

The 2012 Russian Foreign Agent Law

An evaluation of the legitimacy of the Foreign Agent Law with reference to freedom of association and expression as specified in the European Convention on Human Rights

Candidate number: 8013

Submission deadline: 15th of May 2013

Number of words: 19985

Supervisor: Kjetil Mujezinović Larsen



ACKNOWLEDGMENTS

I would like to express my deepest gratitude first and foremost to my thesis supervisor, Kjetil Mujezinović Larsen, for being an outstanding mentor and excellent professor. His expertise, patience, optimism and constructive guidance provided me with the drive and enthusiasm to realize this project. This experience would not have been as rewarding and enjoyable if not for his ability to keep me calm and motivated throughout the entire process.

I would also like to thank Gunnar Ekeløve-Slydal at the Norwegian Helsinki Committee, for his time, valuable knowledge on the topic and assistance in establishing contacts with organizations in Moscow, contributing to the realization of the study trip to Russia.

I owe a sincere and earnest gratitude to Lilia Shibanova and Furkat Tishaev for taking the time to meet with me during my stay in Moscow and providing me with such valuable perception and understanding of the various aspects of the law and its implications for civil society organizations.

This dissertation would not have been possible if not for my wonderful classmates. You all made this process and the last two years at the Norwegian Centre for Human Rights so much more fun, interesting and exciting than I ever imagined they could be. You are the most inspiring and amazing group of people I know.

To my Mom and Sister, for their patience when dealing with a neurotic master student. To my dearest flatmate Anni Røe, for listening patiently to my frustrations on a rather daily basis. And the biggest thank you to all my friends for representing everything not related to the thesis, especially Cathrine Heen. I am forever grateful for her unconditional support and belief in everything I do.

ABBREVIATIONS

CIA	Central Intelligence Agency
DHRD	Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
EU	European Union
HRC	Human Rights Council
HRD	Human Rights Defender
ICCPR	International Covenant on Civil and Political Rights
IRL RAS	Institute of the Russian Language by the Russian Academy of Sciences
MHG	Moscow Helsinki Group
MoJ	Ministry of Justice
NED	National Endowment for Democracy
NCO	Non-commercial Organization
NGO	Non-governmental Organization
OHCHR	Office of the High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
PACE	Parliamentary Assembly of the Council of Europe
SIDA	Swedish International Development cooperation Agency
UDHR	Universal Declaration of Human Rights
UN	United Nations
UPR	Universal Periodic Review
USAID	United States Agency for International Development

TABLE OF CONTENTS

1 INTRODUCTION	2
1.1 Outline	4
1.2 Methodology	5
1.3 Russia's civil society legislation.....	9
1.3.1 Foreign Agent Law at a glance.....	11
1.3.2 Recent enforcements of the law.....	14
2 RUSSIA'S INTERFERENCE WITH CIVIL SOCIETY ORGANIZATIONS	16
2.1 The 2006 Russian NGO Law	19
2.2 Unfavourable tax law	20
2.3 Limited governmental funding	21
3 INTERNATIONAL RULES PROTECTING CIVIL SOCIETY	22
3.1 Freedom of association	24
3.1.1 The scope of the right	24
3.1.2 The content of the right	26
3.2 Freedom of expression.....	28
3.3 Criteria for legitimate interference as prescribed in Article 11 and 10.....	29
3.3.1 What constitutes interference?.....	29
3.3.2 First criterion: Prescribed by law.....	30
3.3.3 Second criterion: In pursuit of a legitimate aim	30
3.3.4 Third criterion: Necessary in a democratic society	31
3.4 The right to seek and secure resources	33
3.4.1 Right to secure resources as a self-standing right.....	34
3.4.2 Access to funding as an integral part of the freedom of association	35

4	GOVERNMENT JUSTIFICATIONS FOR INTRODUCING AMENDMENTS	37
5	ANALYSIS OF THE LEGITIMACY OF THE FOREIGN AGENT LAW	40
5.1	The implications of the ‘foreign agent’ self-denomination	40
5.2	The law’s qualitative assessment	44
5.2.1	Vagueness of law	44
5.2.2	Unsuitable use of the phrase “political activity”	46
5.3	Does the law pursue a legitimate aim?	50
5.4	Necessary in a democratic society?	51
5.4.1	Based on acceptable assessment of relevant facts?	52
5.4.2	Importance of the right vis-à-vis need for restriction	53
5.4.3	The extent and intensity of the interference	54
5.4.3.1	Scope of the law broader than the aim	55
5.4.3.2	Excessive reporting	55
5.4.3.3	Disproportionate sanctions	56
5.4.4	Social benefits of restriction	57
6	CONCLUSION	58
	BIBLIOGRAPHY	62

1 Introduction

On the 21th of July 2012, President Vladimir Putin signed in to law bill No. 121-FZ, named *Federal Law on Introducing Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Non-Commercial Organizations Performing the Function of Foreign Agents*, commonly referred to as the Foreign Agent Law. These amendments compel any politically active non-governmental organizations (NGOs) receiving funding or other property from foreign sources to enter into a special roaster with the Russian Ministry of Justice (MoJ) as “non-commercial organizations performing the function of foreign agents”.¹ Numerous legal experts and the overall international community have criticized the law for its broad scope of interpretation, the speed with which it was adopted and the excessive burdens it imposes on NGOs.² The UN Special Rapporteur on the right to freedom of peaceful assembly and association as well as the Special Rapporteur on the situation of human rights defenders (HRD) expressed their reservations in a joint statement urging the Russian government not to adopt the legislation, claiming that it constitutes a direct affront to those wishing to freely exercise their right to freedom of association.³

Russian human rights organizations are maintaining that the pejorative term “foreign agent” is designed to generate mistrust towards NGOs among the general public and ruin their credibility making it difficult for them to operate effectively in society. The broad terminology used in the provisions and the high degree of discretion accredited to the MoJ who is in charge of applying the regulation is claimed to be opening up for arbitrary application of the law. The Russian government on the other hand, maintains that the amendments are legitimate and in accordance with internationally set rules, and that the aim of the law is to regulate the unrestricted NGO community by guaranteeing

¹ ICNL Law on Foreign Agents, 2012 Article 1.2b

² Laws of Attrition Report, 2013 p. 13

³ OHCHR, Joint Statement, 2012

transparency, objectivity and preventing foreign the in their internal affairs of the country.⁴

Freedom of association and expression are internationally set standards that specify the criteria for legitimate restrictions placed on civil society actors. This paper seeks to determine whether Russia is violating their international obligations by adopting and enforcing the Foreign Agent Law through examining the legitimacy of the provisions. A broader examination of the social, political and legal context in which the law has come about and the manner in which it is being implemented will provide a more competent understanding of its objectives and intent, as well as the possible implications it creates for the Russian NGO community. The connotations that accompany with the word “foreign agent” will also be explained with reference to historical developments in order to clarify and recognize how and why the legislation has triggered such provocation. The analysis will expose the various legal, administrative and operational implications of the law for non-governmental organizations, and clarify how the requirements will affect the organization’s overall autonomy. Such considerations will assist in determining whether the Foreign Agent Law fulfils the conditions for legitimate interference with the freedom of association and expression as stipulated in the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The research question is therefore the following:

What are the possible implications of the Foreign Agent Law for non-governmental organizations receiving foreign funding in Russia, and how can this be said to interfere with their freedom of association and expression? Are the provisions of the law in accordance with the limitation clauses as specified in the European Convention of Human Rights, Article 11§2 and 10§2?

⁴ Bogoroditskii, 2010

1.1 Outline

The introductory chapter starts with presenting the methodological approach taken throughout the writing process, and raises several issues with regards to studying and writing about a law that is so new, and whose concrete effects haven't had the time to materialize properly. This is followed with a clarification of the sources and structure of Russian law, with an emphasis on civil society legislation and their incorporated international commitments. Section 1.3.1 introduces the main provisions of the Foreign Agent Law in order to provide a comprehensive understanding of its scope and content. This is followed by an update of the most recent events and undertakings by the executive powers with regards to the application of the law, consequently verifying the fears that the NGO community in Russia has expressed before it came into force. These incidents emphasize the need to critically examine the law as it stands today, and question the motives behind its implementation.

Chapter 2 places the Foreign Agent Law within a broader legislative trend that has emerged in Russia after Putin's third inauguration as President by presenting other recently adopted laws which bear hallmarks of state interference with the freedom of association and expression. The cumulative effects of these legal restrictions are creating a challenging environment for civil society actors to work in. Furthermore, the scepticism that the Russian authorities are feeling towards Western funding rationalizes the adoption of the Foreign Agent law with reference to certain historical trends. Section 2.1 describes more in detail the first legal measure initiated by the government with the purpose of ensuring NGO transparency aimed particularly, but not only, at foreign funded NGOs, namely the 2006 NGO law. The knowledge of the requirements that this particular law specifies are important when evaluating the necessity and urgency of adopting the 2012 amendments, as well as the proportionality assessment of their provisions. Section 2.2 and 2.3 emphasize the severity of the implications of the Foreign Agent Law by referring to NGO's dependency on foreign support, due to other domestic obstructive regulations and the lack of government and private funding possibilities.

Chapter 3 specifies the international rules created for the protection of civil society from unjustified and unlawful state interference, which will be used when examining the legitimacy of the amendments. These include freedom of association, freedom of expression, as well as the right to seek and secure resources. The criteria for the legitimate interference with these rights are specified and described more in detail in section 3.3. Part 3.4 seeks to establish why the right to seek and secure resources is such a crucial aspect of NGO's independence as well as an essential part of their freedom of association. It further explains how the law interferes with NGOs entitlements as autonomous organizations by attaching a pejorative status to certain of their funding routines.

In order to fairly evaluate the legitimacy of the law, an assessment of Russia's justification for introducing the amendments is important. Chapter 4 therefore explains the governments need to regulate the NGO community, and also seeks to establish the adequacy of their presented reasons. Chapter 5 determines whether the law constitutes an interference with the organization's freedom of association and expression by discussing the implications a "foreign agent" status can have on their credibility and reputation. It subsequently reviews the law in line with the limitation clauses as set out in Article 11§2 and 10§2 of the ECHR. Sections 5.2 - 5.4 evaluate whether the provisions are corresponding to the "prescribed by law", "pursuing a legitimate aim" and "necessary in a democratic society" criterions in order to determine whether Russia is violating their international human rights obligations through the implementation of these amendments. This consequently entails a proportionality assessment where factors such as the extent and scope of the interference are discussed and balanced against the urgency and potential social benefits of introducing the restriction. These findings will determine in what ways the law is affecting the overall autonomy and operating space of civil society organizations in Russia.

1.2 Methodology

The research of this paper is qualitative in nature, principally based on a desk study and supplemented with some semi-structured interviews conducted in Moscow from the 27th of February till the 6th of March 2013, with representatives from Golos organization, Human

Rights Centre Memorial and the Norwegian Embassy. The interviews were informal with a flexible structure that provided the representatives the possibility to speak more openly and freely about matters that were of importance to them and their case. The relevant topics and some general questions were prepared in advance, but their order, specification and follow-up was constructed throughout the talks. The goal of the interviews was not the comparison of the answers, so this way of structuring the meetings seemed as the most fruitful way to get in-depth and personalized knowledge on the topic. It provides a good balance between standardisation and flexibility.⁵

The methodological approach can be described as an external approach of law in practise, meaning the examination of how legal institutions and rules exist in a society within its social, cultural or political context.⁶ It emphasizes the disparity between “law in the book”, which is a typical internal approach, and “law in action”, and demonstrates how the internal content and form of the law moves into social reality through its application and interpretation in a given social and political framework. This method attempts to investigate and understand legal phenomena and the role of the law in society on the basis of multi-disciplinary work.⁷ This paper accordingly discusses how the provisions of the Foreign Agent Law can affect the work of NGOs within the Russian context, assessing its consequences with reference to their political, historical and social trends. It is, however, important to keep in mind that at the time of this writing the outcome of the cases that have been initiated against organizations being in breach of the law has not yet been determined, and so the law’s overall effects have not had the proper time to materialize. Assessing its potential effects will therefore to a certain degree be based on probability, and on the assumption that there are certain hidden motives in the wording of the law. This assumption is based on the critiques of the law coming from legal experts, United Nations (UN) actors, governments as well as national and international civil society organizations. It is also strengthened when considering the broader political and legislative trend that has

⁵ Johannessen et.al, 2006 p. 139

⁶ McGrudden 2006, p. 634

⁷ McGrudden 2006, p. 637-638

emerged in Russia, where people in political opposition as well as human rights defenders have been subject to harassment, threats, violence and judicial persecution.⁸

The legal structure and interpretation of Russian law will be presented more in detail in chapter 2, but it is important to establish the relationship and precedence of the sources when evaluating the recently adopted amendments. The Constitution is the supreme basis of law in Russia, and a major legislative document. All other legal acts, such as legislation passed by the constituent components of the Russian Federation, must accordingly be in accordance with the laws as stipulated in the Constitution. The Foreign Agent Law introduces alterations to certain federal laws, which regulate issues included into the executive authority of the Russian Federation. The Constitution provides them priority and direct effect throughout its whole territory.⁹ These modifications have been evaluated against recognized standards of international human rights law, to which the Russian Federation has dedicated themselves to through the ratification of international conventions and treaties. These rights take precedence over domestic legislation, meaning that should an international treaty establish rules that differ from those established by domestic law, the internationally set rules will prevail.¹⁰ The focus of the analysis has therefore been to determine whether Russia is violating their international obligations, which amount to the highest source of law according to their legal system. A violation of international law will thus always be unconstitutional, and consequently also a breach of their domestic legislation.

The major commercial sources of authentic Russian legal texts today that are accessible online are all made available mostly in the Russian language. Alternative sources have therefore been used, primarily the International Center for Not-For-Profit Law, which is a law monitor that provides up-to-date information on legal issues affecting NGOs all around

⁸ OHCHR Summary of stakeholders information, 2013

⁹ Library of Congress, Legal Research Guide: Russia, 2012

¹⁰ Library of Congress, Legal Research Guide: Russia, 2012

the world.¹¹ Their Research Centre was the first to publish an unofficial translation of the Foreign Agent Law that has been used in this analysis. The quality of the translation has been ensured through supplementing this document with secondary sources confirming its content and method of interpretation.

The paper further builds on articles from relevant scholarly journals, various UN documents and commentaries, relevant case law from the European Court of Human Rights, civil society reports, as well as first hand information gathered through the conducted interviews and documentations received from the visited human rights organizations. In addition to using legally binding treaties as sources of international law, certain non-binding declarations and statements have been applied in order to strengthen and emphasize the importance of the arguments and findings. Because the law itself is so new and there is a lack of relevant scholarly literature on the topic and on its effect, a big portion of the information gathering (especially with regards to current events and developments) has been based on newspaper articles collected through various Internet sources. Although such sources have high credibility, it is important to keep in mind that journalists work under shorter timeframes and are lacking the qualitative control mechanisms associated with professional and peer-reviewed articles or journals. More importantly, newspapers are placed under lesser demands when it comes to the strive towards objectivity. Attempts on increasing their reliability have been made by double-checking the information stated with other comparable sources.

The choice to visit organizations and talk to their representatives was also considered as the most fruitful approach to make up for this shortcoming. Several human rights organizations were initially contacted with the assistance from the Norwegian Helsinki Committee and their established connections. However, not many had the possibility or time to meet in the timeframe that was given. The conducted interviews with Lilia Shibanova (Executive Director at Golos) and Furkat Tishaev (Senior Lawyer at Memorial Human Rights

¹¹ ICNL, NGO Law Monitor, 2013

Organization) strengthen the credibility of the findings because of their closeness and relation to the topic. Although not high in quantity, these interviews provided an in-depth understanding of relevant issues with regards to the law, important knowledge as well as documentation, which was of great significance for this study. This includes the unpublished English version of the application lodged to the European Court of Human Rights on behalf of eleven Russian NGOs - an important document with high credibility due to its authoritative status - and the attachments confirming their claimed arguments. It should be noted that the government's perspective and opinion has not been obtained using the same approach, since establishing contact with Russian state officials proved to be a challenging task. The analysis of this paper has consequently been written with this potential weakness of bias in mind.

The following segment provides a short introduction into Russian law governing civil society and NGOs. It places the Foreign Agent Law within this legislative framework, and furthermore introduces the details of the law in order get familiarised with its content and critically assess its implications on civil society organizations.

1.3 Russia's civil society legislation

The Russian Constitution confirms the internationally recognized importance of the freedom of association in Article 30, and freedom of expression in Article 29.¹² The legal document states that such organizations are constitutionally prohibited from engaging in activity that aims at the alteration of the Constitution or the integrity of the Federation. Ratified general principles and norms of international law take precedence over Russian domestic law, thus supplementing the constitutional freedom of association and expression with internationally set standards. Finally, we have the *Civil Code*, which further specifies constitutional and international law on the area of NGOs and is the primary legal framework regarding civil society. The section on Non-Commercial Organizations (NCOs),

¹² The Constitution of the Russian Federation, Art. 29 and 30

a definition in Russian law that broadly refers to non-profit and nongovernmental organizations, defines over 20 various non-profit organizations, their legal status and duties. Article 50 gives such on-commercial organizations the right to a legal entity status.¹³ Article 51§1 specifies; “a legal entity shall be subject to state registration with the authorized state body in conformity with the procedure, laid down by the Law on Registration of Legal Entities. The data on state registration shall be entered to the Unified State Register of Legal Entities, which shall be open to the general public”.¹⁴

The *1995 Law on Public Associations* is the most important Russian legislation to date concerning NGOs. A public association is here defined as “a voluntary, self-governing, non-profit formation, set up at the initiative of individuals who have united on the basis of the community of interests to realize common goals”.¹⁵ The law aims at regulating the relationship between the authorities and NGOs, more specifically regulating the content of their freedom of association and state guarantees thereof, their status, procedures for establishment, activity and registration/liquidation. Passed on the same year as this law, the *Law on Non-Profit Organizations* was developed to regulate NGOs, characterized as groups formed who do not have profit making, or the distribution of profits among their members as their main purpose. Their aim is to reach “social, charitable, cultural, educations, scientific and managerial goals, for the purpose of protecting the health of citizens (...), protecting the rights and legitimate interests of citizens and organizations (...)”.¹⁶ This law provides NGO management guidelines, similar to those enumerated in the Law on Public Associations. The lack of established NGO governance structure in Russia after the democratic transition period provided ample opportunities for fraud and deception in the early 1990’s. The transition to a free marked society was fraught with corruption and questionable business activities, resulting in disillusionment among citizens and low confidence in NGOs. These guidelines were therefore set up as a response to public

¹³ Albertie, 2004 p. 17-18

¹⁴ The Civil Code of the Russian Federation, Art. 51§1

¹⁵ Law on Public Associations, Art. 5

¹⁶ Law on Non-Profit Organizations, Art. 2§2

demands that NGOs act legally and ethically. The need to establish their credibility was crucial for their survival, and the Law on Non-Profit Associations was created with precisely the aim of establishing NGO legitimacy.¹⁷

The Foreign Agent Law introduces amendments to the Law on Public Associations and the Law on Non-Profit Organizations, as well as the Criminal Code; and the Law On Combating Money Laundering and Financing of Terrorism. But before we can critically examine the implications of these alternations, there is a need to understand the content of the law and the regulations that it prescribes. The following section presents the provisions of the law and the requirements that they place on politically active NGOs receiving funding from sources outside of Russia.

1.3.1 Foreign Agent Law at a glance

The adopted amendments require any politically active NGO receiving, or intending to receive, funding and other property from foreign sources to enter to a special roaster with the Russian Ministry of Justice as a “non-commercial organizations performing the functions of foreign agents”.¹⁸ The law considers an NGO as carrying out political activity if, “regardless of its statutory goals an purposes, it participates (including through financing) in organizing and implementing political action aimed at influencing the decision-making by state bodies intended for the change of state policy pursued by them, as well as in shaping public opinion for the aforementioned purposes”.¹⁹ If an NGO is considered as being engaged in political activity, it is thus compelled to register and mark all of its publications and materials, including books, brochures, reports, press-releases, official statements, declarations and publications as being produced by an NGO performing the functions of a foreign agent.²⁰ The law doesn’t clearly establish the registration

¹⁷ Albertye, 2004 p. 20

¹⁸ ICNL Law on Foreign Agents 2012, Art. 1§2b

¹⁹ ICNL Law on Foreign Agents 2012, Art. 2§1

²⁰ ICNL Law on Foreign Agents 2012 Art. 2§3

procedure, it mentions only that the process for the inclusion of NGOs into the registry as well as its maintenance falls under the responsibilities of the MoJ. It also fails to provide a description of how one removes an organization from the roaster.

Annual bookkeeping and financial reports shall be subject to mandatory auditing every year, and separate records must be kept of all income and expenses received from foreign vs. other sources. The intended use of these resources and their actual use shall be documented and submitted to the authorized body on a quarterly basis, while documents containing reports on their activities shall be handed in every six months.²¹ Scheduled checks by the authorized body are limited to once a year, while unscheduled checks as a result of requests and petitions from citizens or legal entities or mass media reports indicating signs of extremism in the activities of the NGO do not have a limitation explicitly stated in the law.²²

Non-compliance or failure to submit the required information, or any other violation of the law by an NGO imposes civil, administrative as well as criminal sanctions and may result in extremely harsh financial fines on both the organizations and its private individuals.²³ For instance, if an NGO fails to register as a foreign agent, it faces up to six months of suspension of its activities in addition to fines amounting up to 500,000 RUB (USD 16,240). The managing staff of an NGO may be deprived of their liberty for up to two years for the avoidance of entering the registry of Foreign Agents, and a fine in the amount of 300,000 RUB, or in the amount of accumulated personal income for the period of the last two years.²⁴ The final sanction against an NGO who fails to register as a foreign agent after exhausting all their appeals to Court will be liquidation of legal entity, a measure

²¹ ICNL Law on Foreign Agents 2012, Art. 2§4b

²² ICNL Law on Foreign Agents 2012, Art. 2§4f

²³ ICNL Law on Foreign Agents 2012, Art. 3-5

²⁴ ICNL Law on Foreign Agents 2012, Art. 3-4

which in not to be found stated anywhere in the law, but which has been voiced by MoJ officials in their dialog with NGOs.²⁵

A number of human rights activists and leaders from some of the most prominent NGOs in Russia, such as Memorial, Moscow Helsinki Group (MHG), the Interregional Committee Against Torture, the Movement for Human Rights, and the Public Verdict Foundation, have stated that they have every intention of boycotting the new law, and that they refuse to accept the pejorative status of “foreign agent”. Lyudmila Alekseeva, Head of MHG, explains that “We do not think of ourselves as foreign agents, and we are not foreign agents. We have always been open and honest with our state and with our nation, so we find it very offensive that they are trying to label us as some sort of agent and threatening us with fines. We receive grants from abroad and spend the money on defending human rights – our job is to help people in need, and that is all there is to it”.²⁶

Although the State Duma put the MoJ in charge of monitoring the implementation and enforcing these new rules, Justice Minister Alexander Kononov has not been hiding his hesitance towards carrying out the provisions, and actually told the Duma that the law was unenforceable the way it stands today.²⁷ He has admitted that there is a lack of certainty as to its implementation, and that a body of case law is required in order for the Ministry to be able to apply the law more precisely and correctly.²⁸ He specified that the Ministry was lacking the jurisdiction to identify the sources of funding or to assess whether NGOs activities are “political”.²⁹ Their executive role was therefore for a long time put on hold because of the vagueness of the law, and its lack of enforcement. However, in mid-February 2013, President Putin gave a public speech to officers of the Federal Security Service, calling on them to shield Russians from an array of threats, including foreign

²⁵ Tishaev, interview 01.03.2013

²⁶ Runkevich, 2012

²⁷ The Economist, 2013

²⁸ Freedom Under Threat Report, 2013, p. 36

²⁹ Laws of Attrition Report, 2013 p. 19

funded organizations, asserting that no one has a monopoly on speaking in the name of the Russian society, “especially structures financed from abroad and serving foreign interests”.³⁰ He referred to laws concerning the functions of foreign funded NGOs, and stated: “these laws, undoubtedly, should be enforced”³¹, consequently encouraging concrete action by the Russian authorities in late February/ beginning of March 2013.

1.3.2 Recent enforcements of the law

A wave of inspections by representatives of the local prosecutors office, departments of justice as well as tax authorities was conducted during these months in the offices of various NGOs throughout Russia, affecting hundreds of both foreign and domestic associations. President Putin has said, “The Prosecutor General’s Office must check the legality of actions of all bodies of power – regional, municipal, and also public organizations. I think in this case the goal of the inspections is to check how the activities of non-governmental organizations comply with their declared objectives, and with the laws of Russian Federation”.³² Official documents were presented verifying these check-ups with the aim of ensuring compliance with the laws of the Russian Federation.

Many of the organizations are regarding these inspections as unlawful by failing to comply with several legal pre-conditions. The massive nature of the inspections raises serious questions, along with the way they were conducted. In some instances, such as in the case of Memorial, journalists from the state-controlled NTV station accompanied the team of prosecutors.³³ The NGO initially requested an official explanation from the Prosecutors Office, after being subject to several onerous check-ups.³⁴ The organization then lodged a formal complaint to the Russian court against the actions of the prosecutors, alleging the violation of their freedom of association through interrupting their operations and

³⁰ Winning, 2013

³¹ Freedom Under Threat Report, 2013 p.36

³² Nikolskyi, 2013

³³ Seddon, 2013

³⁴ Tishaev, e-mail 28.04.2013

obstructing their work, simultaneously challenging the legality of the prosecutors' actions. They argue that the inspections were not in line with domestic legislation governing the officials' competence, and also challenge their failure to provide reasons for these check-ups and the notification of the NGOs staff of their rights and procedural safeguards.³⁵ Pavel Chikov, a member of the Presidential Human Rights Council, said that the scale of the government campaign is unparalleled. "It goes full circle across the whole spectrum. They are trying to find as many violations as possible".³⁶

Subsequently, on the 9th of April 2013, the MoJ informed the election watchdog Golos and its executive director Lilia Shibanova that a case is being initiated against them for being in breach of the Foreign Agents Law.³⁷ The NGO is thus facing severe fines, and should the Court rule in the MoJ's favour, then the organization will either have to register as a "foreign agent" or face further sanctions under the law. On the 16th of April, the New York Times also wrote about another organization falling under the provisions of the law, called the Kostroma Center for the Defense of Public Initiatives³⁸, closely followed by Memorial later the same month.³⁹ The most recent enforcements were announced on the 8th of May 2013, where three more NGOs were branded as foreign agents, namely the Moscow School of Political Studies, the Ural Human Rights Group and Public Verdict Human Rights Foundation.⁴⁰

The investigations and the cases filed against organizations being in breach of the law are confirming the concerns raised by the NGO community when the law entered into force. Many believed that the law was in fact created with the intention of targeting Golos, including the organization themselves, therefore predicting that the enforcement would fit

³⁵ Freedom Under Threat, 2013 p. 37-38

³⁶ Seddon, 2013

³⁷ Panov, 2013

³⁸ Roth, 2013

³⁹ Pomeroy, 30.04.2013

⁴⁰ Krivobok, 2013

them first.⁴¹ The following chapter places the law within the overall Russian civil society legislation, and mentions other regulations that have been in the spotlight because of the restrictive influence they have on the freedom of association and expression in Russia. This is important in order to grasp the broader trend and continuity of the restrictions that the authorities are placing on the NGO society, and also to acknowledge the cumulative effects of these measures have on their operational space.

2 Russia's interference with civil society organizations

Numerous laws have been passed in the last decade bearing hallmarks of state interference and curtailment of the freedom of association and expression in the Russian Federation. Some of these restrictions are a direct result of the laws that govern the activities of civil society, while others are a result of lengthy and vague “catch-all” definitions used in other legislative frameworks that have been applied to the work of human rights organizations. The 2002 *Federal Law on the Counteraction of Extremist Activity* for instance, has a broad definition of what such activity entails, and continues to be enlarged until this day, providing wide discretion to the authorities on its application.⁴² NGOs that work on human rights, are politically active, and that express or mobilize dissent are thus vulnerable to being targeted under the law, which as a result has been labelled as an “invitation to abuse” through a tightening of registration and liquidation procedures and arbitrary application.⁴³

The 2006 Law on Introducing Amendments to Certain Legislative Acts of the Russian Federation (the 2006 Russian NGO Law) establishes burdensome registering and reporting requirements for NGOs, consequently contributing to having an administrative choking effect on the organizations. This law targets foreign funded NGOs in particular, and has been heavily criticized by various international NGOs as seriously undermining the work

⁴¹ Tishaev & Shibanova, interview 01.03.2013

⁴² Blitt 2008, p. 9

⁴³ Blitt 2008, p. 9. For more information on the topic, see. HRW 2009 Report “An Uncivil Approach to Civil Society. Continuing State Curbs on Independent NGOs and Activists in Russia”

of human rights NGOs by burying them with reporting procedures and unnecessary administrative tasks.⁴⁴ This law in particular will be addressed more in detail in section 2.1.

In the period between June and July 2012, the state Duma adopted an additional set of laws that further restrict civil rights in Russia. These initiatives include, among others, the law on increasing sanctions for violation of rules governing assemblies (the so-called “protest law”), the law on the criminalization of defamation⁴⁵, and the recent Law on Foreign Agents. Many believe that these recent legislative measures have been adopted as a response to the wide scale protest campaigns and demonstrations against the authorities, which took place after the public revelations of electoral fraud in both the Parliamentary elections held on December 4th 2011, and the Presidential elections which took place on 4th of March 2012, conducted by the electoral surveillance organization Golos.⁴⁶

The Parliamentary Assembly of the Council of Europe (PACE) pointed in their Resolution 1896 on “The honouring of obligations and commitments by the Russian Federation”, dated 2 October 2012, towards the worrying legislative trends that have recently emerged in the country, calling the Russian authorities’ real intention into question.⁴⁷ Various stakeholders in Russia’s Universal Periodic Review (UPR) summary report expressed concerns regarding the country’s civil society legislation and their overall situation on human rights defenders. It was stated that NGOs and HRD faced both legal and administrative hindrances in their work, as well as government-stoked hostility. There were reports of HRD facing harassment and intimidation and even physical violence. Many pointed to the fact that arbitrary and discriminatory application of legislation in all stages of creation and functioning of NGOs was an on-going problem, much because of the qualitative inadequacies in the wording of the laws.⁴⁸

⁴⁴ See Defending Civil Society Report (2012) or Chocking on Bureaucracy (2008)

⁴⁵ Application, Ecodefence, GOLOS and 9 other NGOs v. Russia, 2013 p. 8

⁴⁶ Application, Ecodefence, GOLOS and 9 other NGOs v. Russia, 2013 p. 8

⁴⁷ PACE Resolution 1896, 2012 § 6

⁴⁸ OHCHR Summary of Stakeholders Information, 2013 p.7

The 2012 amendments forces organizations to register as foreign agents when seeking and obtaining money from abroad. Their right to seek and secure resources is subsequently affected because of the implications that are attached with such a label. Russia's distrust towards foreign money and the restrictions that are being placed on NGO funding can be explained with reference to the American foreign policy of democratization both before and after the fall of the Soviet Union. Many governments were publicly denouncing Western democracy assistance to civil society organizations as illegitimate political meddling after decades of democracy building programs were introduced by the US around the world. Some started expelling or harassing Western NGOs and also prohibiting local groups and associations from obtaining foreign funds – or have started to punish them for doing so. Autocratic regimes have won public sympathy by arguing that these measures are not implemented as resistance to democracy itself, but rather as a step to halt American interventionism.⁴⁹ Nowhere in the world can this political rhetoric have more force and influence than in the post-Soviet countries. Putin's offence against Western democracy and civil society aid through the establishment of administrative and legal funding barriers for NGOs is thus rationalized a defence of the country's national security from "foreign intervention" and political meddling. This way of explaining this 'protection' is consequently both logical and effective for the overall Russian population.

This distrust towards foreign funded NGOs in particular was first formed into state policy with the amendments introduced in the 2006 Russian NGO law. The governments' way of regulating NGOs has been very much in the spotlight since its implementation. This following section therefore presents the already existing financial reporting regulations that were in place before the adoption of the Foreign Agents Law, which is significant when determining the necessity of introducing these 2012 amendments, especially with regards to the proportionality assessment.

⁴⁹ Carothers, 2006 p. 55

2.1 The 2006 Russian NGO Law

The 2006 NGO law has been heavily criticized by the international NGO community for establishing burdensome administrative procedures particularly for foreign, but also domestic NGOs. It provided new broad powers of the registration bodies to audit the activities of the organizations, added new and frequent reporting requirements accompanied by severe penalties for non-compliance or wrongful or incomplete applications. The law has raised special concerns because of the excessive obligations and the broad discretion accorded to state officials to interfere with the founding and operation of NGOs. Many have pointed to the fact that these traits open up for discriminatory and arbitrary misuse and can have a harmful impact on the work of human rights NGOs.⁵⁰

The Kremlin has not tried to hide the fact that the aim of this law was to control and monitor foreign funding of NGOs in particular, by offering more transparency and accountability through new reporting requirements relating to any foreign income sources. At the time of the approval of these regulations, Putin commented that “the government will support non-commercial organizations, but shall see to it that their funding is transparent, which should guarantee their independence; otherwise they would dance to the tune of their foreign puppeteers”.⁵¹ On international funding of NGOs in general, he stated that “I can say – and I think that it is clear for all – that when these nongovernmental organizations are financed by foreign governments, we see them as an instrument that foreign states use to carry out their Russian policies”.⁵² The law is supposed to “prevent the intrusion of foreign states into Russia’s internal political life and at creating favourable and transparent conditions for the financing of NGOs”.⁵³

The regulatory barriers that have received negative attention relating to the 2006 NGO law and foreign funded NGOs are not a direct result of the legal provisions per se, but more as a

⁵⁰ Choking on bureaucracy Report, 2008 p. 23

⁵¹ Bogoroditskii, 2010

⁵² Schofield, 2007

⁵³ Lowenkron, 2006

result of the selective application of law.⁵⁴ This is made possible due to the broad and excessive powers given to the registration authorities, together with the vague language and unclear guidelines of the law. In its 2009 report, the Expert Council on NGO Law – a body created under the auspices of the Council of Europe Conference of International NGOs to evaluate the conformity of member states’ NGO-related laws and practices with Council of Europe standards – criticized various aspects of Russia’s NGO regime, concluding that it has a number of incompatibilities with the notion of a desirable flexible regime governing the acquisition of legal personality or registration, and that the overall NGO legislation needs reform.⁵⁵

The prevention of foreign money from entering the country is also ensured through other decrees and rules, further limiting the prospects for NGOs to receive grants from national and international donors, which will be addressed in sections 2.2 and 2.3 below.

2.2 Unfavourable tax law

Foreign or international organizations wishing to make tax-exempt grants to Russian NGOs must be on an approved donor list created by the Russian government, which was reduced in size by Decree #485 adopted on June 28th 2008, shrinking the number of approved international foundations from 101 to merely 12.⁵⁶ This new rule put in jeopardy tens of millions of US dollars of grants to NGOs operating in Russia, and some of the donors that didn’t make the list included the Global Fund to fight AIDS, the MacArthur Foundation, the Ford Foundation, and the International Federation of Red Cross and Red Crescent Societies among others – all highly respected and credible international funds. Under these new rules, NGOs receiving grants from donors that were not on the list were required to pay a 24 per cent tax on “profits”, a provision which contravenes the 2007 recommendation of the Council of Europe’s Committee of Ministers on the legal status of non-governmental

⁵⁴ Bogoroditskii, 2010

⁵⁵ An Uncivil Approach to Civil Society Report, 2009 p. 23

⁵⁶ An Uncivil Approach to Civil Society Report, 2009, p. 20

organizations, a nonbinding document which states that “NGOs should be assisted in the pursuit of their objectives through public funding and other forms of support, such as exemption from income and other taxes”.⁵⁷ In September 2012, Russian authorities also ended the activities of United States Agency for International Development (USAID) in Russia altogether by expelling the organization, claiming that their programs undermined Russia’s sovereignty and interfered in their politics.⁵⁸

2.3 Limited governmental funding

Government funding is very limited in Russia and it is especially difficult for human rights organizations to obtain the small amount of grants that are available, much because they take on the role of criticizing the government. Before signing the law, on July 10 the President promised a threefold increase in domestic finding for Russian NGOs.⁵⁹ The authorities did in fact create a couple of their own programs for financing civil society organizations, but their procedure has proven to be quite doubtful and it seems as though there are always some unknown, pro-governmental NGOs that are receiving the grants.⁶⁰ The Golos organization has for instance applied for grants awarded by the Russian government on several occasions, but has been consistently refused, while private Russian companies are afraid to offer it open support.⁶¹

Finding sponsors among private individuals or businesses in Russia is also challenging, especially since the arrest of the former Yukos Chief Mikhail Khodorkovsky in 2003. Many believe that his imprisonment was orchestrated because of his funding of opposition groups, politicians and democracy activists, consequently creating fear among individuals wishing to finance any opponent of the government.⁶² And since the present Russian tax

⁵⁷ Committee of Ministers Recommendation, 2007

⁵⁸ Abbakumova & Lally, 2012

⁵⁹ Laws of Attrition Report, 2013 p. 12

⁶⁰ Tishaev, interview 01.02.2012

⁶¹ Barry, 2012

⁶² Profile: Mikhail Khodorovsky BBC News

law strongly discourages private philanthropy and there are no significant Russian funds, this leaves many NGOs heavily dependent on foreign donors in order to survive. When national access to funding is so limited and difficult to obtain for NGOs that criticize the government, and the attainment of foreign funds is accompanied with a pejorative tag that hinders NGOs to operating efficiently, to what degree is the freedom of association really then protected? What alternatives do these organizations have if they want to keep their legal entity status and operate efficiently? Access to funding forms an integral part of the right to freedom of association as is argued below, and if funding restrictions stifle the organizations' ability to pursue their goals or in any way prevents them from carrying out their activities effectively, they then represent unwarranted interference with this particular right. The Foreign Agents Law consequently not only discourages the organizations from seeking foreign funding, but ultimately also threatens their existence because of the lack of alternative solutions.

Having established the content of the law along with the social context in which it has arisen, the following chapter seeks to clarify the existing international human rights standards that protect individuals to form, join and participate in civil society organizations, namely freedom of association and expression. It also seeks to describe the limitation clauses that provide guidelines on what constitutes legitimate state interference, in order to be able to determine to what degree the provisions of the law are fulfilling the required criteria. The chapter also establishes the importance of right to access funding both as a self-standing right, and as an integral part of freedom of association for NGOs.

3 International rules protecting civil society

The right to freedom of association is widely recognized as a fundamental right in a democratic society, in fact, one of the foundations of such a society. The Human Rights Council (HRC) has recognized in their Resolution 15/21 that this right is indispensable to the full enjoyment of other human rights, and should be free of restrictions and subject only

to limitations permitted by international human rights law, particularly where individuals may espouse dissenting political beliefs.⁶³ The resolution also encourages NGOs to promote the enjoyment of the right to freedom of association, recognizing that civil society facilitates the achievement of the aims and principles of the UN. The right to associate freely is repeatedly connected with the freedom of expression, both of which are guaranteed by the Universal Declaration of Human Rights (UDHR)⁶⁴ and also protected by the major international treaties such as the International Covenant on Civil and Political Rights (ICCPR)⁶⁵, the ECHR⁶⁶, and a substantial list of other human rights conventions and declarations.⁶⁷ Although the treaties contain virtually identical guarantees, the European Court of Human Rights (ECtHR) has been far more active in developing the exact content and scope of that right derived from relevant case law.⁶⁸ Russia became a state party to the ECHR in 1998 by virtue of their ratification.⁶⁹ The decisions made by the Court, which are final and not subject to any review, are of global significance since Article 10 and 11 of the ECHR protecting freedom of expression and association are essentially the same as article 19 and 22 of the ICCPR, a convention that has been ratified by 140 nations, including the Russian Federation.⁷⁰ The European Convention and the practice of the Court will therefore be the primary sources used with regards to these rules and their interpretation, which also take precedence over Russian domestic law.

⁶³ HRC Resolution 15/21, p.2

⁶⁴ UDHR, Art. 20

⁶⁵ ICCPR, Art. 22

⁶⁶ ECHR Art. 11

⁶⁷ These include, for example, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities, the African Charter on Human and People's Rights, the American Convention on Human Rights, the Arab Charter on Human Rights, and the European Convention for the Protection of Human Rights and Fundamental Freedoms

⁶⁸ See eg. Case of Sidiropoulos and Others vs. Greece, United Communist Party of Turkey and Others v. Turkey or Gorzelik and Others v. Poland

⁶⁹ ICNL Law Monitor: Russia

⁷⁰ ICNL, European Court of Human Rights Holds Right to Form Associations is a Fundamental Human Right, September 1998

3.1 Freedom of association

The freedom of association is a fundamental human right involving the right of individuals to interact and organize themselves to collectively express, promote, pursue and defend common interest and values. It is protected in Article 30 of the Russian Constitution as well as in the various human rights treaties mentioned above. The ECtHR has noted that “where a civil society functions in a healthy manner, the participation of citizens in the democratic process is to a large extent achieved through belonging to associations in which they may integrate with each other and pursue common objectives collectively”.⁷¹

3.1.1 The scope of the right

Article 11 of the ECHR stipulates that everyone has the right to peaceful assembly, and to the freedom of association with others, including the right to form and join trade unions.⁷² This right, however, is not absolute, and any permissible grounds for restriction on the exercise thereof are prescribed by the limitation clause 11§2, which limits the restrictions to those which are “prescribed by law and are necessary in a democratic society in the interest of national security or public safety, for the prevention of disorder or crime, for the protection of health and morals or for the protection of the rights and freedoms of others (...)”.⁷³

Association within the meaning of this article could be defined as any form of voluntary grouping for a common goal. Despite the fact that Article 11 of the Convention expressly enumerates only one type of association, i.e. trade unions, it does not exclude in its definition other forms of voluntary assemblies. The definition in fact reveals that the Court interprets the term very broadly, including religious organizations, employer association

⁷¹ Gorzelik and others v. Poland, §92

⁷² ECHR, Art. 11 § 1

⁷³ ECHR, Art. 11 § 2

and various other forms of voluntary groupings gathered for a common goal, such as non-governmental organizations.⁷⁴

The freedom of association is not dependent on any legal entity status, since the law includes the possibility to associate informally, without the requirement of registering with the state authorities.⁷⁵ In some instances it may be enough to rely solely on the individual legal capacities of those who wish to found the NGO in order to pursue the organizations objectives. In practice, however, the pursuit of those goals is usually something more readily and easily undertaken through endowing the organization concerned with a legal personality that is distinct from that of its founders or the members belonging to the organization. It is often through the registration process that NGOs are able to act with the advantages that such a legal personality may afford, such as the having access to tax preferences, right to enter contracts, the ability to conclude transactions for goods and services, hire staff, open a bank accounts, etc.

In the *Sidiropoulos and others v. Greece* case, the ECtHR has held that the ability to form a legal entity in order to act collectively is one of the most important aspects of the right to freedom of association, without which that right would be deprived of any meaning.⁷⁶ It is therefore essential that there is a possibility under the law to acquire legal entity status for groups that so desire. In those countries where states have employed a registration system, it is their responsibility to guarantee that the process is easily accessible, with clear and quick, apolitical and inexpensive procedures in place.⁷⁷ Once formed, NGOs have the right to operate in an enabling environment, free from unjustifiable state intrusion or interference in their activities and affairs. As Mr Tishaev stated in his interview, “the possibility of not registering as a legal entity is really not an option for us because of the strong commitments

⁷⁴ Mataga, 2006 p. 5

⁷⁵ Mataga, 2006 p. 5

⁷⁶ *Sidiropoulos and Others v. Greece* § 40

⁷⁷ *Defending Civil Society Report*, 2012 p. 38

that we have towards our funders”.⁷⁸ The requirement of reporting on how the money that the organization has received is being spent is a necessity in any legitimate international foundation, and this whole process would probably not be possible without the obtainment of a legal status at the national level. This is important because it leaves no other option for foreign funded human rights organizations that wish to operate with their legal entity status, than to declare themselves as foreign agents under this law. Their working efficiency is therefore dependent on the registration.

3.1.2 The content of the right

The content of the freedom of association protects 1) the aims of the associations, 2) guards against interference by the State with the right to form or join already existing organizations, 3) forbids unjustified prohibition or dismissal of an association and also 3) declares their right to autonomously regulate their internal structure.⁷⁹

Article 11 suggests the right of an association to undertake any activity with the view of achieving any legal aim and pursue a broad range of lawful objectives. The State cannot deny such freedom by simply rendering the aims of an organization as illegal or banned.⁸⁰ One of the features of a democratic society is pluralism, and so the banning of an NGO based on their views, which are contrary to the majority parties in that society cannot be justified. Associations, including NGOs, should be able to campaign for a change in the law or in the legal and constitutional structures of the State, provided that the means used for this purpose are lawful and democratic, and that the change itself is compatible with fundamental democratic principles.⁸¹ Human rights work is characterised by its efforts to make governments comply with internationally set human right standards in the field of both civil, political, economical, cultural and social rights. In some situations this might

⁷⁸ Tishaev, interview 01.03.2013

⁷⁹ OSCE Guidelines of Freedom of Association, p. 8-11

⁸⁰ COE, Fundamental Principles on the Status of NGOs in Europe, 2002 p.3

⁸¹ United Communist Party of Turkey and Others v. Turkey p. 23

entail advocating for a political change. In the case of United Communist Party of Turkey and Others v. Turkey, the Court concluded that an association or a political party shall not be denied their freedom of association and the protection that this right entails simply because the authorities consider these acts to be constituting the deterioration of the constitutional order. This is important with regards to the Foreign Agents Law, as the amendments require the organizations to register as foreign agents if they perform political activities aimed at influencing the decision-making by state bodies intended for the change of state policy pursued by them, as well as in shaping public opinion for the aforementioned purposes.⁸² The issues and implications with regards to using such a criterion in the wording of the law will be discussed more in detail in section 5.2.2.

Given that the implementation of the principle of pluralism, which is essential in a well functioning democracy is impossible without an organization being able to freely express and distribute their ideas, findings and opinions, the ECtHR has also recognized that Article 10 of the Convention regarding freedom of expression is one of the objectives of the freedom of association as enshrined in Art. 11.⁸³ This is particularly relevant for NGOs because of their role as government “watchdogs”, which involves imparting information, ideas and findings on all matters of public interest thus contributing to the transparency of the actions of public authorities.⁸⁴ This link between these rights is also important since many believe that the Foreign Agents Law was introduced, at least in part, in reaction to the organizations’ views and statements.⁸⁵ The Court has in its practise established that a case can be examined under Art.11, and in a case of a violation of that provision conclude that no separate issue arose under Art.10 since Art. 11 is *lex specialis*.⁸⁶ If the Foreign Agents Law proves to be an unjustifiable restriction on the freedom of association, this will naturally also touch upon the organizations’ freedom of expression as well.

⁸² ICNL Law on Foreign Agent, 2012 Art. 2§1

⁸³ Freedom and Democracy Party (Özdep) v. Turkey, §37

⁸⁴ Vides Aizsardzibas Klubs v. Latvia, § 42

⁸⁵ Application, Ecodefence, Golos and 9 other NGOs v. Russia, 2013 p. 19

⁸⁶ Mataga, 2006 p. 28

3.2 Freedom of expression

Article 29 of the Russian Constitution states that everyone shall be guaranteed the freedoms of ideas and speech, and have the right to freely look for, receive, transmit, produce and distribute information by any legal way. Article 10 of the ECHR states that everyone has the freedom to hold opinions and receive impartial information and ideas without interference by a public authority, and regardless of any boundaries. However, because such a freedom carries with it duties and responsibilities towards other members of society, limitations are allowed in the name of “national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary”.⁸⁷ These restrictions must also be prescribed by law, and necessary in a democratic society.

In *Stankov and the United Macedonian Organization Ilinden v. Bulgaria*, the Court held that: “Freedom of assembly and the right to express one’s views through it are among the paramount values of a democratic society. The essence of democracy is its capacity to resolve problems through open debate. Sweeping measures of a preventive nature to suppress freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles – however shocking and unacceptable certain views or words used may appear to the authorities, and however illegitimate the demands made may be – do a disservice to democracy and often even endanger it. In a democratic society based on the rule of law, political ideas which challenge the existing order and whose realization is advocated by peaceful means must be afforded a proper opportunity of expression through the exercise of the right of assembly as well as by other lawful means.”⁸⁸ The Court has also stated that: “An organization may campaign for a change in the legal and constitutional structures of the State if the means used to that end are in every respect legal and democratic and if the change proposed is itself compatible with fundamental

⁸⁷ ECHR Art. 10§2

⁸⁸ *Stankov and the United Macedonian Organization Ilinden v. Bulgaria*, 2 October 2001

democratic principles”.⁸⁹

As previously mentioned, the freedom of association and expression can be subject to certain restraints for the protection of a bigger cause, as long as these restrictions are constructed according to their limitation clauses. This next section explains the criteria that need to be fulfilled in order for an interference to be legitimate, and elaborates on their application.

3.3 Criteria for legitimate interference as prescribed in Article 11 and 10

The State authorities can interfere with both freedoms as long as these regulations are “prescribed by law”, “in pursuit of a legitimate aim” and “necessary in a democratic society”.⁹⁰ All of these conditions must be fulfilled cumulatively, meaning that if one of the criteria’s is not fulfilled, the restriction is unlawful and the Russian authorities are consequently violating their international obligations. The first step is to establish whether there has been interference, and if so, whether it was legitimately justified. This includes an examination of whether the restriction was proportional to the legitimate aim pursued.⁹¹ This section attempts to clarify the meaning of these steps and principles, which will later be applied when evaluating the Foreign Agent Law.

3.3.1 What constitutes interference?

A government can restrict an individuals right to association in various ways, including deleting an association from the public register, prohibit an organization from undertaking certain activities, penalize its members, refuse registration, prohibit individuals to join an association, or force him/her to leave etc. These are all rather direct restrictions placed on the NGOs or their members. In general, there is rarely a problem with determining whether

⁸⁹ Zhechev v. Bulgaria § 47, 21 June 2007

⁹⁰ ECHR, Art. 11 § 2

⁹¹ Mataga, 2006 p. 14-15

or not there has been a limitation of the right, since States most often admit to having interfered and focus instead on their arguments proving that such interference was in fact justified.⁹² Issues arise when the interference is of a more indirect nature – such as an aftereffect of the requirements stipulated in the law. The Russian authorities are claiming to have acted rightfully when articulating the Foreign Agent Law, while the associations affected argue that their freedom of association has been restricted by a damaged reputation, making it difficult for them to operate effectively in society.

3.3.2 First criterion: Prescribed by law

It is not sufficient that the State has a formal legal source allowing interference; it also has to contain certain qualitative characteristics. This “prescribed by law” criterion aims to ensure compliance with the principle of legal certainty and foreseeability. The domestic regulations have to be accessible, and its provisions formulated with sufficient precision to enable the person or association concerned to foresee the implications and consequences, which a given action may entail. Complete precision is not necessary, which would exclude the needed interpretation in the application of the laws, but certain level of foreseeability is required.⁹³ In order for domestic law to meet these demands it must afford a measure of legal protection against arbitrary use in order to avoid unfettered power being granted to the executive, which would be contrary to the rule of law - one of the basic principles of a democratic society.⁹⁴

3.3.3 Second criterion: In pursuit of a legitimate aim

Freedom of association may be restricted only a) in the interest of national security or public safety, b) for the prevention of disorder or crime, c) for the protection of health and

⁹² Mataga, 2006 p. 15

⁹³ Mataga, 2006 p. 15-16. See, for example *Gorzelik and others v. Poland*

⁹⁴ *Maestri v. Italy* §. 30

morals, and d) for the protection of the rights and freedoms of others.⁹⁵ In order to avoid any potential abuse of the broadness of these terms, the Court has established that they are to be interpreted narrowly, and should not be broadened beyond their usual meaning. As a response to concerns that the limitation clauses in the ICCPR (which are identical to those in the ECHR) were interpreted and applied in a manner that was not consistent with the purposes of the Convention, the UN Economic and Social Council adopted a non-binding international treaty in 1984 called “Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights”. Though not legally binding, these principles articulate some general interpretive criteria relating to the justifications of the limitations, adopted by a group of international human rights experts in May 1984.⁹⁶ These interpretations indicate that the aims are understood very strictly. The notion “national security” for instance, only justifies the measures that limit certain rights when they are taken to protect the mere existence of the nation, its territorial integrity or political independence against any threat of force.⁹⁷ No restrictions can be placed simply to prevent isolated threats to law and order. “Public safety” on the other hand, means “protection against danger to the safety of persons, to their life or physical integrity, or serious damage to their property”.⁹⁸

3.3.4 Third criterion: Necessary in a democratic society

In order for a measure limiting the freedom of association to be regarded as necessary, it must be aimed at achieving one of the abovementioned legitimate aims.⁹⁹ The term “necessary” must here be understood in the context of a democratic society, and the characteristics that are crucial for its well function, such as pluralism, tolerance, open-

⁹⁵ ECHR, Art. 11§2

⁹⁶ The assembly was made up of the International Commission of Jurists, the International Association of Penal Law, the American Association for the International Commission of Jurists, the Urban Morgan Institute for Human rights, and the International Institute of Higher Studies in Criminal Sciences

⁹⁷ Siracusa Principles, 1984 p. 5

⁹⁸ Siracusa Principles, 1984 Principle VII

⁹⁹ These include in the interest of national security, or public safety, for the prevention of disorder or crime, for the protection of health and morals or for the protection of the rights and freedoms of others.

mindedness, equality and freedom. A measure is seen as proportionate, and therefore also necessary, if it fulfils a “pressing social need” and does not restrict the freedom more than absolutely required in the interest of the pursued aim.¹⁰⁰ The State party must also demonstrate that the restriction is needed in order to avert real and not hypothetical dangers to national security or democratic order, and that less intrusive measures would not suffice.¹⁰¹

This is a proportionality test in a *strict sense*, where one evaluates whether the measure was proportional to the legitimate aim sought to be achieved. This entails a balancing test that requires an appropriate relationship between the benefits that are gained by restricting a right versus the societal harm caused by the limitation. An evaluation of the importance of the right in its social context, the extent of the limitation, its intensity, dimension and probability must be considered on the on side of the scale. On the other side, we would have the importance of the goal in view of its content, the urgency of its realization reflected in the harm that would be caused absent the restriction, and the probability of that harm.¹⁰² Although such balancing is a daunting task, and the principle of proportionality has its critics, it helps to structure the mind of the balancer and identifies certain critical measures that have to be taken in consideration when determining whether the measures taken by the State can be said to be necessary in its societal context.

According to the HRC, the reference to the notion of “democratic society” indicates that the existence of civil society organizations is a cornerstone of a democracy, even (and maybe even more so) if they promote ideas not necessarily favourable to the government or the majority of the population.¹⁰³ However, what constitutes a justifiable restriction on a human right varies from society to society, depending on its unique challenges, history, and self-perception. The importance of a right and the importance of preventing its limitation

¹⁰⁰ Mataga 2006, p. 17-18

¹⁰¹ HRC, Jeong-Eun Lee v. Republic of Korea, § 7.2

¹⁰² Barak, 2010 p. 12

¹⁰³ HRC, Victor Korneenko et al. v. Belarus § 7.3

are therefore determined according to a society's unique character, and its fundamental perceptions.¹⁰⁴ Given the direct contact that the governments have with the processes that are forming their country, they are in a much better position to assess the need of the regulation. The state authorities are therefore left with something called "the margin of appreciation". This discretion has been perceived as quite broad in the European Court's practise, however, it is not unlimited and its scope depends on the circumstances of the case, the nature of the legitimate aim pursued as well as the intensity of the interference.¹⁰⁵ The ECtHR has stressed that this discretion goes hand in hand with a European supervision, where the Court is thus empowered to give the final ruling on whether the restriction is legitimate.¹⁰⁶

Because the source of the alleged interference is directly related to the funding routines of NGOs, the following section establishes the importance of the organizations' right to seek and secure resources both as a self-standing right, but more importantly as a vital component of their freedom of association.

3.4 The right to seek and secure resources

Since various NGOs and human rights organizations generally function on the "not-for-profit" principle, they are naturally and consequently heavily dependent on sources of funding in order to carry out their work. This necessity has been codified as a self-standing right in in the Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, commonly known as Declaration on Human Rights Defenders (DHRD), adopted by the General Assembly in 1998, and also as an integral part of the freedom of association. The solicitation of income therefore becomes a very important aspect and a crucial part of NGOs independence.

¹⁰⁴ Barak, 2010 p. 6-11

¹⁰⁵ Mataga, 2006 p. 18

¹⁰⁶ Handyside v. The United Kingdom §49

3.4.1 Right to secure resources as a self-standing right

The HRD Declaration refers to “individuals, groups and associations (...) contributing to (...) the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals” as human rights defenders.¹⁰⁷ This broad categorization encompasses both large intergovernmental organizations as well as individuals in local communities working towards the promotion and protection of human rights. Rather than using a specific description of who a HRD is, the term describes the work that they perform, which may be; collecting and disseminating information on violations, support victims of human rights violations, work toward securing accountability and the end of impunity, support better governance and government policy, contribute to the implementation of human rights treaties or undertake human rights education and training.¹⁰⁸ Consequently, these activities and requirements are applicable to the work and activities conducted by local, national and international NGOs.

Despite the fact that the DHRD is not a legally binding text, it provides a normative framework for the protection of HRD and also represents a strong political commitment by all UN member States to respect the principles encoded in the document. Article 13 of the Declaration states: “Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with Article 3 of the present Declaration”.¹⁰⁹ States are thus under the obligation to permit both individuals and organizations to “solicit, receive and utilize resources”, a wording that covers all the phases connected to the cycle of funding.¹¹⁰ With this in mind, States must adopt a legislative and administrative framework that does not impede any of these stages

¹⁰⁷ DHRD, Annex §4

¹⁰⁸ OHCHR, “Who is a defender”

¹⁰⁹ DHRD, Art. 13

¹¹⁰ Asoka & Rocca, 2009 p. 8

of funding, whether these have been obtained nationally or internationally.

States may justify legislation that restricts the access to funding on the basis of the reference to domestic law. The Special Rapporteur on HRD has however clarified that this provision must be read together with Article 4, specifying that domestic legislation is dependent on being in accordance with international human rights law in order for it to provide the framework within which defenders carry out their activities, thus having many of the same limitation standards as freedom of association.¹¹¹

These commitments emphasize the importance of a legislative and administrative framework that does not impede the solicitation of sources for NGOs, and provide strong indicators for the seriousness of such interference. This next section affords these guarantees a degree of authority, by establishing the right to seek and secure resources as a part of NGOs freedom of association.

3.4.2 Access to funding as an integral part of the freedom of association

Freedom of association entails duties containing both positive and negative obligations. Governments should not only refrain from unlawfully interfering with the creation of associations, but also encourage participation and create an enabling environment for all NGOs to operate freely and without any unnecessary legal, administrative or operational hindrance. If freedom of association is a formally recognized and protected right, but individuals and organizations are denied the resources, or placed under funding restrictions in a way that makes it difficult for them to pursue their objectives as an association, then this right cannot be considered to be effectively implemented and protected.¹¹² The UN Special Rapporteur on Freedom of Assembly and Association, Maina Kiai, stressed that,

¹¹¹ ISHR Right to Access Funding, 2009 p. 6

¹¹² Asoka & Rocca, 2009 p. 6

“without the ability to access funding, from sources local, regional or international, this right becomes void”.¹¹³

Authoritative support to such an interpretation can be found among observations and statements issued by various UN treaty-monitoring bodies. In the October 2004 Report of the Special Representative of the Secretary General on human rights defenders Hina Jilani, which is in charge of monitoring the implementation of the Declaration, included “restrictions on funding” as a category of legal impediments used by governments, which seriously affect the ability of human rights defenders to carry out their activities.¹¹⁴ The Special Representative recommended that governments must allow access by NGOs to all funding, including foreign funding, as a part of international cooperation, to which civil society is entitled to, and to a large extent dependent on. The only legitimate requirements placed on NGOs should thus be those in the interest of transparency.¹¹⁵ To what extent this is the actual aim of the Foreign Agents Law will be discussed when analyzing its legitimacy in chapter 5.

By forcing organizations to register as foreign agents because of their obtainment of funding from abroad, the NGO’s right to seek and secure resources and consequently their freedom of associations are no longer entitlements that are properly protected because of the implications that accompany such a term. Having established that the law touches upon these freedoms, there is a demand take into consideration the governments’ justifications for introducing the amendments in order to fairly determine the legitimacy and rightfulness of the law. As previously mentioned, the national authorities do have a margin of discretion when creating domestic legislation since they are in the best position to assess the need and necessity of the restriction.¹¹⁶ The State must thus demonstrate that it exercised its discretion reasonably, and that their justifications are relevant and sufficient.

¹¹³ Kiai, 2012

¹¹⁴ Jilani, 2004 p. 20

¹¹⁵ Jilani, 2004 p. 22

¹¹⁶ Mataga 2006. p. 18

4 Government justifications for introducing amendments

The Russian authorities have viewed foreign funded NGOs as threats to the national security and national sovereignty of the Russian Federation. Stricter regulatory control is explained with the need for supervisory oversight of their activities, prevent interference in the affairs of the state and to protect against attempts to exercise foreign influence through the funding of politically active human rights organizations from abroad.¹¹⁷ Indeed, the fact that human rights NGOs have positioned themselves as very influential and powerful actors, which deal with morally infused principles, does create a need to investigate and regulate their conduct quite urgent. Responsibility must be attached to their increasingly prominent role in society. NGOs authority is informal, and it stems from cultural sources that are capable of “triggering powerful logistics of compulsion that are masked by the theory of rational voluntarism”.¹¹⁸ The legal authority of such organizations is therefore not controlled or limited in any way. Rather, their authority flows from elemental principles of morality, voluntarism and individual action¹¹⁹ – all of which are potentially subject to abuse. One must therefore understand the governments need to create laws that ensure transparency, objectivity and accurate reporting.

Using human rights organizations as a front for political objectives are not recent or unknown developments either. Throughout history, there have been incidents of attempted political influence through the funding of civil society organizations operating abroad. For instance, the New York Times conveyed in 1967 that the Central Intelligence Agency (CIA) had secretly funded several “anti communist NGOs” during their ideological struggle, and governments have on many later occasions levelled charges of bias and politicization against supposedly independent NGOs. The potential for such alignment is in fact real, especially given that the industry is not subject to any formal regulation. Some point to the fact that human rights organizations base their actions on the unimpeachable and high moral principles of human rights, which provides these NGOs with a level of

¹¹⁷ Bogoroditskii, 2010

¹¹⁸ Blitt, 2004 p. 9

¹¹⁹ Blitt 2004, p.10

incontrovertibility as to intent and motive that is simply without parallel.¹²⁰ Such a “shield” is most certainly open to abuse. There exists a possibility that human rights organizations are being established to advance politicized objectives that are held by their financial backers or funders, and the public at large is ill informed regarding the sources of their income. The question remains whether such concerns are realistic and urgent in the Russian context, and whether the authorities can demonstrate that the adoption of the law was a response to an imminent threat of such intentional foreign influence.

The Kremlin has thus justified the Foreign Agents Law on the need for organizational transparency and objectivity achieved through scrutinizing foreign funded NGOs. The law is therefore claimed to be an instrument of openness. Civil society organization receiving grants from outside the country have been viewed with intense suspicion in Russia since the so-called “colour revolutions” in Georgia in 2003 and Ukraine in 2004, where the public uprisings that overthrew the governments were perceived as driven by foreign funded NGOs.¹²¹ These incidents manifested in the eyes of the Russian authorities the possibility of public uprising brought about by such actors, thus further establishing the need for stricter regulation.¹²² Aleksandr Sidyakin, a United Russia deputy and the co-author of the law, has expressed the following in his blog; “The ultimate goal of funding non-profit organizations, as a form of soft power, is a colored revolution (...). This is not a myth of government propaganda it is objective political reality. The United States is trying to affect Russian politics”.¹²³

Irina Yarova, who chairs the lower house of parliament’s security and heads the pro-Kremlin party’s conservative wing, has stated that the bill was fully in line with international democratic standards, and that its aim is to protect the interests of civil society. It is an “instrument of openness that threatens no one”, and “Russians must be able

¹²⁰ Blitt 2004, p. 39

¹²¹ Choking on Bureaucracy Report, 2008 p. 1

¹²² COE Secretariat Working Paper, 2012

¹²³ Barry, 2012

to understand who in the country does political work paid with foreign money. That's a standard of international democracy", she claims.¹²⁴ Federation Council speaker Valentina Matvienko has publicly voiced her support for the law, explaining in an interview with RIA Novosti, the Russian International News Agency, that "the necessity of the law is obvious because any state is obliged to defend its national interests from foreign influence".¹²⁵ In similar wording, vice-speaker of the State Duma Sergei Zheleznyak has explained that registration is desirable "because it is unclear in whose interest and on whose dime these NGOs were operating".¹²⁶ Mr Sidyakin doesn't hide the fact that the amendments were introduced in order to counter what he calls attempts by the United States to "affect Russian politics". He singles out the independent election monitor Golos as an example, arguing that they received 2 million dollars in 2011 in order to "dirty the Russian authorities". The author is stressing that the registrations will "by no means interfere with NGO activities", and believes that there is nothing insulting in the term "foreign agent".¹²⁷

Many of the non-Russian organizations that regularly support Russian NGOs are highly respected, credible and well-known foundations that provide open and transparent processes when providing grant funding, including the European Commission, USAID, the Nordic Council of Ministers, the Council of Europe, various UN institutions, Ford Foundation, Swedish International Development cooperation Agency (SIDA), the MacArthur Foundation, the Norwegian Helsinki Committee and the National Endowment for Democracy (NED), to mention a few.¹²⁸ Suggesting that organizations like these have any hidden political agendas, which are hostile to Russia's interests shows a genuine misunderstanding of the goals and aims of both the sponsors and the NGOs. Neither have there been any recent, concrete incidents that could in other ways justify these accusations. The Russian authorities are thus making a strong case for the necessity of the Foreign

¹²⁴ Von Twickel, 2012

¹²⁵ Burke, 2012

¹²⁶ Burke, 2012

¹²⁷ Bennetts, 2012

¹²⁸ Application, Ecodefence, Golos and 9 other NGOs v. Russia, 2013 p. 25

Agents Law, but are failing to substantiate their motivations with concrete evidence that would demonstrate the urgency with adopting such regulations. The clarity of the law, its motive and need will be subject to scrutiny and a proportionality assessment in the following chapter.

5 Analysis of the legitimacy of the Foreign Agent Law

This chapter seeks to examine the legitimacy of the Foreign Agents Law by taking use of the criteria that justify interference with freedom of association and expression as stipulated in the European Convention; hereunder “prescribed by law”, “in pursuit of a legitimate aim” and “necessary in a democratic society”. But before turning to such an assessment, the first part of this chapter will discuss how and why the foreign agent label is affecting the work of these organizations, in order to establish whether there is in fact an interference with these rights.

5.1 The implications of the ‘foreign agent’ self-denomination

The NGO community in Russia is claiming that the interference with their freedom of association and expression is, among others, a consequence of the self-denomination requirement that the law places on them.¹²⁹ A linguistic report undertaken by the Institute of the Russian Language by the Russian Academy of Sciences (IRL RAS) has found that the term “agent” has three principal definitions in the contemporary Russian language; 1) the representative of an organization, 2) someone acting in the interests of another, and 3) a spy. This term taken together with the word “foreign” has strong and persistent connotations among the majority of Russian native speakers as being someone acting in the interest of a foreign and necessarily hostile state/organization.¹³⁰

¹²⁹ Application Ecodefence, Golos and 9 other NGOs v. Russia, 2013

¹³⁰ Application Ecodefence, Golos and 9 other NGOs v. Russia, 2013 p. 26

The abovementioned connotations can be explained in historical terms. The Russian authorities and investigative bodies repeatedly used phrase “foreign agent” as a standard accusation against large numbers of Russian citizens during the political repression of the 1930’s and 1940’s. The notion therefore entered the consciousness of native Russian speakers as a politically loaded term, associated with the critical speeches of Soviet public prosecutors, in court sentences and extra-judicial decisions, and on the pages of Soviet newspapers.¹³¹ These findings are also supported by a public opinion toll conducted by Levada Analytical Centre, a Russian non-governmental research organization, which regularly conducts sociological surveys. 69% of the overall respondents of the opinion toll perceived the term negatively, accordingly validating the findings of the linguistic report as well. 39%, which was the highest percentage, understood the wording as meaning a spy, secret service agent of a foreign state, or a secret service agent acting undercover. 22% of the respondents answered that for them, a “foreign agent” meant a masked enemy acting inside Russia in the interest of other countries, a so-called traitor. Only 18% had a more neutral understanding of the wording, and understood it as meaning a representative of a foreign state or organization.¹³² These findings indicate that the arguments presented by the state authorities regarding the neutrality of the terminology are inadequate, since it can be verified that the majority of the Russian public has negative associations with such a label. The historical understanding and cultural context in which the law has come about is therefore of great significance for the effect it has on NGOs. Russia’s Presidential Council for Human Rights, a consultative body established to assist the President in the exercise of his constitutional responsibilities, even suggested removing the wording from the entire document and replacing it with a more neutral description, such as “an NGO that receives funding from abroad for carrying out political activities”.¹³³

Certain statements expressed by both politicians and officials indicate that the wording seems to be chosen with the particular intent of discrediting organizations receiving

¹³¹ Application Ecodefence, Golos and 9 other NGOs v. Russia, 2013 p. 27

¹³² Vorozheikin, 2012

¹³³ Astakhov, 2012

funding from abroad, making the public question their motives and legitimacy. Mr Sidyakin has said, “People who are invited to public demonstrations will know that they are invited by an NGO performing functions of a foreign agent”.¹³⁴ A representative from the leading political party United Russia has also stated that “those NGOs who are engaged in political activity and are paid from abroad must have the status of foreign agent so the public could see who implant ideas into their mind and who pays for their work”.¹³⁵ The term is therefore obviously chosen with the intention of creating suspicion regarding the information received from such associations, and weakening their overall credibility. In fact, on the same day that the law came into effect, the offices of two human rights organizations, For Human Rights and Memorial, were spray-painted with the word “Foreign Agent/Here resides Foreign Agent” and a heart with “USA” written next to it.¹³⁶ In addition to humiliating the dignity of the staff of the organizations in question and the trustees associated with them, these actions consequently damaged their professional reputation. Mr Tishaev also explained that there have also been a lot of provocative campaigns on the Internet discrediting human rights organizations, and also some demonstrations organized by pro United Russia Youth Group demanding that NGOs obey the law and register as foreign agents.¹³⁷ The reputation of these organizations had thus already suffered, even without the law being formally enforced on them at that particular time.

Several scholars on social organizations in Russia recognize that the atmosphere of contemporary Russian society is symbolized by pervasive mutual alienation and distrust among citizens, referred to as the “post communist syndrome”. Russian society regards the non-profit sector with suspicion, and most citizens consider charitable organizations to be a form of “organized theft”. The handicaps of social organizations in post communist Russia, and consequently the attitudes towards them, can thus be explained as an attitudinal legacy

¹³⁴ Application Ecodefence, Golos and 9 other NGOs v. Russia, 2013 p. 24

¹³⁵ Application Ecodefence, Golos and 9 other NGOs v. Russia, 2013 p.24

¹³⁶ Ireland, 2012

¹³⁷ Tishaev, interview 01.02.2013

of the Soviet system. It has fostered the growth of individualism in people's values as a natural reaction to the collectivist way of thinking that was imposed by the party state regime.¹³⁸ Such an outlook discourages most Russian citizens from participating voluntarily in the work of NGOs, and it also generates cynicism towards their actions in society. With such default general attitudes among the Russian population, a "foreign agents" status will inevitably reinforce and fortify the negative attitudes towards NGOs and the work that they do.

Civil society organizations are dependent on working with legitimacy when operating on the ground among the general public. But maybe more importantly, they need credibility when working at a more structural level among state officials and politicians. The label will in practice make it very difficult for them to operate efficiently when advocating for changes in law or public policy, since civil servants and other interlocutors will be highly reluctant to cooperate with organizations carrying such status.¹³⁹ This has already been evident in some regions of Russia. On the 9th of August 2012, the administration of the Mari-El region issued a directive to its own officials requesting them to refrain from participating in any social or public political activities organized by NGOs receiving funding from foreign sources.¹⁴⁰

Although the limitation comes in a form of damaged public opinion rather than a direct prohibition of any kind, it still amounts to an interference with the freedom of association and expression by creating a hostile environment for the NGOs to work in. Because they are dependent on their legal entity status and are required to register with the MoJ, and because of the lack of obtainable domestic and private funds, the organizations thus have to struggle to prove their objectivity in an already distrustful society. Having established the challenges that the law creates for the existence of NGOs, we must now evaluate the qualitative aspects of the provisions in order to determine the legitimacy of its articulation.

¹³⁸ Evans, 2002 p. 325-326

¹³⁹ Application Ecodefence, Golos and 9 Other NGOs v. Russia, 2013 p. 27

¹⁴⁰ Digges, 2012

5.2 The law's qualitative assessment

As previously mentioned, any measure that restricts the freedom of assembly must entail certain characteristics in order to fulfil the criterion of being “prescribed by law”. Domestic law has to be formulated with sufficient precision to enable the persons concerned to foresee the consequences, which a given action might entail. It must also afford a level of protection against arbitrary interferences by the public authorities.¹⁴¹ To what degree can it be said that the law meets these qualitative demands?

5.2.1 Vagueness of law

The Foreign Agent law creates a new category of NGOs in the Russian legal system, namely those receiving foreign funding and performing “political activity”, which is a phrase lacking any definition in the Russian legal system, except by a way of prohibiting certain state officials (such as judges) on being members of political parties and therefore pursue such activity.¹⁴² The mere merits and scope of the term can be found in the Russian laws on public associations and on political parties, wherein both texts an organization is considered as political if it aims to “influence the political will of the population, participates in elections, or if it participated in, and forms, official authorities”.¹⁴³ The Law on Foreign Agents however, expands this definition by incorporating new wording into the provision, such as “political action”, “state policy” and “shaping public opinion”.¹⁴⁴ A further definition of these additional terms is absent, potentially resulting in a broadened interpretation.

The Office of the High Commissioner for Human Rights (OHCHR) also raised this issue as one of the main concerns in Russia's UPS summary paper. The document stressed that the lack of a “legal definition of the term ‘political activity’ could result in broad interpretation

¹⁴¹ *Maestri v. Italy* § 30

¹⁴² The Federal Law on the status of Judges, 1992 Art. 3 § 3

¹⁴³ *Application Ecodefence, Golos and 9 Other NGOs v. Russia*, 2013 p. 21

¹⁴⁴ ICNL Law on Foreign Agents, 2012 Art. 2§1

whereby almost all human rights organizations would fall in the category of ‘foreign agents’”.¹⁴⁵ In fact, one of the very first initiatives and responses from the civil society organizations to the adoption of the law was to request a clarification of the term from acting Minister of Justice J. Konovalov in November 2012.¹⁴⁶ The organizations, with the human rights organization AGORA and their lawyers in the forefront, were seeking explanations on the flexible terminology used in the provisions, maintaining that the law can be misinterpreted because of its vague articulation and unclear procedure, and that the concepts used are more or less inherent in all NGOs.¹⁴⁷ The Ministry responded to the request that it was not authorized to answer such questions.¹⁴⁸

The ECtHR has through its practice acknowledged that legal certainty in law is in practice unattainable, and that too much certainty is in fact undesirable.¹⁴⁹ When discussing such issues, it is helpful to have in mind what we can call “fact sensitivity” of a law. A law’s fact sensitivity is the degree to which the outcome of its application depends on the detailed factual context in which it is applied.¹⁵⁰ A law that is written in rigid terms using concrete and very precise concept becomes fact insensitive, since its application would be very limited to a small number of very specific cases. Excessive rigidity may prevent those who apply the law from achieving the objective that lies behind it. A law can become more fact sensitive in two ways. One way is to make it more detailed, so that a wider range of parameters becomes relevant to how it might apply in any given case. The other way is to increase the practical decision-making, the degree of discretion, accredited to those who are in charge of applying the law. Making use of concepts that are somewhat imprecise and broad in nature fulfils this task.¹⁵¹ Such concepts thus call for an exercise of evaluative assessment in light of the particular facts of every case.

¹⁴⁵ OHCHR Summary of stakeholders information, 2013 part I, B(5)

¹⁴⁶ Pellegrini Adam, 2012

¹⁴⁷ Bowring, 2012 p.9

¹⁴⁸ Laws of Attrition Report, 2013 p. 21

¹⁴⁹ See e.g. Case of S.W. v United Kingdom 1996, § 36

¹⁵⁰ Sales and Hooper 2003, p. 427

¹⁵¹ Sales and Hooper 2003, p. 428

Because there are so many diverse NGOs in Russia with distinctive mandates and different working practices (which is a characteristic of the overall NGO community), the wording of the law does in fact require some degree of flexibility in order to be applicable to at least a significant number of them if it is supposed to fulfil its aim of transparency. There consequently exists a significant tension between the requirement of legal certainty and foreseeability deriving from the “prescribed by law” criterion, and the doctrine of proportionality. This principle encourages implementing adaptable laws, often involving a high degree of discretion on the part of decision-makers on its practical application. However, with this increase comes less certainty and the consequences of the law becomes less easy to predict.¹⁵² The relevant question in this case therefore becomes whether the definition of political activity used in the Foreign Agents Law is inappropriate, overly vague and transcends the permissible boundaries regarding foreseeability.

5.2.2 Unsuitable use of the phrase “political activity”

The establishment of NGOs as an alternative or a supplement to a political party is quite common among nationally based organizations that criticize and resist the government. The line between narrow human rights objectives and broader political ambitions is being blurred due to the ever-expanding definition attributed to human rights and the consistent broadening of NGO’s mandates. At the same time, human rights organizations are opposed to being labelled as political since such a stamp might degrade their objectivity and impartiality. Difficulties also arise when NGOs expand their objectives, venturing into activities that represent a departure from the touchstone of human rights norms, again clouding the distinction between what defines a human rights organizations as opposed to a lobbying or activist organizations performing political activity.¹⁵³ This expansion of NGO mandates and activities are creating unclear lines for what constitutes political activities

¹⁵² Sales and Hooper 2003, p. 439

¹⁵³ Blitt, 2004 p. 39-40

versus human rights work. The broadness of the phrase and its lack of a clear definition in the wording of the law is providing too much manoeuvring space for the MoJ in deciding which human rights activities are to be defined as political. Even the Ministry admitted their lack of authority in defining the outreach of the provisions.¹⁵⁴

Many of the leading Russian human rights organizations¹⁵⁵ argue that the definition used in the law appears to cover the majority of their usual activities, consequently targeting all organizations that do any kind of human rights work, including election monitoring and environmental protection. In support of their claim, the NGOs refer to statements of a number of Russian commentators and experts. In the opinion of political commentator K. Rogov, the terminology used in the law was deliberately broad in order to cover human rights activity, including electoral rights.¹⁵⁶ The political scientist working at the Russian Academy of Sciences, Dimitriy Oreshkin, also supports this conclusion in his statement to the European Court. He says that the phrase “political activity” as a terminology is nowhere to be found in the Russian law. According to his statement, the broad nature of the term will consequently cover many of the normal human rights activities since they inevitably aim at strengthening the civil society, and definitely influencing public opinion – either directly or indirectly.¹⁵⁷

Neither of the organizations consider their activities as being “political”, which would be contrary to the NGOs constitutional or statutory documents, their financial agreements with donors and the overall common understanding of all the persons involved, including staff and board members.¹⁵⁸ Promoting public awareness, dialogue with state bodies and aiming to secure transparency and accountability of State authorities are not political actions,

¹⁵⁴ Laws of Attrition Report, 2013 p. 19

¹⁵⁵ These include: Ecodefence, Golos, Citizen’s Watch, Committee of Civic Assistance, Committee Against Torture, Mashr, Memorial, Moscow Helsinki Group, Public Verdict, Memorial and Movement for Human Rights

¹⁵⁶ Application Ecodefence, Golos and 9 Other NGOs v. Russia, 2013 p. 22

¹⁵⁷ Oreshkin, 2012

¹⁵⁸ Application Ecodefence, Golos and 9 other NGOs v. Russia, 2013 p. 22

according to the organizations. The vagueness of the provisions is thus creating possibilities for the government to subjectively pinpoint organizations that should register as foreign agents. The recent enforcements of the law are confirming these concerns, such as with the case of the election monitoring organization Golos. To what degree can it be said that ensuring fair elections and discovering electoral fraud is a political action aimed at influencing the decision-making by state bodies or shaping public opinion intended for the change of state policy? Aren't they rather actions aimed at ensuring just voting and securing liability of the Russian state – goals that should be preserved and fought for in any democratic society?

The human rights organizations are claiming that from a legal perspective, the wording of the law and the definitions used are lacking significant clarity, thus preventing the NGOs from foreseeing the consequences of its application in relation to their activities. Since so many of them will potentially qualify as “political” it gives the MoJ too much power for in determining who should register as a foreign agent, and who should not, consequently opening up for arbitrary application. This claim can be strengthened by referring to the ECtHR concern regarding the use of the term “political” in other national legislation. In several cases, the Court has found violations of the Convention where the justifications for restrictions placed on associations are due to its perceived “political” objectives.¹⁵⁹ It has stated that the term “political” can be considered overly and inherently vague and can be subject to diverse interpretations. Any classification based on such a criterion is liable to produce incoherent results and engender considerable uncertainty.¹⁶⁰

Although such fears are understandable, certain developments might prove that such outlooks are overly pessimistic. On 22 January 2013, the Russian newspaper Forbes wrote an article about a Russian human rights organization called Shield and Sword, which the

¹⁵⁹ See e.g. *United Macedonian Organization Ilinden and Others v. Bulgaria*, 2011

¹⁶⁰ *Zhechev v. Bulgaria*, 2007 §. 55

MoJ refused to register in their foreign agents list.¹⁶¹ The organization themselves voluntarily submitted the necessary documents for the inclusion into the registry - although they do not consider themselves as such - in order to understand how the law works from the inside, to force the Ministry to clarify the situation, and also to force an application of the law in order to be able to initiate legal proceedings. The MoJ decided that although the organization receives foreign funding, their activities that aim at eradicating instances of human rights violations within the Chuvash Republic, are not considered to be political activities. The Ministry concluded that; “The forms of political activity stated by the organization are directly governed by a set aim, and are not aimed at altering government policy”¹⁶²

Evidently, not all human rights organization’s actions will fall within the definition, and so the number of NGOs that might be targeted by the law might therefore prove to be smaller than feared. However, Shield and Sword can be seen a more low-key organization not posing any direct nuisance for the government, consequently not generating any need for closer oversight or stricter limitation. Memorial, which is one of oldest and most respected human right organization in Russia, has as previously mentioned recently been requested to register as a foreign agent. The NGO commits itself to research, human rights assistance, and information gathering as well as distribution about violations on the territory of the former Soviet Union.¹⁶³ Neither of these actions would seem to be conducted in order to alter government policy or shape public opinion. Still, they became one of the primary targets of the provisions. Golos is a similar example, where a case is currently being filed against them for being in breach of the law. The documentations and reports of violations in parliamentary and presidential elections conducted by the organization resulted in massive public demonstrations. It seems as though the autonomy of NGOs and the importance of their work is creating demands for closer oversight and monitoring, and even the curbing of their funds and actions on behalf of the authorities. The possibility of such

¹⁶¹ Ministry Refuses to Register Shield and Sword as Foreign Agent, 2013

¹⁶² Ministry Refuses to Register Shield and Sword as Foreign Agent, 2013

¹⁶³ The Charter of the Memorial, <http://www.memo.ru/eng/about/whowe.htm>

selective application of the law is thus verifying its qualitative inadequacy.

The balance criterion with regards to the discretion that should be given to the executive on one hand, and the precision of the law on the other does in light of these enforcements not appear to be proportionate, and is consequently contrary to the rule of law. The vagueness of the terminology seems to transcend the permissible boundaries regarding foreseeability, and consequently leaves too much discretion to the MoJ. The new terms added to the definition of political activity are consolidating its inadequacy, since these traits characterise a broad range of legitimate NGO activities. Any attempt on limiting such actions would constitute a setback for a democratic society. These weaknesses are thus not satisfying the qualitative demands needed for the “prescribed by law” criterion to be fulfilled. Although the ECtHR would declare interference as illegitimate if one of the criterions should not be fulfilled, we will for arguments sake move on to the next principle in order to further reinforce and strengthen the findings of this paper.

5.3 Does the law pursue a legitimate aim?

The overriding aim of the law seems to be to restrict and limit the influence of NGOs, which allegedly carry out “hostile activities” under the instructions of foreign sponsors pursuing “hostile interests”. President Putin recently stated, "No one has the monopoly of speaking on behalf of the entire Russian society, let alone the structures directed and funded from abroad and thus inevitably serving foreign interests," he said. "Any direct or indirect meddling in our internal affairs, any forms of pressure on Russia, on our allies and partners is inadmissible".¹⁶⁴ Can these intentions fall within the aim of a restriction that is adopted in order to protect “national security”?

The European Court has stated that the aims articulated in Article 11§2 are to be interpreted narrowly in order to avoid abuse, and that their content should not be broadened beyond

¹⁶⁴ Isachenkov, 2013

their usual meaning.¹⁶⁵ According to the Siracusa Principles, “national security” may be invoked only when they are taken to protect the mere territorial or political existence of a nation against a threat of force, and not to prevent relatively isolated threats to law and order. It should neither be used as a pretext for adopting vague and arbitrary limitations. If a State is systematically violating human rights, it is then consequently also jeopardizing international peace and security, and it cannot invoke national security as a justification for introducing measures that are aimed at suppressing opposition to such violations.¹⁶⁶ It has been the fear among the civil society that the Foreign Agent Law was introduced in order to limit the operational ability of organizations that are critical of the government. These suspicions have to a certain degree been confirmed by the recent enforcements of the law, but also when considering it in light of the other recently adopted legislation that target both organizations and other individuals in political opposition. Many of the NGOs that potentially fall within the scope of the law are working with the documentation and distribution of violations of human rights in the Russian territory. The regulation is consequently aimed at preventing what the authorities consider to be threats to the current law and order, and not at protecting the mere existence of the nation. This criterion is, however, is the most difficult one to determine because of the broadness of the terms. Restrictive measures will often therefore fulfill this condition in the European Courts practice.¹⁶⁷

5.4 Necessary in a democratic society?

If we assume that the aim was legitimate, the measure used to achieve that purpose will be proportionate, and thereby necessary, if it fulfils a pressing social need and if it does not restrict the freedom of association to a larger extent than is necessary. The notion of necessity is difficult to grasp, and the ECtHR has noted that it is not synonymous with

¹⁶⁵ Mataga, 2006 p. 17

¹⁶⁶ Siracusa Principles, Section VI § 29, 30, 31, 32.

¹⁶⁷ Mataga, 2006 p. 17

“indispensable”, nor “allowed”, “usual”, “useful”, “reasonable” or “wishful”.¹⁶⁸ The limitation should thus have an aspect of inevitability, and the reasons for its implementation have to “relevant and sufficient”. The national authorities consequently have to prove that they have applied standards that are in conformity with the principles embodied in Art.11, and that they based their decisions on an acceptable assessment of relevant facts.¹⁶⁹ The reference to a democratic society means that this proportionality assessment must be considered in light of the basic values of a democratic society. There must accordingly be a balance between the severity of the restriction and the reasons for its adoption. An evaluation of the importance of the right in its social context, the extent of the limitation, its intensity, dimension and probability must be considered on the one side of the scale. On the other side, we have the importance of the goal in view of its content, the urgency of its realization reflected in the harm that would be caused absent the restriction.¹⁷⁰ The following sections address such considerations, but first there is a need to establish whether the regulations were based on adequate evaluations of relevant facts when determining the necessity of introducing the law.

5.4.1 Based on acceptable assessment of relevant facts?

It is difficult to search for solid proof that substantiates the scepticism that the Russian authorities are feeling towards foreign funded NGOs that could substantiate that there was a pressing social need for the adoption of the law. The national authorities have to prove that they based their decisions to introduce the regulation on an acceptable assessment of relevant facts.¹⁷¹ There have not been any concrete incidents of deliberate influencing of political processes through financial support that could support their arguments, although these could of course be potentially be hard to detect. Vladimir Novitski, President of the Russian Section of the International Society for Human Rights, has expressed in an

¹⁶⁸ Handyside v. The United Kingdom § 49

¹⁶⁹ Sidiropoulos and Others v. Greece §40

¹⁷⁰ Barak, 2010 p. 12

¹⁷¹ Sidiropoulos and Others v. Greece §40

interview that he does not believe that any of the human rights organizations are pursuing such an objective. “I do not know of any grants that were positioned to undermine the Russian State, to bring about an illegal change of power, to criticize wrongfully acts of national institutions or civil servants. On the contrary - all furthering activities by the European Union (EU), Organization for Security and Co-operation in Europe (OSCE), or other private or international funds in Russia position themselves on development of a civil society”.¹⁷²

Also as previously indicated, the foundations and organizations that distribute grants to NGOs are all highly respected, credible and well-known foundations that provide open and transparent processes when providing grant funding.¹⁷³ Without concrete facts to base their decisions on, the interference seems to be based on a genuine misunderstanding of the goals and aims of both the sponsors and the role of NGOs in society. The Russian State is failing to demonstrate that these dangers that the Foreign Agent Law is supposed to protect them from are real and urgent, and not only hypothetical.

5.4.2 Importance of the right vis-à-vis need for restriction

If the importance of preventing certain limitations of a right depends on the importance of the right itself, then it is decisive for the survival and well functioning of a democratic society that freedom of association and expression be placed under limitations only when absolutely necessary. Because civil society is such a crucial element of a democracy, the protections afforded to its actors are of great importance for the overall community.

This is maybe even more so the case in a country such as Russia, where the early development of the NGO sector and civil society was slow. Civil society was essentially non-existent in the Soviet Union because of the state controlled tradition that dominated the

¹⁷² Novitski, 2012

¹⁷³ Application, Ecodefence, Golos and 9 other NGOs v. Russia, 2013 p. 25

Russian communist ideology.¹⁷⁴ Although the proliferation of such organizations has been substantial during the last decades, there still is a long way to go, and their need to establish themselves firmly in the Russian society is critical for the promotion and further development of a sustainable democracy. The European Court has on several occasions emphasized the special protection afforded to political parties in the context of Article 11 and 10. This is because their actions are seen as giving invaluable contribution to political dialogue.¹⁷⁵ The NGO's function can be compared to that of political parties, and even the law itself specifically targets those organizations performing "political activities". This reasoning could therefore be expanded to also embrace NGOs, especially those who have taken on the function of watchdogs on the national authorities. The margin of appreciation given to the contracting State should thus be narrow, where the authorities are called upon to present particularly important reasons to justify an imposed restriction.¹⁷⁶ It can be argued that the importance of preventing the restriction of freedom of association and expression in the Russian context is therefore reasonably high based on these assessments.

5.4.3 The extent and intensity of the interference

The Court has held that the ECHR does not prevent State authorities from laying down what they consider are reasonable legal formalities as to the "establishment, functioning or internal organizational structure of NGOs".¹⁷⁷ The authorities would point to the fact that the Foreign Agent Law doesn't in any way restrict or prohibit the organizations from seeking foreign funding. It only establishes reasonable formalities with regards to their objectivity, claiming that the intensity of the restriction is very low and does not hinder the organizations' work in any way. Having already argued otherwise with regards to the consequences of the foreign agents status in chapter 5.1, the proportionality balance of the

¹⁷⁴ Maxwell, 2006 p. 6

¹⁷⁵ *United Communist Party of Turkey and others v. Turkey*, (i) General Principles

¹⁷⁶ Mataga, 2006 p. 18

¹⁷⁷ *Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan* §72

remaining provisions of the law should also be evaluated against the requirements they stipulate.

5.4.3.1 Scope of the law broader than the aim

Firstly, the law stipulates that NGOs must register themselves as foreign agents if they receive finances from foreign sources, and that they participate in political activities including (but not exclusively) in the interest of foreign donors. Irrespective of the influence or interest of their backers, they still need to register and are still subject to the same restrictions under the law, ultimately bearing the same harmful consequences.¹⁷⁸ The status of foreign agent will necessarily disrupt the work of all “politically active” NGOs, and damage their credibility accordingly. The articulation of the law is therefore broader than the stated aims, and targets all organizations disproportionately. If there actually were organizations in Russia carrying out policies in the name of their donors, they would most likely only account for a minor percentage of the overall NGO society. Having a law that is aimed to targets only a small fraction of such organizations, but instead sweeps all politically active, foreign funded NGOs within its scope in order to make sure that the provisions reach those intended, is hence considered as overly excessive and unfounded.

5.4.3.2 Excessive reporting

Secondly, the need for even more administrative reporting requirements is heavily questioned when considering the regulations that were already in place before the adoption of the law. The 2006 amendments already demanded reporting with details on the attained amounts and its actual spending, received from both domestic and foreign sources. The additional series of reporting obligations that the law requires might therefore appear as unwarranted in order for the state to control the objectivity of the activities of the NGOs.¹⁷⁹ Several experts on accountability have established that the additional reporting obligations

¹⁷⁸ Application Ecodefence, Golos and 9 other NGOs v. Russia, 2013 p.25

¹⁷⁹ For a more detailed information about this law, see page 15-16

introduced by the Law on Foreign Agents are excessive, inexpedient and most importantly unnecessary in order for the state to control the lawfulness of the activities of NGOs. Pavel Gamolskiy, Chair of Club of Accountants and Auditors of NGOs, has stated that the law obliges the NGOs “to provide excessive information, which is unnecessary for the effective state control, planning and management”.¹⁸⁰ Maria Kanevskaya, Director of Human Rights Resources Center and Tatiana Chernyaeva, Executive Director of the Club of Accountants and Auditors of St. Petersburg have agreed that, “the obligation to provide these report quarterly is inappropriate because it increases expenses not only of an NGO but also additionally burdens state bodies”.¹⁸¹

In light of these statements and considerations, one can hardly agree that there was a “pressing social need” for introducing more regulations aimed at ensuring transparency and the prevention of foreign meddling. Additional administrative and financial tasks seem disproportionate in light of the already existing oversight regulations.

5.4.3.3 Disproportionate sanctions

The third consideration is concerning the sanctions that the law imposes vis-à-vis the severity of the disobedience. The Law on Foreign Agents establishes a series of civil, administrative and criminal sanctions for non-compliance.¹⁸² When reviewing the initial draft of the law, Russia’s Supreme Court noted that the provisions establishes criminal responsibility not in respect of any dangerous act committed by an NGO or its leaders, but merely for the refusal to register themselves as foreign agents. The text that was adopted did not differ from the draft with regards to these comments. The law therefore blurs the distinction between what constitutes a criminal offence, and an administrative offence.¹⁸³

¹⁸⁰ Application Ecodefence, Golos and 9 other NGOs v. Russia, 2013 p. 28

¹⁸¹ Application Ecodefence, Golos and 9 other NGOs v. Russia, 2013 p. 28

¹⁸² ICNL Law on Foreign Agents, 2012 Art.4

¹⁸³ Application, Ecodefence, Golos and 9 other NGOs v. Russia, 2013 p. 23

The refusal to register in a separate roaster cannot be said to proportionally correspond to the severity of the sanctions that the law has specified. Such radical measures that lead to both criminalization and ultimately liquidation of legal entity as a result of non-compliance with the demands that the law places on the organizations contravenes the European Court's principle of proportionality. The Court has also through its case law established that the dissolution of an association should only be applied in exceptional cases of very serious misconduct.¹⁸⁴

5.4.4 Social benefits of restriction

Proportionality in its strict sense includes balancing the social benefits of realizing the goal versus the harm that the restriction causes.¹⁸⁵ The purpose of the Foreign Agent Law is accordingly not only to ensure organizational transparency for the authorities, but also to ensure that the general public knows whom they obtain their information from. The necessity of compelling the NGOs to register with such a status can be questioned when considering other less invasive options that could potentially fulfil the same aim. A registration list for foreign funded NGOs could be established, but instead of labelling them with a negatively associated term, this list could be made available for those interested in seeking this type of information, which is actually the appropriate procedure as prescribed in the Civil Code, Art. 51§1.¹⁸⁶ Another easier and less invasive solution would be to use a more neutral description that could convey the same message, without damaging the reputation of the organizations.

The importance of the awareness that comes with such transparency cannot be said to be proportionate to the damage that the Foreign Agent Law is causing for NGOs. It is also highly doubtful how such transparency will ensure objectivity and directly prevent foreign

¹⁸⁴ *Tebieti Mühafize Cemiyeti and Sabir Israfilov v. Azerbaijan*, 2009 §. 63

¹⁸⁵ Barak, 2010 p. 6

¹⁸⁶ Civil Code of the Russian Federation, Art. 51§1: "The data on state registration shall be entered to the Unified State Register of Legal Entities, which shall be open to the general public".

meddling in Russia's internal affairs. Obtaining foreign funds doesn't automatically indicate that you are performing the work on behalf of the donor. How then does such reporting and insight prevent potential intrusion? The emphasis must therefore be on the notion of prevention, meaning that the possible intent behind introducing the foreign agents label was to actually discourage NGOs from seeking and obtaining funds from abroad, consequently affecting their right to seek and secure resources as prescribed in the DHRD. The authorities must accordingly have assumed that NGOs would not want to register under such conditions, and would rather seek resources elsewhere in order to not lose their credibility, or their legal entity status. Due to the limited funds available in Russia, the outcome of such an option is threatening the survival of many NGOs.

The urgency of realizing a measure is reflected in the harm that would be caused absent of the restriction, as well as probability of that harm.¹⁸⁷ In light of the already existing civil society regulation and reporting that was in place before the adoption, it is hard to argue that the general public was in eager need of knowing who is funding the civil society organizations. Particularly not when weighted against the necessity to safeguard the freedom of association and expression within the Russian societal context. The intensity and dimension of the restriction vis-à-vis the importance and urgency of the goal are unevenly balanced, and it is accordingly hard to conclude that the interference was "necessary in a democratic society".

6 Conclusion

The role that NGOs have in society is conditioned on their independence. There is therefore a prerequisite of autonomy in order for these groups to freely be able to exercise their right to freedom of association and expression. First of all, they are heavily reliant on external resources because of their not-for-profit character. Optimally and for the sake of their objectivity, these should include a mixture of both international and governmental grants.

¹⁸⁷ Barak, 2010 p. 12

Second, they need legitimacy and credibility to be able to work within the society, both among the general population, but ultimately also with state officials and other stakeholders. They are therefore also dependent on a friendly legal environment that encourages and welcomes their views and findings as valuable to the overall well being of society. They should also be free to function as efficiently as possible, without the hindrance of unnecessary and excessive administrative and managerial tasks that take up their time and focus. And their role as watchdogs ensuring transparency of the actions of public authorities should be conducted without the fear of prosecution and unjustifiable sanctions, especially NGOs working with politically sensitive issues.

The freedom of association and expression have come under increasing attack after Vladimir Putin's third inauguration as Russia's President, despite the fact that these rights are explicitly guaranteed by the Russian Constitution and legally binding international human rights treaties to which Russia is a part of. The findings of this research indicate that the Foreign Agent Law manages to affect and disrupt all the abovementioned conditions simultaneously. It intrudes their right to seek and secure resources through creating conditions that strongly discourage "politically active" NGOs from seeking international grants because of the foreign agent status that accompanies such obtainment. Even if the prospects of acquiring state or private funding were good in Russia, this would again raise issues with regards to the independence and capacity to be monitors on state power when their overall financial stability is dependent on funding from the government.¹⁸⁸ However, because of the lack of such domestic grants, it leaves them with no other option than to register in order to maintain their legal entity status. This label, because of the associations that it carries with it, damages their reputation to the point where their operations are severely affected. Their credibility and legitimacy is significantly impaired, making it hard for them to efficiently perform their work at all levels of society.

¹⁸⁸ Blitt, 2004 p. 28

Ironically, the law is introducing alterations to federal laws that were in fact created with the precise intention of establishing reliability and trustworthiness to NGOs after a critical period of low NGO confidence and disillusionment among the public.¹⁸⁹ The effects of introducing the amendments are therefore working against the aim of the regulations that they are modifying. Also, the administrative reporting requirements that the law places on them are further disrupting their focus and managerial resources that could instead be allocated elsewhere, especially since it has been recognized that these demands are not necessary for the state to control the objectivity of the activities of the NGOs.¹⁹⁰ The law also has an aspect of intimidation because of the severity of the series of civil, administrative and criminal sanctions that it establishes for non-compliance, which ultimately blur the distinction between what constitutes a criminal offence, and an administrative offence.¹⁹¹

The provisions of the law are clearly directed at restricting the independence and authority of these organizations, in order to limit their influence in society. This is accomplished by the subtle introduction of seemingly neutral wording into the provisions, vague articulation of the law as well as wide margin of discretion accredited to the Ministry of Justice allowing for arbitrary application. The paper therefore argues that in the absence of any alternatives, the NGOs falling within the scope of the law are forced to register as foreign agents consequently damaging their reputation to the degree where they lose credibility and legitimacy and cannot perform the work competently. The findings therefore indicate a violation of the limitation clauses as stipulated in the ECHR, Art. 11§2 and 10§2.

¹⁸⁹ Albertie, 2004 p. 20

¹⁹⁰ For a more detailed information about this law, see page 15-16

¹⁹¹ Application, Ecodefence, Golos and 9 other NGOs v. Russia, 2013 p. 23

Eleven of the leading Russian human rights NGOs¹⁹² have contested the law by lodging an application to the European Court on the 6th of February 2013, asserting the status of so-called “potential victims”.¹⁹³ None of the organizations had been targeted at the time of the submission, but the recent enforcements and filed cases are confirming their fears and consolidating their claims. The question remains whether the ECtHR would establish interference with freedom of association and expression based on the notion of damaged reputation and public opinion. The Court has not exercised such practise at any previous occasions. The probability of repealing the law if a violation will be declared is surely an overly optimistic assumption. However a clarification of the vague terminology used, and an overall moderation of the law should as a consequence be encouraged.

The Russian Federation is increasingly stifling governmental critics by introducing a mixture of legal and administrative obstacles, repressions, fines and inspections. Smaller and somewhat camouflaged limitations and regulations have been adopted in order to achieve a bigger goal of restricting dissent more broadly, as can be seen with the recent adoption of several laws that limit the freedom of association and expression. One way to interpret these measures is to look at them as clear demonstration of state power. Another is to consider them as indications of government insecurity, with regards to the potential power and influence that NGOs and the overall civil society is holding. They are then consequently nothing less than clear signs of weakness of the Russian authorities trying to hastily limit or delay the potential outcomes of such criticism.

¹⁹² Ecodefence, Golos, Citizen’s Watch, Committee of Civic Assistance, Committee Against Torture, Mashr, International Memorial, Moscow Helsinki Group, Public Verdict, Human Rights Center Memorial and Movement for Human Rights.

¹⁹³ Application, Ecodefence, Golos and 9 other NGOs v. Russia 2013, p. 4 § ii

Bibliography

Conventions and treaties

Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). Adopted by the Council of Europe, Rome, 4 November 1950.

Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders). Resolution, Adopted by the General Assembly, 8 March 1999, A/RES/53/144.

International Covenant on Civil and Political Rights (ICCPR) Adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966. 999 UNTS 171.

Council of Europe. *Fundamental Principles on the Status of Non-Governmental Organisations in Europe and Explanatory Memorandum*. Strasbourg, 13 November 2002.

Universal Declaration of Human rights (Adopted and opened for signature, ratification and accession by General Assembly Resolution 217 A (III) of 10 December 1948)

List of judgments

The European Court of Human Rights. *Case of Freedom and Democracy Party (Özdep) v. Turkey*. (Application no. 23885/94). Judgment: Strasbourg, 8 December 1999

The European Court of Human Rights. *Case of Gorzelik and Others v. Poland*. (44158/98) Judgment: Strasbourg, 17 February 2004

The European Court of Human Rights. *Case of Handyside v. the United Kingdom*. (Application no. 5493/72). Judgment: Strasbourg, 7 December 1976

The European Court of Human Rights. *Case of Maestri v. Italy*. (Application no.39748/98). Judgment: Strasbourg, 17 February, 2004

The European Court of Human Rights. *Case of Sidiropoulos and Others v. Greece*. (57/1997/841/1047) Judgment: Strasbourg, 10 July 1998

The European Court of Human Rights. *Case of Stankov and the United Macedonian Organization Ilinden v. Bulgaria*. (Applications nos. 29221/95 and 29225/95). Judgment: Strasbourg, 2 October 2001

The European Court of Human Rights. *Case of S.W. v. United Kingdom* (Application no. 20166/92). Judgment: Strasbourg, 22 November 1995

The European Court of Human Rights. *Case of Tebieti Mühafize Cemiyeti and Sabir Israfilov v. Azerbaijan*. (Application no. 37083/03). Judgment: Strasbourg, 8 October 2009

The European Court of Human Rights. *Case of United Communist Party of Turkey and Others v. Turkey*. (133/1996/752/951) Judgment: Strasbourg, 30 January 1998

The European Court of Human Rights. *Case of the United Macedonian Organisation Ilinden and Others v. Bulgaria*. (Application no. 34960/04). Judgment: Strasbourg, 18 October 2011

The European Court of Human Rights. *Case of Vides Aizsardzibas Klubs v. Latvia*. (Application no.57829/00). Judgment: Strasbourg, 13 February 2003

The European Court of Human Rights. *Case of Zhechev v. Bulgaria*. (Application no.57045/00) Judgment: Strasbourg, 21 June 2007

Other legal sources

Application to the European Court of Human Rights. *Ecodefence, Golos and 9 other NGOs v. Russia*. Moscow, 6 February 2013. Unpublished.

International Center for Not-for-Profit-Law (ICNL). *Law on Foreign Agents, Unofficial Translation*: Federal Law No. 121-FZ On Introducing Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Non-Commercial Organizations Performing the Function of Foreign Agents. 20 July 2012, available at:

<http://www.citwatch.org/upload/wysiwyg/files/ICNL%20Unofficial%20Translation%20Russian%20Enacted%20Law.pdf> Last accessed: 1 May 2013

Federal Law of The Russian Federation No. 3132-1 on the Status of Judges. Adopted by the State Duma on June 26, 1992, Amended 2005. Available at:

<http://www.legislationline.org/documents/id/4369> Last accessed: 15 March 2013

Federal Law of the Russian Federation No. 7-FZ on Non-Profit Organizations. Adopted by the State Duma on December 8, 1995, Amended 2003. Available at:

http://host.uniroma3.it/progetti/cedir/cedir/Lex-doc/Ru_1-1996.pdf Last accessed: 10 March 2013

Federal Law of the Russian Federation No. 82-FZ on Public Associations. Adopted by the State Duma on April 14, 1995, Amended 2004. Available at: <http://www.legislationline.org/documents/id/4374> Last accessed: 30 March 2013

The Civil Code of the Russian Federation. Entry into force: 1 January 2008. Available at: <http://www.wipo.int/wipolex/en/details.jsp?id=6775> Last accessed: 4 May 2013

The Constitution of the Russian Federation. Adopted at National Voting on December 12, 1993. Entry into force December 25, 1993. English Translation, Garant-Service. Available at: <http://www.constitution.ru/en/10003000-01.htm> Last accessed: 4 May 2013

UN Documents

Human Rights Committee. *Jeong-Eun Lee v. Republic of Korea*, Communication No. 1119/2002. UN Doc. CCPR/C/84/D/968/2001. Adopted 23 August 2005. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/DER/G05/436/99/PDF/G0543699.pdf?OpenElement> Last accessed: 28 April 2013

Human Rights Committee. *Victor Korneenko et al. v. Belarus*, Communication No. 1274/2004. UN Doc. CCPR/C/88/D1274/2004. Adopted 31 October 2006. Available at: <http://www1.umn.edu/humanrts/undocs/1274-2004.html> Last accessed: 15 April 2013

Human Rights Council. *Resolution 15/21: The Right to Freedom of Peaceful Assembly and of Association*. United Nations General Assembly, 6 October 2012. UN Doc. A/HRC/RES/15/21. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/166/98/PDF/G1016698.pdf?OpenElement> Last accessed: 1 May, 2013

Jilani, Hina. *Report of the Special Representative of the Secretary General on Human Rights Defenders*. UN General Assembly, UN Doc. A/59/401. 1 October 2004. Available at: <http://www.unhcr.org/refworld/pdfid/4267bfd84.pdf> Last accessed: 10 April 2013

Office of the High Commissioner for Human Rights. *Information provided by the accredited human rights institutions of the State under review in full compliance with the Paris Principles*. General Assembly, 28 January 2013. UN Doc. A/HRC/WG.6/16/RUS/3. Available at: http://www.upr-info.org/IMG/pdf/a_hrc_wg.6_16_rus_3_russian_federation_e.pdf Last accessed: 30 March 2013

United Nations Commission on Human Rights. *Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights*. 28 September, 1984. U.N. Doc.E/CN.4/1985/4. Available at: <http://www.unhcr.org/refworld/docid/4672bc122.html> Last accessed: 10 March 2013

Reports

Amnesty International. *Freedom Under Threat. Clampdown on Freedom of Expression, Assembly and Association in Russia*. London: Amnesty International Ltd. April 2013.

Council of Europe. *Secretariat Working Paper. Russia 2012 NGO Law*. Strasbourg, 18 September 2012.

Human Rights Watch (et. al). *An Uncivil Approach to Civil Society. Continuing State Curbs on Independent NGOs and Activists in Russia*. New York, June 2009.

Human Rights Watch. *Choking on Bureaucracy. State Curbs on Independent Civil Society Activism*. Volume 20, No.1(D). February 2008

Human Rights Watch. *Laws of Attrition. Crackdown on Russia's Civil Society after Putin's Return to Presidency*. Washington DC, April 2013.

Office of the High Commissioner for Human Rights. *Special Rapporteur on the Situation on Human Rights Defenders, Who is a Defender*. Available at: <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx> Last accessed: 1 May 2013

World Movement for Democracy Secretariat (at al.). *Defending Civil Society Report*. Washington D.C. Second Edition. June 2012

Statements, recommendations and testimonies

Council of Europe. *Recommendation of the Committee of Ministers to member states on the legal status of non-governmental organizations in Europe*. Adopted 10 October 2007. CM/Rec(2007)14. Available at: <https://wcd.coe.int/ViewDoc.jsp?id=1194609>

Kiai, Maina. *Statement by Special Rapporteur on the rights to freedom of peaceful assembly and association*. 20th Session of the Human Rights Council, Agenda item 3. 20 June 2012. Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12349&LangID=E> Last accessed: 1 May, 2013

- Lowenkron, Barry F. *Civil Society, and Democratic Governance in Russia: Current Situation and Prospects for the Future*. Testimony at a Hearing of the Commission on Security and Cooperation in Europe, Washington, DC February 8, 2006. Available at: http://www.csce.gov/index.cfm?Fuseaction=ContentRecords.ViewTranscript&ContentRecord_id=366&ContentType=H,B Last accessed: 4 May 2013
- Office of the High Commissioner for Human Rights (OHCHR), Joint Statement. *Russia's draft law on non-commercial organizations detrimental to civil society – UN Experts*. Geneva, 12 July 2012. Available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12344&LangID=E> Last accessed: 4 April 2013
- Oreshkin, Dimitriy. *Expert Opinion to the European Court of Human Rights*. Moscow, December 21, 2012. In: Application to the ECtHR, Ecodefence, Golos and 9 Other NGOs v. Russia.
- OSCE Office for Democratic Institutions and Human Rights. *Note Outlining Key Guiding Principles of Freedom of Association with an Emphasis on Non-Governmental Organizations*. Warsaw. Available at: <http://www.un.org.kg/en/publications/document-database/article/Document%20Database/UN%20System%20in%20Kyrgyzstan/Human%20Rights%20and%20Human%20Rights%20Based%20Approach/115-Governance/2129-osce-odhr-note-outlining-key-guiding-principles-of-freedom-of-association-with-an-emphasis-on-non-governmental-organizations-eng> Last accessed: 10 March 2013
- Parliamentary Assembly, Council of Europe (PACE). *Resolution 1896: The honouring of obligations and commitments by the Russian Federation*. Adopted 2 October 2012. Available at: <http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=19116&lang=EN> Last accessed: 25 April 2013
- Vorozheikin, T. *How to understand the word "foreign agent"*. Levada Center. 22 October 2012. Available at: <http://www.levada.ru/22-10-2012/kak-ponimat-slovo-inostrannyi-agent-kommentarii-t-vorozheikinoi> Last accessed: 15 April 2013

Personal communications

Shibanova, Lilia. *Interview*. 1 March 2013. Moscow

Tishaev, Furkat. *Interview*. 1 March 2013. Moscow

Tishaev, Furkat. *E-mail*. 28 March 2013. Oslo

Tishaev, Furkat. *E-mail*. 5 April 2013. Oslo

Articles

Albertie, C.J. *A Survey & Critique of Russian Law & Its Effects on NGOs*. In: International Journal of Civil Society Law. Volume 2, Issue 2. April 2004.

Asoka, K. & Rocca, A. *Right to Access Funding*. In: Human Rights Defenders Briefing Papers. International Service for Human Rights (ISHR). May 2009.

Barak, Aharon. *Proportionality and Principled Balancing*. In: Law & Ethics of Human Rights. Volume 4, Issue 1. Berkeley Electronic Press, 2010

Blitt, Robert C. *Babushka Said Two Things— It Will Either Rain or Snow; it Either Will or Will Not: An Analysis of the Provisions and Human Rights Implications of Russia's New Law on Nongovernmental Organizations as Told Through Eleven Russian Proverbs*. In: George Washington International Law Review, Vol. 40, Issue 1, 2008.

Bogoroditskji, Aleksei. *Special Section: Restrictions on Foreign Funding of Civil Society*. In: The International Journal of Not-for-Profit-Law, Vol. 12, Issue 3. May 2010.

Bowring, Bill. *Russian Legislation and NGOs in Russia*. In: Russian Analytical Digest. No. 120. 23 November 2012. pp.7-9.

Carothers, Thomas. *The Backlash Against Democracy Promotion*. In: Foreign Affairs, Vol. 85 (2), Council of Foreign Relations, March-April, 2006. pp. 55-68.

International Center for Not-for-Profit-Law (ICNL). *European Court of Human Rights Holds Right to Form Associations is a Fundamental Human Right*. In: The International Journal of Not-for-Profit-Law, Vol. 1, Issue 1. September 1998. Available at: http://www.icnl.org/research/journal/vol1iss1/cn_1.htm Last accessed: 25 April 2013

Mataga, Zvonimir LL. M. *The Right to Freedom of Association Under the European Convention on the Protection of Human Rights and Fundamental Freedoms*. Legal Advisor at the European Court of Human Rights. Strasbourg, October 2006. Available at: <http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan044376.pdf> Last accessed: 13 May 2013

Maxwell, Michael P. *NGOs in Russia: Is the Recent Russian Legislation the End of Civil Society in Russia?* In: Tulane Journal of International and Comparative Law. Issue 15. Winter 2006. Pp. 235 – 263

McGrudden, Christopher. *Legal research and the social sciences*. In: Law Quarterly Review. Vol. 122, October 2006. pp. 632-650.

Novitski, Vladimir. *Interview and opinion on Russia's new NGO law*. In: International Society for Human Rights (ISHR), December 2012. Available at: <http://www.ishr.org/Vladimir-Novitski-President-of-the-ISHR-Section-Russia-Intervi.1417.0.html> Last accessed: 25 April 2013

Sales, Philip, & Hooper, Ben. *Proportionality and the form of law*. In: Law Quarterly Review. Vol. 119. July 2003. pp. 426-454.

Newspaper articles

Abbakumova, Natasha & Kathy Lally. *Russia boots out USAID*. In: The Washington Post, Foreign Policy. September 18, 2012. Available at: http://articles.washingtonpost.com/2012-09-18/world/35497800_1_russian-activists-usaid-golos Last accessed: 2 May, 2013

Astakhov, Dmitry. *HR Council wants "foreign agent" status dropped from NGO bill*. In: RT, 12 July 2012. Available at: <http://rt.com/politics/foreign-agents-bill-council-015/> Last accessed: 25 April 2013

Barry, Ellen. *Foreign-funded Nonprofits in Russia Face New Hurdle*. In: The New York Times. 2 July 2012.

Bennetts, Marc. *Russian Parliament Approves NGO "Foreign Agents" Law*. In: RIA Novosti. 6 July 2012. Available at: <http://en.rian.ru/russia/20120706/174436993.html> Last accessed: 15 March 2013

Burke, Ingrid. *"Foreign Agents" under Russia's NGO law and its US doppelganger*. Russian Legal Information Agency (RAPSI). 27 July 2012. Available at: http://rapsinews.com/legislation_publication/20120727/263954264.html Last accessed: 20 April 2013

Evans, Alfred B.Jr. *Recent Assessment of Social Organization in Russia*. In: *Demokratizatsiya*. George Washington University, Vol 10 (3). Summer 2002.

- Digges, Charles. *Prime Minister Putin slaps tax on foreign NGOs in effort to purge Russia of foreign influence*. Bellona Foundation, 3 July 2008. Available at: http://www.bellona.org/articles/articles_2008/ngo_tax Last accessed: 15 March 2013
- Digges, Charles. *Russian regional administration forbids employees contact with “foreign agents” as new NGO law gains traction*. Bellona Foundation, 5 September 2012. Available at: http://www.bellona.org/articles/articles_2012/mari_el_salvo Last accessed: 10 April 2013
- Ireland, Louise (ed.). “*Foreign Agent*” sprayed on Russian NGO offices as new law takes effect. In: Reuters. 21 November 2012. Available at: <http://www.reuters.com/article/2012/11/21/us-russia-ngo-idUSBRE8AK19G20121121> Last accessed: 18 March 2013
- Isachenkov, Vladimir. *Putin Warns Foreign NGOs Against ‘Meddling’ in Russian Affairs*. In: Huffingtonpost. 2 February 2013. Available at: http://www.huffingtonpost.com/2013/02/14/putin-warns-ngos-foreign-meddling_n_2686723.html Last accessed: 1 May 2013
- Krivobok, Ruslan. *Russia labels three more NGOs as “foreign agents”*. In: RAPSI Russian Legal Information Agency. 8 May 2013. Available at: <http://rapsinews.com/news/20130508/267296706.html> Last accessed: 8 May 2013
- Nikolskyi, Aleksey. *Russia’s NGO checks ‘legal and routine’ – Putin*. In: Ria Novosti. 29 March 2013. Available at: <http://rt.com/politics/routine-putin-legal-checks-030/> Last accessed: 29 March 2013
- Panov, Alexander. *Russia busts Golos as “foreign agent” NGO*. In: Russia Beyond the Headlines. 13 April 2013. Available at: http://rbth.ru/society/2013/04/13/russia_busts_golos_as_foreign_agent_ngo_24985.html Last accessed: 14 April 2013
- Pomeroy, Robin. *Russia’s oldest rights group told to register as “foreign agent”*. In: Reuters. Moscow, 30 April 2013. Available at: <http://uk.reuters.com/article/2013/04/30/uk-russia-humanrights-idUKBRE93T0YS20130430> Last accessed: 2 May 2013
- Roth, Andrew. *Russian Groups Fears Fine After Talk With Americans*. In: The New York Times. April 16, 2013.
- Runkevich, Dmitry. *Human Rights Organizations to boycott new law on NGOs*. In: Izvestia. 13 September 2012. Available at: https://rbth.ru/articles/2012/09/13/human-rights_organizations_to_boycott_new_law_on_ngos_18249.html Last accessed: February 2013

- Schofield, Matthew. *Putin Cracks Down on Nongovernmental Organizations*. McClatchy Washington Bureau. February 20 2007. Available at: <http://www.mcclatchydc.com/2007/02/20/v-print/15642/putin-cracks-down-on-nongovernmental.html> Last accessed: 20 February 2013
- Seddon, Max. *Russia Searches Hundreds of Rights Groups, NGOs*. In: AP, 21 March 2013. Available at: <http://bigstory.ap.org/article/memorial-among-hundreds-ngos-searched-russia> Last accessed: 22 March 2013
- Von Twickel, Nikolaus. *Foreign Agent Law Complaint Sent to Strasbourg*. In: The Moscow Times. 8 February 2013. Available at: <http://www.themoscowtimes.com/mobile/article/475224.html> Last accessed: 10 February 2013
- Without the mentioning of author. *Ministry of Justice Refuses to Consider Shield and Sword a Foreign Agent*. In: Forbes, 22 January 2013. Available at: <http://www.rightsinrussia.info/archive/russian-media/forbes/shield-sword> Last accessed: 2 February 2013
- Without the mention of author. *Profile: Mikhail Khodorovsky*. In: BBC News Europe, 30 December 2010. Available at: <http://www.bbc.co.uk/news/world-europe-12082222> Last accessed: 15 March 2013
- Winning, Alexander. *Putin Warns Against Foreign "Interference" at FSB Meeting*. In: The Moscow Times. 15 February 2013. Available at: <http://www.themoscowtimes.com/mobile/article/475594.html> Last accessed: 20 February 2013
- Without the mentioning of author. *Will Russia play tough with its "foreign agents" law?* In: The Economist Newspaper. 28 March 2013. Available at: <http://www.economist.com/blogs/easternapproaches/2013/03/russian-politics> Last accessed: 10 April 2013

Books

- Johannessen, Asbjørn, Per Arne Tufte & Line Kristoffersen. *Introduksjon til samfunnsvitenskapelig metode*. 4th Edition, Oslo: Abstrakt Forlag, 2010.

Internet sources

- International Historical-Enlightenment Human Rights and Humanitarian Society Memorial. *The Charter of Memorial: Who and What is Memorial?* Available at: <http://www.memo.ru/eng/about/whowe.htm> Last accessed: 5 May 2013
- International Center for Not-for-Profit-Law (ICNL). *NCO Law Monitor: Russia*. 20 February, 2013. Available at: <http://www.icnl.org/research/monitor/russia.html> Last accessed: 13 May 2013
- Library of Congress. *Legal research Guide: Russia*. Last updated: 08 August 2012. Available at: <http://www.loc.gov/law/help/russia.php> Last accessed: 28 April 2013
- Office of the High Commissioner on Human Rights. *Who is a Defender*. Available at: <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx> Last accessed: 10 Mars 2013
- Pellegrini Adam, Silvana M. *Russia, NGOs become "foreign agents"*. Peace and Collaborative Development Network (PCDN). 21 November 2012. Available at: http://www.internationalpeaceandconflict.org/forum/topics/russia-ngos-become-foreign-agents?xg_source=activity#.UWK-Jr81evs Last accessed: 8 March 2013