RUSSIAN NGOs AFTER THE FOREIGN AGENTS LAW:
SUSTAINING CIVIC ACTIVISM
IN AN ADVERSE SETTING
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Part 1. Introduction: current situation of NGOs in Russia

Draconian reforms passed in Russia since 2012 have drastically closed space for civic activism and exposed the country’s NGO community to ever-evolving legal risks that threaten its very existence. In particular, laws against “foreign agents” and “undesirable organizations” have increasingly been weaponized to close civil society organizations of all kinds through fines and forced liquidations. Such laws have also led to a mass exodus of the large international donors who have funded Russian civil society for decades.

Starting in December 2012 any NGO receiving foreign funding (any amount), and engaged in, according to the opinion of the Government, any political activity was labeled as a non-profit organization performing the functions of a «foreign agent».

At the same time in accordance with the legal precedents any public activities of an NGO (interactions with the government authorities, publication of reports, court proceedings, distribution of literature or medical devices and all other activities) are considered by the government as political.

Political scientists disagree with this definition of a «political activity», distinguishing between «policy» (a public activity, not related to political processes) and «politics» (politics itself, a struggle for power).

Since the law was enacted, 127 organizations have been included in the list of foreign agents, 17 of which have been liquidated, while 109 still continue operations. During the same time period 30 organizations have been excluded from the list, thus only one in five organizations was withdrawn.

As of the 15th of May 2016 there are 97 NGOs in the list of non-profit organizations named as foreign agents and engaged in various activities: human rights defense, environmental protection, protection of women’s rights, health, ethnic-cultural, one publishing house, a photo club and one chamber of commerce.

In 2014 the Constitutional Court of the Russian Federation validated the foreign agents law as constitutional.

In 2015 a new round of «foreign agents» detection campaign resulted in adoption of a law against undesirable organizations, in accordance with which any interaction with an «undesirable organization» can be considered a criminal case or an administrative delict. The intention of the government this time was to undermine the access of the Russian NGOs to the foreign funding and to urge major donors to leave Russia, thus to terminate the operation of the Russian NGOs left without any financial support.

In the course of 2015 pressure on Russian independent non-profit organizations increased significantly: new laws were adopted to deteriorate working conditions of NGOs; additional restrictions for their activities were implemented; more possibilities were introduced into legislation to impose administrative liability upon NGOs. Moreover, the mass media launched a large campaign aimed to discredit independent NGOs, and, as the authors of this campaign think, to lower the degree of confidence that the public has in the activities of NGOs. The government

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1 Federal law from 20.07.2012 №121.
2 http://www.vedomosti.ru/opinion/articles/2015/09/07/607733-boi-ekspertov-i-rossiiske-spori-o-politike
3 http://unro.minjust.ru/NKOForeignAgent.aspx
5 Federal Law as of 23.05.2015 №129-FZ «On amendments to a number of legislative acts of the Russian Federation». 
NGO LAWYERS CLUB (Association), May, 2016

does not adhere to its own legislation: in spite of legislative prohibitions in effect, many environmental and scientific organizations, as well as organizations dedicated to the prevention of violence against women, and others, were labeled as «foreign agents».

Therefore, since last year Russian NGOs have experienced numerous problems with regards to their activities, which results in the reduction of the number of NGOs and certain restrictions in the type of work they are conducting, as well as in the increased efforts which NGOs need to put to protect themselves.

In general, 2015 and the beginning of 2016 have been marked by an increase in control by the government (very often this control is arbitrary) of the operation of the Russian NGOs, and implementation of new laws to make this operation even more complicated, which challenged the legal existence and operation of NGOs in Russia in general, although NGOs are an integral element of Russian civil society.

Part 2. Top 5 Problems facing Russian Civil Society

Top 5 Problems facing Russian Civil Society are as follows.

2.1. Legal challenges and increased governmental control over NGOs.

2.1.1. Some NGOs voluntarily apply for the list of «foreign agent NGOs» to avoid (in their opinion) severe penalties.

2015 and 2016 saw an increased number of NGOs voluntarily applying for the inclusion in the list of non-profit organizations performing the functions of a «foreign agent». The majority are independent NGOs, as well as NGOs conducting activities which shall be not considered political, thus they shall not be included in the list.

For instance, in 2013 only one organization volunteered for inclusion in the foreign agents list, which was a non-commercial partnership "Competition Promotion in the CIS", in 2014 one organization applied as well - NGO Karachay–Cherkessk Republican Youth Social Organization «The Union of Young Political Scientists»; however in 2015 - at the beginning of 2016 8 organizations applied, including the Regional Social Movement "Novgorod Women's Parliament" from Veliky Novgorod, NGO "Sibalt" from Omsk region, NGO Arkhar from Gorno-Altaysk, and others.

Personal interviews with heads of some NGOs revealed that the organizations voluntarily applying for the enrollment in the foreign agents list are trying to avoid the administrative liability stipulated by section 19.34 (1) of the Russian Code of Administrative Offenses for failure to voluntarily apply for the inclusion into the list. It is noteworthy that such applications are usually made in the course of inspections of NGOs exercised by the territorial units of the Russian Ministry of Justice, and not upon the termination of such inspections.

From the legal point of view such strategy is erroneous, because in accordance with the above mentioned legislation, NGOs become liable for failure to enroll in the list of the foreign agents at the time of receiving foreign funding and performing a political activity, or earlier; it

6 Source: http://unro.minjust.ru/NKOForeignAgent.aspx
8 Section 19.34 (1) of the Russian Code of Administrative Offenses was introduced under the Federal Law as of 12.11.2012 №192-FZ «On Amendments to the Russian Code of Administrative Offenses», and entered into force on 25.11.2012; it stipulates that a foreign agent shall be subject to an administrative fine amount to from 100 thousand to 300 thousand rubles for physical persons and from 300 thousand to 500 000 rubles for legal entities.
should be noted that the term «political activity» shall be understood as it is described in the «foreign agents law» and applied in the judicial practice.

If an organization applies later (including during the inspection of the Ministry of Justice), this do not absolve it from incurring a several thousand penalty, if at the time of the inspection, starting from November 2012 or later, it was receiving foreign funding and was engaged in «political activity».

Therefore, those organizations that perceive the foreign agents law as repressive, are ready to voluntarily enroll in the foreign agents list due to lack of resources required to pay huge fines. They prefer to use these resources (from 300,000 to 500,000 RUB) for their activities.

Such «requirement» for «voluntary» applications for registration as foreign agents are usually initiated by controlling bodies, in accordance with the authors of the report.

Indeed, such «agreements» between controllers and NGOs facilitate faster completion of the foreign agents list, and relieve the Ministry of Justice from unnecessary judicial processes initiated by NGOs to challenge decisions of the Ministry, on the one hand, and on the other hand provides the Ministry of Justice with an instrument for manipulation of civil organizations which do not have any qualified legal support available, and benefit from the selective enforcement of the «foreign agents» law depending on the degree of loyalty of a trusted NGO.

One of the negative effects of the voluntary enrollment in the foreign agents list by NGOs is the expansion of the understanding of the political activities of NGOs, which did not use to be considered political before.

For instance, in June 2014 the Chief of Staff of the government Executive Office, Sergey Prikhodko, initiated mass inspections of NGOs engaged in AIDS prevention programs. During the summer of 2014 the Ministry of Justice have inspected such NGOs in Moscow, St. Petersburg, the Republic of Tatarstan, the regions of Kirov, Kursk and Tyumen, however no political activity was detected.

Nevertheless, on the 15th of February 2015 NGO "SIBALT" from Omsk region voluntarily enrolled in the list of foreign agents NGOs, and became the first HIV service organization voluntarily registered as a foreign agent.

This precedent empowered controlling bodies to continue applying the expanded «political activity» term to NGOs engaged in AIDS prevention programs in court.

In April 2016 the Prosecutor’s Office of the city of Engels, the Saratov region, requested the court to assign to NGO «Socium» from Saratov a status of an organization performing the functions of a foreign agent. NGO «Socium» was engaged in the following activities: interviews of drug-dependent and HIV-infected individuals, as well as free distribution of condoms and other medical devices among them.

On the 18th of April, 2016 the Engels District Court of the Saratov region chaired by Judge S.V. Shestakova obliged NGO «Socium» to apply for enrollment in the list of non-profit organizations performing the functions of a foreign agent at the Department of the Russian Ministry of Justice for the Saratov region. The Court decision did not enter into force on the date on which the present report was prepared (May 15, 2016).

The above mentioned court decision recognized as political the activities of NGO «Socium», namely distribution of syringes, condoms, information on medical assistance and examination available, as well as literature on the prevention of HIV.

NGO «Socium» was receiving funding for their projects from NGO «Esvero», which funded 32 Russian NGOs engaged in AIDS prevention in 32 Russian cities in the period from 01.09.2013

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9 Source: http://www.kommersant.ru/doc/2545010
10 Source: http://www.kommersant.ru/doc/2967485
11 Self-produced information.
to 31.12.2014. Thus a precedent was established, which the Prosecutor’s Office could therefore use to expand the list of foreign agents adding NGOs engaged in AIDS prevention.

Obviously, the government is currently unable to administratively expand the scope of application of the foreign agents law to all NGOs engaged in this type of activities, thus the authorities are using court procedures for this purpose, and do not enjoy the right of the Ministry of Justice to register such organizations as foreign agents by its administrative decision.

In the near future the expansion of the «political activity» term shall be expected in relation to NGOs, traditionally avoiding any dialog with the authorities, and directly cooperating with their target groups instead.

Another case to be considered is a voluntary enrollment of NGO Arkhar from Gorno-Altaysk in the foreign agents list at the April, 05, 2016. Before its enrollment, 20 environmental organizations had been included in the list of foreign agent NGOs, including 2 NGOs located in the nearby Altay region, which were contesting the legitimacy of such inclusion: NGO «Geblerov Ecological Society» and NGO «Altai Regional Public Fund for 21st Century Altay» from Barnaul. This precedent allowed for the inclusion of another ecological NGO from the same region on the list: on May, 17, 2016 «Ecological school of the Soul «Tengri».

Voluntary enrollment of an NGO into the list does not allow it to avoid the risk of administrative penalty liability and additional inspections by the Ministry of Justice, and also it is a disservice for its fellow organizations creating a precedent which the government takes advantage of to legitimately include NGOs, engaged in activities which were not political and could never be regarded as political, in the foreign agents list without their consent.

2.1.2. The building up of pressure on NGOs included in the list of foreign agent NGOs, by imposing administrative liability for refusing to use the «foreign agents» label.

It is quite common that NGOs included in the foreign agents list refuse to label all their publications as developed by a «foreign agent» as it is required by a non-legal foreign agent’s law and correspondent norms of responsibility for violation of the law.

For instance, section 19.34 (2) of the Russian Code of Administrative Offenses stipulates administrative liability for failure to include in all materials published and/or distributed by an NGO, registered as a foreign agent, a notification that these materials are published and/or distributed by a non-profit organization performing the functions of a foreign agent, including materials published in the media and/or in the Internet. Such NGOs can be fined from 100,000 to 300,000 RUB if they are public officials, and from 300,000 to 500,000 RUB if they are legal entities.

Arbitrary application of such norms results in fines imposed on NGOs in 2015-2016 for publications of third parties about activities of an NGO without a proper indication made. It is apparent that an NGO shall not be liable for failure to indicate that the materials in the media or in the Internet are published by a foreign agent if this publication was not made by the organization itself. However, the Russian justice system does not share this opinion, and organizations, which had been fined for failure to voluntarily register as a foreign agent in the amount of several thousand rubles (in accordance with section 19.34 (1) of the Russian Code of Administrative Offenses), are later fined again for failure to indicate that their materials were published by a foreign agent (section 19.34 (2) of the Russian Code of Administrative Offenses). Such penalties jeopardize the existence of an NGO by obligation to pay fines totaling up to one million rubles.

A good example is the case of the Krasnodar Regional Social Organization of University Alumni. The head of the organization, Irina Dubovitskaya, stated in her interview regarding a

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13 Source: http://unro.minjust.ru/NKOForeignAgent.aspx
14 Source: http://unro.minjust.ru/NKOForeignAgent.aspx
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publication made at the NGO website in 2015\(^{16}\): «Roskomnadzor charged us for failure to indicate that the materials originate from a «foreign agent» on every page of our website». At the same time, this was indicated on the main page of the organization’s website.

The Oktyabrsk District Court of Krasnodar reviewed the report of an administrative offense provided by the Department of Roskomnadzor in the Krasnodar region, and found the organization as well as its head guilty, charging them with a penalty of 150,000 RUB to be paid by the organization and 100,000 RUB to be paid by the head of the NGO.

Irina Dubovitskaya noted that paying the fine would result in the bankruptcy of the NGO.

Another example is the case of the Human Rights Center «Memorial»\(^{17}\). In September 2015 judge Sergey Komlev imposed a penalty in two cases on the Human Rights Center «Memorial» for failure to indicate that the materials on the website of another organization, the Ryazan Historical, Educational and Human Rights Center «Memorial», were published by a foreign agent. Report by Kirill Velikanov and Discussion «Society can be reborn» were published in the Internet. A separate administrative report was drawn up in relation to each publication, two separate penalties were consequently imposed on the organization, while none of the NGO employers was involved in the preparation of the reports or their publication, neither as a representative of the organization, nor as an individual.

On the 17th of March 2016 the Public Verdict Foundation from Moscow was charged with a penalty of 400,000 RUB for failure to indicate that four articles at the organization website were published by a foreign agent\(^{18}\).

At the end of April 2016 the Meschansky Court of Moscow charged the All-Russian movement «For Human Rights» with a penalty of 900,000 RUB as a part of three cases for distribution of materials without a proper «foreign agent» indication. This judicial decision was based on the publications in the magazine «Vestnik», issue named «For the protection of the human rights of prisoners», and at www.zaprava.ru website, in spite of the fact that the website is administered and owned by a physical person, and not by the movement «For Human Rights». The movement was charged with the penalties after its exclusion from the list of non-profit organizations performing the functions of a foreign agent, but for the period from 2014 to 2015 when the movement was enrolled in the list\(^{19}\).

In 2015 Roskomnadzor reviewed the materials provided by the Ministry of Justice, the Federal Security Service and the Ministry of Internal Affairs of Russia regarding 23 non-profit organizations performing the functions of a foreign agent\(^{20}\).

As a result of court proceedings in 2015:

- Roskomnadzor prepared **27 reports** of administrative offenses under section 19.34 (2) of the Russian Code of Administrative Offenses, in respect of **15 organizations**;
- **10 organizations** were held administratively liable;
- cases regarding **2 organizations** were pending in the court;
- **NGOs** were charged with a total amount of **5,250,000 RUB** of fines for failure to indicate that their materials were published by a foreign agent;
- the total amount of **2,000,000 RUB** of such fines were enforced in favor of the state budget.

Consequently, in 2015 the government passed to the approval of the provision of the law to establish restrictions on the freedom of association in the Russian Federation, namely to oblige

\(^{16}\) Source: http://kommersant.ru/doc/2931701

\(^{17}\) Source: http://www.kasparov.ru/material.php?id=55E954B55A1BB

\(^{18}\) Source: http://publicverdict.ru/topics/found/12105.html

\(^{19}\) Source: http://www.novayagazeta.ru/news/1702918.html

\(^{20}\) Source: https://www.facebook.com/groups/freedomofassociation/permalink/787712974693845/
NGOs, enrolled in the foreign agents list, to include in all their published ‘materials’ a notification that these materials are published by a foreign agent.

The establishment of this restriction resulted in numerous penalties imposed on NGOs: firstly, for the failure to voluntarily register as a «foreign agent», and then for failure to indicate that their materials were published by a foreign agent, which demonstrates the increasing pressure on NGOs enrolled in the foreign agents list, and expansion of the scope of application of the mechanism approved in 2015, which adds to the pressure on NGOs.

35 cases have been considered by court regarding the failure to indicate that the materials published originate from a «foreign agent» since the law was adopted21.

2.1.3. Applications for voluntary liquidations of NGOs, registered as «foreign agents», refused by the Government.

Starting in 2012, 17 NGOs have been withdrawn from the foreign agents list due to termination of their activities as foreign agents as a result of liquidations of these organizations.

2015 saw the first cases when the Ministry of Justice refused applications for voluntary liquidations of NGOs due to various reasons with intention to retain them in the list.

On the 19th of March 2015 NGO «Eco-logic» from Rostov, registered as a non-profit organization performing the functions of a foreign agent, decided to voluntarily apply for its liquidation and provided corresponding documentation to the Ministry of Justice. The information on the liquidation was subsequently included in the EGRYUL (Unified Government Register of Legal Entities) on the 8th of April 2015, and on the 3rd of June 2015 «Eco-logic» submitted final documents to the Ministry of Justice for the correspondent registration of the organization due to its liquidation. However one week later the Ministry of Justice refused the application for liquidation «due to the fact that the documents provided constitute an infringement of the legislation of the Russian Federation»22.

The NGO «Eco-logic» appealed to the Court, however the Court did not find in favor of the organization, indicating that at the time it filed its final application for liquidation, the NGO was challenging the decision of the Justice of the Peace as of 20.04.2015 regarding the penalty of 300,000 RUB imposed on the organization for failure to voluntarily register as a «foreign agent». The Ministry of Justice and the court believed that the above mentioned circumstance «attests that the organization and its members might attempt to deny their responsibility stipulated by the government by taking advantage of the liquidation mechanism23». Furthermore, «Decision ... of the Justice of the Peace as of 20.04.2015 ... has not been enforced» (the decision could not be enforced because it had not been become effective - Note from the Authors of the Report). The interests of the organization were represented by the NGO Lawyers Club.

The above mentioned court decision was challenged, however the appeals court did not find in favor of the organization, and the organization is currently planning to lodge an appeal in cassation.

The case of «Eco-logic» is not a unique one, however it was the first case of such refusal. It has become evident that the intention of the government is to prevent NGOs from using legal ways to withdraw from the foreign agents list and avoid the corresponding restrictions in their activities; the government is testing new procedures with a view to forcibly retain organizations in the list.

21 Self-produced information.
22 Self-produced information.
23 Decision of the Leninsky District Court in Rostov-On-Don as of 18.08.2015r., Judge A.V. Lepetyukh. Archive of the NGO Lawyers Club.
«Eco-logic» eventually managed to be excluded from the list on the 30th of March 2016 with due support from the NGO Lawyers Club after almost a year of being listed a «foreign agent» (from the 3rd of April, 2015)\(^{24}\).

Another relevant case is the voluntary liquidation of the «Golos» Foundation. The Russian legislation prescribes a judicial procedure for the liquidation of foundations. On the 15th of October 2015 a correspondent application was filed to the Basmanny District Court of Moscow by the liquidator in accordance with the civil procedures established by the legislation.

On the 20th of October, 2015 a judge of the Basmanny District Court of Moscow, Yu.V. Karkina, returned an «administrative application submitted by I.V. Sivoldaev addressed to the Chief Department of the Russian Ministry of Justice in Moscow regarding the voluntary liquidation of the Foundation»\(^{25}\), despite the fact that the «Golos» Foundation filed an application as a part of the Russian Federation Code of Civil Procedure, rather than as a part of the Russian Federation Code of Administrative Procedure, which recently entered into force.

Subsequently, on 12.02.2015 the Moscow City Court restored justice and reversed the judgment of the regional court regarding the return of the application for voluntary liquidation of «Golos» Foundation.\(^{26}\) The case is currently pending in the first instance court, the application of the «Golos» Foundation is being considered.

However, in the course of the appeal process of the unlawful decision of the Court of the first instance regarding the return of the application for voluntary liquidation of «Golos» Foundation, which took place from October 2015 to February 2016, the Ministry of Justice filed an application to the court for a forced liquidation of the «Golos» Foundation on the 22nd of December 2015\(^{27}\), simulating in this manner that the foundation would be liquidated due to legislative violations detected by the Ministry of Justice, rather than voluntarily.

The continuation of this trend appears to be quite dangerous, because NGOs have to confront the situation when they are not able to liquidate a legal entity.

2.1.4. Search for foreign funding among Russian donors (partners) of NGOs.

2015 was marked by the approval of one more provision of paragraph 6 article 2 of the Federal Law «About non-commercial organizations» stipulating that the funds received by an NGO from other NGO, which previously received these funds from a foreign source, shall be recognized as a foreign funding, and the foreign funding is a sufficient condition along with a «political activity» for an NGO to be included in the foreign agents list.

On the 11th of December 2015, the NGO Woman's World from Kaliningrad became the most western NGO enrolled in the list of non-profit organizations performing the functions of a foreign agent\(^{28}\). It received funding for its social projects from two legal entities: NGO «Anna's Center» and the Informational Bureau of the Council of Ministers of Northern Countries from Kaliningrad which was registered as Russian NGO as well. No other foreign funding was detected by the Ministry of Justice.

This fact allowed the government to include the NGO in the list, as well as initiate legal procedures to impose the administrative liability on the organization and its head, Oksana Prischepova, as stipulated by section 19.34 (1) of the Russian Code of Administrative Offenses for failure to voluntarily register as a «foreign agent». The case is currently pending in the court\(^{29}\).

\(^{24}\) Source: http://unro.minjust.ru/NKOForeignAgent.aspx

\(^{25}\) Archive of the NGO Lawyers Club.

\(^{26}\) The same reference. NGO Lawyers Club participated in shaping of a legal position in the case.

\(^{27}\) Source: http://www.interfax.ru/russia/494320

\(^{28}\) NGO Lawyers Club provides an integrated legal support in the case.

\(^{29}\) Archive of the NGO Lawyers Club.

On the 30th of December the Yekaterinburg Memorial Society was included in the list of «foreign agents». While the organization did not have a current account, the Ministry of Justice decided that charges for utilities, telephone and insurance paid by another organization, the Research and Information Center "Memorial" from St. Petersburg, in 2013-2014 was an instance of foreign funding due to the fact that the Research and Information Center "Memorial" was receiving foreign funding 30.

On the 18th of April 2016 the Engels District Court of the Saratov region, after examining a suit of the office of public prosecutor against NGO «Socium» from Saratov, which was receiving funding for their projects from a Russian NGO «Esvero» funded by the Global Fund to Fight AIDS, Tuberculosis and Malaria, declared such funding a foreign funding; moreover, the court had declared that the AIDS prevention activities of the organization were political, and the combination of these two facts resulted in the satisfaction of the claim, and consequent inclusion of NGO «Socium» from Saratov into the list of non-profit organizations performing the functions of a foreign agent 31.

Such cases may have far-reaching implications.

Firstly, in order to avoid the inclusion into the foreign agents list, NGOs shall examine, on their own, the sources of funding provided by donors. If donors receive funding from foreign sources, the receiving organization is likely to be enrolled in the foreign agents list, which involves several thousands in penalties, an obligation to indicate a «foreign agent» label and provide a great deal of reports and an obligatory audit made only by Russian auditors.

Secondly, even if a donor provides a confirmation of exclusive use of Russian sources of funding, this does not guarantee that the Ministry of Justice will accept it.

Thirdly, if the receiving organization was reassured that the funding source is exclusively Russian, while the Ministry of Justice in the course of their examination declares that the funding source is foreign, this can result in administrative liability charge on the organization for failure to provide reports to be provided by an NGO performing the functions of a foreign agent 32, as the legislation does not relieve the organization from the obligation to provide such reports before enrollment in the foreign agents list.

In conclusion, a continuation of this trend to arbitrarily apply the law by the State bodies, excessive expansion of the «foreign funding» concept and no mechanism in place to detect whether a donor receives any foreign funding or not, may result in a situation where any funding received by an NGO, including the funding from Russian donors, might be classified as «foreign funding», which further results in the inclusion of such organization in the list of non-profit organizations performing the functions of a «foreign agent».

2.1.5. Closed court hearings of «foreign agents» cases.

The «Sakhalin Environment Watch» from Yuzhno-Sakhalinsk is the most eastern Russian NGO included in the «foreign agents» list. The first closed court hearing took place in 2016 initiated by the administrative claim made by the «Sakhalin Environment Watch» against the Department of the Ministry of Justice of the Russian Federation in the Sakhalin region and the Ministry of Justice of the Russian Federation.

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32 Article 19.7.5.-2 of the of the Russian Code of Administrative Offenses envisages administrative liability on a non-profit organization registered as a foreign agent for failure to provide in time to a State body (public official) information (data), which shall be provided under the legislation and required by the State body (public official) to conduct its legitimate activities, or for provision of incomplete or distorted information (data), if such actions (omission) do not constitute a criminal offense, in the form of a notice or a fine amount to from 10 thousand to 30 thousand rubles for physical persons and from 100 thousand to 300 000 rubles for legal entities.
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regarding disputing the results of the examination and the instruction of the Ministry of Justice to include the NGO in the list of non-profit organizations performing the functions of a «foreign agent».

The decision regarding a closed court hearing was made by the Yuzhno-Sakhalinsk City Court on the 12th of January 2016 to investigate the appeal of a state body in closed court, constituting the basis for an unscheduled field inspection of the organization. The court based such a decision on the fact that the Ministry of Justice assigned to the appeal of a state body a level «Restricted/For internal use only». The organization has challenged the decision regarding a closed court hearing, due to the fact that the appeal of a state body does not contain and may not contain any restricted data.

It is noteworthy that even in the decision of the court in the first instance a state body, which initiated the inspection, is not indicated, and is listed only as «a state body». It is easy to guess which state body, responsible for security issues, it was.

In the course of the inspection, the court made representatives of the NGO sign a non-disclosure notice regarding the information contained in the appeal of a well-known state body, which initiated the inspection, on pain of incurring administrative liability for the disclosure.

The tendency to classify information and an increase in the number of criminal cases of treason, as well as a growing “spy fever” all constitute links in one and the same chain, leading to an absence of legal grounds, in accordance with the authors of the report, to closed court trials of those cases, which are of a high interest to the public and the access to which should never be restricted arbitrarily.

2.1.6. Increasing numbers of inspections of NGOs initiated by claims of the Federal Security Service or «unidentified» citizens.

2015 saw an increase in the number of inspections of NGOs, which resulted in the enrollment of these organizations in the foreign agents list. Quite often these inspections were initiated by the appeals of the Federal Security Service, «unidentified» citizens or persons, whose presence in the court was not possible.

On the 19th of June 2015 a Youth organization called "Nuori Karjala/Young Karelia» (Karelia region) was registered as a foreign agent. The organization decided to challenge the decision of the Ministry of Justice, and only in the course of the court hearing it appeared that the inspection was initiated on the basis of an email from K. Khrustoforov sent to the Department of the Russian Ministry of Justice for the Republic of Karelia from his email address antoshka-sergeev-79@mail.ru and registered in the state body on the 22nd of April 2015 at 06.25 PM, after working hours.

In the course of the hearing the representatives of the «Young Karelia» attempted to obtain the examination of the witness K. Khrustoforov, while the Judge obliged the Department of the Russian Ministry of Justice in the Republic of Karelia to inform him of the date of the court hearing and invite him to testify in the court. However, the mysterious K. Khrustoforov never appeared in the court. The email provider Mail.Ru did not reply to the request made by the court.

As a part of the above mentioned case of «Sakhalin Environment Watch», the inspection was initiated by a claim from a state body which the court was unable to mention in its decision.

33 Legal assistance is rendered by NGO Lawyers Club.
34 Decision of the Yuzhno-Sakhalinsk City Court as of 12.01.2016. Archive of the NGO Lawyers Club.
35 Decision of the Yuzhno-Sakhalinsk City Court as of 08.02.2016
36 The case was conducted by NGO Lawyers Club
The inspection of NGO «Far East Center» from Vladivostok was initiated by A.N. Sharanov, who requested to check the organization with regard to the presence of characteristics of a foreign agent, however A.N. Sharanov never appeared in court.

In all the cases the Ministry of Justice attempted not to disclose the claims and the names of their authors. This information generally became available to NGOs only in court.

Texts of the claims, which served as the grounds for inspections, are full of terms such as «foreign agent», «legislation», and «foreign funding», which attests to the similarity of the texts, and probably of their authors in terms of their educational level.

The authors of the above mentioned claims never appeared in the court, therefore it was impossible to examine them and to find out their motivation, therefore their existence has been called into question.

2.1.7. Increasing number of political expert assessments, made by scientists loyal to the Government.

In the course of their inspections procuratorial authorities and departments of the Ministry of Justice sometimes request scientists from state universities to carry out an expert political assessment. All such assessments concluded that the inspected NGO is engaged in a «political activity».

In the course of the inspection of the Center for Social Development «Vozrozhdeniye» from Pskov with regard to the presence of characteristics of a foreign agent, the Prosecutor’s Office of the Pskov Region requested the Herzen State Pedagogical University of Russia from St. Petersburg to carry out an expert political assessment of the activities of the NGO. The organizations was not notified neither of the initiation of this assessment, nor of its progress.

The university was delighted to carry out the assessment, and on the 24th of October 2014 S.A. Naumov, Candidate of political sciences, concluded that the public discussion as of 13.01.2013 regarding the Dima Yakovlev Law banning the adoption of Russian children by foreign citizens, was a «political act».

The second assessment was carried out on the 12th of December 2014 by the employees of the Chair of Political Institutions and Applied Policy Research of the Saint Petersburg State University, O.V. Popova, N.A. Baranov and O.D. Safronova. They concluded that the public discussion had some characteristics of a political act.

The organization was then included in the list of non-profit organizations performing functions of a foreign agent.

S.A. Naumov carried out expert political assessments as a part of other inspections of NGOs, which were later included in the list: Public Human Rights Organization "Citizen Watch" from St. Petersburg, Regional Press Institute from St. Petersburg, while S.A. Naumov became a Fulbright fellow and left Russia to do a long-term internship.

Another example of an expert political assessment, which experts find questionable from the point of view of its quality and content, is a conclusion of I.N. Konovalov, Professor of the Saratov State Academy of Law (who is even a Doctor of Historical Sciences) as a part of the case initiated by a claim of the office of public prosecutor regarding the obligation imposed on the NGO «Socium» to apply to the Department of the Ministry of Justice for the Saratov region for enrollment in the list of non-profit organizations performing the functions of a foreign agent.
Citing the conclusion of Ivan Konovalov, on the 18th of April 2016 the Engels District Court of the Saratov region satisfied the claim of the office of the public prosecutor. The decision of the Court stated: «the expert’s conclusion made by I.N. Konovalov, Professor of the Saratov State Academy of Law, implies that NGO «Socium» was engaged in AIDS prevention programs ... Over the entire duration of its projects, the NGO «Socium» received about a hundred thousand syringes and ten thousand condoms, which were distributed free-of-charge ... Apart from that, the organization monitored drug-dependent and HIV-infected individuals by interviewing them, while the questionnaires covered a wide range of topics...

The expert therefore concludes that activities of the NGO «Socium» not only lack approval of the Russian authorities, but also seriously contradicts the State policy in the area of AIDS prevention.

Two main approaches may be distinguished in the area of AIDS prevention. The first one is being implemented by the Ministry of Health and Social Development of the Russian Federation... The second approach is being implemented by the Global Fund to Fight AIDS, Tuberculosis and Malaria, the Soros Foundation, and for Russia - The United States Agency for International Development (USAID). Their position is based on the belief that the modern society exists in the era of post-sexual revolution characterized by total absence of any moral or legal prohibitions for any types of free sexual relations for adults. Therefore, the priority in the AIDS prevention shall be the use of condoms always. The wider propaganda of them shall be made. However, no information is provided on the fact that condoms do not protect from certain sexually transmitted infections and their use might cause infertility in women.

Thus, we can observe not only a conflict of methodologies, but also a conflict of ideologies. On the one part, we see a propaganda of a healthy lifestyle, a total rejection of drug use, importance of family values. On the other part, we see a propaganda of harm reduction, which is basically an indirect and very often a direct propaganda of drugs and gay culture. It appears that the fight against the AIDS epidemic carried out by the international foundations is just a cover for propaganda of their own interests at the «new landscapes».

This is not at all a humanitarian project, but an ideological and political one, which strives to impose its practices, contradicting with the national interests of Russia. Firstly they will try to alter the State policy in the area of healthcare, social protection, and then in all other areas. In this perspective, activities of several Russian NGOs, including the Non-Profit Partnership «ESVERO» and NGO «Socium», engaged as subcontractors of the global foundations and the United States State Department, have all the characteristics of a political movement.

Therefore, NGO «Socium»... is a «foreign agent», because it is funded by a foreign organization and engaged in the activities which may be classified as political activities. There is no ground to doubt the credibility of the data provided in the political expert assessment...

In the situation when there is no evidence of a political activity, the court bases its decisions on expert political assessments, carried out by the experts invited by the office of the public prosecutor or the Ministry of Justice, while the same assessments by the experts invited by NGOs are rejected as evidence.

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43 For instance, in the case of challenging the judgement of the Russian Ministry of Justice regarding enrollment of the Research and Information Center «Memorial» in the list of non-profit organizations performing the functions of a «foreign agent», an expert political assessment was provided, which was prepared by the Doctor of Political Science, A.Yu. Sungurov, regarding absence of any political activity in case of the «Memorial», however the Oktyabrsk District Court of St. Petersburg did not consider this assessment as an evidence by its decision as of 06.04.2016.
2.1.8. Additional inspections of NGOs, enrolled in the list of foreign agent NGOs.

As practice shows, the registration of an NGO as a foreign agent involves subsequent additional inspections, apart from those initially carried out by the Ministry of Justice.

For instance, on the 12th of August 2015 a fire inspection was carried out on the premises of the Public Human Rights Organization «Citizen Watch» in accordance with the request of the public prosecution service. The inspection was initiated on the basis of a claim from an individual, alleging that he had visited the office of the «Citizen Watch» to receive a legal assistance, however he was rudely refused, and at the same he spotted several violations of the fire safety regulations, with which he was well acquainted. On the results of the inspection 4 reports of administrative offenses were drawn up, which provided ground for charging the organization and its head with administrative liability by the court of first instance, however on the 2nd of March 2016 the court of second instance denied the charge.

On the 6th of November 2015 the Research and Information Center «Memorial» was registered as a «foreign agent» under number 101 on the results of the inspection carried out by the Ministry of Justice. «Memorial» decided to transfer all its projects to the Iofe Foundation, an unregistered social organization.

However, Evgeny Marchenko, a deputy of the St. Petersburg Region Legislative Assembly, was not satisfied with this decision, so he requested the Russian Ministry of Justice to conduct an inspection of the Iofe Foundation. The Ministry of Justice redirected this request to the General Prosecutor’s Office of Russia, which further redirected it to the St. Petersburg Prosecutor’s Office, which entrusted the inspection to the District Prosecutor’s Office.

Evgeny Marchenko explained that, in his opinion, «the organization found a way to escape from being enrolled in the list of foreign agents for the second time, they just decided not to register their organization, which relieves them from the regulation of their activities by the State. As the Criminal Code of the Russian Federation stipulates, administrative liability is incurred for illegal entrepreneurship, however the term «illegal public activities» do not exist».

In accordance with the authors of the report, a prosecutor’s inspection carried out in December 2015 - January 2016 did not lead to any negative results, however it did enable the Prosecutor’s Office to legally invite the employees of the Research and Information Center «Memorial» to their office.

It must be pointed out that the Russian legislation does not prohibit public associations to undertake their activities without being registered as a legal entity.

Approximately at the same time, in the morning on the 26th of November 2015 «Memorial» received an email from the Department of the Russian Ministry of Culture in the North-West Federal District. The Ministry of Culture informed in the email that it had «received information» regarding a planned screening of the film «Khatyn’» [the correct name of the movie is «Katyn’»], while in accordance with the Federal Act «On State support for cinematography in the Russian Federation», a screening of a film on the territory of the Russian Federation without a correspondent distribution certificate leads to an administrative charge in accordance with article 14.58 of the RF Code of Administrative Offenses.

On the 26th of November 2015 the assistant prosecutor at the Central District of St. Petersburg escorted by seven policemen visited the premises of the Research and Information Center «Memorial».
Center «Memorial» to carry out one more inspection\(^49\). The assistant prosecutor claimed that they needed to check whether a «prohibited film» was screened on the premises of «Memorial» [Film «Katyn’» directed by A. Vayda is not prohibited for display at the territory of the Russian Federation - Note from the Authors of the Report], however no supporting documents were provided. No documents were received on the results of the inspection either.

It is clear that as soon as an NGO is registered as a foreign agent, it attracts new inspections for various reasons.

2.1.9. Subsidiary responsibility placed on heads of NGOs for debts of the organization.

On 06.02.2015 the «Golos-Povolgie» Foundation was enrolled in the list of non-profit organizations performing the functions of a foreign agent\(^50\).

Prior to this event a tax audit of the organization was conducted by the Inter-District Inspectorate of the Federal Tax Service No. 18 for the Samara region, followed by a decision announced on the 6th of June 2014 of an additional income tax charge of 2,222,521 RUB, a fine of 401,101 RUB and a penalty of 510,089 RUB.

The accrual of these sums by the tax authority was made on the basis of the fact that the «Golos-Povolgie» Foundation earlier received a grant from a foreign donor to carry out its statutory activities; after paying all the applicable taxes the donor transferred the donation to «Golos» Foundation for implementation of its elections monitoring project. In accordance with article 582 of the Civil Code of the Russian Federation, article 251 of the Tax Code of the Russian Federation a donation is not subject to Russian tax, however the tax authorities took the opposite position.

The «Golos-Povolgie» Foundation unsuccessfully tried to challenge the decision of the tax authorities in the arbitration courts of the first to third instances. However, the arbitration courts decided that the amount donated is an income and an income tax shall be paid. The Arbitration Court of the Povolzhie District brought things to a close (the Resolution of August 05, 2015 in the case № А55-24633/2014) by confirming the legitimacy of the court’s decision. Consequently, the «Golos-Povolgie» Foundation had a tax obligation to pay to the budget the amounts charged by the tax authorities, while being a non-profit organization without any funding sources the Foundation was not able to pay by virtue of objective reasons.

On the 16th of January 2015 while the court of the first instance was considering the challenge of the decision of the tax authorities regarding the charge of the tax, fine and penalty, the Investigatory Directorate of the Investigatory Committee of the Russian Federation in the Samara region launched a criminal case against the former head of the «Golos» Foundation in connection with the failure to pay taxes, however the criminal case was later stopped due to the expiry of the statute of limitations.

On the basis of the above mentioned decision of the investigatory authority, the tax authority filed a suit against the former head of the «Golos» Foundation demanding the payment for the losses inflicted upon the Russian Federation due to the failure to pay the tax, fine and penalty charged on the Golos-Povolgie Foundation.

On the 27th of November 2015 the Samara District Court rejected the claim of the tax authority, however on the 14th of March 2016 the Samara Regional Court reversed the judgment of the court of first instance, satisfied the suit and enforced the collection of «the compensation of the property damage inflicted upon the government in the amount of RUB 2,222,521 (two million two hundred twenty-two thousand and five hundred twenty-one rubles) in favor of the Inter-district Inspectorate of the Federal Tax Service No. 18 for the Samara region» from L.G. Kuzmina.\(^51\)

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\(^{49}\) Source: http://www.kommersant.ru/doc/2863008

\(^{50}\) Source: http://unro.minjust.ru/NKOForeignAgent.aspx

\(^{51}\) Source: appeal decision of the Samara District Court as of 14.03.2016r. in case №33-1455/2016.
It is important to note that in the course of all these events, on the 7th of July 2015 the Samara District Court adopted a resolution on the liquidation of the Foundation\(^{52}\) in relation to the case of L.G. Kuzmina, however the liquidation was not completed, thus the foundation continues operating as a legal entity, and has the rights, duties and responsibilities established for an operating organization.\(^{53}\)

Thus, for the first time since pressure on NGOs appeared, the former head of the organization was charged with the liability for the organization. At the same time, it should be noted that:

- First, the tax authority has two orders of the State bodies, which came into legal force, for the collection of the same amount from a legal entity and a physical person: one order of the tax authority for collection of an income tax of 2,222,521 RUB, a fine of 401,101 RUB and a penalty of 510,089 RUB from the «Golos-Povolgie» Foundation, and another order of the court for collection of a compensation of 2,222,521 RUB from L.G. Kuzmina as a physical person, in contravention of the principle of the legal liability;

- Secondly, the «Golos-Povolgie» Foundation has not been liquidated and the tax authority is entitled by the legislation to enforce its decision regarding the tax, fine and penalty charges;

- Thirdly, taking into account a non-commercial profile of the «Golos» Foundation and unavailability of any substantial funds to the former head of the Foundation to pay the amounts charged, the enforcement of the judgement of the Samara Regional Court becomes in fact a penalty imposed on the former head of the NGO for the activities of the «Golos-Povolgie» Foundation and results in the seizure of the assets of the former head of the Foundation, and its execution under the enforcement proceedings by means of deduction of millions of rubles from the pension.

The above mentioned precedent places NGOs in a vulnerable situation, because this means that none of the heads of the non-profit organizations is immune from being prosecuted in the same way as the head of the «Golos-Povolgie» Foundation.

The government has already started to develop this practice. The next similar case № А 76-4773/2016 was initiated on the 1st of March 2016 by the Inter-district Inspectorate of the Federal Tax Service No. 21 for the Chelyabinsk region regarding the charge of a value-added tax of 1,410,928 RUB and penalty of 525,158 RUB 68 Kopecks from the Interregional Public Foundation for Civil Society Development "GOLOS-Ural" (also registered as a «foreign agent» on the 27th of July 2015\(^{54}\)\(^{55}\). The reason for the suit became a reclassification made by the tax authority in relation to the donation received by the «GOLOS-Ural» Foundation from the «Golos Foundation in Support of Democracy» for implementation of the elections monitoring project. The preliminary court hearing was scheduled for the 6th of June 2016.

As the analysis of the situation indicates, the government continues to use for a different case the logic and the method of the collection of «debts», which have already been successfully implemented by the tax authority in the case of the «Golos-Povolgie» Foundation.

How many similar cases can appear in the near future? The answer is, regrettably, included in the question.

Taking into the account the control which tax authorities have over definition and reclassification of the responsibilities of a legal entity in the past three years, hundreds of heads of organizations all over the country might be attacked in the same way.

\(^{52}\) Source: decision of the Samara District Court as of 07.07.2015 in case №№ 2-1045/2015, http://sudact.ru/regular/doc/YBz2I2EcFcUl/


\(^{54}\) Source: http://unro.minjust.ru/NKOForeignAgent.aspx

Certainly, enforcement decisions in the above mentioned case shall be challenged, while the attempts to apply the same methods as in the case of the «Golos-Povolgie» Foundation shall be suppressed from the very beginning.

2.1.10. Attempts to exclude the representatives of the organizations, registered as «foreign agents», from the court proceedings related to the human rights protection.

The trial is being held in the Avtozavodsky District Court of Nizhny Novgorod, where six policemen are charged with using torture. A victim is represented by the NGO «Committee Against Torture».

During the court proceedings the defendants made an unexpected move on the 6th of February 2016, requesting to exclude the representative of the victim from participation in a judicial procedure, due to the fact that the representative is an employee of an organization enrolled in the «foreign agents» list56. The defendants claimed in their request that «in accordance with the Prosecutor of the Nizhny Novgorod Region... the organization provides negative evaluation and discredits the law enforcement authorities of the Russian Federation by highlighting the facts of torture and inhuman treatment of citizens during interrogations in the police and in other detention facilities. The oversight entity considers such actions as activities, ... aimed at drawing attention to these facts and building a negative public opinion to influence the decisions of state bodies, namely to alter state policy in respect to criminal prosecution procedures»57.

In spite of the claim, in the absence of other legal grounds the representative of the victim was not excluded from participation in the proceedings.

2.1.11. Enforcement of the judicial acts, which have not entered into legal effect.

On the 13th of October 2015 the «Far East Center for the Development of Civil Initiatives and Social Partnership» was enrolled in the list of non-profit organizations performing the functions of a foreign agent 58.

On the 25th of December 2015 the Leninskiy District Court of Vladivostok imposed a penalty on the organization of 300,000 RUB for failure to voluntarily register as a foreign agent, while it was receiving foreign funding and engaged in «political activities»59.

Two months later, on the 29th of February 2016, the Primorsky Regional Court reduced the amount of the penalty to 150,000 RUB, and only after this date the order for collection of the penalty entered into legal effect60 and was due to be enforced61.

However, the court bailiff of the Department of Court Bailiffs in the Leninsky District of the Vladivostok City District, A.S. Krishtal, on the 27th of January 2016, before the order entered into legal effect, enforced the collection of the penalty of 300,000 RUB, and managed to have this amount written off from the current account of the organization.

The «Far East Center» is currently challenging the decision of the court bailiff and attempting to return the overpaid amount of 150,000 RUB from the budget, challenging at the same time as a part of other cases the imposition of the administrative liability, as well as the judgement of the Ministry of Justice of the Russian Federation regarding the enrollment of the organization in the «foreign agents» list.

The case described above is the only instance of «foreign agent» cases, when a court bailiff arbitrarily enforced a court order. This case is quite alarming, as it attests to either the lack of the

57 Source: https://www.facebook.com/dmitry.utukin/posts/10207691899408297?pnref=story
58 Source: http://unro.minjust.ru/NKOForeignAgent.aspx
59 Decision of the Leninskiy District Court of Vladivostok as of 25.12.2015 in administrative offense case.
60 Decision of the Primorsky Regional Court as of 29.02.2016 in administrative offense case.
61 Legal assistance is rendered by NGO Lawyers Club.
legal literacy of the specialists engaged in the enforcement of court orders, or disregard of legal requirements when NGOs «foreign agents» are involved.

2.1.12. Forced liquidations of NGOs, registered as «foreign agents».

The beginning of 2016 saw the new initiatives of the government to enforce liquidations of NGOs, enrolled in the «foreign agents» list. The first NGOs liquidated were the Interregional Human Rights Association «Agora» and «Golos» Foundation. For these cases a new scheme of NGO liquidation was tested, implemented in accordance with the Code of Administrative Justice of the Russian Federation, which entered into legal effect in September 2015.

On the 10th of February 2016 the Supreme Court of the Republic of Tatarstan decided on liquidation of the Interregional Human Rights Association «Agora» 62. The decision was based on the claim of the Ministry of Justice in the Republic of Tatarstan, which the court claimed justified. The Ministry of Justice claimed that the organization failed to comply with the requirements of the statutory documents regarding the periodicity of the town hall meetings and the need for a financial audit of the organization to be performed by its auditors; implementation of a simplified accounting system by the organization, while an organization, registered as a «foreign agent» shall use a general accounting system; publication of 19 information materials on the internet without a proper «foreign agent» indication.

The court concluded, that «the Association fails to comply with the requirements, established by the federal legislation for the activities of non-profit organizations, registered as foreign agents, while these requirements are based on the idea that NGOs shall conduct their activities in an open and public manner, and proper public control shall be established over the activities of non-profit organizations, engaged in political activities on the territory of the Russian Federation and funded by foreign sources. Therefore we should recognize the justification of the reasoning provided by the Chief Department of the Ministry of Justice of the Russian Federation in the Republic of Tatarstan regarding the fact that the Association is operating with repeated and flagrant violations of the law, which provides grounds for liquidation of a public association as stipulated by paragraph 3 (3) article 61 of the Civil Code of the Russian Federation and article 44 (1) of Federal Law № 82-FZ as of the 19th of May 1995 «On Public Organisations».

The court considers these violations as substantial and irremediable, thus the law can be restored exclusively by means of liquidation of the Association. Liquidation of a legal entity as a response to non-compliance with the law under certain circumstances corresponds with the general principle of the legal responsibility and in this case is proportionate to violations committed by the legal entity and its consequences».

The next day after the court made a decision on liquidation of the Association «Agora», on the 11th of February 2016, it transpired that the Ministry of Justice was planning to enforce the liquidation of the «Golos» Foundation. 63 This request was prepared by the Chief Department of the Ministry of Justice of the Russian Federation in Moscow on the 22nd of December 2015 already and was submitted to the Basmanny District Court of Moscow.

In accordance with the Ministry of Justice the «Golos» Foundation is subject to liquidation due to its failure to inform the Chief Department of the Ministry of Justice of the Russian Federation in Moscow of a change of address (location) of the standing executive body of the Foundation; failure to timely provide the documents, required for conducting an inspection of the Foundation; recorded violations of the provisions of the Charter of the Foundation, as well

63 Sources: http://www.interfax.ru/russia/494320
https://www.vedomosti.ru/politics/articles/2016/02/11/628536-minyust-likvidirovat-golos
as requirements of the Russian legislation; failure to comply with the requirements provided in the notification as of September 4, 2015.

Such targeted activities of the government aimed at forced liquidations of NGOs registered as foreign agents are carried out almost simultaneously, while some organizations do not have an opportunity to voluntarily leave the list.

These facts demonstrate the increasing pressure on NGOs enrolled in the foreign agents list.

2.1.13. Refusal to withdraw an NGO from the foreign agents list, even if it stopped receiving foreign funding within three months of enrollment in the list.

In accordance with paragraph 7.1 (4) article 32 of the Federal Law «About non-commercial organizations» an NGO can be excluded from the foreign agents list if an unscheduled inspection detects that it refused receiving funds and other property from foreign sources and returned funds and other property to the foreign source which had provided it to them, no later than three months after enrollment in the list.

This provision is not the most popular among the NGOs registered as foreign agents, and the Ministry of Justice has not yet withdrawn any organization from the list on the basis of this provision.

As informed by the open sources, the first NGO, which tried to get excluded from the list under this provision in 2015 was the Ecological Foundation «ISAR-Siberia». However the Ministry of Justice refused the organization request, and «ISAR-Siberia» did not attempt to challenge this decision. The second well-known case was the case of the «Sakhalin Environment Watch». The organization refused from receiving the foreign funding and returned it within three months upon its enrollment in the list.

The NGO was included in the list of non-profit organizations performing the functions of a «foreign agent» on the 18th of September 2015\(^{64}\), and on the 23rd of September 2015 in the course of an unscheduled meeting of its members decided to return all the foreign funding available at that time in the organization, and refuse from receiving it in the future.

The funding returned included the donation of 159,000 USD from Leonardo DiCaprio, received by the organization for the implementation of the project of preservation of «Vostochny» wildlife reservation on the Sakhalin island and wild salmon rivers adjacent to the reservation in Smirnykovsky and Nogliksky Districts of the Sakhalin region\(^{65}\). However, the Department of the Ministry of Justice in the Sakhalin region concluded on the results of an unscheduled inspection of the NGO, that there were no reasons for the withdrawal of the organization from the list. The «Sakhalin Environment Watch» is currently challenging the refusal of the state authority under the reasoning provided.\(^{66}\)

The decision made by the Ministry of Justice is an indication of the restrictions being applied by it in the case of a withdrawal of an organization from the foreign agents list.

2.1.14. Cases when NGOs, which are not funded by foreign sources, were included in the foreign agents list on the basis of the fact that they were founded with the participation of the founders of an NGO, which had been earlier included into the list.

On the 16th of January 2015 the NGO «Committee Against Torture» was enrolled in the list of non-profit organizations performing the functions of a «foreign agent». Three days later, the head of the NGO declared that the organization would not operate as a member of the «foreign agents» list\(^{67}\), thus the organization decided to be voluntarily liquidated. On the 9th of November

\(^{64}\) Source: http://unro.minjust.ru/NKOForeignAgent.aspx

\(^{65}\) Source: http://www.interfax.ru/russia/468589

\(^{66}\) Legal assistance is rendered by NGO Lawyers Club.

\(^{67}\) Source: http://www.pytkam.net/press-centr.novosti/4137
2015 the liquidator requested the Arbitrary Court of the Nizhny Novgorod region to declare the organization as bankrupt\(^{68}\). The process of the liquidation through bankruptcy is ongoing, and the court will supposedly decide on the completion of the winding up proceeding and the NGO liquidation on the 19th of July 2016.

Before the «Committee Against Torture» with the headquarters in Nizhny Novgorod was included in the list, an Interregional Non-Governmental Organization «The Committee Against Torture» located in Orenburg was founded\(^ {69}\), which has recently «moved» to Nizhny Novgorod. The head of both organizations was Igor Kalyapin.

The Ministry of Justice could not resist temptation to include the Committee Against Torture in its list, and on the 14th of January 2016 the Committee was registered as a foreign agent.

It is worth mentioning, that in accordance with the information provided by the Committee, it was not receiving any foreign funding. The reason for its enrollment in the foreign agents list was that «most of the Committee’s employees receive their salaries from another organization, the Bureau of Public Investigations\(^ {70}\), registered in the foreign agents list, and later they pay contributions to the Committee Against Torture»\(^ {71}\).

Alexander Utkin, an employee of the Committee, says: «\textit{In accordance with the logic of the Ministry of Justice, we shall track the funds of all the donors. The Bureau of Public Investigations did receive foreign grants, and the activities of the Bureau, such as paying for examinations and rehabilitation of the victims of torture, who asked the Committee for help, was considered political. In accordance with the logic of the Ministry, if individuals work in an organization receiving foreign funds, and at the same time they are members of other organizations, these two organizations are connected} »\(^ {72}\).

The Committee Against Torture is planning to operate without registration of a legal entity in case the claim against the decision the Russian Ministry of Justice on inclusion of the Committee in the foreign agents list will not be satisfied.

This case is significant because it demonstrates that the government does not shy away from using extremely doubtful reasoning to prove the receipt of the foreign funding of an NGO, if this NGO is trying to get excluded from the «foreign agents» list by creating a new NGO, which does not formally have any characteristics of a foreign agent, and by transferring to it all the projects. The government makes it very clear here that an organization will be included in the list anyway, because it is not the foreign funding which matters, but the content of the projects implemented by the organization.

Taking these cases into account, the strategy of certain NGOs, which attempt to liquidate an NGO registered as foreign agent, creating at the same time a new NGO, which is not enrolled in the list, might fail, because the foreign agents law is non-legal and is applied arbitrarily to those organizations which the government wants to include in the list.

It is possible that by using this strategy new NGOs will not be included in the list again, however no guarantee can be granted, taking into account the existing enforcement mechanisms in Russia.

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\(^{69}\) Registered by the tax authorities on 27.11.2014.

\(^{70}\) Interregional Public Organization «Bureau of Public Investigations» from Nizhny Novgorod. The organization was enrolled in the list of non-profit organizations, performing functions of a foreign agent on 14.01.2016. Source: http://unro.minjust.ru/NKOForeignAgent.aspx

\(^{71}\) Source: http://www.vedomosti.ru/politics/articles/2016/01/18/624302-komitet-predotvrashcheniyu-pitok-priznan-nostrannim-agentom

\(^{72}\) The same reference.
2.1.15. NGOs accused of undermining the constitutional order.

As part of the ongoing campaign to pressure Russian civil society, 2015 was marked by public accusations of undermining the constitutional order made against the Human Rights Center «Memorial».

The organization was included the list of non-profit organizations performing the functions of a foreign agent on the 21st of July 2014.73

In October 2015 the Chief Department of the Russian Ministry of Justice in Moscow carried out a scheduled inspection of the organization registered as a «foreign agent». The inspection resulted in a report drawn up on the 30th of October 2015. On pages 9-13 of the inspection report the Ministry of Justice pointed out that: «the employees of the Human Rights Center «Memorial» were undermining the Constitutional Order of the Russian Federation by appealing for the overthrow of existing authorities and a change of political regime in the country».74

The Ministry also mentioned that «this organization is actively engaged in political activities aimed at the creation of a negative public opinion regarding the current government policy implemented by the supreme government authorities, it voices concerns regarding the decisions and actions of the above mentioned State institutions, results of preliminary investigations and sentences announced by the court in relation to significant criminal cases».75

At the same time the inspection report did not include any references to statements of the Human Rights Center «Memorial», which could be classified as an appeal for overthrowing the existing authorities or the change of the country’s political regime. The conclusions of the Ministry of the Justice on the results of the inspection of the NGO could lead to additional checks and charges against its directors of offenses against the security of the state.

Due to many public denouncements of the actions of the Ministry of Justice, it backed off, thus there were no accusations of undermining the security of the state in the notification provided on the results of the inspection.76

This situation demonstrates that being empowered to enforce extensive control over the operations of NGOs, the Ministry of Justice may issue such conclusions in relation to any organization, even if the NGO in question is not involved in any type of similar activities. The Ministry of Justice is empowered to identify an evidence of a crime committed.

Meanwhile, the fact that the inspection report contains the above mentioned conclusion, demonstrates that, on the one hand, that the activities of the Human Rights Center «Memorial» is a matter of great concern for the Ministry of Justice, and, on the other hand, the inclusion of such statements is a test of the Russian civil society and a demonstration of the limit, which the Ministry of Justice is able to reach while speculating under the «foreign agents» logic and creating an evidentiary basis for law enforcement authorities for prosecution of civil activists.

2.1.16. Refusal to withdraw an NGO from the foreign agents list, in case it was receiving funds exclusively from Russian sources within a year.

The easiest way for an NGO to be excluded from the «foreign agents» list, while retaining its legal identity, is to demonstrate that it was receiving no foreign funding within a year, and invite the Ministry of Justice to conduct a correspondent unscheduled inspection77.

The Ecological Center «Dront» attempted to get excluded from the list on the basis of this provision, however in August 2015 the Ministry of Justice refused to withdraw the organization from the «foreign agents» list due to the fact that in the course of the previous year the

73 Source: http://unro.minjust.ru/NKOForeignAgent.aspx
74 Source: http://grani.ru/blogs/free/entries/247431.html
75 The same reference.
76 The same reference.
77 Paragraph 7.1 (2) article 32 of the Federal Law as of 12.01.1996 №7-FZ «On Non-Profit Organizations».
organization, in accordance with the Ministry, was using funds, received from three foreign sources. However, the organization commented that all the three sources were Russian.

The head of «Dront», Askhat Kayumov, explained: «The first (source) is the donation for publication of «Bergini» (in the amount of 500 RUB) from a Russian organization «Bellona-Murmansk». The second one is a grant competition "Orthodox Initiative" of the Sorabotnichestvo (Collaboration) Foundation (a Russian organization), for the project «Preservation of Volga Relics» (478,899 RUB). The third source is the Russian organization «Green World», which lent money to us (we returned all the funds received, however the Ministry of Justice preferred to overlook this fact) ».

Askhat Kayumov stressed that all the sources indicated by the Ministry of Justice had been recorded by the Ministry in the course of the previous inspection, however on that occasion they were not considered to be foreign ones.

Problems arising at the moment of the exclusion from the «foreign agents» list by NGOs demonstrate that the Ministry of Justice does not have any intention to reduce the existing list, even if there are legal grounds for an NGO to be withdrawn from it. The Ministry of Justice intends to control the most active NGOs by retaining them in the list, which involves all additional responsibilities for them (annual audit, scheduled annual inspections, quarterly performance reports, etc.), as well as extensive opportunities for imposition of several thousand penalties – all this evidences that an NGO enrolled in the «foreign agents» list generally do not have a chance to leave it.

2.1.17. Voluntary liquidation of NGOs as a mechanism for exclusion from the list of foreign agents NGOs.

In accordance with the authors of the report, 17 organizations applied for a voluntary liquidation to leave the «foreign agents» list, which means one in eight organizations.

In 2015 14 NGOs were withdrawn from the «foreign agents» list due to their voluntary liquidation:
- The League of Women Voters (Saint-Petersburg),
- Human Rights Resource Center (Saint-Petersburg),
- Jewish regional branch of the Russian public organization «Municipal Academy» (Birobidjdan),
- Center for Social Policy and Gender Studies (Saratov),
- JURIX (Lawyers for Constitutional Rights and Freedoms from Moscow),
- Humanist Youth Movement (Murmansk),
- Legal Expert Partnership «Soyuz»,
- Regional Social Environmental Organization «Bellona-Murmansk» (Murmansk),
- Center for social, psychological and legal help to victims of discrimination and homophobia «Maximum» (Murmansk),
- Kabardino-Balkaria Human Rights Center – regional branch of the «For Human Rights» All-Russian movement,
- Association “Partnership for Development” (Saratov),
- Women's League (Kalinigrad),
- Photography Club «Sobytiye» (Omsk).

In 2016 3 NGOs were withdrawn from the «foreign agents» list due to their voluntary liquidation:
- Youth organization "Nuori Karjala/Young Karelia» (Karelia region)79,
- Altai Regional Public Fund for 21st Century Altai;
- Society of Assistance to Social Protection of Citizens "Peterburgskaya EGIDA" (Saint Petersburg).

79 Legal assistance was provided by NGO Lawyers Club.
The effective legislation provides for the option of a liquidation for an NGO which has no debts to the government or other creditors. All the organization liquidated either managed to terminate the liquidation procedure before the imposition of any penalties, or had previously paid the several thousand charges for failure to voluntary register as a «foreign agent».

The «foreign agents» law placed non-profit organizations under pressure and resulted in reduction of truly effective civil society organizations. The statistics confirms this: 13% of NGOs enrolled in the «foreign agents» list ceased to exist.

Some organizations enrolled in the list attempt to voluntary liquidate legal entities (for instance, the «Committee Against Torture» is trying to get liquidated through court proceedings under the bankruptcy case), while several NGOs are refused by the Ministry of Justice in a voluntary liquidation for fictitious reasons (for instance, the Department of the Russian Ministry of Justice in the Rostov region refused the liquidation of the NGO «Eco-logic» based on the assumption that the organization might be using this mechanism to avoid paying the fine of 300,000 RUB imposed under court judgement, which had not entered into legal effect).

The «foreign agents» law is therefore intended not only to reduce the number of effective civil society organization in Russia, but also to place them under pressure, while they are neither able to conduct their activities, nor get liquidated, remaining in limbo and striving to raise the resources to fulfill all their obligations imposed by the «foreign agent» status (including detailed quarterly reporting, annual audits, etc.) on pain of incurring several thousand charges (which may be imposed on the organization, as well as on its head), resulting from enrollment in the foreign agents list.

2.1.18. Increasing number of penalties imposed on organizations registered as «foreign agents» for failure to voluntarily apply for the enrollment in the list.

Section 19.34 (1) of the Russian Code of Administrative Offenses stipulates administrative liability charge if an organization, performing functions of a foreign agent, is operating without being enrolled in the foreign agents list. The liability stipulates imposition of an administrative penalty in the amount of:

- from 100,000 RUB to 300,000 RUB for physical persons;
- from 300,000 RUB to 500,000 RUB for legal entities.

In 2014 NGOs registered as foreign agents were charged with more than 3 million RUB for failure to voluntarily apply for the enrollment in the list, and in 2015 with more than 7 million RUB.

There are several reasons for such drastic increase:

- firstly, last year the Ministry of Justice included 79 NGOs in the list, while in 2012 it did not include any, in 2013 it included only one, and in 2014 it included 29 NGOs in the list;
- secondly, the number of reports of administrative offenses against public officials representing organizations and against organizations prepared at the same time by the regional bodies of the Ministry of Justice increased significantly, which enables them to open two administrative violation cases and increase the amount of the penalties to be paid.

For instance, two reports were drawn up by the Department of the Russian Ministry of Justice in Kaliningrad region on the 7th of December 2015 due to failure of the «Women’s League» from Kaliningrad to apply for enrollment in the list of non-profit organizations performing the functions of a foreign agent:

- one report against the NGO;
- one report against the president of the organization, Oksana Prischepova.

Source: http://hro.org/node/23677
On the 14th of January 2016 the Justice of the Peace of the 6th judicial district of the Central District of Kaliningrad imposed a penalty of 300,000 RUB on the organization and a penalty of 100,000 RUB on its head. On the 7th of April 2016 the decision of the Justice of the Peace was reversed by a superior court while the case was submitted for a re-examination.81

On the results of the inspection of the «Baikal Environmental Wave», four reports of administrative offenses were drawn up by the Department of the Russian Ministry of Justice in Irkutsk region for failure to apply for enrollment in the list of non-profit organizations performing the functions of a foreign agent:

- one report in relation to the organization;
- three reports in relation to the three co-chairs of the organization.

On the 29th of January 2016 the Sverdlovsky District Court of Irkutsk found the organization as well as its co-chairs guilty; imposed a penalty of 150,000 RUB on the organization, and a penalty of 50,000 RUB on each of its co-chairs, thus the penalty totaled 300,000 RUB.82

On the 13th of April 2016 the appeal instance confirmed the legitimacy of the decision of the district court.83

The increase of the amount of penalties charged is closely linked to the progress of the registration of NGOs in the «foreign agents» list. The penalties imposed are insignificant for the State budget, however these expenses are too great to bear for many organizations, so they have either to suspend their activities, or get liquidated.

2.1.19. Registering an NGO at the list of the foreign agent NGOs with a view to putting a strain on an opposition politician.

An independent nonprofit “Vozrozhdenie” Social Project Planning Centre was set up in November 2002. Its director and a co-founder is Lev Markovich Shlosberg, a well-known federal-level opposition politician. The organisation carried out projects aimed at developing the Pskov region while Lev Shlosberg, then a member of the Regional Legislative Assembly, criticized actions of the governor with the ruling party, implemented an opposition policy, published the “Pskovskaya Gubernia” (Pskov Province) newspaper and in August 2014 made public the results of investigation into death of commandos from Pskov in Ukraine.

In 2014, the Regional Prosecutor’s Office made an inspection at the “Vozrozhdenie” NGO to arrive at the conclusion that the organisation was engaged in political activities and had been receiving funds from abroad, and on December 30, 2014 was, therefore, put on the “foreign agents” register of the Ministry of Justice under the head of “NGOs performing functions of “foreign agents”.

“Engagement in political activities” came in relation with a public debate on “International adoption of Russian children: what is it we have refused and where are we heading?” The debate focused on the “Dima Yakovlev’s Law” banning foreign adoption of Russian children.

“Vozrozhdenie” NGO was neither an organiser nor a participant in the debate while Lev Shlosberg spoke there in his capacity of a regional deputy (which he emphasized during the discussion put on video). This, however, did not prevent the law-enforcing bodies from treating that speech as the organization’s involvement in political activities.

The Centre challenged its registration as an NGO FA. Mr. Shlosberg represented the Centre in the Pskov City court as its attorney (he already was not the director of the organization then), which was used as a pretext for taking away his deputy status.

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81 The case is conducted by NGO Lawyers Club.
83 Source: http://www.svoboda.org/content/article/27672321.html
Later the appeal against the order from Ministry of Justice to enter the “Vozrozhdenie” NGO on the FA list was transferred to be considered by Zamoskvoretsky District Court in Moscow which denied the appeal. The appellation proceedings are still under way\textsuperscript{84}.

In this unsophisticated way did the law-enforcement bodies try to put a strain on the opposition politician by including the organisation in the FA register and creating most uncomfortable work conditions for it. This, however, was not enough so the authorities took away Mr. Shlosberg’s deputy status.

\subsection*{2.1.20. Non-cooperation with organisations registered as NGO FAs.}

The authors of this report are aware of at least two such cases.

One happened in the Kaliningrad region where a long-standing partner of an NGO put on the FA list refused to prolong a target financing agreement to go on with a joint project in the social support sphere.

The other case, in Moscow, concerns an organisation that is not on the FA list yet but is part of an organisation having a “foreign agent” status and so is apprehensive that the status might be extended to cover it as well and because of it is trying to leave that organisation.

Deliberate curtailing of contacts with organisations registered as NGO FAs on the part of their colleagues from other organisations testifies to their intention to estrange themselves from the processes destroying the civil society in the country. The hope of such organisations that the FA status will not “happen” to them can go up in smoke because arbitrary application of the unfair Law on NGO FAs may end up with assigning this status to organisations that are nowhere near it.

The split among the organisations making the civil society, the unwillingness of long-standing partners to continue co-operation and support organisations put on the FA list are the goals that the law-enforcement bodies are striving to reach in order to cause panic in the civil society and make NGO FAs lose their support.

\subsection*{2.1.21. Applying the experience of dealing with NGOs on the FA register to religious organisations.}

The “foreign agents” campaign has also been used to tighten control over existing religious organisations.

On December 9, 2015 a Federal Law binding religious organisations to report to authorities on funds received from foreign sources came into force. Repeated failure of such an organisation to submit a report will justify its closure\textsuperscript{85}.

The reporting content for such organisations that have received financial or other resources from international and foreign organisations, foreign nationals or persons without citizenship is the same as that for nonprofit organisations registered as FA:
- report on their activities,
- report on the personal composition of the management,
- report on the uses that the resources, both financial and not, including those received from international and foreign organisations, foreign nationals or persons without citizenship have been actually put to.

Besides, such religious organisations have to annually place these reports on the Internet or submit them to media.

The state has, clearly, been trying to not only obtain control and full information about foreign funding for domestic nonprofit organisations but has also imposed new obligations on

\textsuperscript{84} This case is being handled by the Lawyers’ Association «NGO Lawyers Club».

them, failure to fulfill which puts them in danger of liquidation. Such laws are very much in tune with repressive legislation restricting the human rights and freedoms in Russia.

2.1.22. Prohibiting NGOs «foreign agents» to participate in observation of the polls.

This prohibition was enacted on November 25, 2014\textsuperscript{86} and is aimed, mainly, at paralyzing the “Golos” organisations, which had been watching if election campaigns were properly carried out, including the voting process itself.

Five “Golos” organisations have been put on the FA list now (and none has been liquidated so far):

- June 5, 2014 – The “Golos” association of nonprofit organisations for protection of voters’ rights; the “Golos” regional non-governmental organisation for protection of democratic rights and freedoms;
- February 6, 2015 – the “GOLOS-Volga” interregional non-governmental foundation for development of the civil society;
- July 27, 2015 - the “GOLOS-Ural” interregional non-governmental foundation for development of the civil society;
- September 4, 2015 – the “Golos” Foundation for democracy.\textsuperscript{87}

According to § 6 of article 3 of the Federal Law of 12.06.2002 №67 “On the main guarantees of the right to vote and the right to participate in a referendum for citizens of the Russian Federation”, NGOs performing functions of a foreign agent shall not undertake activities promoting or hindering:

- nomination of individual (groups of) candidates,
- election of registered candidates,
- launching initiatives to conduct referendums,
- achieving certain results of elections or referendums,
- or participate in any way in election or referendum campaigns (i.e. exactly what the\textit{prohibition against observation at the polls} implies—\textit{authors’ note}).

This regular step towards limiting the freedom of NGOs on the FA list forced the “Golos” organisations look for other ways of observing elections but, formally, deprived them of the opportunities to carry out activities enshrined in their Charter.

Over the time that the NGO FA register has existed, none of the “Golos” has managed to leave it.

2.1.23. Influence of the repressive legislation concerning NGO FAs on exercising other freedoms.

Imposing restrictions on freedom of association, freedom of expression and freedom of assembly is a way of applying pressure on the civil society in the country.

Adoption of the unconstitutional Law on NGO FAs has enabled the government to go on with their offensive on other freedoms.

On March 20, 2016 a law introducing new restraints on public events came into force\textsuperscript{88}:
- automobile rallies were equated to demonstrations, plans to arrange which have to be made known to the authorities;

\textsuperscript{86} Federal Law of 24.11.2014 №355 «On making amendments to certain legislative acts of the Russian Federation in respect of financial reporting of political parties, electoral associations, individual candidates in elections to governmental bodies and self-governing authorities».

\textsuperscript{87} Source: http://unro.minjust.ru/NKOForeignAgent.aspx

\textsuperscript{88} Federal Law of 09.03.2016 N 61 “On making amendments to articles 2 and 7 of the Federal Law “On assemblies, rallies, demonstrations, processions and picketing”.
- now an individual planning a solitary picket has to give a three-day notice if the picketer “is going to use a rapidly erected prefabricated structure that can interfere with pedestrian and motor traffic”;

Thus, application of the Law on NGO FAs enables authorities to impose restraints on other freedoms in place in a democratic society.

2.1.24. Doubling the amount of a fine on NGOs and their leaders if they failed to pay the initial fine imposed for failure to apply for registration as NGO FAs voluntarily.

According to Russian legislation, if a person held administratively liable fails to pay the fine imposed within 60 days, the court is entitled to double the amount of the initial fine. Such a precedent has already occurred.

On August 8, 2014 the “Partnership for development” Association and its director Olga Pitsunova were fined for failure to apply for registration as an NGO FA: the organisation was fined RR 300K and its director was fined RR 100K.

Olga Pitsunova, whose income amounted to her pension, did not pay the fine that big and in January 2015 Justice of the Peace of judicial district №8 in the Kirov District of Saratov levied another fine of RR 200K.

2.1.25. Broad interpretation of the Law on FA recognizing any NGO activity as a political one.

The Ministry of Justice of the Russian Federation and Prosecutors’ Offices have been very loose in interpreting the concept of “political activities” and “foreign funding” the combination of which places an NGO on the FA list.

As the “Human Rights Resource Centre” NGO put it in March of 2015, any public activity of a nonprofit organisation is, in fact, recognized as a political one by law-enforcement bodies even though the term “political activities” in the Federal Law “On nonprofit organisations” does not extend to cover, for instance, conducting activities in the fields of science, culture, arts, health care, prophylaxis of diseases and health promotion, social care, social welfare and protection of citizens, protections of motherhood and childhood, social support for the handicapped, promotion of the healthy style of life and sports, protection of plants and animals, charity as well as activities assisting charity and voluntary work.

Meanwhile, in spite of this, the RF Ministry of Justice has recently been busy entering environmentalists, AIDS-prevention initiatives, scientific research centers and others on the FA register.

Specifically, 22 environmental organisations have been added to the list, 5 of which have already been closed down.

On May 25, 2015 two other organisations that were doing scientific projects: Dmitry Zimin’s “Dynasty” Foundation of Nonprofit Programmes and the “Liberal Mission” Scientific Foundation of Basic and Applied Research.

Inclusion of those in the FA list made Dmitry Zimin, a major donor of scientific projects, give up their financing and, effectively, put all the activities of the kind on hold in Russia.

On February 15, 2016, for the first time ever, a health care organization, the SIBALT Centre for Health and Social Protection, was registered as an NGO FA. SIBALT is a non-governmental organisation in the city of Omsk working on the AIDS-prevention projects. The Centre applied to

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90 Report “Foreign agents”: imaginary enemies and actual losses of the civil society.
91 Article 2 §6 of Federal Law of 12.01.1996 №7 “On nonprofit organisations”.
be registered as FA on its own initiative because it thought that it was engaged in political activities.

The analysis of cases where NGOs were included in the FA list shows that the main criterion for registering an organisation as such has been finance from abroad and not engagement in “political activities”, which, from law-enforcement bodies’ point of view, are almost any NGOs’ activities anyway.

The Russian Parliament is now considering a draft law, which, if adopted, will actually make it possible to regard any NGOs’ activities as political ones.92

Formally, the initiators of this draft refer to the vagueness of the notion of “political activities” found in article 2 §6 of the Federal Law of 12.01.1996 №7 “On nonprofit organisations” and unpredictable approach to its interpretation by law-enforcement bodies in respect of nonprofit organisations.

In reality, the draft is meant to legalize arbitrary application of the legislation on NGO FAs, which has been created by Ministry of Justice, Prosecutors and courts but has little in common with the rule of law.

Formally, the draft does set the criteria (spheres, forms, goals) of political activities but these criteria are such as to cover nearly any public activity of a successful nonprofit organisation, which can lead to inclusion in the FA list any one that used to or still does receive foreign funds.93

Once adopted the draft will leave no chance to any effective Russian NGOs that have received any funds from abroad, however small, since November 22, 2012 to avoid the FA mark.

However, in the evening of May 10, 2016 an amendment was made, according to which the recommended wording of the final paragraph was: “political activities shall not cover activities in the field of science, culture, arts, health care, prophylaxis of diseases and health promotion, social care, social welfare and protection of citizens, protections of motherhood and childhood, social support for the handicapped, promotion of the healthy style of life and sports, protection of plants and animals and charity activities”.

2.1.26. Impossibility to leave the list of NGO FAs.

Earlier94 the FA list contained 127 organisations, of which 30 NGOs were removed from the list due to voluntary liquidation or termination of FA functions (i.e., choosing to do without foreign funding). So, currently there are 97 operating NGOs on the list.

In 2016, so far 15 organisations have been added while the number of NGO FAs registered before December 31, 2015 was 111.

According to the official final report on the performance of the RF Ministry of Justice in 2015, “as of January 01, 2016 the register of nonprofit organisations fulfilling functions of foreign agents contains data on 111 organisations, 82 of which were put there following the results of a federal state inspection of nonprofit organizations’ activities carried out by the RF Ministry of Justice and its regional offices, 22 – on petitions by public prosecutors, 9 organisations were entered on the register on the basis of own applications”.

It should be noted that organisations encounter serious difficulties before they leave.

It was only on March 20, 2015, slightly over a year ago, that NGOs got an opportunity to leave the FA register after enactment of the Federal Law of 08.03.2015 №43 “On making...

92 A detailed analysis of the draft was provided by the Club of NGO Lawyers in their opinion of the draft of the Federal Law № 04/13/01-16/00045477 of 21.01.2016 “On making amendments to § 6 of article 2 of the Federal Law “On nonprofit organisations” in the part clarifying the idea of political activities”. http://www.hrrcenter.ru/events/detail.php?ID=1950


94 As of 10.05.2016
amendments to articles 27 and 38 of the Federal Law “On non-governmental associations” and article 32 of the Federal Law “On nonprofit organisations”. That law says that organisations can leave the register in four cases:

1) if an organisation has been closed down or went out of operation as a legal entity;
2) if an organisation submitted a request with the Ministry of Justice for removal from the register with a subsequent inspection by the Ministry of Justice revealing that the NGO had not received financial or other resources from foreign sources and (or) had not engaged in political activities on the territory of the Russian Federation for one year from the date of submission of the request;
3) if an organisation was earlier removed from the register and then re-entered again, after which filed a request with the Ministry of Justice for removal with a subsequent inspection by the Ministry of Justice revealing that the NGO had not received financial or other resources from foreign sources and (or) had not engaged in political activities on the territory of the Russian Federation for three years from the date of submission of the request;
4) if an organisation was earlier removed from the register and then re-entered again, after which filed a request with the Ministry of Justice for removal with a subsequent inspection by the Ministry of Justice revealing that the NGO not later than three months after the day of inclusion in the FA list refused to receive funds or other resources from foreign sources and returned financial or other resources to the foreign source they had come from.

In order to leave the register, NGOs rely on the first, second and fourth reason, however, in reality, the fourth one does not work: over the year after it became possible to leave the FA list via a refusal of foreign funding and a return of the money to foreign sources within 3 months from the day of inclusion in the FA register, two organisations have submitted their applications – the “ISAR-SIBERIA” Interregional non-governmental environmental foundation and the “Environmental Watch Sakhalin” Regional non-governmental organization. However, neither of the two managed to get crossed off due to a denial from the Ministry of Justice.

All the organisations which managed to leave the register either closed down or had not received funding from foreign sources for a year. No organisation has lost its FA status because it stopped its “political activities”.

On February 26, 2016 the Ministry of Justice informed that over the time an opportunity to leave the register had been available, 22 out of 120 organisations registered at that time had tried to use it. By our account, this is 18% or every sixth organisation on the list.

In 2015, the Ministry of Justice removed from the register “in view of cessation of functions of a foreign agent” 7 organisations (because they had had no funding from foreign sources for a year) as follows:

- “Kostroma non-governmental initiatives support center” Foundation,
- “GRANI” Centre for civil analysis and independent research” Foundation,
- “Youth consulting and training center” Autonomous nonprofit human rights organisation,
- “Liberal Mission” Scientific foundation for basic and applied research,
- “Environment and safety training center” Private institution in the field of supplementary vocational education,
- “Soldiers’ Mothers of St. Petersburg” Regional non-governmental human rights organisation,
- “For Human Rights” All-Russia non-governmental campaign for human rights.

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95 Source: http://article20.org/ru/node/5658/#.Vw5PhPmLSUt
96 Source: http://unro.minjust.ru/NKOForeignAgent.aspx
97 The case was handled by the lawyers' association “NGO Lawyers Club”.
As of February 26, 2016 the Ministry of Justice had not made decisions in respect of 8 organisations yet and was still running checks while 7 other organisations had been denied a removal from the register.

In 2016, the Ministry of Justice removed from the register «in view of cessation of functions of a foreign agent” (specifically, “in view of” no funding from foreign sources for a year) 4 organisations:
- “PIR” Scientific center for international research” Autonomous nonprofit organisation
- “Women’s Union of the Don” Regional non-governmental human rights organisation,
- “The club of accountants and auditors with nonprofit organizations” Nonprofit partnership,
- “ECO-LOGIKA” Rostov-on-Don city non-governmental organisation

In 2015, 14 NGOs were deleted from the FA register due to liquidation (see section 2.2.17).

Thus, out of 127 NGOs put on the FA list over the period when the Law on NGO FA has been in effect, 30 organisations have lost this status, i.e., over 23% (one out of five NGOs).

It should be noted that a removal of NGOs’ names from the public register kept by the RF Ministry of Justice takes time. For instance, “Petersburg Aegis” society for social support from St. Petersburg was put on the register on February 02, 2016, closed down on March 21, 2016, however, its name was only deleted from the register on April 26, 2016, i.e., a month after the liquidation.

The Ministry of Justice keeps the register in such a way that NGOs which have, formally, been removed from it, are still listed there so that anyone willing can find an organisation that by the decision of the Ministry of Justice have already lost its FA status in the public register as “has-been” NGOs. So, an organisation that has once entered the FA register, will stay there forever.

2.1.27. Risks of NGOs collaborating with “undesirable” organisations.

A year ago, on June 3, 2015, in Russia legislation prohibiting anyone against collaborating with “undesirable” organisations under pain of being brought to administrative or criminal liability. (For more information on “undesirable” organisations see 2.1).

On May 15, 2016 the status of an “undesirable” organisation was forced on 5 institutions as follows:
- National Endowment for Democracy;
- Open Society Institute Assistance Foundation;
- Open Society Foundation;
- U.S.-Russia Foundation for Economic Advancement and the Rule of Law;
- National Democratic Institute.

According to law, declaring activities of a foreign or international non-governmental organisations undesirable on the territory of Russia entails:
1) a ban on setting up on the territory of Russia own branches and a necessity to close down branches opened earlier
2) a refusal of banks, other loans and non-leverage financial organisations to provide services to “undesirable” organisations;

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98 Legal support was provided by the lawyers’ association “NGO Lawyers Club”.
99 Source: http://unro.minjust.ru/NKOForeignAgent.aspx
100 Source: https://egrul.nalog.ru/
101 Source: http://unro.minjust.ru/NKOForeignAgent.aspx
102 Source: http://unro.minjust.ru/NKOForeignAgent.aspx
103 Federal Law of 23.05.2015 №129 “On making amendments to certain acts of law of the Russian Federation”.
RUSSIAN NGOs AFTER the FOREIGN AGENTs LAW: SUSTAINING CIVIC ACTIVISM IN AN ADVERSE SETTING

3) a ban on dissemination of information materials published and (or) spread by an “undesirable” organisation, in particular, via media outlets and (or) the Internet as well as production or storage of such materials for dissemination purposes;

4) ban on implementation of programmes and projects within Russia.

If an NGO or its members have received funds from an organisation that was later on recognized as “undesirable” by the state or have been involved in an “undesirable” organisations in any other way (for example, in workshops, editing publications, etc.), such persons can be held administratively liable in the form of a fine:

- citizens – from 5K to 15K;
- officials – from 20K to 50K;
- organisations – from 50K to 100K.104

However, if there are elements of crime, such persons can be brought to criminal liability if a person has taken part in activities of an “undesirable” organisation and earlier within a year has already been held administratively liable for a similar offence twice.105

In this case such a person can be subjected to various kinds of punishment: from fine of RR 300K to RR 500K to imprisonment of 2 - 6 years.

Since the elements of this administrative offence and crime are worded as vaguely as possible, “involvement in activities of an undesirable organization” can include any kind of interaction with one.

By the time of writing this report there have not been initiated cases concerning “involvement in activities of an undesirable organization” in Russia yet, however, according to the “NGO Lawyers’ Club”, several organizations who have received funds for doing projects from major donors’ place on the list of “undesirables” have had to turn down such funds fast and return them to the donors.

Introduction of the new term “an undesirable organization” into the Russian legislation is a clear sign of a new boost to the FA exposing campaign aimed at curbing co-operation between Russian NGOs with NGOs abroad, in particular, cutting NFOs off from support of major donors.

2.1.28. Putting a bigger strain on NGO FAs via imposition of administrative sanctions for irregularities in reporting to state bodies.

Starting from November 21, 2012 NGO FAs106 have had to submit extended reporting to the RF Ministry of Justice and State Committee on Statistics.

Thus, apart from reporting that has to be submitted by nonprofit organisations not included in the register, they have to submit additional detailed quarterly reports as follows:107

- report on their activities,
- report on the personal composition of the management,
- report on the uses that the resources, both financial and not, including those received from foreign sources.

These reports have to be sent to the Ministry of Justice and uploaded to the website of the Ministry.

105 Article 284.1 of the RF Penal Code.
107 Article 32 § 3 of the Federal Law “On nonprofit organisations”.
The (blank) report has 36 pages\textsuperscript{108} and requires entering all the data about cash inflow and expenditure items with references to all the original documents.

It is clear that if an organisation conducts certain operations, filling in such an additional report turns into a constant pain in the neck and requires allocating resources (including funds) to do it.

What makes things worse is that having bound organisations to submit such reports, the state did not clarify either the filling or submission requirements, which causes confusion about what data are necessary and how these reports should be submitted.

Moreover, before April 15 of every following year an NGO FA must file an auditors’ report with the Ministry of Justice (even if it does not conduct any operations or receive any funds).

A copy of the auditors’ report must also be sent to a stats body either with accounting statements (i.e., not later than March 31 of the following year ) or not later than within 10 working days starting from the day after the date of the auditors’ report but not later than December 31 of the year following the reporting year.

It is obvious that if an organisation does not receive funding and not on the FA register, it still has to allocate funds to arrange for an auditors’ report, in particular, by drawing on membership fees or donations. Otherwise, it runs the risk of incurring administrative liability no matter whether it is capable of raising funds for making the reports and pay for an auditors’ report or not.

As a result, the mere fact of being registered involves a necessity to produce extra funds for reporting (on average, RR 100K a year), otherwise, the NGO and its director will be fined.

On November 25, 2012 article 19.7.5-2\textsuperscript{109} of the RF Code of the administrative offences was enacted providing for the punishment for:

- failure or late submission of such reports to the Ministry of Justice and state body on statistics;
- submission of incomplete or improperly made reports if these actions (or lack of action) do not contain criminal offence.

It should be borne in mind that failure to fill in a box in a report or doing it wrongly can lead to a reprimand or a fine on the NGO in the range from RR 100K to 300 K and RR 10K to 30K - on the director.

Technically, over a year such fines can be imposed 6 times:
- for failure, late submission or submission of incomplete quarterly reports to the Ministry of Justice;  
- for failure, late submission or submission of incomplete annual auditors’ report to the Ministry of Justice and state body on statistics.

Thus, the amount of fines on an organisation included in the FA register but not conducting any activities and economically incapable of meeting the requirements of the law on reporting can run up to RR 1.8 mln a year. Over the whole period when the law on additional reporting has

\textsuperscript{108} The order from Ministry of Justice of Russia of 16.04.2013 №50 “On the format and time of submitting to the Ministry of Justice of the Russian Federation of reports from nonprofit organisations performing functions of foreign agents”.

been in effect, several NGOs have been held liable for the offences above. All the cases were dismissed\textsuperscript{110} and ended up with reprimands\textsuperscript{111} or fines\textsuperscript{112}.

At the end of April 2016, the Ministry of Justice launched a new campaign of imposing administrative sanctions on NGO FAs under article 19.7.5-2 of the Code of administrative offences of the Russian Federation.

By the time this report was being written, several organisations in various parts of Russia received notices urging them to arrive in Moscow to the Ministry of Justice for drawing up an administrative offence report - NGO “Dalnevostochny Centre” (Vladivostok), NGO “Centre for Independent Sociological Research” (St. Petersburg), “ECO-LOGIKA” Rostov city non-governmental organisation (Rostov-on-Don) and others.

The state is, clearly, putting to use all the repressive mechanisms to restrain the civil activity of NGO FAs, in particular, using various opportunities to impose considerable fines on them for failure to meet the reporting requirements, i.e., offences of a formal not substantive nature.

It should be noted that the harshest sanction under article 19.7.5.-2 of the Code of administrative offences of the Russian Federation is 60 (!) times higher than the maximum sanction for NGOs which is not on the register but have committed the same offences.\textsuperscript{113} It seems that this tendency will continue to grow.

2.2. «Undesirable» organisations and a sharp cut in financing NGOs

2.2.1. «Undesirable» organisations.

A year ago a Law on “undesirable” organisations” was adopted in Russia\textsuperscript{114}, the purpose of which is to deprive the Russian civil society of financing from foreign sources and administrative termination of “undesirable” organisations’ activities in the country. Passing such a law flowed naturally from the campaign of exposing “foreign agents” and destroying the independent civil society.

Over this period, 5 institutions were included in the register of «undesirable» organisations:
- The National Endowment for Democracy;
- OSI Assistance Foundation;
- Open Society Foundation;
- U.S. RUSSIA Foundation for Economic Advancement and the rule of law\textsuperscript{115};
- National Democratic Institute.

\textsuperscript{110} Judgment in the case of an administrative offence of 28.07.2015 passed by an acting Justice of the Peace of the judicial district № 31 of the Samarsky judicial district of Samara-city Justice of the Peace of the judicial district № 5 in Zheleznodorozhny judicial district of Samara-city D.A. Nikanorov

\textsuperscript{111} Judgment in the case of an administrative offence №5-444/2015 of 09.10.2015, вынесённое by the Justice of the Peace judicial district №2 in Zheleznodorozhny judicial district of Samara-city N.A. Orlova

\textsuperscript{112} Judgment in the case of an administrative offence of 14.01.2015, passed by the Justice of the Peace of the judicial district № 8 of Kirovsky district of Saratov-city N.G. Sedova.

\textsuperscript{113} See art.19.7 of the Code of administrative offences of the Russian Federation providing administrative liability for an analogous offence in the form of a reprimand or imposing an administrative fine on citizens in the amount from one hundred to three hundred rubles; on officials – from three hundred to five hundred rubles, on legal entities – from three thousand to five thousand rubles.

\textsuperscript{114} Federal Law of 23.05.2015 №129- “On making amendments to certain acts of law of the Russian Federation”.

\textsuperscript{115} In 2015 it was removed from the register of branches and affiliates of international organisations, foreign nonprofit non-governmental organisations kept by the RF Ministry of Justice pursuant to §1 part 3 art. 3.1 of the Federal Law of 28.12.2012 №272- “On compensatory remedies for persons involved in violations of fundamental human rights and freedoms, rights and freedoms of citizens of the Russian Federation”. Source: Report of the RF Ministry of Justice “On the state supervision over activities of nonprofit organisations to be exercised by the Ministry of Justice of the Russian Federation and on effectiveness of such supervision in 2015”.

33
Each of these has provided a serious support to the third sector in Russia promoting democratic values and carrying out projects aimed at implementing innovative experience in various spheres of social life.

It is noteworthy that introduction of the “undesirable organisations” idea came at the same time as adoption of several legislative initiatives that later became laws.

**Stage 1. “Foreign agents”**.

On November 21, 2012 the Law on NGOs performing functions of “foreign agents” came into force.  \(^{116}\)

**Stage 2. Limiting the rights of US citizens and organisations that they have set up.**

On January 01, 2013 “Dima Yakovlev’s Law” was enacted \(^{117}\) limiting the rights of US citizens put on a special list made by the RF Ministry of Foreign Affairs.

The restrictions include:
- a ban on entering Russia;
- asset freeze within Russia, a ban on making deals and managing property in the country;
- suspending activities of any organisations if they are under control of US citizens on the list in question.
- a ban on adoption of children by US citizens.

The same law enables the RF Ministry of Justice to suspend activities of organisations (both nonprofit and commercial ones) if they satisfy two criteria:
1) participation in political activities;
2) receiving grant money or other property from US citizens or implement in Russia projects and programmes jeopardizing RF interests.

The two criteria above were defined quite vaguely and allow for interpreting them as widely as possible since the concept of “political activities” has not been cleared up for the purposes of this law so it is the concept of “political activities” set by the law-makers for NGO FAs that is used here.

Besides, even with no financing the very implementation of projects and programmes in Russia can result in suspension of the organization’s operations.

This Law prohibits Russian nationals having US citizenship from taking part in activities of such NGOs. Otherwise such organisations’ operations might also be suspended.

At the same time the organisations placed on the list above are subjected to:
- suspension of their rights as mass media founders,
- a ban on initiating, holding mass actions and public events and participating in them,  
- a ban on using bank accounts and deposits,
- having its property seized after a court order following a request from the RF Ministry of Justice.

“Dima Yakovlev’s Law” has only applied to NGOs related to the USA in some way.

**Stage 3. “Undesirable” organisations.**

On June 3, 2015 the Law “on undesirable” organisations was enacted in Russia \(^{118}\) to introduce amendments to the “Dima Yakovlev’s Law”.

This law:
- has introduced the concept of an “undesirable” organisation;

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118 Federal Law of 23.05.2015 №129- “On making amendments to certain acts of law of the Russian Federation”.

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- provides for administrative liability\textsuperscript{119} for an “undesirable” organisation’s operations in Russia; either for participation in its operations; or violation of bans set for “undesirable organizations”. Such a violation causes an administrative fine on ordinary citizens of RR 5K to RR 15K; on officials – RR 20K to RR 50K while on legal entities -RR 50K to RR 100K;

- provides for criminal liability\textsuperscript{120} for managing operations of an “undesirable” organisations within the Russian Federation, or for participation in its operations committed by a person that have already been held administratively liable twice for such a violation within a year. Such a violation is punished differently: from fines for citizens from RR 300K to RR 500K up to imprisonment for 2 - 6 years.

Under this law an «undesirable» organisation is a foreign or international non-governmental organisation which poses a threat for the constitutional foundation of the social order in Russia, its defensive ability or state security.

Decision to recognize an organisation as “undesirable” is taken by the Prosecutor General of Russia or his deputies after obtaining an approval from the Ministry of Foreign Affairs.

After that this decision is forwarded to the RF Ministry of Justice which enters this organisation on the corresponding list that is placed on the official website of the Ministry. From this point on that information on recognizing this organization “undesirable” is considered public and from now on the organization and those involved in its activities are liable to face the legal implications of restraint and termination of their operations.

Among the restraints on «undesirable» organizations is:

1) a ban on setting up (opening) within Russia their branches and an obligation to close down the ones opened earlier

2) a refusal of banks, other leverage and non-leverage financial organisations to provide services to “undesirable” organisations;

3) a ban on dissemination of information materials published and (or) spread by an “undesirable” organisation, in particular, via media outlets and (or) the Internet as well as production or storage of such materials for the dissemination purposes;

4) ban on implementation of programmes and projects within Russia.

Currently the Russian Parliament\textsuperscript{121} is considering a draft\textsuperscript{122} providing for introducing a ban on “undesirable” organisations on creating Russian legal entities or participating in them.\textsuperscript{123}

The Russian legislation, therefore, creates conditions where the state can make an extrajudicial decision recognizing this or that international or foreign organisation undesirable on the territory of Russia, which will mean it will have to quickly discontinue all its projects and programmes in Russia, withdraw from commercial or nonprofit organisations it was a participant (member) in, and Russian NGOs that have co-operated with such an organisation will have to immediately stop co-operation with such “undesirable” organisations or they can be held administratively or criminally liable.

Adoption of the legislation on “undesirable” organisations is targeted at destroying sources of financing independent NGOs in Russia, which, given the absence of domestic financing, will result in a sharp reduction of the number of registered NGOs in Russia. Thus the civil society is going to be destroyed.

\textsuperscript{119} Article 20.33 of the Code of administrative offences of the Russian Federation.
\textsuperscript{120} Article 284.1 of the Criminal Code of the Russian Federation.
\textsuperscript{121} Source: http://www.bbc.com/russian/news/2016/04/160426_russia_unwanted_ban
Yet certain activists cannot put up with losing their organisations so they will conduct their activities within pressure groups.

By adopting the legislation on “undesirable” organisations, the Russian state is intent on liquidating structural elements of the civil society, exposing specific individuals interested in development of the civil society, creating for them personal risks of prosecution. It is obvious that following destruction of independent NGOs the Russian state will go on with applying pressure on individuals who have gathered together in pressure groups to go on with their activities.

If the draft\textsuperscript{124} regarding a ban on leaving Russia for a period of 5 years for Russian citizens (who have received from the Russian Security Service an “official admonition against actions creating conditions for commission of crime”, including extremist ones) is adopted, some activists will remain at the state’s gun point for many years with no chance to receive asylum in safe countries. Recently, reposting in social networks\textsuperscript{125} or expressing own opinion at public events\textsuperscript{126} by both activists and citizens not engaged in public activities has in many cases resulted in their authors found liable for extremism.

This draft put forward by Yarovaya and Ozerov on May 10, 2016 got an approval of the Security and Anti-Corruption Committee of the Lower Chamber in Parliament\textsuperscript{127}.

The Russian state is, clearly, trying to ban (and it has already happened) the work of major donors in Russia depriving independent NGOs of their international support and not giving them any national financing in return. Yet, now more than ever, the civil society in Russia needs support if it is to preserve its facilities, human capital and experience.

Failing that there will remain no more than 10 NGOs, really independent institutions of the civil society, which will never be able to cope with the major problems in the sphere of human rights and address the topical issues that the society is facing and this will be a turning point, after which the society will lapse back into arbitrary rule of the state.

2.2.2. A sharp decrease in NGO financing.

Currently, the Russian state has divided all NGOs into two big groups: loyal (useful) and disloyal (useless) for the rule.

Loyal NGOs enjoy considerable preferences from the state whereas independent NGOs face trouble.

Adoption of legislation on “undesirable” organisations in 2015 urged the major donors to leave Russia so domestic NGOs faced a sharp decrease in financing for their projects and programmes, which, in turn, has brought down the level of their activities in human rights protection and solving topical problems the society is confronted with.

After an analysis of NGO FAs’ sources of finance, the state singled out the biggest donors and made ousting them from the country its top priority.

As a result, not only the 5 “undesirable” organisations mentioned above have stopped funding NGOs (see §2.1. of the report) but also other big donors of the Russian nonprofit sector to avoid the brand of an “undesirable” organisation with its negative connotation.

Specifically, Russian NGOs have lost the support of MacArthur Foundation\textsuperscript{128}, Charles Stewart Mott Foundation\textsuperscript{129}. Information bureaus of the Nordic Council of Ministers have


\textsuperscript{125}\textit{Source:} http://www.bbc.com/russian/russia/2016/02/160225_smj_regional_extremism_courts

\textsuperscript{126}\textit{Source:} http://www.kommersant.ru/doc/2865178

\textsuperscript{127}\textit{Source:} https://tvrain.ru/news/komitet_gosdumy_podderzhkal_antiterroristicheskie_popravki-408982/

\textsuperscript{128}\textit{Source:} https://www.macfound.org/about/people/president/

\textsuperscript{129}\textit{Source:} https://lenta.ru/articles/2015/08/01/undesirable/
RUSSIAN NGOs AFTER the FOREIGN AGENTS LAW: SUSTAINING CIVIC ACTIVISM IN AN ADVERSE SETTING

stopped their operations in Russia after such bureaus in St. Petersburg\textsuperscript{130} and Kaliningrad were placed on the FA register.\textsuperscript{131} Besides, Dmitry Zimin’s Foundation that had been providing support for the Russian science was also declared an FA on 25.05. 2015 and stopped its work.\textsuperscript{132}

According to the RF Ministry of Justice, in 2015 NGOs on the FA list received RR 950 mln from foreign sources.\textsuperscript{133}

<table>
<thead>
<tr>
<th>№</th>
<th>The country of the donor’s registration</th>
<th>Amount of finance for Russian NGOs, mln, roubles</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Great Britain</td>
<td>391</td>
</tr>
<tr>
<td>2</td>
<td>USA</td>
<td>111</td>
</tr>
<tr>
<td>3</td>
<td>Liechtenstein</td>
<td>77</td>
</tr>
<tr>
<td>4</td>
<td>Denmark</td>
<td>50</td>
</tr>
<tr>
<td>5</td>
<td>Norway</td>
<td>44</td>
</tr>
<tr>
<td>6</td>
<td>Cyprus</td>
<td>39</td>
</tr>
<tr>
<td>7</td>
<td>Belgium</td>
<td>23</td>
</tr>
</tbody>
</table>

According to the data from the RF Ministry of Justice,\textsuperscript{134} the list of countries whose organisations had provided financial support largely corresponds to the list of major donors presented in the report of the Human Rights Resource Center (March 2015). The principal donors of Russian NGOs in 2015 were:

<table>
<thead>
<tr>
<th>№</th>
<th>Name of donor</th>
<th>Amount of finance for Russian NGOs, mln, roubles</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Open Society Foundation Institute</td>
<td>77</td>
</tr>
<tr>
<td>2</td>
<td>Secretariat of Nordic Council</td>
<td>39</td>
</tr>
<tr>
<td>3</td>
<td>MacArthur Foundation</td>
<td>37</td>
</tr>
<tr>
<td>4</td>
<td>Nationalй foundation в поддержку democracy</td>
<td>36</td>
</tr>
<tr>
<td></td>
<td>Total:</td>
<td>305</td>
</tr>
</tbody>
</table>

Thus, all the major donors in 2015 stopped financing the civil society in Russia, which confronted it with a challenge of surviving and continuing with its activities aimed at the support of human rights values and addressing burning problems in the Russian society.

Russian business hit hard by the economic crisis has not been providing funds for independent NGOs either.

Under the circumstances, the Russian civil society feeling constant pressure from the state and its advances on human rights cannot survive unless it is provided with urgent help, in particular, unless a set of measures is taken to secure financing of the Russian civil society.

Importantly, the state depriving independent NGOs within the civil society of funds for ongoing projects is providing nearly none of own finance meanwhile allocating more and more funds to loyal NGOs. Starting from adoption of the Law on NGO FAs, the state increased the amount of resources for loyal NGOs:
- in 2013 – 2.32 bln roubles\textsuperscript{135};
- in 2014 – 2.698 bln roubles\textsuperscript{136};

\textsuperscript{130}Placed on the register of NGO FAs 20.01.2015 Source: http://unro.minjust.ru/NKOForeignAgent.aspx
\textsuperscript{131}Placed on the register of NGO FAs 13.05.2015\textsuperscript{r} Source: http://unro.minjust.ru/NKOForeignAgent.aspx
\textsuperscript{132}Source: http://www.interfax.ru/russia/445988
\textsuperscript{133}Source: http://www.vedomosti.ru/politics/articles/2016/05/11/640573-kritika-zakona-inostrannih-agentah-yavlyaetsya-povodom-priznaniya-organizatsii-agentnom
\textsuperscript{134}Report of the RF Ministry of Justice “On the state supervision over activities of nonprofit organisations to be exercised by the Ministry of Justice of the Russian Federation and on effectiveness of such supervision in 2015”.
\textsuperscript{135}Source: http://www.portal-nko.ru/finance/konkurs/16500
\textsuperscript{136}Source: http://www.portal-nko.ru/finance/konkurs
In 2015 it is planned to spend 4.6 bln roubles\textsuperscript{138} from the Federal budget on state support for NGOs and 9 operators are going to be responsible for its distribution.

It is common knowledge that independent organisations of the civil society often criticizing government for violations of human rights and addressing such issues, as a rule, do not get any finance for their projects from the government that has its own understanding of “human rights”. The way granted were awarded in 2006 - 2015 was a clear sign of it.

For instance, in the period from 2013 to 2015 among the main recipients were organisations associated with the Russian Orthodox Church which received at least 63 grants totaling over RR 256 mln.\textsuperscript{139} Besides, youth organisations close to the government won big grants: “Young Guards of the United Russia”, “StopKham”, «“Khrushi protiv”, “Agents”, “Rossia Molodaya”.\textsuperscript{140} The bike club «Nochnye Volki” (Night wolves) in 2013-2015 received via affiliated organisations presidential grants of RR 57.8 mln.\textsuperscript{141}

Among other state grant winners in 2015 were the Eurasia Youth Union, the Institute of Eurasian Research and the “Eurasian Co-operation Development” Foundation. According to the Centre for Economic and Political Reform, this became possible since “at present Eurasianism, to a large extent, means antiliberalism, anti-Westerner mood, positive perception of the Soviet legacy and the idea of multipolar world”.\textsuperscript{142}

According to the survey results by the Centre for Economic and Political Reform\textsuperscript{143}, which analyzed the mechanisms of allocating state grants, “conformance of the winning applications to the dominating political trend, factual subsidizing of pro-government civic and quasi-civic structures shows that this mechanism is rather meant to serve the interests of the state than those of the civil society”.

Apart from presidential grants, state-loyal NGOs (as a rule, not being actual institutions of the living civil society of Russia but GoNGOs) are going to be given one more opportunity to receive funds as providers of socially beneficial services\textsuperscript{144}. In March of 2016, a draft to this effect was introduced to the Federal Duma of Russia.

According to the draft\textsuperscript{145} “in order to become a provider of socially beneficial services an NGO has to have a record of providing socially beneficial services of proper quality for at least one year, must not be on the NGO FA register (i.e. not receiving foreign financing and not engaged in political activities (any public activities) – the way they are interpreted by law-enforcement bodies) and not have any debts of taxes, duties or other mandatory payments RF laws provide for.

The state has been pushing out and destroying independent NGOs while supporting loyal organisations thus replacing independent civil society with organisations which will assume an

\textsuperscript{137} Source: http://grants.oprf.ru/
\textsuperscript{138} Source: http://www.vedomosti.ru/politics/news/2016/04/19/638218-gospodderzhki-nko
\textsuperscript{139} Source: https://lenta.ru/news/2015/12/21/grant/
\textsuperscript{140} Source: https://lenta.ru/news/2015/12/21/grant/\textsuperscript{141} Source: https://lenta.ru/news/2015/12/21/grant/
\textsuperscript{142} Source: http://cepr.su/2015/12/21/issledovanie-cepr-ktostopoluchaet-prezidentskie-granty-nko/
\textsuperscript{143} Source: http://cepr.su/wp-content/uploads/2015/12/%D0%9F%D1%80%D0%B5%D0%B7%D0%B8%D0%B4%D0%B5%D0%BD%D1%82%D1%81%D0%BA%D0%B8%D0%B5-%D0%B3%D1%80%D0%B8%D0%BD%D1%82%D1%80%D0%B0%D0%BE%D1%89%D1%80%D0%B5%D0%BD%D0%B8%D0%BD%D0%B0%D0%BE%D1%87%D0%B8%D0%BD%D0%B5%D1%81%D1%82%D0%B8-%D0%B2%D0%B8%D0%BD%D1%82-%D0%BE-%D1%81%D1%82%D0%BE-%D0%B3%D1%80%D0%B8%D0%BD%D0%B5%D1%81%D1%82%D0%B8.pdf
\textsuperscript{144} Source: http://www.asi.org.ru/news/125059/
\textsuperscript{145} Source: http://www.asi.org.ru/news/125059/
uncritical position towards governmental decisions and even support its efforts to dismantle human rights institutions in the country.

These steps are, therefore, have an aim of creating a mock civil society, which might have far-reaching consequences: support by loyal organisations for decisions of an authoritarian power dismantling democratic institutions in Russia, which, in turn, may place Russia behind all the democratic countries in terms of respect for human rights.

However, Russian independent NGOs are alive and feel an acute need for support from foreign organisations to go on with activities, and need it in the nearest future. Then, possibly, the civil society will come to life and become the stronghold of human rights protection and addressing the issues of public concern.

With no help from foreign NGOs Russian civil society will die quite soon and its restoration will take a long time.

Now the results of democratic reforms and many years of activities to recognize and observe human rights can be preserved by assistance to Russian NGOs that have come under unprecedented pressure from the state.

2.3. Closure of human rights institutions.

Against the background of persecution of independent NGOs and human rights activists and sharp deterioration of human rights respect in Russia, in March of 2016 the Office of the High Commissioner for Human Rights was closed up in Moscow.146

The High Commissioner for Human Rights Zeid bin Ra’ad was quite concerned with the closure of his office in Moscow147, was not ready for it and expressed hopes that his representative in Russia will continue their work148. Also, the High Commissioner for Human Rights spoke about the necessity of maintaining closer contacts with Russian authorities, in particular, to discuss the “contracting sphere (of activities) for human rights activists and non-governmental organizations”.

In his turn, the RF resident commissioner at the office of UN and other international organisations in Geneva Alexey Borodavkin said that the representative of the Office of the High Commissioner for Human Rights successfully discharged of their mandate, which mostly implied provision of technical assistance to Russia in implementing projects on education in the sphere of human rights protection and promotion of national human rights institutions. In the official’s opinion, at the current stage these institutions are in place and successfully operating so a decision had been taken that the time came to bring the mission of its representative in Russia to a close149.

Obviously, liquidation of international human rights institutions in Russia does not encourage progress in recognition and observance of human rights, carrying out effective reforms in this field and development of national human rights institutions.

At the same time as the Moscow Office of the High Commissioner for Human Rights was closed, the authorities, effectively, “froze” the institution of the Human-Rights Ombudsman in Russia.

On March 25, 2016 deputies of the RF State Duma made a decision to terminate the powers of the National Ombudsman Ella Panfilova from March 28, 2016 due to a transfer to another appointment with the Central Electoral Commission of Russia.150

146 Source: http://grani.ru/Politics/Russia/m.249420.html
148 Source: http://tass.ru/politika/2729675
A month later on April 22, 2016 deputies of the Lower Chamber of the Russian Parliament appointed Major General of the police and previously a deputy of the State Duma Tatiana Moskalkova to be the next Human-Rights Ombudsman.\footnote{Source: http://ombudsmanrf.org/news/novosti_upolnomochennogo/view/tatjana_moskalkova_naznachena_upolnomochennym_po_pravam_cheloveka_v_rossijskoj_federacii}

Before her election to the Russian Parliament Tatiana Moskalkova worked as first deputy of Legal Department at the Ministry of Internal Affairs. When in Parliament, Tatiana Moskalkova suggested\footnote{Source: https://meduza.io/feature/2016/04/22/generala-ne-poshlesh} renaming the Ministry of Internal Affairs as Cheka.\footnote{Cheka (the All-Russian Extraordinary Commission for Combating Counter-Revolution, Speculation, and Sabotage) was the first of a succession of Soviet State Security organisations which carried out repression in the early years of the Soviet power. Source: https://ru.wikipedia.org/wiki/%D0%92%D1%81%D0%B5%D1%80%D0%BE%D1%81%D1%81%D0%88%D0%B9%D1%81%D0%BA%D0%B0%D1%8F_%D1%87%D1%80%D0%B5%D0%BD%D0%B2%D1%8B%D1%87%D0%B0%D0%B9%D0%BD%D0%B1%8F_%D0%BA%D0%B8%E0%8C%BD%81%81%D0%88%D1%8F_%D0%B0%8E%D0%BF%D0%BE_%D0%B1%D0%BE%D1%80%D1%8C%D0%B1%D0%85_%D1%80%D0%BE%D0%BD%D1%82%D1%80%D1%80%D0%B5%D0%B2%D0%BE%D0%BB%D1%8E%D1%86%D0%B8%D0%B5%D0%B9_%D0%B8%D0%BD%D0%B1%82%D0%B0%D0%BE%D1%82%D0%B6%D0%B5%D0%BC_%D0%BF%D1%80%D0%B8_%D0%A1%D0%9D%D0%A1_%D0%9A_%D0%AD%D0%A4%D0%A1%D0%9A}

When taking the office Tatiana Moskalkova said to the deputies who had elected her: “I see my goal as strengthening the authority of the National Ombudsman in the international arena. It is essential because recently the human rights issue has been used quite actively by some Western and American structures as a tool for blackmail, speculation, threats and attempts of putting pressure on Russia. And the National Ombudsman can and should stand up against false, unsubstantiated accusations aimed at Russia”.\footnote{Source: https://meduza.io/feature/2016/04/22/generala-ne-poshlesh}

As it was pointed out by one of the media,\footnote{Source: http://www.rosbalt.ru/federal/2016/04/22/1509103.html} the new Ombudsman made it clear from the outset that she did not share the so called “Western values”, the protection of which is the mission of most Russian human rights organisations. It appears that respect for political rights and freedoms of citizens and the related problems of law-enforcement bodies persecuting civil rights activists and the obstacles that the government has been putting in the way of nonprofit organisations is not at the top of Ms Moskalkova’s agenda either”.

The top priority in the new Ombudsman’s work, according to her, is going to be protection of citizens’ labor and social rights within the country and securing the Russian nationals living abroad. “Russian schools are closing down, Russian citizens’ elementary political rights are infringed upon, and the Ombudsman must deal with these issues – they are going to be a new component of work”, said Tatiana Moskalkova before she was appointed the National Ombudsman of Russia.

In her first month in office the new National Ombudsman did not demonstrate any noticeable results of her work but bearing in mind her statements and the police background one should hardly expect any qualitative shifts in tackling the existing human rights issues, including those guaranteed by the Convention on human rights and fundamental freedoms.

It has to be stated that the new National Ombudsman of Russia is not very likely to protect NGOs and activists from persecution, which, if true, will essentially take away the human rights status from the National Ombudsman institution.

If that is the case, there will be no state-run human rights institution instilling in various social spheres the human rights values guaranteed in international legal documents except for the Council for Human Rights and Development of Civil Society under the President of Russia that does work in close contact with human rights activists but has very limited influence.

\footnote{Source: https://meduza.io/feature/2016/04/22/generala-ne-poshlesh}
2.4. Pressure on NGOs, their leaders and civil activists.

Pressure on NGO leaders is growing every day. Human Rights Watch in their report point out that “the authorities portray human rights activists as sort of enemies of the Russian people, who act according to some anti-Russian agenda using money of their foreign masters”.\textsuperscript{156} Tatiana Lokshina, programme director of the organisation says that “The Kremlin is, quite clearly, intent on whipping up anti-Western hysteria, “witch-hunt” and intimidation of critics”.\textsuperscript{157}

The position of those in power in Russia, who do not share human rights values, is understandable: human rights activists, as a bullhorn of the civil society, inform about numerous violations of human rights and growing pressure on personal rights and freedoms of everyone in Russia. Because of this they are out of favor with the authorities. They will not let hush up the tendencies and processes initiated by the government, designed at strengthening the authoritarian trend and are leading to isolation of the country from the world outside, building a police state and, eventually, - to suppression of personal freedoms of individuals, intrusion of state into the sphere of private interests having nothing in common with the necessity of protecting public interests.

On the one hand, authorities would like to have less talk in the society about human rights and their violations to be able to go on suppressing personal freedoms so that pluralism becomes a thing of the past. A mass where there is no variety of opinions is more manageable. In other words, all the members of public must be loyal to the regime that ignores human rights putting them under a bigger pressure. At that, those who disagree with such a position must shut up or leave the country where they were born, grew up and were going to live in. As a result, it is mostly those who, as a rule, lack critical capacity when looking at reality and are more manageable without realizing that their rights and the rights of their near and dear are being violated that can stay in the country.

To achieve such goals the regime is trying out various methods: either civil activists are persecuted using legal methods (with no effective independent judiciary in place) and far-fetched pretexts or the authorities create unbearable conditions for the most active representatives of the civil society so that they cannot exist in Russia any longer and have to leave the country.

Among the “techniques”, there are numerous audits of independent NGOs (sometimes parallel ones), inspiring spy mania, ramping up the campaign to expose imaginary “foreign agents”, creating a bogey image of an “undesirable organization” (that has made huge investment to support science and education in Russia), endless summons on NGO leaders and activists to law-enforcement offices for “conversations”, using manageable media to create a negative public attitude to NGO and their leaders’ actions, initiation of administrative and criminal proceedings, etc. In the new unbearable atmosphere, the voices of human rights activists and civil activists cannot be heard.

2.4.1. Pressure on NGO leaders and activists.

On May 12, 2016 Lilia Shibanova, the founder of the “Golos” Association and a member of the Council on human rights under the President was got off the Moscow-bound train on the Lithuanian-Belorussian border with the aim of a personal security check. After she was detained the connection with her was lost until the next day when she became available for calls again. It is worth mentioning that due to increased pressure Lilia Shibanova has been living in Vilnius. According to her comments, “It appeared there had been a signal that I was carrying the billions

\textsuperscript{156}Source: https://www.hrw.org/ru/news/2016/01/27/285950

of dollars that they keep trying to find in nonprofit organisations... *What has happened shows that such signals have probably been sent out not only about me*.

Strain is often put not only on organisations but on individuals. The flat and pension of a member the Samara branch (of the Interregional public foundation for development of civil society “GOLOS-Volga”) Lyudmila Kuzmina were distrained. It is crucial that the Council on human rights get involved in the assessment of the lawless situation that the “Golos” Association and some others have found themselves.158

On May 6 and 10, 2016 Valentina Cherevatenko, leader of the “Women’s Union of the Don” Regional non-governmental human rights organisation 159 and “Women of the Don” Foundation for Development of Civil Society and Human Rights160 received subpoenas to arrive at the Office of Investigations161. The pretext for the summons was a check that the investigator was running, allegedly, in respect of “malicious evasion” of fulfilling obligations provided for in the law on “nonprofit organisations performing functions of foreign agents” concerning alleged violations on the part of the two NGOs above, in which Valentina Cherevatenko chairs the Steering Council and the Board, respectively.

Both the organisations, on the one hand, considering their adding to the FA register and imposing fines unlawful resorted to the right of protection and appealed against them. On the other hand, they conscientiously performed all obligations in compliance with the NGO FA legislation: submitted to the Ministry of Justice the required reports and results of auditors’ checks, informed the public about the fact of their inclusion in the register. The obligation to pay administrative fines had also been fulfilled.

As a result, Valentina Cherevatenko may become the first person to be held criminally liable under article 330.1 of the RF Penal Code (“malicious evasion of fulfilling obligations provided for the RF legislation on “nonprofit organisations performing functions of foreign agents”). This article was enacted in 2012 in the package of legislative changes related to “NGOs performing functions of foreign agents” and provides for punishment with a maximum of over two years of imprisonment.

According to an assessment of human rights activists162, the provision providing for criminal liability for “malicious evasion of fulfilling obligations provided for the legislation on “nonprofit organizations performing functions of foreign agents” does not conform to the legal principles of formal certainty and proportionality and so is not applicable and, therefore, must be repealed.

Before the Cherevatenko’s case this article was “dead”, however, as pressure on civil leaders is growing, the state is engaging all the mechanisms.

The attempt to hold leader of an NGO FA criminally liable is, of course, an alarming symptom that poses a question of whether a law-abiding NGO can carry out its mission safely, which is indicative of real hazards for human rights activists in Russia today.

In April of 2015, Evgeniya Chirikova, leader of campaign for defense of the Khimky Forest, left the country. In 2007 together with other “green” activists she took part in the campaign to defend the Khimky Forest from felling to make way for a new motorway near Moscow and in 2011 she arranged for a civil forum “AntiSeliger” and was a member of the Co-ordination Council of opposition. In 2012 she was awarded a Goldman Environmental Prize, which is one of the biggest prizes in the world available for environmentalists.163

158 Source: http://www.svoboda.mobi/a/27732553.html
159 It was entered on the list of NGO FAs on 05.06.2014 and removed from it on 29.02.2016. Source: http://unro.minjust.ru/NKOForeignAgent.aspx
160 It was entered on the list of NGO FAs on 27.10.2015 Source: http://unro.minjust.ru/NKOForeignAgent.aspx
161 Office of Investigations №7 (stationed in Rostov-on-Don) of the Main Investigations Directorate of the RF Investigative Committee. Source: http://publicverdict.org/topics/appeals/12176.html
162 Source: http://publicverdict.org/topics/appeals/12176.html
In the course of the campaign the defenders of the Khimky Forest managed to alert the general public and authorities to the problem of destroying nature in the Moscow suburbs but the motorway was built anyway while Evgeniya came under pressure. In 2015 she informed that child services were trying to take away her children.\textsuperscript{164} Earlier someone sent letters to clients of her husband’s company’s requesting them not to use its services.

Since spring of 2015 Evgeniya, apprehensive for her children’s future, has been living in Estonia.\textsuperscript{165}

On December 11, 2015 the Kaliningrad regional NGO for development of the women’s community “The Women’s World” was put on the FA register.

Until then the organisation had taken part in events initiated by the governor of the Kaliningrad region, its activities had had support from the Federal and local governments, some of the NGO’s representatives were members of numerous public councils attached to authorities and had been awarded moderate grants for its activities. It was by no means strange as “«The Women’s World” ” had been one of the few organizations driving forward the civil society in the region. Besides she had been raising such important social issues as prevention of violence against women, development of entrepreneurship and improvement of the region’s tourist attractiveness.

However, after the organisation had been stigmatized as an FA the state authorities dramatically reduced communication with the organization while the governor expelled representatives of “The Women’s World” from the public council attached to his office.\textsuperscript{166}

Also in 19 days after putting “The Women’s World” on the FA register, the governor made an urgent amendment to the Provision on public affairs council under the governor of Kaliningrad region stipulating that “representatives of nonprofit organisations performing functions of foreign agents cannot be members of this council”.\textsuperscript{167}

At the same time one NGO—a long-standing partner of that organisation—refused collaborating with “The Women’s World”.

In January 2016 the organisation’s president Oksana Prishepova was not allowed to cross the border so that she could not participate in the “Open World” programme. In May 2016 a municipal organisation forced the vice-president Julia Bazan retire from the permanent job in the municipal system of teenage education.

Thus, “The Women’s World” deprived of assistance from colleagues and finance organisations was subjected to massive pressure of the state for half a year because of its FA status the state stuck to it. Legal support is being provided by the “NGO Lawyers’ Club” Association.

“The Planet of Hope” human rights environmental NGO starting from 2000 protected the rights of radiation accident victims at the “Mauk” industrial company in the town of Ozersk in Chelyabinsk region.

In April 2015 the organisation was included in the FA register and from that moment on both the organization itself and its leader Nadezhda Kutepova came under a new cycle of pressure.

In May 2015 the organisation was fined RR 300K for a refusal to voluntary get registered as an FA. On the day following the hearing a state-run Federal TV channel broadcasting all over Russia said that the organisation had been engaged in “industrial espionage”.\textsuperscript{168}

\textsuperscript{165} Source: http://www.bfm.ru/news/291058
\textsuperscript{166} Source: http://gov39.ru/zip/u196_30122015.pdf
\textsuperscript{168} Source: http://www.bbc.com/russian/russia/2016/04/160412_russian_political_refugees_kutepova
In July 2015 a new programme came out in which reporters talking about “The Planet of Hope”’s activities showed the block of flats where Nadezhda Kutepova lived and her flat so she began getting letters with threats and left Russia.169

Here is how Nadezhda Kutepova comments: “in the news they say that we are carrying out some subversive activities aimed at the collapse of Russia”.170 “This as well as a court’s decision saying that our organisation’s activities were at variance with security of Russia... made me go to avoid an arrest for treason and espionage”.171

The former ombudsman in Chelyabinsk region Alexey Sevastianov said that Nadezhda got into trouble in her native Ozersk after the attention that the Federal media paid to her: “Media people came to her house, shot the entrance door and her neighbors made comments. As far as I know, her children started feeling a worse attitude. At school talk began that she was an agent although it is not true – hers is just an NGO. She had grounds to be apprehensive for her and her children’s lives – she has a large family”.172

In July 2015 Nadezhda Kutepova with three children left Russia and in April of 2016 received an asylum in France.173

On January 20, 2015 the “Youth consulting and training center “autonomous nonprofit human rights organisation was included in the FA register.

In spring of 2015 on the organisation and its director Temur Kobalia were levied fines (of RR 300K and 100K, respectively) for a refusal to voluntarily get registered as an NGO FA. Then the organization was fined another RR 300K for placing an announcement on the director’s personal page in the “V Contacte” social network of a coming event without specifying that it was going to be conducted by the organization recognized as an FA even though the law does not extend to cover individuals.

Since no documents arrived from the court to inform on the fine imposed on the director, it became known only after a refusal to issue a foreign passport although the existence of a fine should by no means have such consequences. After the fine had been paid the State Security made an inspection and it was only three months later that the civil activist got her passport.

The “Civil Assistance” organisation helping refugees and forced migrants174 received the FA status on April 20, 2015.175 In July 2015 the Property Department of Moscow without explaining the reason canceled the rent agreement about the space,176 which the organisation had occupied from 1998 and used for the work of the Centre of adaptation and education of refugees’ children (the organisation’s project). Around 70 refugees’ children from Syria, Afghanistan, Congo, Uzbekistan and other countries were taking a course at the Centre.177 As a result, the socially significant activities were disrupted. According to director of the Centre Olga Nikolaenko, everything happened in keeping with the best raiding traditions: when there was no-one inside representatives of the Mayor’s office broke into, installed an alarm and put up a sign prohibiting an “unauthorized entry”.178

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169 Source: http://www.hro.org/node/23135
170 Source: http://www.svoboda.org/content/article/27161095.html
171 Source: http://www.svoboda.org/content/article/27654267.html
172 Source: http://www.kommersant.ru/doc/2957299
174 “Civil Assistance” regional non-governmental charity helping refugees and forced migrants.
175 Source: http://unro.minjust.ru/NKOForeignAgent.aspx
176 Source: https://openrussia.org/post/view/8832/
177 Source: http://www.kommersant.ru/doc/2919132
178 Source: http://www.newsmsk.com/article/18feb2016/adaptation.html
2.4.2. Destruction of independent media: implications for NGOs.

For the human rights defenders pressure on independent media means their own threats, because if so there is no platform to speak to the general public about the violations of human rights.

For instance, in March of 2015 fired was the editor of a leading independent outlet publishing unbiased information about the events in the country Galina Timchenko. A lot of journalists also left because of it so the outlet turned into a resource loyal to the regime. At that time the journalists stated that the outlet came under strain and referred to the dismissal of the editor-in-chief as a blatant violation of the Law on Mass Media prohibiting censorship.

In May 2016 there was a sudden change of the team took place at another independent media holding including a TV channel, online and print media — RosBusinessConsulting (RBK). These developments took place against the background of searches in the offices of companies belonging to the RBK owner Mikhail Prokhorov and bringing criminal charges against RBK management.

On May 13, 2016 fired were Maxim Solus, editor-in-chief of the RBK newspaper, Elizaveta Osetinskaya, the holding editorial director and Roman Badanin, editor-in-chief of the RBK information agency. Later a lot of other journalists left RBK. The remaining journalists are now obliged to get an approval of the RBK’s general director.

“Transparency International”, a well-known human rights NGO, reported at its website that it had lost its important partner in covering corruption scandals and exposures: “Amidst a full-scale attack on independent media and NGOs, RBK journalists, on an incredibly regular basis, succeeded in obtaining information and writing about Russian “Watergates”. Under the circumstances where publications about large-scale corruption rarely cause bribe-takers’ retirements but rather trouble for applicants and journalists, the main thing is to preserve oneself and own competence, try and preserve the profession. We have been honored to be involved in preparing a number of important RBK’s investigations, serve as sources of information and expert opinion for journalists of the holding».

Thus, in Russia there are several independent Federal media that are, largely, focused on narrow categories of readers while a system of media self-censorship is taking shape in the country. This process has a direct bearing on human rights because human rights activists and civil activists have been losing opportunity to convey information on violations of human rights and react to them while people in the country are losing unbiased and balanced information, which leads to less critical perception of reality and more loyalty towards anything that authorities do including actions violating human rights. This, in turn, results in formation of an end bloc society having nothing to do with either democracy or civil society values.

Another blow delivered independent media in Russia became adoption of a law on January 10, 2016 that obliges a media outlet, broadcaster or publisher, if they receive funds from foreign sources while an NGO FA must notify authorities about it and this information will be made publicly available. Failure to fulfill this obligation is fined RR 30K to 50K on members and an organization will have to pay an amount equivalent to the amount received from foreign

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180 http://www.colta.ru/news/2412
181 Source: https://slon.ru/posts/67873
sources if the media outlet, broadcaster or publisher has not reported it or a double amount of it. In the case of a repeated violation, individuals will be fined RR 60K to 80K and an organization – 3 to 4 fold of the amount of foreign funds received. 186.

It is obvious that such rules for media flow naturally from the campaign against FAs. Having accumulated experience of oppressing NGOs and branding them as FAs since November 2012, the state has now started digging at media. The Law on FAs in Russia is dangerous not only because its application strangling independent initiative strikes not only independent civil society institutions but also media.

On the other hand, the situation with human rights that has emerged in the country does not look very optimistic. As the police functions of the state are becoming more clear-cut, Russian citizens’ rights are violated more and more often but because the judiciary is not independent and there are no state-run institutions actually protecting human rights, people cannot redress an injustice. Human rights activists, who disagree with such a state of things, are trying to improve the situation using means available to them conducting campaigns and events, exposing violations of people’s human rights and interests, trying to defend public interests frequently disregarded by the state or business associated with it. However, in a situation where the regime is curbing personal freedoms, it is an uphill battle.

2.4.3. GoNGO vs NGO.

The civil society movements loyal to the government, for example, National Liberation Movement (NLM) acting under a slogan “Motherland! Freedom! Putin!”187 (whose goal it is ... “to provide comprehensive popular support for the national leader V. V. Putin”) have recently been busy creating the myth of “a fifth column” including the independent NGOs and civil activists opposed to violation of human rights and destruction of the civil society in the country. NLM frequently launches campaigns regarding the organizations that must be sidelined and defamed.

For instance, on April 28, 2016 NLM activists attacked the participants of the school history contest held by the “Memorial” human rights center. They spilled brilliant green and egged an author Lyudmila Ulitskaya, shouted insults at those present including children who came from different provinces for the victory ceremony. Eye-witnesses say the police did not get involved.188 The incident occurred in full view of the German ambassador in Russia.189

Irina Yasina, member of the Council for the development of the civil society and human rights under the President of Russia, said “I could not have possibly imagined anything nastier and a bigger embarrassment of the country. I have never had rose-colored glasses on but still I had never expected such a degradation of the country, and I mean country”.190

In March 2015 NLM activists carried out a similar action against the Mass Media Defense Centre in Voronezh. The participants of this action cried out “Suitcase, station, Europe!”, “Yankees, go home!” This action had been organized by Alexander Kaminsky.191 The same happened in Vladimir to “Lebed”.

187 Source: http://www.wikigrain.org/?req=%D0%9D%D0%B0%D1%86%D0%B8%D0%BE%D0%BD%D0%B0%D0%BB%D1%8C%D0%BD%D0%BE-%D0%9E%D1%81%D0%BD%D0%BE%D0%B1%D0%BE%D0%B4%D0%BD%D1%82%D0%B5%D0%BB%D1%8C%D0%BD%D0%BE%0B%20%3D%0095%0D%83%0D%81%0D%82%0D%8B%0D%85%0D%8E%0D%80%0D%8B%0D%80%0D%8B%0D%84%0D%81%0D%8E%0D%80%0D%8E%0D%80%0D%81%0D%82%0D%8C%0D%85%0D%84%0D%80%0D%8B%0D%80%0D%89+0D%90%0D%80%0D%86%0D%80%0D%94%0D%81%0D%83%0D%80%0D%82%0D%88%0D%80%0D%86%0D%80%0D%85%0D%82%0D%83%0D%80%0D%83%0D%80%0D%8B%0D%80%0D%86%0D%80%0D%85%0D%8C%0D%85%0D%81%0D%88%0D%80%0D%8B
188 Source: http://www.svoboda.org/content/transcript/27706494.html
190 Source: http://www.gazeta.ru/social/2016/04/28/8202437.shtml
2.4.4. Loyal media vs NGOs.

The media loyal to the regime have also joined the unprecedented campaign of NGO persecution. Federal channels regularly produce programmes devoted to the “fifth column”. Journalists are competing in their attempts to find a regular FA and devote a lot of air-time to it.

For example, on March 3, 2016 the “Channel 5” broadcast an “Who are NGOs for?” film about activities of the “Command 29” Association which ran a story about its sources of finance and creating finance schemes. The story contained testimony of one of the Command’s members whose face was blurred and the voice was distorted. The authors would also show extracts of the business correspondence, credibility and sources of which remained unknown.192

On March 17, 2016 the TV channel issued a second programme about the “Command 29”. This follow-up repeated accusations made on March 3 but did not mention the fact that part of the information about activities of the association was untrue because a Command’s volunteer, who had been offered money for leaking insider information, warned the management about this and with their consent provided the TV channel with data on non-existing projects and goals of the association. Having received a request from “Channel 5” for an interview on March 11, 2016 “Command 29” replied it would only agree to it in a live show. The TV channel did not answer. Instead of an interview journalists filmed attorney at law Ivan Pavlov on the way to the office and included this footage in a new story.193

According to the new story, “Command 29” was trying to get the Ministry of Defense to set up a website where one can see information on transfer of troops within Russia or that the real goal of their requests and court appeals was to paralyze activities of state bodies”.194

“Channel 5” produces such programmes about other NGO FAs as well.

It is important that human rights NGOs virtually do not have an access to Federal TV channels where they could explain their position. A lot of TV stories made by loyal channels are twisted and meant to marginalize human rights activists, and the media support it.

2.4.5. Destroying freedom of speech or self-censorship

The state is using vague anti-extremist legislation to intimidate civil activists.

Persecution of Daria Poludova, an activist from Kuban in the south of Central Russia. In December 2015 Oktyabrsky court of Krasnodar sentenced the activist to two years in a colony-settlement. The 26-year old woman was found guilty of appeals to extremist activities and separatism for publications in the “V Contacte” social network. She was put under arrest in the courtroom. During the aural argument the prosecuting party requested for Ms. Poludova three and a half years in a colony-settlement.

The authorities had a problem with what she wrote in social networks, in particular, her repost of a picture with a caption “Ethnic Ukrainians in Cuban want to join Ukraine”. Also, investigators considered extremist a note where she held Vladimir Putin liable for all the terrorist acts and misfortunes in Russia and asks why the Russians like Ukrainians cannot overthrow the regime. The court regarded Ms. Poludova’s guilt to be fully proved. The activist herself does not admit her guilt and does not agree that her statement encouraged “a violent overthrow of the constitutional order”. She believes she is being persecuted for her political views.195

In this connection a lot of civil activists, NGOs and independent media more and more speak about the necessity of self-censorship not to incur liability. As a result, public debate is becoming less heated. The facts about human rights violations, which the general public should

192 Source: http://sos-hrd.org/node/1103#.VzjOP9SLTg
193 Source: http://sos-hrd.org/node/1160#.VzjOTdSLTg
194 Source: https://lenizdat.ru/articles/1137339/
195 Source: http://www.svoboda.org/content/article/27438432.html
know, cannot be disseminated due to the absence of access to media that have a big audience. The freedom of speech, as one of the democratic pillars, is being gradually destroyed.

In mid-May of 2016 the RF Government approved of the draft by Ozerov-Yarova y restraining citizens’ right to leave the country without a court’s decision, for example, if a person has an unquashed or an outstanding conviction for crimes of “the extremist nature”. As it said above, in Russia due to an extremely wide interpretation of anti-extremist legislation such criminal persecution can be used towards any civil activists, who after fulfilling their sentence will not be able to leave the country for several more years (depending on the crime – up to 8 years after fulfilling the sentence).¹⁹⁶

The same draft suggests exerting stricter control over correspondence between citizens without any court sanction. Providers would have to store for 3 years information “on facts of reception, transmission, delivery and (or) processing voice information and text messages, including their contents and also images, voices or other messages from communications service users”. If the draft is enacted, the bodies conducting investigative activities or ensuring state security will be able to request and receive such information without a court decision.¹⁹⁷

As a result, the state will administer tighter control over personal freedoms of citizens, there will be more arbitrariness and corruption and the state will be more police-ridden.

On May 13, 2016 the State Duma of Russia adopted this draft in the first reading.¹⁹⁸

2.4.5. Banks vs NGOs

Business, in the wake of the authorities, is trying oppress NGOs receiving foreign funds. NGO Lawyers Club has dealt with at least 4 cases like this where banks without explaining the reason refused to provide services with such NGOs. This is because the state has started watching questionable, from its point of view, financial transaction with foreign currencies, implementation of the Central Bank’s policy to reduce the number of banks and also very strict inspections by “Rosfinmonitoring”, a special state-run supervision body watching flow of funds, – of banks and NGOs’ activities.

The RF Ministry of Justice in its annual report on control over NGOs’ activities in 2015 ¹⁹⁹ draws a conclusion that it must have access to NGOs’ tax and banking records without court procedures since loans and financial organisations refuse to provide it with data concerning NGOs’ accounts. Now such an access to data relating to tax and banking secrets of anyone (commercial and nonprofit organisations, physical persons) can, as a rule, only be obtained based on a court decision.

The RF Ministry of Justice is unhappy because it cannot find out if Russian legal entities, which donate money to NGO FAs, have received funds from foreign sources. It, therefore, asks for the right to obtain such information from Russian legal entities and receive those data from “Rosfinmonitoring”²⁰⁰ in order to have more administrative opportunities to control NGOs.

These are the ways using which the regime, loyal civil society movements (GoNGOs), media and business create an atmosphere of intolerance of NGOs and civil activists defending human rights values, marginalizing such activities and also creating artificial barriers and obstacles in their work. To a large extent, all this is an after-effect of applying the unfair Law on NGO FAs, the

¹⁹⁶ § 3 of article 86 of the RF Penal Code.
¹⁹⁸ Source: http://argumenty.ru/society/2016/05/448360
effect of an arbitrary application of which have an impact on all the components of a true democratic society destroying its institutions or emasculating them and rendering them useless.

At the first stage of the campaign suppressing civil activities in the country the regime tried to cut off foreign sources of financing NGOs and also dramatically reduce the number of NGOs actually operating in the field of human rights, environmental protection and other civil activities.

At the second stage of the campaign, which has already begun, the authorities are trying out various ways of oppressing NGO leaders and activists, i.e. the state is gradually switching over to personal pressure on the most active members of the civil society. These tendencies are only emerging and have not taken a clear shape yet but can get quite developed in the nearest future.

In such conditions support for NGOs and activists is really crucial: their members need to be trained to get new skills and knowledge in the constantly changing conditions; programmes of urgent help for civil activists are required (both in Russia and abroad; legal and social support); a bigger impact from international institutions on the situation with human rights in Russia. This is necessary to prevent creation of a new iron curtain, which is quite likely to be put up in Russia now.

2.5. NGO vs GONGO or allowance for the civil society?

At the end of 2015 Union of nonprofit organisations was founded in Russia, and the first sessions were held in a lot of regions (for example, in St. Petersburg – on February 8, 2016201, in Moscow - from 1st to 4th December 2015 ). Even though the Union was still at the registration stage and its full launch was set on September 30, 2016 202, it has already been declared that among its founders were 192 organisations from 70 regions of Russia. Unfortunately, representatives of civil society organisations do not understand the legal niceties and the righteous goal of its foundation, i.e. protection of rights and representation of the third sector in its interaction with Federal and regional governmental bodies, local self-government bodies, and also with international specialist organisations and business. The Union is meant to assist NGOs in obtaining financial, material, educational, information, administrative, organisational, legal and other support, is take too literally.

However, already judging by the interview of the President-Chairperson of the new Union, head of the Russian agency for development of the information society (RARIO), Alexander Aigistov one can see that “the main tasks of the new union must be, in particular, development and promotion of standards and rules regulating activities of nonprofit organisations, involvement in development of state policies and various legal acts concerning NGOs, legal and expert assistance to the third sector organisations”.

Besides, it says at the organisation’s website that the Union is going to engage in development of the system of standards, criteria and performance indicators of social projects implementation, which involves not only providing social services, but, quite possibly, legal services too. Another sphere of activities will be establishment of a mediation court for prejudicial settlements of conflicts between nonprofit organisations, businesses and governmental bodies; establishment of independent public regulator in the field of distributing grants and subsidies; observation over grant competition procedures at the federal, regional and municipal levels, interaction with inspecting bodies and regulators.

Setting service standards will lead mean that first they will develop standards of social services, then – of legal ones while in the nearest future might come to denote issuing permits for nonprofit activities, since the said Union will be issuing permits for activities and warranting

201Source: http://www.osnko.ru/#1blank-3/hokpz
202Source: http://www.osnko.ru/
203Source: http://ria.ru/society/20151202/1334221232.html
the quality of services to be provided. Of course, permits can be issued for a fee and to not to anyone.

Having been carrying out bustling activities without registration for over half a year now, the Union has not encountered any obstacles related to inspection of the nature and lawfulness of its activities. It is only NGOs and civil society movements that are allowed to dispense with registration yet in this case the form of a union has been chosen. Besides, at the official website of the National union of nonprofit organization there is an emblem of the double-headed eagle, which is the symbol of the Russian state. The Russian legislation also explicitly bans using similar emblems having to do with state symbols. Besides, the new rules of registering organisations introduced more than two years ago requires notarial certification of each founder’s signature on the registration application. It seems doubtful that all the 192 founders of the Union put their signatures.

Part 3. Success stories

Despite the pressure from the state and media loyal to it on the civil society in Russia, it is still there and struggling for democratic values and ideals.

However, this is uneven confrontation and our victories are sporadic and tactical ones making a big difference in certain cases but not influencing the strategic vector of the state campaign to do away with the civil society in the country.

Today the structure of the Russian civil society is changing while NGOs are learning how to survive and continue their activities in severe conditions, even mutate into new organisational forms and change the format of their activities.

On the whole, among the success stories within the Russian civil society are:
– tactical victories in cases concerning fines levied on organisations for a refusal to voluntarily join the FA register;
– restricted use of the “political activities” by courts in certain cases initiated by NGOs challenging the FA status;
– improved practices of applying legislation on inspecting NGOs;
– a growing number of grassroots regional initiatives launched for tackling local problems with no hope for state assistance and support but effective because they have learned how to be a success in a new environment;
– development of social charity private initiatives not calling themselves NGOs but operating as civil initiatives deploying NGO arsenal;
– testing out new ways of how initiative groups can influence the authorities and associated business when defending public interests.

These processes are going on the background of a sharp reduction of the number and activity of NGOs; the survivors are trying to get adapted to the rapidly changing conditions and carry on.

Also, there has been an increasing involvement in civil society operations of individual activists unrelated to a particular NGO, which is hard to assess as positive or negative for survival of the civil society. On the one hand, a rising number of individual activists enlivens the civil society but, on the other hand, it creates personal risks of being persecuted for their activities for them.

3.1. Tactical successes in cases of fines on NGO FAs

In 2015-2016 for the first time the RF Supreme Court began repealing fines in cases of organisations’ refusals to apply for a place on the NGO FA register. The Court has made such decisions due to procedural violations in drawing up protocols of administrative offences by the RF Ministry of Justice or hearing cases in lower courts. However, when considering such cases,
the Supreme Court has never found a violation in identifying an NGO’s actions as “political activities”.

For the first time on November 16, 2015 the Supreme Court quashed all the court orders in the case of imposing administrative liability (§1 art. 19.34 of the RF Code on administrative offences) on the “Institute of regional press” nonprofit partnership and overturned the imposition of a fine of RR 400K. The case was closed

A fine that had initially been imposed by Justice of the Peace at the judicial district №206 in St. Petersburg Mr. Kalmadinov was upheld by two more higher courts to be quashed by the last national court instance available for cases of the sort.

In March 2015 the Institute of regional press paid a considerable fine for the organisations of RR 229K thanks to contributions from journalists and citizens supporting the organization while the rest was paid by the head of organization using her own funds.

A year later, the Ministry of Justice Office in St. Petersburg made a decision to recall the fine from the budget and in March 2016 it was forwarded to the organisation’s bank account in full.

In April 2016 the “NGO Lawyers Club” Association was reported to have attained at the RF Supreme Court quashing of a finea imposed on the “Centre of independent sociological research” NGO (hereafter - CISR) from St. Petersburg. On April 11, 2016 the RF Supreme Court passed a judgment quashing all the court orders in the case of holding an organisation administratively liable for a refusal to voluntarily get registered on the NGO FA list and closed the case of an administrative offence. Currently, CISR is planning to request the state for a return of the paid administrative fine of RF 300K.

Such a position of the Supreme Court became possible, in particular, owing to the stand that the Russian civil society considering the Law on NGO FAs at variance with the rule of and fighting hard in courts for annulling numerous fines imposed on NGOs law has taken. Well organised legal work became one of the factors that made such decisions of the highest court of the country possible.

Organisations who disagree with imposed fines should address all the court instances and try and use all the legal ways “self-defense”. Not all the NGOs have resources for such work though so in order to increase the tendency of addressing the highest court instances NGOs, which provide quality legal assistance to other NGOs and specializing in this kind of cases, need resource support.

For the time being, the RF Supreme Court’s positive practice in such cases only covers organisations in St. Petersburg and only in respect of judgments by Justice of the Peace Kamaldinov.

Another curious positive tendency and to some extent success of some NGOs is in reduction of the amount of fines imposed in FA cases.

At the beginning of 2016 courts of the first and appeals instances started reducing the amounts of administrative fines compared to 2014 when the active phase of bringing organisations to administrative liability for a refusal to get registered as an FA began.

205 It was included in the FA register on 20.11.2014 Source: http://unro.minjust.ru/NKOForeignAgent.aspx
208 It was included in the FA register on 22.06.2015. Source: http://unro.minjust.ru/NKOForeignAgent.aspx
According to the NGO Lawyers’ Club in 2014 the average amount of an administrative fine for one offence was RR 300-400K.

Today there are precedents when courts found NGOs guilty of an offence under §1 art. 19.34 of the RF Code on administrative offences for a refusal to voluntarily get registered as an FA but the amount of fine for it was lower than the bottom limit set by the law.

For example, on April 13, 2015 Kirovsky district court of Ekaterinburg, being an appeals instance, reduced the amount of fine on the “Memorial” Information and education center211 to RR 100K.212 Nevertheless, the minimum sanction on legal entities for this offence is RR 300K.213

On February 10, 2016 Kirovsky district court of Irkutsk levied a fine of R 150K 214 while the three co-chairs – to RR 50K each.215 Nevertheless, the minimum sanction on an NGO manager for such an offence is RR 100K.216

3.2. Limited court application of the “political activities” concept in certain court cases initiated by NGOs challenging the FA status

No NGO branded as an FA has succeeded in leaving the FA register via court proceedings. However, courts in their analysis of NGO activities would not always agree to the bodies of the RF Ministry of Justice in qualifying NGOs’ activities as political ones.

On February 8, 2016 Yuzhno-Sakhalinsk city court passed a decision217 on an administrative action from the “Environmental Watch Sakhalin” Regional non-governmental organisation218 against the RF Ministry of Justice challenging its order to place the organization of the FA list. The court found that three out of four counts brought forward by the Ministry of Justice did not amount to “political activities”:

- publication of information on an unofficial page in the format of an «Environmental Watch Sakhalin” open group under the name of “Club of Sakhalin Eco Watch’ friends” in the “V Contacte” social network;
- publication on May 20, 2015 of an article “Waiting for a fried rooster” about protection of green space of Yuzhno-Sakhalinsk;
- a letter to the Sakhalin governor on January 13, 2014 about violations of Exxon NL company.

However, the court considered the fact of signing a letter “To Environmental Organisations of Ukraine. To all Ukrainian environmental activists.” in March of 2014 by the director as a “political activity”.

This example shows that courts do not always back administrative bodies in their practice of labelling any NGOs’ social activities as politics.

3.3. Prevention of NGO forced liquidation.

“Environmental Watch North Caucasus” is the biggest NGO in southern Russia, set up in 2004 and dealing with environmental problems and protection of citizens’ rights for a healthy environment.

211”Memorial” information and education center, Interregional non-governmental organisation. It was entered on the list of NGO FAs, on 16.01.2015.
Source: http://unro.minjust.ru/NKOForeignAgent.aspx
213 § 1 of article 19.34 of the RF Code on administrative offences.
214 Source: http://www.vsp.ru/social/2016/02/16/561280
216 § 1 of article 19.34 of the RF Code on administrative offences.
218 It was included in the FA register, 18.09.2015
Source: http://unro.minjust.ru/NKOForeignAgent.aspx
On October 24, 2015 the Supreme Court of Republic of Adygeya liquidated this organisation on an action from the territorial office of the RF Ministry of Justice. This decision became one of the first recent decisions of the judiciary closing down a large well-known independent interregional human rights and environmental NGO.

The reason for granting the action by the RF Ministry of Justice and liquidation of the organisation was based on the arguments that the organization had not submitted a timely report on its activities and other documents to be checked; that the NGO did not have offices in six regions of its activities and also “other violations of the Federal legislation of a blatant and regular nature”.219

Environmental organisations of Russia also disseminated their opinion of the situation: “In conditions when there dozens of fictitious non-governmental organizations in the country, which fact does not bother the Ministry of Justice at all, its attempt to close down one of the most active non-governmental organisations, whose activities totally serve observance of the most important public rights and interests, looks completely absurd and of all things appears rather like an unjustified murder”.220

Members of the NGO Lawyers’ Club got involved and provided qualified legal support. It took a short while to correct whatever minor flaws there were in the organisation’s paperwork and a report was submitted to the RF Ministry of Justice.

The RF Supreme Court postponed passing a decision in this case twice221 and at its third sitting on April 15, 2015 refused to liquidate the “Environmental Watch North Caucasus”222 due to remission of the office of RF Ministry of Justice Republic of Adygea of its claim to liquidate the organisation. Thus an independent NGO was preserved and can continue its activities of protecting public interests.

In September of 2014 the RF Ministry of Justice requested the RF Supreme Court to do a compulsory liquidation of the “Memorial” Russian history studies and human rights society.223 The state had questions concerning its Charter, activities and absence of the all-Russian structure of the organisation.

The RF Supreme Court postponed considering the case twice from November of 2014 to January of 2015.224 During this time the NGO corrected all the legal irregularities and confirmed its all-Russian status. On January 28, 2015 the RF Supreme Court rejected the request from the RF Ministry of Justice about liquidation of the “Memorial” Russian history studies and human rights society.225

The cases above show that sometimes NGOs do achieve success even on the highest judicial level of the country.

3.4. Perfecting the practice of applying legislation on NGO inspection

Following numerous NGO checks on February 17, 2015 the RF Constitutional Court passed a judgment226 which limited the prosecutors’ rights when making inspections of organisations (both commercial and not).

Before that point a prosecutor’s office could demand submission of a huge number of documents from the organisation under inspection within a very short time while the NGO

219 Source: http://www.rosbalt.ru/federal/2014/12/02/1344141.html
220 Source: http://www.rosbalt.ru/federal/2014/12/02/1344141.html
221 Source: http://www.hro.org/node/21685
223 Source: http://rg.ru/2015/01/28/memorial-site.html
226 Source: Judgment of the Constitutional Court of 17.02.2015 №2-П.
inspection procedure itself was not clearly defined in the legislation and did not grant NGOs with the same guarantees and rights as those of other organisations during audits by state bodies.

The RF Constitutional Court recognized as unconstitutional the provisions of the Law on "On Office of Public Prosecutor", which did not provide for the maximum length of time for an NGO audit and allowed the inspectors determine the time of meeting their requirements themselves. Inspections per se, however, are lawful. Before making those amendments to the law the Prosecutor’s Offices were recommended to be guided by the provisions of the Law on protection of the rights of legal entities and sole entrepreneurs where the length of an inspection cannot exceed 20 working days.

Besides, the Court instructed Prosecutor’s offices to observe a number of rules during inspections. For example, a decision to run a check must be justified and communicated to the NGO reps at the moment it is beginning at the latest – earlier such a requirement did not exist. A Prosecutor’s office must advise the NGO on the results of the audit, i.e. about the absence or presence of violations. Earlier such a requirement did not exist either.

Auditors are not entitled to request the NGO to provide publicly accessible information or materials, which are already at the disposal of state bodies as well as documents which the organization does not have to have.

An audit cannot be done twice for the same reasons – at least if it is not about correcting faults exposed earlier. Representatives of other supervising bodies can only be engaged as experts.227

These provisions were not included in the legislation earlier, which resulted in situations where prosecutors could audit organisations without being guided by well-defined procedures and demanded the same documents as they did earlier during other audits or documents which the state already has. However, despite this prosecuting reps would demand a huge amount of documents, sometimes within a day or several days, failure of which 228 would bring the organization leaders to administrative liability.229

By and large, this judgment of the RF Constitutional Court cleared up the procedure of the prosecutor’ NGO audits by extending the basic requirements that NGO audits by other state bodies must meet to apply to Prosecutors’ offices too. This is no doubt an NGOs’ victory.

3.5. Grassroots initiatives in regions.

The strain that human rights and other independent NGOs found themselves under in Russia led to a sharp reduction of their number. Departure of the main donors from the country does not boost organisations’ activities either. However, despite this local grassroots initiatives emerge with a vague organizational structure and operating almost or entirely without external financing.

Such initiatives are created accidentally and made up of people who unite to resolve local small-scale everyday problems that, on the face of it, do not have a human rights agenda but are of a public concern.

It appears that such initiatives operating without state registration as a legal entity can become prototypes of new NGOs, contribute to civil society in Russia and strengthen ties between professional NGOs advocating public opinion and people in the street.

Such grassroots initiatives do not rely on the state in what they do but rather expect assistance from members of their groups and seldom attract other, external resources.

In order to improve such a structure, they need information, legal, organizational and educational support.

227 Source: http://www.vedomosti.ru/newspaper/articles/2015/02/18/proveryat-no-ne-beskonechno
229 Article 17.7 of the RF Code on administrative offences.
3.6. Charity initiatives.

In Russia over the last several years there have emerged quite a number of charity initiatives operating in the social and environmental fields. As a rule, they are initiative civil groups beginning with a group in the social network and then coordinating their activities through them.

The most well-known ones are groups helping stray animals that exist in every region and frequently in all medium-sized and big cities. They do not set up officially registered organisations and work as initiative groups both carrying out projects according to their immediate agendas and raising funds for effecting such projects among citizens (both in social networks and directly via fund-raising events).

Sometimes an event can bring up to RR 100K. As a rule, all the donated funds are spent on immediate help to animals, which is what they are raised for. The state does not participate in these activities in any way – neither controlling nor assisting them.

It might as well be one of the key reasons why such groups successfully operate in the country today experiencing no control of state bodies.

Similar groups are often set up to raise money for treating children requiring urgent medical care. The transparency of groups’ financial statements helps them attract private donators, who can watch both incoming and spending of funds online and see what they are used for.

Such initiative groups coordinating their activities online (unlike grassroots initiatives, whose members, as a rule, meet and make plans in person) and having own Internet sites are capable of uniting people who might not join if they had to do it in person. Participants of such groups are often not acquainted, which, however, does not stop prevent them from creating temporary working groups, which solve specific problems quite well.

At the same time such online initiative groups use the tools of officially registered NGOs conducting meetings, raising funds, implementing projects but ignoring intrusion of the state.

Officially registered charity organisations of the federal level, who have managed to create a brand and have proved themselves helping such categories of population who are ignored by the state (for example, those with incurable diseases), are also successfully developing in Russia creating non-governmental services for such people and raising considerable funds to help them.

Development of private charity (even non focused on the human rights issues), where a lot of citizens donate little sums of money, can be called one of the success stories of the Russian civil society today.

On the whole, new shoots of the civil society are appearing in Russia at the very base level and NGOs’ activities are shifting far away from political rights and freedoms – towards charity.

Such situation cannot be regarded as right or wrong but it makes one think about the future of the civil society if NGOs protecting the fundamental democratic rights and freedoms will not be part of it.

3.7. New ways of influencing authorities and associated businesses road tested by initiative groups with a view to protect public interests.

In this connection we would like to recall the movement “In defense of Khimky forest” – a civil initiative that tried to defend one of the few remaining Moscow suburbs that was nearly unaffected by civilization from constructing a Federal motorway that could destroy the local ecosystem.

The movement attracted attention through media, carried out to defend the forest from destruction, built tent camps and arranged public events.

²³⁰ Source: http://www.ikd.ru/node/5883
Studying investors to the construction the leader of the movement «In defense of Khimky forest» Evgenia Chirikova reported that “the subsidiary of the Vinci construction company committed corruption-related crimes in Russia during construction of the Moscow - St. Petersburg motorway” being the only investor of the project. The movement held protest actions in Paris, made reports about destroying the Khimky forest at roundtables while in autumn of 2013 managed to get the Prosecutor’s office of Paris involved in investigating operations of the Vinci company in the project of the Moscow - St. Petersburg motorway construction through the Khimky forest in Russia.

Commenting on the situation, Evgenia Chirikova notes: “a French construction company Vinci was involved in criminal and financial crimes in this project: it made an offshore chain using which money from Russian taxpayers the motorway is being built on is moved out abroad”.

Such a lateral method of influencing the source of finance for a project hazardous for the local ecosystem had been thought up and implemented by an initiative group. It is also the only widely-known example of pressure exerted by a civil group who initiated a large-scale campaign in defense of their living environment and got the state to look at the source of violation, a foreign company.

This case is remarkable because only foreign law-enforcement agencies took some interest in a company operating in Russia whereas their domestic counterparts took no notice.

This success story shows that civil initiative groups can achieve great results by using unconventional methods.

Part 4. NGOs’ needs and suggestions concerning donor community

4.1. Principal NGO FAs’ needs.

The authors of this report have done some research into NGO FAs’ basic needs. This survey reflects principal needs of these organisations. We do not claim to have a very wide representative sample and comprehensive reflection, however, the principal needs are clear.

The first question was about continuation of their activities. We were answered that only 15% continued working without any changes (registration of new legal entities, liquidation, etc.), 85% of nonprofit organizations ending up in the FA register gave up their operations for various reasons: 15% - stopped their work while 65% found alternative ways to go on.

![Figure 1. The choice of an NGO declared a foreign agent](image-url)

<table>
<thead>
<tr>
<th>Percentage</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>15%</td>
<td>The organisation continues to work</td>
</tr>
<tr>
<td>65%</td>
<td>The organisation’s operations are terminated</td>
</tr>
<tr>
<td>20%</td>
<td>Alternative working formats have been found but the NGO is not working</td>
</tr>
</tbody>
</table>

231 Source: http://www.bbc.com/russian/international/2013/10/131004_chirikova_france_vinci
232 Source: http://www.hro.org/node/10958
233 Source: http://www.novayagazeta.ru/politics/60324.html
234 Source: http://www.novayagazeta.ru/politics/60324.html
235 Source: http://www.novayagazeta.ru/politics/60324.html
236 53 FA organisations took part in the survey.
The most common reason for ending activities is liquidation of organisations. Today 47% of organisations are at different stages of liquidation. Another 46% have reported that it has become impossible to continue with their activities (Figure 2).

According to the survey, the following kinds of support are required the most (Figure 3):

- legal – 54%;
- psychological – 16%;
- financial – 74%;
- participation in fellowship programmes and visits – 48%;
- assistance in emigration from the country – 16%;
- assistance in getting a multi visa (Schengen) – 10%;
- assistance from a resource center outside RF in supporting projects and activities connected to RF – 50%;
- paying for auditor services in RF – 20%.
A request for providing legal support comprises the following kinds of legal help (Figure 4):

- assistance and defense in court in RF – 24%;
- liquidation of an NGO declared an FA – 20%;
- legal support for NGOs set up in other jurisdictions – 20%;
- opening an NGO in other jurisdictions – 16%;
- preparation of reports to the Ministry of Justice and assistance at audits – 12%.
- setting up commercial organisations in RF – 8%.

4.2. Suggestions for the donor community

It is crucial to realize that even in the most unfavorable situation it is important to continue with a dialogue and provide organisations with help of various kinds, in particular, solidarity support. **It is necessary to:**

- continue to support NGOs despite “journalist investigations”, media propaganda, etc.;
- support Grassroots initiatives paying special attention to those whose experience can be applied in other regions;
- support NGO members, civil activists forced to leave the country as well as their associations;
- look for “new” organisations to support and also encourage creating of new organisations all over Russia;
- in situations where the legal environment does not make it possible to continue with the support, arrange for fellowships, visits, sharing of experience;
- continue a dialogue on the People-to-People level;
- institute awards to human rights activists, civil activists;
- support organizations offering legal support; help NGO leaders and activists in risky situations.
Part 5. Conclusion

On the level of state institutions Russia has been rapidly decreasing co-operation with other countries, the USA, Western and Central Europe in the first place setting up a new iron curtain in intergovernmental relations.

Serious degradation of the human rights situation in Russia, structural problems in economics, social sphere, culture, health care and environmental protection are, to a large degree, consequences of isolationism promoted and implemented today by the Russian state.

Having weakened co-operation on the level of state institutions as much as possible, the state is trying to stop the channels between Russian and foreign NGOs used for sharing experience, receiving funds for addressing topical issues in the society, which the state is either unwilling or incapable of resolving.

All of the above has led to a situation in the country where there is a new set of laws the application of which has been destroying independent institutions of the civil society.

NGOs put on the foreign agent register have been faced with huge fines, denials of voluntary liquidation and removal from the register, but at the same time the increasing, often high-handed, state control is forcing organisations to stop their activities because they cannot satisfy all the legislative requirements and constantly run a risk of taking administrative or criminal punishment for actions that only several years ago were not punishable in any way.

The very fact that an NGO is registered as a legal entity makes its life full of risks of both having to pay fines up to millions of rubles sometimes and taking personal risks as the head or an activist.

Currently, the legislation on NGO FAs can be used against any NGO operating in Russia. This means that nearly at any moment the state can close down an independent NGO for formal violations or by way of strict control create such an atmosphere for an NGO where it can no longer survive wasting its time in courts to defend itself, challenging unlawful audits or facing enormous fines.

At the initial stage of the campaign to suppress civil activities in the country authorities strived to cut off NGOs from foreign sources of finance and also dramatically decrease the number NGOs actually working in the field of human rights, environmental protection and other civil activities. The state had not only stopped co-operation with NGOs put on the FA register, it began placing a lot of pressure on them depriving NGOs of support available earlier.

At the second stage of the campaign, which has already started, we can see the first signs of persecuting NGO leaders and activists, i.e. the state is switching over to applying personal pressure on the most active members of the civil society. These tendencies are only emerging and have not taken a clear shape yet but can get quite developed in the nearest future.

The fact that no NGO in Russia has managed to get rid of the FA stigma in court so far speaks for itself. Courts often ignore NGO’s arguments that, for example, the organisation in dealing with medical products does not come across authorities and is not engaged in politics; or that participation of a deputy of a local legislative body in a public debate does not make the NGO he is with involved in this debate.

The campaign exposing FAs has already destroyed all the independent NGOs in smaller regions while some NGOs unwilling to be labeled FA stop any activities remaining a legal entity in name only.

The legislation that the government has been introducing since 2012 has been bringing new restrictions on NGOs, in particular, allowing state bodies to use laws “unlawfully” by running checks of NGOs whenever they can, hold them administratively liable and impose big fines on NGOs for what they have not done.
In the period from 2012 to 2015 the number of actually operating NGOs in the country went down by a third. In 2000 the number of registered NGOs was about 600 000, but for January, 01, 2016 – it is only 223 551 according to the report of Ministry of Justice. Further toughening of the legislation and the practice of its application may eliminate independent civil society in Russia altogether, which will enable the state to violate human rights without it being known to the general public and give up democratic principles.

The trends revealed by the NGO Lawyers’ Club should be developing with a different speed. The state will be keen on applying the existing regulations on administrative liability:
- for the absence of marking on materials NGO FAs publish;
- for mistakes during preparation and submission of reports;
- doubling the fines for failure to pay the initial one.

The number of “undesirable” organisations is going to grow, which may cut NGOs off from foreign sources of finance with no funds available in the country because they are mostly allocated to the NGOs that do not indulge in criticizing state bodies.

The techniques tested during the campaign aimed at exposing NGO FAs are going to be extended to cover other organisations and new obstacles will be placed in the way of both NGOs and other organisations – media, religious, donor ones.

The situation created by arbitrary application of the unfair Law on NGO FAs is going to make the human rights situation in Russia worse because since most the NGOs have been destroyed there will be barely no-one to protect them.

Under the circumstances, the nonprofit sector in Russia, if it is to survive, will require both a change of legislation (which, however, does not appear very realistic currently) and tangible support, development of existing NGOs specializing in providing quick help to NGOs in Russia, increased legal support for NGOs and a bigger pressure from international human rights institutions on the Russian state in order to improve the setting for NGOs. The most important thing is maintaining a dialogue and continuing with support for existing organisations and initiative groups.

RUSSIAN NGOs AFTER the FOREIGN AGENTS LAW: SUSTAINING CIVIC ACTIVISM IN AN ADVERSE SETTING

Our partners

https://www.youtube.com/user/NGOTVRussia
https://www.facebook.com/NGO-TV-1573681462853762/?fref=ts
About the authors of this report:

The “NGO Lawyers Club” Association unites NGO lawyers and counsels collaborating with us. The Club is a non-governmental independent professional association.

The Club’s mission is assisting lawyers’ professional education, protecting rights to freedom of association and also providing legal support for civil initiatives and organisations of the third sector throughout Russia.

We believe that legal professionals can and must contribute to setting up and development of NGOs for establishment of civil society institutions in Russia. We share human rights values and awareness of the fact that social problems cannot be resolved without full-scale involvement of NGOs and activists.