



RUSSIAN FEDERATION

MONITORING OF COURT CASES RELATED TO THE IMPLEMENTATION OF THE “FOREIGN AGENTS” LAW

*A report on the trials against Kostroma Centre for Civic Initiatives (Kostroma,
29 July and 12 August 2013)
Transparency International Russia (Moscow, 9 August 2013)*

This report has been prepared in the framework of a Civil Solidarity Platform initiative coordinated by International Partnership for Human Rights (IPHR). The purpose of the initiative is to monitor trials against NGOs in cases initiated under the 2012 ‘foreign agent’ law in Russia, as well as other legal proceedings aiming either directly or indirectly at hampering the functioning of independent civil society organizations in this country. The initiative aims to raise awareness about these proceedings and mobilize national and international support for the organizations affected by them. The report has been finalized in September 2013 and factual circumstances described in it are reflective of this date.

October 2013

MONITORING OF COURT CASES RELATED TO THE APPLICATION OF THE “FOREIGN AGENTS” LAW

Monitoring of the trials against the Kostroma Centre for Civic Initiatives (Kostroma, 29 July and 12 August 2013) and Transparency International Russia (Moscow, 9 August 2013)

BACKGROUND²

The Russian Federation’s legislation on non-commercial organisations consists of a raft of laws and regulations.

The two laws that are of particular relevance to this report are Federal Law No. 82-FZ “On Public Associations” of 19.05.1995 (as amended) and Federal Law No. 7-FZ “On Non-Commercial Organisations” of 12.01.1996 (as amended), as well as the RF Code of Administrative Offences of 30.12.2001 (as amended).

Other applicable legislative provisions are found in the Constitution of the Russian Federation; the Civil Code; the Criminal Code; the Code of Administrative Offences; Federal Law No. 2202-1 “On the Prosecutor’s Office of the Russian Federation” of 17.01.1992 (as amended); the Tax Code; Federal Law No. 135-FZ “On charitable activities and charitable organisations”; Federal Law No. 95-FZ “On Grant Aid (Assistance)”; Federal Law No. 54-FZ “On assemblies, meetings, demonstrations, marches and picketing”; and Federal Law No. 275-FZ “On the procedure of establishment and use of endowments of non-commercial organisations”.

A number of subordinate legislative provisions are also applicable: Resolution of the Government of the Russian Federation No. 212 “On measures aimed at implementing certain provisions of the federal laws regulating activities of non-commercial organisations” of 15.04.1996; Resolution of the Government of the Russian Federation No. 485 “On the list of international organisations whose grants (free aid) obtained by Russian organisations shall be tax exempt and shall not be accounted for as taxable income of Russian organisations” of 28.06.2008; and Decree of the Ministry of Justice of Russia No. 222 “On the procedure for state control of the activity of non-commercial organisations (including spending of resources)” of 22.06.2006.

The applicable legislation was substantially amended by the adoption of Federal Law No. 121-FZ “On the introduction of amendments to certain legislative acts of the Russian Federation regarding the regulation of the activity of non-commercial organisations performing the function of a foreign agent”, which entered into force on 21.11.2012.

This law amended the laws on public associations and non-commercial organisations, the RF Criminal Code and Code of Criminal Procedure, the RF Code of Administrative Offences and Federal Law No. 115-FZ “On combating legalisation (laundering) of criminally gained income and financing of terrorism”.

According to these amendments, a non-commercial organisation performing the function of a foreign agent is a Russian non-commercial organisation “which receives funding and other

¹ This report was compiled by the author as a monitor from the Civic Solidarity Platform.

² This section was written using information from the “Opinion of the Commissioner for Human Rights on the legislation of the Russian Federation on non-commercial organisations in light of Council of Europe standards” CommDH (2013), 15 July 2013, Strasbourg.

property from foreign states, their state authorities, international and foreign organisations, foreign citizens, persons without citizenship or persons authorised by them, and/or Russian legal entities receiving funding and other property from said sources [...], and which engages, including in the interest of foreign sources, in political activity carried out on the territory of the Russian Federation”.

Such organisations are required to apply for inclusion in the Register of non-commercial organisations performing the function of a foreign agent and to indicate in materials published and/or distributed by them that they have been published and/or distributed by a non-commercial organisation performing the function of a foreign agent.

Pursuant to the amendments, a non-commercial organisation is considered to carry out political activity, if, regardless of the mission and goals stated in its founding documents, it participates (including by means of financing) in organising and implementing political actions that influence the state authorities to make decisions changing the state policy pursued by them, as well as in the shaping of public opinion for the aforementioned purpose.

However, the following activities are excluded from the scope of “political activity”: activities in the realms of science, culture, arts, health protection, disease prevention and protection of citizens’ health, social support and protection of citizens, protection of motherhood and childhood, social support to people with disabilities, promotion of a healthy lifestyle, physical well-being and sports, protection of plant and animal life, charitable activities, and activities to promote charity and volunteering.

The amendments place additional requirements on non-commercial organisations that are registered as “foreign agents”, including in terms of financial reporting, such as maintaining separate accounts for funds received from local and foreign sources, and submission of biannual activity reports, quarterly spending reports and an annual audit report, etc.

Infringement of the new legislation may incur both administrative and criminal penalties. In accordance with Article 19.34 of the RF Code of Administrative Offences “Infringement of the rules for activity by a non-commercial organisation performing the function of a foreign agent”, inserted by Federal Law No. 192-FZ of 12.11.2012:

“1. Activity by a non-commercial organisation performing the function of a foreign agent that has not been included in the register of non-commercial organisations performing the function of a foreign agent shall incur an administrative fine of between 100,000 and 300,000 roubles for officials, and of between 300,000 and 500,000 roubles for legal entities.

2. The publication by a non-commercial organisation performing the function of a foreign agent of materials and/or their distribution, including through the media and/or the internet, without an indication that these materials have been published and/or distributed by a non-commercial organisation performing the function of a foreign agent, shall incur an administrative fine of between 100,000 and 300,000 roubles for officials, and of between 300,000 and 500,000 roubles for legal entities.”

The following amendments were inserted into parts 2 and 3 of Article 239 of the Criminal Code “Creation of a non-commercial organisation violating the persons and rights of citizens”:

“2. The creation of a non-commercial organisation (including a non-commercial organisation performing the function of a foreign agent) or a structural subdivision of a foreign non-commercial non-governmental organisation whose activity is associated with the incitement of citizens to refuse to fulfil their civic duties or to commit other illegal actions, as well as the management of such an organisation or structural subdivision, shall be punished by a fine of

up to 200,000 roubles or a fine of the size of the salary or other income of the guilty party for a period of up to 18 months, or a restriction of liberty for a period of up to three years, or forced labour³ for a period of up to three years, or deprivation of liberty for the same period.

3. Participation in the activity of a non-commercial organisation specified in parts one and two of this article, as well as the advocacy of the actions specified in parts one and two of this article, shall be punished by a fine of up to 120,000 roubles or a fine of the size of the salary or other income of the guilty party for a period of up to one year, or a restriction of liberty for a period of up to two years, or forced labour for a period of up to two years, or deprivation of liberty for the same period.”, while the newly inserted Article 330.1 “Wilful failure to perform the obligations specified by the legislation of the Russian Federation on non-commercial organisations performing the function of a foreign agent” reads as follows: “Wilful failure to perform the obligations with respect to the submission of documents necessary for inclusion in the register specified in Article 13.1, paragraph 10 of the Federal Law of 12 January 1996 No. 7-FZ “On non-commercial organisations” of non-commercial organisations performing the function of a foreign agent shall be punished by a fine of up to 300,000 roubles or a fine of the size of the salary or other income of the guilty party for a period of up to two years, or a restriction of liberty for a period of up to two years, or community service for a period of up to 480 hours, or correctional labour⁴ for a period of up to two years, or deprivation of liberty of the same period.”

A preliminary review of the legislation with its amendments shows that, as a minimum, three fundamental principles of international human rights law may be seriously violated when it is applied in practice.

The principle of the presumption of law

That is to say, that the burden of proof for proving whether there are sufficient grounds for imposing limitations or a prohibition on the enjoyment of a right or freedom lies with the body authorised to impose such restrictions. The decisions and actions of the competent state authorities must seek, first and foremost, to enable the exercise of constitutional rights and freedoms, and only where there are sufficient grounds to impose the restrictions provided for by law.

The power of the state should be directed at helping citizens and their associations to exercise their rights, including the freedom of association, and not at restricting them.

The principle of legal certainty and predictability

Restrictions on the enjoyment of a right or freedom must be based on clear criteria that enable anyone to differentiate with certainty between lawful and unlawful behaviour and to predict the legal consequences of such behaviour, and that rule out the possibility of arbitrary interpretation of the law both by state officials and citizens.

The phrase “political activity” used in the law does not provide the necessary certainty and predictability.

The principle of proportionality

³ Translator’s note: “Forced labour” is a literal translation of the Russian *prinuditel’nye raboty*. The person convicted is sent to work in a place specified by the penitential authorities and receives a salary, a certain percentage of which is deducted and paid to the state.

⁴ Translator’s note: “Correctional labour” is a literal translation of the Russian *ispravitel’nye raboty*. The person convicted continues to work at his/her usual place of work, but a certain percentage of his/her salary is deducted and paid to the state.

Limitations on a right or freedom must be proportionate to their legitimate purpose and essential in a democratic society. The restrictions imposed on non-commercial organisations that receive foreign funding are not proportionate to their legitimate purpose, are founded on legally vague criteria and are not essential in a democratic society.

Nevertheless, much depends on actual practice and how the competent RF state authorities will apply the new legislation in actual legal situations.

In early March 2013, the RF Office of the Prosecutor General and a host of state structures launched an extensive inspection of non-commercial organisations for their compliance with the “foreign agents” legislation.

In some cases, the organisations were issued with cautions; in others, administrative penalties were levied on non-commercial organisations (legal entities) and/or their officials for activity without inclusion in the Register of non-commercial organisations performing the function of a “foreign agent”.

When applying the new legislation on non-commercial organisations, employees of the Prosecutor’s Office established two facts: did the non-commercial organisation receive foreign financing and did it take part in “political activity” within the meaning of the new legislation.

The **Kostroma Civic Initiatives Support Centre** and the **Transparency International-R Centre for Anti-corruption Research and Initiatives** were among the non-commercial organisations who were inspected and against whom proceedings were brought.

This report is based on monitoring of proceedings against these two non-commercial organisations.

1. PROCEEDINGS AGAINST THE KOSTROMA CIVIC INITIATIVES SUPPORT CENTRE

Information on the organisation

The Foundation “Kostroma Civic Initiatives Support Centre” (“the Centre”) operates pursuant to its Charter, approved on 12 December 2005.

Registered office of the Centre: Russian Federation, Kostroma, Prospekt Mira 94, office 1.
Chair of the Board: Nikolay Sorokin, Executive Director: Aleksandr Zamaryanov

The Centre’s mission is:

- to support socially significant civic initiatives and create an environment conducive to the formation of civil society in the Russian Federation;
- to promote economic, technical and legal knowledge.

The Centre’s goals are:

- to spread legal, economic, social and other knowledge among the public in order to advance the development of the rule of law and civil society institutions as well as the preservation and development of society’s moral values, cultural wealth and academic achievements;

- to support the strengthening and development of the rule of law and Russia's economic and social progress through the creation of an environment in which education and learning can flourish;
- to support the implementation by the state of policy that ensures social peace, interethnic harmony and respect of individual rights and freedoms.

As the Chair of the Board N. Sorokin has explained, the Centre has organised and actively supported public debates and discussions involving various politicians, social activists and well-known academics with a range of views, giving society in Kostroma Province the chance to stay in touch with Russian social and political life.

According to him, the Centre has not supported any candidates during elections and has not taken part in election monitoring, especially as under Russian legislation foundations do not have the right to appoint election monitors.

The Centre has not had any particular problems with the local authorities during its existence.

Inspection by the Prosecutor's Office

From March to April 2013, the Kostroma Prosecutor's Office inspected the Centre, and on 15 April 2013 issued statement No. 7-108pr-2013 to the Centre's Executive Director A. Zamaryanov requiring the rectification of violations of legislation on non-commercial organisations.

The inspection was carried out in accordance with legislation on the Prosecutor's Office, although under current Russian legislation, Ministry of Justice bodies are responsible for controlling the activities of non-commercial organisations.

In the statement, the Kostroma Prosecutor's Office stated that the Centre had breached legislation on non-commercial organisations by engaging in political activity and receiving funding from foreign sources without applying for inclusion in the Register of non-commercial organisations performing the function of a "foreign agent".

According to the Kostroma Prosecutor's Office, from 2011 to 2013 the Centre had received "funding from foreign sources, including from the United States of America" which it had used, in the opinion of the Prosecutor's Office, for political activity.

The Prosecutor's Office's cited the following breaches of legislation on non-commercial organisations, including legislation on "foreign agents":

1. Organisation by the Centre on 28 February 2013 of a round table on the theme "Resetting the Reset: Where Now for Russian-American Relations?" in which Howard Solomon, Minister Counsellor at the US Embassy in the Russian Federation, participated. In the opinion of the Prosecutor's Office, this round table was "a mass public event", invitations to which were distributed in various public places, including on the internet, and, as questions of state policy were discussed, it constituted political activity "aiming to shape public opinion of state policy".

2. Organisation of electoral monitoring in March 2013. The statement dated 15 April 2013 did not provide any evidence of this "organisation of electoral monitoring".

3. Organisation and participation in other mass public events. The statement dated 15 April 2013 did not provide any details of these “other mass public events” (such as their time, place or name).

4. Exceeding the bounds of the Centre’s mission and goals specified in its Charter reflected in the fact that in 2011 the Centre received one-off financial aid of 661,000 roubles, which it donated to residents of the town of Nei in Kostroma Province who had been affected by fire. In the view of the Prosecutor’s Office, “[the Centre’s] mission is not to provide financial aid in emergencies (fires)” and therefore the Centre had breached legislation on non-commercial organisations, although charitable activity is specified by its founding documents.

The Prosecutor’s Office statement took up five pages but contained nothing more on the substance of the allegations against the Centre.

The statement was signed by the Kostroma City Deputy Prosecutor, Counsellor of Justice A. Smirnov, and specified that this statement must be examined with a representative of the Prosecutor’s Office and that breaches must be rectified within 30 days, future breaches must not be allowed, and the guilty parties must be disciplined.

It is important to note that the statement (including the name of its month of issue) were printed on a printer, but the date - the 15th (of April) - was filled in by hand.

On that same day, 15 April 2013, the Kostroma Prosecutor, Senior Counsellor of Justice V. Smirnov, issued two decisions to institute administrative proceedings under Article 19.34 of the RF Code of Administrative Offences (on “foreign agents”) against a legal entity - the non-commercial organisation the Foundation “Kostroma Civic Initiative Support Centre” - and an official - the Centre’s Executive Director, A. Zamyranov.

The Prosecutor’s decisions took up six and seven pages, but contained nothing more on the substance of the allegations against the Centre than the statement requiring the rectification of a legislative breach.

The decisions cited the applicable legislation of the Russian Federation, outlined the rights of parties against whom administrative proceedings are brought, and gave notice that administrative proceedings had been instituted under Article 19.34 of the RF Code of Administrative Offences (regarding “foreign agents”).

The decisions were also printed out on a printer, but the date - the 15th (of April) - was filled in by hand.

According to the Chair of the Centre’s Board, N. Sorokin, the Centre was notified of the inspection findings prior to that date, and had submitted its objections to the Prosecutor’s Office, but the statement and the decisions were issued to the Centre’s representatives simultaneously on 15 April 2013.

Judging from the dates on the documents, it appears that on 15 April 2013 the Kostroma City Deputy Prosecutor, A. Smirnov, issued a statement to the Centre requiring the rectification of breaches of legislation on non-commercial organisations and, in accordance with the law, gave the Centre 30 days to rectify the breaches, but on that same day, 15 April 2013, the Kostroma City Prosecutor, V. Smirnov, issued decisions to institute administrative proceedings against the Centre and its Executive Director without waiting for a month to pass.

Proceedings before the Magistrate's Court

This stage of proceedings was not monitored. Administrative proceedings against the Centre as a legal entity and A. Zamaryanov as the Centre's Executive Director were initiated by the Kostroma City Prosecutor's Office.

Both cases were heard by V. Tretyakov, Magistrate of Kostroma City Judicial District No. 1. On 29 May 2013, the Magistrate found the Centre guilty of committing an offence under Article 19.34 of the RF Code of Administrative Offences and sentenced it to pay an administrative fine of 300,000 Russian roubles.

The text of the decision took up 12 pages. It contained the submissions made by the Prosecutor's Office, extracts from the legislation on non-commercial organisations and the arguments put by the Centre's representatives.

In particular, the Magistrate found that "for its recognition as a non-commercial organisation performing the function of a foreign agent, the law does not require the money or other property obtained by this organisation to be used to carry out actual activities that may be categorised as engagement in political activity".

In other words, if a non-commercial organisation receives any foreign funding at all, then it is carrying out the function of a "foreign agent" by carrying out any actual activities with the purpose of shaping public opinion or changing state policy, even if it does not use this money.

The remaining findings set out in the Magistrate's decision substantially repeat the submissions of the Prosecutor's Office.

A similar decision with the same findings was issued with respect to the Centre's Executive Director A. Zamaryanov, who was found guilty of committing an offence under Article 19.34 of the RF Code of Administrative Offences and sentenced to pay an administrative fine of 100,000 Russian roubles.

Appellate proceedings

The decisions issued by the Magistrate on 29 May 2013 against the Centre and A. Zamaryanov were appealed to Kostroma City's Sverdlovsk District Court. The first hearing began on 29 July 2013 at 16.00.

The proceedings were open and there was public access to the court house. At the court house entrance, visitors had to pass through a metal detector and their belongings were searched for arms, pointed and sharp implements and other prohibited items.

Judge A. Shirokov heard the two appeals in the two administrative cases in succession: a, with regard to the Centre as a legal entity; and b. with regard to A. Zamaryanov as the Centre's Executive Director.

The Centre and Mr Zamaryanov were represented by the attorney Ramil Akhmetgaliev from the Agora Association.

The Prosecutor's Office was represented by the Kostroma City Deputy Prosecutor, Counsellor of Justice A. Smirnov, and the Assistant to the Prosecutor, E. Dolgoborodova.

Proceedings were monitored by Danuta Przywara, President of the Polish Helsinki Foundation, and Yevgeniy Zhovtis, chairman of the Council and expert consultant at the Kazakhstan International Bureau for Human Rights and Rule of Law.

The Chair of the Centre's Board N. Sorokin and the Editor-in-Chief of the Kostroma newspaper *Moy Gorod* R. Tsarev were also present.

Proceedings were chaired by Judge Andrey Shirokov.

Proceedings opened with an ascertainment that the parties were present, an explanation of their rights and an announcement of the composition of the court.

The court then heard the appeal submissions in the first case, submitted by Mr Akhmetgaliev. They may be summarised as follows:

- The Centre has not and does not ever engage in political activity. It organises various round tables and seminars in order to encourage public discussion, in compliance with the mission set out in its founding documents. Minister Counsellor at the US Embassy Howard Solomon was in the city of Kostroma at the invitation of the Kostroma Provincial Administration, and had taken part in the round table to discuss the reset of Russian-American relations in the context of meetings with civil society;
- The Centre did not organise electoral monitoring in March 2013 as foundations are not allowed to send monitors to elections. The Chair of the Centre's Board, N. Sorokin, had taken part in electoral monitoring as a monitor from another organisation, the Kostroma regional division of the Russia-wide Civic Movement "the Russian Union of Voters", as shown by documents evidencing that he had been sent to monitor elections by this organisation and that he had been accredited by the electoral commissions. Mr Sorokin had not represented the Centre as an electoral monitor.

The attorney requested the court to overturn the Magistrate's decision in both cases as the Centre does not engage in political activity, or to remit the cases for fresh proceedings.

The position of the Prosecutor's Office was expounded by Mr Smirnov and may be summarised as follows.

As the questions discussed at the round table were of a political nature, regarding the relationship between Russia and the USA, and in particular the Magnitsky Law, which President Putin has called "anti-Russian", its aim was to shape public opinion and influence a change state policy which, in its turn, comprises political activity. As the Centre receives foreign funding, it should have applied for inclusion in the Register of non-commercial organisations performing the function of a foreign agent.

Moreover, Mr Sorokin is Chair of the Centre's Board, and he took part in electoral monitoring, therefore the Centre engages in political activity in the sense of aiming to change state policy.

In reply to Mr Akhmetgaliev's assertion that under the RF Constitution all citizens have the right to freedom of expression, which means the freedom to discuss any socio-political questions, including the Magnitsky Law, Prosecutor A. Smirnov stated that the Prosecutor's Office was not calling into doubt constitutional provisions on freedom of speech and

expression, or the right of citizens to discuss any questions, including the Magnitsky Law, but in order to do this, the organisation must first register as a “foreign agent”.

With regard to the second case, relating to the Centre’s Executive Director A. Zamaryanov, the attorney pointed out that the Centre has a Board, which decided that the Centre did not engage in political activity and it did not need to register as a “foreign agent”. Mr Zamaryanov was therefore carrying out the Board’s decision as Executive Director and he was not guilty.

The Prosecutor replied that Mr Zamaryanov had taken part in the board meeting and had not objected to its decisions and so he had been correctly found guilty.

The Prosecutor asked the court to uphold the Magistrate’s decisions in both cases, and to reject the appeals. The Judge then adjourned proceedings until 12 July 2013. The hearing was continued on 12 July 2013 at 10.00. The Centre and Mr Zamaryanov were represented by the attorney R. Akhmetgaliev. The Prosecutor’s Office was represented by the Kostroma City Deputy Prosecutor, Counsellor of Justice A. Smirnov, and the Assistant to the Prosecutor, E. Dolgoborodova. Ye. Zhovtis was present as an observer.

The Chair of the Centre’s Board N. Sorokin and the Editor-in-Chief of the Kostroma newspaper *Moy Gorod* R. Tsarev were also present. Proceedings were chaired by Judge Andrey Shirokov.

The court spent around an hour examining material from the case file, such as documents, certificates, explanatory notes and witness statements.

After short addresses by counsel and the Prosecutor, the Judge retired to his chambers and after an hour announced his verdict: to uphold the decision of the Magistrate and to reject the appeal.

After this, the court moved on to examine the second case relating to the Centre as a legal entity. As the parties’ arguments were the same, the court only took half an hour to examine material from the case file, such as documents, certificates, explanatory notes and witness statements. The Judge then retired to his chambers and after approximately two hours pronounced his verdict: to uphold the Magistrate’s decision and to reject the appeal.

Both decisions were virtually identical. The statement of reasons in both contained an exposition of the main findings of the court of first instance (Magistrate’s Court), some (but not all) of the grounds contained in the notice of appeal, several of the submissions made by the representative of the Prosecutor’s Office and counsel during the trial, and a list of evidence examined (documents, receipts, explanatory notes, print-outs from the internet and so on).

The statement of reasons also quoted legislation on non-commercial organisations with regard to “foreign agents”.

The substance of the court’s findings was as follows: a. the Centre received foreign funding; b. on 28 February 2013 the Centre organised an event, a round table on the resetting of Russian and American relations, where political questions were discussed, demonstrating that the Centre engaged in political activity; and c. the Chair of the Centre’s Board N. Sorokin had taken part in election monitoring and, although he had been sent to monitor the elections by another organisation, he had acted (undertook actions of legal significance) as the Centre’s representative and therefore the Centre had taken part in the electoral process and engaged in political activity. In the last instance, evidence that Mr Sorokin had acted as the Centre’s representative during election monitoring was either not presented during the trial or was not made public. In any case, the monitor was unaware of such evidence.

In the light of the submissions made above, the court came to the conclusion that all of the decisions by the court of first instance were lawful and well-founded, and rejected the appeals.

The following preliminary conclusions may be drawn from monitoring of the proceedings against the Centre and its Executive Director:

- the definition of “political activity” in RF legislation on non-commercial organisations does not comply with the principle of legal certainty and predictability, and when applied in practice leads to almost any social activism being labelled as political;
- it follows from the substance of the decisions by the Kostroma provincial courts that the organisation of any events where political issues are discussed is “political activity”, although the legislation does not clearly define “political questions” and how they differ from non-political questions;
- it also emerges from these decisions that when the legislation is applied by the courts, priority is not given to protecting freedom of association and speech, and these rights are restricted, in breach of the principle of proportionality. This does not comply with international law and jurisprudence on human rights and freedoms, including decisions by the European Court of Human Rights and the UN Human Rights Committee.

On 13 August 2013, the attorney Mr R. Akhmetgaliev filed an application to the RF Constitutional Court on the Centre’s behalf.

2. PROCEEDINGS AGAINST TRANSPARENCY INTERNATIONAL - R CENTRE FOR ANTI-CORRUPTION RESEARCH AND INITIATIVES

Information on the organisation

The Autonomous Non-commercial Organisation “The Centre for Anti-Corruption Research and Initiatives “Transparency International - R” (“TI-R”) operates pursuant to its Charter, approved on 25 April 2000 and registered on 6 May 2000.

TI-R’s registered office: Russian Federation, Moscow, ul. Nikoloyamskaya, d. 6. Chair of TI-R’s Board: Mikhail Krasnov. TI-R’s General Director: Yelena Panfilova. TI-R’s mission is to create a unified national system for combating corruption that would achieve three sets of goals:

- formation of an anti-corruption mind set among the public and improving knowledge of the law;
- institutionalisation of “transparency”;
- prevention of corruption by ensuring the effectiveness of anti-corruption mechanisms.

In its work, TI-R prioritises the role of society in the fight against corruption in a broad sense of the word, and seeks transparency and accountability in government.

As TI-R’s General Director Ms Panfilova has explained, TI-R has never engaged in a struggle for power, supported any political parties or candidates during elections, has not taken part in election monitoring, and does not view its activity as political.

TI-R is a Russian non-commercial organisation and is a member of the international movement Transparency International as its Russian chapter.

According to Transparency International’s documents, its members may not be non-governmental organisations that engage in political activity.

In the light of the fact that TI-R is the Russian chapter of this movement and engages in the same type of activity as other members and the movement as a whole, it is clear that the movement does not perceive TI-R's activities as political.

Inspections

In February 2013, the Main Directorate of the RF Ministry of Justice carried out an inspection of TI-R's activity. According to the inspection report dated 27 February 2013:

- "the organisation's activity corresponds to the mission set out in its founding documents and the legislation of the Russian Federation;
- its financial operations confirm that its activity is directed towards achieving the mission set out by its Charter;
- no foreign investments were detected in the period under review".

Information on the inspection can be found on the Prosecutor's Office website. Under Russian legislation, it is the RF Ministry of Justice that is responsible for controlling the activity of non-commercial organisations, specifying how inspections are to be carried out and checking that their activity complies with the mission and goals set out in their Charters.

Nevertheless, in April 2013, just one month after the inspection by the Ministry of Justice, the Moscow City Prosecutor's Office carried out a second inspection of TI-R's activity and on 26 April 2013 issued Caution No. 27-6-2013 against Breach of the Law, signed by the Moscow City Deputy Prosecutor, Senior Counsellor of Justice V. Vedernikov.

According to the caution, the Prosecutor's Office had established that between 2010 and 2012 TI-R had received foreign funding, including from the US Agency for International Development.

The Prosecutor's Office had also established that between 2012 and 2013, TI-R had organised 48 public anti-corruption events, that it was accredited by the RF Ministry of Justice as an independent expert authorised to conduct expert reviews of the propensity of legislation to foster corruption, and that in July 2012 TI-R had produced a report on an anti-corruption review of draft law No. 10266-6 "On the introduction of amendments to certain legislative acts of the Russian Federation regarding the regulation of the activity of non-commercial organisations performing the function of a foreign agent".

On the basis of this information and an analysis of TI-R's activity as specified in its Charter, the Moscow Prosecutor's Office found that TI-R's actual activity "aimed to shape public opinion of the policy pursued in law enforcement and other spheres on the territory of the Russian Federation and to influence the adoption of decisions by the state authorities of the Russian Federation, including legislation".

It therefore followed, in the view of the Prosecutor's Office, that if TI-R received money from international and foreign organisations to carry out its Charter mission, in order to comply with legislation on non-commercial organisations it should apply for inclusion in the Register of non-commercial organisations performing the function of a foreign agent.

The Prosecutor's Office therefore cautioned TI-R's General Director Ms Panfilova against breaching RF legislation on non-commercial organisations and warned her of liability for such breaches.

TI-R did not agree with the caution and filed an application to Moscow City's Zamoskvorechye District Court contesting the Caution against Breach of a Law issued by the Prosecutor on 26 April 2013.

In its application, TI-R stated that:

- under the Federal Law on the Prosecutor's Office, a caution may be issued on the grounds of reliable information on illegal actions under preparation that could lead to commission of an offence. As there was no reliable information that TI-R was preparing to commit illegal actions, the Caution was unfounded and unlawful;
- as TI-R had undergone an inspection by the Main Directorate of the RF Ministry of Justice that did not detect any breaches just one month before the inspection carried out by the Prosecutor's Office, the Prosecutor's Office did not have any formal grounds to carry out an inspection;
- TI-R's social activism cannot be deemed political as TI-R is not involved in the work of the state authorities, does not support or promote candidates in elections at any level, and does not take part in political actions that aim to influence decision-making by state authorities;
- the Prosecutor's Caution referred to TI-R's activity before the entry into force of the "foreign agents" law.

In its application, TI-R asked the court to find the Caution unlawful and to revoke it. The hearing began in Moscow's Zamoskvorechye District Court on 9 August 2013 at 10:00. The trial was open and there was public access to the court house. At the court house entrance, visitors had to pass through a metal detector and their belongings were searched for arms, pointed and sharp implements and other prohibited items.

The case was heard by Judge S. Varankina and the clerk was N. Cherednichenko. TI-R was represented by its General Director E. Panfilova, its in-house lawyer D. Primakov and the attorney A. Glushenkov. The Prosecutor's Office was represented by A. Averyanova, V. Maslova and A. Bulankina.

Proceedings were monitored by Yevgeniy Zhovtis, chairman of the Council and expert consultant at the Kazakhstan International Bureau for Human Rights and Rule of Law. In addition, TI-R employees, journalists, representatives of other NGOs (including Yu. Dzhibladze, President of the Centre for the Development of Democracy and Human Rights) were present.

Proceedings opened with an ascertainment that the parties were present, an explanation of their rights and an announcement of the composition of the court. The Court then heard submissions by the claimant, which were made by attorney A. Glushenkov and supplemented by TI-R's in-house lawyer, D. Primakov. They repeated the submissions made in the application. The attorney asked the court to find the Prosecutor's Caution of 26 April 2013 unlawful and to revoke it. The position of the Prosecutor's Office was expounded by Prosecutor A. Averyanova and may be summarised as follows.

TI-R's activity aims to change state policy and shape public opinion and so is political. As established by the inspection by the Prosecutor's Office, TI-R has received foreign funding for many years.

The law does not differentiate between positive or negative influence on state policy and so an organisation whose activity aims to influence a change in state policy, even in a positive manner, must register as a foreign agent if this activity is carried out with foreign funding.

By issuing the Caution, the Prosecutor's Office had not accused TI-R of illegal actions but simply warned it that, should TI-R receive foreign funding, it would have to register as a "foreign agent" or it would breach legislation on non-commercial organisations as TI-R had

not changed its mission and goals, and these, according to the Prosecutor's Office, indicated political activity. The representative of the Prosecutor's Office stated that this caution did not impact on TI-R's rights and legitimate interests.

However, as TI-R's General Director Ye. Panfilova explained, one of the conditions of membership of Transparency International and recognition as a chapter of this movement is that an organisation does not engage in political activity. As the Caution stated that TI-R engaged in political activity, TI-R ran the risk of being expelled from the movement, which would directly affect its rights and legitimate interests.

Another statement by the representative of the Prosecutor's Office is worthy of note. She said that the terms "political activity" and "political actions" are defined by dictionaries of the Russian language, and that any public appearance by an employee of a non-commercial organisation - any interview, article or participation in a discussion - is a political action aiming to change state policy or shape public opinion. In this case, if this non-commercial organisation receives foreign funding, it should register as a "foreign agent".

After examining the case file, the Judge withdrew into her chambers and after approximately an hour announced her decision: to refuse to grant TI-R's application contesting the Caution by the Prosecutor's Office.

The court's decision contained the submissions put forward by TI-R in its application, the submissions made by the representatives of the Prosecutor's Office, and references to the provisions of several pieces of legislation.

The substance of the court's findings was as follows:

- TI-R received foreign funding;
- between 2012 and 2013, TI-R had organised 48 public events focusing on tackling corruption, the operations of bodies of the Ministry of Internal Affairs and state support to non-commercial organisations, and in July 2012 TI-R had produced a report on an anti-corruption review of draft law no. 10266-6 "On the introduction of amendments to certain legislative acts of the Russian Federation regarding the regulation of the activity of non-commercial organisations performing the function of a foreign agent";
- the above activity aims to change state policy and shape public opinion and so is political;
- based on the above, the Caution issued by the Prosecutor's Office was well-founded and lawful.

The following preliminary conclusions may be drawn from monitoring of proceedings against TI-R:

- the definition of "political activity" in RF legislation on non-commercial organisations does not comply with the principle of legal certainty and predictability, and when applied in practice leads to almost any social activism being labelled as political;
- it follows from the substance of Zamoskvorechye District Court's decisions that the organisation of any events where social problems are discussed is "political activity";
- it also emerges from these decisions that when the legislation is applied by the courts, priority is not given to protecting freedom of association and speech, and these rights are restricted, in breach of the principle of proportionality. This does not comply with international law and jurisprudence on human rights and freedoms, including decisions by the European Court of Human Rights and the UN Human Rights Committee.

TI-R intends to appeal this decision.