

SERIOUS DETERIORATION OF HUMAN RIGHTS IN RUSSIA: AN UPDATE TO THE COUNCIL OF EUROPE

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The arbitrary arrest and imprisonment of the Russian prominent anti-corruption campaigner and opposition figure Aleksei Navalny, and the concurrent arrests and detention on spurious charges of his colleagues from the Anti-Corruption Foundation and other civil society activists and peaceful protesters are the latest in the series of severe, brazen reprisals against all dissent in Russia.

The prosecution of Aleksei Navalny is politically motivated and so is the prosecution of his colleagues and supporters who face arbitrary arrests and unlawful deprivation of liberty. They are deprived of their freedom solely for their peaceful political activism and exercising the right to freedom of expression and they must be immediately released. Amnesty International calls on the Council of Europe to pay active attention to these developments, condemn them in the strongest terms, and call for immediate release of all those detained for peaceful exercising their right to freedom of expression and assembly.

This mass repression of dissent is unfolding against the background of new laws signed by President Putin in December 2020. These laws, as well as those still under legislative review, are severely restricting freedom of association, assembly and expression and leading to a further shrinking of civic space in Russia. Amnesty International calls on the Council of Europe to urge the Russian authorities to abolish these laws and halt the growing crackdown on civic activism and all dissent.

THE DETENTION OF ALEKSEI NAVALNY

Prominent Russian opposition figure and anti-corruption activist Aleksei Navalny was arbitrarily arrested on 17 January at Moscow Sheremetyevo airport's border control upon arrival from Germany, where he was recovering after his poisoning by a Novichok nerve agent in August 2020.

Aleksei Navalny had been tried and convicted in two separate politically motivated criminal cases in previous years. In 2019, the European Court of Human Rights (ECtHR) found violations of Articles 5, 10 and 18 of the European Convention on Human Rights, ruling that Aleksei Navalny's house arrest was "arbitrary" and pursued the aim "to suppress political pluralism".¹ Nonetheless, Aleksei Navalny's conviction and sentence have been upheld.

Following Aleksei Navalny's poisoning in 2020, while he was recovering in Germany, the Russian Federal Penitentiary Service (FSIN) demanded that he immediately present himself to a probation officer or face prison for violating the terms of his non-custodial sentence. On 28 December, two days before the sentence expired (before the end of the so-called probation period of his sentence), FSIN requested his arrest and replacement of his non-custodial sentence with a prison term of three and a half years. Aleksei Navalny was then arrested on arrival in Russia "for multiple violations" of the terms of his sentence.

On 18 January, a court hearing took place inside the police station where Aleksei Navalny was held.² Neither he nor his lawyers were informed of the hearing in advance. His lawyers were only allowed in at the last minute and Aleksei Navalny did not have time to prepare for the hearing. As Navalny informed the court, the confidentiality of his communication with the lawyers had not been respected, in violation of fair trial standards. In violation of Russian law, the court remanded Aleksei Navalny in custody for 30 days pending judicial review of his case; the legal provisions quoted by the judge who approved his remand do not provide for a 30-day detention for violation of probation. On 2 February, Moscow's Simonovsky District Court ruled that Aleksei Navalny's non-custodial sentence

¹ Navalny v Russia (2), Application 43734/14.

² <https://www.amnesty.org/en/latest/news/2021/01/russia-authorities-use-farcical-surprise-hearing-to-keep-aleksei-navalny-behind-bars/>.

must be replaced with a prison term. Having already spent ten months under house arrest in 2014, he will now serve the remaining two years and eight months of his prison sentence.

On 20 January 2021, Navalny lodged an application before the ECtHR under Article 34 of the European Convention on Human Rights, and made a request to the Court under Rule 39 of the Rules of Court related to his detention, asking for his release. On 16 February, the ECtHR granted an interim measure in favor of Navalny, with “regard to the nature and extent of risk to the applicant’s life”, and asked the Russian government to release him.³

The authorities have also waged a campaign of persecution of Aleksei Navalny’s supporters and colleagues from the Anti-Corruption Foundation (FBK) with dozens arrested on the day of his arrival in Russia, ahead of, during and after protests on 23 and 31 January and 2 February 2021, in a clear effort to stop them protesting and to intimidate others. Several of Aleksei Navalny’s colleagues and supporters are under house arrest under spurious criminal charges. On 10 February, the Basmani Court in Moscow ruled to remand in custody the FBK’s head of staff, Leonid Volkov, for two months as a criminal suspect under Article 151.2 (2) of the Criminal Code (“involvement of minors in unlawful activities which could endanger their life”) for purportedly calling on minors via the internet to take part in protests (Leonid Volkov denied making such calls, although children have the same right to freedom of peaceful assembly as adults). The decision was issued *in absentia* and the Russian Investigation Committee placed Volkov on its wanted list.

The authorities also severely clamped down on peaceful protesters who took to the streets across the country to support Aleksei Navalny and protest against corruption and injustice. According to the Russian monitoring organization OVD-Info, over 4,000 protesters were arrested on 23 January, at least 5,754 people were arrested on 31 January and a further 1,512 people arrested on 2 February,⁴ the largest cumulative number of arrests of participants in protests that lasted a total of three days. Among those arrested were dozens of independent journalists and human rights defenders who were covering or monitoring the protests. Thousands of administrative prosecutions and at least 90 criminal cases were initiated across the country,⁵ and further arrests and detentions on spurious charges are ongoing. According to numerous reports peaceful protesters sentenced to “administrative detention” were subjected to inhuman or degrading treatment, including *inter alia* being placed in severely overcrowded detention facilities, denied food and water for several hours, and had to spend prolonged (several hours at a time, often at nighttime) periods of time in police vans during transfer. People who participated in protests have also reported that they were threatened with or were expelled from universities or colleges or lost their jobs.

Peaceful protesters, including older people and children, were also subjected to excessive use of force by the riot police. For instance, Amnesty International monitors witnessed the vicious police response in Moscow on 23 January. Law enforcement officers acted roughly and unreasonably against overwhelmingly peaceful protesters, pushing people down the stairs, beating protesters with batons and deliberately striking their vital organs. On 31 January, officers used electroshock equipment against peaceful, non-resisting protesters.

Amnesty International calls for the immediate and unconditional release of all peaceful protesters and other civil society activists who have been subjected to “preventative” arrests or are being prosecuted on spurious criminal charges.⁶

RECENT LEGISLATION FURTHER RESTRICTING FREEDOM OF ASSOCIATION AND FREEDOM OF ASSEMBLY

New laws and a draft law affecting freedom of association

New pieces of legislation impose additional severe restrictions on the activities of civil society organizations and ordinary activists, with the intention to further stigmatize them and establish almost total government control over civil society:

Law providing for designation of private individuals and unregistered public associations as “foreign agents”

Federal Law No. 481-FZ “On Introducing Changes to Certain Pieces of Legislation of the Russian Federation to Take Further Measures to Combat Threats to National Security” was introduced on 17 November 2020 (draft law No. 1057914-7), adopted by the Parliament on 23 December 2020, and approved by the Federation Council on 25 December and signed by the President on 30 December 2020.

³ [https://hudoc.echr.coe.int/eng-press#\[%22itemid%22:\[%22003-6942317-9334363%22\]\]](https://hudoc.echr.coe.int/eng-press#[%22itemid%22:[%22003-6942317-9334363%22]]).

⁴ <https://ovdinfo.org/articles/2021/02/03/sud-otpravil-alekseya-navalnogo-v-koloniyu-itogi-akcii-protesta-2-fevralya>;
<https://ovdinfo.org/news/2021/02/02/spisok-zaderzhannyh-v-svyazi-s-sudom-nad-alekseem-navalnym-2-fevralya-2021-goda>.

⁵ <https://mvdmedia.ru/news/official/ofitsialnaya-infomatsiya/>.

⁶ <https://www.amnesty.org/en/latest/news/2021/01/russia-scores-of-activists-arrested-for-protesting-the-detention-of-aleksei-navalny-must-be-released/>.

This law expands the scope of entities that may be put on the “foreign agents” register to public associations (civil society organisations and initiatives that are not formally registered) and individuals. It also broadens the criteria under which financial or other support received by an organization or an individual may be classified as “foreign” for the purpose of this law, and introduces a number of discriminatory restrictions for those included in the “foreign agents” register.

Public associations which receive foreign funding or foreign support in kind, and which engage in broadly and vaguely defined “political activities”, are required to register “voluntarily” as “foreign agents” of face severe consequences, including intrusive inspections and heavy fines.

By introducing these changes, the authorities have eliminated the legal loophole that allowed some groups to close their registered NGOs declared “foreign agents” and continue their work as an unregistered public association, to avoid having to carry this stigmatising label. Upon its registration as a “foreign agent”, a public association must file quarterly reports on the funding and other assets received, and on their use. Moreover, any information about the activities of such association and any materials published, distributed or submitted by the association or persons linked to it (founders, members or executives) in the course of their “political activities” must be marked as “foreign agent” materials.

The same labelling requirement applies to the materials created by staff, executives and members of registered NGOs included in the “foreign agents” register. Media outlets are expressly prohibited from publishing information about “foreign agents” or re-printing their materials without the “foreign agent” marking.

While the “foreign agents” legislation had already been amended in December 2019, under the Law on Mass Media, to enable forcible registration of individuals as “foreign agents”, these latest amendments have expanded the group of people who can be designated as “foreign agents”. As such, any individual who is involved in a broadly and vaguely defined “political activity” or “collects information” about Russia’s military or military-technical operations and is “influenced” by foreign sources of funding or by “Russian citizens or organizations acting on their behalf,” can now be registered as a “foreign agent.” Any foreign support, financial or in kind, can be classified as such “influence.”

The extremely broad definition of “political activity” embraces, among other things, participation in public gatherings, petitions to the authorities or even expressing opinions regarding government’s decisions. Given this, and the vague and overbroad definition of “foreign funding”, countless individuals in Russia now face the risk of being included in the “foreign agents” register. Last December, this happened to three independent journalists, Denis Kamalyagin, Sergei Markelov and Lyudmila Savitskaya, prominent human rights defender Lev Ponomaryov, and St. Petersburg-based activist Darya Apakhonchich, all of whom were included in the registry of “foreign mass media performing the functions of a foreign agent” under the 2019 amendments to the Law on Mass Media.

Russian citizens registered as “foreign agents” cannot hold public or municipal office, or access classified information that constitutes state secret. They are obliged to report bi-annually to the authorities about their activities, the amount of foreign funding received and used, and mark all their publications, official petitions and information about their work as “foreign agent” materials.

Foreign nationals including, under certain circumstances, foreign journalists, can also be included in the “foreign agents” register. Alien “foreign agents” must notify the Ministry of Justice in advance of their planned arrival in Russia to perform their “foreign agent” activity.

These legislative amendments also introduce further restrictions and reporting requirements on NGOs already designated “foreign agents”, including the requirement to report not only information about their executives but also about each member of their staff, amongst other issues.

Law introducing harsher criminal penalties for violating the “foreign agents” law

Federal Law No. 525-FZ “On Introducing Amendments to Article 330.1 of the Criminal Code of the Russian Federation” was introduced on 17 November 2020 and adopted by the Parliament on 23 December 2020. It was approved by the Federation Council on 25 December 2020 and signed into law by the President on 30 December 2020.

This legislative initiative amends Article 330.1 of the Criminal Code which was first introduced in the 2012 law on “foreign agents”. As in the case of NGOs listed as “foreign agents”, unregistered public associations and their leadership can be criminally prosecuted and fined up to 300,000 rubles (Euro 3,350) or sentenced to up to two years in prison for “malicious non-compliance” with the above legal requirements.

The new law provides for similar penalties for media outlets registered as “foreign agents” and their Russian legal entities. Individuals who have been put on the register of “foreign mass media performing the functions of a foreign agent” will face similar criminal penalties if they have already been found guilty of repeated violation of the “foreign agents” law under Article 19.34.1(2) of the Administrative Code.

The most severe criminal penalty, up to five years in prison, is now envisaged for individuals who fail to voluntarily register as “foreign agents”. The criminal charges may be brought against anyone who is allegedly gathering information about military activities; for all other individuals whose activities fall under this legislation, penalties under Article 19.7.5-4(1) of the Administrative Code apply in the first instance, and, following, criminal charges. Failure to submit an activity report is also now a criminal offence under this legislation.

Draft bill on the status of NGOs registered as “foreign agents”

The draft bill “On Introducing Amendments to the Federal Law ‘On Non-Commercial Organizations’ to Improve the Legal Regulation of the Activities of Non-Commercial Organizations Performing the Functions of a Foreign Agent and Subdivisions of Foreign Non-Commercial NGOs” (No. 1052523-7) was tabled in the parliament by the Russian government on 10 November 2020, and adopted in its first reading by the State Duma on 15 December 2020. A total of three readings is required before it is passed on for approval to the upper chamber and then the President. Some amendments to the bill may be made before the next reading.

This draft bill expands criteria of that legally defined as “foreign funding” for the purpose of the “foreign agents” law, extending it, inter alia, to the funds received from Russian legal entities “whose beneficiary owners are foreign nationals or stateless persons.” It also widens the legal grounds for conducting unscheduled audits of NGOs registered as “foreign agents”, and obliges such NGOs and subdivisions of foreign NGOs to inform the Ministry of Justice about their programmes of work and planned activities and report on their implementation. It is envisaged that the Ministry of Justice will have the authority to ban certain activities. Failure to comply with orders of the Ministry of Justice may lead to liquidation of the respective NGO or subdivision of a foreign non-commercial NGO.

New laws and draft bills affecting freedom of assembly

The law on prohibition of foreign or anonymous funding of mass events was introduced on 17 November 2020, adopted by the parliament in December, and signed by the President on 30 December 2020.

This legislative initiative compels organizers of mass gatherings with over 500 participants to report on the funding for such events, and requires that all relevant expenses and transactions are cashless and only go through an account in a Russian bank. Upon the bank transfer, all donors have to provide detailed information about themselves, including passport numbers, registered taxpayer ID and registration date for legal entities.

Donations for public events from foreign governments, foreign organizations, international organizations or movements, foreign nationals, NGOs and individuals included in the “foreign agents” registry, unregistered public associations, Russian citizens under 16, anonymous donors and legal entities that have been established less than a year prior to transferring money, are prohibited.

The law on recognizing “picket lines” as mass events and other restrictions on the right to freedom of assembly was introduced on 17 November 2020, adopted by the parliament in December, and signed by the President on 30 December 2020.

A single-person picket is the only form of street protest which does not require prior approval from the authorities. Activists have used this legal provision to protest in the form of so-called “picket lines” (lines of single picketers standing 50 metres apart). This law equates picket lines with mass public events, which makes their prior official approval mandatory.

Moreover, the authorities can now withdraw their approval for any pre-approved public event at any time if the organizers “disseminate information about the change of the purpose of the event” or if a “threat” of a terrorist attack has been reported. If the authorities insist that the organizers change the time or place of the planned event, the organizers cannot insist on their initial proposal or negotiate any alternatives. The only choice they have is either to accept the conditions imposed by the authorities or cancel the event altogether.

Journalists are prohibited from “conducting agitation” or otherwise “promoting” a mass event in the course of their professional activities.

The Law on criminalizing obstruction of traffic was introduced on 16 December 2020, adopted by the parliament the same month and signed by the President on 30 December 2020. Under this law, blocking traffic on roads, highways and urban streets is a criminal offence, even in the absence of any grave consequences. The previous version of Article 267 of the Criminal Code only provided for punishments in cases when transportation infrastructure had been destroyed or damaged or other grave consequences had occurred. These amendments make blocking streets punishable by fines of between 100,000 and 300,000 roubles (Euro 1,100 – 3,300), or community service of up to 240 hours, or up to one year of forced labour, or up to one year of imprisonment.

The Law on adding new elements to the crime of “hooliganism” was introduced on 14 December 2020, adopted by the parliament the same month and signed by the president on 30 December 2020. These amendments introduce new elements to the crime of “hooliganism” under Article 213 of the Russian Criminal Code and increase penalties for violations. Hooliganism with use of violence or threat of use of violence (instead of actual use of arms, as in the previous version of the article), and hooliganism committed by a “group” (instead of a “group of persons upon their prior conspiracy” or an “organized group”) are now criminal offences carrying a maximum fine of 1 million roubles (Euro 11,100; previously 500,000 roubles or Eur 5,500) and a maximum sentence of seven years in prison (previously five years).

Charges of “hooliganism” are often used in Russia against street protesters and others, for the purpose of stifling peaceful protest and any dissent.

The draft bill on penalties for unlawful use of mass media worker badges was introduced on 23 November 2020 and adopted by the parliament in the first reading on 24 December 2020. In addition to restrictions on journalists’ participation in mass events, the law will introduce fines of between 20,000 and 30,000 roubles (Euro 220 – 330) and/or community service of up to 50 hours for a person who falsely identifies as a journalist using a mass media worker’s badge at mass events.

The law on increased administrative penalties for disobeying legitimate police orders and failure to comply with the rules for mass event funding was introduced on 23 November 2020 and adopted by the Parliament in its third reading on 10 February 2021. This law increases fines for several administrative offences related to the organization and holding of mass gatherings. It suggests that failure to comply with the rules regulating fundraising and spending for events be punishable by fines of between 10,000 and 20,000 roubles (EUR 111 - EUR 223) for individuals; fines of between 20,000 and 40,000 roubles (EUR 223 – EUR 446) for officials; and fines of between 70,000 and 200,000 roubles (EUR 781 – EUR 2,231) for legal entities. Transferring money for a mass event by an entity that is not allowed to do so will be punishable by fines of between 10,000 and 15,000 roubles (EUR 111 -EUR 167) for individuals, and between 50,000 and 100,000 roubles (EUR 557 – EUR 1,115) for legal entities.

The law also provides for increased punishments for disobedience of “legitimate orders” of police and other officials; although the maximum penalty – 15 days of administrative arrest – remains the same, the fines are raised from 500 – 1,000 roubles (EUR 5.5 - EUR 11) to 2,000 – 4,000 roubles (EUR 22 - EUR 44), and the penalty of community service of between 40 and 120 hours is added. Repeated failure to obey respective “legitimate orders” may lead to fines of between 10,000 and 20,000 roubles (EUR 111 - EUR 223) instead of the current penalty of 5,000 roubles (EUR 55), or up to 30 days of administrative arrest (same as in the current version), or community service of between 100 and 200 hours (new).

RECOMMENDATIONS TO THE COUNCIL OF EUROPE

Amnesty International calls on the Council of Europe’s Secretary General, Committee of Ministers and Parliamentary Assembly to:

- Condemn in the strongest terms the politically motivated prosecution and arbitrary deprivation of liberty of Aleksei Navalny, his colleagues, associates and supporters, and call on the Russian authorities to immediately release Aleksei Navalny and all those who have been detained for peaceful exercising their right to freedom of expression and assembly; iterate the European Court of Human Rights’ decision of 16 February to indicate an interim measure under Rule 39 of the Rules of Court to the Government of Russia to release Aleksei Navalny;

- Demand an immediate end to the ongoing harassment and persecution of peaceful political and civil society activists, protesters and all dissenting voices in Russia, and insist on the full respect of the rights to freedom of expression, peaceful assembly and association in line with the European Convention on Human Rights;
- Urge the Russian authorities to revert the unduly restrictive legislative initiatives, including by repealing the relevant adopted laws and recalling the respective draft bills, including those that unduly restrict the rights to freedom of expression, association and peaceful assembly, and bring Russia's legislation into full compliance with its international human rights obligations; and in doing so in particular urge the Russian authorities to implement the forthcoming Opinion of the Venice Commission on the Compatibility with international human rights standards of the Bills introduced to the Russian Parliament at the end of 2020 and early 2021;
- Demand that the Russian authorities remove immediately from the list of "undesirable organisations" the Council of Europe School of Political Studies as called for by PACE in Resolution 2363 (2021); and repeal the original laws on "undesirable organisations" and on "foreign agents", adopted in 2012 and 2015 respectively, as incompatible with the right to freedom of association, and lift all subsequent restrictive measures imposed on Russian and foreign organisations under these laws;
- Urge the Russian authorities to enable visits to Russia by the Commissioner for Human Rights, the Council of Europe Parliamentary Assembly's Rapporteurs of the Monitoring Committee on Russia, the PACE Rapporteurs on Political Prisoners in Russia and the Rapporteur on the poisoning of Aleksei Navalny, and others as necessary;
- Pursuant to CM/Rec(2018)11 on the need to strengthen the protection and promotion of civil society space in Europe, ensure that the Moscow Office of the Council of Europe "promotes civil society's, NHRIs' and human rights defenders' work and gives visibility to key judgments of the European Court of Human Rights, recommendations of the Commissioner for Human Rights, the Venice Commission, and Parliamentary Assembly resolutions concerning the safe and enabling environment for human rights defenders", in particular those pertaining to the host state.⁷

Amnesty International also specifically calls on the Committee of Ministers to:

- Prioritize the implementation of *Navalny v Russia (No.2)*, (Application 43734/14) at its 9-11 March 2021 DH meeting on implementation of judgments, and call for Aleksei Navalny's immediate release. In doing so, it should consider using all the tools available under Article 46 of the ECHR, including the infringement proceedings under Article 46.4 of the ECHR;
- Call for a prompt and full implementation of general measures, to prevent the occurrence of further violations, notably measures concerning independence of the judiciary and restrictions on the rights to freedom of expression, association and peaceful assembly;
- Pursuant to CM/Rec(2018)11 Recommendation CM/Rec(2018)11 on the need to strengthen the protection and promotion of civil society space in Europe and the Helsinki Ministerial Decision of 2019, organize a "thematic debate on threats to civil society, NHRIs and human rights defenders, in particular to address threats and attacks on human rights defenders and to express concern for the unjustified detention and criminal charges which effectively lead to halting civil society work in Council of Europe member States."⁸

⁷ Recommendation CM/Rec(2018)11 of the Committee of Ministers to member States on the need to strengthen the protection and promotion of civil society space in Europe:⁷, para IV b.

⁸ Recommendation CM/Rec(2018)11 of the Committee of Ministers to member States on the need to strengthen the protection and promotion of civil society space in Europe, para(IV d)).