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**EXPERT COUNCIL ON NGO LAW**

**OPINION ON THE COMPATIBILITY WITH EUROPEAN  
STANDARDS OF RECENT AND PLANNED AMENDMENTS TO  
THE RUSSIAN LEGISLATION AFFECTING NGOs**

**Prepared by the Expert Council on NGO Law of the  
Conference of INGOs of the Council of Europe**

*The opinions expressed in this work are the responsibility of the author(s) and do not necessarily reflect the official policy of the Council of Europe.*

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## **EXECUTIVE SUMMARY**

This opinion examines the compatibility with European standards of the main changes in recently adopted and planned legislative provisions with respect to the functioning and activities of NGOs in Russia. The changes involve extending the scope of the category of “foreign agent”, modifying their operation regime, imposing certain prohibitions on their activities and establishing other obstacles to their functioning. The connection of these changes in time and substance makes it appropriate to consider them together.

Firstly, the opinion notes that the speed of the legislative with which the process has been conducted for most of the texts in question is remarkable given that they are intended to make profound changes to the shape of the civil space in Russia. It precluded the opportunity to address the concerns raised about the amendments drafted, or to elaborate the necessity for their adoption. The numerous and pressing objections raised by international organisations to the 2012 Law on Foreign have not been addressed during the discussion.

Secondly, the "quality of the law" requirements cannot be regarded as being met by several of the provisions examined. This is especially the case for the extension of the category of foreign agents to individuals, since it uses vague concepts. The planned introduction of a prior declaration of activities also raises problems, especially because the grounds for imposing a prohibition on carrying out a programme are not provided for in the text. As a result, the administrative authority appears to be given an unfettered discretionary power, with the power of prohibition not being limited to illegal activities.

Thirdly, the legitimacy of the aims invoked by the authorities for adopting these amendments - the prevention of disorder and the protection of national sovereignty - appears problematic. Their invocation is either devoid of substance or entirely abstract, no concrete explanations as to how order or national sovereignty were threatened. In addition, the impediment to a fair and public debate because of the “foreign connection” of those concerned appears by its very nature to be contrary to the ideas of openness and pluralism which are at the heart of the values in the European Convention on Human Rights.

Fourthly, the texts raise serious question of proportionality. The legal scope category of foreign agents is undergoing a major expansion. The intensity of the control envisaged over NGOs-foreign agents, is also considerably increased. This will be particularly the case if the bill imposing a prior declaration of activities on NGOs-foreign agents is adopted. This requirement would go hand in hand with a broad discretionary power given to the executive bodies to ban some of them or even completely neutralize the NGO itself. The penal context in which people working for NGOs are forced to operate is another major concern. There is a permanent legal risk for those concerned, primarily as a result of the penalties associated with largely indeterminate and therefore impossible to apprehend administrative obligations. This risk also results from the sharp tightening of public defamation legislation, which leads to NGOs' watchdog action being carried out under the threat of heavy prison sentences.

Although the legal context for NGOs in Russia has been constantly evolving since the adoption of the 2012 law on foreign agents, this new body of legislation exacerbates the

hostile environment for their work, not only from the point of view of the legal persons, but above all from the point of view of the persons who associate themselves with their work, given the risk of very heavy prison sentences.

Ultimately, what is now at stake is whether the public space in Russia leaves room not only to persons or associations whose views are favourably received or regarded as inoffensive or as a matter of indifference, but also ensures the fair and proper treatment of others and avoids abuse of a dominant position. Certainly, the changes introduced in the provisions under consideration call into question the very substance of the rights guaranteed in Articles 8, 10 and 11 of the European Convention and their elaboration in associated European standards.

## 1. Introduction

1. This opinion examines the compatibility with European standards and best practices of the main changes in recently adopted and planned legislative provisions<sup>1</sup> with respect to the functioning and activities of NGOs in the Russian Federation.
2. These provisions are largely aimed at extending the scope of existing measures concerned with what have been designated as “foreign agents”, which have been the subject of two previous opinions.<sup>2</sup> However, certain of them will have an impact on the pursuit of activities by NGOs in general.
3. The connection of these changes in time and substance makes it appropriate to consider them together, notwithstanding their different status at the date of this opinion. Moreover, such an approach provides an overall picture of the way in which the general legal framework applicable to associations is being changed.
4. The opinion first provides some background to the regime of foreign agents and then examines the principal changes that have been made or are planned.

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<sup>1</sup> Namely, Bill No. 1052523-7 on amendments to the Federal Law "On non-commercial organizations" to improve the legal regulation of the activities of non-commercial organizations acting as foreign agents and structural subdivisions of foreign non-commercial non-governmental organizations, registered on 10 November 2020 (<https://sozd.duma.gov.ru/bill/1052523-7>), Federal Law No. 481-FZ of 30 December 2020 on amendments to certain legislative acts of the Russian Federation to establish additional measures to counter threats to National Security (<http://publication.pravo.gov.ru/Document/View/0001202012300001>) resulting from the bill no. 1057914-7, registered on 18 November 2020; [https://sozd.duma.gov.ru/bill/1057914-7#bh\\_histras](https://sozd.duma.gov.ru/bill/1057914-7#bh_histras)), Bill No.1060950-7 On the Amendments to the Code of Administrative Offences of the Russian Federation with a view to clarifying the liability for violation of the proceedings related to the activities of persons performing the functions of foreign agents (<https://sozd.duma.gov.ru/bill/1060950-7>), Federal Law No. 525-FZ of 30 December 2020 Amending Article 330.1 of the Criminal Code of the Russian Federation" (resulting from the Bill No. 1073604-7 (<https://sozd.duma.gov.ru/bill/1073604-7>), Federal Law No. 541-FZ of 30 December 2020 on Amendments to the Federal Law on Meetings, Rallies, Demonstrations, Marches and Pickets (resulting from the bill no. 1057230-7; <https://sozd.duma.gov.ru/bill/1057230-7>), Bill no. 1060689-7 "On amendments to the Code of Administrative Offences of the Russian Federation on increasing the liability for violations in the preparation and holding of public events" (<https://sozd.duma.gov.ru/bill/1060689-7>) and Bill no. 1057892-7 On the amendments to the federal law "On the fundamental guarantees of electoral rights and the right to participate in a referendum of the citizens of the Russian Federation" (<https://sozd.duma.gov.ru/bill/1057892-7>). The opinion also takes into account the impact on NGO activities of Federal Law of 30 December 2020 N 538-FZ "Amending Article 128.1 of the Criminal Code of the Russian Federation" (<http://publication.pravo.gov.ru/Document/View/0001202012300058>), resulting from Bill no. 1074945-7 (<https://sozd.duma.gov.ru/bill/1074945-7>) and Bill n°1057895-7 on amendment to the Federal Law "On Education in the Russian Federation" (<https://sozd.duma.gov.ru/bill/1057895-7>).

<sup>2</sup> Opinion examining the Law Introducing Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Non-Commercial Organisations Performing the Function of Foreign Agents, dated 20 July 2012, No. 121-FZ, OING Conf/Exp (2013) 1 and Opinion on the draft federal law on introducing amendments to certain legislative acts of the Russian federation No. 662902-6, OING Conf/Exp (2014) 3.

## 2. Background

5. On 20 July 2012, the Russian Parliament adopted a series of amendments to the laws on non-governmental organisations, collectively known as the “Foreign Agents Law”.<sup>3</sup> These introduced the concept of a “foreign agent” into section 2 of the Law on Non-Commercial Organisations (“the NCOs Law”).
6. All organisations exercising the functions of a “foreign agent” were initially required to seek registration with the Ministry of Justice.<sup>4</sup> However, since 2014, the Ministry of Justice has had the power to put NCOs on the list of foreign agents on its own initiative.
7. Furthermore, the Foreign Agents Law provides specific grounds for unscheduled inspections of NCOs exercising the functions of a foreign agent.<sup>5</sup> In addition, it provides that routine inspections of these organisations shall be carried out once a year.
8. Moreover, NGOs registered as foreign agents are required to label their publications accordingly. Thus, material issued by it or distributed by it, in particular through the mass media or with the use of the Internet, must bear an indication that such material has been issued or distributed by an NCO exercising the functions of a foreign agent.
9. The Foreign Agents Law also introduced new accounting requirements.
10. The definition of a “foreign agent” was updated in June 2016 to read as follows:

A non-commercial organisation, except for a political party, is considered to carry out a political activity in Russian territory if, regardless of its statutory goals and purposes, it engages in activities in the field of statehood, the protection of the Russian constitutional system, federalism, the protection of the Russian Federation’s sovereignty and territorial integrity, the rule of law, public security, national defence, external policy, the Russian Federation’s social, economic and national development, development of the political system, State and local authority activities, or human rights, for the purpose of influencing State policy, State and local authority structure, or their decisions and actions.

The above activity shall be carried out in the following ways:

organising and holding public events such as meetings, rallies, demonstrations, marches or pickets, or any combination of them, and organising and holding public debates, discussions, or speeches;

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<sup>3</sup> In Opinion no. OING Conf/Exp (2013) 1, the provisions of the law are examined in detail. Furthermore, the amendments to the relevant legislation are reviewed in a third party intervention before the European Court of Human Rights by the Council of Europe Commissioner for Human Rights in the case *ECODEFENCE and Others v. Russia and 48 other applications*, CommDH(2017), 22 5 July 2017; <https://rm.coe.int/third-party-intervention-by-the-council-of-europe-commissioner-for-hum/1680731087..>

<sup>4</sup> Article 32. The Public Associations Law (Federal Law no. 82-FZ of 19 May 1995) contains the same requirement on a non-governmental organization.

<sup>5</sup> Article 32(4.6).

attempting to get certain results from elections, holding a referendum, acting as an election or referendum observer, establishing election or referendum commissions, engaging in political party activities;  
submitting public petitions to State and local authorities and officials, and carrying out other actions affecting [such public authorities and officials], including actions encouraging the adoption, amendment or repeal of laws or other legal acts;  
disseminating, including via information technology, views on State authorities' decisions and policy;  
shaping opinion on social and political issues by, amongst other things, carrying out public opinion polls and publishing the results, or conducting other sociological research;  
involving citizens, including minors, in the above activities;  
financing the above activities.

The activities in the following fields shall be excluded from the scope of 'political activity': science, culture, the arts, health care, disease prevention and protection of health, social security, protection of motherhood and childhood, social support of disabled persons, promotion of a healthy lifestyle, physical well-being and sports, protection of flora and fauna, charitable activities.

11. Political activity is defined as follows:

“... 6. ... a Russian non-commercial organisation which receives funds and other property from foreign States, their governmental bodies, international and foreign organisations, foreign nationals, stateless persons or persons authorised by [any of the above], or Russian legal entities receiving funds and other property from the above-mentioned sources (except for joint-stock companies with State involvement and their subsidiaries) (hereinafter referred to as 'foreign sources'), and which engages in political activity, including political activity in the interests of foreign providers of funds, in the territory of the Russian Federation.”

12. In its Ruling no. 10-P of 8 April 2014, the Constitutional Court held that the establishment of minimum fines by the law on Foreign Agents was at odds with the principle of proportionality.
13. On 22 March 2017, the European Court of Human Rights communicated 49 applications to the government. The applicants complain under Articles 10 and 11 regarding the quality of the Foreign Agents Law, their persecution for failing to register as foreign agents, and excessive State control.<sup>6</sup>
14. In November 2017, the scope of the law was extended so as to impose the use of the 'foreign agents' label on any foreign media directly or indirectly receiving foreign funding<sup>7</sup>.
15. Further amendments to the law on 'foreign agents', which extended the status of 'foreign agents' to include private persons, including bloggers and independent journalists, were adopted on 2 December 2019. The law imposes specific requirements for registration, accounting, and labelling of publications, and makes non-compliance a criminal offence, punishable by heavy administrative fines or imprisonment for up to two years.

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<sup>6</sup> *Ecodefence and Others v. Russia and 48 other applications*, no. 9988/13, 14338/14, 59787/14.

<sup>7</sup> Article 6 of the Law No. 2124-I of 27 December 1991 on the Mass Media



16. On the eve of the examination of the provisions that are the subject of this opinion, some 192 organisations were registered as foreign agents.<sup>8</sup>
17. All these measures have given rise to considerable international concern, notably in opinions of the Commissioner for Human Rights of the Council of Europe,<sup>9</sup> an opinion of the European Commission for Democracy through Law (“the Venice Commission”),<sup>10</sup> a statement of the Organisation for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media calling on the Russian parliament to withdraw the draft law extending the status of a “media outlet - foreign agent” to individuals<sup>11</sup> and a resolution of the European Parliament<sup>12</sup>.

### **3. The changes made or planned**

18. The changes involve extending the scope of the category of foreign agent, modifying the regime under which organisations falling within it can operate, imposing certain prohibitions on their activities and establishing other obstacles to their activities.

#### *a. The category of foreign agents*

19. The extension to the foreign agents category is threefold.
20. First, Law No. 481-FZ establishes a mechanism for registering as foreign agents individuals

who, in the interest of a foreign source, participate in political activities on the territory of the Russian Federation and/or carry out targeted collection of certain categories of important information in the field of military, military-technical activities of the state.<sup>13</sup>

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<sup>8</sup> Statement before the State Duma by V. I. Piskarev, Chairman of the Committee on Security and Corruption Control, 8 December 2020.

<sup>9</sup> Opinion of the Commissioner for Human Rights on the legislation of the Russian Federation on non-commercial organisations in light of Council of Europe standards, 15 July 2013 (<https://rm.coe.int/opinion-of-the-commissioner-for-human-rights-on-the-legislation-of-the/16806da5b2>) and Opinion of the Commissioner for Human Rights on the legislation and practice in the Russian Federation on non-commercial organisations in light of Council of Europe standards: an update, 9 July 2015 (<https://rm.coe.int/opinion-of-the-commissioner-for-human-rights-on-the-legislation-and-pr/16806da772>).

<sup>10</sup> Opinion on Federal Law n. 121-fz on Non-commercial Organisations (“Law on Foreign Agents”), on Federal Laws n. 18-fz and n. 147-fz and on Federal Law n. 190-fz on making amendments to the Criminal Code (“Law on Treason”) of the Russian Federation, CDL-AD(2014)025, 27 June 2014 ([https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)025-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)025-e)).

<sup>11</sup> 20 November 2019; <https://www.osce.org/representative-on-freedom-of-media/439658>.

<sup>12</sup> 2019/2982(RSP), 19 December 2019; [https://www.europarl.europa.eu/doceo/document/B-9-2019-0262\\_EN.html](https://www.europarl.europa.eu/doceo/document/B-9-2019-0262_EN.html).

<sup>13</sup> Explanatory note to the Bill. Previously, individuals could already be recognised as “foreign agents”, equating them to the media. On 28 December 2020, the human rights defender Lev Ponomarev, civil activist Darya

21. For this qualification to apply, the person must not only engage in the activities described, but also be under the so-called "influence" of a foreign source. This influence is reflected by the support received from abroad for his or her activities - financial, material or organizational/methodological support.<sup>14</sup>
22. Accordingly, an individual whose activities meet the characteristics specified in the law is required to submit an application for inclusion in the list of persons exercising the functions of a foreign agent. A person who is not a citizen of the Russian Federation, permanently residing outside the territory of the Russian Federation, intending, upon arrival in the Russian Federation, to perform activities related to the performance of the functions of a foreign agent must inform the federal executive body before entering the Russian Federation.
23. All persons falling within the category of individual foreign agent must, at least once every six months, submit to the competent body a report on his or her related activities, including information on the purposes for which the funds were spent and the use of other assets received from foreign sources, as well as on their actual expenditure and use. The person may not hold office in the administration of the State and local authorities.
24. Activities relating to any matter relating directly or indirectly to public action are characterised as "political":

Political activity shall be defined as activity in the sphere of state-building, protection of the foundations of the constitutional system of the Russian Federation, the federal structure of the Russian Federation, protection of sovereignty and ensuring the territorial integrity of the Russian Federation, ensuring law and order, state and public security, national defence, foreign policy, socio-economic and national development of the Russian Federation, development of the political system, activities of state bodies, and bodies of government.<sup>15</sup>

25. However, the political activity, for which a person may be recognised as a foreign agent, does not include activities:

in the field of science, culture, art, health care, prevention and protection of the health of citizens, social services, social support and protection of citizens, protection of motherhood and childhood, social support of disabled persons, promotion of a healthy lifestyle, physical culture and sports, protection of flora and fauna

nor charitable activities.<sup>16</sup>

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Apakhonchich, journalists Lyudmila Savitskaya and Sergei Markelov Denis Kamalyagin were included in the "register of foreign media performing the functions of a foreign agent".

<sup>14</sup> As specified in Article 2.1 of the Federal Law No. 272-FZ of 28 December 2012 on measures to exert influence on persons involved in violations of fundamental human rights and freedoms and of the rights and freedoms of citizens of the Russian Federation.

<sup>15</sup> Article 2.1 of the Federal Law No. 272-FZ of 28 December 2012 on measures to exert pressure on persons involved in violations of fundamental human rights and freedoms and of the rights and freedoms of citizens of the Russian Federation.

<sup>16</sup> *Ibid.*

26. To fall within the scope of the provision, the activity must materialise in one of the following ways:

participation in the organisation and conduct of public events in the form of meetings, rallies, demonstrations, processions or picket lines (...), organisation and conduct of public debates, discussions, speeches; participation in activities aimed at achieving a certain result in elections, referendums, monitoring the conduct of elections, (...) the activities of political parties; public appeals to state bodies, bodies of local self-government, their officials, as well as other actions affecting the activities of these bodies, including those aimed at adopting, amending, repealing laws or other regulatory legal acts; the dissemination, including through the use of modern information technologies, of opinions on decisions taken by State bodies and their policies; the formation of socio-political opinions and beliefs, including by conducting public opinion polls and publishing their results or conducting other sociological research; the involvement of citizens, including minors, in these activities; financing of these activities.<sup>17</sup>

27. The second extension, which results from the same law, relates to the inclusion in the category of foreign agents of a form of association that was not previously taken into account by this system, public associations<sup>18</sup> that “operate without acquiring the rights of a legal person”.

28. These forms of association can operate legally without State registration. According to the explanatory note accompanying the bill, the reason for this provision is that in this case

the mechanisms for controlling the activities of public associations, including those sponsored from abroad and participating in political actions on the territory of the Russian Federation, are practically absent.

29. As a result, the Law No. 481-FZ institutes a register of unregistered public associations acting as foreign agents. The definitions of political activities and foreign funding are those contained in the Law on NCOs.

30. The organisations concerned are required to make a declaration to the authorities, which must include information on their internal structure and financing.

31. In addition, the authorities may decide *ex officio* to enter an organisation in the register if it has not done so. The law does not provide for this decision to be notified to the organisation concerned.

32. The third extension of the scope of the category of foreign agents concerns changes to the origin of the funds taken into account to establish the foreign element.

33. Law 481-FZ creates the notion of *intermediary*, i.e., a person who, in receiving funds and/or property from a foreign source

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<sup>17</sup> *Ibid.*

<sup>18</sup> “Общественные объединения”.

is a citizen of the Russian Federation or a Russian legal person transferring funds and/or other property from a foreign source or a person authorised by him/her to a Russian non-profit organisation engaged in political activities on the territory of the Russian Federation.<sup>19</sup>

34. Another modification is envisaged in Bill no.1052523-7. Its text aims to include among the sources of financing defined as "foreign" any financing received by a Russian legal entity with foreign "beneficial owners".
35. A beneficial owner is a natural person who ultimately, directly or indirectly, owns (has a predominant interest of more than 25 per cent in the capital) a legal person or has the ability to control its actions.<sup>20</sup>

#### ***b. Conditions governing operation***

36. The legislative provisions significantly modify the regime of operation of the organisations performing the functions of foreign agents, both those that are NCOs and public associations.
37. The provisions involve a general system of prior declaration of activities, reporting obligations, administrative and criminal sanctions, labelling of an organisation's material and expansion of unannounced checks.

#### ***i. Prior declaration of activities***

38. Bill no. 1052523-7 provides that the NCOs concerned would have to communicate information in advance about their planned programmes and activities to the Ministry of Justice and report annually on their implementation or complete or partial non-completion.<sup>21</sup> The text does not define what is meant by the terms "programmes" and "activities", in respect of which reporting would be required but it would seem to make all the activities of the organisations concerned subject to a general prior declaration regime.
39. Competent authorities would also be authorized to prohibit an organisation, by reasoned decision, from carrying out all or part of the programme concerned. Moreover, a failure by the said organisation to comply with such a decision would automatically lead to its liquidation.<sup>22</sup>

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<sup>19</sup> Article 2 (6) of the Law FZ-7 of 12 January 1996 on NCOs. The legal scope of the concept of intermediary created by the law is unclear as the law already targeted funds received "from Russian citizens or legal entities receiving funds and (or) other property from specified sources".

<sup>20</sup> Article 1 (1) of the Bill no.1052523-7.

<sup>21</sup> Article 1 (3) a of the Bill no.1052523-7

<sup>22</sup> "The authorised body shall send to the non-profit organisation performing the functions of a foreign agent or to a structural subdivision of a foreign non-profit non-governmental organisation in writing a reasoned decision banning the implementation in the territory of the Russian Federation of the programme (its part) declared for implementation or being implemented in the territory of the Russian Federation. A non-profit organisation performing the functions of a foreign agent, a structural subdivision of a foreign non-profit non-governmental organisation which has received a decision banning the implementation of a programme (its part) shall not be

40. The grounds for prohibiting an organization from carrying out a programme are not specified, leaving this entirely to the discretion of the administrative authority concerned.

*ii. Reporting obligations*

41. The creation of a register dedicated to foreign agents public associations goes hand in hand with the administrative constraints and controls already experienced by NCOs with this status.

42. Thus, from now on, such a flagged entity is obliged to inform the authorities on a quarterly basis of the amount of funds and/or other property received from foreign sources, the purpose of expenditure of such funds and use of other property, and their actual expenditure and use.<sup>23</sup>

43. Moreover, the creation of a list of natural persons acting as foreign agents is also accompanied by the corresponding obligations already in existence. In particular, a person included in this list must, at least once every six months, submit to the federal executive body a report on his or her activities related to the exercise of the functions of a foreign agent, including information on the purposes for which the funds were spent and the use of other assets received from foreign sources, as well as on their actual expenditure and use.<sup>24</sup>

*ii. Administrative and criminal sanctions*

44. Bill No. 1060950-7 proposes that a non-registered public association-foreign agent or an individual-foreign agent that fails to submit information requested or does so either in an untimely fashion or in an incomplete or distorted form, be liable to an administrative fine.<sup>25</sup>

45. In addition, Law No. 525-FZ provides that failure to comply with the obligation to submit the application for inclusion in the list of individual-foreign agent and/or the report on activities related to the exercise of the functions of a foreign agent, by a

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entitled to embark on the implementation of this programme (its part) and shall cease activities related to the implementation of this programme (its part). Failure to comply with the above decision shall result in the liquidation of the non-profit organisation performing the functions of a foreign agent, the liquidation of the branch of the foreign non-profit non-governmental organisation by court decision upon the claim of the authorised body or its territorial body or the removal of the branch or representative office of the foreign non-profit non-governmental organisation from the register of branches and representative offices of international organisations and foreign non-profit non-governmental organisations by decision of the authorized body” (Article 1 (3) g of the Bill no. 1052523-7).

<sup>23</sup> Article 29.1 of the Federal Law of 19.05.1995 N 82-FZ (as amended on 30.12.2020) "on public associations".

<sup>24</sup> Article 5 of the Law no. 481-FZ.

<sup>25</sup> Article 19.7 (5-3) and Article 19.7 (5-4) of the Code of Administrative Offenses, in the wording proposed by Bill No. 1060950-7. As to non-registered public association, the fine is between 5 000 and 10 000 roubles (between 10 000 and 30 000 roubles for people holding authority). As to individual-foreign agent, the fine is also between 10 000 and 30 000 roubles).

person who has already been subject to an administrative penalty on this account, is punishable by up to five years' imprisonment and a fine of up to 300,000 roubles (3247 euros).<sup>26</sup>

46. Furthermore, the sanctions regime related to NCOs-Foreign agents in case of “malicious” non-compliance with the provisions of the law – entailing up to two years’ imprisonment - is made applicable also in the sphere of unregistered public associations-foreign agents.<sup>27</sup>

*ii. Labelling material*

47. All materials of a non-registered public association-foreign agent should be supplemented with a mention that such organisation performs the functions of a foreign agent<sup>28</sup>. The regime for public associations is thus aligned with that of NCOs from this point of view.
48. At the same time, the Law no. 481-FZ considerably extends the scope of the obligation, both materially and from the point of view of its addressees.
49. On the first aspect, according to the new law, the obligation to label publications with the mention of foreign agent now extends to documents that these organisations send to public authorities or any organisation.
50. Secondly, these obligations now apply to material produced or distributed not only by the organisation itself but also by “the founder, member, participant, head of [it], or a person who is a member of [its] body”.<sup>29</sup>
51. Bill No. 1060950-7 plans fines on NCOs if they release materials without a label stating that they were produced by a foreign agent.<sup>30</sup>
52. In addition, from now on, it is forbidden for the media to publish information on these NCOs, public associations and natural persons without indicating that they are included in the "registers of foreign agents".<sup>31</sup>
53. Bill No. 1060950-7 proposes to attach an administrative sanction to this prohibition.<sup>32</sup>

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<sup>26</sup> Article 330.1 (3) of the Criminal code in the wording resulting from the Federal Law of 30.12.2020 N°525-FZ

<sup>27</sup> Article 330.1 (1) of the Criminal code in the wording resulting from the Federal Law of 30.12.2020 N°525-FZ

<sup>28</sup> Article 29.1 of the Federal Law of 19 May 1995 No. 82-FZ on Public Associations

<sup>29</sup> Article 24 (1) of the Federal Law No. 7-FZ of 12 January 1996 "On NCOs"; Article 29.1 of the Federal Law of 19 May 1995 No. 82-FZ on Public Associations.

<sup>30</sup> The fines will range from 100,000 to 300,000 rubles for persons with authority and from 300,000 to 500,000 rubles for legal entities, Bill No. 1060950-7, part (5)

<sup>31</sup> Article 4 of the Law of 27 December 1991 no.2124-1 "On Mass Media".

<sup>32</sup>For citizens, from 2, 000 to 2, 500 roubles with or without confiscation of the object of the administrative offence; for persons with authority- from 4,000 to 5,000 rubles with or without confiscation of the object of

54. Furthermore, Bill no. 1057892-7 plans to impose a requirement to indicate whether a candidate is affiliated with a foreign agent and performs the functions of a foreign agent in statements, signature sheets, campaign materials, publications of campaign materials, information boards, as well as to impose on the election administration the obligation to provide information about the candidate's affiliation with a foreign agent.<sup>33</sup>

*iii. Unannounced checks*

55. The Law no. 481-FZ provides that the receipt by the competent authorities of information from another public service or of a citizen's denunciation that an NCO is carrying out activities that do not correspond to its purpose and means of action constitutes grounds for unannounced control.<sup>34</sup>
56. Furthermore, Bill no. 1052523-7 also intends to extend the possibilities of unannounced inspections to include cases where the Ministry of Justice is informed that the organisation concerned has collaborated with or participated in the activities of a foreign NGO that has been declared undesirable in Russia.<sup>35</sup>

*c. Prohibitions on activities*

57. A person included in the list of persons exercising the functions of a foreign agent cannot be appointed to posts in state or local government bodies.<sup>36</sup>
58. Moreover, for the purpose of organizing and holding a public event, it is now prohibited to receive funds, as well as to transfer and/or receive other property to/from NCOs, unregistered public associations or individuals acting as foreign agents.<sup>37</sup>
59. On its side, Bill no. 1057892-7 plans to prohibit NGO-foreign agents from participating in a debate related to an election or referendum.<sup>38</sup>

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an administrative offence; legal entities - from 40,000 to 50,000 rubles with or without confiscation of the object of an administrative offence.

<sup>33</sup> Part 1) of the Bill no. 1057892-7

<sup>34</sup> Article 32 (4.2, 2) the Federal Act of 12 January 1996 No. 7-FZ on NCOs

<sup>35</sup> Article 1 (3).

<sup>36</sup> Article 2 (1) of the Federal law of 28 December 2012 No. 272-FZ "On measures of influence of persons involved in violations of fundamental human rights and freedoms of citizens of the Russian Federation", resulting from Article 5 of Law 481-FZ.

<sup>37</sup> Article 11.3 of the Federal law of 19 June 2004 No. 54-FZ "on meetings, rallies, demonstrations, processions and pickets".

<sup>38</sup> "Foreign citizens, (...)foreign organisations, international organisations and international social movements, [as well as] non-profit organisations and unregistered public associations, foreign mass media performing the functions of a foreign agent, Russian legal entities established by a foreign mass media outlet, performing the functions of a foreign agent, may not carry out activities that promote or hinder the nomination of candidates or lists of candidates, the election of registered candidates, the promotion of an initiative for a referendum or a referendum, the achievement of a particular result in an election or a

*d. Other obstacles*

60. The provisions will lead to a number of obstacles for activities that involve publishing and the holding of public events by NGOs whether or not they are designated as foreign agents.
61. In the first place, Law of 30 No. 538-FZ December 2020 provides for a prison sentence of up to two years and a fine of up to 1 million roubles for publicly disseminating defamation, including through the media or the Internet.
62. The maximum penalty is increased to 5 years' imprisonment and 5 million rubles fine for defamation combined with the accusation of a person having committed a crime against the inviolability and sexual freedom of a person or a serious or particularly serious crime".<sup>39</sup>
63. Secondly, despite its wording, the Bill no.1057895-7 on educational activities has a very broad impact on the advocacy and awareness-raising activities carried out by organisations, far beyond the educational sphere.
64. Thus, in order to "prevent negative foreign interference in the educational process", it is proposed to give the federal bodies "the power to coordinate the participation of educational organisations in international cooperation by issuing appropriate conclusions".
65. According to the explanatory memorandum of the Bill,

the lack of appropriate legal regulation creates the preconditions for the uncontrolled implementation by anti-Russian forces in the school and student environment under the cover of educational activities of a wide range of propaganda activities, including those supported from abroad and aimed at discrediting state policy, pursued in the Russian Federation, revising history, undermining the constitutional order.
66. In this connection, the Bill plans to establish the concept of "educational activity", which is understood as

activity outside the framework of educational programmes aimed at disseminating knowledge, skills, values, experience and competence for the purposes of intellectual, spiritual, moral, creative, physical and (or) professional development of people and meeting their educational needs and interests.

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referendum, or participate in any other way in election campaigns or the campaigning of a referendum. The participation in election and referendum campaigns of these persons and representatives of these organisations as foreign (international) observers shall be regulated in accordance with federal law."( part 2) of the Bill no. 1057892-7).

<sup>39</sup> Article 128.1 of the Criminal Code as resulting from Federal Law No. 538-FZ of 30 December 2020. The previous maximum penalty for this offence was 480 hours of community service and a fine of 5 million rubles.



67. Thirdly, Federal law No. 541-FZ of 30.12.20 creates a procedure for raising funds for preparing and holding a public event, as well as for spending donations received for this purpose. In particular, the organizer of such a public event has to provide the details of the bank account used to raise funds for organizing and holding of this event when the estimated number of its participants exceeds 500 people.<sup>40</sup> Funds used for such an event must necessarily pass through this account.
68. In addition, law No. 541-FZ introduces a ban on financing a public event from foreign sources (and persons or entities that may act as intermediaries for such financing).<sup>41</sup>
69. This rule implies for the organiser to collect from the bank the data concerning the authors of the transfers. Funds raised by the organiser of a public event may only be used to cover the expenses associated with it. The organiser is required, within ten days, to return unspent funds to individuals and organisations in proportion to the funds given.<sup>42</sup>
70. At the end of a public event with an estimated number of participants exceeding 500 persons, its organizer shall submit to the administration a report on the expenditure of funds. These new obligations would, according to a bill passed in first reading, be accompanied by administrative sanctions.<sup>43</sup>

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<sup>40</sup> Article 7 (3) 8.1 of the Federal Law of 19 June 2004 N 54-F "on gatherings, rallies, demonstrations, parades and picketing" amended by the Federal Law of 30 December 2020 N 497-FZ.

<sup>41</sup> Article 11 (3) of the Federal Law of 19 June 2004 N 54-FZ "For the purpose of organising and holding a public event, it is prohibited to transfer and/or receive money, as well as to transfer and/or receive other property from 1) foreign states or foreign organisations; 2) international organizations or international public movements; 3) foreign citizens or stateless persons (...) 4) NCOs, unregistered public associations or individuals performing the functions of a foreign agent; 5) citizens of the Russian Federation under the age of 16 years [...]6) anonymous contributors [...] 7) legal entities registered less than one year prior to transfer (transfer) of cash and (or) other property.

<sup>42</sup> Article 11 (10) of the Federal Law of 19 June 2004 No. 54-FZ

<sup>43</sup> Bill no.1060689-7 concerning amendments to the Code of Administrative Offences of the Russian Federation aiming at strengthening liability for violations during the preparation and holding of public events. Failure to carry out fund-raising procedures and failure to provide adequate reporting in this area may result in administrative penalties of ten thousand to twenty thousand roubles or compulsory labour for a maximum period of forty hours; for persons with authority - from twenty thousand to forty thousand roubles; for legal entities - from seventy thousand to two hundred thousand roubles. Transfer of funds for the organization and holding of a public event, committed by a person who is not allowed to transfer funds for these purposes in accordance with federal law - shall carry an administrative fine from ten thousand to fifteen thousand rubles; for legal entities, from fifty thousand to one hundred thousand rubles.

#### 4. Compatibility with European standards

71. The establishment and operation of NGOs are guaranteed, in particular, by Article 11 of the European Convention on Human Rights (“the European Convention”), Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations<sup>44</sup> and the Joint Guidelines on Freedom of Association of the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights<sup>45</sup>.
72. The restrictions and requirements effected by the provisions under consideration will necessarily have an impact on the ability of the NGOs concerned to pursue their objectives. In addition, they will also affect individuals connected with them, not only as regards the exercise of the right to freedom of association but also, through the reporting obligations, the right to respect for private life under Article 8 of the European Convention, as well the rights to freedom of expression and to peaceful assembly under Articles 10 and 11 of the European Convention on account of penalties for defamation and the prohibition on certain public events.
73. In order to be regarded as justified, all these restrictions and requirements need not only to have an appropriate legal basis but also must have a legitimate aim and be necessary in a democratic society.
74. Previous opinions have indicated that – particularly as regards the definition of political activities, the registration and the labelling requirements, the reporting and supervisory rules and the criminal and other penalties established - some or all of these conditions had not been met.<sup>46</sup> The same conclusion applies as regards the restrictions and requirements being established by the provisions under consideration.

##### *a. Quality of the parliamentary review*

75. In order to determine the proportionality of a general measure, one must primarily assess the legislative choices underlying it. In accordance with the principle of subsidiarity, the quality of the parliamentary and judicial review of the necessity of the measure is of particular importance in this respect, including to the operation of the relevant margin of appreciation.<sup>47</sup>

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<sup>44</sup> Adopted by the Committee of Ministers on 10 October 2007 at the 1006th meeting of the Ministers’ Deputies.

<sup>45</sup> CDL-AD(2014)046, 17 December 2014.

<sup>46</sup> See OING Conf/Exp (2013) 1.

<sup>47</sup> see among other authorities, A.-M.V. v. Finland, no. 53251/13, § 82, 23 March 2017

76. In addition, both Recommendation CM/Rec(2007)14<sup>48</sup> and the Joint Guidelines<sup>49</sup> underscore that any regulation interfering with freedom of association should be adopted through a democratic, participatory, and transparent process.
77. While there are not specific European rules or standards governing the preparation of *ex-ante* impact assessment, this is considered best practice in policy development.<sup>50</sup>
78. In the view of the scale of the changes undertaken and their impact on the democratic life of the country, the parliamentary debates on the texts examined so far have been particularly summary. There was a lack of proper public consultations regarding the draft amendments. It precluded the opportunity for the State Duma and the government to address the concerns raised about the amendments, or to elaborate the necessity for their adoption.
79. In addition, while the objections raised by international organisations to the 2012 Law have been numerous and pressing, they do not appear to have been addressed during the discussion.

Moreover, during its meeting with the President of the Russian Federation on 10 December 2020, the Presidential Council for Civil Society and Human Rights underlined the indeterminacy of the concepts included in the bills under consideration and the risk that these texts will unduly restrict the action of civil society<sup>51</sup> The President of the Russian Federation himself has indicated on the same day the need to rework the texts so that they do not become prohibitive for the NGOs concerned.<sup>52</sup> The Ministry of Economic Development of the Russian Federation has been critical

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<sup>48</sup> Par. 77. The Explanatory Memorandum to the *Recommendation 2007(14)* further clarifies that: “it is essential that NGOs not only be consulted about matters connected with their objectives but also on proposed changes to the law which have the potential to affect their ability to pursue those objectives. Such consultation is needed not only because such changes could directly affect their interests and the effectiveness of the important contribution that they are able to make to democratic societies but also because their operational experience is likely to give them useful insight into the feasibility of what is being proposed” (par. 139).

<sup>49</sup> Principle 9, See also Principle 8 and the Explanatory Note to the Joint Guidelines, par. 33., which provides that any legislation impacting on NGOs needs to be developed in a manner that is timely, free of political influence and transparent. The Joint Guidelines further clarifies that NGOs should be consulted in the process of introducing and implementing any regulations or practices that concern their operations (par. 106.). See also Venice Commission, *Opinion on the Law on nongovernmental organisations (Public Associations and Funds) as amended of the Republic of Azerbaijan*, CDL-AD (2014)043), 15 December 2014, para. 42.

<sup>50</sup> SIGMA, *The Principles of Public Administration*, OECD/EU, 2017 edition, pp. 32-34, <http://www.sigmaxweb.org/publications/Principles-of-Public-Administration-2017-edition-ENG.pdf> European Commission, *Better Regulation Guidelines*, working document, Brussels, 7 July 2017, SWD (2017) 350; Chapter III: Guidelines on Impact Assessment, <https://ec.europa.eu/info/sites/info/files/better-regulation-guidelines-better-regulation-commission.pdf>

<sup>51</sup> <http://www.president-sovet.ru/events/meetings/read/16/>

<sup>52</sup> Ibid.

of the bills no.1052523-7<sup>53</sup> and no.1057914-7<sup>54</sup> and has recommended that they be limited in scope.<sup>55</sup> These warnings have not given rise to the corresponding review at the Parliamentary stage. In particular, the changes adopted at second reading on the definition of “political activity” of individuals-foreign agents “to avoid broad, double interpretation, so that it is clear what “political activity” is”<sup>56</sup> correspond in reality to a harmonisation of the legal regime with that applicable to NCOs and public associations.

***b. Prescribed by law***

80. In order to satisfy the condition for a limitation on rights and freedoms guaranteed by the European Convention to be prescribed by law, the European Court has underlined that any legal rule being relied upon must fulfil the condition of foreseeability.<sup>57</sup>

81. By “foreseeability”, the European Court has repeatedly emphasised that:

a norm cannot be regarded as a “law” unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.<sup>58</sup>

82. The fulfilment of this condition cannot be regarded as being met by the extension of the category of foreign agents to individuals, particularly on account of the wide scope of circumstances making that extension applicable and the way in which “political activities” are defined.

83. Federal Law 481-FZ brings into the category of foreign agent any person who receives material financial or organisational-methodological support from a foreign source or who joins a public initiative in connection with a matter affecting the conduct of public action falls into the category of foreign agents. As a result, persons contributing in a professional capacity to the action of an NGO-foreign agent fall within the scope of this law.

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<sup>53</sup> Bills no.1052523-7 on amendments to the Federal Law "On non-commercial organizations" to improve the legal regulation of the activities of non-commercial organizations acting as foreign agents and structural subdivisions of foreign non-commercial non-governmental organizations

<sup>54</sup> Which became Federal Law No. 481-FZ of 30 December 2020 on amendments to certain legislative acts of the Russian Federation to establish additional Measures to counter threats to national security

<sup>55</sup> The ministry had recommended not to maintain the amendment on the rules governing the dissemination in the mass media of the material of foreign agents, in view of the risk of arbitrariness. It had also considered that activities related to the participation of social non-profit organisations in regulatory impact assessment procedures established by legislation should be excluded from the scope of the policy activity, as well as participation in the procedure for assessment of regulatory legal acts of state bodies, local authorities, subject to public discussion. See [Social Information Agency, 22/12/2020](#).

<sup>56</sup> Statement of Vasily Piskarev, head of the committee on Safety and Anti-Corruption of the State Duma, <http://duma.gov.ru/news/50387/>

<sup>57</sup> See, e.g., *Medvedyev and Others v. France* [GC], no. 3394/03, 29 March 2010, at para. 92 and *Khlaifia and Others v. Italy* [GC], no. 16483/12, 15 December 2016, at para. 92.

<sup>58</sup> See, e.g., *Rekvenyi v. Hungary* [GC], no. 25390/94, 20 May 1999, at para. 34.

84. In addition, the same consequence could follow for any person participating on a one-off basis in an activity organised by such an NGO, such as a public meeting, provided that it includes an "organisational-methodological" support dimension, such as capacity building, or the payment of a train ticket or even a meal.
85. This very possibility demonstrates not just the breadth of the reach of the extension but also the considerable difficulty in being sure that a particular individual falls within it.
86. In this connection, it should be noted that, according to the law, neither citizens nor NGOs are legally entitled to access the information which would make it possible to trace the origin of the funds used by NCOs and public associations. They are not, therefore, able to identify the funding or other assets received as "foreign funding". Consequently, they cannot legally and practically protect themselves from being qualified as "foreign agents".
87. As a result, it will not be practicable for individuals to foresee whether certain conduct will necessarily be regarded as bringing some within the category of foreign agent.
88. Moreover, it has previously been found that
- the definition of "political activities" in the Law also falls short of satisfying "prescribed by law" requirement with respect to Article 10 and 11 of the Convention. There is a manifest lack of clarity as to what activities are deemed political, which is recognised by public authorities. The Law confers the public authority with broad discretionary power to qualify a particular activity as "political" and thereby effectively prevent a NCO-recipient of foreign funds from engaging in any kind of advocacy with respect to any government decision it might be concerned with.<sup>59</sup>
89. This conclusion is equally applicable to the provisions now under consideration, notwithstanding some additions made to the text on the second reading, which are supposed to avoid an extensive interpretation of political activity.
90. Certainly, it cannot be said that the exclusion of a series of spheres of activity from the scope of political activity has proved effective from catching organisations working in those spheres. For example, the exclusion of activities related to health protection has not prevented HIV-related organisations from being captured by the legislation on foreign agents. Similarly, the exclusion of activities related to environmental protection has not prevented environmental organisations from being labelled as foreign agents.<sup>60</sup>
91. There is, therefore, no reason to believe that the exclusions will operate any differently under this new law or that individuals treated as foreign agents will be any more protected than NCOs who have been so categorized.

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<sup>59</sup> OING Conf/Exp (2013) 1, at para. 58.

<sup>60</sup> See the [diagram published on 03.12.2019 by the Deutsch Welle](#) on the basis of data from the register of foreign agents of November 2017 : 4 health protection organisations and 8 environmental organisations were registered.

92. In any event, the wording of the text is not such as to adequately prevent the risk of arbitrariness in its application and thus ensure that the condition of being prescribed by law is fulfilled.
93. Bill no.1052523-7 also raises problems from the perspective of the "quality of the law" requirements.
94. This is because its text defines neither what is meant by the terms "programmes" and "activities" that should be reported nor the extent of the information required. Yet the incomplete responding to these formalities is subject to sanctions.
95. In addition, the grounds for imposing a prohibition on carrying out a programme are not provided for in the text. As a result, the administrative authority appears to be given an unfettered discretionary power, with the power of prohibition not being limited to activities contrary to the law. Furthermore, the obligation to state reasons provided by the Bill is largely devoid of substance since the authority would not have to provide a legal analysis of the facts taken into account.

*c. Legitimate aim*

96. The justifications put forward for extending the category of foreign agents, as seen in the explanatory memorandum to the bill and in the parliamentary debates, are the prevention of disorder and the protection of national sovereignty.
97. The legitimacy of these aims pursued appears problematic from a twofold point of view.
98. In the first place, such aims require a certain materiality in order to be accepted<sup>61</sup> but their invocation is either devoid of substance or entirely abstract. There have been no reports of situations in which the Russian constitutional order has been jeopardised as a result of civil society action remotely controlled by a foreign power.
99. In addition, the legal regime of the system set up is not tailored to thwart anti-democratic actions likely to destabilise the constitutional order.<sup>62</sup> The provisions under consideration do not outlaw the activities in question. Rather, it points them out unfavourably to the general public. Moreover, the provisions are indifferent to the intentions of those it targets. Furthermore, they do not take into account the magnitude of the means being provided by the foreign source, since minimal support is sufficient to trigger the scheme. In other words, the labelling of a foreign agent

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<sup>61</sup> See, e.g., *Navalnyy v. Russia* [GC], no. 29580/12, 15 November 2018, at paras. 120-127.

<sup>62</sup> In announcing the legislative initiative, the Chairman of the Security Committee of the Council of the Federation (upper house of parliament) indicated that the measure had the character of a retaliatory measure and a replica of US legislation; Ria Novosti, 24 September 2020 <https://ria.ru/20200924/inoagency-1577695873.html>.

- occurs regardless of the actual or potential results of their activities, which are not taken into account. Therefore, the "prevention of disorder" cannot be invoked as a relevant consideration.
100. The second objection relates to the question of whether there is room, among the legitimate restriction clauses, for suspicion to be attached to openness to the outside world,<sup>63</sup> having regard to the fundamental principles of “pluralism, tolerance and broadmindedness without which there is no "democratic society"”.<sup>64</sup>
  101. From this point of view, the European Convention's restrictive clauses must be interpreted in the light of the prohibition in Article 17 of any activity aimed at the destruction of any of the rights and freedoms set forth in it or their limitation to a greater extent than it provides for.
  102. Certainly, the justifications given in the explanatory memoranda of the bills under consideration - like the content of the parliamentary debates - reflect the negative prejudice affecting, as a matter of principle, the links (however tenuous) that civil society may have with foreign countries.
  103. As the Commissioner for Human Rights of the Council of Europe has underlined

“the activities qualified as “political” under the Law on Foreign Agents are among the most commonly-practiced, basic and natural methods for civil society institutions to perform their work. Moreover, they constitute important elements of the democratic process. In his view, the application of the Law on Foreign Agents against civil society groups advocating for changes in law and practice, or against those scrutinising the human rights compliance of decisions, actions and policies of public authorities, greatly undermines their role as a public watchdog in a democratic society.”<sup>65</sup>
  104. The accumulation, over the years, of laws implicating foreign agents, undesirable foreign organisations, treason, seems to have forged a collective imagination that sees the opening of civil society to the outside world as a threat. The preservation of society from external intellectual or cultural influences, by stigmatising those who could be its intermediaries, can hardly be considered legitimate, given the cardinal principles shared in the Council of Europe's area of law and democracy.

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<sup>63</sup> See, *mutatis mutandis*, *Bayev and Others v. Russia*, no. 67667/09, 20 June 2017, para 81-82. The legislative provisions under consideration were adopted with the specific aim of blacklisting in the public space organisations supported in one way or another by foreign structures, whose message is assimilated to a threat to national sovereignty. In this respect, it should be recalled that the national sovereignty proceeds in a democracy from the free and informed choices of individuals. The impediment to a fair and public debate because of the “foreign connection” of those concerned appears by its very nature to be contrary to the ideas of openness and pluralism which are at the heart of the values in the European Convention.

<sup>64</sup> *Handyside v. United Kingdom*, no. 5493/72, 7 December 1976, at para. 49.

<sup>65</sup> Third party intervention before the European Court of Human Rights by the Council of Europe Commissioner for Human Rights in the case *ECODEFENCE and Others v. Russia and 48 other applications*, CommDH(2017), 22 5 July 2017, at para. 23.

105. Furthermore, it should be borne in mind that the NGOs which are primarily affected by the provisions under consideration are ones that operate in the international arena, whether through litigation, advocacy activities or international exchanges with other NGOs. The activities of these NGOs contribute in a number of ways to the achievement of the aims and principles of the Statute of the Council of Europe.
106. Thus, they play an essential role in implementing the European Convention on a day-to-day basis, using it before the domestic courts and, in accordance with the principle of subsidiarity, thereby ensuring that national authorities fulfil their responsibility to act as the primary safeguard of human rights and fundamental freedoms. In addition, by handling a large part of the Russian cases before the European Court, they contribute to the dialogue between the latter and the Russian courts and, more broadly, the Parliament.<sup>66</sup>
107. Finally, they contribute to the proper execution of the European Court's judgments by contributing to the monitoring process through communications to the Committee of Ministers.
108. As a result, the restrictions and requirements being imposed on the activities of these NGOs can not only have an adverse impact on the democratic and social climate in Russia, but they could also affect Russia's engagement with the Council of Europe.
109. Further isolation of Russian civil society may also ensue if the Bill on amendments to the Law on Education leads to restrictions on the participation of Russian NGOs in research activities conducted at the regional and/or European level. Such participation is an increasingly widespread form of associative activity, allowing those involved to learn from foreign experiences and giving European bodies an overview of issues concerning a particular field.
110. In these circumstances, it is difficult to see how the restrictions and requirements in the provisions under consideration can be regarded as having any legitimate aim that could justify limiting the rights and freedoms affected.

#### **d. Necessary in a democratic society**

111. However, even if the provisions were to be considered as having a legitimate aim, the lack of proportionality in their effect is such as to preclude them from being considered necessary in a democratic society and admissible limitations on the rights and freedoms affected.
112. This can be seen, first, in respect of the extension of categories to both individuals and unregistered public associations.

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<sup>66</sup> See the Brussels Declaration, 27 March 2015; [https://www.echr.coe.int/Documents/Brussels\\_Declaration\\_ENG.pdf](https://www.echr.coe.int/Documents/Brussels_Declaration_ENG.pdf).



113. The consequences for an individual of being on the register of foreign agents are extremely grave. In particular, they cannot work in the administration of the State or local authorities and become subject to heavy administrative formalities. The latter are already very difficult from an organisational point of view for NGOs to manage but they are likely to prove almost impossible for an individual to do so. Yet, despite the lack of clarity as to when the need for compliance with these formalities arises, they will be exposed to administrative sanctions and, in the event of repeated breaches, to heavy criminal sanctions for any failure in this regard.
114. Moreover, it is important to keep in mind that an individual will not enjoy the right to freedom of association if in reality the freedom of action or choice which remains available to her or him is either non-existent or so reduced as to be of no practical value.<sup>67</sup> There can be no doubt that the constraints associated with participation, either as an employee, or as a mere supporter receiving financial, material or organizational/methodological support, are such as to render the right guaranteed in Article 11 of the European Convention devoid of substance.
115. In addition, the publication of personal data relating to individuals categorized as foreign agents will also have serious consequences for their right to respect for private life. Especially in small towns, this can be expected to lead to unjustified public shaming of those concerned.<sup>68</sup>
116. Russian law – in accordance with European standards - allows public associations to operate informally, i.e., without being subject to otherwise applicable administrative formalities.
117. However, the inclusion by Law No. 481-FZ of unregistered public associations in the category of entities that may be designated as foreign agents makes them subject to the same obligations as public associations and NCOs in respect of reporting and disclosure requirements, effectively requiring them to take a shape that their founders and members do not seek.
118. The application to informal public associations of the constraints associated with the status of a foreign agent deprives this form of legally recognised grouping of its *raison d'être*, rendering the right of their founders and members under Article 11 of the European Convention either non-existent or of no practical value.<sup>69</sup>
119. Secondly, there is a lack of proportionality in the introduction of a general requirement for a prior declaration of activities by organisations entered in the register of foreign agents.

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<sup>67</sup> *Young, James and Webster v. United Kingdom*, no. 7601/76, at para. 56.

<sup>68</sup> As regards opinion polls on public attitudes towards the label of foreign agents, see the third intervention of the Commissioner for Human Rights, see CommDH(2017) 22, at para. 8-9. On the professional impact of the label of individual-foreign agent, see in particular the testimony of the Pskov journalist Lyudmila Savitskaya, [Server.Realii, 13 January 2021](#)

<sup>69</sup> See *Zhechev v. Bulgaria*, no. 57045/00, 21 June 2007, at para. 56.

120. The consequences for the NGOs concerned would be an increase in the administrative workload, which is already heavily burdened by the existing requirements in force. In addition, they would be at the mercy of a possible ban on carrying out their planned activities. Such a regime would seriously compromise planning capacities, which are essential for their good management, and the risk of a ban could also dissuade both donors from funding the NGOs concerned and the public from supporting their activities.
121. Moreover, by creating a hazard for the conduct of the activities of the NGOs concerned, the requirement clearly undermines their organisational autonomy, which constitutes an important aspect of the right to freedom of association.<sup>70</sup>
122. More fundamentally, such a form of prior declaration strikes at the very substance of the freedom guaranteed by Article 11 for NGOs to pursue their activities as this would become entirely subject to the goodwill of the authorities. Moreover, any failure by an NGO to comply with the requirements of the authorities would necessarily lead to the liquidation of the organisation. Such a broad discretionary power is entirely inconsistent with the requirement that dissolution be a measure of last resort and applicable only to serious misconduct.<sup>71</sup>
123. Thirdly, the extension of the labelling requirement to the material of employees, directors and members of NCOs and public associations recognised as "foreign agents", as well as individual-foreign agents and the introduction of a direct prohibition for the media to publish any information about "foreign agents" or material published by them without specifying the label "foreign agent" is not only an excessive restriction on the right to freedom of expression but it will lead to those concerned being subjected to a grave form of stigmatization.
124. As previously pointed out, the negative perceptions of the term "foreign agent" are particularly strong,<sup>72</sup> reflecting an implicit but clear connotation of an enemy figure. The stigma associated with hostility to the state will undoubtedly be much heavier when it weighs directly on individuals as opposed to legal entities. Thus, there is a risk that people may be ostracized in their daily social interactions in a much more significant way than when the obligation of labelling applies to the organizations to which they belong.
125. Fourthly, the possible criminal sanctions applicable to both the leaders of public associations and individuals for failure to register as foreign agents – respectively up to two and five years' imprisonment – are also clearly a grossly disproportionate response to non-compliance with the obligation concerned.

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<sup>70</sup> See *Lovrić v. Croatia*, no. 38458/15, 4 April, 2017, at para. 71.

<sup>71</sup> See, e.g., *Croatian Golf Federation v. Croatia*, no. 66994/14, 17 December 2020, at para. 98.

<sup>72</sup> See OING Conf/Exp (2013) 1, at para. 69.

126. This is equally so of the penalties prescribed by Law 538-FZ, which provides for a possible fine of up to 500,000 roubles and 2 years' imprisonment and a minimum fine of 5 million roubles and a maximum of 5 years' imprisonment for false accusations of committing a crime against sexual inviolability and sexual freedom of a person or a serious crime.
127. As the European Court has emphasised, NGOs are exercising a public watchdog role of similar importance to that of the press when they draw attention to matters of public interest that attracts the protection of Article 10 of the European Convention.<sup>73</sup> Although this protection does not apply where no attempt is made to check the veracity of what is published, the European Court has made it clear that:
- the imposition of a custodial sentence for a media-related offence, albeit suspended, compatible with journalists' freedom of expression as guaranteed by Article 10 of the Convention can only be in exceptional circumstances, notably where other fundamental rights have been seriously impaired, as, for example, in the case of hate speech or incitement to violence.<sup>74</sup>
128. These penalties are not only disproportionate but are also likely to dissuade NGOs from exercising their duty of vigilance and information, particularly in cases involving state officials, judges or the heads of large companies. As a result, matters of public interest, such as exposures of corruption, the use of torture by the police or prison services, environmental crimes and even domestic violence could be silenced because of the risk of being subjected to such draconian penalties.
129. Finally, the cumulative effect of amendments to Federal law No. 54-FZ - making it very difficult for associations to hold public events, depriving them of access to any foreign funding and subjecting them to draconian administrative and budgetary constraints when the projected event potentially involves more than 500 people - must also be seen as amounting to disproportionate restrictions on their rights to freedom of expression, association and peaceful assembly.

## 5. Conclusion

130. Adopted or under consideration within the framework of separate but concomitant legislative processes, the provisions introduced in November-December 2020 find their coherence in the tight control that they deploy over associational activities and the "protection" that they want to secure for civil society against the influence of the outside world.
131. The speed with which the process has been conducted for most of the texts in question is remarkable given that they are intended to make profound changes to the shape of the civil space in Russia.

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<sup>73</sup> *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, 8 November 2016, at para. 166.

<sup>74</sup> *Sallusti v. Italy*, no. 22350/13, 7 March 2019, at para. 59.

132. Although the legal environment for NGOs in Russia has been constantly evolving since the adoption of the law on foreign agents in 2012, this new body of legislation exacerbates the hostile environment for the work of NGOs, not only from the point of view of the legal persons themselves, but above all from the point of view of the persons who compose them or who associate themselves with their work, given the risk of very heavy prison sentences.
133. Ultimately, what is now at stake is whether the public space in Russia leaves room not only to persons or associations whose views are favourably received or regarded as inoffensive or as a matter of indifference, but also ensures the fair and proper treatment of others and avoids abuse of a dominant position.
134. Certainly, the changes introduced in the provisions under consideration call into question the very substance of the rights guaranteed in Articles 8, 10 and 11 of the European Convention and their elaboration in associated European standards. In this context, it should be recalled that

Political pluralism, which implies a peaceful co-existence of a diversity of political opinions and movements, is of particular importance for the survival of a democratic society based on the rule of law.<sup>75</sup>

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<sup>75</sup> *Virabyan v. Armenia*, no. 40094/05, 2 October 2012, at para. 200.