

# Legislation as a Tool for Expanding the Power of the State and Limiting Political and Civil Rights in Modern Russia

by Olga Romanova

## ABSTRACT

The whole world is now witnessing what Russian lawmaking of previous years has led to. The aggression against Ukraine is a direct consequence of the suppression of any dissent in Russia, formalised by the parliament as laws. Russian legislators – who got into parliament as a result of not only electoral fraud, but also laws that place insuperable obstacles in front of not only the opposition, but also any sane citizens with dignity who seek election to the State Duma – easily stamp out any Kremlin legislative initiative. It is they who make it possible not only to pass repressive laws that suppress civil society in Russia, but also to make decisions that put the whole world on the brink of a large-scale war and a real nuclear catastrophe. Russian legislators bear direct responsibility for unleashing this war.

*Russia | Human rights | NGOs | Mass media*

**keywords**

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by Olga Romanova\*

## 1. Brief history of lawmaking as a tool for expanding the power in post-soviet Russia

Legislative activity in Russia is quite intensive, and we can observe a steady upward trend. Whereas the State Duma in place from 1995 until 2000 passed 876 legislative acts, the 7th State Duma (2016–2021) passed more than 2,500 federal laws. Indeed, such intensity and the nature of the adopted legislative acts themselves secured the State Duma of the Russian Federation the sobriquet “the mad printer”. It is significant that the most important laws are passed mostly without discussion and public discourse. This principle underlying the work of the Putin’s Duma was clearly formulated back in 2003 by its then chairman Boris Gryzlov: “Parliament is not a place for discussions”.<sup>1</sup>

If we speak specifically about the 20-year period of the Russian parliament’s work “under Putin” – more precisely, the 21 years under Putin and their impact on civil society – it becomes quite obvious that the most important laws in this sense were adopted over the past ten years. In Putin’s first decade, the formation of a modern civil society in Russia was taking place. During these years, independent

<sup>1</sup> Russian State Duma, *Transcript of the Meeting No. 1 (715)* [in Russian], 29 December 2003, <http://transcript.duma.gov.ru/node/1386/>. See also Alexey Levchenko, “Not a Place for Discussions” [in Russian], in *Gazeta.ru*, 15 November 2007, <https://archive.ph/20120730205351/www.gazeta.ru/politics/elections2007/articles/2311346.shtml>.

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media already existed and were developing in Russia, although in the middle of the 2000s a significant attack on freedom of speech began. Oppositional or partly oppositional political parties appeared and even took part in the elections, such as the Union of Right Forces or the Parnassus party, created by Boris Nemtsov and former Prime Minister Mikhail Kasyanov. Non-governmental organisations and charitable foundations were being created, and began to take part in public life. An environmental movement as well as animal rights activism appeared, and Public Monitoring Commissions began to work in places of deprivation of liberty. Mass rallies (for example, in defence of the NTV channel) and major political speeches, including those of a radical nature (supporters of national Bolshevism, led by the writer Eduard Limonov, were especially distinguished here) were not uncommon.

Public activism, however, was not popular until around 2010. This period is considered to be the time of "Putin's glamour": high prices for oil and gas, coupled with a favourable foreign policy environment, made it possible to raise household incomes, the government's rating was high, and Russians were curious about the world and new opportunities.

It is generally recognised that the events of 2010 represent the beginning of mass social activity. The well-known Russian political scientist Ekaterina Schulman notes:

It is believed that the catalyst point, after which quantity turned into quality, after which the growth of social ties and the growth of civil interaction skills acquired a qualitatively new character, was 2010 – the year of great fires in Siberia and Central Russia. It was in that year that citizens realised that they could help those who were in trouble, that they could complement and in many ways replace inefficient state structures, they felt the joy of joint action, which is actually what brings people to activities of non-profit organizations.<sup>2</sup>

It is characteristic that during this period the authorities and structures of civil society tried to interact with each other, and often quite successfully. Thanks to this, during the period of the "Medvedev thaw" (the years of Dmitry Medvedev's presidency, 2008–2012), much changed for the better in Russian legislation. As Schulman notes,

Helping the seriously ill, cancer patients pain relief, guardianship and trusteeship reforms, reorganization of orphanages – all this is done with the help of those public organizations that can and know how to impose their agenda (speaking in terms of lobbying) on state structures, through such structures as public councils at ministries, expert councils, working

<sup>2</sup> Ekaterina Shulman, "Parallel to the State: The Birth of Civil Society from Fire and Water" [in Russian], lecture 22 in course *Return of the State. Political History of Russia 2000-2012*, 6 June 2020, <https://openuni.io/course/6-course-5/lesson/22>.

groups under the relevant ministers and deputy prime ministers.<sup>3</sup>

In parallel with this, however, other processes also took place. Back in the mid-2000s, the State Duma began to adopt minor amendments to the basic law (1996) on non-profit organisations, which limited the participation of foreign individuals in non-profit organisations (NPOs), and later foreign NPOs. These amendments gave the Ministry of Justice additional rights regarding the registration of new organisations, but this did not cause much public concern, and especially as the Ministry of Justice did not abuse this right.

At that time the law on fighting against extremism, adopted back in 2002, also did not cause much concern. This law introduced into the Criminal Code of the Russian Federation a whole conglomeration of criminal articles aimed at anti-extremist activities: Articles 280 "Public calls for extremist activity", 282.1, "Establishment of an extremist organization" and 282.2 "Organising activities of an extremist organization". That is to say, back in 2002 Russian legislation included the concept of thought crimes as extremist crimes, according to which a citizen and an organisation can be prosecuted for appeals, for statements and for disseminating information. However, this did not make a big impression on the active part of society for quite a long time. According to judicial and criminal statistics, real imprisonment and other restrictions under Articles 280–282 of the Criminal Code until 2012 affected mostly nationalists.

We can name the exact date in Russian history when everything changed dramatically. It was 24 September 2011. At the party convention of United Russia, it was announced that Vladimir Putin would again go to the presidential elections, and Dmitry Medvedev would head the party list in the Duma elections – because Putin and Medvedev had "agreed" on this ahead of time. This frank public announcement shocked the citizens, and they began to sign up en masse as election observers.

Electoral fraud became so obvious that on the day of the parliamentary elections, 4 December 2011, the first major protest took place in Moscow. The large-scale protests against electoral fraud in 2011–2012 made a strong impression on the current government and, apparently, on Vladimir Putin personally. Over the next ten years, parliament passed several dozen repressive laws designed to completely suppress civil and political activity in Russia.

## 2. Foreign Agents Law

The concept of the "foreign agent" originally appeared in 2012 in the law "On non-profit organisations" and referred to NPOs that: a) receive foreign funding (money

<sup>3</sup> Ibid.

or property from foreign states, international or foreign organisations, foreign citizens, stateless persons, etc.); or b) participate in political activities, including in the interests of foreign sources.

According to the law, foreign agents must register as such with the Ministry of Justice and indicate their status in all publications in the media and on the Internet. Those who do not obey will face fines and forced liquidation. In addition, foreign agents must file special reports, the rules of which are often changed retroactively so that it is physically impossible to comply with them – for this you need to have a time machine or a full-time diviner.

It is quite easy to shut down an organisation recognised as a foreign agent by a court; worldwide fame and recognition did not save the oldest Russian human rights organisation Memorial, founded by Andrei Sakharov, from liquidation. For this, not only are formal and far-fetched reasons sufficient – as practice shows, it can be done without a reason. The author of this report is the head of the Russia Behind Bars human rights foundation, which was included in the list of foreign agents back in 2016. I testify that the lawyers of the organisation in the past two years have not been able to prove the illegality of a single fine imposed on the organisation in courts, despite the fact that we often still manage to win in courts related to the protection of the rights of citizens, although it is becoming more and more difficult to do this every day. At the same time, the amount of the fines each time endangers the very existence of the organisation.

In 2017, in response by the requirement of the US Department of Justice for Russia Today and Sputnik (Russian state-controlled media) to register as foreign agents, the Duma passed its own law introducing the concept of media outlet as foreign agent. According to the new version of Article 6 of the media law, the Ministry of Justice can recognise any foreign media that receives funding or property from “foreign authorities” or citizens, whether directly or through Russian legal entities, as a foreign agent. Such foreign media agents are equated in their duties with foreign NPOs. The register of recognised foreign media/foreign agents is maintained by the Ministry of Justice. By February 2022, there were 115 such foreign agents on the register. Thus, as of now, the term “foreign agent” is applied not only to non-profit organisations, but also to the media, as well as to individuals.

In 2018, the State Duma adopted amendments to this law, which provide for the recognition of an individual as a foreign agent if the individual distributes materials to an unlimited number of people and receives foreign funding. The amendments to the second reading made it possible to include in this category those who distribute any messages and media materials of foreign agents or those who participate in the creation of these materials and at the same time receive funding from abroad. Thus, journalists who work in media already recognised as foreign agents in Russia could be recognised as individual foreign agents (by 2019 these included Voice of America, Radio Liberty, Current Time, Tataro–Bashkir Service of Radio Liberty, Siberia.Realii, Idel.Realii, North.Realii, Factograph, Kavkaz.Realii and Crimea.Realii).

The right to selectively determine the people who will be included in the list of “agents” was vested in the Ministry of Justice and the Foreign Ministry. According to the amendments, an individual can be recognised not just as a foreign agent, but as a foreign mass media acting as a foreign agent, and within a month this individual is obliged to establish a Russian legal entity and notify the authorities about it. The risk zone included journalists working in media recognised as foreign agents, citizens working in companies with foreign funding, or scientists who received foreign grants. However, the actual reach extended well beyond this zone, as the practice of law enforcement has shown.

On 28 December 2020, the Russian Ministry of Justice published the first list of individuals recognised as media foreign agents, and number one on this list was the oldest Russian human rights activist Lev Ponomarev (aged 81), who had never worked in the media. A day after that Vladimir Putin signed a law “establishing additional measures to counter threats to national security”, which provides for the possibility of recognising as foreign agents public associations that operate without forming a legal entity. The first such organisation was the “Voice” movement, which is engaged in election monitoring. The movement “For Human Rights” and the Committee against Torture were also included in the register. Despite the negative perception of the foreign agent legislation on the part of both the Russian and the international public, attempts at legal resistance have not yet been successful.

Meanwhile, many Russian human rights organisations and charitable foundations have been forced to stop their work due being assigned this status. Also, a number of well-known Russian public figures, having received the status of foreign agent, have been forced to leave the country. Among them are writer Viktor Shenderovich, lawyer Ivan Pavlov, and Pyotr Verzilov and Nadezhda Tolokonnikova from Pussy Riot. The leading opposition media in Russia, for example the TV Rain channel, were recognised as foreign agents. On the sixth day of the war with Ukraine, TV Rain was simply turned off, as was the Echo of Moscow radio station.

### 3. Undesirable Organisations Law

In 2015, the term “undesirable organisation” was introduced into Russian legislation. It was understood as a foreign or international organisation that poses a threat to the defence capability or security of the state, or to public order, or to the health of the population. In order to protect the foundations of the constitutional order, morality, and the rights and legitimate interests of others, after being recognised as undesirable, a ban and restrictions would be imposed on the activities of any such organisation.

The law on undesirable organisations was passed very quickly, and as a result, many well-known and respected foreign non-governmental organisations were

forced to leave Russia. As of today there are 55 organisations on the list, including all organisations connected in one way or another with Mikhail Khodorkovsky.<sup>4</sup>

In December 2021 under the threat of blocking, the Federal Service for Supervision of Communications, Information Technology and Mass Media – Roskomnadzor forced a number of Russian media to remove news based on investigations by the Russian publication Proekt (recognised as an undesirable organisation). The investigations concerned real estate and other property, which (according to the publication) is owned or used by high-ranking Russian officials and their families.

#### 4. Freedom of assembly and protest laws

Freedom of assembly is enshrined in the Constitution of the Russian Federation (Article 31). In 2004, the Law “On meetings, rallies, demonstrations, marches and pickets” was adopted. Russian laws prohibit holding mass actions unless they have been agreed upon with the authorities. At the same time, the deadlines for agreement are inconvenient: it is allowed to notify the authorities about an upcoming rally no later than ten days before the action and three days before picketing. Without approval from the government only single pickets are allowed, and even then not necessarily. But even an action agreed upon with the authorities is not safe. It is almost impossible to predict the behaviour of police officers. For example, the agreed-upon march and rally on 6 May 2012 ended in harsh arrests and initiation of a criminal case, the investigation of which lasted for many years. Conversely, the uncoordinated mass rally in support of the arrested governor Sergei Furgal in Khabarovsk in June 2020 and the March of Mothers in support of the defendants in the “New Greatness” case in August 2018 did not have a single detention.

When an action is not officially agreed upon, the law prohibits the dissemination of information about it. The “organisation” of uncoordinated public events, which is sometimes understood simply as the dissemination of information about them in social networks, leads to significant fines and arrests. More often, in connection with actions, protocols are drawn up on violation of the procedure for holding a public event under Article 20.2 of the Code of Administrative Offenses.

Over the past ten years, this article has been repeatedly edited, introducing new prohibitions and adding greater punitive measures. During this time, the number of parts in the article has grown from three to ten, the minimum fine for a participant has grown from 1 to 10 thousand rubles, and punishment has appeared in the form of compulsory work and arrests for participating in an uncoordinated action. The most severe punishment is provided for a repeated violation under this

<sup>4</sup> For a current list of organisations, see Wikipedia, *List of Undesirable Organisations* [in Russian], [https://ru.wikipedia.org/wiki/Список\\_нежелательных\\_организаций](https://ru.wikipedia.org/wiki/Список_нежелательных_организаций).

article: a fine of 150 to 300 thousand rubles (up to 3,000 euros, which is a huge and unbearable amount for the average Russian), compulsory work (from 40 to 200 hours) or arrest (5 to 30 days).

In 2014, the new article Article 212.1 was introduced into the Criminal Code. Its introduction makes possible, for participation in more than three uncoordinated actions within six months or for other repeated violations of the rules for holding a public event, a penalty of up to 5 years in prison. This article was first applied in December 2015: activist Ildar Dadin was sentenced to three years in prison. In September 2019, activist Konstantin Kotov was sentenced to four years in prison for five peaceful actions. In 2017 and 2020, the Constitutional Court of the Russian Federation raised the question of the constitutionality of such harsh liability for participation in peaceful actions, but both times the article was not recognised as contrary to the Constitution.

## 5. Anti-extremism laws as laws prohibiting the freedom of conscience and free expression of the will

In Russia, the legal definition of what actions are considered extremist is contained in Article 1 of the Federal Law "On counteracting extremist activity" applied on 25 July 2002. This law has been repeatedly criticised, including by the European Commission against Racism and Intolerance. The vagueness of the wording was noted, allowing one to interpret anything as extremism. However, no clarifications were made.

In 2017, the Ministry of Justice recognised Jehovah's Witnesses as extremists, and the Supreme Court of the Russian Federation confirmed their extremism. As a result, hundreds of adherents received serious criminal terms in Russia as extremists. All of them were recognised as prisoners of conscience by the Memorial Human Rights Center, which was later given the status of foreign agent and liquidated in March 2022.

In May 2021, State Duma deputies from the Commission for Investigating the Facts of Interference by Foreign States in Russia's Internal Affairs submitted to the parliament a law banning individuals involved in the activities of extremist organisations from running in elections for the State Duma. Moreover, the ban on running also applied to those who collaborated with the organisation even before it was recognised as extremist. Within a month, the law was adopted and signed by Vladimir Putin. This made it possible to prevent everyone who was somehow connected with the organisations of Alexei Navalny from participating in the 2021 parliamentary elections. All these organisations were also later recognised as extremist and liquidated.



## 6. "Gay Propaganda" Law

Russia abolished the criminal punishment for sodomy in 1993 (it never applied to women). But ten years later, Putin's parliament made repeated attempts to legally ban the so-called "gay agenda". In 2013, the State Duma passed a law supplementing the Code of Administrative Violations with an article establishing liability for "propaganda on non-traditional sexual relations among minors".<sup>5</sup> Many foreign public men's and international organisations condemned these bans, calling them discriminatory. In 2017, the European Court of Human Rights found Russian laws on homosexual propaganda to be a violation of the right to freedom of expression, pointing to the vague definitions in the legislation and the arbitrary nature of their application.

In the period 2013–2014, the State Duma also discussed or adopted other laws related to LGBT people. In just two days after signing the law banning propaganda on non-traditional relationships, Vladimir Putin signed a law banning the adoption, guardianship and trusteeship of children by individuals who are in a relationship with a person of the same sex. The law was passed to protect children from the "artificial imposition of non-traditional sexual behaviour".

In 2020, Vladimir Putin personally met with the working group on the preparation of amendments to the Constitution. During the meeting he noted that it would be correct to formalise the concept of marriage exclusively as the union of a man and a woman. This is exactly how it was included in the new Constitution, which also reset the counter to zero for Putin's presidential terms.

## 7. Law on Educational Activities

The bill legislating educational activities was submitted to the State Duma at the end of 2020 and, despite strong public resistance, it was adopted and entered into force on 1 June 2021. The law very broadly interprets the concept of "educational activity", as the activity of all subjects who in one way or another transmit educational and disciplinary information to other people. In particular, it targets YouTube bloggers who publish educational and popular science content, publicists, Instagram bloggers, writers, publishers, journalists, TV presenters, and more. Their activities now fall under the control of officials. The explanatory note states that the law "is meant to protect Russian citizens, primarily schoolchildren and students, from anti-Russian propaganda presented under the guise of educational activities".

To legally engage in educational activities, companies and citizens must meet certain criteria: they must be of legal age; take part in the implementation of

<sup>5</sup> Wikipedia, *Russian Gay Propaganda Law*, [https://en.wikipedia.org/wiki/Russian\\_gay\\_propaganda\\_law](https://en.wikipedia.org/wiki/Russian_gay_propaganda_law).

socially significant initiatives; carry out educational or public awareness activities for at least two years; and they must not have restrictions on educational work (for example, a criminal record). Naturally, educational organisations must not be included in the register of non-profit organisations recognised as a foreign agent; they must not have debts on taxes, fees and other obligatory payments; and the organisations should report on their activities on the Internet.

Educational activities can only be carried out on the basis of a contract. The contract must be concluded with an educational / scientific organisation or a cultural institution (depending on the scope of educational work). Simply put, the law requires permission to run a knitting class, a drawing workshop or tax webinars. If companies or individuals do not meet these criteria, they will not be able to enter into a contract to conduct educational work and, accordingly, will not be able to engage in it.

The law hit first of all such organisations as the Sakharov Center – those who were engaged in civic education, education on legal awareness and the protection of human rights.

## 8. Laws of the wartime

On 5 March 2022, both chambers of the Russian parliament adopted a law, which was signed by Vladimir Putin, introducing criminal liability for disseminating false information about the Russian Armed Forces, statements that discredit them, and calls for sanctions on Russia. The law now adds to the Criminal Code a new article 207.3 “Public dissemination of deliberately false information about the use of the Armed Forces of the Russian Federation”. For such actions, the document provides for a fine of up to 1.5 million rubles (about 15 thousand euros) or up to three years in prison. A job title, mercenary motives or motives of political, racial and other hostility can become aggravating factors. In this case, the amount of the fine can increase to 5 million (50 thousand euros), and the term of imprisonment can be five to ten years. Further, if the spread of “fake news” has led to serious consequences, the prison term will be from ten to 15 years.

In addition, the Criminal Code introduces liability for “public actions aimed at discrediting the use of the Russian Armed Forces in order to protect the interests of Russia and its citizens, maintain international peace and security” (Article 280.3). Sanctions are also provided for public calls against the use of the army for these purposes.

Overall, any information that the authorities may not like may be recognised as false or discrediting the use of the Russian armed forces, including calls to stop the war.

The law actually introduces strict military censorship. On the day of its adoption, many independent media, which had not yet been closed at the request of the prosecutor's office and not blocked by Roskomnadzor, shut down. Some of the independent media, such as Novaya Gazeta, publicly refused to publish materials about the war.

Bloggers or people managing accounts on social networks are also under the threat of reprisals. Since the law applies not only to journalists and bloggers, but to all Russian citizens, many were forced to close their social media accounts.

Particular attention should be given to the sobering fact that the law was adopted unanimously by the State Duma.

## Conclusion

Thus, it can be stated that repressions against the active part of civil society in Russia have intensified over the past 20 years and have now reached their climax. The suppression of civil activity has led to the closure of many public and human rights organisations in Russia, an increase in the number of political prisoners and an increase in emigration from Russia – and has completely eliminated freedom of speech, freedom of conscience, expression of will and freedom of assembly. Any protest actions, including the expression of thoughts and beliefs, are severely prosecuted, and a legislative framework has been laid down for these persecutions. The participants in these repressions against Russian citizens will be able to employ that historically well-used excuse: "I did everything according to the law".

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