MINISTRY OF FOREIGN AFFAIRS OF THE RUSSIAN FEDERATION

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Unofficial translation from Russian

Open Letter of Russian Minister of Foreign Affairs Sergey Lavrov, Published in the Noviye Izvestia Newspaper on January 18, 2006

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To Oleg Orlov,

Tatyana Lokshina,

Lyudmila Alexeyeva,

Natalia Taubina,

Yelena Topoleva,

Valentin Gefter,

Svetlana Gannushkina,

and Georgy Dzhibladze

Esteemed ladies and gentlemen,

In relation to your open letter addressed to me, of December 26, 2005, I want to say that I well understand the striving to fully clear up the situation with the adoption by Russia of amendments to certain federal laws governing the activities of nongovernmental organizations (NGOs). For, on how uniform the understanding of the legal situation in this field will be, both from authority and from the NGOs, the fate of civil society in Russia, the onward development of which is directly tied to the evolution of democracy in our country, will largely depend.

At the same time I cannot agree with the criticism contained in your letter. It seems that the fears or concerns expressed by you stem largely from a not quite objective understanding of the situation in this field in the legislation of leading western democratic states. Reality, however, is such that with the adoption of the new Russian law no dramatic changes in the activities of the NGOs will set in.

I shall permit myself to begin with international legal aspects of the problem raised by you. In your letter it is asserted that the bill "in a whole array of its provisions continues to run counter to international law." Given as an example are the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights. Apparently you meant Art. 20 of the Universal Declaration, Art. 22 of the International Covenant and Art. 11 of the European Convention, which all refer to everyone's right to freedom of association. I would like to stress that the law passed by the Federal Assembly does not place the freedom of people to form and participate in the activities of NGOs under a ban, nor could have placed, because this would be contrary to the Russian Constitution. As for certain legislative restrictions of the activities of NGOs, the possibility of their imposition is directly enshrined in the same aforesaid documents. In particular, Art. 29 of the Universal Declaration, and the already mentioned Art. 22 of the International Covenant and Art. 11 of the European Convention refer directly to a possible imposition of restrictions prescribed by law on the right in question that are necessary "in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others." To achieve these aims is the exact purpose of the Russian law. Moreover, the European Convention in a sense goes even further, by establishing in its Art. 16 the norm by which the parties to the Convention may impose restrictions on the political activity of aliens precisely (among other things) in the context of the right to freedom of association.

As for the assertion contained in your letter about this law being contrary to the Civil Code of Russia, to me, honestly speaking, it is not quite understandable in what relationship the law may be with the document governing civil legal relationships. Anyway, I would be grateful for the information on which specific articles of the Civil Code (and which other specific Russian laws) it is contrary to.

Now on the expert scrutiny by the Council of Europe (CE). Of course, the authors of the examination voiced a number of recommendations regarding the bill sent to them, a considerable part of which, by the way, was indeed taken into account in the finalization. It should be noted that bills coming in for scrutiny from states with developed democratic institutions also cause CE experts' serious remarks quite often. The general conclusions of the CE examination regarding the Russian draft law consisted in that, for example, the necessity of registration of NGOs conforms to European standards, and that financial control over their activities is altogether considered a norm for European practice. Whereas the quotations and examples cited by you from the CE's examination belong to remarks of a technical character and do not concern the theme of a violation of everyone's right to association as such.

I shall note that the recommendations of the Council of Europe experts could equally be applied to the legislation of developed democratic states governing the activities of NGOs. This, for example, concerns the anxiety over the "system of burdensome control, supervision and accountability" over the activities of NGOs, contained in our law. Although it is not quite understandable to us just which aspects of this system are meant, but if we are to speak about financial control, then, for example, under the legislation of France the appropriate reports are to be presented by all religious brotherhoods and "associations of public utility" (under this notion falls a considerable part of NGOs) if they lay claims to "donations and inheritances" (France also equates the financial support of NGOs from abroad with

them). In France, moreover, the receipt by an NGO of such "donations and inheritances" is allowed only with the permission of a prefect after an administrative check of the organization's activities. The associations have to include in their charters an obligation to submit their accounting records upon any request from the Interior Ministry or authorities of the department. NGOs also have to submit to the authorities an annual financial report on their activities and permit the representatives of competent ministries to carry out checks in their premises. Under the legislation of Israel financial information may be elicited from NGOs at any moment. The registering authority in Israel upon submission of an external auditor has the right to conduct inspections and investigations of any (and not only financial) activities of NGOs. The United States provides for an even tougher control regime for NGOs run by so called "foreign agents" on the basis of the Foreign Agents Registration Act of 1938. The key role in this regard belongs not even to the court, but to the attorney general, by whose decision any checks may be carried out.

Incidentally, speaking of the registration procedure, the US one in its cumbersomeness is incomparable with that established in the Russian bill. Even if we set aside the 1938 Act, then on the grounds of, for example, the New York State Law on Nonprofit Corporations any NGO to get registration has to fulfill "any conditions" (without concretization) set forth by a permitting authority. When registering with tax agencies the founders of NGOs fill out Form No. 1023, containing 240 questions, the majority of which do not directly relate to finances. All these questions literally turn inside out the entire ideological orientation of an NGO and its financial structure.

Speaking of the presence in the bill of "unsubstantiated criteria for refusal to register NGOs and for their liquidation," it is this portion of the bill that follows in the largest measure in the mainstream of the legislative practice of developed democracies. Thus, in France an NGO will not be registered and is subject to liquidation that is "founded unlawfully or for unlawful purposes and is contrary to law, morals, or the integrity of the territory or the republic." The grounds for refusal of registration and for liquidation of NGOs practically coincide under the legislation of Russia and Finland. In Israel the grounds for refusal of registration are "suspicions of illegal activity, a threat to the existence or democratic character of the Israeli state and a misleading name of an organization that may inflict harm upon public policy or popular feelings." Very similar to Russian are the grounds existing in Israel for the liquidation of NGOs. In addition, an NGO in Israel may be liquidated for debts and also upon the recommendation of a person who has investigated its activities.

As can be seen, all the aforesaid grounds are formulated in rather general terms, giving much scope for interpretation by officials and courts. But this does not cause any special problems for anyone.

Of course, very much depends on law enforcement.

It seems that, for its regularization in the context of the law in question, it would do no harm to adopt relevant by-laws establishing certain bounds for the activity of competent Russian agencies in this domain.