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RUSSIA: "Foreign agents", "undesirable organisations", and freedom of religion or belief

By Victoria Arnold, Forum 18 (<https://www.forum18.org>)

Russia has used increasingly strict legislation on "foreign agents" (a term which has connotations of spying) and "undesirable organisations" to curtail, complicate, or prohibit the activities of organisations which promote human rights and monitor their violation, including that of freedom of religion and belief. This "indirectly affects the people human rights defenders stand up for", Aleksandr Verkhovsky of the SOVA Center for Information and Analysis (branded a "foreign agent") told Forum 18. The Justice Ministry and prosecutors are seeking through the courts to close down the Memorial Human Rights Centre (also branded a "foreign agent"), partly for its monitoring of criminal prosecutions of Jehovah's Witnesses.

Courts in Moscow are considering whether to liquidate two organisations belonging to Memorial, one of Russia's longest-established human rights movements – with one lawsuit partially based on Memorial's support for freedom of religion and belief.

On 23 December, Moscow City Court will begin considering the Justice Ministry's and city prosecutors' request to close down the Memorial Human Rights Centre, on the grounds both of alleged violations of the law on "foreign agents" and of "justification of the activities of terrorist and extremist organisations", including Jehovah's Witnesses.

Meanwhile, judges at Russia's Supreme Court have completed their examination of the General Prosecutor's Office's case against International Memorial. Both sides are due to make their arguments to the court on 28 December.

Memorial Human Rights Centre has covered the jail sentences and other punishments handed down to Muslims who study the works of the late Turkish theologian Said Nursi, and to Jehovah's Witnesses. The Supreme Court banned "Nurdzhular" as "extremist" in 2008 (https://www.forum18.org/archive.php?article_id=2215), though Muslims in Russia deny any such formal organisation ever existed. The Supreme Court banned Jehovah's Witnesses as "extremist" in 2017 (https://www.forum18.org/archive.php?article_id=2297).

Since 2012, Russia has introduced increasingly strict legislation on "foreign agents" (a term which has connotations of spying) and "undesirable organisations", ostensibly to prevent undue foreign influence on political processes and civil society. State authorities have, however, also used these designations to curtail, complicate, or prohibit the activities of organisations which promote human rights and monitor their violation, including that of freedom of religion and belief (see below).

Both these Memorial organisations are among human rights groups and media outlets, some of which monitor violations of freedom of religion or belief, which the state has branded as "foreign agents". They continue to function (see below).

Unlike the "foreign agents" legislation, the "undesirable organisations" law can be applied to religious associations, and a number of Falun Gong-related entities appear on the Justice Ministry's list. "Undesirable organisations" are banned from functioning in Russia, while anyone involved with them can be punished, including with jail terms (see below).

A state decision to include organisations, media and individuals on the registers of "foreign agents" and "undesirable organisations" "of course complicates their work", Aleksandr Verkhovsky, Director of the SOVA Center for Information and Analysis, commented to Forum 18. For human rights groups, this "indirectly affects the people human rights defenders stand up for" (see below).

The Moscow-based SOVA Center researches and reports on religion in society, including the impact of restrictive measures such as the 2016 "anti-missionary" amendments; nationalism and xenophobia; and the application of Russia's Extremism Law, including to Jehovah's Witnesses and Muslims who meet to study the writings of Said Nursi (see below).

The Justice Ministry has branded SOVA Center a "foreign agent", a designation it has tried to challenge. The designation has, for example, made it difficult to organise round tables in some places. "Some people are afraid to cooperate," Verkhovsky noted (see below).

Sergey Chugunov of the Moscow-based Slavic Centre for Law and Justice – which works on freedom of religion or belief issues – notes that these designations have "an indirect effect on the entire society". He points to the designation not only of NGOs but some media outlets as "foreign agents". "There are already risks for example in quoting them or distributing their materials," he told Forum 18. "This all restricts the dissemination of information" (see below).

Lawyer Mikhail Frolov, who has worked on many freedom of religion and belief cases, believes the impact of the "foreign agents" and "undesirable organisations" designations is less harmful than that of the Extremism Law. "Yes, it will affect [people's] willingness to discuss problems with a foreign agent organisation. But the activities of such an organisation will not completely stop" (see below).

Increasing state pressure on NGOs, media, journalists, human rights defenders

In recent years, the state has increased pressure on non-governmental organisations, non-state media, and individual journalists and human rights defenders.

The Justice Ministry added 24 media outlets to its register of "foreign agents" in 2021 (compared with two in 2020, one in 2019, none in 2018, and nine in 2017, eight of which were linked to each other). Sixty-seven individuals have now also been listed as fulfilling the function of "foreign agent" media outlets (five in December 2020, the rest in 2021). The register of "undesirable organisations" saw 29 additions in 2020-21 (compared with 19 across the preceding four and half years).

"Foreign agents" are non-profit organisations which authorities claim engage in broadly defined "political activity" and receive foreign funding. In fact, those on the register work in a wide range of fields, including domestic violence prevention, LGBTQ+ rights, and environmental protection.

The "foreign agents" register also includes human rights organisations which (among other things) monitor violations of religious freedom in Russia, including Memorial and the SOVA Center for Information and Analysis.

The scope of the legislation has expanded in recent years to designate many foreign media outlets and individual Russian journalists as "foreign agents". These include several who have covered violations of religious freedom (e.g. Radio Liberty outlets, Meduza) going beyond the official narrative from the Police, FSB security service, Prosecutor's Office and Investigative Committee, which is often presented unchallenged in state media.

"Undesirable organisations" are foreign or international organisations deemed to pose a threat to Russia's constitutional order and state security. Unlike the "foreign agents" legislation, the "undesirable organisations" law can be applied to religious associations, and a number of Falun Gong-related entities appear on the Justice Ministry's list.

The majority of entries on the "undesirable organisations" list, however, are organisations which promote or research democracy and civil society development in Russia, such as the Open Society Foundation and the Association of Schools of Political Studies of the Council of Europe.

How is freedom of religion and belief affected?

"Foreign agents" and "undesirable organisations" are targeted primarily for their (perceived) political activity. Ascertaining the precise impact on freedom of religion and belief is difficult, but the inclusion of human rights organisations on these lists may weaken the sphere of freedom of religion and belief in Russia, through preventing or complicating the work of those who monitor this alongside other human rights and political freedoms as well as by making victims of freedom of religion or belief violations more fearful of telling their stories.

Human rights observers in Russia are cautious in their assessment of the effect these measures are having specifically on freedom of religion and belief.

A state decision to include organisations, media, and individuals on the registers of "foreign agents" and "undesirable organisations" "of course complicates their work", Aleksandr Verkhovsky, Director of the Moscow-based SOVA Center for Information and Analysis told Forum 18 on 14 December.

"If this is human rights work, it complicates that too, which indirectly affects the people human rights defenders stand up for," Verkhovsky commented. "But so far these consequences are not very dramatic, since such human rights organisations and individual human rights defenders are not going to abandon their activities."

"Foreign agent" organisations may be closed down completely, either forcibly through the courts or because their practical and financial difficulties become overwhelming. "Undesirable organisations" are automatically shut down, and individuals deemed to be participating in their activities may face fines or prison terms.

"It's not so much about the closure of organisations as the persecution of people [connected with them]", Verkhovsky noted. He added, however, that "Attempts to close organisations, as we can see from the example of Memorial Human Rights Centre, take up a lot of resources, which, accordingly, causes much more harm than simply being included in the register of [foreign] agents."

Lawyer Mikhail Frolov has worked on many freedom of religion and belief cases. While noting that the "undesirable organisations" law can have "serious negative consequences" for any organisation, he considers the "foreign agents" law in itself to be "the appropriate response by any state to attempts by other states to interfere in its internal affairs".

While the "foreign agents" law "certainly creates some inconvenience (but not problems)" for many non-profit organisations, Frolov told Forum 18 on 14 December, "this is more related to the complication of reporting and does not affect the very essence of freedom of conscience and religion". He added that the "foreign agent" law is "far behind" the Extremism Law (https://www.forum18.org/archive.php?article_id=2215) in its "repressive potential" for the freedom of religion and belief.

The negative connotations of the terms "foreign agent" and "undesirable organisation", as well as, in some cases, the possibility of prosecution for involvement in their activities, may mean that both victims of human rights violations and others working in the same field may be discouraged from approaching or collaborating with such organisations.

"It has become more difficult for us, for example, to organise round tables in the regions," Aleksandr Verkhovsky told Forum 18. "Some people are afraid to cooperate."

"This has an indirect effect on the entire society," Sergey Chugunov of the Moscow-based Slavic Centre for Law and Justice – which works on freedom of religion or belief issues – commented to Forum 18 on 16 December. "Now, in addition to NGOs, there are 'foreign agent' media outlets and individuals. There are already risks for example in quoting them or distributing their materials. This all restricts the dissemination of information."

Mikhail Frolov notes that the term "foreign agent" has a "negative connotation for Russians", but not so much as to affect the work of the media or a human rights organisation significantly. "This is more a legally enshrined 'black mark'," he told Forum 18. "No public authorities or other pro-government structures will deal with the bearer of this" in terms of permitting events or advertising. "Yes, it will affect [people's] willingness to discuss problems with a foreign agent organisation. But the activities of such an organisation will not completely stop."

Memorial: Attempt to close down two "foreign agents"

The Justice Ministry and prosecutors in Moscow are attempting to close down two organisations which are part of Memorial. The human rights and historical society was originally set up in 1989 to document Soviet-era repressions (including on grounds of freedom of religion or belief), but continues to monitor current human rights violations in post-Soviet Russia (and Central Asia).

There are seven Memorial organisations on the register of "foreign agents", including regional branches in Yekaterinburg, St Petersburg and Ryazan.

On 8 November 2021, Moscow City Prosecutor's Office and the Justice Ministry lodged a similar suit at Moscow City Court against the Memorial Human Rights Centre (added to the "foreign agents" list on 21 July 2014).

The General Prosecutor's Office lodged a suit at the Supreme Court on 9 November 2021 against Memorial International Historical Educational Charitable and Human Rights Society, which was added to the list of "foreign agents" on 4 October 2016.

Both suits request the liquidation of the Memorial organisations on the grounds of "systematic violations" of the law on "foreign agents" – specifically, allegedly failing to display a disclaimer on all materials showing that they had been produced by a "foreign agent".

In the suit against the Memorial Human Rights Centre, prosecutors also claim that its online materials contain "justification of the activities of terrorist and extremist organisations", including Jehovah's Witnesses (which the Supreme Court banned as an "extremist organisation" in 2017 (https://www.forum18.org/archive.php?article_id=2297)).

"The activities of these organisations are presented by the authors of [these] materials as legitimate and permissible, and participation in their activities as a form of exercising the right to freedom of religion," prosecutors claim in the suit, as quoted by the Human Rights Centre on its website on 12 November.

This claim is based on a forensic psycho-linguistic report submitted by mathematician Natalya Kryukova and translator Aleksandr Tarasov, both of the Centre for Socio-Cultural Analysis in Moscow, according to a "Novaya Gazeta" report of 19 November. Kryukova and Tarasov have previously produced analysis which led to the banning of Jehovah's Witness literature as "extremist" (https://www.forum18.org/archive.php?article_id=2319), including the New World version of the Bible in 2017.

Memorial Human Rights Centre maintains a list of people it has recognised as political prisoners who have been "persecuted in connection with the realisation of their right to freedom of religion". This covers both those who have been convicted and are serving jail terms, and those who are in detention or under house arrest while investigations or trials are underway.

The Memorial list, as of 20 December, includes 104 of the jailed Jehovah's Witnesses (from Russia (https://www.forum18.org/archive.php?article_id=2702) and Russian-annexed Crimea). The list has previously included Muslims who study the writings of Said Nursi, but who have now been released from prison.

Moscow City Court has so far held three preliminary hearings in the case of the Memorial Human Rights Centre (on 23 and 25 November and 16 December 2021). The court is due to begin considering the case on its merits on 23 December, according to the Human Rights Centre website.

The Supreme Court finished examining the materials of the case against International Memorial in hearings on 25 November and 14 December 2021, Memorial noted on Twitter shortly after the most recent court session. The next hearing is due to take place on 28 December, when both sides will make their arguments to the court.

FOREIGN AGENTS

Register of non-profit organisations "fulfilling the function of a foreign agent"

The "foreign agents" list is maintained by the Justice Ministry, based on legislation originally aimed at Russian non-governmental, non-commercial organisations which received foreign funding and engaged in loosely defined "political activity", even if that funding did not support the activities in question. For the purposes of the register, "political activity" is not determined by what is stated in an organisation's constitution, but by its involvement in anything which the Justice Ministry decides is intended to influence state policy or public opinion.

After the legislation was first adopted in July 2012, organisations were supposed to register themselves. In 2014, the State Duma introduced an amendment which permitted the Justice Ministry to add organisations to the list. In 2017 and 2019, the legislation was further expanded to apply to foreign media outlets and individuals (see below).

The law explicitly states that registered religious organisations cannot be declared "foreign agents".

The "Register of non-profit organisations fulfilling the function of a foreign agent" is governed by 2012 Federal Law No. 121 – a set of amendments to legislation on public organisations, non-profit organisations, and money laundering, and the Criminal and Criminal Procedural Codes. This is collectively and popularly known as the "foreign agents law".

The first entry on the list was the Eurasian Antimonopoly Association on 27 June 2013. The list now contains 75 organisations. The latest are the "Citizen. Army.Law" Human Rights Group (soldiers' and conscripts' rights), added on 3 December 2021, and the Nizhny Novgorod Centre for German and European Culture (which closed a month after listing) and the Ivanovo Centre for Gender Studies, both added on 29 September 2021.

The register includes several human rights organisations which monitor violations of freedom of religion and belief, including Memorial (see below) and the SOVA Center for Information and Analysis (added on 30 December 2016). The SOVA Center researches and reports on religion in Russian society, including the impact of restrictive measures such as the "anti-missionary" amendments of 2016 (https://www.forum18.org/archive.php?article_id=2593); nationalism and xenophobia; and the application of Russia's Extremism Law, including to Jehovah's Witnesses and Muslims who meet to study the writings of Said Nursi.

Unregistered groups which are not legal entities can also be listed as foreign agents. So far, only three have been added: the Golos Movement for the Defence of Voters' Rights (added on 18 August 2021), OVD-Info Media Project (29 September 2021), and the Russian LGBT Network (8 November 2021).

OVD-Info mostly monitors state action against political activists and demonstrators and provides support to those arrested. It has also reported on the criminal prosecutions of Jehovah's Witnesses and Muslims who read Nursi's works (https://www.forum18.org/archive.php?article_id=2702), as well as individuals and communities punished under the "anti-missionary" amendments (https://www.forum18.org/archive.php?article_id=2593).

Requirements for "foreign agents"

Organisations deemed to fit the definition of "foreign agent" must register with the Justice Ministry. Those that do not risk having their bank accounts frozen, being barred from activities deemed "political", and incurring heavy fines.

Other requirements include:

- submission of reports – every three months on how funds are spent, and every six months, on activities and the composition of the governing body;
- a full audit every year (unscheduled audits may take place at any time);
- the labelling of all materials, online and off, with a disclaimer stating that they were produced or distributed by a "foreign agent".

Any foreign donation worth more than 200,000 Roubles is subject to mandatory monitoring by the Federal Financial Monitoring Service (Rosfinmonitoring).

Both "foreign agent" legal entities and their employees may be subject to punishment under the Administrative Code (Article 19.34) and Criminal Code (Article 330.1, Part 1 and Article 239) if the Justice Ministry or prosecutors decide that they have violated any of the requirements of registering or operating as a foreign agent (see below). This may take the form of large fines or (in criminal cases), community service, correctional labour, or imprisonment.

Administrative Code Article 19.34.1 ("Violation of the procedure for activities of foreign mass media performing the functions of a foreign agent, and/or a Russian legal entity established by it") carries a maximum fine for individuals of 50,000 Roubles, and for organisations of 5 million Roubles.

Criminal Code Article 330.1 ("Malicious evasion of [legal obligations] in relation to recognition as performing the functions of a foreign agent") carries a maximum punishment of two years' imprisonment.

Criminal Code Article 239 ("Creation of a non-profit organisation which infringes upon the person and rights of citizens") carries a maximum punishment of four years' imprisonment.

Register of media outlets "fulfilling the function of foreign agents" – including individual journalists

In November 2017, Federal Law No. 327 amended Russia's 1991 Media Law to enable the Justice Ministry to list foreign media outlets as "foreign agents".

Any foreign organisation distributing informational material in Russia (online or offline) may be declared a foreign agent if it receives funds from "foreign states, their state bodies, international [or] foreign organisations, foreign citizens, stateless persons, or persons authorised by them, and/or from Russian legal entities receiving funds and/or other property from these sources".

This appears to apply even if an organisation has no branches or representatives in Russia, regardless of any involvement in "political activity", and regardless of whether or not it is a legal entity in its own country.

Organisations on the register must set up a Russian legal entity within one month of being recognised as a "foreign agent", and must register this separately as a "foreign agent" with the Justice Ministry.

All obligations to which "foreign agent" NGOs are subject are also applicable to "foreign agent" media outlets, including the obligatory use of a "foreign agent" disclaimer on all materials.

There are 36 organisations currently on this register, including many who report on violations of freedom of religion and belief, among other human rights issues, such as Meduza (based in Latvia, but founded and run by Russian journalists), the US news organisation Radio Free Europe/Radio Liberty, and RFE/RL's various regional outlets which cover the Caucasus, Tatarstan and Bashkortostan, Siberia, the Russian North, and Russian-annexed Crimea.

Further amendments to the Media Law in December 2019 (Federal Law No. 426) allow the Justice Ministry to add individuals (regardless of citizenship) to its register of media outlets "fulfilling the function of foreign agents" on the same basis as organisations, ie. if they publish or distribute informational materials (online or offline) and receive funding from foreign sources.

Sixty-seven people now appear on this register, many (though not all) linked to organisations also designated "foreign agents". Some of them, as well as people who work for "foreign agent" media outlets, have been subjected to police raids on their homes.

These individuals must also establish a Russian legal entity within one month of being listed (even if they are Russian citizens) and must add a disclaimer to all published materials stating that they were produced or distributed by a "foreign agent".

Both media organisations and individuals are subject to punishment under the Administrative Code (Article 19.34.1 – fines only) and Criminal Code (Article 330.1, Part 2 – including possible prison terms of up to several years) should the Justice Ministry or prosecutors decide that they have violated any of the conditions of registering and operating as "foreign agents".

(There is now also a "Register of individuals fulfilling the function of foreign agents" – not connected to media activity – aimed at people collecting military, military-technical, and strategic information on behalf of foreign states or organisations, which could threaten Russian state security. This is governed by Article 2.1 of the 2012 Federal Law "On measures of influence on persons involved in violations of fundamental human rights and freedoms [and the] rights and freedoms of citizens of the Russian Federation", which was introduced by an amendment of 30 December 2020. Nobody has yet been listed.)

Register of foreign and international organisations whose activity is recognised as undesirable on the territory of the Russian Federation

A harsher measure taken against organisations deemed to pose a threat in Russia's political and security sphere is the Justice Ministry's register of "undesirable organisations", inclusion in which shuts down a legal entity immediately and bars individuals' involvement with it, even outside Russia. It is governed by Article 3.1 (adopted on 23 May 2015) of the 2012 Federal Law "On measures of influence on persons involved in violations of fundamental human rights and freedoms [and the] rights and freedoms of citizens of the Russian Federation" (known as the Dima Yakovlev Law).

This legislation applies to foreign or international non-governmental organisations which allegedly threaten Russia's constitutional order, defence capabilities, or state security – explicitly including influence on elections and referendums – or which are deemed to have acted as a financial intermediary for an "undesirable organisation" already on the list.

Once listed, an "undesirable organisation" must close all its branches in Russia and is banned both from opening more and from founding any other legal entities. It can no longer produce, distribute, or store any informational materials, online or offline, and is barred from carrying out any programmes or projects.

As of 1 October 2021, when the latest amendments to the law came into force, Russian legal entities and citizens (plus stateless persons resident in Russia) are barred from involvement with "undesirable organisations" outside Russia (punishments for such involvement inside Russia had already been in place since 2015).

The General Prosecutor's Office decides which organisations to add to the register. Its current total of 49 entries are largely US-based, but also Canadian, British, Romanian, Latvian, Lithuanian, Ukrainian, Czech, Belgian, French, and German. The first entry was the (US) National Endowment for Democracy on 29 July 2015; the latest was the European Network of Election Monitoring Organisations on 1 October 2021.

Unlike the "foreign agents" law, the "undesirable organisations" law can be applied to religious organisations. The register currently includes six Falun Gong or Falun Gong-linked organisations: Dragon Springs Buddhist Inc., Friends of Falun Gong, Global Mission to Rescue Persecuted Falun Gong Practitioners Inc., Coalition to Investigate the Persecution of Falun Gong in China, World Organization to Investigate the Persecution of Falun Gong Inc. (all US), European Falun Dafa Association (UK), all added on 21 July 2020.

Falun Gong is a spiritual movement which originated in China whose followers in Russia largely practice qijong exercises and attempt to draw attention to fellow practitioners' persecution in China. Prosecutors have had several Falun Gong texts outlawed as "extremist literature", with the result that people found with copies can be prosecuted under Administrative Code Article 20.29 ("Production or mass distribution of extremist materials included in the published Federal List of Extremist Materials, as well as their production or storage for mass distribution").

Falun Gong practitioners have also been prosecuted under Administrative Code Article 5.26 for "unlawful missionary activity" (https://www.forum18.org/archive.php?article_id=2475).

On 10 November 2020, after long-running court proceedings, the 5th Appeal Court in Novosibirsk upheld the request of the Khakasiya Republic Prosecutor's Office to liquidate Khakasiya's registered Falun Gong organisation as "extremist" and ban its activities. (END)

More reports on freedom of thought, conscience and belief in Russia (<https://www.forum18.org/archive.php?country=10>).

For background information, see Forum 18's survey of the general state of freedom of religion and belief in Russia (https://www.forum18.org/archive.php?article_id=2246), as well as Forum 18's survey of the dramatic decline in this freedom related to Russia's Extremism Law (https://www.forum18.org/archive.php?article_id=2215).

A personal commentary by the Director of the SOVA Center for Information and Analysis (<https://www.sova-center.ru>), Alexander Verkhovsky, about the systemic problems of Russian "anti-extremism" laws (https://www.forum18.org/archive.php?article_id=1468).

Forum 18's compilation of Organisation for Security and Co-operation in Europe (OSCE) freedom of religion or belief commitments

(https://www.forum18.org/archive.php?article_id=1351).

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