

Russia at the Crossroads: What Next for NGOs?

by Milton Cerny

The following article by Milton Cerny of McGuireWoods LLP is a postscript to an article he wrote 2004 in which he made recommendations for modifying charitable tax law in Russia. The 2004 article, "Russia — A 'Virtual' Democracy?" was published in The Exempt Organization Tax Review, Aug. 2004, p. 231. Cerny, with attorney Vitaly Timokhov, also wrote "Russia in Transition," which was published in The Exempt Organization Tax Review, Sept. 2003, p. 411.

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Today's Russia remains a "virtual democracy" built on a vertical power structure with limited opportunity for a pluralistic society and free media. This atmosphere is unfavorable to nonprofit nongovernmental organizations (NGOs) operating in Russia and for U.S. charities that want to help Russian charities.

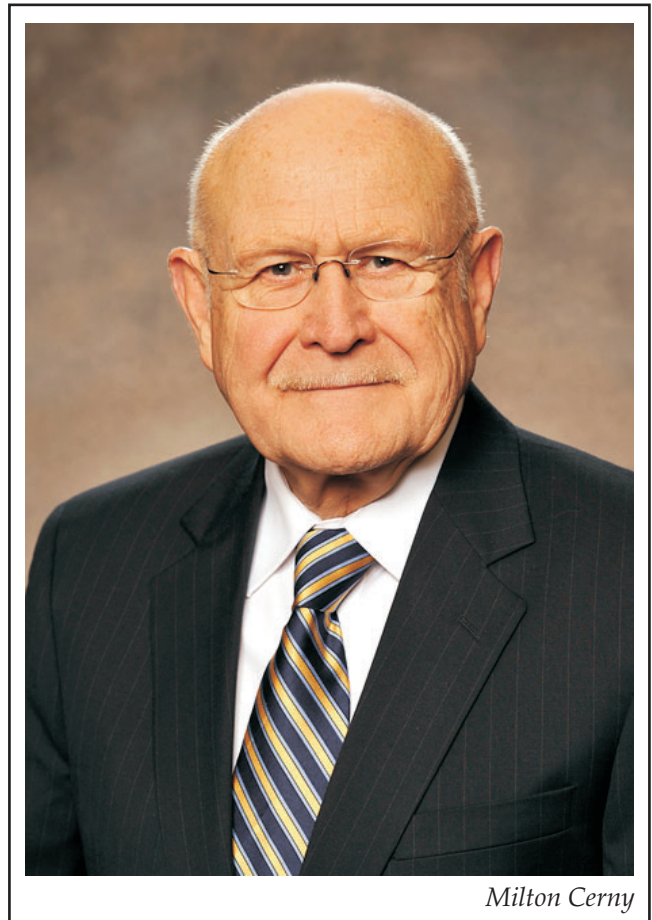
In the 1990s and the beginning of the 2000s, changes were sweeping Russia as it struggled to create new legal structures and a viable civil society. Financial assistance and advisers came to help in the reform efforts. Russia's economy, fueled by its rich oil and gas resources, attracted business opportunities, but the country lacked the vision to innovate and incorporate new technologies into its deteriorating industrial base. Following the ill-fated attempts of Boris Yeltsin to govern, Prime Minister Vladimir Putin, the former president (who could soon become president again if he wins an election scheduled for March), believed in creating a strong Russia based on a vertical power structure to provide stability and order with limited participation of autonomous organizations.

During the past decade Putin has exploited the nostalgia for an idealized Soviet Union and has tried to create a Eurasian Union hegemony over his neighbors through the exercise of power and money flowing from the consolidation of state control of oil and gas revenues and resources. The result has been a lack of a viable civil society based on the rule of law. The movement that started with the creation of autonomous NGOs and business opportunities under the generally accepted principles of law has diminished. As Putin made clear in a speech he delivered in 2004 (similar in many respects to his response to the current crisis following the protests to the recent parliamentary elections), he sees protests calling for the rule of law, democracy, and civil society as being instigated by foreign elements to reduce Russian power and influence. What appears to matter to him is control through the exercise of power that silences the free expression of ideas and criticism of government

action. The press has been brought under state control, similar to the way the oil and gas properties came under state control in the 1990s.

In place of new law for NGOs, then-President Putin recommended the establishment of a Public Chamber composed of 124 members to exercise civil control over law enforcement bodies. The apparent purpose was to have the chamber act as a bridge between government authorities and the public. The Chamber membership is equally divided between presidential appointments, NGOs, and individuals selected from the regions, which means the chamber lacks independence and is controlled by the government. Thus, the chamber does not provide the freedom of expression to make needed recommendations to build a viable civil society.

Because of limited funding for NGOs and the government's desire to limit the foreign support of NGOs, the Chamber has been used as a filter for government grants. The speculation has been that groups opposed to the Putin government go unfunded.



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In 2006 the Duma (Russian parliament) passed Federation Law 18-FZ, which was intended to expand the government authority to audit NGOs and require additional reporting from Russian NGOs. While these requirements are typical of the rules imposed on NGOs worldwide, many Russian NGOs and observers have complained that the burdensome structure for reporting has caused four out of five NGOs to fail to comply with these reporting requirements, and as a result, NGOs have lost the opportunity for government funding.

Under Putin and President Dmitry Medvedev, we have not seen the development of a typical democracy based on the pluralism of ideas and the voicing of concerns of autonomous groups that seek to be part of the decision-making process. We see a country not operated under the rule of law but rather a managed democracy where NGOs perform social welfare functions while receiving their funding, direction, and scrutiny from a less-than-benevolent government.

What happened after 2004, when there was an opportunity to construct new legal systems and a new civil society based on the rule of law? Recommendations were made to the Duma to strengthen and revise the laws for NGOs similar to those for other Western NGOs and the newly created democracies in Central and Eastern Europe. The recommendations were consistent with the newly enacted Russian Constitution on human rights guarantees.

Regrettably the suggestions that were made in 2004 to construct a vibrant civil society through autonomous NGOs were not adopted by the Duma. Whether such a society can ever be achieved under a managed democracy, without the rule of law and a free and open society, is open to question. Perhaps the people's protests of fraud and corruption in the recent elections will create that opportunity for change. However, we must be realistic and assume that the current government will resist major changes.

These developments are important to U.S. charities that make grants or distributions to Russian charities. Under U.S. tax law, public charities and private foundations are required to make distributions only to support charitable activities defined under U.S. tax law. Funds to support charitable purposes in Russia were given by U.S. charities after the fall of the Soviet Union to motivate and support charitable efforts to build a stable open society under the rule of law. Without autonomous NGOs and free and open media, it has been difficult for U.S. charities to operate or fund activities in Russia.

However, there are some signs of hope. To alleviate some of the concerns raised by U.S. charities regarding the granting of funds and operations in Russia, Medvedev and President Obama have established the United States and Russia Bilateral Presidential Commission to strengthen ties between Russian and American civil society organizations and to review common problems of corruption, capacity building, and funding. These issues will require government support and action by both nations, including a more benevolent attitude toward NGOs and U.S. charities by the Russian government.

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