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NOTE VERBALE

The OSCE Office for Democratic Institutions and Human Rights (ODIHR) presents its compliments to the Delegations of OSCE participating States and, in accordance with the second part of paragraph 11 of the Moscow Document of 1991, has the honour to transmit the report of the OSCE rapporteur appointed by 38 OSCE participating States under the Moscow Mechanism invoked in respect of the Russian Federation.

ODIHR avails itself of this opportunity to renew to the Delegations of the OSCE participating States the assurances of its highest consideration.

Warsaw, 16 September 2022



To the Delegations of the OSCE participating States
Vienna

REPORT ON RUSSIA'S LEGAL AND ADMINISTRATIVE PRACTICE IN LIGHT OF ITS OSCE HUMAN DIMENSION COMMITMENTS

by Professor Angelika Nußberger

GENERAL OBSERVATIONS AND EXECUTIVE SUMMARY

On 28 July 2022, 38 OSCE participating States invoked Article 12 of the OSCE's Moscow Document in respect of the Russian Federation in order "to establish a mission of experts to look into and report on the ongoing concerns [the invoking States] have identified as particularly serious threats to the fulfilment of the provisions of the OSCE human dimension by the Russian Federation, to assess Russia's legal and administrative practice in light of its OSCE commitments, to establish the facts, and to provide recommendations and advice."

The author of this report was appointed as a single rapporteur because the Russian Federation had decided not to appoint a second expert. The OSCE Office for Democratic Institutions and Human Rights (ODIHR), provided technical support to the mission by serving as a coordination point between the participating States and providing administrative and logistical support to the Rapporteur.

The mandate of the mission reads as follows:

- *To assess the state of Russia's adherence, in law and in practice, to its OSCE Human Dimension commitments and to identify actions taken by the Russian Government over recent years that have led to the current human rights and fundamental freedoms situation in the country.*
- *To assess ramifications of such developments on Russian civil society, on free media, on the rule of law, and on the ability of democratic processes and institutions to function in Russia, as well as on achieving the OSCE's goal of comprehensive security.*

The Rapporteur invited all potential sources to contribute information and received support from many sides, in particular from Russian NGOs. Unfortunately, the Permanent Representative of the Russian Federation did not reply to the Rapporteur's request to organise a country visit. Nor did she receive information from the eight State institutions she contacted through the Permanent Representation of the Russian Federation. The position of the Russian State could therefore only be taken into account insofar as it is accessible through public sources.

The main findings of the mission can be summarised as follows:

A decade of reform legislation in Russia has completely changed the scope of action of Russian civil society, cutting it off from foreign and international partners, suppressing independent initiatives, stifling critical attitudes towards the authorities, silencing the media and suppressing political opposition. The repression has gradually intensified since 2012 – after mass protests in the context of parliamentary and presidential elections – and reached its peak with the new reform laws adopted after the beginning of the war in July 2022. Most of the new legal provisions are implemented immediately and have the effect of forcing non-

governmental organisations, anti-corruption activists, journalists and other media actors, human rights defenders, lawyers and researchers to reduce or abandon their activities or to leave the country.

While the basic principles of the 1993 Russian Constitution, which are in line with OSCE human rights commitments, have remained untouched and human rights are still considered the "highest values to be protected by the State", a very strong vertical power structure has emerged. Successively, all federal and regional law enforcement agencies have been brought under the direct control of the President. There are still institutional guardians of human rights and civil society such as the Constitutional Court and the Ombudsman, but they are not able or willing to protect political rights effectively.

One of the core pieces of legislation suppressing civil society activities is the so-called "foreign agents" law, which has been criticised by all international human rights monitoring bodies. The original 2012 law has been constantly reformed and its scope has been extended more and more so that virtually any Russian and foreign organisation and individual can be declared and registered as a "foreign agent" or "affiliated with a foreign agent". As a result, participation in social and political life has been drastically restricted. The situation is even worse for foreign or international organisations declared "undesirable". Their work is illegal; whoever participates in their activities has to face persecution.

Freedom of expression is restricted by many new laws such as the laws on "fake news", "extremism", historical remembrance, "terrorism", "State secrets", "propaganda of non-traditional sexual relationships", and the "protection of religious feelings". The most restrictive laws are the "fake-news" laws related to the Russian Armed Forces that were adopted shortly after the beginning of the war against Ukraine. Together with the broadly interpreted Law on Extremism and the legislation on State secrets they establish a sort of military censorship completely banning anti-war protests.

Mass media and the internet have been regulated in such a way as to radically restrict access to information, not least shown with the blocking of thousands of websites and the declaration of many organisations providing information as "extremist" or "undesirable" organisations.

The Law on Assemblies which was changed 13 times as well as the continued application of the COVID-19-rules in many places – despite other pandemic-related restrictions being lifted – makes demonstrations de facto impossible.

In addition, propaganda, pressure in opinion formation, the use of criminal law for other purposes, the use of violence against civil society activists and the media, the dispersal of peaceful assemblies as well as the ineffective investigation of the murders of journalists have created a climate of fear and intimidation.

Russian legislation and practice in recent years, which betrays fear of civil society as a "fifth column" that weakens the State, is not in line with OSCE standards based on pluralism and a strong and independent civil society.

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REPORT ON RUSSIA'S LEGAL AND ADMINISTRATIVE PRACTICE IN LIGHT OF ITS OSCE COMMITMENTS

A) Introductory Remarks

I) Invocation of the Moscow Mechanism and Mandate

On 28 July 2022, 38 OSCE participating States (Albania, Andorra, Austria, Belgium, Bulgaria, Canada, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Greece, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Montenegro, Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Ukraine, the United Kingdom, and the United States) invoked Article 12 of the OSCE's Moscow Document in respect of the Russian Federation in order "to establish a mission of experts to look into and report on the ongoing concerns [the invoking States] have identified as particularly serious threats to the fulfilment of the provisions of the OSCE human dimension by the Russian Federation, to assess Russia's legal and administrative practice in light of its OSCE commitments, to establish the facts, and to provide recommendations and advice."¹

According to paragraph 10 of the Moscow Document the 38 participating States appointed the author of this report on 9 August 2022 from the resource list to serve as OSCE rapporteur.

The requested State, i.e. the Russian Federation, was informed on 10 August 2022 and given the opportunity to choose an additional rapporteur from the resource list within six days. If a second rapporteur is chosen, the Moscow Mechanism provides that the rapporteurs must agree on a third person to be chosen from the resource list to form the fact-finding group. However, as the Russian Federation did not appoint a second rapporteur within the deadline, the first rapporteur was mandated to carry out the mission as a single expert.²

The mandate of the mission reads as follows:

- *To assess the state of Russia's adherence, in law and in practice, to its OSCE Human Dimension commitments and to identify actions taken by the Russian Government over recent years that have led to the current human rights and fundamental freedoms situation in the country.*
- *To assess ramifications of such developments on Russian civil society, on free media, on the rule of law, and on the ability of democratic processes and institutions to function in Russia, as well as on achieving the OSCE's goal of comprehensive security.*

The invoking States encourage the mission of experts "to apply a gender-sensitive approach to their assessment". In addition to establishing the facts, they also encourage the experts

¹ Joint Letter of 28 July 2022 from 38 participating States invoking paragraph 12 of the Moscow Document (hereinafter Joint Letter of 28 July 2022).

² The Rapporteur would like to thank her team – Daniel Krotov, Frederic Kupsch and Dr. Júlia Miklasová, for their great support in research and fact-finding, as well as Marina Schneider, for her great support in the administration of the project.

“to offer recommendations and give advice to the Russian Federation, to the OSCE, and to the international community on how to address the matters of concern.” In particular, they “encourage the experts to offer recommendations to the OSCE and its participating States on identifying early warnings and addressing such emerging challenges in a timely and effective manner.”³

The mission was facilitated by the OSCE Office for Democratic Institutions and Human Rights (ODIHR). In accordance with the Moscow Document it limited itself to a merely technical role. It served as a coordinating point between the participating States, provided administrative and logistical assistance to the rapporteur, shared civil society contacts of relevance, transmitted information gathered through a mailbox specifically devoted to the mission, and received the report by the rapporteur. The rapporteur alone is responsible for the drafting and content.

II) Methodology

1) Scope of the Report

a) Time-Frame

The time-frame of the mission is not defined narrowly. The mission statement focusses on the present time (“state of Russia’s adherence, in law and practice, to its OSCE human dimension commitments”), but also includes the recent past (“actions taken by the Russian Government over recent years that have led to the current human rights and fundamental freedoms situation in the country”). The explanatory text makes reference to “numerous laws imposed in the Russian Federation over the last years”; at the same time, it speaks of the “ongoing war of aggression against Ukraine”.⁴

Current Russian legislation as well as current Russian law enforcement practice in the area of freedom of association, assembly and expression must be seen in context. While many of the laws were passed in the early 1990s during the transition period, they underwent important changes at the beginning of the new century. Reforms have continued gradually, step-by-step, up to the present. Therefore, the report focuses on the legislation and practice immediately before the outbreak of the war and during the war, but also considers the reform process that set the stage for the latest developments.

The report was written in the period from 18 August until 31 August 2022. Events that took place during these two weeks were still taken into account.

b) Thematic Focus

The mission comprises two different tasks.

First, the facts must be established, i.e., the relevant laws and regulations and how they are enforced. However, this is not sufficient, as it does not give an overall picture. Therefore, the

³ Joint Letter of 28 July 2022.

⁴ Idem.

terms of reference explicitly call for analysing the "actions" of the government that have led to the current human rights situation. The term "actions" in this context includes everything done by the government even without a legal basis, be it the creation of certain narratives or the use of propaganda to achieve certain goals, be it intimidation measures against demonstrators or the use of criminal law for other purposes; it also includes "non-actions" such as the lack of investigation into certain crimes.

Second, it is requested to give recommendations and advice. These have to be directed to three different addressees, the Russian Federation, OSCE, and the international community. In this context, two separate questions need to be answered: How can matters of concern be addressed? And – how is it possible to identify early warnings and address challenges in a timely and effective manner? The questions thus relate on the one hand to the present situation concerning Russia and on the other hand to lessons learned.

The term "human rights and fundamental freedoms situation" is too broad to provide a clear point of reference for a study accomplished in two weeks' time. Therefore, a thematic focus is necessary.

According to the explanatory report to the mission statement the focus should be on the "crack down on independent civil society, independent media, and political opposition, targeting in particular non-governmental organisations, anti-corruption activists, human rights defenders, journalists, other media actors, researchers, lawyers." This means that freedom of association, assembly and expression are in the centre of interest.

The matters of concern are enumerated in a detailed manner. It is, among other things, held that:

- "allegations of extremism have been ... used to outlaw dissenting opinions or beliefs, as well as to ban peaceful organisations"
- "the Russian Federation is rapidly moving towards a situation of complete censorship and isolation of its citizens from any form of independent information"
- "the Russian Federation continues to hold more than 430 political prisoners"
- "there are ... widespread reports of torture and other mistreatment in places of detention throughout Russia"
- "there is censorship of the media and of content on the internet"
- "[there is] political repression"
- "[there is] Impunity for violence"
- "[there is] the spread of hate speech"
- "[there is] engagement in propaganda on war of aggression"
- "[there is] the imposition of severe restrictions on freedom of assembly and association, on the right to liberty and security of person, and on the right to vote and to be elected"

These allegations show that the focus is clearly on the relationship between the State and civil society in the political sphere and the participation of individuals in public affairs.

On this basis, the Rapporteur has decided to analyse first and foremost the legislation that restricts freedom of association, assembly and expression (such as the "foreign-agent"-

legislature, the legislation on “undesirable organisations”, the legislation on “extremism”, the new criminal provisions concerning statements on the war and the Armed Forces).

Other human rights issues such as the rights of refugees, the rights of minorities, the rights of persons in detention and the rights of LGBTQI+ persons are closely related to the issues identified as a priority area, not least because the human rights defenders, journalists and lawyers targeted by the restrictive measures often defend the rights of those vulnerable groups. Furthermore, those minority groups form an important part of civil society. Yet, as it is not possible to scrutinise all matters of concern in detail, those topics are touched upon only insofar as they have direct thematic links.⁵ The thematic selection is, however, in no way intended to prioritise or hierarchise human rights issues in Russia; they are all of utmost importance.

A caveat is also necessary with regard to the electoral legislation. It is beyond the scope of this study to analyse it in detail and to address the allegations of electoral fraud. However, insofar as the right to vote is withdrawn in connection with other restrictive measures, it will be mentioned.

According to the mission statement a "gender-sensitive approach" is required. Therefore, wherever appropriate, it is shown in how far the measures taken by the authorities show a gender bias.⁶

The study is only based on the developments in Russia; it is not a comparative report.

c) Territorial Scope

The report focusses only on Russian territory insofar as it is internationally recognised.

2) Main Sources

Fact-finding in this mission concerns three different types of information: Russian legislation, practical application of the legislation, and “Government actions”.

Insofar as Russian legislation⁷ is concerned, it is fully accessible online.⁸

Administrative and judicial law enforcement is only partially accessible online.⁹ Sometimes judgements or administrative acts are not published or not published in full. In this context, summaries in newspaper reports or other sources had to be taken into account.

⁵ E.g. the legislation Federal Law of 29 June 2013 no. 135-FZ “On Propaganda of Non-Traditional Sexual Relationships” restricts freedom of speech, but is also discriminatory against LGBTQI+ people and touches upon their private lives.

⁶ This applies mainly to the measures taken against women in the course of detentions during demonstrations, but it is also evident from the orientation of official propaganda.

⁷ The legislation comprises laws and sublegal norms (Laws, ordinances and regulations).

⁸ <http://actual.pravo.gov.ru/>; <http://www.consultant.ru/popular/?ysclid=l7ajc3kpkz182731089>; <https://www.garant.ru/doc/law/?ysclid=l7ajc02ac964418909>.

Insofar as “Government actions” are concerned, fact-finding is based on newspaper reports, NGO reports, and information disseminated on social media. The most important sources were interviews with members of the Russian civil society, both living inside and outside the country. In addition, there was an exchange of information with representatives of international NGOs such as Committee on the Protection of Journalists (CPJ), International Federation on Human Rights (FIDH), Freedom House, Frontline Defenders, and Human Rights House Foundation.

Almost all interviews were conducted online, as a rule for one hour; with some interlocutors the exchange was in a written form. Some of the respondents consented to their names being mentioned in the report.¹⁰ Other respondents, however, preferred to remain anonymous. The Rapporteur wants to emphasize in this connection that after 24 February 2022 new criminal provisions have been adopted that might potentially be applicable to interviews such as those conducted in the framework of the present mission.¹¹ Furthermore, the changes in the “foreign-agent” legislation might also lead to negative consequences for those interviewed by a foreign expert. Therefore, the Rapporteur is of the opinion that it is fully justified not to publish the names of the interview partners.

As far as possible the information provided was double-checked. The relevant sources are indicated in the footnotes; wherever necessary, the issue of credibility is discussed.

The report also relies on academic publications and reports. Academic analyses are, however, cited only when they provide material for fact-finding or are used for direct quotations.

Immediately after the beginning of the mission on 18 August 2022, the Rapporteur contacted the Permanent Representative to the Russian Federation Aleksander Lukashevich and sent him a request to organise a country visit as foreseen in Article 10 of the Moscow Mechanism. While the Permanent Representation confirmed the receipt of the letter, there was no answer to the request for co-operation. Therefore, a country visit was not possible. The Rapporteur also forwarded eight letters to the Permanent Representation addressed to the presidents or representatives of those Russian State organs considered to be the most knowledgeable about the topic of the report (Igor Krasnov (General Prosecutor), Valery Zorkin (President of the Constitutional Court), Konstantin Chuychenko (Minister of Justice), Tatyana Moskalkova (Ombudsperson), Alexander Bastrykin (Chairman of the Investigative Committee), Andrey Klishas (Chairman of the Federation Council Committee on Constitutional Legislation and State Building), Andrey Lipov (Chairman of Roskomnadzor) and Mikhail Fedotov (Chairman of the Presidential Council for the Development of Civil

⁹ See e.g. Registers of Foreign Agents kept by the Federal Service for Supervision of Communications, Information Technology and Mass Media (hereinafter Roskomnadzor); Website of Roskomnadzor, <https://rkn.gov.ru/>; Official Telegram Channel of Roskomnadzor, https://t.me/rkn_tg.

¹⁰ Galina Arapova (Mass Media Defence Centre), Svetlana Gannushkina (Civil Assistance Committee), Tatiana Glushkova (Memorial), Lev Gudkov (Levada Centre), Daria Korolenko, Alexander Lokhmutov, Violetta Fitsner (all OVD-Info), Denis Shedov (OVD-Info, Human Rights Defence Centre Memorial), Anna Winckelmann (Novaya Gazeta Europe), and Leonid Volkov (Anti-Corruption Foundation).

¹¹ See e.g. confidential cooperation with a foreign State, international of foreign organisation (Art. 275.1 CC), fake news legislation (Art. 207.1, 207.2 CC), discreditation of the Armed Forces (Art. 207.3 CC) and other provisions.

Society and Human Rights¹²). Yet, no answers were received. In addition, an email was directly sent to Tatyana Moskalkova on 27 August 2022; there was no response to it.

In order to compensate for the lack of direct information from the Russian authorities the Rapporteur scrutinised all indirect sources such as the homepages of the Russian Ministries, the Russian reports to international organisations, their statements in court proceedings defining the Russian position, the President's statements, other official declarations.

Furthermore, there were interviews with Russian colleagues working or having worked for various State institutions. For them as well, it was important to remain anonymous.

The Rapporteur also took into account all sorts of international sources, such as the assessment and evaluation of the human rights situation in Russia by international bodies (Human Rights Council, Human Rights Committee, other UN treaty bodies, UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, Venice Commission, Human Rights Commissioner of the Council of Europe, European Court of Human Rights).

In addition, there were several interviews with representatives of international organisations such as the President of the European Court of Human Rights Robert Spano, the Human Rights Commissioner of the Council of Europe Dunja Mijatović, the OSCE Representative on Freedom of the Media Teresa Ribeiro, the President of the Venice Commission Claire Bazy-Malaurie, the Secretary General of the Venice Commission, Simona Granata-Menghini, and the former UN Special Rapporteur on Freedom of Opinion and Expression David Kaye.

All in all, the Rapporteur interviewed 29 persons between 19 and 30 August 2022.

All the internet sources were last accessed on 30 August 2022.

3) Selection of Material

Even though the time frame for the mission was extremely short, the rapporteur was able to collect much more material than could be included in the report. This is due to the enormous dimension of the human rights problems civil society in Russia is facing. The amount of (reform) laws concerning freedom of expression, assembly and association demonstrates the speed with which the situation changes. Enforcement of the new legislation seems to have priority so that there are very many concrete cases reported. Therefore, for the report a selection had to be made. The report tries to outline the specific problems linked to the new legislation in the light of long-term development and to give examples illustrative of general tendencies.

4) Overlap with other OSCE Reports under the Moscow Mechanism

Within a short period of time, three reports were adopted under the Moscow Mechanism, all of which directly or indirectly concern Russia.

¹² This was a mistake as the current President of the Council is Mr. Fadeev.

a) OSCE Report under the Moscow Mechanism on Alleged Human Rights Violations and Impunity in the Chechen Republic of the Russian Federation

On 1 November 2018 the Moscow Mechanism of the human dimension of OSCE was invoked by 16 participating States with regard to “allegations of impunity for reported human rights violations and abuses in Chechnya from January 2017 to the present, including but not limited to, violations and abuses against persons based on their perceived or actual sexual orientation or gender identity, as well as against human rights defenders, lawyers, independent media, civil society organisations and others. Among the reported human rights violations and abuses were: allegations of harassment and persecution; arbitrary or unlawful arrests or detentions; torture; enforced disappearances; and extrajudicial executions.”¹³ The report transmitted to the participating States on 13 December 2018 covers the period from January 2017 until November 2018.¹⁴

There is some overlap between the 2018 report and this report, as the crackdown on the LGBTQI+ community in Chechnya is part of a crackdown on civil society in general. Moreover, the situation of human rights defenders, lawyers, civil society organisations and independent media are covered in both reports. Yet, the 2018 report covers only Chechnya and thus a specific region considered to be different from the rest of Russia. The topic is rather narrowly defined and the time-period is restricted for two years only (2017-2018).

The findings of the OSCE November 2018 report are nevertheless relevant for the present analysis, especially since they were not implemented;¹⁵ the Rapporteur of the present report fully endorses the recommendations of the 2018 report. Yet, the present mission is much broader and does not have similar spatial and temporal limitations. Neither Chechnya nor LGBTQI+ rights nor the period between 2017 and 2018 will be the focus.¹⁶

b) OSCE Report on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes against Humanity

On 3 March 2022 the Moscow Mechanism of the human dimension of OSCE was invoked by Ukraine supported by 45 participating States with regard to “possible contraventions of OSCE commitments, and violations and abuses of international human rights law and international humanitarian law”.¹⁷

¹³ Joint Letter by the 16 invoking participating States of 1 November 2018 invoking paragraph 12 of the Moscow Document and Joint Letter by the 16 invoking participating States of 5 November 2018 announcing the appointment of a rapporteur.

¹⁴ OSCE Rapporteur’s Report under the Moscow Mechanism on alleged Human Rights Violations and Impunity in the Chechen Republic of the Russian Federation: https://www.osce.org/files/Moscow%20Mechanism%20Document_ENG.pdf (hereinafter OSCE November 2018 Report).

¹⁵ See Joint Statement on Invoking the Moscow Mechanism: Human Rights Violations and Abuses in the Russian Federation, 28 July 2022, <https://osce.usmission.gov/joint-statement-on-invoking-the-moscow-mechanism-human-rights-violations-and-abuses-in-the-russian-federation/>.

¹⁶ See above for the explanations on the present report.

¹⁷ OSCE Rapporteurs’ Report on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity: <https://www.osce.org/files/f/documents/f/a/515868.pdf> (hereinafter OSCE March 2022 Report).

This report concerns potential violations of OSCE commitments on the territory of Ukraine while the present report concerns potential violations on the territory of the Russian Federation. Nevertheless, there is a thematic overlap insofar as the report also touches upon violations of the right to freedom of expression¹⁸ and the right to freedom of association¹⁹ by Russia, although focusing on the situation in armed conflict. The March 2022 report also touches upon propaganda in schools.²⁰

There is thus a certain thematic overlap, e.g. in the reference to specific legislation adopted before or after the beginning of the war or specific practices relevant both in the occupied Ukrainian territories and in Russia.

c) OSCE Report on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes against Humanity

On 2 June 2022 the Moscow Mechanism of the human dimension of OSCE was invoked by the delegations of 45 participating States, after consultations with Ukraine, under paragraph 8 of the Moscow Document to “consider, follow up and build upon the findings of the Moscow Mechanism report received by OSCE participating States on 12 April 2022” addressing “the human rights and humanitarian impacts of the Russian Federation’s invasion and acts of war, supported by Belarus, on the people of Ukraine, within Ukraine’s internationally recognized borders and territorial waters”.²¹

As this report follows the OSCE report of March 2022, it does not differ from it in terms of thematic overlaps with the present report.

III) Structure of the Report

The main part of the report (B) is structured along the lines of the mission's mandate. First, it analyses the extent to which Russia complies in law and in practice with its commitments in the human dimension of the OSCE. This part begins with a presentation of the constitutional framework, which is characterised by the "vertical power structure", as this is important for understanding the scope of action of civil society in Russia. In addition, the work of the institutional guardians of civil society and human rights is assessed. On this basis, the most important reforms of Russian legislation restricting freedom of expression, assembly and association are presented and the practical consequences for civil society are explained. These changes in law and practice are then assessed in the light of OSCE standards. The conclusive part of the chapter focusses on the main trends and short-term and long-term effects of the legislation.

Part C identifies the measures taken by the Russian government that have led to the current situation of human rights and fundamental freedoms in the country. It thus documents measures that are understood to lead to a general situation of uncertainty and fear.

¹⁸ OSCE March 2022 report, p. 59 et seq.

¹⁹ OSCE March 2022 report, p. 79 et seq.

²⁰ OSCE March 2022 report, p. 70; Term “war of aggression” see p. 116.

²¹ OSCE Rapporteurs’ Report on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity: <https://www.osce.org/files/f/documents/3/e/522616.pdf>.

Part D explains the interrelation between the human rights dimension in Russia and international peace and security. In this context, the shortcomings of the current system are addressed, where alarm bells ring when red lines are crossed, but without clear consequences.

The recommendations in part E are addressed to the Russian Federation, to OSCE and to the international community.

IV) Terminology

The report will use the same terminology as the other OSCE report published in March 2022 and speak of “war” or “war of aggression” and not about “special military operation” as is prescribed by Russian law.²²

B) Russia’s Adherence, in Law and in Practice, to its OSCE Human Dimension Commitments

I) Constitutional Framework and Practice

1) Constitutional Principles Reflecting Russia’s OSCE Commitments

The Russian Constitution has been amended several times since its adoption in 1993, with the most important and far-reaching changes being made in 2020,²³ but the basic principles of "democracy, the rule of law and federalism" have remained untouched.²⁴ Human rights are considered to be the “highest values to be protected by the State;”²⁵ this provision has not been changed either. The same applies to the principle of separation of powers,²⁶ pluralism,²⁷ and to the significance of international human rights guarantees.²⁸ These

²² Art. 207.3 CC (“Public dissemination of knowingly false information about the use of the Russian Armed Forces”) is interpreted as prohibiting the use of the word “war” for the aggression against Ukraine. The official term used is “special military operation” (in Russian: специальная военная операция); as a rule, the abbreviation (“CBO”) is used.

²³ Federal Constitutional Law no. 1-FKZ of 14 March 2020 “On Enhancement of Regulations Concerning Specific Questions of Organisation and Functioning of Public Authority” (approved by referendum on 1 July 2020), an extensive analysis is provided by Venice Commission, Opinion on Constitutional Amendments and the Procedure for their Adoption no. 992/2020 of 21 March 2021.

²⁴ Art. 1 of the Constitution: “The Russian Federation - Russia is a democratic federal law-bound State with a republican form of government.”

²⁵ Art. 2 of the Constitution: “Man, his rights and freedoms are the supreme value. The recognition, observance and protection of the rights and freedoms of man and citizen shall be the obligation of the State.”

²⁶ Art. 10 of the Constitution: “The state power in the Russian Federation shall be exercised on the basis of its division into legislative, executive and judicial power. The bodies of legislative, executive and judicial power shall be independent.”

²⁷ Art. 13 of the Constitution: “(1.) In the Russian Federation ideological diversity shall be recognised.; (2.) No ideology may be established as state or obligatory one.; (3.) In the Russian Federation political diversity and multi-party system shall be recognised.; (4.) Public associations shall be equal before the law.; (5.) The creation and activities of public associations whose aims and actions are aimed at a forced change of the fundamental principles of the constitutional system and at violating the integrity of the Russian Federation, at undermining

provisions are all part of the Constitution's first chapter and cannot be amended through the normal amendment procedure, but only through a very complex procedure²⁹ that has not yet been used. Chapter one of the Constitution thus mirrors the fundamental principles of the OSCE.

Human rights are permanently used in the rhetoric of Russian officials such as the President even for justifying the war against Ukraine, but as a rule referring to the general term "human rights" and not alluding to specific rights such as freedom of expression, freedom of assembly or freedom of association.³⁰

But even though the basic principles of the Russian Constitution have not been amended, the distribution of power both on the federal level and between the centre and the regions has considerably changed. Especially in the area of law enforcement, power has been concentrated in the hands of the president.

2) Formation of a Vertical Power Structure

a) Concentration of Power within the Federal Level

The Constitution of the Russian Federation is very president-centred – and has been this way already since 1993. However, an increase of presidential influence can be noted during the last decades. The most recent development was the constitutional reform of 2020.³¹

For the purposes of this mission, the successive subordination of the area of law enforcement under the direct control of the president is of particular interest.

The Russian intelligence services Federal Security Service (FSB)³², Foreign Intelligence Service (SVR)³³, and Federal Protective Service (FSO)³⁴ were already under control of the President before 2000.

In 2010, the Investigative Committee of the Russian Federation (SK), was detached from the General Prosecutor's office and placed under direct authority of the President.³⁵

its security, at setting up armed units, and at instigating social, racial, national and religious strife shall be prohibited."

²⁸ Art. 17 of the Constitution: "(1.) In the Russian Federation recognition and guarantees shall be provided for the rights and freedoms of man and citizen according to the universally recognised principles and norms of international law and according to the present Constitution.; (2.) Fundamental human rights and freedoms are inalienable and shall be enjoyed by everyone since the day of birth.; (3.) The exercise of the rights and freedoms of man and citizen shall not violate the rights and freedoms of other people."

²⁹ See Art. 135 of the Constitution.

³⁰ See e.g. Putin's speech on 24 February 2022 where he speaks of the "high values of human rights and freedoms in the reality that emerged over the post-war decades", <http://en.kremlin.ru/events/president/news/67843>.

³¹ Federal Constitutional Law no. 1-FKZ of 14 March 2020 "On Enhancement of Regulations Concerning Specific Questions of Organisation and Functioning of Public Authority" (approved by referendum on 1 July 2020).

³² See Art. 1 (2) of the Federal Law no. 40-FZ of 3 April 1995 "On the Federal Security Service".

³³ See Art. 12 of the Federal Law no. 5-FZ of 10 January 1996 "On Foreign Intelligence".

³⁴ See Art. 12 (3) of the Federal Law no. 57-FZ of 27 May 1996 "On State Protection".

The Federal Service of the Troops of the National Guard of the Russian Federation (National Guard, Rosgvardiya) was created by the Federal Law no. 226-FZ of 3 July 2015 “On Troops of the National Guard of the Russian Federation”. Article 6 (1), (2) of this Law places the National Guard directly under the authority of the President. Article 2 (1) lists the tasks of the National Guard. This list is, however, not exhaustive as Article 2 (2) provides that the President can determine other tasks “in accordance with constitutional laws and federal laws” without further concretisation. The National Guard is the successor of the Internal Troops and comprises also the Special Rapid Response Unit (SOBR) and Special Purpose Mobile Unit (OMON), all three formerly under the authority of the Ministry of the Interior.

The constitutional amendments of 2020 further strengthen the already extensive presidential powers in the area of law enforcement. Implementing the newly introduced Article 83 (6.1) of the Constitution, the Presidential Decree no. 21 of 21 January 2020 lists the Federal Organs that are now under the direct authority of the President. Among those Federal Organs are the Ministry of Foreign Affairs, the Ministry of Defence, the Ministry of Justice, and especially the Ministry of the Interior that still has several law enforcement organs under its control – most importantly the regular police force.

The amendments also change appointment powers in relation to the already centralised public prosecution (Article 83 e.1 of the Constitution).³⁶ Article 12 of the Federal Law “On the Prosecution of the Russian Federation” allows for the appointment and dismissal of the Prosecutor General directly by the President after consultation (not approval) of the Federation Council. The president's influence, which used to be limited to the nomination of the candidate who was appointed and dismissed by the Federation Council, now extends directly to this fundamental personnel issue. Article 15.1 of the Law, already introduced in 2014,³⁷ extends direct influence of the president also to the lower level, prescribing that the President himself appoints and dismisses the prosecutors of the constituent entities of the Russian Federation. The constitutional amendments of 2020 abolish the requirement of an agreement between the President and the respective constituent entity organ upon nomination by the Prosecutor General and after consultation of the Federation Council. Other, subordinated personnel is also in some cases appointed and dismissed by the President.³⁸

The presidential power was even further increased by constitutional reform regarding the term of office. In 2008 the duration of the mandate was increased from 4 to 6 years.³⁹ The Constitutional Amendment of 2020⁴⁰ upheld the term limitation of two terms but eliminated

³⁵ Federal Law no. 403-FZ of 28 December 2010 “On the Investigative Committee of Russia”.

³⁶ See the changes made by Federal Law no. 367-FZ of 9 November 2020 “On Amendments to the Federal Law ‘On the Public Prosecution of the Russian Federation’”.

³⁷ Art. 1 (6) of the Federal Law no. 427-FZ of 22 December 2014 “On Amendments to the Federal Law ‘On the Public Prosecution of the Russian Federation’”.

³⁸ See Federal Law no. 427-FZ of 22 December 2014 “On Amendments to the Federal Law ‘On the Public Prosecution of the Russian Federation’”.

³⁹ Russian Federation Constitutional Amendment no. 6-FKZ of 30 December 2008 “On Amendments to the Term of Office of the President of the Russian Federation and the State Duma”.

⁴⁰ Russian Federation Constitutional Amendment no. 1-FKZ of 14 March 2020 “On Enhancement of Regulations concerning Specific Questions of Organisation and Functioning of Public Authority” (approved by referendum on 1 July 2020).

the requirement for consecutive terms and annulled the limitation of two consecutive terms for the mandates preceding the amendment. Thus, incumbent President Putin is allowed to stay in power for two more not necessarily consecutive terms. The same exception applies for former President Medvedev. This reform was criticised by the Venice Commission as an “ad hominem constitutional amendment”.⁴¹

b) Concentration of Power on the Federal Level

As already stated, Article 1 of the 1993 Constitution confirms that Russia is a federal State. The relationship between the Federation and its constituent entities is further detailed by a series of Articles of the 1993 Constitution⁴² and several Federal Laws.⁴³ However, since 2000, the federal organisation of the Russian Federation is being reduced.⁴⁴

On 13 May 2000, President Putin decreed the creation of federal districts (or federal okrugs).⁴⁵ The districts arrange the constituent entities of the Russian Federation in groups each headed by a “Plenipotentiary Representative of the President of the Russian Federation” who is part of the presidential administration. The districts are not prescribed by the Constitution and have only the Presidential Decree as a legal basis. The currently eight districts serve, according to the preamble of the decree, “to ensure the exercise of presidential powers, to increase effectiveness of federal organs, and to improve the control over the implementation of their decisions”. The creation of the federal districts is a means of extending presidential power to the regional level without the participation of the federal ministries and constituent entities of the Russian Federation. Furthermore, it allows to coordinate the activities of the federal organs under the auspices of the President.

The most important reform concerns the Federation Council, the upper house of the Russian Parliament (Federal Assembly) representing the constituent entities of the Russian Federation. By the Federal Law of 5 August 2000,⁴⁶ the heads of the highest executive body of State power (execute heads of the constituent entities) lost their *ex officio* seat in the Federation Council and were obliged to send a representative assuming these duties. This loss of direct contact with the federal level in Moscow was remedied by the possibility to convene with the President in the recreated advisory organ of the State Council of the

⁴¹ Venice Commission, Interim Opinion on Constitutional Amendments and the Procedure for their Adoption, 23 March 2021, CDL-AD(2021)005, pp. 13 et seq.

⁴² Art. 3, 5, 8, 10, 11, 65 to 68, 70 to 74, and 76 to 78 of the 1993 Constitution.

⁴³ Most importantly Federal Law no. 184-FZ of 6 October 1999 “On General Principles of the Organisation of Legislative (Representative) and Executive Bodies of State Powers of Constituent Entities of the Russian Federation”; replaced (partially only from 1 January 2023) by Federal Law no. 414-FZ of 21 December 2021 “On General Principles of the Organisation of Public Authority Within the Constituent Entities of the Russian Federation”.

⁴⁴ An analysis of the Russian regional democracy in general is provided by Congress of local and regional authorities, Report no. CG37(2019)11final of 30 October 2019, pp. 51 et seq.

⁴⁵ Presidential Decree no. 849 of 13 May 2000 “On the Plenipotentiary Representatives of the President of the Russian Federation in Federal Districts”.

⁴⁶ Federal Law no. 113-FZ of 5 August 2000 “On the Procedure for Forming the Federation Council of the Federal Assembly of the Russian Federation”; replaced by Federal Law no. 229-FZ of 3 December 2012 “On the Procedure for Forming the Federation Council of the Federal Assembly of the Russian Federation”; replaced by Federal Law no. 439-FZ of 22 December 2020 “On the Procedure for Forming the Federation Council of the Federal Assembly of the Russian Federation”.

Russian Federation.⁴⁷ The State Council was enshrined in the Constitution by the 2020 constitutional amendments⁴⁸ and is now regulated by the Federal Law no. 394-FZ of 8 December 2020 “On the State Council of the Russian Federation”.

The President’s influence in the upper house was further strengthened by his/her right, introduced in 2014, to nominate “Representatives of the Russian Federation” to the Federation Council making up maximum 10 percent of the total of the members of the Federation Council – so 17 members.⁴⁹ With the constitutional amendment of 2020, the number was increased to 30 members, of which up to seven can be appointed for life.⁵⁰

The most noticeable strengthening of the constituent entities of the Russian Federation was the possibility for the entities to reintroduce the direct election of the head of the highest executive body in 2012,⁵¹ previously replaced by an approval procedure by the respective legislative assemblies of candidates nominated by the President from 2004 to 2012.⁵² Today, the majority of the Russian Federation’s constituent entities make use of this possibility. However, a so-called “municipal filter” leads to a restriction of the eligibility of potential independent and opposition party candidates.⁵³ A nation-wide lowering of the “municipal filter” to 5 per cent was discussed in the State Duma in 2019,⁵⁴ but not implemented. In addition, there is a “presidential filter” meaning that the executive heads cease their

⁴⁷ Presidential Decree no. 1602 of 1 September 2000 “On the State Council of the Russian Federation”.

⁴⁸ Art. 83 (e.5) of the Constitution, as amended by Federal Constitutional Law no. 1-FKZ of 14 March 2020 “On Enhancement of Regulations concerning Specific Questions of Organisation and Functioning of Public Authority” (approved by referendum on 1 July 2020).

⁴⁹ Art. 95 (2) of the Constitution, as amended by Federal Constitutional Law no. 11-FKZ of 21 July 2014 “On Amendments to the Constitution of the Russian Federation”.

⁵⁰ Art. 95 (2) (b) of the Constitution, as amended by Federal Constitutional Law of 14 March 2020, no. 1-FKZ “On Enhancement of Regulations concerning Specific Questions of Organisation and Functioning of Public Authority” (approved by referendum on 1 July 2020).

⁵¹ Federal Law no. 40-FZ of 2 May 2012 “On Amendments to the Federal Law ‘On General Principles of the Organisation of Legislative (Representative) and Executive Bodies of State Powers of Constituent Entities of the Russian Federation’ and to the Federal Law ‘On Basic Guarantees of Voting Rights and the Right to Participate in Referendums of Citizens of the Russian Federation’” amending Art. 18 (3) of the Federal Law no. 184-FZ of 6 October 1999 “On General Principles of the Organisation of Legislative (Representative) and Executive Bodies of State Powers of Constituent Entities of the Russian Federation”, replaced today by Art. 22, 23, 24 of the Federal Law no. 414-FZ of 21 December 2021 “On General Principles of the Organisation of Public Authority within the Constituent Entities of the Russian Federation”.

⁵² See Federal Law no. 159-FZ of 11 December 2004 “On Amendments to the Federal Law ‘On General Principles of the Organisation of Legislative (Representative) and Executive Bodies of State Powers of Constituent Entities of the Russian Federation’ and to the Federal Law ‘On Basic Guarantees of Voting Rights and the Right to Participate in Referendums of Citizens of the Russian Federation’”; under the presidency of Yeltsin direct elections of the executive heads of the constituent entities were possible in some entities and since 1995 in all entities; for an overview see “How the Legislative Bases for the Election of Heads of the Constituent Entities Changed” (Russian), <https://tass.ru/info/12514329>.

⁵³ It imposes an approval rate from 5 to 10 per cent of the members of the respective legislative assembly who represent at least 75 per cent of the municipal entities to be eligible for executive head of a constituent entity of the Russian Federation; see in detail S. Solovov/V. Mayorov/A. Petrov, Legal Construction of the ‘Municipal Filter’ for Developing Local Self-Government in Russia, in: *Journal of Advanced Research in Law and Economics*, Volume IX (2018), pp. 1771–1775.

⁵⁴ See <https://www.interfax.ru/russia/657669>.

functions in case of a simple “loss of confidence of the President of the Russian Federation”.⁵⁵

The constitutional amendments of 2020 further change the image of federalism in Russia. The competences of the Federation (Article 71) and the joint competences of the Federation and its constituent entities (Article 72 of the Constitution) are expanded. The “organisation of public authority” has become a purely federal competence (Article 71 (r) of the Constitution) with the consequence that municipal and regional civil servants will be integrated in federal structures.⁵⁶

The amendments also create the new term of a “unified system of public authority in the Russian Federation”⁵⁷ encompassing all levels of government – federal, regional and local. Article 132 (3) of the Constitution prescribes that these authorities “shall cooperate to most efficiently resolve tasks in the interests of the population inhabiting the relevant territory”.⁵⁸ The President is tasked with coordinating and ensuring the functioning of these organs (Article 80 (2) of the Constitution, Article 1 (2) of the Law). To this aim, the President is vested with broad powers. They include even the right not to apply acts contradicting federal legislation, fundamental rights, or international law (Article 2 (5) of the Law), as well as the right to impose sanctions against the executive head of the constituent entity of the Russian Federation up to his/her removal from office (Article 29 of the Law). In addition, the term limit for the executive heads has been abolished.⁵⁹ The creation of the “unified system of public authority in the Russian Federation” is an extremely important change making sure that what is done on the lowest level of the hierarchy is compatible with what is done on the highest level.

The Russian State structure is thus characterised by a trend towards centralisation, with the President of the Russian Federation at its centre. Russian and foreign media and academics, as well as President Putin himself, use the term “vertical of power” (вертикаль власти) – with the president at the top – to characterise the desired form of administration.

The Venice Commission regards the 2020 introduction of a federal competence for “organisation of public authority” (Article 71 (r) of the Constitution) and the presidential competence regarding the coordination of the public authorities as “seriously curtail[ing]

⁵⁵ Art. 19 (1) (r) of the Federal Law no. 184-FZ of 6 October 1999 “On General Principles of the Organisation of Legislative (Representative) and Executive Bodies of State Powers of Constituent Entities of the Russian Federation”; replaced by Art. 28 (1) (3) of the Law no. 414-FZ of 21 December 2021 “On Common Principles of the Organisation of Public Authority within the Constituent Entities of the Russian Federation”.

⁵⁶ See Venice Commission, Opinion on Constitutional Amendments and the Procedure for their Adoption, 21 March 2021, CDL-AD(2021)005, p. 24 (hereinafter VC 2021 Opinion on the Constitutional Amendments).

⁵⁷ Art. 80 (2), Art. 132 (3) of the Constitution, Art. 1 (1)-(5) of the Federal Law no. 414-FZ of 21 December 2021 “On Common Principles of the Organisation of Public Authority within the Constituent Entities of the Russian Federation”.

⁵⁸ The translation is taken from VC 2021 Opinion on the Constitutional Amendments, pp. 13 et seq.

⁵⁹ Art. 18 (5) of the Federal Law no. 184-FZ of 6 October 1999 “On General Principles of the Organisation of Legislative (Representative) and Executive Bodies of State Powers of Constituent Entities of the Russian Federation” has no equivalent in the Federal Law no. 414-FZ of 21 December 2021 “On Common Principles of the Organisation of Public Authority within the Constituent Entities of the Russian Federation”, see especially Art. 20 (2) of the 2021 Law.

regional and local autonomy”.⁶⁰ Federalism in the Russian Constitution as an essential basis for checks and balances in the Russian legal system⁶¹ is weakened and becomes increasingly focused on the President – with the trend having started already in 2000.

A substantial gain in power by the President can also be noticed on the federal level itself. The President becomes the key figure especially in the area of law enforcement with all intelligence and special forces being under his direct authority – leaving the Ministry of the Interior, itself since 2020 under the direct authority of the President, with ‘ordinary’ law enforcement agencies such as the police and the investigative department.

According to the OSCE human dimension commitments political pluralism is of decisive importance.⁶² It can be achieved through broad participation, transparency,⁶³ and also, but in accordance to the respective constitutional traditions, through federalism and strong regional and local governments.⁶⁴ These structural components of a democratic society are a basis for the implementation of the other OSCE human dimension commitments.

The Rapporteur notes with concern that a concentration of power in the hands of the President of the Russian Federation is detrimental to the control mechanisms that ensure the rule of law and compliance with OSCE human dimension commitments. As will become visible in the report, this is the case particularly with regard to the law enforcement practice.

3) Institutional Guardians of Human Rights and Civil Society in Russia

Human rights are extensively codified in the Russian Constitution.⁶⁵ Several State institutions either on the constitutional or on the sub-constitutional level are responsible for their protection.

a) Constitutional Court

The Constitutional Court’s tasks are described in the Constitution as follows:

“The Constitutional Court of the Russian Federation is the supreme judicial body of constitutional control in the Russian Federation, which exercises judicial power through constitutional proceedings in order to protect the foundations of the constitutional order, fundamental human and civil rights and freedoms, and to ensure the supremacy and direct application of the Constitution of the Russian Federation throughout the territory of the Russian Federation.” (Article 125 (1))

⁶⁰ See VC 2021 Opinion on the Constitutional Amendments, pp. 24 et seq.

⁶¹ VC 2021 Opinion on the Constitutional Amendments, p. 24.

⁶² Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 5-29 June 1990 (hereinafter Copenhagen 1990), Charter of Paris for a New Europe, Meeting of the Heads of State or Government of the participating States of the CSCE, 19-21 November 1990 (hereinafter Paris 1990).

⁶³ Document of the Sixteenth Meeting of the Ministerial Council of the OSCE, 4-5 December 2008.

⁶⁴ Document of the Helsinki Summit of the CSCE, 9-10 July 1992, para. 53 (hereinafter Helsinki 1992).

⁶⁵ Chapter 2 of the Constitution, Art. 17-64.

The status of the Court within the constitutional system was fundamentally changed by the 2020 constitutional reform. Based on the 2020 amendments the President has not only the power “to submit candidates for the Chairman of the Constitutional Court of the Russian Federation, the Deputy Chairman of the Constitutional Court of the Russian Federation and judges of the Constitutional Court of the Russian Federation to the Federation Council” (Article 83 (e)), but can also “submit to the Council of Federation a proposal to terminate, in accordance with federal constitutional law, the powers of the Chairman of the Constitutional Court of the Russian Federation, the Deputy Chairman of the Constitutional Court of the Russian Federation, and judges of the Constitutional Court of the Russian Federation” (Article 83 (e.3)). The Constitution thus provides for direct interference by the head of the executive in the exercise of constitutional jurisdiction. Furthermore, in 2020 the number of judges was reduced from 19 to 11 (Article 125 (1)).

Another noteworthy reform – introduced after the constitutional reform – was the prohibition of publishing dissenting and concurring opinions. It is not only no longer possible to attach them to the judgements, but even the judges themselves are not allowed to publicly refer to them; it is a – probably unique – specific limitation of freedom of expression for constitutional court judges.⁶⁶

In the first years after its establishment the Constitutional Court had played an important role in protecting human rights and had made important rulings, for instance on the suspension of the death penalty in Russia.⁶⁷ But even before the fundamental reform in 2020 its role in human rights protection had diminished considerably.

While the Constitutional Court had to decide on some of the most human-rights-restrictive laws adopted in the 2010s, such as the Law on “Foreign Agents”⁶⁸ and the Law “prohibiting the promotion of non-traditional sexual relations”,⁶⁹ it never declared any of them incompatible with the Constitution. At most it called for some details to be changed,⁷⁰ but, importantly, confirmed the new legislative approaches as such. The Constitutional Court’s reasoning has thus been used in international forums by the Russian representatives to

⁶⁶ Art. 76 of the Federal Constitutional Law no. 1-FKZ of 21 June 1994 “On the Constitutional Court of the Russian Federation”, as amended by Federal Constitutional Law no. 5-FKZ of 9 June 2020 “On Amendments to the Federal Constitutional Law no. 1-FKZ of 21 June 1994 ‘On the Constitutional Court of the Russian Federation’”: “A dissenting opinion or opinion of a judge shall be attached to the protocol of a meeting of the Constitutional Court of the Russian Federation and kept together with it. A judge of the Constitutional Court of the Russian Federation shall not have the right to publish a dissenting opinion or opinion in any form or to refer to it publicly.”

⁶⁷ Constitutional Court, decision no. 1344-O-R of 19 November 2009.

⁶⁸ See Constitutional Court, decision no. 10-P of 8 April 2014 (with one dissenting opinion); see also Constitutional Court, decision no. 1738-O of 18 July 2017 (on the complaint of the Levada Centre against the registration as a foreign agent which was declared inadmissible; with one dissenting opinion); the foreign-agent legislation is explained in detail below.

⁶⁹ Constitutional Court, decision no. 24-P of 23 September 2014; the legislation on “Propaganda of Non-Traditional Sexual Relationships” is explained in detail below.

⁷⁰ In its decision on the “Foreign-Agent-Law” (Constitutional Court, decision no. 10-P of 8 April 2014) the Court was mainly concerned about the amount of the minimum fines to be paid; see the summary in ECtHR, *Ecodefence and others v. Russia*, 14 June 2022, app. no. 9988/13 et al., para. 36 et seq.

justify the Russian position on “homosexual propaganda”⁷¹ and “foreign agents”,⁷² both issues at the centre of international criticism.

Furthermore, the Constitutional Court was instrumental in creating a mechanism to verify the compatibility of European Court of Human Rights rulings with the Russian Constitution before their implementation⁷³ contrary to Russia’s obligations under international law.⁷⁴ In the Yukos case⁷⁵ as well as in the case of Anchugov and Gladkov,⁷⁶ it argued that the Strasbourg Court ruling could not be implemented.

b) Ombudsman⁷⁷

The function of the ombudsman is foreseen in the Constitution (Article 103). According to the Law on the Ombudsman⁷⁸ his or her role is “to provide guarantees of State protection of the rights and freedoms of citizens and their observance and respect by state bodies, local government bodies and officials.”⁷⁹

The appointment and dismissal of the Ombudsman by the Duma is regulated in Article 103 of the Constitution. This provision was amended in the 2020 reform to require that the Ombudsman be a Russian citizen without dual citizenship or permanent residence in another country. It was also added that the Ombudsman must not open an account or deposit

⁷¹ See UN Human Rights Committee, Eighth report submitted by the Russian Federation under article 40 of the Covenant, due in 2019, 8 April 2019, UN Doc. CCPR/C/RUS/8, paras. 374-376: “[The] constitutional and legal intent [of the legislation] is to defend constitutionally significant values such as the family and childhood and to prevent harm to the health of minors and their moral and spiritual development. It does not entail interference in individual autonomy, including sexual self-determination. The purpose of the provision is not to prohibit or officially stigmatize non-traditional sexual relations and it does not hinder public discussion on the legal status of sexual minorities or the use by their representatives of all legal means of expressing their opinion on these issues and defending their rights and interests, including by organising and holding public events. The only acts that can be deemed unlawful are public acts intended to disseminate information promoting non-traditional sexual relations among minors or imposing such relations on them, including as a result of the circumstances in which the act was committed. This has allowed for a balance to be reached between the rights of sexual minorities and the rights of minors.”

⁷² UN Human Rights Committee, Replies of the Russian Federation to the List of Issues in Relation to its Eighth Periodic Report, 16 December 2020, UN Doc. CCPR/C/RUS/RQ/8, para. 124: “The requirement for a foreign agent to apply for inclusion on the applicable register before engaging in political activity is intended simply to ensure greater transparency and openness in the activities of such organisations. This obligation in itself does not violate the right the rights of such non-profit organisations.”

⁷³ Constitutional Court, decision no. 21-P of 14 July 2015.

⁷⁴ Venice Commission, Opinion on Draft Amendments to the Constitution (As Signed by the President of the Russian Federation on 14 March 2020) Related to the Execution in the Russian Federation of Decisions by the European Court of Human Rights, 18 June 2020, CDL-AD (2020)009 (hereinafter VC 2020 Opinion on Execution of ECtHR Decisions)

⁷⁵ Constitutional Court, decision no. 1-P of 19 January 2017 (with one dissenting and one concurring opinion).

⁷⁶ Constitutional Court, decision of the Russian Federation no. 12-P of 19 April 2016 (on the non-execution of Anchugov and Gladkov v. Russia (prisoners' voting rights), with two dissenting and one concurring opinion).

⁷⁷ In Russian: Уполномоченный по правам человека.

⁷⁸ Federal Constitutional Law no. 1- FKZ of 26 February 1997 “On the Human Rights Ombudsman in the Russian Federation”.

⁷⁹ Art. 1 of Federal Constitutional Law no. 1-FKZ of 26 February 1997 “On the Human Rights Ombudsman in the Russian Federation”.

money in banks outside the Russian Federation, a prohibition that reflects the restrictive position of the “Foreign-Agent” legislation.⁸⁰

There are ombudspersons on the federal level and on the regional level. They have quite comprehensive powers, especially the right to turn to each State organ with concrete complaints.⁸¹ There are different assessments of the effectiveness of the federal and regional ombudsmen’s work in the present situation in Russia. The role of the ombudsman on the federal level is described in the OSCE November 2018 Report on Chechnya where it is said “she does indeed have far-reaching powers, which, however, seem limited in practice”, but this statement is made with reference to the context in Chechnya.⁸² The Ombudsman’s Report for the year 2021 published on the official website provides a comprehensive overview over the Ombudsman’s activities including in the field of civil and political rights. By way of example, Part 2.4. of the report covers freedom of expression and protection of journalists. It mentions the arrests of journalists during mass demonstrations in the beginning of the year 2021 as follows:

“In communications on violations of the rights of journalists on the territory of the Russian Federation of the Russian Federation, it has been reported that journalists have been detained by the Russian law enforcement authorities in connection with their professional activities, that obstacles have been erected to the search for information, that journalists were denied access to information, were not allowed to attend public meetings of government bodies, and that rules on picketing were violated. Most of the complaints concerned the detention of journalists covering public events in January-February 2021. According to estimates by the Union of Journalists of Russia, more than 100 media representatives were detained and sentenced to imprisonment during unauthorised actions on 23-31 January and 2 February 2021; in addition, cases of unlawful demands for documents and the use of physical force are reported. We have continuously monitored the situation and taken measures to protect citizens' rights.”⁸³

The report continues highlighting one case in which a journalist’s conviction to an arrest of four respectively ten days was reviewed and terminated on the initiative of the prosecutor’s office as several facts of the case had not been correctly assessed.⁸⁴ There is, however, no further comment on the detention of more than 100 media representatives. This seems to be exemplary – human rights problems are mentioned, even providing statistics, but serious counter-measures were not taken.

According to the Ombudsman’s recent newsletters the focus of her work is on social rights such as social benefits, family reunification, care for seriously ill people, and the alleviation

⁸⁰ See below.

⁸¹ See for a comprehensive description the OSCE November 2018 Report , p. 31.

⁸² OSCE November 2018 Report, p. 32; e.g. she supported the opening of a procedure in a case of abduction, but without success (OSCE November 2018 Report p. 15); she also supported transferring a case out of Chechnya, but also without success, (OSCE November 2018 Report p. 25).

⁸³ Ombudsman of the Russian Federation, Annual Report of the Ombudsman for the Year 2021, <https://ombudsmanrf.org/documents/ezhegodnye-doklady>, p. 132.

⁸⁴ Ombudsman of the Russian Federation, Annual Report of the Ombudsman for the Year 2021, <https://ombudsmanrf.org/documents/ezhegodnye-doklady>, p. 133.

of the fate of prisoners; in 2022 it was much centered on humanitarian help in Donbass region.⁸⁵

The Rapporteur's conclusion is therefore that in the human rights crisis studied in the present report the federal Ombudsman does not play a visible role. The Rapporteur was told that on the regional level it might be different. There are (few) examples of ombudsmen directly addressing urgent problems.⁸⁶

c) Presidential Council on the Development of Civil Society and Human Rights

According to the Russian Constitution (Article 80 (2)) the Russian President is the "guarantor of human rights and freedoms". The attribution of this responsibility to the President is in line with the vertical power structure – whatever competence is given to other State organs, the President must have the final word and be on the top of the hierarchical pyramid.

In this context it is worth mentioning the Presidential Council on the development of civil society and human rights which is an advisory body. It was established to assist the head of State in implementing his/her constitutional mandate to safeguard and protect human and civil rights and freedoms, to inform the President of the Russian Federation about the situation on the ground, to assist the development of civil society institutions, and to prepare proposals to the President on issues within the Council's competence.⁸⁷ Several standing commissions of the Council deal with political and civil rights issues.⁸⁸

The Council may adopt "expert opinions", if they are supported by at least half of the Council's members. If this quorum is not reached, members may also adopt statements "on behalf of the Council". In the past some of the Council's expert opinions were critical of new restrictive laws and were taken up by international monitoring bodies, such as the expert opinion on the reform of Article 20.1 of the Code of Administrative Offences (hereinafter CAO) concerning a sanction for the dissemination of "indecent" information in the internet⁸⁹ which was cited by UN Special Rapporteur David Kaye in his assessment.⁹⁰

⁸⁵ See Ombudsman of the Russian Federation, Newsletter of the Ombudsman, https://eng.ombudsmanrf.org/news/we_did_it.

⁸⁶ See e.g. Perm: "Statement by the Regional Ombudsman P. Mikov in connection with a lawsuit filed by the Prosecutor General's Office with the Supreme Court to liquidate 'Memorial'" (Russian), <https://ombudsman.perm.ru/news/2021/11/12/9044/?ysclid=l7akmdw1k9136610351>; Ekaterinburg: T. Merzlyakova in an interview with Kommersant-Ural, "Russia Is a Special Country that Has Never Lived up to the Law" (Russian), <https://www.kommersant.ru/doc/5127613>.

⁸⁷ <http://www.president-sovet.ru/about/mission/>.

⁸⁸ Standing Commission 2 on Personal Rights, <http://www.president-sovet.ru/about/permanent/1064/about/>; Standing Commission 3 on Political Rights, <http://www.president-sovet.ru/about/permanent/1046/about/>; Standing Commission 7 on Human Rights in the Field of Information, <http://www.president-sovet.ru/about/permanent/1058/about/>.

⁸⁹ Expert Opinion to the law "On Amendments to the Federal Law "On Information, Information Technologies and Information Protection Information Protection" and the Law "On the Introduction of Amendments to Article 20.1 of the Code of the Russian Federation On Administrative Violations" adopted by the State Duma (Russian), http://www.presidentsovet.ru/docs/expert_conclusions/ekspertnoe_zaklyuchenie_na_zakon_o_vnesenii_izmeneniya_v_fz_ob_informatsii_informatsionnykh_tekhnolo/.

⁹⁰ UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Letter, 1 May 2019, OL RUS 4/2019.

After 24 February 2022, the Council raised the issue of sending conscripts instead of soldiers under contract to fight in Donbass. The Military Prosecutor's Office was instructed to check these facts with the effect that some soldiers were returned to Russia.⁹¹ Other recent examples for the topics the Council deals with were the opening of clinics for homeless people and vaccinating them against COVID-19, the problem of "Gulag children" (return of repressed children to their parents), stopping the construction of buildings in environmentally sensitive areas, helping children with serious illnesses purchase of rare and expensive medicines by the State.⁹²

It is also important to mention that the Presidential Council made a critical analysis of the "foreign-agent" legislation,⁹³ even if not the whole Council signed up to it, but only some of its commissions. The analysis was submitted to the State Duma through the Presidential Administration; according to information provided many recommendations were ignored by lawmakers, some were taken into account.⁹⁴ Other statements were made by individual members, e.g., on soldiers who wanted to annul their contract, but were detained in Donbass,⁹⁵ or also on the consequences of the war in Ukraine.⁹⁶ There is also the possibility – even without being provided for by law – that members of the Council send amicus curiae opinions to the Supreme and Constitutional courts on important matters.

⁹¹ See the statement of Peskov: "In connection with the facts of the presence of a number of conscripts in units of the Armed Forces which are involved in a special military operation in Ukraine, material have been sent to the Chief Military Prosecutor's Office on the order of the Russian President to check and legally assess the actions and punish the officials responsible for the failure to comply with this order", see "Putin Orders Military Prosecutor's Office to Look into Situation with Sending Conscripts to Ukraine" (Russian), <https://tass.ru/politika/14013917>.

⁹² Some of the topics were taken up by President Putin in the Meeting of the Council for Civil Society and Human Rights Development on 21 December 2021, <http://www.kremlin.ru/events/president/news/67331>; e.g. M. Achmedova regarding hospitals and vaccinations for homeless people; "Gulag children": the Council opposed to the Project on the Federal Law no. 988493-7 "On Amendment of Article 13 of the Law of the Russian Federation 'On Rehabilitation of Victims of Political Repressions'" (currently at the stage of the third reading), <https://sozd.duma.gov.ru/bill/988493-7>; "State Duma considers in first reading bills on 'Gulag children'" (Russian), <https://www.memo.ru/ru-ru/projects/pravo-vernutsya-domoj/news/494>; environment: "Shies" Eco-Technopark in the Arkhangelsk region, where a large landfill is planned for the disposal, recycling and treatment of waste from the Moscow region was taken under the monitoring of the Council, 26 November 2018, http://www.president-sovet.ru/presscenter/news/soveto_po_pravam_cheloveka_vzyl_pod_kontrol_situatsiyu_so_stroitelstvom_ekotekhnoparka_shies_v_arkha/; influenced the Presidential Decree no. 16 of 5 January 2021 "On the Establishment of the Circle of Kindness Fund to Support Children with Severe Life-Threatening and Chronic Illnesses, including Rare (Orphan) Illnesses, <https://www.garant.ru/products/ipo/prime/doc/400068476/>; e.g. http://www.president-sovet.ru/presscenter/news/fond_krug_dobra_odobril_zakupku_trekh_preparatov_dlya_detey_so_sma/.

⁹³ See on this initiative: "Expert Opinion on the Draft Federal Law 'On the Control of Activities of Persons under Foreign Influence'" (Russian), http://www.president-sovet.ru/members/blogs/post/ekspertnoe_zaklyuchenie_na_proekt_federalnogo_zakona_o_kontrole_zadeyatelnostyu lits_nakhodyashchikh/.

⁹⁴ The Rapporteur could not verify the relevant changes.

⁹⁵ "In Pre-Trial Detention and Pits'. Members of Putin's Human Rights Council Denounce Unlawful Detention of Military Conscientious Objectors in Donbas" (Russian), <https://www.bbc.com/russian/news-62350702>.

⁹⁶ "Basic Rights Should not be Subject to Additional Restrictions" (Russian), <https://memohrc.org/ru/monitorings/osnovnye-prava-ne-dolzny-podvergatsya-dopolnitelnym-ogranicheniyam>: "We, the members of the Presidential Council for the Development of Civil Society and Human Rights, do not make political assessments or proposals. But we do note that at least hundreds of Russian and Ukrainian citizens have already died, and that many social and individual rights of citizens and human beings have been jeopardised by all the recent events." This statement was made on 7 March 2022 by 12 out of 47 members.

The effectiveness of the work of the Presidential Council is controversial. As a consultative body its authority as an institution mostly depends on the authority of its members and the president. The change in the composition of the Council by Presidential Decree in 2019⁹⁷ was seen as a “purge”;⁹⁸ some human rights defenders left as they saw the Council as a legitimisation of repressive State policy; others nevertheless stayed.

d) Public Oversight Committees⁹⁹

The Public Oversight Committees established in 2008 have the task of monitoring the situation in penal institutions and preventing torture and inhuman treatment.¹⁰⁰ They were modelled on the "Visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment" (national preventive mechanism) under Article 3 of the Optional Protocol to the Convention against Torture,¹⁰¹ but differ from them in important aspects. Committee members visit places of detention, receive complaints from detained persons and may hold (non-confidential) interviews with them. They can make non-binding recommendations to the authorities.

The Public Oversight Committees operate on a sub-federal level and are formed by the Civil Chamber.¹⁰² The system and the criteria for selection and appointment of the members are, however, not transparent and inclusive.¹⁰³ Furthermore, the members are not paid or reimbursed for their expenses. These factors limit the effectiveness of Public Oversight Committees and their ability to protect the rights of people in detention.¹⁰⁴

With the entry into force of the reform law on “Foreign Agents”¹⁰⁵ those qualified as “persons under foreign influence” are prohibited from being members of monitoring commissions. Since more or less all relevant independent NGOs are now so labelled, it is to be expected that the last independent members will also be excluded from the Public Oversight Committees, thus reducing their influence on human rights protection.

⁹⁷ Presidential Decree no. 512 of 21 October 2019 “On the Change in the Composition of the Presidential Council for Civil Society and Human”.

⁹⁸ “Human Rights Activists call the Changes in the HRC a big Blow and a Demolition” (Russian), <https://www.interfax.ru/russia/681208>.

⁹⁹ In Russian: Общественные наблюдательные комиссии (ОНК).

¹⁰⁰ See Federal Law no. 76-FZ of 10 June 2008 “On Public Monitoring of Human Rights in Places of Enforced Detention and on Assistance to Persons Held in Places of Enforced Detention”.

¹⁰¹ The Russian Federation has not ratified the Optional Protocol.

¹⁰² In Russian: Общественная палата.

¹⁰³ In 2016, the new composition of the Public Oversight Committee of Moscow caused a wide public discussion as many active members of the Committee (e.g. a representative of Memorial) were not elected; see “The Committee's ‘Debate’” (Russian), <https://polit.ru/article/2016/10/24/onk/>. According to information given during interviews, in the present, there are very few active human rights activists on the Committees, more representatives of state-associated initiatives, former civil servants, or representatives of “traditional” religious organisations. But the situation is regionally different.

¹⁰⁴ See Citizens’ Watch, “An Overview of Torture Prevention Systems in Russia, Lithuania, Sweden and Norway” (Russian), <https://citwatch.org/obzor-nezavisimyh-mehanizmov-predotvrashheniya-pytok-v-mestah-prinuditel-nogo-soderzhaniya-v-rossii-litve-shveczii-i-norvegii/>, p. 10.

¹⁰⁵ See below.

e) Interaction between Constitutional and International Law

The Russian Constitution of 1993 was very open towards international law. Article 15 (4) of the Constitution integrates international law in the Russian legal order and grants “universally-recognised norms of international law and international treaties and agreements” a rank above ordinary law. Article 17 (1), 69 (1) of the Constitution specifically refer to internationally recognised human and specifically minority rights. The participation in interstate associations was only restricted in case of a “limitation of the rights and freedoms of man and citizen [or a contradiction to] the principles of the constitutional system of the Russian Federation” (Article 79 of the Constitution).

Even though Article 15 (4), 17 (1), 69 (1) of the Constitution were not amended,¹⁰⁶ the Constitutional Amendments of 2020¹⁰⁷ challenged this openness. The new version of Article 79 of the Constitution states that “decisions of interstate bodies adopted on the basis of provisions of international treaties of the Russian Federation in their interpretation contradicting the Constitution of the Russian Federation shall not be enforceable in the Russian Federation.” The legislator then introduced similar provisions in several laws including laws on vulnerable groups, ecological questions, defence, extremism, and terrorism.¹⁰⁸ The competence to review the constitutionality of the aforementioned decisions of interstate bodies now explicitly lies with the Constitutional Court (Article 125 (5.1) (6) of the Constitution). The Venice Commission found these reforms alarming.¹⁰⁹

The overview of State institutions charged with protecting human rights shows that good approaches have not been followed up. As the authorities feared that these institutions could substantially criticise human rights violations and influence policy, the rules of procedure and the staffing of the competent institutions were changed. As a result, they do not seem to be developing their full capacity for effective human rights protection at present, but rather prioritise uncontroversial topics in the social sphere. They are thus not a counterweight in the current crisis.

II) Freedom of Association – Legislation and practice

1) Constitutional Guarantee of Freedom of Association

The constitutional guarantee of freedom of association, Article 30 of the Russian Constitution of 1993, reads as follows:

¹⁰⁶ The Chapters 1, 2 and 9 of the Russian Constitution cannot be amended, see Art. 135 (1), (2) of the Constitution.

¹⁰⁷ Federal Constitutional Law no. 1-FKZ of 14 March 2020 “On Enhancement of Regulations Concerning Specific Questions of Organisation and Functioning of Public Authority” (approved by referendum on 01 July 2020).

¹⁰⁸ Federal Law no. 429-FZ of 8 December 2020 “On Amendments to Certain Legislative Acts of the Russian Federation”.

¹⁰⁹ A detailed analysis of the amendments to Art. 79, 125 of the Russian Constitution and of the previous jurisdiction of the Constitutional Court is provided by VC 2020 Opinion on Execution of ECtHR Decisions.

- “1. Everyone shall have the right to association, including the right to create trade unions for the protection of his or her interests. The freedom of activity of public association shall be guaranteed.
2. No one may be compelled to join any association and remain in it.”

The provision has never been amended. Restrictions are possible on the basis of the general clause contained in Article 55 of the Russian Constitution, which reads as follows:

- “1. The listing in the Constitution of the Russian Federation of the fundamental rights and freedoms shall not be interpreted as a rejection or derogation of other universally recognised human rights and freedoms.
2. In the Russian Federation no laws shall be adopted cancelling or derogating human rights and freedoms.
3. The rights and freedoms of man and citizen may be limited by the federal law only to such an extent to which it is necessary for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, for ensuring defence of the country and security of the State.”

In recent years several restrictive measures on freedom of association were enacted on the basis of new legislation. The most important laws are the legislative acts on “foreign agents” and on “undesirable organisations”.

All these legislative acts will be analysed in the following chapters.

2) “Foreign-Agent” Legislation

a) Starting Point of the “Foreign-Agent” Legislation

The foreign-agent legislation is the centrepiece of the Russian legislation on the status and activities of civil society organisations. It has been the object of several thorough international expert analyses between its entry into force in 2012 and 2021;¹¹⁰ the last

¹¹⁰ There are three reports of the Venice Commission, the first one in 2014: Venice Commission, Opinion on Federal Law no. 121-FZ on Non-Commercial Organisations (“Law on Foreign Agents”), on Federal Laws no. 18-FZ and no. 147-FZ and on Federal Law no. 190-FZ on Making Amendments to the Criminal Code (“Law on Treason”), 27 June 2014, CDL-AD(2014)025 (hereinafter VC 2014 Opinion on Foreign-Agent-Legislation); the second one in 2016: Venice Commission, Opinion on Federal Law no. 129-FZ (Federal Law on Undesirable Activities of Foreign and International Non-Governmental Organisations), 13 June 2016, CDL-AD(2016)020 (hereinafter VC 2016 Opinion on Foreign-Agent-Legislation), and the third one in 2021: Venice Commission, Opinion on the Compatibility with International Human Rights Standards of a Series of Bills Introduced by the Russian State Duma Between 10 and 23 November 2020 to Amend Laws Affecting “Foreign Agents”, 6 July 2021, CDL-AD(2021)027 (hereinafter VC 2021 Opinion on Foreign-Agent-Legislation); there are two analyses by the Council of Europe Expert Council on NGO Law, Opinion on the Compatibility with European Standards of Recent and Planned Amendments to the Russian Legislation Affecting NGOs, 19 February 2021, CONF/EXP(2021)1, at <https://rm.coe.int/expert-council-conf-exp-2021-1-opinion-amendments-to-russian-legislati/1680a17b75> and <https://www.coe.int/fr/web/ingo/expert-council-on-ngo-law-country-study-on-ngo-legislation-in-the-russian-federation>; there are three analyses by the European Commissioner of Human Rights: Council of Europe Commissioner for Human Rights, 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, CommDH(2013)15, 15 July 2013, para. 57 (hereinafter Commissioner 2013 Opinion on Foreign-

amendments in 2022 have been reviewed internally by Russian experts,¹¹¹ but not yet by international experts. It is therefore not necessary to add another expert report on this comprehensive legislation adopted before 2022, but rather to summarise the main tendencies in the development of the law, to dwell on the latest developments and to reflect on the consequences for civil society in Russia.

In 1995 the Law “On Non-Commercial Organisations” (NCO Act) was adopted.¹¹² It provided a general regulatory framework for the activities of non-profit organisations.¹¹³ In 2012, it was substantially changed by the adoption of the so-called “Foreign Agents Act”¹¹⁴ which introduced a series of changes to other laws¹¹⁵ as well.

Since 2012, this legislation on “foreign agents” has been repeatedly reformed at short intervals.¹¹⁶ The last comprehensive reform was undertaken in July 2022 and will enter into force on 1 December 2022.¹¹⁷ It consolidated the former legislative acts under the title “On the control of the activities of persons under foreign influence” and broadened the original concept of “foreign agent”¹¹⁸ replacing it by “persons under foreign influence”.¹¹⁹

In the present, the “foreign agent” legislation is not only the decisive instrument regulating and restricting all NGO activities in Russia, but it has also become an instrument for regulating and restricting media activities¹²⁰ and political and social activities of individuals.

The basic concept, as developed in 2012, did not directly prohibit certain socio-social activities considered to be “political”, nor did it prohibit foreign funding of such activities.

Agent-Legislation); Council of Europe Commissioner for Human Rights, Statement, 13 July 2017, <https://www.coe.int/en/web/commissioner/-/the-russian-federation-s-law-on-foreign-agents-contravenes-human-rights> (hereinafter Commissioner 2017 Opinion on Foreign-Agent-Legislation); Council of Europe Commissioner for Human Rights, Statement, 7 December 2020, <https://www.coe.int/en/web/commissioner/-/commissioner-for-human-rights-calls-on-the-state-duma-to-refrain-from-adopting-legislation-which-violates-the-rights-of-ngos-and-civil-society-activis> (hereinafter Commissioner 2020 Opinion on Foreign-Agent-Legislation); and there Council of Europe Commissioner for Human Rights, Third party intervention, 5 July 2017, CommDH(2017)22 (intervention in ECtHR, 14 July 2022, Case of Ecodefence and others v. Russia, app. nos. 9988/13 et al).

¹¹¹ The Rapporteur was given two draft analyses that have not yet been published.

¹¹² Federal Law no. 7-FZ of 12 January 1996 "On Non-Commercial Organisations" (hereinafter NCO Act)

¹¹³ Changes to the law were seen critically by the international community already in 2006; see UN Human Rights Committee, Concluding Observations on the sixth periodic report of the Russian Federation, 24 November 2009, UN Doc. CCPR/C/RUS/CO/6, para. 26.

¹¹⁴ Law no. 121-FZ of 13 July 2012 “On Entering Amendments to Individual Legislative Acts of the Russian Federation in the Part Regulating the Activities of Non-Commercial Organisations Performing the Functions of a Foreign Agent” (hereinafter “Foreign Agents Act”).

¹¹⁵ The Law on Public Associations, The Criminal Code, the Code on Administrative Offences, and the Law on the Laundering of Crime Proceeds to Finance Terrorism.

¹¹⁶ Federal Law no. 121-FZ of 20 July 2012; Federal Law no. 305-FZ of 14 October 2014; Federal Law no. 304 FZ of 3 November 2015; Federal Law no. 327-FZ of 25 November 2017; Federal Law No. 426-FZ of 2 December 2019; Federal Law no. 481-FZ of 30 December 2020; Federal Law no. 525-FZ of 30 December 2020; Federal Law no. 255-FZ of 14 July 2022.

¹¹⁷ Federal Law 255-FZ of 14 July 2022 "On the Control of Activities of Persons under Foreign Influence".

¹¹⁸ In Russian: Иностраннй агент.

¹¹⁹ In Russian: “находящихся под иностранным влиянием”; it includes “persons getting support from abroad and/or being otherwise under foreign influence”.

¹²⁰ Restrictions on the media under the foreign-agent-legislation will be considered below.

However, a distinction was introduced between two types of NGOs: NGOs that do not receive funding from foreign sources and NGOs that do receive funding from foreign sources. While the former were privileged and their activities were supported and facilitated, the latter were hindered in their activities to such an extent that their work became very difficult or even impossible.

According to the 2012 legislation this aim was achieved by the following indirect means:

First, there is an element of stigmatisation in the choice of the term "foreign agent". Due to experiences in Soviet/Russian history, the perception of "foreign agents" as "enemies" is widespread in Russia,¹²¹ at least unconsciously, and thus stigmatises activities that should actually be supportive and helpful to society.

Secondly, and closely related to the first point, NGO's classified as "foreign agents" are obliged to label all their publications and communications in order to make their potential "dangerousness" clear; even the size of the labels has been specified by law.

Thirdly, the granting of "foreign agent" status is fraught with very negative consequences, as NGOs classified as "foreign agents" have to comply with burdensome administrative, accounting and reporting obligations, with severe penalties always looming in case of errors or omissions.

Fourthly, their radius of action is significantly narrowed, as many activities such as support for election campaigns or cooperation with political parties are prohibited for foreign agents.

And fifthly, "foreign agents" are under intense scrutiny by the authorities; the law provides for both scheduled and unscheduled inspections by the Ministry of Justice.

Therefore, it is decisive which NGOs are considered to be "foreign agents" and – according to the 2012 version of the law – have to file an application with the Ministry of Justice to be included on the respective register.

The definition of "foreign agent" has been amended several times. In 2012 it was defined as follows.

“(…) a Russian non-commercial organisation receiving 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 (...) ('foreign sources') and which engages in political activity, including political activity carried out in the interests of foreign providers of funds, in the territory of the Russian Federation.”¹²²

¹²¹ See VC 2021 Opinion on Foreign-Agent-Legislation, para. 46; see also Commissioner 2020 Opinion on Foreign-Agent-Legislation, para. 57: “The use of the term ‘foreign agent’ (inostrannyi agent) is of particular concern to the organisations affected by the implementation of the Law on Foreign Agents, since it has usually been associated in the Russian historical context with the notion of a ‘foreign spy’ and/or a ‘traitor’ and thus carries with it a connotation of ostracism or stigma.”

¹²² Art. 2 (6) of the NCO Act.

The definition thus comprised two components: receipt of foreign funds and participation in political activities.

In 2012 “political activity” was defined as follows:

“A non-commercial organisation, except for a political party, is considered to carry out political activity if, regardless of its statutory goals and purposes, it participates (including financially) in the organisation and implementation of political actions in order to influence State authorities’ decision-making process that affect State policy and public opinion.”¹²³

Several activities were, however, excluded from this broad notion of “political activity”:

“science, culture, the arts, healthcare, the prevention of diseases and the protection of health, social security, the protection of motherhood and childhood, the social support of disabled persons, the promotion of a healthy lifestyle, physical well-being and sports, the protection of flora and fauna, charitable activities, and the assistance of charities and voluntary organisations.”¹²⁴

Already this first version of the “Foreign Agents” Act contains vague terms that are open to narrower or broader interpretation. It is important to note that there is no minimum threshold for funding, there is no requirement for the NGO to act in the interest of a foreign principal – which might have to be proven – and there is no restriction of the law’s application with a view to the source of foreign funding, be it by a private individual, by an institution or by a State.

The Russian authorities’ main argument for adopting the law was the need for transparency. According to the government’s explanation in the dialogue with the Venice Commission, the law represented an “improvement” and served to “protect human and civil rights and freedoms, as well as the interests of society and the State protected by law”, but without specifying what these were.¹²⁵ Further, they argued that the law did not prohibit or restrict to engage in free debate and public activities,¹²⁶ and that similar laws had been adopted elsewhere.¹²⁷ The Russian Constitutional Court upheld the law with minor modifications.¹²⁸

The non-registration of an organisation as “foreign agent” despite fulfilling the conditions according to the law is punishable with fines of up to 300,000 roubles or up to two years deprivation of liberty.¹²⁹ More generally, the fulfillment of all the obligations under the law is secured on the basis of the Criminal Code (CC) as well as the Code of Administrative Offences (CAO). The submission of incorrect information,¹³⁰ the organisation of events

¹²³ Emphasis added.

¹²⁴ Art. 6 (2) of the NCO Act.

¹²⁵ VC 2021 Opinion Foreign-Agent-Legislation, para. 44, Fn. 107.

¹²⁶ The Russian opinion is quoted in ECtHR, *Ecodefence and others v. Russia*, 14 June 2022, app. nos. 9988/13 et al., para. 79.

¹²⁷ See ECtHR, *Ecodefence and others v. Russia*, 14 June 2022, app. nos. 9988/13 et al., para. 114.

¹²⁸ JConstitutional Court, decision no. 10-P of 8 April 2014.

¹²⁹ See Art. 330.1 CC.

¹³⁰ See Art. 19.7.5-2 CAO.

without registration¹³¹ as well as the failure to label publications correctly¹³² is sanctioned by administrative fines.¹³³

b) Reforms between 2012 and 2021

The basic 2012 legislation on “foreign agents” was subsequently constantly amended. As a rule, the reform laws changed detailed regulations in a whole series of laws such as the Law on Associations, the Criminal Code and the Code of Administrative Offences. This made the system very complex and difficult to assess in its entirety.

While in the beginning the focus of the foreign-agent legislation was more on the exercise of “freedom of association” as only NGOs were targeted, for example the Golos Association (2013) or Memorial (2014), due to the changes it became also very relevant for the exercise of “freedom of expression”. Thus, in 2017 the definition of “foreign agent” was extended to include also the mass media, both Russian and foreign. Since then mass media outlets as, for example, Voice of America (2017), Radio Liberty (2017), TV Rain (Dozhd) (2021), Meduza (2021) and Rosbalt (2021) were declared foreign agents.

Since 2019 the law applies to individual persons if they “disseminate information to an unspecified number of people and receive funding from abroad.” It thus mainly targets bloggers and journalists, not only those who live in Russia, but also those who live abroad, but publish in Russia.¹³⁴ Bloggers and journalists declared as foreign agents are, for example, Lyudmila Savitskaya (2020), Denis Kamalyagin (2020), Yulia Apukhtina (2021), Taisiya Bekbulatova (2021) and Yuri Dud (2022).

As of 2020, even non-registered associations can be classified as “foreign agents”.¹³⁵ This also applies to foreigners intending to carry out activities linked to the performance of the functions of a foreign agent after their arrival.¹³⁶ The reform of 2020 creates a new designation, the “foreign agent by affiliation”. Although they do not have the same obligations as “foreign agents”, in elections the affiliation has to be clearly shown, even on the ballots.¹³⁷ Finally, in 2022 commercial companies are included as well.¹³⁸

While in the original version of the law precondition for the qualification as “foreign agent” is the receipt of money from foreign sources, according to the 2020 version of the law the money can also come from Russian legal entities, whose beneficial owners are foreign citizens or stateless persons.¹³⁹ The actual receipt of the money is no longer necessary, but it

¹³¹ See Art. 19.34 (1) CAO.

¹³² See Art. 19.34 (2) CAO.

¹³³ Art. 19.7.5-2 CAO: fine of between 100,000 roubles and 300,000 roubles; Art. 19.34 (1), (2) CAO: fine of between 300,000 roubles and 500,000 roubles.

¹³⁴ See VC 2021 Opinion Foreign-Agent-Legislation, para. 17.

¹³⁵ See VC 2021 Opinion Foreign-Agent-Legislation, para. 37, fn. 75.

¹³⁶ See VC 2021 Opinion Foreign-Agent-Legislation, para. 37, fn. 87.

¹³⁷ See VC 2021 Opinion Foreign-Agent-Legislation para. 37, fn. 94.

¹³⁸ See Art. 1 (2) of the Federal Law 255-FZ of 14 July 2022 "On the Control of Activities of Persons under Foreign Influence" according to which legal entities can be recognised as foreign agents regardless of their legal form.

¹³⁹ See VC 2021 Opinion Foreign-Agent-Legislation, para. 36.

is deemed sufficient to intend to receive money from foreign sources. In the 2020 reform the receipt of money is replaced by the receipt of “organisational and methodological support”.¹⁴⁰ Furthermore, the collection of specific information, not classified as “State secrets”, is another way of becoming registered as “foreign agent”. The list of information has been drawn up by an order of the Federal Security Service.¹⁴¹ It is very broad and contains very general information on defence issues such as the conditions of military service, public procurement in the military sector, compliance by Russian military officials, but also information on the conclusion, termination and compliance with international treaties.¹⁴²

Finally, in the 2022 reform, the link between “foreign agents” and money transfer is abandoned and replaced by some kind of influence from abroad.¹⁴³

However, the legislative reforms not only change the aspect of receiving “foreign funds” as a prerequisite for being classified as a “foreign agent”, but also broaden the concept of “political activity”. In the 2016 reform it is clarified what is meant by “participation (including financially) in the organisation and implementation of political actions”. It is explained that this relates to the engagement “in activities in the fields 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 security and defence, external policy, the Russian Federation’s social, economic and national development, the development of the political system, the structure of State and local authorities, [or] human rights, ...”.¹⁴⁴

The 2016 reform further specifies the ways in which such political activity can be carried out, e.g. by organising demonstrations, submitting public petitions or conducting opinion polls and publishing the results, or by funding such activities.¹⁴⁵ Since then organisations such as Sova (2016), the Yuri Levada Analytical Center (2016) and Sphere (2016) were declared “foreign agents”.

Here, too, the 2022 reform brings a major change that reverses the rule and the exception: everything is considered “political” unless proven otherwise.¹⁴⁶

¹⁴⁰ See VC 2021 Opinion Foreign-Agent-Legislation, para. 37, Fn. 78.

¹⁴¹ Federal Security Service, Order no. 379 of 28 September 2021 “On Approval of the List of Information in the Field of Military, Military-technical Activities of the Russian Federation which, if Obtained by a Foreign State, its State Bodies, International or Foreign Organisation, Foreign Nationals or Stateless Persons may be Used Against the Security of the Russian Federation.”

¹⁴² For more details on the information see “FSB Approves List of Information that can be Recognised as a ‘Foreign Agent’ for Collecting it” (Russian), <https://www.svoboda.org/a/fsb-utverdila-spisok-svedeniy-za-sbor-kotoryh-mogut-priznatj-inoagentom/31487309.html>.

¹⁴³ See below.

¹⁴⁴ Art. 2.6 of the Federal Law no. 7-FZ of 12 January 1996 “On Non-Commercial Organisations” – amended in 2016 by Federal Law no 179-FZ of 2 June 2016 “On Amendments to Art. 8 of the Federal Law ‘On Public Associations’ and Art. 2 of the Federal Law ‘On Non-Commercial Organisations’”.

¹⁴⁵ Art. 2.6 of the Federal Law no. 7-FZ of 12 January 1996 “On Non-Commercial Organisations” – change 2022 by Federal Law no. 255-FZ of 14 July 2022 “On the Control of Activities of Persons under Foreign Influence”.

¹⁴⁶ See below.

But not only is the term "foreign agent" extended to all civil society actors;¹⁴⁷ in addition, the initiative to assess qualification as a "foreign agent" is transferred from those concerned to the Ministry of Justice. With the 2014 reform the Ministry of Justice has the power to add NGO's to the register of "foreign agents" if it considers that an organisation meets the criteria set out in the Act without waiting for an application to be made.¹⁴⁸ While recourse to courts is open, courts are not involved in deciding on the fulfilment of the preconditions for registration.¹⁴⁹

Another focus of the reform legislation is to increase the administrative and bureaucratic burdens. The duties linked to registering, auditing and reporting as well as the labelling obligations for all material used are becoming so complicated and cumbersome that they are ultimately almost impossible to fulfil.

At the same time, direct control and interference with civil society activities increases with each reform step. The intervals at which reports have to be rendered to the Ministry of Justice get shorter; first biannual or annual reports are required, then reports on "political activities" are due two times per year. First, it is necessary to hand in support documents on events and report on their implementation. Then the material has to be provided ex ante so that the Ministry of Justice can decide whether a specific program may be implemented or not. What is understood under "control" is thus close to classical censorship. In case of non-compliance liquidation is possible. Furthermore, unplanned inspections are possible. Here, the authorities' power was also enlarged in 2014 and once again in 2020. Since 2014, the reason for such unplanned inspections can be that "the activities do not correspond to the statutory aims and tasks of its activities". Since 2020 such inspections may last of up to 45 days.

Furthermore, the restrictions on the activities of those declared "foreign agents" get more important with each reform step. Right from the beginning, taking part in campaigning cooperating with political parties and giving donations and taking part in specific forms of monitoring is prohibited. With the next reform step "foreign agents" are excluded from the category of "providers of socially useful services". They are banned from registering in residential areas, from holding or financing assemblies and, since 2022, even from teaching

¹⁴⁷ The list of foreign agents includes organisations and individuals from different areas, e.g. 28 social and education projects and initiatives, 19 research institutions or academics, 32 environmental protection organisations or activists, 15 from the field HIV Prevention and Drug Addiction Care and 9 ethnic organisations and individuals for the support of indigenous people.

¹⁴⁸ Art. 32 (7) of the NCO Act introduced through Federal Law no. 147-FZ of 4 June 2014 "On Amending Article 32 of the Federal Law 'On Non-Commercial Organisations'".

¹⁴⁹ See on this point the criticism of the UN Human Rights Committee, Concluding Observations on the seventh periodic report of the Russian Federation, 28 April 2015, UN Doc. CCPR/C/RUS/CO/7, para. 22: "The Committee notes with concern that the definition of "political activity" in the law is very broadly construed and allows the authorities to register as foreign agents, without their consent or a court decision, non-governmental organisations (NGOs) conducting diverse activities related to public life."

in State institutions.¹⁵⁰ The last reform of 2022 is the most comprehensive one in this context as well.¹⁵¹

Last but not least, the sanctions for failure to comply with the obligations imposed on "foreign agents" are considerably tightened. To quote just one example: On 30 December 2020 the maximum penalty for "maliciously avoiding the obligation to submit documents required for registering an organisation as a 'foreign agent'" was extended to five years imprisonment.¹⁵²

c) Reform after 24 February 2022

The latest reform of the "foreign agent" legislation has not yet entered into force. It was adopted together with other major reforms of the legislation on civil society activities on 14 July 2022, almost four months after the beginning of the war against Ukraine. It is foreseen to enter into force on 1 December 2022. As already mentioned, this reform law has consolidated the former legislative acts under the title "On the control of the activities of persons under foreign influence" and changed the starting point for the restrictive measures as foreign financing is no longer required. It is sufficient to "receive support and/or otherwise be under foreign influence",¹⁵³ a term that is much vaguer and broader than the reference to funding. Although the terms used such as "foreign influence" and "support" are defined in the law, they leave a very broad margin for interpretation. Thus "foreign influence" means "provision of support and/or influencing someone through coercion, persuasion or other means";¹⁵⁴ "support" is defined as "provision of money or other assets, but also organisational, methodological, scientific or technical assistance provided in other forms".¹⁵⁵ Unlike before this reform, "political activity" is no longer a *conditio sine qua non* for the application of the law, but other activities such as collection and distribution of information material are included as well. The activities covered by the law are defined in the following way:

"The types of activities specified in Part 1 of Article 1 of this Federal Law shall mean political activities, purposeful collection of information in the field of military and military-technical activities of the Russian Federation, distribution of messages and material intended for an unlimited number of persons and (or) participation in the creation of such messages and material, and other types of activities specified in this Article."

¹⁵⁰ See on all those changes the summaries of the reform legislation in ECtHR, *Ecodefence and others v. Russia*, 14 June 2022, app. nos. 9988/13 et al., para. 33 et seq. and VC 2020 Opinion Foreign-Agent-Legislation, para. 36 et seq.

¹⁵¹ See below.

¹⁵² Federal Law no. 525-FZ of 30 December 2020 "Amending Article 330.1 of the Criminal Code of the Russian Federation".

¹⁵³ Art. 1 (1) of the Federal Law no. 255-FZ of 14 July 2022 "On the Control of Activities of Persons under Foreign Influence".

¹⁵⁴ Art. 2 (1) of the Federal Law no. 255-FZ of 14 July 2022 "On the Control of Activities of Persons under Foreign Influence".

¹⁵⁵ Art. 2 (2) of the Federal Law no. 255-FZ of 14 July 2022 "On the Control of Activities of Persons under Foreign Influence".

The third form of activity seems to clearly target bloggers.

The definition of “political activity” is upheld, but the exceptions for science, culture, art etc are no longer valid “if the respective activities contradict national interests of the Russian Federation, the foundations of the public order of the Russian Federation or other values protected by the Constitution of the Russian Federation.”¹⁵⁶ That would mean in practice that an individual or an organisation trying to challenge their “foreign agent” status would be required to prove that their activity, besides being on the “non-political” list, does not contravene Russia's national interests, public law and order, and other constitutionally-protected values.

The law is applied to a broad range of activities, including raising issues of public interest and other standard journalistic practices.¹⁵⁷

The law unifies the existing registers of “foreign agents”. At the same time, it establishes a separate register of persons “affiliated” with a “foreign agent” by including anyone who is in any way connected (or was connected) with organisations and/or individuals carrying such a status.¹⁵⁸ This is very far-reaching. Persons affiliated with foreign agents can be their founders or those working there, but also those who are paid by them for “political work”.¹⁵⁹ It seems that a paid lecture given for an organisation qualified as foreign agent would be sufficient for being included into the register of “persons affiliated with foreign agents”. That makes foreign agents “toxic” – contacts with them can have serious negative consequences. Although the “foreign-agent” regime itself is not applied immediately to the “persons affiliated”, in case of a repetitious contact it is applied to them as well. As it is also sufficient to have had contact in the past, the law applies retroactively, and that even if the cooperation with an organisation qualified as “foreign agent” took place before the qualification. While it is not yet clear, if the law will be applied in that way, it creates a worrying legal uncertainty.¹⁶⁰

This is particularly so in view of the new restrictions introduced. It is worth enumerating them. For “persons under foreign influence” it is not allowed:

- to take public offices, to sit on election or referendum commissions;
- to have access to State secrets;
- to be involved in any commissions or committees, any consultative, advisory, expert and other bodies formed by public authorities;
- to nominate candidates to public monitoring commissions;

¹⁵⁶ Art. 4 (4) of the Federal Law no. 255-FZ of 14 July 2022 “On the Control of Activities of Persons under Foreign Influence”.

¹⁵⁷ Art. 4 (4) of the Federal Law no. 255-FZ of 14 July 2022 “On the Control of Activities of Persons under Foreign Influence”.

¹⁵⁸ Art. 6 of the Federal Law no. 255-FZ of 14 July 2022 “On the Control of Activities of Persons under Foreign Influence”..

¹⁵⁹ Art. 6 (1), (2), (3) of the Federal Law no. 255-FZ of 14 July 2022 “On the Control of Activities of Persons under Foreign Influence”.

¹⁶⁰ The wording of the relevant part of Art. 6 reads as follows: “A natural person who is affiliated with a foreign agent is understood to be an individual: (...) engaging (or having engaged) in political activity and receiving (or having received) funds and/or other assets from foreign agents, including through intermediaries, to carry out political activity.”

- to participate in independent anti-corruption review of bills and effective legal acts;
- to be involved in nominating candidates, in making lists of candidates, in the election of registered candidates, in initiating or holding a referendum, or to be engaged in any way in election or referendum campaigns;
- to make contributions to the electoral funds of candidates, registered candidates, electoral associations, and to referendum funds;
- to transfer or receive funds or other property for organising and holding a public event;
- to act as organiser of a public event;
- to make contributions to any political party, to sign agreements with any political party, its regional branches and other structural subdivisions;
- to engage in educational activities involving minors and/or to teach at State or municipal educational organisations;
- to produce information intended for minors;
- to participate in the procurement of goods and services for public and municipal needs and in the selection of service providers;
- to apply a simplified taxation system;
- to apply simplified methods of accounting and financial reporting;
- to invest in business entities of strategic importance for national defence and security;
- to operate critical information infrastructure and to engage in activities to ensure the security of critical information infrastructure;
- to be involved as experts in a State environmental review or to participate in organising or conducting a State environmental review.¹⁶¹

The prohibitions are so comprehensive that they render participation in State affairs and public life more or less impossible. Many of the prohibitions directly touch upon election rights. An important new focus is teaching activities. For those working in science being declared to be “under foreign influence” can be considered as “academic death”.

There are also additional duties placed on those registered: they have to disclose their status every time they come in contact with educational organisations or other organisations and authorities and also to the founders, members, beneficiaries and employees.

Furthermore, the Ministry of Justice will be able to request to block the websites of “foreign agents” for any violation of the law on “foreign agents”.

Even foreigners living outside Russia have to register themselves “if they want to act as a foreign agent after their stay in Russia”.¹⁶² The duty to register also applies to foreign journalists.¹⁶³

¹⁶¹ The enumeration of what is forbidden comprises 18 different activities; see Art. 11 of the Federal Law no. 255-FZ of 14 July 2022 “On the Control of Activities of Persons under Foreign Influence”.

¹⁶² Art. 7 (2) of the Federal Law no. 255-FZ of 14 July 2022 “On the Control of Activities of Persons under Foreign Influence”.

¹⁶³ Art. 7 (4) of the Federal Law no. 255-FZ of 14 July 2022 “On the Control of Activities of Persons under Foreign Influence”.

As the new law has not yet entered into force, it is not yet clear, how it will be applied. Right now, it seems that the entry into force of this law is being prepared. Many laws have to be amended and the respective registers set up.

The practical significance of the legislation on “foreign agents” cannot be overestimated. It had and still has a decisive influence on civil society in the Russian Federation. It can be understood as one of the major tools for curbing civil society activities both of associations and individuals and for bringing them under control of the authorities. While already the first version of the law was very restrictive, it still allowed NGOs to continue their work if they avoided getting foreign funding. But after eight reforms, a constant broadening of the applicability of the concept of “foreign agent”, a deepening of the control and supervision system and a progressive exclusion of those targeted by the law from social and political life the crackdown on the NGO community seems to be completed.

Many NGOs had to cease their activities, either because they had no more funding or because they were not able to pay the high fines that had been imposed on them. Among them are very famous NGOs that had started their activities in Russia in the early 1990s and shaped public life for many years. Others were dissolved by the authorities such as International Memorial and Human Rights Center Memorial in March 2022.¹⁶⁴ Some of the persons engaged in civil society activities emigrated and continued their work abroad, others gave up, while a few NGOs continue to function in Russia. The legislation has created a climate of distrust, fear and hostility¹⁶⁵ and had a dissuasive effect to engage in political activity.

The effects can be seen on the basis of statistics. As of mid-August 2022 81 organisations were registered as “foreign agents”, among them eight public associations.¹⁶⁶ Between 2017-2021 229 cases were brought to court for non-inclusion in the register or violation of labeling rules and issued 158 indictments, imposing fines in the total amount of 36,245,500 roubles (467,617 USD); the average fine increased from 190,000 roubles to 350,000 roubles.¹⁶⁷ Around 100 NGOs decided to self-dissolve and reorganise. 16 research centers and three academics were declared “foreign agents”.¹⁶⁸

For the application and effects of the legislation in individual cases the judgement of the ECtHR in the case of *Ecodefence and others v. Russia* provides ample evidence.¹⁶⁹ The individual cases illustrate the loss for civil society. The organisations that were closed down by the authorities or had to close down after intrusive measures of the authorities all fulfilled valuable tasks for society as a whole, be it by protecting vulnerable groups, giving legal aid, fighting for the protection of the environment or safeguarding the rights of

¹⁶⁴ See Council of Europe Human Rights Commissioner, Statement, 29 December 2021 <https://www.coe.int/en/web/commissioner/-/the-liquidation-of-memorial-ngos-is-a-harsh-blow-to-human-rights-protection-in-russia>.

¹⁶⁵ Venice Commission, Opinion on the Compatibility with International Human Rights Standards of a Series of Bills Introduced by the Russian State Duma Between 10 and 23 November 2020 to Amend Laws Affecting “Foreign Agents”, 6 July 2021, CDL-AD(2021)027, para. 50.

¹⁶⁶ See <http://unro.minjust.ru/NKOForeignAgent.aspx>; <https://inoteka.io/ino/foreign-agents-en>.

¹⁶⁷ “Information on the human rights situation in Russia for the OSCE’s Moscow Mechanism”, <https://reports.ovdinfo.org/information-human-rights-situation-russia-osces-moscow-mechanism#5-1-1>.

¹⁶⁸ See <https://inoteka.io/ino/foreign-agents-en>.

¹⁶⁹ See the annex to ECtHR, *Ecodefence and others v. Russia*, 14 June 2022, app. no. 9988/13 et al.

detainees; the spectrum of their activities is extremely broad.¹⁷⁰ The negative consequences for women, ethnic minorities, indigenous people, non-citizens as well as for other vulnerable persons are taken up by the UN human rights bodies such as the Committee on the Elimination of Discrimination against Women,¹⁷¹ Committee on the Elimination of Racial Discrimination,¹⁷² and the Committee against Torture.¹⁷³ The UN Special Rapporteur on the Situation of Human Rights Defenders wrote that “far too often the ‘foreign agents’ law is used to punish journalists and human rights defenders for doing the valuable work of monitoring human rights abuses.”¹⁷⁴

That would, however, not mean that there were no more NGOs in Russia. On the contrary, those who are loyal to the government and active in spheres not linked to any specific interests of the authorities or outspokenly pro-government can continue their work without hindrance.¹⁷⁵ Examples would be “Women for health”¹⁷⁶ and the National Council for Associations of Children and young people,¹⁷⁷ the latter of which explicitly declares in its self-description that its aim is to implement government policy.

d) Evaluation

“Non-governmental organisations (NGOs) can perform a vital role in the promotion of human rights, democracy and the rule of law. They are an integral component of a strong civil society. We pledge ourselves to enhance the ability of NGOs to make their full contribution to the further development of civil society and respect for human rights and fundamental.”¹⁷⁸

¹⁷⁰ See the explanation on the missions of the different organisations in the appendix to ECtHR, *Ecodefence and others v. Russia*, 14 June 2022, app. nos. 9988/13 et al.

¹⁷¹ UN Committee on the Elimination of Discrimination against Women, Concluding Observations on the eighth periodic report of the Russian Federation, 20 November 2015, UN Doc. CEDAW/C/RUS/CO/8, para. 16: “The Committee calls upon the State party to review the legislation requiring non-commercial organisations that receive foreign funding to register as ‘foreign agents’ and to ensure an environment in which women’s associations and non-governmental organisations working on gender equality and women’s empowerment may freely operate and raise funds.”

¹⁷² UN Committee on the Elimination of Racial Discrimination, Concluding Observations on the Twenty-Third and Twenty-Fourth Periodic Reports of the Russian Federation, 20 September 2017, UN Doc. CERD/C/RUS/CO/23-24, paras. 11-12.

¹⁷³ UN Committee against Torture, Concluding Observations on the Sixth Periodic Report of the RF, 28 August 2018, UN Doc. CAT/C/RUS/CO/6, para. 28.

¹⁷⁴ UN Office of the United Nations High Commissioner for Human Rights, Press Release, 31 August 2021, <https://www.ohchr.org/en/press-releases/2021/08/russia-free-semyon-simonov-and-stop-criminalising-human-rights-defenders>.

¹⁷⁵ See Civic Chamber, 2021 Report on the Status Quo of the Russian Civil Society in Russia (Russian), 10 December 2021, http://cmokhv.ru/media/cms_page_media/2022/2/21/oprf2021.pdf.

¹⁷⁶ “Business Breakfast on ‘Civil Society and Business: Why it Is Important to Work Together’” (Russian), <https://womenforhealth.ru/news/delovoy-zavtrak-grazhdanskoe-obshchestvo-i-biznes-pochemu-vazhno-rabotat-vmeste/>.

¹⁷⁷ “On the National Council” (Russian), <http://youthrussia.ru/news/o-nacionalnom-sovete>.

¹⁷⁸ Document of the Sixth Summit of Heads of State or Government of the OSCE, 18-19 November 1999 (hereinafter *Istanbul 1999*), para. 27; see also in particular *Copenhagen 1990*: “the participating States recognise that [...] active involvement of persons, groups, organisations and institutions, will be essential to ensure continuing progress towards their shared objectives” and “the right of association will be guaranteed. [...] These rights will exclude any prior control.”

The compatibility of the Russian foreign-agent legislation with international human rights standards was assessed throughout a decade by various international bodies; without exception both regional and universal human rights bodies came to the conclusion that the legislation was not compatible with basic human rights and should be fundamentally changed or repealed. The Venice Commission undertook three detailed studies where it explicitly advised to clarify the vague concepts, to restrict the discretion of the administration, to abandon the notion of “foreign agent” and to stop the special regime of registering and reporting.¹⁷⁹ The CoE Commissioner for Human Rights repeatedly criticised the law itself¹⁸⁰ as well as its application in individual cases.¹⁸¹ The European Court of Human Rights unanimously found a violation of Article 11 ECHR in the joint applications of 61 different NGOs in the judgement *Ecodefence and others v. Russia*.¹⁸² The UN human rights bodies also requested it be thoroughly reviewed or repealed.¹⁸³ The concerns of individual Russian NGOs were discussed at these fora as early as 2013.¹⁸⁴ In so far as media outlets and journalists are qualified as “foreign agents”, the OSCE Media Freedom Representative also voices great concern.¹⁸⁵

Some of the reactions of the international community were immediate,¹⁸⁶ others were slow. The latter is true for the European Court of Human Rights. While the first applications were lodged already in 2013,¹⁸⁷ the judgement was handed down only on 14 June 2022, almost ten years later, a few days after the Russian Federation had declared not to be bound any longer by the Court’s judgements.¹⁸⁸ This was a problem of wrongly qualifying the case as a

¹⁷⁹ VC 2014 Opinion on Foreign-Agent-Legislation; VC 2016 Opinion on Foreign-Agent-Legislation, VC 2021 Opinion on Foreign-Agent-Legislation.

¹⁸⁰ Commissioner 2013 Opinion on Foreign-Agent-Legislation; Commissioner 2017 Opinion on Foreign-Agent-Legislation; Commissioner 2020 Opinion on Foreign-Agent-Legislation.

¹⁸¹ See the Council of Europe Human Rights Commissioner’s Letter to the Russian authorities in the case of International Memorial and Memorial Human Rights Center at <https://www.coe.int/en/web/commissioner/-/commissioner-urges-the-russian-general-prosecutor-to-discontinue-the-liquidation-proceedings-of-memorial-human-rights-ngos>; see also the Council of Europe Human Rights Commissioner’s statement in the case of All Russia Movement for Human Rights at <https://www.coe.int/en/web/commissioner/-/the-commissioner-urges-the-authorities-of-the-russian-federation-to-discontinue-the-liquidation-proceedings-against-the-all-russia-movement-for-human->.

¹⁸² ECtHR, *Ecodefence and others v. Russia*, 14 June 2022, app. nos. 9988/13 et al.

¹⁸³ UN Committee on the Elimination of Discrimination against Women, Concluding Observations on the eighth periodic report of the Russian Federation, 20 November 2015, UN Doc. CEDAW/C/RUS/CO/8; Committee on the Elimination of Racial Discrimination, Concluding Observations on the Twenty-Third and Twenty-Fourth Periodic Reports of the Russian Federation, 20 September 2017, UN Doc. CERD/C/RUS/CO/23-24; UN Committee against Torture, Concluding Observations on the Sixth Periodic Report of the RF, 28 August 2018, UN Doc. CAT/C/RUS/CO/6.

¹⁸⁴ Office of the UN High Commissioner for Human Rights, Press Release, 6 June 2013, <https://www.ohchr.org/en/press-releases/2013/06/un-rights-experts-seek-assurances-russian-ngos-will-not-face-reprisals>.

¹⁸⁵ See e.g. OSCE Representative on Freedom of the Media, Press Release, 4 October 2021, <https://www.osce.org/representative-on-freedom-of-media/499633>.

¹⁸⁶ The first reaction of an international body, the UN Special Rapporteurs on Freedom of Association, Human Rights Defenders and Freedom of Expression was even before the new law was adopted in 2012: Office of the UN High Commissioner for Human Rights, Press Release, 12 July 2012, <https://www.ohchr.org/en/press-releases/2012/07/russias-draft-law-non-commercial-organizations-detrimental-civil-society-un>.

¹⁸⁷ See e.g. Golos Fund, Citizens Watch, Civic Assistance Committee and others.

¹⁸⁸ Federal Law no. 183-FZ of 11 June 2022 “On Amendments to Certain Legislative Acts of the Russian Federation and the Annulment of Certain Provisions of Legislative Acts of the Russian Federation”.

category-IV-case¹⁸⁹ and thus as a case of minor importance. But it is doubtful if an earlier judgement could have changed the situation. The multitude of critical assessments by international bodies did not influence the Russian law-maker to reverse the basic concepts of the law, but, on the contrary, the more the legislation was criticised, the more it was expanded and developed further.¹⁹⁰

From the very outset, the ideas behind this legislation have been incompatible with international human standards and thus with Russia's OSCE commitments. As stated in Article 19 ICCPR freedom of expression has to be guaranteed "regardless of frontiers". In the Document of the Copenhagen Conference on the Human Dimension of the CSCE is stated: "The participating States ... will ... encourage, facilitate and, where appropriate, support practical co-operative endeavors and sharing of information, ideas and expertise among themselves and by direct contact and co-operation between individuals, groups and organisations" in areas such as constitutional law, journalism, independent media.¹⁹¹ The foreign-agent legislation, however tries to re-establish walls and to hinder any form of international cooperation. It is incompatible with basic rule-of-law principles as the terms used in the law – such as "being under foreign influence" in the reform law of 2022 – are so broad and vague that they give an almost unlimited discretion to the authorities. Even an email from a foreign colleague on a constitutional issue picked up in a public speech can theoretically be enough for classifying a person as "under foreign influence", with drastic consequences for one's social life and professional career. The barely concealed intention of the legislation is to expose NGOs engaged in political activity to the constant threat of administrative and criminal liability and thus to give up.¹⁹² This is exactly the opposite of what the OSCE seeks: to strengthen the capacity of NGOs to make their full contribution to the further development of civil society.¹⁹³

3) "Undesirable Organisations"-Legislation

a) Definition, Law and Practice

The term "undesirable organisation" was introduced in Russian legislation in 2015¹⁹⁴ in the new Article 3.1 of the Federal Law no. 272-FZ of 28 December 2012 "On Measures to Influence Persons Involved in Violations of Fundamental Human Rights and Freedoms, the Rights and Freedoms of Citizens of the Russian Federation". Under Article 3.1 (1) "the

¹⁸⁹ See the Court's priority policy at https://www.echr.coe.int/documents/priority_policy_eng.pdf. The qualification as a "normal" Art. 10 case was wrong – it should have been qualified under category II as a case having an impact on the effectiveness of the Convention system as such; in the meantime the Court has developed a new "impact strategy" which would have allowed to deal with such a case in a very short period of time; see R. Spano, *Cour européenne des droits de l'homme: une nouvelle stratégie pour une nouvelle décennie*, in: *Recueil Dalloz*, 22 July 2021, no. 26, pp. 1388-1391.

¹⁹⁰ One of the interview-partners called the law a "cancer" in the Russian legislation as provisions about foreign agents were introduced in a multitude of laws.

¹⁹¹ Copenhagen 1990, para. 26.

¹⁹² On the consequences for civil society activists and human rights defenders see Council of Europe Commissioner for Human rights, *Support Russian and Belorussian Civil Societies and Human Rights Defenders*, 31 August 2022, <https://www.coe.int/en/web/commissioner/-/support-russian-and-belarusian-civil-societies-and-human-rights-defenders>.

¹⁹³ Istanbul 1999, para. 27.

¹⁹⁴ Federal Law no. 129-FZ of 23 May 2015 "On Amendments to Certain Legislative Acts of the Russian Federation".

activities of a foreign or international non-governmental organisation posing a threat to the foundations of the constitutional order of the Russian Federation, the defence capacity of the country or the security of the State may be declared undesirable in the Russian Federation.” The decision is taken by the Prosecutor General together with the Ministry of Foreign Affairs (Article 3 (4, 5) of the 2012 Law). Since 2015 the definition of an “undesirable organisation” was extended two times to include organisations participating in election campaigns¹⁹⁵ and “if information has been received in relation to the organisation about its provision of intermediary services in carrying out transactions with funds and (or) other property” belonging to another undesirable organisations.¹⁹⁶

Organisations declared “undesirable” face severe consequences under Article 3.1 (3) of the 2012 Law. They have to close existing branches and cannot create new branches in Russia (1), are banned from cooperating with banks and other financial organisations (2), from storing and disseminating their material including via Internet¹⁹⁷ (3), from conducting projects in Russia (4) and from creating or participating in Russian moral persons (5). Since 2021 even the participation for Russian citizens and Russian moral persons in activities of “undesirable organisations” abroad is forbidden (6).¹⁹⁸

As of August 2022, more than 60 organisations are declared “undesirable”, especially U.S. and Western European organisations.¹⁹⁹ The legislation is used to cut off international support for Russian oppositional movements and thus silence criticism. Recent additions include political NGOs criticising the Russian war of aggression against Ukraine such as the Heinrich Böll Foundation (2022), election-monitoring NGOs such as the European Network of Election Monitoring Organisations (2021), investigative journalism outlets such as The Insider (2022), Bellingcat (2022), Proekt (2021) and organisations related to Russian politicians living abroad such as Open Russia (2017) and other organisations related to Mikhail Khodorkovsky, Free Russia Foundation (2019), and the WOT Foundation (2022) that was sponsored Boris Nemzov.²⁰⁰ The broad wording of the legislation also allows to target Russian-based NGOs under the pretext of mere contact with foreign NGOs. An example is the self-dissolution of the defence organisation Kommanda 29 or Team 29²⁰¹ in July 2021 after a website blocking and allegations of being identical with the Czech NGO Freedom of

¹⁹⁵ Federal Law no. 555-FZ of 27 December 2018 “On Amendments to Art. 3.1 of the Federal Law ‘On Measures to Influence Persons Involved in Violations of Fundamental Human Rights and Freedoms, the Rights and Freedoms of Citizens of the Russian Federation’”.

¹⁹⁶ Federal Law no. 230-FZ of 28 June 2020 “On Amendments to Art. 6 of the Federal Law ‘On Combating the Legalisation (Laundering) of Proceeds of Crime and the Financing of Terrorism’ and Art. 3.1 of the Federal Law ‘On Measures to Apply to Persons Involved in Violations of Fundamental Human Rights and Freedoms, Rights and Freedoms of Citizens of the Russian Federation’”.

¹⁹⁷ Art. 15.3 of the Federal Law no. 149-FZ of 27 July 2006 “On Information, Information Technology and Information Protection” provides for the possibility of website-blocking in case of dissemination of information material, see below.

¹⁹⁸ Introduced by the Federal Law no. 230-FZ of 28 June 2021 “On Amendments to Art. 6 of the Federal Law ‘On Combating the Legalisation (Laundering) of Proceeds of Crime and the Financing of Terrorism’ and Art. 3.1 of the Federal Law ‘On Measures to Apply to Persons Involved in Violations of Fundamental Human Rights and Freedoms, Rights and Freedoms of Citizens of the Russian Federation’”

¹⁹⁹ A comprehensive list is published at the website of the Russian Ministry of Justice, <http://minjust.ru/ru/activity/nko/unwanted>.

²⁰⁰ See <https://inoteka.io/ino/foreign-agents>.

²⁰¹ The name refers to Art. 29 of the Russian Constitution protecting freedom of expression.

Information Society by Roskomnadzor and the Prosecutor General,²⁰² denied by Kommanda 29. Leading members have been declared “foreign agents” shortly after.²⁰³

The legislation not only targets “undesirable organisations” themselves, but also contact with “undesirable organisations”. In their current, very broad version laid down in 2021,²⁰⁴ Article 20.33 CAO and Article 284.1 CC punish “participation in activities” of undesirable organisations with up to 2 years of imprisonment. Subject to immediate criminal responsibility and even harsher punishments are “the provision or collection of funds or financial services knowingly intended to support activities” and “organisation of activities” of “undesirable organisations”. Since July 2022²⁰⁵, the offences do not have to be committed on the territory of the Russian Federation. According to the note to Article 284.1 CC, voluntarily ceasing the respective deed exonerates the perpetrator from criminal responsibility. Article 26 (9) of the Law on entry to and departure from the Russian Federation²⁰⁶ bans foreigners from “participating in activities” of an “undesirable organisation” from entering Russia.

These provisions are often used to persecute former members of “undesirable organisations”. For instance, opposition politician Vladimir Kara-Murza, already in pre-trial detention on charges under Article 207.3 CC,²⁰⁷ was charged under Article 284.1 CC for allegedly organising a conference of Free Russia Foundation in Moscow.²⁰⁸ He had previously renounced his vice-presidency of the organisation in Russia to avoid criminal responsibility on grounds of this very provision. A verdict has already been reached for Andrey Pivovarov, former head of Otrklytaya Rossiya, self-disbanded in May 2021, who was sentenced to 4 years of imprisonment. The court was convinced that Pivovarov continued to work for the UK-based organisation Open Russia, already declared “undesirable” in 2017, based on several Facebook posts criticising the FSB and condoning opposition protests.²⁰⁹

²⁰² “‘Kommanda 29’ Announces Closure” (Russian), <https://ovd.news/express-news/2021/07/18/komanda-29-zayavila-o-zakrytii>; “‘A Planned Assault Along Many Fronts’: Russia’s Komanda 29 Shatters, Saying It’s Too ‘Dangerous’ To Continue”, <https://www.rferl.org/a/31367262.html>.

²⁰³ “Ministry of Justice Lists Lawyer Pavlov and Kommanda 29 Lawyers as Foreign Media Agents” (Russian), <https://tass.ru/obschestvo/12865623?>.

²⁰⁴ Federal Law no. 129-FZ of 23 May 2015 “On Amendments to Certain Legislative Acts of the Russian Federation” introduced criminal and administrative responsibility only for “leading the activity on the territory of the Russian Federation” of an undesirable organisation and “participating in such an activity”. The responsibility was enormously extended by the Federal Law no. 292-FZ of 1 July 2021 “On Amendments to Art. 284.1 of the Criminal Code of the Russian Federation”.

²⁰⁵ Federal Law no. 260-FZ of 14 July 2022 “On Amendments to the Criminal Code of the Russian Federation and the Criminal Procedure Code of the Russian Federation”.

²⁰⁶ Federal Law no. 114-FZ of 15 August 1996 “On Departure from the Russian Federation and Entry to the Russian Federation”.

²⁰⁷ “Russia Opens Criminal Case Against Activist Vladimir Kara-Murza for Spreading Disinformation, Lawyer Says”, <https://www.forbes.com/sites/madelinehalpert/2022/04/22/russia-opens-criminal-case-against-activist-vladimir-kara-murza-for-spreading-disinformation-lawyer-says/?sh=5eca7c037ea4>.

²⁰⁸ “Vladimir Kara-Murza Charged Under ‘Undesirable Organisation’ Article” (Russian), <https://ovd.news/express-news/2022/08/04/vladimiru-kara-murze-predyavili-obvinenie-po-state-o-nezhelatelnoy>; “Criminal Case opened Against Kara-Murza for Action in Support of Political Prisoners” (Russian), <https://www.svoboda.org/a/ugolovnoe-delo-protiv-kara-murzy-vozbudili-za-aktsiyu-v-podderzhku-politzekov/31973441.html>.

²⁰⁹ “Kremlin Critic Pivovarov Sentenced to 4 Years in Prison for ‘Undesirable’ Activity” <https://www.themoscowtimes.com/2022/07/15/kremlin-critic-pivovarov-sentenced-to-4-years-in-prison-for-undesirable-activity-a78313>.

b) Evaluation

The participating States “express their commitment to [...] ensure that individuals are permitted to exercise the right to association, including the right to form, join and participate effectively in non-governmental organisations which seek the promotion and protection of human rights and fundamental freedoms, including trade unions and human rights monitoring groups”.²¹⁰ They “recognise the important role of non-governmental organisations, including political parties, trade unions, human rights organisations and religious groups, in the promotion of tolerance, cultural diversity and the resolution of questions relating to national minorities.”²¹¹

Even before its adoption, the OSCE viewed the 2015 Law on “undesirable organisations” with concern. The OSCE Representative on Freedom of the Media Dunja Mijatović called upon President Putin to veto the law.²¹² The Permanent Commission on the Development of NGOs of the Council of Europe also advised against the adoption of the law as it considered it “unconstitutional, superfluous, and leading to confusion” in March 2015.²¹³ The UN Human Rights Committee raised concerns in April 2015.²¹⁴

The Russian Federation justified the adoption of the law with the concern to “safeguard domestic interests of the Russian Federation”²¹⁵. But, while sanctions for associations for non-compliance with State regulations are *per se* legitimate,²¹⁶ restrictions to freedom of association “must be precise, certain and foreseeable, in particular in the case of provisions that grant discretion to State authorities. [...] Any restriction on the right to freedom of association and on the rights of associations, including sanctions, must be necessary in a democratic society and, thus, proportional to their legitimate aim.”²¹⁷

The legislation on “undesirable organisations” has been thoroughly analysed by the Venice Commission in 2016.²¹⁸ The Venice Commission criticised the law and the provisions of the

²¹⁰ Copenhagen 1990, para. 10.3.

²¹¹ Copenhagen 1990, para. 30.

²¹² OSCE Representative on Freedom of the Media, Press Release, 20 May 2015, <https://www.osce.org/fom/159081>.

²¹³ Presidential Council for the Development of Civil Society and Human Rights, Expert Opinion of the Presidential Council for the Development of Civil Society and Human Rights regarding the Federal Law Project No. 662902-6, “On Amendments to Several Legislative Acts of the Russian Federation”, http://www.president-sovet.ru/docs/expert_conclusions/ekspertnoe_zaklyuchenie_soveta_na_zakonoproekt_o_nezhelatelnnykh_organizatsiyakh/, press release at http://www.presidentsovet.ru/presscenter/news/chleny_spch_schitayut_chno_zakonoproekt_o_nezhelatelnnykh_organizatsiyakh_protivorechit_konstitutsii/.

²¹⁴ UN Human Rights Committee, Concluding Observations on the seventh periodic report of the Russian Federation, 28 April 2015, UN Doc. CCPR/C/RUS/CO/7.

²¹⁵ UN Human Rights Committee, Eighth report submitted by the Russian Federation under Art. 40 of the Covenant, due in 2019, 8 April 2019, UN Doc. CCPR/C/RUS/8, para. 329.

²¹⁶ OSCE/Venice Commission, Joint Guidelines on Freedom of Association, OSCE/ODIHR Legis-Nr. GDL-FOASS/263/214, para. 235. (hereinafter Joint Guidelines on Freedom of Association)

²¹⁷ Joint Guidelines on Freedom of Association, paras. 34, 35.

²¹⁸ VC 2016 Opinion on Foreign-Agent-Legislation.

Criminal Code (hereinafter: CC) for their vague wording and lack of clarity²¹⁹ as well as for the automatic applicability of the legal consequences from the moment of declaring an organisation “undesirable”. Similar concerns regarding the uncertain scope of applicability were raised by the High Commissioner for Human Rights.²²⁰

The Rapporteur shares the concerns regarding the lack of clarity of the legislation. With the extension of criminal responsibility to any form of participation in activities of an “undesirable organisations” and with the extraterritorial applicability of the criminal law provisions the legislation deviates even further from international standards. The individual cases where the law was applied show its increased potential for arbitrariness, especially with regard to organised political dissent.

III) Freedom of Expression – Legislation and Practice

1) Constitutional Guarantee of Freedom of Expression

The constitutional guarantee of freedom of expression, Article 29 of the Russian Constitution of 1993, reads as follows:

- “1. Everyone shall be guaranteed the freedom of ideas and speech.
2. The propaganda or agitation instigating social, racial, national or religious hatred and strife shall not be allowed. The propaganda of social, racial, national, religious or linguistic supremacy shall be banned.
3. No one may be forced to express his views and convictions or to reject them.
4. Everyone shall have the right to freely look for, receive, transmit, produce and distribute information by any legal way. The list of data comprising State secrets shall be determined by a federal law.
5. The freedom of mass communication shall be guaranteed. Censorship shall be banned.”

The provision has never been amended. Restrictions are possible on the basis of Article 55 of the Constitution.²²¹

In recent years several restrictive measures on freedom of expression were enacted on the basis of new legislation. The most important laws are the legislative acts concerning “fake news”, “extremism”, “historical remembrance”, “terrorism” and “State secrets”, “propaganda of non-traditional sexual relationships”, and the “protection of religious feelings”. Concerning “slander” and “defamation” the practice is relevant as well.

²¹⁹ The Venice Commission stresses in particular that the law does not specify the term “non-governmental organisation”, sparsely used in Russian legislation, creates vague and broad criteria for undesirable organisations and allows the imposition of severe consequences without a court order.

²²⁰ UN Office of the United Nations High Commissioner for Human Rights, Opening Statement to the 29th Session of the Human Rights Council by the High Commissioner for Human Rights, 15 June 2015, <https://www.ohchr.org/en/statements/2015/06/opening-statement-29th-session-human-rights-council-high-commissioner-human?LangID=E&NewsID=16074>.

²²¹ See above.

All these legislative acts will be analysed in the following chapters.

2) “Fake news”-Legislation

a) “Fake news” Related to COVID-19

COVID-19 was a trigger point for increased restrictions on many basic human rights in order to avoid contacts and infections. The necessity of restrictions on freedom of expression is, however, not obvious.²²²

Federal Law no. 27-FZ supplemented Article 13.5 CAO with new provisions on administrative offences.²²³ It entered into force on 18 March 2019 before the COVID-19 pandemic started. However, during the COVID-19 pandemic the provision was used as legal basis for sanctioning the spreading what was considered “false information”. The new provisions introduced administrative offences for “disseminating knowingly unreliable information of public significance under the guise of reliable information, endangering the life and (or) health of citizens, property, threat of mass violation of public order and (or) public security or threat of interference with the functioning or disruption of infrastructure in the mass media and through information and telecommunication networks”.²²⁴

In the early days of the pandemic, Agora International monitored 170 cases under Article 13.15 CAO which led in 46 cases to fines in the amount of more than one million roubles in comparison to only 13 cases under the same provision in the pre-pandemic era.²²⁵ On 19 June 2020 a Moscow court fined Echo of Moscow with 200,000 roubles and the head of its website with 60,000 roubles for distributing unreliable information because of an interview with a scientist about COVID-19 statistics which were not in accordance with the official sources.²²⁶

But “fake news” about COVID-19 are not only sanctioned as “administrative offence”, but also as “crime”. The outbreak of the pandemic led to the adoption of two new criminal laws concerning “fake news”.²²⁷ Law no. 100-FZ supplemented the Russian Criminal Code with Article 207.1 and Article 207.2. According to Article 207.1 CC the “public dissemination under the guise of reliable information of knowingly false information about circumstances that poses a threat to the life and security of citizens or on measures taken to ensure the security of the population and territories” should be punished. Similarly, Article 207.2 CC

²²² COVID-19-regulations restricting freedom of assembly will be treated below.

²²³ See *inter alia* parts (9) to (11) added to Art. 13.15 CAO .

²²⁴ Federal Law no. 27-FZ of 18 March 2019 “On Amendments to the Code of Administrative Offences of the Russian Federation”.

²²⁵ “The Fake News ‘Infodemic’: The Fight Against the Coronavirus as a Threat to Free Speech”, https://agora.legal/fs/a_delo2doc/196_file__ENG_final.pdf, p. 7

²²⁶ “‘Ekho Moskvyy’ and the Station’s Chief Editor are fined 260,000 roubles under the Fakes Act because of an Interview with Political Analyst Solovyy” (Russian), <https://novayagazeta.ru/news/2020/06/19/162425-eho-moskvyy-i-glavreda-sayta-radiostantsii-oshtrafovali-na-260-tysyach-rublej-za-intervyu-s-politologom-soloviem>.

²²⁷ Federal Law no. 100-FZ of 1 April 2020 “About Modification of the Criminal Code of the Russian Federation and Art. 31 and 151 of the Criminal Procedure Code of the Russian Federation”; Federal Law no. 99-FZ of 1 April 2020 (as amended on 30 December 2021) “On Amendments to the Code of Administrative Offences of the Russian Federation”.

states that the “public dissemination under the guise of reliable information of knowingly false socially significant information, which resulted in negligent infliction of harm to human health” should be punished. A violation of those provisions leads to harsh punishments.²²⁸

In regard to the terms “knowingly false information” and “under the guise of reliable information”, the Supreme Court of the Russian Federation issued a general note of interpretation.²²⁹ “Knowingly false” is an information which does not correspond to reality and which the distributor is aware of. That indicates that intention is required which has to be proven by State authorities. An information is disseminated “under the guise of reliable information” if the forms and methods of presentation indicate a true information. Responsible for the determination whether an information is false is the Prosecutor General of the Russian Federation and his or her deputies.

Agora International monitored 42 cases of criminal prosecution in the phase from the date of entry into force of Article 207.1 CC on 1 April 2020 to 10 June 2020. 17 out of those 42 cases were criminal prosecutions because of statements from “public critics of the authorities” like activists, journalist and bloggers. Agora states that Article 207.1 CC therefore “has become a useful tool of repression”.²³⁰

On 1 April 2020, Law no. 99-FZ amending the Russian Code of Administrative Offences (hereinafter: CAO) entered into force supplementing, *inter alia*, Article 13.15 CAO with parts 10.1 and 10.2. They introduced similar provisions as in the CC into the CAO focussing on the dissemination of “unreliable information” in mass media and fines for legal entities from 1 million to 3 respectively 5 million roubles and the possibility to confiscate the subject matter of the administrative offence.

b) “Fake News” Related to the Military

aa) “Fake News” Related to the Russian Armed Forces

On 24 February 2022, the day when the war of aggression started, Roskomnadzor published a statement threatening mass media and other information sources with fines according to Article 13.15 CAO and website blocking orders according to Article 15.3 of the Law on Information if they do not use only information obtained from official Russian sources and intentionally spread false information about the “special operation in connection with the situation in the Luhansk People's Republic and the Donetsk People's Republic”.²³¹ Thus, in

²²⁸ It can be sanctioned with fines from 300,000 to 700,000 roubles or by compulsory labour for up to 360 hours, by corrective labour for a term of up to one year or imprisonment for up to three years respectively in regard to Art. 207.2 CC with fines from 700,000 to two million roubles, correctional labour for a term up to two years, by compulsory labour or imprisonment for a term of up to five years.

²²⁹ Supreme Court, Review of Selected Issues of Judicial Practice Related to the Application of Legislation and Measures to Counter the Spread of New Coronavirus Infection (COVID-19) in the Russian Federation no. 2, 30 April 2020.

²³⁰ “The Fake News ‘Infodemic’: The Fight Against the Coronavirus as a Threat to Free Speech”, https://agora.legal/fs/a_delo2doc/196_file__ENG_final.pdf, p. 5.

²³¹ “To the Attention Media and Other Information Resources” (Russian), <https://rkn.gov.ru/news/rsoc/news/74084.htm>.

the first period after 24 February 2022 the pre-existing provision of the Code on Administrative Offences was used for what was from then on considered “fake news”.

In February and March 2022 Roskomnadzor sent several notices with a request from the Prosecutor General’s Office to Russian²³² and foreign²³³ mass media outlets in order to block access to or remove articles spreading allegedly false information about the shelling of Ukrainian cities by the Russian Armed Forces, the death of Ukrainian civilians, as well as material in which the “special operation” is called an “attack, an invasion, or a declaration of war”.

Shortly thereafter, on 4 March 2022, Article 207.3 CC was introduced penalising the “public dissemination of knowingly false information about the use of the Russian Armed Forces as well as the execution of powers by State bodies of the Russian Federation. Since then, it is criminally prohibited to use the word “war” instead of the officially-approved term “special military operation”.²³⁴

The provision provides for severe fines from 700,000 roubles to 5 million roubles, corrective labour for a term of up to one year or compulsory labour for a term of up to five years. In particularly severe cases the sanction can lead to imprisonment from five to ten years with prohibition to hold certain positions or engage in certain activities for a term of up to five years.²³⁵ If the offence committed entails “grave consequences”, a term which is not defined in the CC, imprisonment of up to 15 years is possible. This is a particularly severe sanction as under Russian law enforcement practice a mere charge under an especially grave article is sufficient grounds to keep a person in pre-trial detention.²³⁶

The number of cases under Article 207.3 CC varies depending on the source. As of 14 June 2022 NGOs counted at least 59 cases.²³⁷ Most likely, the number of cases has risen to more than 100 to date.²³⁸

²³² Ekho Moskvyy, InoSmi, Media Zone, The New Times, Dozhd, Svobodnaya Pressa, Krym.Realii, Nowaya Gaseta, Zhurnalist, and Lenizdat, see https://t.me/rkn_tg/194; OSCE Representative on Freedom of the Media, Press Release, 27 February 2022, <https://www.osce.org/representative-on-freedom-of-media/513064>.

²³³ E.g. Meduza, Voice of America, BBC Russian Service, Deutsche Welle, Radio Liberty and others, see “Many Readers in Russia Unable to Access Meduza’s Website. Official Block Unconfirmed as yet”, <https://meduza.io/en/news/2022/03/04/many-readers-in-russia-unable-to-access-meduza-s-website-official-block-unconfirmed-as-yet>.

²³⁴ Art. 20.3.3 CAO; under Article 280.3 CC, the maximum punishment is five years of imprisonment.

²³⁵ Federal Law no. 32-FZ of 4 March 2022 “On Amendments to the Criminal Code of the Russian Federation and Art. 31 and 151 of the Criminal Procedure Code of the Russian Federation” as amended through Federal Law no. 63-FZ of 25 March 2022 “On Amendments to the Criminal Code of the Russian Federation and Art. 150 and 151 of the Criminal Procedure Code of the Russian Federation” extending the criminal responsibility not only to false statements against Russian Armed Forces but also against Russian state bodies.

²³⁶ Art. 108 of the Federal Law no. 174-FZ of 18 December (with amendments and additions from 25 July 2022) “Criminal Procedure Code of the Russian Federation”.

²³⁷ “‘Knowingly False’. It Has Been Three Months Since the Law on ‘Fakes’ About the Russian Army Came Into Force. How and Against Whom Is It Used?”, <https://ovdinfo.org/articles/2022/06/29/knowingly-false-it-has-been-three-months-law-fakes-about-russian-army-came-force>; other sources given to the Rapporteur calculated 84 cases and 78 cases but do not exactly mention on which date they refer.

²³⁸ Interview with Galina Arapova, Lawyer and chairperson of Mass Media Defence Centre, 19 August 2022.

Among the accused and convicted persons are strikingly many journalists, opposition politicians and human rights activists who did not follow the State-imposed narrative about the war. For example, local councillor in Moscow, Alexey Gorinov was sentenced to seven years in prison;²³⁹ women human rights defender and editor-in-chief of the news media outlet Fortanga.org Isabella Evloeva is accused in three cases.²⁴⁰ Accusations were also made against the journalists Marina Ovsyannikova, Alexandra Bayasitova, Mikhail Afanasyev and Sergei Mikhailov²⁴¹ as well as against artist and musician Aleksandra (Sasha) Skochilenko.²⁴²

Until now, there is no known case about the application of Article 207.3 (3) CC which would allow an imprisonment of up to 15 years.²⁴³

bb) Discreditation of the Russian Armed Forces

On the same day when Article 207.3 CC was introduced, two other norms entered into force punishing the “discreditation” of the Russian Armed Forces. Article 20.3.3 CAO punishes “public actions aimed at discrediting the use of the Armed Forces of the Russian Federation in order to protect the interests of the Russian Federation and its citizens, maintain international peace and security, or the execution of powers by governmental bodies of the Russian Federation for these purposes”.²⁴⁴ The provision applies for every anti-war opinion, pacifist slogan like “no to war”, wearing yellow and blue ribbons or clothes or saying a sermon condemning violence.²⁴⁵

Article 20.3.3 CAO is not a criminal norm, but is part of the Code of Administrative Offences. Nevertheless, the sanctions are harsh.²⁴⁶ What is more, a repeated violation within one year – for example a second blogpost – can amount to a criminal offence severely punished.²⁴⁷

²³⁹ Sentence of the Meshchansky District Court of Moscow of 8 July 2022 no. 01-0719/2022; “Moscow councillor jailed for seven years after criticising Ukraine war”, <https://www.theguardian.com/world/2022/jul/08/moscow-councillor-jailed-seven-years-criticising-ukraine-war-alexei-gorinov>.

²⁴⁰ <https://www.frontlinedefenders.org/en/profile/isabella-evloeva>; “Journalist Isabella Yevloyeva Faces 3rd Criminal Case for ‘Fake’ Reporting about Russian Army”, <https://cpj.org/2022/08/journalist-isabella-yevloyeva-faces-3rd-criminal-case-for-fake-reporting-about-russian-army/>; OSCE Representative on Freedom of the Media, Press Release, 15 August 2022, at <https://www.osce.org/representative-on-freedom-of-media/524175>.

²⁴¹ OSCE Representative on Freedom of the Media, Press Release, 14 April 2022, at <https://www.osce.org/representative-on-freedom-of-media/515967>; OSCE Representative on Freedom of the Media, Press Release, 15 August 2022, at <https://www.osce.org/representative-on-freedom-of-media/524175>.

²⁴² “Artist Sasha Skochilenko Transferred Back to Pre-Trial Detention Centre” (Russian), <https://ovd.news/express-news/2022/08/09/hudozhnicu-sashu-skochilenko-pereveli-obratno-v-sizo>; “A Russian woman is jailed for replacing store price tags with anti-war messages”, <https://www.npr.org/2022/04/14/1092862792/russian-woman-jailed-ukraine-protest-price-tags?t=1661866539001>.

²⁴³ ‘Knowingly False’. It Has Been Three Months Since the Law on ‘Fakes’ About the Russian Army Came Into Force. How and Against Whom Is It Used?’, <https://ovdinfo.org/articles/2022/06/29/knowingly-false-it-has-been-three-months-law-fakes-about-russian-army-came-force>.

²⁴⁴ Federal Law no. 31-FZ of 4 March 2022 (rev. of 14 July 2022) “On Amendments to the Code of Administrative Offences of the Russian Federation”.

²⁴⁵ See for an extended list “No to war. How Russian authorities are suppressing anti-war protests”, <https://reports.ovdinfo.org/no-to-war-en#1>.

²⁴⁶ Violations against Art. 20.3.3 CAO can be fined with 30,000 respectively in severe cases up to 100,000 roubles for individuals and up to one million roubles for legal entities.

More than 3,000 court decisions were issued for violations of Article 20.3.3 CAO with an average fine of 34,000 roubles;²⁴⁸ for example, recently against rock musician Yury Shevchuk for the amount of 50,000 roubles.²⁴⁹

Until now, not many cases have dealt with the application of Article 280.3 CC. The first case was established in Amur Oblast against a resident of Blagoveshchensk who made 10 posts on social networks criticising the war against Ukraine between 1 April and 6 May 2022 after having been fined on the basis of Article 20.3.3 CAO already in another case.²⁵⁰

cc) Calls for Sanctions Against Russia

Shortly after the war began and in connection with the defamation legislation protecting Russian Armed Forces, Article 20.3.4 CAO was introduced.²⁵¹ It provides for fines from 30,000 up to 500,000 roubles if a Russian citizen calls for restrictive measures by foreign States or international institutions or organisations against the Russian Federation. This includes calls for the introduction or extension of political or economic sanctions. On the same day, Article 284.2 CC was introduced which punishes the same act under criminal law with a fine up to 500,000 roubles or restrictions of freedom for a term of up to three years, compulsory labour for a term of up to three years, detention for a maximum term of six months as well as imprisonment for up to three years imposed along with a monetary fine.²⁵²

c) Evaluation

“(…) in accordance with the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights and their relevant international commitments concerning seeking, receiving and imparting information of all kinds, [the participating States] will ensure that individuals can freely choose their sources of information. In this

²⁴⁷ See Art. 280.3 CC; the penalty can then be a fine of up to one million roubles, compulsory labour or imprisonment up to five years with deprivation of the right to hold certain offices or to engage in certain activities for the same period; see Federal Law no. 32-FZ of 4 March 2022 “On Amendments to the Criminal Code of the Russian Federation and Articles 31 and 151 of the Code of Criminal Procedure of the Russian Federation” as amended through Federal Law no. 63-FZ of 25 March 2022 “On Amendments to the Criminal Code of the Russian Federation and Art. 150 and 151 of the Criminal Procedure Code of the Russian Federation” extending the criminal responsibility not only to the discreditation of Russian Armed Forces but also of Russian State bodies.

²⁴⁸ According to sources given to the Rapporteur.

²⁴⁹ “A Court in Ufa Fined Yury Shevchuk 50,000 Roubles for ‘Discrediting’ the Army” (Russian), <https://www.idelreal.org/a/31990831.html>.

²⁵⁰ “A Resident of Blagoveshchensk has been Prosecuted for Discrediting the Russian Army” (Russian), <https://ovd.news/express-news/2022/05/18/na-zhitelya-blagoveshchenska-zaveli-ugolovnoe-delo-o-diskreditacii-armii>; see for more cases “Antiwar Prosecutions: An OVD-InfoGuide”, <https://ovd.news/news/2022/04/07/antiwar-prosecutions-ovd-info-guide>.

²⁵¹ Federal Law no. 31-FZ of 4 March 2022 “On Amendments to the Code of Administrative Offences of the Russian Federation”.

²⁵² Federal Law no. 32-FZ of 4 March 2022 “On Amendments to the Criminal Code of the Russian Federation and Articles 31 and 151 of the Code of Criminal Procedure of the Russian Federation”.

context they will (...) allow individuals, institutions and organisations (...) to obtain, possess, reproduce and distribute information material of all kinds.”²⁵³

The fact that the Russian State authorities determine which information corresponds to reality leads to a monopolisation of the truth. This was most clearly expressed in the statement of Roskomnadzor on 24 February 2022. It goes without saying, that prosecutors rely most likely on official State sources as manifestation of the objective reliability of information.²⁵⁴ Therefore, the suspect has no chance of proving his or her innocence as reality is defined by the Russian State. This, in particular, “pose[s] a risk of undue restriction on the work of journalists and of self-censorship for media actors trying to inform the public” and acting as watchdogs over State activities.²⁵⁵

Due to the vague and broad notions used in Article 207.1/2/3 CC and Article 280.3 it is difficult to predict which acts trigger criminal liability.²⁵⁶ It is also difficult to differentiate between Article 207.3 CC and Article 280.3 CC. It seems that any negative comments, regardless if true or not, could fall under Article 280.3 CC. Every unreliable information could be at the same time a discreditation of the Russian Armed Forces.²⁵⁷ This grants the Russian authorities a huge discretionary power. Taking this in connection with the severe sanctions it must be concluded that such restrictions suppress freedom of expression offline and online completely. Such restrictions reducing freedom of expression to zero do not meet the standards envisaged in Article 19 (3) ICCPR and Article 10 (2) ECHR as they are neither necessary nor proportionate and lead to a huge chilling effect.²⁵⁸ While more intense restrictions of freedom of expression may be possible in times of war, this does not apply to Russia as it has not invoked the emergency clauses foreseen in the Constitution²⁵⁹ and in international human rights treaties.²⁶⁰

Therefore, the Rapporteur notes – in line with the OSCE representative – that the “fake news” legislation, the prohibition to discredit the Russian Armed Forces as well as calls for sanctions against Russia are instrumentalised and politically motivated by the Russian

²⁵³ Concluding Document of the Vienna Meeting 1986 of the CSCE, 4 November 1986 - 19 January 1989, Principles, para. 34 (hereinafter Vienna 1989).

²⁵⁴ “Knowingly False’. It Has Been Three Months Since the Law on ‘Fakes’ About the Russian Army Came Into Force. How and Against Whom Is It Used?”, <https://ovdinfo.org/articles/2022/06/29/knowingly-false-it-has-been-three-months-law-fakes-about-russian-army-came-force>.

²⁵⁵ OSCE Representative on Freedom of the Media, Press Release, 31 March 2020, <https://www.osce.org/representative-on-freedom-of-media/449455>; OSCE Representative on Freedom of the Media, Press Release, 24 February 2022, <https://www.osce.org/representative-on-freedom-of-media/512950>.

²⁵⁶ Office of the UN High Commissioner for Human Rights, Oral Update on Global Human Rights Developments and the Activities of the UN Human Rights Office, 13 June 2022, at <https://www.ohchr.org/en/statements/2022/06/oral-update-global-human-rights-developments-and-activities-un-human-rights>.

²⁵⁷ “Knowingly False’. It Has Been Three Months Since the Law on ‘Fakes’ About the Russian Army Came Into Force. How and Against Whom Is It Used?”, <https://ovdinfo.org/articles/2022/06/29/knowingly-false-it-has-been-three-months-law-fakes-about-russian-army-came-force>.

²⁵⁸ See Report to the UN Human Rights Committee, UN Doc. A/HRC/44/49, 23 April 2020, para. 49; UN Special Rapporteur on the Promotion and Protection of the Right to freedom of Opinion and Expression, Letter, 1 May 2019, OL RUS 4/2019.

²⁵⁹ See the regulation on the state of emergency (черезвычайное положение) in Art. 56 of the Constitution that can be introduced by the President (Art. 88 of the Constitution), and the regulation on the state of war (военное положение) in Art. 87 (2), (3) of the Constitution that can also be introduced by the President.

²⁶⁰ Art. 15 ECHR; Art. 4 ICCPR.

authorities to silence dissenting voices.²⁶¹ The current legislation led to a “total information blackout on the war” not allowing civil society any space for freedom of expression.²⁶²

3) Legislation on Extremism and Historical Remembrance

a) Definition, Law and Practice

The Federal Law on Extremism²⁶³ was adopted on 25 July 2002, with the aim of defining extremism and extremist activities and providing the authorities of the Russian Federation with a tool for the detection, prevention and suppression of extremist activities. In particular, the Extremism Law empowers prosecutors to take preventive and corrective measures aimed at combating the activities listed in the Law as being “extremist”.²⁶⁴ It also regulates restrictions of professional activities²⁶⁵ as well as the preconditions for dissolving organisations considered to be “extremist”.²⁶⁶ The Law is applicable both to organisations – public, religious and other – and to individuals.

In addition, it sets out the institutional framework for the persecution of extremism. According to Article 4 of the Law on Extremism the President “determines the main direction of State policy in the area of countering extremist activity” and also distributes the competencies under his supervision.²⁶⁷ The President can also create bodies that mix federal and other administrations. Apart from the general law enforcement agencies, the Centre for Combating Extremism of the Ministry of Interior Affairs of the Russian Federation (“Centre E”) is specialised in the field of extremism.

The Law on Extremism is part of a very complex regulation mechanism as it has to be read together with provisions of the Criminal Code, the Code of Administrative Offences, the Law on the Federal Security Service (FSB) as well as media and information-related legislation which are being constantly changed; the Law on Extremism was amended 19 times since its adoption in 2002.

Sanctions against civil society activities are not taken under the Law on Extremism, but under the Criminal Code and the Code of Administrative Offences. The most relevant

²⁶¹ As already pointed out by OSCE Representative on Freedom of the Media, Press Release, 15 August 2022, <https://www.osce.org/representative-on-freedom-of-media/524175>.

²⁶² Office of the UN High Commissioner for Human Rights, Press Release, 12 March 2022, <https://www.ohchr.org/en/press-releases/2022/03/russia-un-experts-alarmed-choking-information-clampdown>; Council of Europe Commissioner for Human Rights, Statement, 7 March 2022, <https://www.coe.int/en/web/commissioner/-/russian-authorities-should-stop-the-unprecedented-crackdown-on-freedoms-of-expression-assembly-and-association-in-the-country>.

²⁶³ Federal Law no. 114-FZ of 25 July 2002 “On Counteracting Extremist Activity” (hereinafter Law on Extremism).

²⁶⁴ Venice Commission, Opinion on the Federal Law on Combating Extremist Activity of the Russian Federation, CDL-AD(2012)016-e, para. 5 (hereinafter VC 2012 Opinion on the Law on Extremism).

²⁶⁵ Art. 15 (2) of the Law on Extremism.

²⁶⁶ Art. 6, 7 and 9 of the Law on Extremism.

²⁶⁷ See Federal Law no. 179-FZ of 28 June 2014 “On Amendments to Certain Legislative Acts of the Russian Federation” specifying the competence distribution on the federal level and replacing the old provision only making a general reference to the federal State organs.

provisions in this context are Article 280 (1) CC²⁶⁸ and Article 282 CC,²⁶⁹ but also the more specific provisions Article 280.1 CC,²⁷⁰ Article 20.29 CAO,²⁷¹ Article 282.1 and 282.2 CC.²⁷² In those provisions “extremism” is not necessarily mentioned; yet they form part of the “extremism legislation”.

The main problem of the legislation is the broad understanding of “extremism”. Unlike in international law²⁷³ there is no abstract definition of extremism.²⁷⁴ Article 1 of the Law on Extremism only draws up a long list of extremist activities:

- 1) the activity of public and religious associations or any other organisations, or of mass media, or natural persons to plan, organise, prepare and perform the acts aimed at:
 - the forcible change of the foundations of the constitutional system and the violation of the integrity of the Russian Federation;
 - the subversion of the security of the Russian Federation;
 - the seizure or acquisition of peremptory powers;
 - the creation of illegal military formations;
 - the exercise of terrorist activity;
 - the excitation of racial, national or religious strife, and also social hatred associated with violence or calls for violence;
 - the abasement of national dignity;
 - the making of mass disturbances, ruffian-like acts, and acts of vandalism for the reasons of ideological, political, racial, national or religious hatred or hostility toward any social group;
 - the propaganda of the exclusiveness, superiority or deficiency of individuals on the basis of their attitude to religion, social, racial, national, religious or linguistic identity;

²⁶⁸ “Public appeals to engage in extremist activity”; Art. 280 (2) CC imposes a more serious punishment for an action committed via mass media, also applies to the extended responsibility. A 2014 Amendment further included a commission via internet in the qualification norm (Federal Law no. 179-FZ of 28 June 2014 “On Amendments to Several Laws of the Russian Federation”).

²⁶⁹ “Incitement to hatred or enmity as well as disparagement of human dignity”.

²⁷⁰ “Public calls to engage in activities aimed against the territorial integrity of the Russian Federation”.

²⁷¹ “Manufacturing and dissemination of extremist material”.

²⁷² “Organisation of an extremist association” and “organisation of activities of an extremist organisation”, the latter including “participating in activities” of an extremist organisation in general.

²⁷³ See the Shanghai Convention on Combating Terrorism, Separatism and Extremism (hereinafter Shanghai Convention). It defines extremism as “an act aimed at seizing or keeping power through the use of violence or changing violently the constitutional regime of a State, as well as a violent encroachment upon public security, including organisation, for the above purposes, of illegal armed formations and participation in them, criminally prosecuted in conformity with the national laws of the Parties.”

²⁷⁴ Definitions are only provided for “extremist organisation” and “extremist material”: An extremist organisation is defined as “a public or a religious association, or any other organisation, in relation to which a court of law has adopted the decision that took legal effect on the grounds provided by the present Federal Law concerning the liquidation or the prohibition of its activity in connection with extremism in its functioning.” Extremist material” are defined as “documents intended for publication or information on other carriers which call for extremist activity or warranting or justifying the need for such activity, including the works by the leaders of the National-Socialist Worker's Party of Germany and the Fascist Party of Italy, publications substantiating or justifying national and/or racial superiority, or justifying the practice of committing military or other crimes aimed at the full or partial destruction of any ethnic, social, national or religious group.”

- 2) the propaganda and public show of nazi attributes or symbolics or the attributes or symbolism similar to nazi attributes or symbolics to the extent of blending;
- 3) public calls for the said activity or for the performance of the said acts;
- 4) the financing of the said activity or any other encouragement of its exercise or the performance of the said acts, including by the extension of financial resources for the exercise of the said activity, the supply of real estate, educational facilities, printing and publishing facilities and the material and technical base, telephone, fax and other communications, information services and other material and technical facilities.²⁷⁵

The list has been constantly changed. In 2012²⁷⁶ the “public display of symbolism of an extremist organisation” was included.²⁷⁷ The most important change came about in 2020²⁷⁸. While in the 2002 version of the law the “forcible change of the foundations of the constitutional order” and “the violation of the territorial integrity of the Russian Federation” were two elements of one alternative of extremism, in 2020 they were separated defining “violation of the territorial integrity of the Russian Federation” as such as “extremism” without including the element of “forcible change”. Thus, all calls for separatism are defined as “extremist” and thus criminalised.

While some of the alternatives require the use of force or violence, others do not.

The general understanding of extremism is thus very vague. Yet, some aspects of the criminal provisions on the basis of which extremist activities are sanctioned have been defined by the Supreme Court in a Resolution of the Plenary “On Judicial Practice in Criminal Proceedings on Charges of Extremist Crimes”.²⁷⁹ This resolution was, however, also amended many times and does not provide much clarity.

aa) Prohibition of Public Appeals to Engage in Extremist Activity

As explained above, one of the central criminal provisions in the context of the “extremism legislation” is Article 280 CC prohibiting “public appeals to engage in extremist activity”. It creates an offence that criminalizes abstract endangerment – successful incitement to extremist activities is not required.²⁸⁰ The current version of the law, amended most recently in 2014, provides for a penalty of up to 4 years of imprisonment, in case of the fulfilment of the qualification in Article 280 (2) CC up to 5 years of imprisonment.

²⁷⁵ Art. 1 of the Federal Law no. 114-FZ of 25 July 2002 “Law on Extremism”.

²⁷⁶ Federal Law no. 255-FZ of 25 December 2012 “On Amendments to Art. 20.3 of the Code of Administrative Offences and Art. 1 of the Federal Law ‘On counteracting extremist activities’”.

²⁷⁷ The legislation regarding the display of symbolism was broadened by Art. 4 of the Federal Law no. 236-FZ of 21 July 2014 “On Amendments to Certain Legislative Acts of the Russian Federation regarding Symbolism of Non-Commercial Organisations” and Art. 2 of the Federal Law no. 421-FZ of 2 December 2019 “On Amendments to Art. 6 of the Federal Law ‘On eternalisation of the Victory of the Soviet people in the Great Patriotic War 1941-1945’ and Art. 1 of the Federal Law ‘On counteracting extremist activities’”.

²⁷⁸ Federal Law no. 299-FZ of 31 July 2020 “On an Amendment to Art. 1 of the Federal Law ‘On counteracting extremist activity’”.

²⁷⁹ Resolution of the Plenary of the Supreme Court no. 11 of 28 June 2011 “On Judicial Practice in Criminal Proceedings on Charges of Extremist Crimes”.

²⁸⁰ Resolution of the Plenary of the Supreme Court no. 11 of 28.06.2011 “On Judicial Practice in Criminal Proceedings on Charges of Extremist Crimes”, paras. 4 (4), 6.1.

It was used for sanctioning calls for violence against State officials in different contexts and in different settings, e.g. in April 2022 for an appeal in the social media to execute the President of the Russian Federation and Duma deputies,²⁸¹ in August 2022 for allegedly commenting on YouTube shootings at the FSB building with the words “cut the KGB-Agents”,²⁸² in July 2022 for placing a video in the Telegram Channel #НЕТВОЙНЕ (“no war”) with a negative assessment of police activities with indices of calls for violence against employees of the Ministry of the Interior.²⁸³ There is also information on persecution on the basis of Article 280 CC for anti-war or pro-Ukrainian-Army posts.²⁸⁴ Article 280 CC was also applied in the case of Boris Stomakhin where a prison sentence and three-year ban on practising journalism was applied for promoting extremism in the context of Chechen conflict. The European Court of Human Rights found a violation of Article 10 ECHR in this case.²⁸⁵

bb) Actions Aimed at Incitement to Hatred or Enmity

Another important provision for sentencing extremist activities is Article 282 CC, which, in its current version,²⁸⁶ punishes “actions aimed at inciting hatred or enmity, as well as at disparagement of a person or a group of persons on the grounds of gender, race, nationality, language, origin, attitude to religion, as well as membership of any social group, committed publicly, including through the media or information and telecommunications networks, including the Internet”.²⁸⁷ Extremism is thus not mentioned in the provision itself. Article 282 CC also constitutes an abstract endangerment offence.²⁸⁸

²⁸¹ “Kuzbass resident who called on social media to shoot the country's top officials received 2.5 years in penal colony” (Russian), <https://www.kommersant.ru/doc/5328996>.

²⁸² “Voronezh activist sentenced to two years in a penal colony over VKontakte post” (Russian), <https://ovd.news/express-news/2022/08/23/voronezhskogo-aktivista-prigovorili-k-dvum-godam-kolonii-poseleniya-iz-za>.

²⁸³ “Russia’s Kirill Martyushev declared terrorist and extremist over anti-war posts”, <https://novayagazeta.eu/articles/2022/07/13/russias-kirill-martyushev-declared-terrorist-and-extremist-over-anti-war-posts-news>.

²⁸⁴ “The Police Raided the Home of a Local Man in Tver Region. He was detained” (Russian), <https://ovd.news/express-news/2022/05/08/v-tverskoy-oblasti-proshel-obysk-u-mestnogo-zhitelya-ego-zaderzhali> (it is said that he is reproached of anti-war posts); “Activist prosecuted for extremism in Tomsk for posting on VK” (Russian), <https://www.sibreal.org/a/v-tomske-na-aktivista-zaveli-ugolovnoe-delo-ob-ekstremizme-za-post-v-vk/31953490.html>.

²⁸⁵ ECtHR, *Stomakhin v. Russia*, 9 May 2018, app. no. 52273/07.

²⁸⁶ It was introduced in 2007: Federal Law no. 211-FZ of 24 July 2007 “On Amendments to Certain Laws of the Russian Federation in regard to Consolidation of State Regulations in the field of Counteracting Extremism”. The administrative offence is punishable with fines up to 20,000 roubles or administrative arrest up to 15 days. A repeated violation within one year after the administrative offence engages criminal responsibility entailing a fine of up to 50,000 roubles or imprisonment up to five years, for commission within a group up to six years.

²⁸⁷ The Supreme Court lists examples for “publicity” such as “speaking at meetings, rallies, distributing leaflets, posters, placing relevant information in magazines, brochures, books, websites, forums or blogs, sending mass e-mails and other similar actions, including those intended to make the information available to others”.

²⁸⁸ Resolution of the Plenary of the Supreme Court no. 11 of 28 June 2011 “On Judicial Practice in Criminal Proceedings on Charges of Extremist Crimes”, para. 7 (4).

In 2018, the legislation was liberalised insofar as the criminal provision can only be applied after a prior administrative sanction.²⁸⁹ This, however, does not apply for the qualification of Article 282 CC.

While the Supreme Court still refers to Article 3, 4 of the Declaration on freedom of Speech of the Council of Europe of 12 February 2004 and the jurisdiction of the European Court of Human Rights regarding the criticism of public officials,²⁹⁰ the practical application does not reflect these standards. As the notion of “incitement to hatred or enmity” is very broad, critical or exaggerated statements in a harsh tone, taken literally, can be seen to fall under the provision.

According to the study “Russia. Crimes against History”²⁹¹ “this provision was “widely used by the authorities to stifle dissent, and to silence journalists and civil society activists.” Between 2012 and 2017, more than 1,500 individuals were convicted under this provision.²⁹² Some of the criminal cases concerned statements about history. One example is Rafis Kashapov, a Tatar activist and head of the local branch of the Tatar Civic Centre, who was sentenced to a suspended prison term of eighteen months for six publications he posted on a popular Internet blog on the “so-called Tatar-Mongolian yoke”.²⁹³ The provision is also used for critique of the annexation of Crimea by Tatars.²⁹⁴ Since January 2022 the ex-photographer of Alexei Navalny has been detained for comments beginning with “Glory to Ukraine”, “Down with the power of Chekists”, “Good morning to everyone down with Putin”. A psychologist-linguist expert concluded that there were elements of incitement of hate and terrorist actions towards the Ministry of Interior Affairs, the FSB, “United Russia” party members, and calls for an attempt on the life of Putin.²⁹⁵

cc) Extremist Activities Directed Against the Territorial Integrity of the Russian Federation

Article 20.3.2 CAO and Article 280.1 CC are more specific provisions punishing “public calls for actions aimed at violating the territorial integrity of the Russian Federation”. The criminal offence (Article 280.1 CC) was introduced in December 2013²⁹⁶ – only a short time before the annexation of Crimea by the Russian Federation in March 2014; the administrative

²⁸⁹ See the introduction of Art. 20.3.1 CAO by the Federal Law no. 521-FZ of 27.12.2018 “On Amendments to the Code of Administrative Offences of the Russian Federation”.

²⁹⁰ Resolution of the Plenary of the Supreme Court no. 11 of 28 June 2011 “On Judicial Practice in Criminal Proceedings on Charges of Extremist Crimes”, para. 7 (3).

²⁹¹ “Russia: ‘Crimes against History’”, https://www.fidh.org/IMG/pdf/russie-_pad-uk-web.pdf, p. 14.

²⁹² Official statistical data by the Judicial Department of the Supreme Court of Russia, <http://www.cdep.ru/index.php?id=79>.

²⁹³ Kashapov had referred to the forcible conversion of Muslims to Christianity, criticised Moscow’s chauvinist policy *vis-à-vis* ethnic minorities, and described the “so-called Tatar-Mongolian yoke” (referring to the Mongol invasion of Russia in the 13th century) as a “State lie” and a “monstrous myth.”, see “Russia: ‘Crimes against History’”, https://www.fidh.org/IMG/pdf/russie-_pad-uk-web.pdf, pp. 14 et seq.

²⁹⁴ “Urgent action. Tatar activist charged for instigating hatred”, <https://www.amnesty.org/en/wp-content/uploads/2021/05/EUR4600012015ENGLISH.pdf>.

²⁹⁵ “Ex-photographer of Navalny’s campaign headquarters granted extension of arrest in news commentary case” (Russian), <https://ovd.news/express-news/2022/06/23/eks-fotografu-shtaba-navalnogo-utverdili-prodlenie-aresta-po-delu-o>.

²⁹⁶ Art. 1 of the Federal Law no. 433-FZ of 28 December 2013 “On Amendments to the Criminal Code of the Russian Federation”.

offence (Article 20.3.2 CAO) was created in 2020.²⁹⁷ An administrative sanction is the precondition for criminal persecution, so prosecution is possible in two steps, making, however, the first step less time-consuming.²⁹⁸

According to the Supreme Court the aim of the public call need not be “to induce certain persons to commit specific criminal acts”;²⁹⁹ a follow-up dangerous for State and society is thus not necessary. Under the Code of Administrative Procedure, a fine is possible, under the Criminal Code the sentence can be up to 4 years of imprisonment, for a communication via mass media or the Internet up to 5 years.

The first case decided was the case of Daria Poljudova, an activist of the “Left Front” who tried to organise a “march for the federalisation of Kuban” saying that ethnical Ukrainians call for an integration of Kuban in the South-Western part of Russia (including Sochi) to Ukraine. The argument of the defence that this was ironical failed. She was sentenced to 2 years of imprisonment on the basis of Article 280.1 CC.³⁰⁰ The case of the opposition politician from Bashkir Ayrat Dilmukhametov on charges of calling for separatism for running as “President of the Republic of Bashkortostan of the new 4th Republic” was judged by the European Court of Human Rights which found the pretrial detention excessive and thus in violation of the Convention.³⁰¹

dd) Dissemination of Extremist Material

Legislation on extremism also covers the dissemination of extremist material. A new definition of what constitutes “extremist material” was introduced in the Law on Extremism in 2021.³⁰² The rather vague provision defines extremist material as “documents or information on other mediums destined for dissemination or public demonstration, calling for pursue in an extremist activity or justifying the necessity to pursue such an activity”.

Dissemination of extremist material by mass media and via “public communication networks” may lead to the cessation of the media company's activities.³⁰³ In addition, administrative sanctions are foreseen.³⁰⁴ The provision applies, however, only to material

²⁹⁷ Federal Law no. 420-FZ of 8 December 2020 “On Amendments to the Code of Administrative Offences of the Russian Federation”.

²⁹⁸ “Is It Dangerous to Call Crimea Ukrainian After the New Law of the RF” (Russian), <https://www.dw.com/ru/опасно-ли-называть-крым-украинским-после-принятия-закона-об-отчуждении-территорий-рф/a-54270009>.

²⁹⁹ Resolution of the Plenary of the Supreme Court no. 11 of 28 June 2011 “On Judicial Practice in Criminal Proceedings on Charges of Extremist Crimes”, para. 7 (3).

³⁰⁰ “Organiser of March for Federalisation of Kuban Jailed for Two Years”, <https://meduza.io/news/2015/12/21/organizatora-marsha-za-federalizatsiyu-kubani-posadili-na-dva-goda>.

³⁰¹ ECtHR, Dilmukhametov and others v. Russia, 9 June 2022, app. nos. 50711/19 et al.

³⁰² Federal Law no. 280-FZ of 1 July 2021 “On Amendments to Art. 6 of the Federal Law On Eternalisation of the Victory of the Soviet People in the Great Patriotic War 1941-1945 and Art. 1 of the Federal Law On Counteracting Extremist Activities”.

³⁰³ Art. 11 of the Law on Extremism, if applicable after a warning (Art. 8 of the Law on Extremism).

³⁰⁴ The administrative sanction (Art. 20.29 CAO) was introduced in 2007 (Art. 6 of the Federal Law no. 211-FZ of 24 July 2007 “On Amendments to Certain Laws of the Russian Federation in regard to Consolidation of State Regulations in the field of Counteracting Extremism”).

included in the list of extremist material created in 2002.³⁰⁵ Thus, a previous court ruling is necessary in order to engage administrative responsibility. While no special provision in the Criminal Code exists in regard of the dissemination of extremist material, Article 280 and 282 CC are nevertheless applicable.³⁰⁶

In July 2022 a new law created a data base of extremist material containing the relevant court decisions.³⁰⁷

Even though the provision on the dissemination of extremist material are not limited to mass media, mass media are certainly the primary addressees of this legislation.³⁰⁸

ee) Sanctions for Extremist Organisations

In addition to administrative and criminal sanctions the Law on Extremism sets out a procedure for closing down organisations considered to be extremist.³⁰⁹ A first warning³¹⁰ of the Prosecutor General can be followed up by a written warning possibly indicating a time-frame for compliance.³¹¹ If the warning is not observed or a violation is repeated within 12 months the organisation can be liquidated or forbidden by a court at the initiative of the Prosecutor General.

The consequences of such a liquidation are far-reaching. Those who are found to have engaged in extremist activities are banned from creating another organisation during a period of 10 years. Out-standers are obliged to distance themselves from the organisation; otherwise, they may be considered extremist themselves. These rules were introduced in 2014.³¹²

Here again, the changes introduced in July 2022, are the most intrusive ones creating a “unified register of information on persons affiliated to the activities of an extremist or terrorist organisation”. Even though the law clarifies that this provision (only) addresses issues of electoral law, the mere existence of such a register raises concerns with regard to its possible abuse. For belonging to an extremist organisation, “involvement” with an extremist or terrorist organisation established by a court is sufficient.

³⁰⁵ Art. 13 of the Law on Extremism.

³⁰⁶ The Supreme Court prescribes to differentiate between the administrative and criminal responsibility based on the perpetrator’s motives (Resolution of the Plenary of the Supreme Court no. 11 of 28 June 2011 “On Judicial Practice in Criminal Proceedings on Charges of Extremist Crimes”, para. 8 (4)).

³⁰⁷ Art. 13 (8-10) of the Law on Extremism; see Federal Law no. 303-FZ of 14 July 2022.

³⁰⁸ See below on the individual application of the law to mass media.

³⁰⁹ Art. 6, 7 and 9 of the Law on Extremism.

³¹⁰ Art. 6 of the Law on Extremism; precondition: “sufficient evidence confirmed in advance for the preparation of unlawful activities.”

³¹¹ Art. 7 of the Law on Extremism; precondition: “evidence of extremism in the activities of the organisation or a branch of the organisation”.

³¹² Art. 15 (2, 3) of the Law on Extremism, introduced by Art. 6 of the Federal Law no. 505-FZ of 31 December 2014 “On Amendments to Certain Legislative Acts of the Russian Federation”.

Furthermore, 282.1 CC punishes the creation and participation in extremist organisations. The definition of an “extremist organisation” was comparatively narrow in 2002,³¹³ but broadened in 2007³¹⁴ so that it suffices for being qualified as “extremist” to prepare or commit any “extremist” crime listed in the Criminal Code – including the legislation on fake news, fake news on Armed Forces and other problematic criminal legislation³¹⁵ – with a particular motivation.

Those who were active in an organisation classified as “extremist” are criminally responsible under Article 282.2 CC, a provision that was also amended several times.³¹⁶

The dissemination of information regarding *inter alia* extremist organisations is punished without mentioning that the organisation has been liquidated or their activity has been forbidden.³¹⁷

Furthermore, criminal and administrative legislation also punishes the use of attributes and symbols of an extremist organisation.³¹⁸ Here again, the 2022 reform introduced harsher sentences.³¹⁹ Interestingly, due to the very broad wording of the administrative offence, a clarifying note was added to Article 20.3 CAO in 2020³²⁰ that the provision does not apply to cases “where a negative attitude towards national socialist and extremist ideology is formed and where there is a lack of indicators of propaganda or justification of national socialist and extremist ideology”.

The legislation on extremism has been used in many cases since the adoption of the Law on Extremism and the respective provisions of criminal and administrative responsibility in 2002. Some organisations banned under this law were also banned in other countries (such as National Socialist Association, Hizb ut-Tahrir). Yet, practice here shows as well that the

³¹³ See above.

³¹⁴ Art. 4 of the Federal Law no. 211-FZ of 24 July 2007 “On Amendments to Certain Laws of the Russian Federation in regard to Consolidation of State Regulations in the field of Counteracting Extremism”. The definition now encompasses “offences committed on grounds of political, ideological, racial, national or religious hatred or enmity or on grounds of hatred or enmity towards any social group provided for in the relevant articles of the Special Part of the present Code and in Art. 63 (1) (e), of the Code.”

³¹⁵ See below.

³¹⁶ It punishes the organisation of activities and the participation in activities of an organisation that was liquidated or whose activities were prohibited by a court decision. The most important amendment was to also include in the provision the “incitement, recruitment or other involvement of another person in the activities of an extremist organisation” in 2014 (Art. 2 (17) of the Federal Law no. 130-FZ of 5 May 2014 “On Amendments to Certain Legislative Acts of the Russian Federation”).

³¹⁷ See Art. 13.15 (2) CAO.

³¹⁸ Art. 20.3 (1) CAO and Art. 282.4 (1) CC punish “propaganda or public display of [...] attributes or symbols of extremist organisations” and also other attributes and symbols banned by Federal legislation. The respective paragraph 2 of the provisions punish “manufacture or sale for the purpose of propaganda or acquisition for the purpose of sale or propaganda” of these attributes and symbolism.

³¹⁹ Criminal responsibility for a repeated action has been introduced in July 2022 leading to an increase of the maximum punishment for a repeated violation from 2000 roubles or 15 days of administrative arrest to an imprisonment of 4 years and fines up to 1 Million roubles; see Federal Law no. 260-FZ of 14 July 2022 “On Amendments to the Criminal Code of the Russian Federation and the Criminal Procedure Code of the Russian Federation”.

³²⁰ Federal Law no. 31-FZ of 1 March 2020 “On Amendments to Art. 20.3 of the Code of Administrative Offences of the Russian Federation.

relevant provisions are more and more used to target potential or real political opponents. In 2010 the Moscow City Court³²¹ declared “People’s Will Army” as extremist organisation. Its aim was to adopt legislative acts establishing the direct responsibility of the President and the Federal Assembly of Russia for their activities. According to information from CPJ (Committee to Protect Journalists), in 2015 the Russian authorities arrested the journalist Sokolov – after having published an investigative report about the alleged embezzlement of government funds – on the ground of being linked to “People’s Will Army”.³²² In 2014 there was a wave of recognition of Ukrainian nationalist organisations as “extremist” following the annexation of Crimea.³²³ The persecution of Jehovah’s Witnesses and its 395 organisations in Russia under the extremist legislation was considered to violate Article 9, 10 and 11 ECHR.³²⁴ Alexei Navalny’s organisations “Anti-Corruption Foundation”, “Foundation of Civil Rights Protection” and the movement “Navalny’s Staff” were 2019 declared “foreign agents” by the Ministry of Justice and in 2021 designated as an extremist organisation and liquidated by the Moscow City Court.³²⁵ Feminist activists were punished by a 15-days arrest for using symbols created by Navalny’s movement for “Smart Voting” even though they are not ‘official’ symbols.³²⁶ On 28 March 2022, Meta was declared an extremist organisation as it had “long been in breach of Russian legislation on countering extremist activity, and Meta’s corporate policy is directed against the interests of Russia and its citizens, endangering public safety, the lives and health of citizens and the security of the State.” The reasons were, *inter alia*, that Facebook and Instagram did not block calls to mass events on 17-19 September 2021 and that discriminatory and extremist information regarding appeals to kill Russian citizens during the war in Ukraine persisted.³²⁷ It was considered to be an “intended omission.” On 10 June 2022 the All-Tatar Public Centre was shut down because of being extremist.³²⁸

b) Historical Remembrance-Legislation

aa) Prohibition of the Rehabilitation of Nazism

Although memory laws have been in place in Russia since 1995,³²⁹ a regime of sanctions has only recently been introduced, with a tightening of laws and practice in recent years.³³⁰

³²¹ Moscow City Court decision 19 October 2010, no. 3-283/2010.

³²² “Aleksander Sokolov was imprisoned in Russia”, <https://cpj.org/data/people/aleksandr-sokolov/>.

³²³ Supreme Court, decision no. AKPI14-1292S of 17 November 2014; it concerned the Right Sector, Ukrainian National Assembly – Ukrainian People’s Self-Defence, Ukrainian Insurgent Army, Tryzub, and Brotherhood.

³²⁴ ECtHR, Taganrog LRO and others v. Russia, 7 June 2022, app. nos. 32401/10 et al.

³²⁵ This judgement was confirmed by the 1st Appellate Court on 4 August 2021. Already on 19 April 2021 the Moscow City Court declared material regarding the Anti-Corruption Foundation and Navalny’s Staff a “state secret”; “FBK added to list of extremists and terrorists”, <https://www.vedomosti.ru/politics/news/2021/08/10/881520-fbk-vnesli-v-spisok-ekstremistov-i-terroristov>.

³²⁶ “The Sign is Relative Whereas the Term is Real” (Russian), <https://novayagazeta.ru/articles/2022/02/09/znak-uslovnyi-srok-realnyi>.

³²⁷ “The Decision Recognising Meta Platforms Inc. as an Extremist Organisation Has Been Published” (Russian), <https://www.advgazeta.ru/novosti/opublikovano-reshenie-o-priznanii-meta-platforms-inc-ekstremistskoy-organizatsiy/>.

³²⁸ “Tatarstan’s Supreme Court Shuts Down All-Tatar Public Center, Labels It Extremist”, <https://www.rferl.org/a/tatarstan-shuts-center-ngo-crackdown-extremist/31892844.html>.

³²⁹ See Federal Law no. 32-FZ of 13 March 1995 “On days of military glory (victory days) of Russia”.

The most severe provision in today's legislation that can be described as a "memory law" is Article 354.1 of the Criminal Code. Introduced in 2014,³³¹ the provision is officially named "Rehabilitation of Nazism" and punishes in its current version³³² in Article 354.1 (1, 3) several deeds:

- 1) Public "denial of the facts established by [the Nuremberg Tribunal], approval of the crimes established by this verdict".
- 2) Public "dissemination of knowingly false information about the activities of the USSR during the Second World War and about veterans of the Great Patriotic War".
- 3) "Dissemination of information expressing clear disrespect for society on military glory days and memorable dates in Russia related to the defence of the Fatherland".
- 4) "Desecration of symbols of Russian military glory, insulting the memory of defenders of the Fatherland or humiliating the honour and dignity of a veteran of the Great Patriotic War, committed in public".

Alternatives (2) and (4) include qualifications for a commission "by a group of persons, a group of persons by prior conspiracy or an organised group", by use of mass media or Internet and – in case of Article 354.1 (1) – also the fabrication of evidence. The punishment goes up to 3 years for Article 354.1 (1, 3) and up to 5 years for the qualifications. The terms used in those laws are very vague.

Between 2014 and 2019 the provision was restrictively applied,³³³ but since 2020 cases increased.³³⁴ Sentences were issued for Hitler, Goebbels, Wehrmacht soldiers and Russian collaborator pictures on a website commemorating World War II veterans,³³⁵ or for publishing a video comparing 9 May decorations and residential buildings where it is demanded that police do not wear St. George ribbon.³³⁶ A harsh sentence imposing 4 years of prison was issued against 19-year-old student Matvei Yuferov which for urinating on a veteran portrait on Izmailov Boulevard in Moscow and posting it on Instagram Story. The

³³⁰ "Russia: 'Crimes against history'", https://www.fidh.org/IMG/pdf/russie-_pad-uk-web.pdf, p. 47 para. 134.

³³¹ Federal Law no. 128-FZ of 5 May 2014 "On Amendments to Certain Legislative Acts of the Russian Federation".

³³² Art. 354.1 (3) CC, the reference to veterans in Art. 354.1 (1), the extension of the qualification in Art. 354.1 (2) to deeds committed "by a group of persons, a group of persons by prior conspiracy or an organised group" and on the Internet, the extension of Art. 354.1 (3) to include "insulting the memory of defenders of the homeland or degrading the honour and dignity of a veteran of the Great Patriotic War" as well as increased sanctions were introduced by Federal Law no. 59-FZ of 5 April 2021 "On Amendments to Article 354.1 of the Criminal Code of the Russian Federation".

³³³ Only 25 were convicted under this article according to the official statistics, <http://www.cdep.ru/index.php?id=79>.

³³⁴ "Sanctions for 'Rehabilitation of Nazism'", https://www.sova-center.ru/en/misuse/reports-analyses/2022/04/d46193/#_Toc101560778; "Inappropriate Enforcement of Anti-Extremist Legislation in Russia in 2020", <https://www.sova-center.ru/en/misuse/reports-analyses/2021/04/d44077/>; see for an extensive case study "Russia: 'Crimes Against History'", https://www.fidh.org/IMG/pdf/russie-_pad-uk-web.pdf, pp. 9 et seq.

³³⁵ "Inappropriate Enforcement of Anti-Extremist Legislation in Russia in 2021", https://www.sova-center.ru/en/misuse/reports-analyses/2022/04/d46193/#_Toc101560778.

³³⁶ "Inappropriate Enforcement of Anti-Extremist Legislation in Russia in 2021", https://www.sova-center.ru/en/misuse/reports-analyses/2022/04/d46193/#_Toc101560778; "Kemerovo Blogger Charged with Rehabilitation of Nazism and Insulting a Law Enforcement Officer" (Russian), <https://ovd.news/express-news/2021/02/28/kemerovskomu-blogeru-predyavili-obvinenie-po-statyam-o-reabilitacii-nacizma>.

accused. said for his defence that he was drunk and regrets what he did; he was a first time offender.³³⁷

bb) Prohibition of the Use of Nazi Symbols

The provisions applicable to most cases are Article 20.3 CAO and, in the future, most likely Article 282.4 CC, already mentioned above. These provisions punish *inter alia* propaganda or display of Nazi attributes or symbolism or similar attributes and symbolism, its “manufacture or sale for the purpose of propaganda or acquisition for the purpose of sale or propaganda”. The provisions regarding the general ban on Nazi symbolism were upheld by the Constitutional Court in 2014 indicating that the mere use of Nazi symbolism can “cause suffering for people whose relatives died during the Great Patriotic War”.³³⁸ The Note introduced in 2020 stated that Article 20.3 CAO does not apply for the use of Nazi symbolism if it contributes to form a negative attitude towards the ideology of Nazism.

In practice, the provision is not applied coherently since its amendment requires that the use of Nazi symbolism propagates Nazism. While Sergei Korablin was fined a thousand roubles for posting on his VKontakte page an episode of the South Park animated series, in which one of the characters comes to school on Halloween in a Hitler costume with the swastika on his shoulder,³³⁹ the police refused to open a case against a teacher who did a World War II amateur play in school.³⁴⁰ However, the provision is constantly applied if the use of Nazi symbols serves to criticise the government.³⁴¹

cc) Prohibition of a Comparison between Soviet Union and Nazi Germany

In April 2022, a new provision was introduced in Article 13.48 CAO.³⁴² This provision penalises³⁴³ the equation of “the objectives, decisions and actions of the leadership of the USSR, the command and troops of the USSR with the objectives, decisions and actions of the leadership of Nazi Germany and the Axis [...] as well as denial of the decisive role of the Soviet people in the defeat of Nazi Germany and the Soviet humanitarian mission in the

³³⁷ “Inappropriate Enforcement of Anti-Extremist Legislation in Russia in 2021”, https://www.sova-center.ru/en/misuse/reports-analyses/2022/04/d46193/#_Toc101560778; “Harshes Sentence in History: Student Sentenced for Insulting Veterans” (Russian), <https://www.gazeta.ru/social/2021/12/24/14352787.shtml>.

³³⁸ “Constitutional Court Upholds Ban on Display of Nazi Symbols” (Russian), <https://www.sova-center.ru/misuse/news/lawmaking/2014/11/d30736/>.

³³⁹ “Inappropriate Enforcement of Anti-Extremist Legislation in Russia in 2020”, <https://www.sova-center.ru/en/misuse/reports-analyses/2021/04/d44077/>; <https://www.svoboda.org/a/30997365.html>.

³⁴⁰ “Inappropriate Enforcement of Anti-Extremist Legislation in Russia in 2020”, <https://www.sova-center.ru/en/misuse/reports-analyses/2021/04/d44077/>.

³⁴¹ See “Inappropriate Enforcement of Anti-Extremist Legislation in Russia in 2020”, <https://www.sova-center.ru/en/misuse/reports-analyses/2021/04/d44077/>.

³⁴² Federal Law no. 103-FZ of 16 April 2022 “On Amendments to the Code of Administrative Offences”.

³⁴³ The sanctions foreseen is a fine up to 2,000 roubles, or, for repeated violations, 5,000 roubles or administrative arrest of up to 15 days.

liberation of the European countries" in the media or the Internet. Here, as well, the vague nature of the law is criticized.³⁴⁴

The provision was already applied several times. For example, opposition politician Kirill Suvorov was sentenced because of replacing the "SS" in KPSS (KPSU) by the SS Runes³⁴⁵. In another case a book on the Katyn massacre was banned by a Kaliningrad Court on the basis of various memory laws.³⁴⁶ According to expert information which were given to the Rapporteur in an interview, the provision could also apply for content covering the consequences of the Ribbentrop-Molotov-Pact including the invasion of Poland by Nazi Germany and the USSR as well as the occupation of the Baltic countries in 1940 by the Soviet Union, mass rape and other cases of inhumane treatment of German women and civil population by Red Army soldiers and Soviet war crimes in general.

Russia's historical remembrance legislation is deeply linked with the extremism legislation as shown by several laws³⁴⁷ and the extensive use of provisions of the extremist legislation by law enforcement agencies.

Since 2020, Russia's memory policy has a constitutional status.³⁴⁸ The newly introduced Article 67.1 (1-3) of the Constitution states:

- “1. The Russian Federation is the legal successor of the USSR on its territory, as well as the legal successor of the USSR in respect of membership in international organisations and their bodies, participation in international treaties, as well as in respect of obligations and assets of the USSR outside the territory of the Russian Federation provided for in international treaties.
2. The Russian Federation, united by a thousand years of history, and preserving the memory of its ancestors, who transmitted to us their ideals and faith in God, and also the continuity in the development of the Russian State, recognises the historically established State unity.
3. The Russian Federation honours the memory of the defenders of the Fatherland and ensures the protection of historical truth. The degradation of the significance of the exploits of the people in defending the Fatherland is not allowed.”

³⁴⁴ See “President Signs Bill on Responsibility for Identifying Actions of USSR and Nazi Germany” (Russian), <https://www.sova-center.ru/misuse/news/lawmaking/2022/04/d46133/>.

³⁴⁵ “Kirill Suvorov, Advisor to the Head of Krasnoselsky District of Moscow, jailed for 15 days” (Russian), <https://ovd.news/express-news/2022/07/27/sovetnika-glavy-krasnoselskogo-okruga-moskvy-kirilla-suvorova-arestovali-na>; “Moscow politician arrested for 15 days over post” (Russian), <https://ovd.news/express-news/2022/08/11/moskovskogo-politika-arestovali-na-15-sutok-iz-za-posta-za-kotoryy-uzhe>.

³⁴⁶ “Court Bans Electronic Version of Book on Katyn Tragedy in Kaliningrad” (Russian), <https://www.sova-center.ru/misuse/news/persecution/2022/07/d46657/>; “Book on the Katyn tragedy banned due to ‘identification of actions of the USSR and Nazi Germany’” (Russian), <https://roskomsvoboda.org/post/katyn-przewodnik-block/>.

³⁴⁷ See Federal Law no. 421-FZ of 2 December 2019 “On Amendments to Art. 6 of the Federal Law ‘On eternalisation of the Victory of the Soviet people in the Great Patriotic War 1941-1945’ and Art. 1 of the Federal Law ‘On counteracting extremist activities’”; Federal Law no. 280-FZ of 1 July 2021 “On Amendments to Art. 6 of the Federal Law On Eternalisation of the Victory of the Soviet people in the Great Patriotic War 1941-1945 and Art. 1 of the Federal Law ‘On Counteracting Extremist Activities’”.

³⁴⁸ Federal Constitutional Law no. 1-FKZ of 14 March 2020 “On Enhancement of Regulations Concerning Specific Questions of Organisation and Functioning of Public Authority” (approved by referendum on 1 July 2020).

c) Evaluation

“The Ministerial Council [...] calls for continued efforts by political representatives, including parliamentarians, strongly to reject and condemn manifestations of racism, xenophobia, anti-Semitism, discrimination and intolerance, including against Christians, Jews, Muslims and members of other religions, as well as violent manifestations of extremism associated with aggressive nationalism and neo-Nazism, while continuing to respect freedom of expression”³⁴⁹

The OSCE commitments mention the necessity to combat extremism at various occasions. They also refer to general international obligations including regulations on freedom of expression including the Shanghai Convention. The Convention defines extremism as “an act aimed at seizing or keeping power through the use of violence or changing violently the constitutional regime of a State, as well as a violent encroachment upon public security, including organisation, for the above purposes, of illegal armed formations and participation in them, criminally prosecuted in conformity with the national laws of the Parties.” Although the definition “shall not affect [...] any national law of the Parties” it is indicative of a narrow understanding of “extremism” that includes an element of violence.³⁵⁰ This is also highlighted in the Madrid Decision of 2007 calling to respect freedom of expression when combating “violent extremism” by the Contracting Parties.³⁵¹

The Supreme Court of the Russian Federation regards the introduction of the legislation on extremism as the fulfilment of a constitutional duty and particularly stresses international obligations and the importance of the observation of international human rights.³⁵² The Court adapted its resolution in 2018³⁵³ prescribing a more precise distinction between extremist and non-extremist crimes. This initiative was well perceived by the OSCE Representative on Freedom of the Media³⁵⁴ and the Venice Commission³⁵⁵. Nevertheless, the lack of clarity remains, which carries the risk of arbitrary application. This point has been raised by the OSCE Representative on Freedom of the Media³⁵⁶, the UN Human Rights Commissioner³⁵⁷, the Committee on the Elimination of Racial Discrimination³⁵⁸ as well as the

³⁴⁹ Decision no. 10/70 on Tolerance and Non-Discrimination: Promoting Mutual respect and Understanding, Madrid 2007.

³⁵⁰ See VC 2012 Opinion on the Law on Extremism, para. 31.

³⁵¹ Madrid 2007.

³⁵² See Resolution of the Plenary of the Supreme Court no. 11 of 28 June 2011 “On Judicial Practice in Criminal Proceedings on Charges of Extremist Crimes”.

³⁵³ See Resolution of the Plenary of the Supreme Court no. 32 of 20 September 2018 “On Judicial Practice in Criminal Proceedings on Charges of Extremist Crimes”.

³⁵⁴ OSCE Representative on Freedom of the Media, Press Release, 26 August 2018, at <https://www.osce.org/representative-on-freedom-of-media/397511>.

³⁵⁵ VC 2012 Opinion on the Law on Extremism, para. 67 et seq.

³⁵⁶ OSCE Representative on Freedom of the Media, Press Release, 23 November 2017, at <https://www.osce.org/fom/358456>;

OSCE Representative on Freedom of the Media, Communiqué, 7 October 2014, no. 6/2014; OSCE Representative on Freedom of the Media, Press Release, 25 June 2014, at <https://www.osce.org/fom/120175>.

³⁵⁷ Office of the UN High Commissioner for Human Rights, Statement, 8 March 2017, <https://www.ohchr.org/en/statements/2017/03/high-commissioner-human-rights-activities-his-office-and-recent-human-rights?LangID=E&NewsID=21316>; UN Human Rights Committee, Concluding Observations on the seventh periodic report of the Russian Federation, 28 April 2015, UN Doc. CCPR/C/RUS/CO/7; UN Human

Venice Commission³⁵⁹ and constitutes the foremost problem of the entire Russian extremism legislation. The lack of clarity and the broad spectrum of activities of individuals and associations that could potentially be qualified as “extremist” create the possibility of abuse. The reality of this danger is clearly shown by the cases decided under the relevant provisions. A multitude of provisions allow Russian State authorities to persecute activists belonging to ethnic minorities within the Russian Federation and to effectively punish political dissent. Harsher punishments and an extensive application of the entire array of extremist legislation since 2021³⁶⁰ and especially since the start of the Russian war against Ukraine on 24 February 2022 have a significant chilling effect on Russian civil society as a whole.

A particular concern is the historical memory laws, especially with regard to the role of the USSR in the Second World War as well as Article 354.1 of the Criminal Code punishing the “glorification of Nazism”. Already in 2013, during the adoption procedure, the OSCE Representative on Freedom of the Media Dunja Mijatović criticized that Article 354.1 of the Criminal Code uses “vague language” and goes “beyond the mere banning of the glorification of Nazism. A narrow application of such a law might lead to its abuse and suppress political and critical speech on issues of history and eventually affect freedom of the media”.³⁶¹ The Representative also raised concerns regarding a chilling effect especially for the academic and public debate on historical issues.

The introduction of Article 13.48 CAO in April 2022 deepens the concern. The ban of an equation of Soviet and Nazi regimes for the period of the Second World War is in direct contradiction to the OSCE Vilnius Declaration of 2009 that notes that “two major totalitarian regimes, Nazi and Stalinist, [...] brought about genocide, violations of human rights and freedoms, war crimes and crimes against humanity”.³⁶² The provision of Article 13.48 CAO makes it impossible to have an open discussion about the role of the Soviet Union, in particular during the period between 1 September 1939 and 22 June 1941 – the period that includes the events in Katyn from 3 April to 11 May 1940.³⁶³

Rights Committee, Concluding Observations on the sixth periodic report of the Russian Federation, 24 November 2009, UN Doc. CCPR/C/RUS/CO/6; UN Human Rights Committee, Concluding Observations of the Human Rights Committee: the Russian Federation, 1 December 2003, UN Doc. CCPR/CO/79/RUS.

³⁵⁸ UN Committee on the Elimination of Racial Discrimination, Concluding Observations on the Twenty-Third and Twenty-Fourth Periodic Reports of the Russian Federation, 20 September 2017, UN Doc CERD/C/RUS/CO/23-24, at https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/RUS/CERD_C_RUS_CO_23-24_28705_E.pdf; UN Committee on the Elimination of Racial Discrimination, Concluding Observations on the Twenty-Third and Twenty-Fourth Periodic Reports of the Russian Federation, 17 April 2013, UN Doc CERD/C/RUS/CO/20-22; UN, Committee on the Elimination of Racial Discrimination, Concluding Observations on the Twenty-Third and Twenty-Fourth Periodic Reports of the Russian Federation, 20 August 2008, UN Doc CERD/C/RUS/CO/19.

³⁵⁹ Specifically on the Law on Extremism VC 2012 Opinion on the Law on Extremism.

³⁶⁰ “Convictions for Extremism have Doubled in Russia in a Year” (Russian), <https://www.sibreal.org/a/v-rossii-vdvoe-za-god-vyroslo-chislo-osuzhdennyh-za-ekstremizm-/31814281.html>.

³⁶¹ OSCE Representative on Freedom of the Media, Press Release, 26 June 2013, at <https://www.osce.org/fom/103121>.

³⁶² Resolution on Divided Europe Reunited: Promoting Human Rights and Civil Liberties in the OSCE Region in the 21st Century of the OSCE, 29 June - 3 July 2009, AS (09) D 1 E, para. 3, see also paras. 10, 17.

³⁶³ “Russia: ‘Crimes Against History’”, https://www.fidh.org/IMG/pdf/russie-_pad-uk-web.pdf, p. 19, para. 53, p. 35 para. 96, p. 58, para 174, at p. 19, para. 53, p. 35 para. 96, p. 58, para 174.

4) Legislation on Terrorism

a) Definition, Law and Practice

Terrorism is defined by Article 3 of the Federal Law no. 35-FZ of 6 March 2006 “On Counteracting Terrorism” (Law on Terrorism) as for the major part containing an element of violence.³⁶⁴ Even though measures under this Law are extensive,³⁶⁵ the Russian legislation on terrorism therefore concerns the civil society mainly insofar as “justification” and “propaganda” of terrorism are concerned.

Article 3 (2) (e) of the Law on Terrorism qualifies “propaganda for terrorism, dissemination of material or information calling for terrorist activities or justifying the need for such activities” as being by itself a terrorist activity. Article 1 (1) of the Law on Extremism qualifies “public justification of terrorism and other terrorist activities” as extremist activities. Article 205.2 CC establishes criminal responsibility for these acts in addition to the legislation on extremism. “Public calls for terrorist activities, public justification of terrorism or propaganda of terrorism” is punished by up to 5 years of imprisonment by Article 205.2 (1) CC. Article 205.1 (2) CC contains a qualification for actions committed via mass media or Internet being punished by imprisonment of up to 7 years. Notes under Article 205.2 CC clarify the meaning of the incriminated actions. Public justification of terrorism is “a public statement recognising the ideology and practices of terrorism as correct and in need of support and emulation”. Propaganda of terrorism is “the dissemination of material and/or information aimed at forming in a person an ideology of terrorism, a belief in its appeal or a perception that terrorist activities are permissible”.

The application of the provision shows that criminal courts tend to impose severe penalties, often in regard to political cases against journalists³⁶⁶ or critics of the government³⁶⁷ implying a misuse of the anti-terrorism legislation.³⁶⁸ Prison sentences of five years and two

³⁶⁴ VC 2012 Opinion on the Law on Extremism, para. 34.

³⁶⁵ Especially the broad presidential powers under Art. 4 of the Law on Terrorism and the possibility to use Armed Forces are worth mentioning.

³⁶⁶ In July 2020, journalist Svetlana Prokopyeva was sentenced to 500,000 roubles fine for commenting on a suicide bombing in Archangelsk in 2018 (killing only the bomber, a 17-year old boy, and injuring FSB officers) that government officials are partly responsible, see OSCE Representative on Freedom of the Media, Press Release, 4 October 2019, <https://www.osce.org/representative-on-freedom-of-media/434678>; OSCE Representative on Freedom of the Media, Press Release, 17 March 2020, <https://www.osce.org/representative-on-freedom-of-media/448645>; OSCE Representative on Freedom of the Media, Press Release, 6 July 2020, at <https://www.osce.org/representative-on-freedom-of-media/456553>.

³⁶⁷ Ex-photographer of Navalny is being detained since January 2022 for anti-war comments considered as justification of terrorism, see “The Arrest of a Kazan Activist Was Prolonged for Three More Months in a Justification of Terrorism Case” (Russian), <https://ovd.news/express-news/2022/08/12/kazanskomu-aktivistu-na-tri-mesyaca-prodlili-arest-po-delu-ob-opravadanii>.

³⁶⁸ See Council of Europe Commissioner for Human Rights, Press Release, 19 February 2019, <https://www.coe.int/en/web/commissioner/-/russian-federation-misuse-of-anti-terrorism-legislation-limits-media-freedom-and-freedom-of-expression>; Council of Europe Commissioner for Human Rights, Letter, 13 February 2019, CommHR/DM/sf 007-2019; Letter of Council of Europe Commissioner for Human Rights, 12 July 2019, CommHR/DM/sf 027-2019.

months or six years for calling a bomber a “hero”³⁶⁹ respectively reposting a picture on VKontakte by Daria Polyudova, the leader of the “Left Resistance”, showing militant Shamil Basaev with an inscription calling for resistance³⁷⁰ seem hardly to comply with the proportionality requirement in freedom-of-expression cases regardless of whether the reasons for the conviction may have been reasonable.

b) Evaluation

“We are convinced that respect of human rights and fundamental freedoms is an important element of ensuring peace and stability and prevention of terrorism. We acknowledge that effective prevention of and fight against terrorism require the involvement of civil society in our countries.”³⁷¹

The OSCE commitments clearly condemn terrorism and call upon prevention and repression of terrorism – with special regard to the use of the Internet for terrorist purposes. However, OSCE commitments stress at multiple occasions that international law, human rights and the rule of law³⁷² have to be observed while combating terrorism.

In particular, the UN Human Rights Committee stresses that “[s]uch offences as ‘encouragement of terrorism’ and ‘extremist activity’ as well as offences of ‘praising’, ‘glorifying’, or ‘justifying’ terrorism, should be clearly defined to ensure that they do not lead to unnecessary or disproportionate interference with freedom of expression. Excessive restrictions on access to information must also be avoided. The media play a crucial role in informing the public about acts of terrorism. Its capacity to operate should not be unduly restricted. In this regard, journalists should not be penalised for carrying out their legitimate activities.”³⁷³ The Joint Declaration on Freedom of Expression and Responses to Conflict Situations³⁷⁴ with participation of the OSCE reiterates the call for States to “refrain from applying restrictions relating to ‘terrorism’ in an unduly broad manner. Criminal responsibility for expression relating to terrorism should be limited to those who incite others to terrorism; vague concepts such as ‘glorifying’, ‘justifying’ or ‘encouraging’ terrorism should not be used.”

³⁶⁹ “Court Sentences Kaluga Resident to Five Years and Two Months in Prison for Comments on FSB Bombing” (Russian), <https://ovd.news/express-news/2020/03/05/sud-prigovoril-zhitelya-kalugi-k-pyati-godam-i-dvum-mesyacam-kolonii-za>.

³⁷⁰ “Left-Wing Activist Darya Polyudova, Charged with Inciting Separatism and Justifying Terrorism, is a Political Prisoner, Memorial says” (Russian), https://memohrc.org/en/news_old/left-wing-activist-darya-polyudova-charged-inciting-separatism-and-justifying-terrorism; “Leader of ‘Left Resistance’ Polyudova Got Six Years for Appeals to Terrorism” (Russian), <https://www.kommersant.ru/doc/4837535>; “Activist Daria Polyudova got Six Years Pleading Guilty to Appeals to Terrorism” (Russian), <https://www.bbc.com/russian/news-57307593>.

³⁷¹ Ministerial Statement on Preventing and Combating Terrorism of the OSCE, 7 December 2004, MC(12).JOUR/2 (hereinafter Sofia 2004).

³⁷² *Inter alia* Charter on Preventing and Combating Terrorism, 7 December 2002, MC(10).JOUR/2 (hereinafter Porto 2002).

³⁷³ UN Human Rights Committee, General comment no. 34, 12 September 2011, UN Doc. CCPR/C/GC/34, para. 46.

³⁷⁴ Joint Declaration on Freedom of Expression and Responses to Conflict Situations of 4 May 2015, para. 3 (b), <https://www.osce.org/files/f/documents/a/0/154846.pdf>.

The Russian Federation already violates these norms by including the vague notion of “justification” or “propaganda” of terrorism in its criminal legislation. The concern even deepens with regard to the application in individual cases. The Russian Federation assumes a very broad understanding of these acts as a basis for prosecution. Already minor actions like re-posts of social media posts expressing concern for the perpetrator of a terrorist act are seen as justifying terrorism and punished severely. The case of the journalist Svetlana Prokopyeva is of particular interest in this regard. The UN Human Rights Committee sees curtailing journalist work as excessive with regard to the chilling effect on freedom of expression, freedom of information, and freedom of media. Furthermore, a Joint Declaration with participation of the OSCE of 2016³⁷⁵ specifically addresses everyone’s “right to criticise the manner in which States and politicians respond” to violence and terrorism. In this regard it is also deeply concerning that the Russian legislation is used to further incriminate criticism regarding the ongoing Russian war of aggression against Ukraine.

The Rapporteur shares the finding of the International Federation of Human Rights³⁷⁶ that the Russian legislation is incompatible with freedom of expression as outlined in Article 19 of the Covenant on Civil and Political Rights and Article 10 of the European Convention of Human Rights.

5) Legislation on State Secrets and Treason

a) Definition, Law and Practice

A growing concern regarding the civil society in Russia is the legislation regarding high treason and State secrets. What constitutes a State secret is defined by Article 5 of the Law on State Secrets.³⁷⁷ A list of information constituting State secrets was adopted by the Presidential Decree of 30 November 1995³⁷⁸. The definitions are broad and heavily sanctioned under Russian criminal law.

The most important and most severe provision is “high treason”, regulated by Article 275 of the Criminal Code. This provision was broadened several times, most importantly by the Federal Law no. 190-FZ of 14 November 2012 “On Amendments to the Criminal Code of the Russian Federation and article 151 of the Criminal Procedure Code”. This law expanded “high treason” to “the provision of financial, material and technical, consulting or other assistance to a foreign State, international or foreign organisation or their representatives, aimed against the security of the Russian Federation” and criminalised the disclosure of State secrets obtained through studies. Today’s wording of Article 275 CC reads as follows: “High treason, that is committed by a citizen of the Russian Federation acts of espionage, the disclosure to a foreign State, an international or foreign organisation or their representatives of information constituting a State secret entrusted to the person or made

³⁷⁵ Idem.

³⁷⁶ “Russia: ‘Crimes Against History’”, https://www.fidh.org/IMG/pdf/russie-_pad-uk-web.pdf, p. 48.

³⁷⁷ Law of the Russian Federation no. 5485-1 of 21 July 1993 “On State Secrets”.

³⁷⁸ Presidential Decree no. 1203 of 30 November 1995 “On Approval of a List of Information Constituting a State Secret”; interestingly Presidential Decree no. 273 of 28 May 2015 “On Amending the List of Information Constituting State Secrets Approved by Presidential Decree no. 1203 of 30 November 1995” places “information revealing losses in war time and in peace time during the conduction of special operations” under secrecy.

known to him in the course of service, work, study or in other cases provided for by Russian law, defection to the enemy³⁷⁹ or the provision of financial, material and technical, consulting or other assistance to a foreign State, international or foreign organisation or their representatives, aimed against the security of the Russian Federation”. The maximum punishment for high treason is imprisonment of 20 years.

The Novaya Gazeta speaks of a “hunt on researchers” as 30 scientists were subjected to criminal proceedings and severe sentences were issued, e. g. seven years for sending a demo-version of a rocket aerodynamics program to China,³⁸⁰ or 20 years for sending a remote control to China not knowing that it is protected by a State secret and bringing a SD-card with a thesis abroad³⁸¹ – especially after the 2012 amendments.³⁸² Also journalists are subjected to criminal proceedings under the very broad legislation. Treason cases are dealt with in camera. This has the effect that there will be criminal proceedings against everyone who comments on a treason case. An example is the case of former journalist and Roskosmos adviser Ivan Safranov, who was charged for allegedly giving information on Russian-African co-operation to a Czech intelligence service and for transmitting information on activities of Armed Forces in Syria,³⁸³ where his lawyers were prosecuted.³⁸⁴

Article 276 of the Criminal Code punishes espionage as a deed of a foreigner or a stateless person. Article 283 of the Criminal Code punishes “the disclosure of State secrets entrusted to the person or made known to him in the course of service, work, study or in other cases provided for by Russian law”. In difference to Article 275 of the Criminal Code the addressee is not a foreign State, an international or foreign organisation or their representatives.

But criminal liability sets in even earlier. Article 283.1 of the Criminal Code, introduced in 2012, punishes already the mere fact of obtaining information constituting a State secret in

³⁷⁹ This variant was introduced by Federal Law no. 260-FZ of 14 July 2022 “On Amendments to the Criminal Code of the Russian Federation and the Criminal Procedure Code of the Russian Federation”.

³⁸⁰ “‘Memorial’ Recognised the Famous Scientist Vladimir Lapygin to Be a Political Prisoner” (Russian), <https://memohrc.org/ru/news/memorial-priznal-izvestnogo-uchyonogo-vladimira-lapygina-politzaklyuchyonnym>; “Scientist Lapygin Sentenced for High Treason Was Released on Parole” (Russian), <https://tass.ru/obschestvo/8702055>.

³⁸¹ “The Proof is Dust” (Russian), <https://novayagazeta.ru/articles/2021/08/16/dokazatelstva-pyl>.

³⁸² “The FSB conducts a ‘hunt on researchers’” (Russian), <https://novayagazeta.ru/articles/2020/11/27/88134-berut-lyudey-s-opytom-lomayut-zhizni-otnimayut-rabotu-i-zdorovie>. E.g. three scientists from Novosibirsk, Alexander Shipluk, Anatoly Maslov, Dmitry Kolker, were arrested on separate treason charges within 30 days. Dmitry Kolker was arrested on 30 June 2022 for giving a lecture in front of Chinese students in 2018 even though the lecture was held in Russian for the accompanying FSB agent to understand it and was previously screened by the university, “It Only Took You Two Days to Kill a Man” (Russian), <https://meduza.io/feature/2022/07/04/vam-hvatilo-dva-dnya-chtoby-ubit-cheloveka>;

“In Novosibirsk, the Director of the RAN Institute Was Arrested on High Treason Charges. This is the Third Case in 40 Days” (Russian), <https://meduza.io/news/2022/08/05/v-novosibirske-po-delu-o-gosudarstvennoy-izmene-arestovan-direktor-instituta-ran-aleksandr-shipluk-eto-tretiy-takoy-sluchay-za-40-dney>.

³⁸³ “Statement in Support of Ivan Safranov” (Russian), <https://www.kommersant.ru/doc/4406986>.

³⁸⁴ “Lawyer Ivan Pavlov has left Russia” (Russian), <https://ovd.news/express-news/2021/09/07/advokat-ivan-pavlov-pokinul-rossiyu>; “The FSB has Detained the Head of the Team 29 Project Ivan Pavlov. The IT Specialist of the Project was Searched” (Russian), <https://ovd.news/express-news/2021/04/30/fsb-zaderzhala-glavu-komandy-29-ivana-pavlova-k-it-specialistu-proekta>; “Disciplinary Proceedings Initiated Against Lawyer Ivan Safranov Following a Complaint by the FSB” (Russian), <https://ovd.news/express-news/2021/11/22/protiv-advokata-ivana-safronova-vozbudili-disciplinarnoe-proizvodstvo-po>.

any unlawful way with up to four years of imprisonment. If the deed is committed *inter alia* by a group of persons or “linked with the dissemination of the information constituting a State secret or with the transfer of carriers of such information outside the Russian Federation” the maximum punishment is increased to 8 years of imprisonment.

The broad application of the law is exemplified by two cases: Gennady Nefedov who had already a conviction for assault was sentenced to five years in prison for posting a photo online of an object in Moscow protected by State secret, while his companions got a much milder punishment;³⁸⁵ a government engineer working for Gostekhnadzor from Bryansk was sentenced to three years imprisonment for a talk with a border guard allegedly because of getting information on the border patrol order.³⁸⁶

Even information not protected as a State secret is de facto restricted by the “foreign-agents” legislation as the mere fact of collecting information on a particular subject deemed sensitive by the FSB³⁸⁷ can lead to the qualification of an individual as a “foreign agent”.³⁸⁸

Federal Law no. 260-FZ, adopted on 14 July 2022,³⁸⁹ once more changed the entire legislation on State security. Espionage was broadened to include “the transfer, collection, theft or storage for the purpose of transferring to the enemy³⁹⁰ of information which may be used against the Armed Forces of the Russian Federation, other troops, military formations and bodies of the Russian Federation, committed in conditions of armed conflict, hostilities or other activities involving weapons and military equipment involving the Russian Federation”. Journalistic work on the Internet regarding armed conflicts with Russian involvement is therefore heavily under risk regarding foreign (Article 276 of the Criminal Code) and domestic journalists (Article 275 of the Criminal Code which refers to “espionage”).

The newly introduced Article 275.1 of the Criminal Code is even more restrictive. It targets the “establishment and maintenance by a citizen of the Russian Federation of cooperation relations on a confidential basis with a representative of a foreign State, international or foreign organisation in order to assist them in activities knowingly directed against the security of the Russian Federation”. The punishment is imprisonment of up to 8 years. The

³⁸⁵ “Supreme Court Upholds Conviction of Moscow Digger in State Secrets Case” (Russian), <https://www.interfax.ru/russia/557895>; “Moscow Digger Sentenced to five Years in Prison for Revealing State Secrets” (Russian), <https://ria.ru/20170411/1491976789.html>; “Supreme Court Affirms Verdict on Moscow Diggers Convicted of Illegally Obtaining Classified Information” (Russian), <https://zona.media/news/2017/11/04/digg>.

³⁸⁶ “An Engineer from Bryansk Is Exempted from a Real Term for Revealing State Secrets” (Russian), <https://ovd.news/express-news/2017/12/20/bryanskogo-inzhenera-osvobodili-ot-realnogo-nakazaniya-za-razglashenie>; “Bryansk Region Resident Accused of Obtaining State Secrets by Talking to Border Guard” (Russian), <https://ovd.news/express-news/2017/07/27/zhitelya-bryanskoy-oblasti-obvinili-v-poluchenii-gostayny-iz-za-besedy-s>.

³⁸⁷ See Federal Security Service, Order no. 379 of 28 September 2021 “On Approval of the List of Information in the Field of Military, Military-Technical Activities of the Russian Federation which, if Obtained by a Foreign State, its State Bodies, International or Foreign Organisation, Foreign Nationals or Stateless Persons May Be Used Against the Security of the Russian Federation”.

³⁸⁸ See above.

³⁸⁹ Federal Law no. 260-FZ of 14 July 2022 “On Amendments to the Criminal Code of the Russian Federation and the Criminal Procedure Code of the Russian Federation”.

³⁹⁰ The notion of “enemy” is included in the Note to Art. 276 CC.

initial version of the law³⁹¹ as it was proposed in the Duma only targeted the confidential cooperation with “special services” of the respective bodies. The Note to Article 275.1 brings further insecurity as it grants dispensation from criminal liability in case the perpetrator, among other conditions, “did not commit any actions to implement the task given to him/her”. Article 275.1 of the Criminal Code itself, however, does not include special tasks given to the perpetrator as a condition for criminal liability.

Another new provision is Article 280.4 of the Criminal Code criminalising – similarly to the legislation on extremism and terrorism – “public calls for activities directed against the security of the Russian Federation or for obstructing the exercise by the authorities and their officials of their authority to ensure the security of the Russian Federation”. The punishment in Article 280.4 (1) of the Criminal Code is up to four years, in qualified cases even much harsher.³⁹²

Article 283.2 of the Criminal Code is also a new provision aimed at the protection of State secrets. It punishes “departure from the Russian Federation of a citizen of the Russian Federation admitted or formerly admitted to State secrets, whose right to leave the Russian Federation is knowingly restricted in accordance with the legislation of the Russian Federation on State secrets”. While Article 24 of the Law on State Secrets and Article 15 (1) of the Federal Law “On departure from and entrance to the Russian Federation”³⁹³ already allowed travel restrictions for persons admitted to State secrets, a violation now constitutes a criminal offence punishable with up to 3 years of imprisonment. Criminal or even administrative sanctions were previously non-existent.

The provision also punishes “illegal removal or transfer of media containing information constituting a State secret outside the territory of the Russian Federation in the absence of indications of offences under articles 226.1, 275, 276 and 283.1 of this Code” with up to four years of imprisonment. Members of Russian civil society consider this amendment to be a liberalisation, as in practice, offenders in similar cases were persecuted under Article 275 of the Criminal Code.³⁹⁴ However, as this provision explicitly cites Article 275 as *lex specialis*, the effect of this provision will depend on the law enforcement practice.

³⁹¹ See <https://sozd.duma.gov.ru/bill/130406-8>.

³⁹² In case of a commission *inter alia* by a “group of persons by prior agreement” or via Internet the punishment is up to six years of imprisonment. In case of a commission by an organised group the punishment is up to seven years of imprisonment. A note clarifies that “activities directed against the security of the Russian Federation” are offences punished by Art. 189, 200.1, 209, 210, 222 - 223.1, 226, 226.1, 229.1, 274.1, 275 - 276, 281, 283, 283.1, 284.1, 290, 291, 322, 322.1, 323, 332, 338, 355 - 357, 359 CC; these provisions include high treason, espionage, confidential cooperation with representatives with foreign countries or foreign or international organisations, the cooperation with an undesirable organisation, unlawful crossing of the border of the Russian Federation including leaving the Russian Federation, and desertion.

³⁹³ Federal Law no. 114-FZ of 15 August 1996 “On departure from the Russian Federation and entrance to the Russian Federation”.

³⁹⁴ E.g. for the case of Alexey Vorobyov see “The Proof is Dust” (Russian), <https://novayagazeta.ru/articles/2021/08/16/dokazatelstva-pyl>.

b) Evaluation

“We reaffirm the importance of (...) the free flow of information as well as the public’s access to information. We commit ourselves to take all necessary steps to ensure the basic conditions for (...) unimpeded transborder and intra-State flow of information (...)”³⁹⁵

The OSCE commitments as well as Article 19 (1) ICCPR and Article 10 (1) ECHR, to which the OSCE commitments refer, protect freedom of expression “regardless of frontiers”. Restrictions are only permitted if they are provided by law³⁹⁶ and also observe the proportionality of the aim of the law³⁹⁷ – the aims including also national security as noted in Article 19 (3) (b) ICCPR.

The Venice Commission already in 2014 analysed the legislation on State secrets of the Russian Federation having also regard to OSCE commitments.³⁹⁸ The Commission held that the legislation in its 2014 version is incompatible with international standards as under the broad and vague wording of the provisions “almost any conversation between Russian citizens and representatives of foreign organisations” as well as the mere access to information by “journalists, researchers and human rights defenders” in particular is punishable by up to 20 years of imprisonment. The Rapporteur shares the assessment that the legislation has already been excessive before the reforms of 14 July 2022.

The excessive nature of the legislation will be exacerbated by the reforms of 14 July 2022. Especially the extension of espionage under Article 276 and therefore of “high treason” under Article 275 of the Criminal Code to information “that can be used against the Armed Forces of the Russian Federation” makes journalistic work during the ongoing war of the Russian Federation against Ukraine impossible: In the digital era, any publicly available information can be accessed from almost any point in the world – including Ukraine. The scope of the amendment is uncertain – also reports on general activities of the President, being the Commander in chief of the Russian Armed Forces, can be seen as potentially causing a threat for the Armed Forces. The risk of abuse in order to further silence criticism is enormous.

Furthermore, the Rapporteur condemns in particular the introduction Article 275.1 of the Criminal Code criminalising “co-operation” with representatives of foreign States, foreign and international organisations. As the wording of Article 275.1 of the Criminal code is very vague, a potential broad application of the norm in the law enforcement practice can lead to the incrimination of any participation of civil society in any international context involving officials or even public servants in general from abroad. Thus, contact with this very OSCE expert mission – if not disclosed publicly or to Russian authorities – potentially endangers Russian civil society interlocutors regardless of their place of residence. Any international monitoring operation – even by organisations the Russian Federation is a member State of, such as the OSCE – can fall under the application of the norm. Should this norm indeed receive such an application, this would constitute a direct violation of Article 9 (4) of the UN

³⁹⁵ Istanbul 1999.

³⁹⁶ Vienna 1989.

³⁹⁷ Copenhagen 1990.

³⁹⁸ VC 2014 Opinion on Foreign-Agent-Legislation, pp. 24 et seq.

Declaration on Human Rights Defenders³⁹⁹ enshrining everyone’s right, “individually and in association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms”.

As the cases of individual application have shown, “vague and overbroad”⁴⁰⁰ terms of the State security legislation are used to target journalists and researchers in particular.⁴⁰¹ An important chilling effect is also present for civil society in general⁴⁰² – especially following the 2022 reform. The UN Human Rights Committee condemns invoking treason and national security laws “to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information”⁴⁰³ as a violation of Article 19 ICCPR.

6) Legislation on “Propaganda of Non-Traditional Sexual Relationships”

The LGBTQI+ community in Russia is under constant pressure because it does not conform to the officially propagated "family values". The conditions for the life of LGBTQI+ individuals differ from region to region.⁴⁰⁴ However, some common trends can be identified.

a) Definition, Law and Practice

On 29 June 2013 Article 14 of the Federal Law no. 124-FZ of 24 July 1998 “On the Main Guarantees of the Rights of the Child in the Russian Federation” was amended.⁴⁰⁵ It introduced the term “information promoting non-traditional sexual relationships”. The provision states that the Government authorities should take measures to protect children

³⁹⁹ UN General Assembly Resolution no. A/RES/53/144, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms.

⁴⁰⁰For Art. 275 CC, see “Russia: ‘Crimes Against History’”, https://www.fidh.org/IMG/pdf/russie-_pad-uk-web.pdf, p. 48.

⁴⁰¹ The UN Human Rights Committee already criticised this in 2003, see UN Human Rights Committee, Concluding Observations of the Human Rights Committee: the Russian Federation, 1 December 2003, UN Doc. CCPR/CO/79/RUS, para. 21.

⁴⁰² See i.e. UN Committee against Torture, Concluding Observations on the Fifth Periodic Report of the Russian Federation, adopted by the Committee at its Forty-Ninth Session (29 October-23 November 2012), 11 November 2012, UN Doc CAT/C/RUS/CO/5, para. 12.

⁴⁰³ UN Human Rights Committee, General comment no. 34, 12 September 2011, UN Doc. CCPR/C/GC/34, para. 30.

⁴⁰⁴ See for a comprehensive analysis of the disastrous situation of the LGBTQI+ community in Chechnya: OSCE Rapporteur’s Report under the Moscow Mechanism on alleged Human Rights Violations and Impunity in the Chechen Republic of the Russian Federation, 2018.

⁴⁰⁵ Federal Law no. 135-FZ of 29 June 2013 “On Amendments of the Federal Law on the Protection of Children from Information Harmful to Their Health and Development and Certain Legislative Acts of the Russian Federation to Protect Children from Information Promoting Denial of Traditional Family Values” (hereinafter Law on Propaganda of Non-Traditional Sexual Relationships).

against such information. Similar provisions already existed at the regional level.⁴⁰⁶ Additionally, it introduced Article 6.21 (1) to the CAO which states:

“The promoting of non-traditional sexual relationships among minors, expressed in the dissemination of information aimed at creating in minors a non-traditional sexual orientation, promoting the attractiveness of non-traditional sexual relationships, creating a distorted image of the social equivalence of traditional and non-traditional sexual relationships, or imposing information about non-traditional sexual relationships, arousing interest in such relationships, if these activities do not contain acts punishable under criminal law,- shall be subject to the imposition of an administrative fine, ranging from 4,000 to 5,000 roubles for citizens; from 40,000 to 50,000 roubles for officials; and, for legal entities, a fine ranging from 800,000 to 1,000,000 roubles or an administrative suspension of their activities for up to 90 days.” If the offence is committed through individuals can be fined up to 100,000 roubles according to Article 6.21 (2) CAO.”

The Russian Constitutional Court declared the provision of the CAO for constitutional as it intends to protect constitutionally significant values such as the family and childhood. It should safeguard the health of minors and their moral and spiritual development. The Court argued that the necessary balance between the rights of minors and the rights of sexual minorities could be reached as only public actions are deemed to be unlawful which were intended to disseminate such information.⁴⁰⁷

The prohibition to “propagate non-traditional relationships”, however, is broadly applied as the Russian authorities consider nearly everything connected with gender and LGBTQI+ as propaganda. This affects, in particular, assemblies and associations in support of the LGBTQI+ community. Assemblies and pickets get frequently banned or dissolved and are not sufficiently protected by the State against counter-demonstrators. Furthermore, the registration of an association dealing with LGBTQI+ rights is difficult to receive, which leads to violations of international human rights standards.⁴⁰⁸

On 18 July 2022 a new draft law was proposed which prohibits the dissemination of information denying family values and propagating non-traditional sexual relationships *inter alia* in the internet and in cinema.⁴⁰⁹

b) Evaluation

“(…) [T]he OSCE should continue to raise awareness and develop measures to counter

⁴⁰⁶ See for an already existing legal analysis Venice Commission, Opinion on the Issue of the Prohibition of so-called “Propaganda of Homosexuality” in the light of recent Legislation in some Member States of the Council of Europe, 18 June 2013, CDL-AD(2013)022.

⁴⁰⁷ Constitutional Court of the Russian Federation, decision no. 24-P of 23 September 2014.

⁴⁰⁸ See the cases UN Human Rights Committee, Alekseev v. Russia, 25 October 2013, Communication No. 1873/2009 and ECtHR, Bayev and others v. Russia, 20 June 2017, app. nos. 67667/09 et al; ECtHR, Alekseyev v. Russia, 21 October 2010, app. nos. 4916/07 et al.; ECtHR, Zhdanov and others v. Russia, 16 July 2019, app. nos. 12200/08 et al.; ECtHR, Berkman v. Russia, 1 December 2020, app. no. 46712/15.

⁴⁰⁹ Draft Federal Law no. 165975-8 “On Amendments to Certain Legislative Acts of the Russian Federation Relating to the Prohibition of Information Promoting Non-Traditional Sexual Relations”.

prejudice, intolerance and discrimination, while respecting human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to *inter alia* race, colour, sex, language, religion or belief, political or other opinion, national or social origin, property, birth or other status (...)."⁴¹⁰

Under OSCE human dimension commitments not only the law in itself but also its broad and arbitrary application is troubling. The legislative ban on the promotion of homosexuality or non-traditional sexual relationships among minors effectively bans all available means of public communication and expression of LGBTQI+ rights. Therefore, it contributes to fomenting prejudices, intolerance and discrimination in the society and hampers the realisation of human rights of LGBTQI+ individuals.

The European Court of Human Rights found that the law in question violates freedom of expression and constitutes a discrimination. It states that the law does "(...) not serve to advance the legitimate aim of the protection of morals, and that such measures are likely to be counterproductive in achieving the declared legitimate aims of the protection of health and the protection of rights of others. Given the vagueness of the terminology used and the potentially unlimited scope of their application, these provisions are open to abuse in individual cases, (...) Above all, by adopting such laws the authorities reinforce stigma and prejudice and encourage homophobia, which is incompatible with the notions of equality, pluralism and tolerance inherent in a democratic society."⁴¹¹

The Law is also constantly criticised by the United Nations treaty bodies as it "exacerbate[s] the negative stereotypes against LGBTQI+ individuals and represents a disproportionate restriction of their rights under the Covenant (...)."⁴¹² This is in particular true as serious concerns were raised to such interferences on the ground of public morality.⁴¹³

The Rapporteur notes with great concern the developments in Russia in this area. The new draft law of July 2022 bans any form of life from the public sphere that does not correspond to the officially propagated family values.

7) Legislation on the Protection of Religious Feelings

a) Definition, Law and Practice

The adoption of the Law on Propaganda of Non-Traditional Sexual Relationships (see above) coincided with a reform of Article 148 of the Criminal Code and Article 5.26 of the Code of Administrative Offences.⁴¹⁴

⁴¹⁰ Thirteenth Meeting of the Ministerial Council of the OSCE, 5-6 December 2005, MC13EW66, para. 4.

⁴¹¹ ECtHR, Bayev and others v. Russia, 20 June 2017, app. nos. 67667/09 et al., para. 83.

⁴¹² UN Human Rights Committee, Concluding Observations on the seventh periodic report of the Russian Federation, 28 April 2015, UN Doc. CCPR/C/RUS/CO/7, para 10.

⁴¹³ UN General Assembly, Report of the Special Rapporteur on the Promotion and Protection of the Right to freedom of Opinion and Expression, Irene Khan, 30 July 2021, UN Doc A/76/258, para. 28.

⁴¹⁴ Federal Law no. 136-FZ of 29 June 2013 "On Amendments to Art. 148 of the Criminal Code of the Russian Federation and Certain Legislative Acts of the Russian Federation Aiming at Counteracting Insults to Religious Convictions and Feelings of Citizens".

While Article 5.26 (2) CAO punishes *inter alia* “intentional public desecration of [...] objects of religious veneration” (including churches), Article 148 (1) of the Criminal Code punishes “public actions expressing an obvious disrespect for society committed for the purpose of insulting religious feelings of believers” in general. The punishment is serious.⁴¹⁵

The following examples illustrate that the legal provisions are applied in practice to any form of mockery about religion and lead to very harsh sentences. Two years and three months suspended sentence are given for the posting of a video on Pokémon in church,⁴¹⁶ a fine of 15,000 roubles for a gay couple kissing in front of a church in the outskirts of St. Petersburg,⁴¹⁷ ten months imprisonment for a photo on the imitation of oral sex in front of the St. Basil Cathedral on the Red Square;⁴¹⁸ a condemnation to compulsory labour for photos of women in front of churches or with icons (partially or completely) naked.

b) Evaluation

“The Ministerial Council [...] undertakes to endeavour to prevent and protect against attacks directed at any religious group, whether on persons or on places of worship or religious objects”⁴¹⁹

OSCE commitments allow restrictions of human rights in order to protect attacks on religious groups. The Russian Federation also stresses that the behaviour criminalised by Article 148 of the Criminal Code “poses a danger to public order, since it violates the traditional and religious norms established by society over many centuries and its ethical standards, is contrary to morality, has serious consequences and is clearly antisocial.”⁴²⁰ While the protection of public order and morals is a legitimate aim, the Russian Federation has, nevertheless, has to respect the “notions of equality, pluralism and tolerance inherent in a democratic society”.⁴²¹ The legislation and the practical application have always to take into account the value of freedom of expression and not to defend what is understood as “religious feelings” in a one-sided manner. Similar concerns have been raised by the European Court of Human Rights for the “Pussy Riot Case” of 2011, a case that was decided before Article 148 of the Criminal Code entered into force.⁴²²

⁴¹⁵ It can be *inter alia* a fine of up to 300,000 roubles and imprisonment of up to one year. Article 148 (2) contains a qualification if the deed is committed in “places specifically designated for religious services, other religious rites and ceremonies” allowing a punishment of up to 500,000 Roubles or imprisonment of up to three years.

⁴¹⁶ “Russian blogger gets 3.5-year suspended sentence for ‘catching Pokemon’ in church”, <https://tass.com/society/945404>.

⁴¹⁷ “Court Rules on Offence Against Religious Feelings” (Russian), <https://comingoutspb.com/news/sud-vynes-reshenie-po-delu-ob-oskorblenii-chuvstv-veruyushchikh/>.

⁴¹⁸ “Sentence Handed Down in Moscow in Case of Photo with Simulated Oral Sex in Front of a Church” (Russian), <https://ovd.news/express-news/2021/10/29/v-moskve-vynesli-prigovor-po-delu-o-fotografii-s-imitaciy-oralnogo-seksa-na>.

⁴¹⁹ Porto 2002.

⁴²⁰ UN Human Rights Committee, Eighth report submitted by the Russian Federation under article 40 of the Covenant, due in 2019, 8 April 2019, UN Doc. CCPR/C/RUS/8, para. 286.

⁴²¹ ECHR, Bayev and others v. Russia, 20 June 2017, app. no. 67667/09, para. 83.

⁴²² See ECtHR, Mariya Alekhina and others v. Russia, 17 July 2018, app. no. 38004/12.

The application of Article 148 (1) of the Criminal Code, as shown above, often shows a lack of consideration of freedom of expression. The provision is used extensively against persons who criticise, albeit sometimes through the use of graphic means, the Orthodox Church's approach to sexual orientation and sexuality in general. Even though in some cases the defendants' behaviour might shock (even if this can hardly be said for most of the aforementioned cases) or cause a negative reaction, the fundamental character of freedom of expression and the exceptional nature of restrictions have to be observed. Russian legal practice, however, systematically sees the combination of nudity or so-called "non-traditional" sexual orientations with ecclesiastic objects and symbols as a criminal action; criminal persecution in this area therefore has a clear gender bias. Criminal persecution for participation in a public debate on conservative values in Russia, publicly and successfully promoted by the Orthodox Church, the biggest religious organisation in Russia, is excessive.

For being criminalised, it might be sufficient to show the picture of a church in a different context. Thus, the "traditional and religious norms established by society over many centuries and its ethical standards" are enforced by criminal law far beyond what religious norms protect. The principle of proportionality is not applied in protecting freedom of expression.

8) Legislation on Slander and Defamation

a) Definition, Law and Practice

The Russian Law contains several defamation laws. Article 5.61 CAO as general defamation provision penalises insults with a fine of up to 200,000 roubles.⁴²³ In 2012 libel and slander were re-criminalised through the introduction of Article 128.1 CC allowing sanctions of up to 500,000 roubles and one million roubles or imprisonment up to one year if the act is committed through mass media or the internet.⁴²⁴

The Federal Law of 18 March 2019 supplemented, *inter alia*, Article 20.1 with parts (3)-(5) CAO. It introduces new administrative offences for disseminating in information and telecommunication networks, including the Internet, information "in an indecent form offending human dignity and public morals, or showing clear disrespect for society, the State, official State symbols of the Russian Federation, the Constitution of the Russian Federation or the bodies exercising State power". Violations can be fined with 30,000 roubles up to 300,000 roubles or administrative arrest for a period of up to fifteen days.⁴²⁵

⁴²³ Introduced by Federal Law no. 420-FZ of 7 December 2011 "On Amendments to the Criminal Code of the Russian Federation and Certain Legislative Acts of the Russian Federation".

⁴²⁴ Federal Law no. 141-FZ of 28 July 2012 "On Amendments to the Criminal Code of the Russian Federation and Certain Legislative Acts of the Russian Federation"; latest revision of Art. 128.1 CC through Federal Law no. 538-FZ of 30 December 2020 "On Amending Article 128.1 of the Criminal Code of the Russian Federation"; additionally, the CC foresees further provision criminalizing defamations, insults and slander, e. g. Art. 298.1, 319 CC.

⁴²⁵ Federal Law no. 28-FZ of 18 March 2019 "On Amendments to the Code of Administrative Offences of the Russian Federation".

b) Evaluation

The participating States reaffirm that everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards.⁴²⁶

The UN Human Rights Committee raised its concerns about the re-criminalisation of libel and slander in 2012 because the “laws appear to be incompatible with the Covenant, as the necessity of the imposed restrictions and the proportionality of the response appear not to meet the strict requirements of article 19 (3) of the Covenant.”⁴²⁷ It noted that imprisonment should never be an appropriate penalty for defamation. Even if the 2012 introduced criminal provision was rarely used against journalists and activists, it cannot be denied that its mere existence could lead to a chilling effect on freedom of expression.⁴²⁸ This is particularly true in regard to the latest amendments in 2019. In fact, due to its broad wording it could lead to a chilling effect in regard to every criticism directed against the government or State authorities. It could also serve as a ground to prosecute journalists and critics of the State authorities.⁴²⁹

IV) Mass Media and Internet – Legislation and Practice

“[The participating States] further recognise that independent media are essential to free and open society and accountable systems of government and are of particular importance in safeguarding human rights and fundamental freedoms.”⁴³⁰

1) Constitutional Guarantees

The constitutional guarantee of pluralism and freedom of mass communication, enshrined in Article 13 para. 1 and 2 and Article 29 para. 5 of the Russian Constitution of 1993, reads as follows:

Article 13 para. 1 and 2:

- “1. In the Russian Federation ideological diversity shall be recognised.
2. No ideology may be established as State or obligatory one.”

Article 29 para. 5:

⁴²⁶ Copenhagen 1990, para. 9.1.

⁴²⁷ UN Human Rights Committee, Concluding observations on the seventh periodic report of the Russian Federation, 28 April 2015, UN Doc. CCPR/C/RUS/CO/7; on the re-criminalisation also OSCE Representative on Freedom of the Media, Press Release, 12 July 2012, <https://www.osce.org/fom/92106>.

⁴²⁸ “Information on the human rights situation in Russia for the OSCE’s Moscow Mechanism”, <https://reports.ovdinfo.org/information-human-rights-situation-russia-osces-moscow-mechanism#3-6>.

⁴²⁹ For example, OSCE Representative on Freedom of the Media, Press Release, 27 August 2003, <https://www.osce.org/fom/55559> under the old libel provision.

⁴³⁰ Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, 26.

“5. The freedom of mass communication shall be guaranteed. Censorship shall be banned.”

The provisions have never been amended.⁴³¹

Restrictions are possible as foreseen under Article 55 of the Constitution.⁴³²

2) Legislation on Mass Media

a) Definition, Law and Practice

The Russian mass media landscape is mainly regulated by the Law on Mass Media which was adopted on 27 December 1991.⁴³³ The Law on Mass Media, drafted during the *glasnost* era, was seen as clearly “democratic” and as a cornerstone fostering media freedom.⁴³⁴ Article 1 explicitly states that no other restrictions shall be imposed than those foreseen in the legislation on mass media and, therefore, reflects Article 29 (5) of the Russian Constitution. However, since its adoption it has undergone several changes culminating in a mosaic with strong repressive elements.

According to Article 2 Law on Mass Media⁴³⁵ the term “mass medium” is rather broad including traditional mass media such as newspapers, television and radio channels as well as network publications like Internet websites. The definition also applies to individual journalists. However, the public opinion is still mainly shaped by television as 67 per cent of the respondents of a survey conducted by the Yuri Levada Analytical Centre in April 2022 get their local and international news from television compared to 39 per cent from social networks and 32 per cent from internet media. However, the trust in the media varies widely as 52 per cent trust the most in television compared to 17 per cent each in social networks and internet media.⁴³⁶

According to Article 8 Law on Mass Media, mass media outlets have to register with Roskomnadzor, the main body responsible for the execution of mass media, mass communication and information technology and communication regulations.⁴³⁷ Registration is a prerequisite for getting a licence to broadcast. According to Article 7 Law on Mass Media organisations whose activities are forbidden in the Russian Federation as well as citizens of a

⁴³¹ See above on the specific procedure for amendment under Article 135 of the Constitution.

⁴³² See above.

⁴³³ Federal Law no. 2124-I of 27 December 1991 “On Mass Media” (hereinafter Law on Mass Media).

⁴³⁴ Council of Europe Commissioner for Human Rights, Report, 20 April 2005, CommDH(2005)2, paras. 416, 417.

⁴³⁵ As amended through no. 142-FZ Federal Law of 14 June 2011 “On Introducing Amendments to Certain Legislative Acts of the Russian Federation in Connection with the Improvement of Legal Regulation of the Mass Media”.

⁴³⁶ “Internet, Social Networks and Blocking”, <https://www.levada.ru/en/2022/05/27/internet-social-networks-and-blocking/>.

⁴³⁷ In Russian: Федеральный орган исполнительной власти, осуществляющий функции по контролю и надзору в сфере средств массовой информации, массовых коммуникаций, информационных технологий и связи (the word-to-word translation is “Federal Executive Body responsible for monitoring and supervising the mass media, mass communication, information technology and communications”).

foreign State are not allowed to found a mass media outlet.⁴³⁸ Currently, 151,422 media outlets are registered.⁴³⁹

The mere number of mass media should not distract from the fact that the situation of the media and journalists in Russia has deteriorated over the last twenty years.⁴⁴⁰ This development can be subdivided in three phases.

aa) Increase of State Influence over Traditional Mass Media

The first phase is characterised by an increased State Influence over traditional mass media without legal basis.

In the early 2000s television channels were the most influential media. In order to shape public opinion, the Russian State increased its influence over the television landscape through different means leading to the result that nowadays the Russian State owns or controls almost all federal television channels.⁴⁴¹

For example, the NTV channel formerly owned by Vladimir Gusinskiy was purchased by Gazprom in 2001 when it was one of the most popular channels in Russia.⁴⁴² In 2002 TV 6, an independent federal TV channel, was first put into liquidation after its bankruptcy and then restructured and renamed (TVS). TVS was finally closed on the grounds of “bad management and financial crisis” in June 2003.⁴⁴³

The Rapporteur got information about the foundation of State-controlled media holdings and agencies uniting local newspaper and TV channels since 2010.⁴⁴⁴ They are fully funded and controlled by regional governments, who have decisive influence on the published content. Former independent media outlets were pushed into those holdings with financial incentives.

bb) Limitation of Foreign Influence in the Mass Media Sector

The second phase, starting from 2014, is characterised by the endeavours of the Russian State to limit foreign Influence in the media sector.

Thus, Federal Law no. 343-FZ established the requirement of government approval for foreigners investing in publications of “strategic importance”, i.e. publications with a specific

⁴³⁸ In particular the activities of “undesirable organisations” and “extremist organisations”, see above.

⁴³⁹ See <https://rkn.gov.ru/mass-communications/reestr/media/> (as of 24 August 2022).

⁴⁴⁰ Since 2010 Russia deteriorated in rank in the Press Freedom Index compiled by Reporters without Borders from rank 140 to rank 155 out of 180 states in 2022, see <https://rsf.org/en/index?year=2022>.

⁴⁴¹ “Who Owns the Media in Russia: the Leading Holdings”, https://www.bbc.com/russian/russia/2014/07/140711_russia_media_holdings.amp; Russian Media Landscape - 2021, <https://www.levada.ru/2021/08/05/rossijskij-medialandshaft-2021/>.

⁴⁴² See ECtHR, *Gusinskiy v. Russia*, 10 May 2004, app. no. 70276/01.

⁴⁴³ Council of Europe Commissioner for Human Rights, Report, 20 April 2005, CommDH(2005)2, para. 427.

⁴⁴⁴ E.g. Don-Media in the Rostov region or RIA in the Voronezh region.

circulation volume.⁴⁴⁵ On 14 October 2014 Article 19.1 of the Law on Mass Media was amended limiting direct or indirect foreign participation in Russian media to 20 per cent.⁴⁴⁶ As a result, the former foreign co-owners of the independent newspaper *Vedomosti* had to sell their shares.⁴⁴⁷ Six years later, on 1 July 2021, Article 19.1 Law on Mass Media was again amended introducing the obligation that shareholders of media outlets who exceed the maximum amount of 20 per cent have to alienate their surplus shares.⁴⁴⁸ The same amendment made it impossible for foreign States, international organisations, foreign legal entities, for a Russian legal entity with foreign participation as well as foreign citizens to act as a founder or to be in the editorial office or to act as editor of a mass media outlet.

On 21 July 2014 Article 14.1 of the Law on Advertising was introduced.⁴⁴⁹ It forbids advertisement on paid TV channels. This prohibition does not apply to Pay-TV channels which distribute at least 75 per cent “national products” and if the content is in Russian language (in the event the product is intended for the Russian mass media), produced by a Russian citizen or by organisation registered in Russia or on request of Russian mass media, and Russian investments into its production constitute no less than 50 per cent. Recently, the distribution of foreign periodical print publications without permission by Roskomnadzor was prohibited. Violations can be fined according to Article 13.21 CAO with 1,000 to 30,000 roubles with confiscation of the foreign periodical.⁴⁵⁰

In November 2017 Federal Law no. 327-FZ introduced a separate register requirement for foreign mass media.⁴⁵¹ The Law amended Article 6 (3) and (4) of the Law on Mass Media using the term ‘foreign mass media’. For mass media registered in a foreign State and receiving funds or other property from foreign States the Law on “Foreign Agents” should apply. As a consequence, they have the legal status of “foreign agents” and the respective duties and obligations apply to them.⁴⁵²

The Law on foreign mass media was amended on 2 December 2019.⁴⁵³ It broadened the definition in Article 6 (7) of “foreign mass media performing functions as a ‘foreign agent’” so as to include any (also natural) person who “gets funds or other property from foreign States and their organs, international and foreign organisations, foreign citizens, stateless

⁴⁴⁵ Federal Law no. 343-FZ of 5 February 2014 “On Amendments to the Law on the Procedure for Foreign Investment in Business Entities of Strategic Importance for National Defense and State Security”.

⁴⁴⁶ Federal Law no. 305-FZ of 14 October 2014 “On Amendments to the Russian Federation Law on Mass Media”.

⁴⁴⁷ “‘Vedomosti,’ one of Russia’s Most Respected Independent Newspapers, is Reportedly Losing its Foreign Owners”, <https://meduza.io/en/news/2015/11/13/vedomosti-one-of-russia-s-most-respected-independent-newspapers-is-reportedly-losing-its-foreign-owners>.

⁴⁴⁸ Federal Law no. 263-FZ of 1 July 2021 “On Amendments to the Russian Federation Law on Mass Media”.

⁴⁴⁹ Federal Law no. 270-FZ of 21 July 2014 “On Amending Article 14 of the Federal Law ‘On Advertising’” as amended through Federal Law no. 5-FZ of 3 February 2015 “On Amending Article 14 of the Federal Law on Advertising”.

⁴⁵⁰ Federal no. 143-FZ Law of 17 June 2019 “On Amendments to Article 13.21 of the Code of Administrative Offences of the Russian Federation”.

⁴⁵¹ Federal Law no. 327-FZ of 25 November 2017 “On Amendments to Articles 10.4 and 15.3 of the Federal Law ‘On Information, Information Technologies and Information Protection’ and Article 6 of the Russian Federation Law ‘On Mass Media’”.

⁴⁵² On the foreign agent legislation see above.

⁴⁵³ Federal Law no. 426-FZ of 2 December 2019 “On Amendments to the Federal Law ‘On Mass Media’ and the Federal Law ‘On Information, Information Technologies and Information Protection’”.

persons or persons mandated by them, foreign agent media, Russian legal entities created by foreign agent media, Russian legal entities that are getting funds or other property from aforementioned sources, or Russian legal entities created by those foreign media.”

Since 2017 47 independent mass media outlets have been declared “foreign mass media” and therefore “foreign agents”, e. g. TV Rain/Dozhd, Radio Liberty, the newspaper “Novaya Gazeta” as well as the news website Meduza. Since the amendment of the definition of a “foreign agent” in 2019, 123 individual journalists have been declared as “foreign agents”.⁴⁵⁴

Additionally, according to the new Article 25.1 (1)-(3) of the Law on Mass Media, foreign mass media outlets not registered on Russian territory are obliged to create a Russian legal entity within one month of the declaration of the status as a “foreign agent”. Article 25.1 (8)-(10), 27 (7) of the Law on Mass Media and Article 7 of the Federal Law no. 149-FZ of 27 July 2006 “On Information, Information Technologies and Information protection” (hereinafter Law on Information) impose different obligations to indicate the classification of a foreign mass media as “foreign agent” and the content distributed by them as stemming from a “foreign agent”. If mass media outlets do not comply with this labelling requirement, they can be fined up to 50,000 roubles under Article 13.15 (2.4) CAO.⁴⁵⁵ If foreign mass media outlets do not comply with the procedure regulating their activities defined in the Law on Non-Commercial Organisations, they can be fined up to 5 million roubles according to Article 19.34.1 CAO.⁴⁵⁶ On the same grounds and if they were previously held liable based on the CAO, they can be sanctioned with up to 300,000 roubles or imprisonment up to two years according to Article 330.1 (2) CC.

On 12 January 2021, Roskomnadzor sent first notices for not labelling their articles as produced by a “foreign agent” to the media outlets Radio Free Europe/Radio Liberty, Current Time TV, and the regional news websites Sibir.Realii and Idel.Realii.⁴⁵⁷

At the same time, Law no. 426-FZ amended the Law on Information by supplementing Article 10.7 of the Law on Information with the prohibition to disseminate material without indicating that the material stem from foreign mass media performing the function of a “foreign agent”. Article 15.9 of the Law on Information was supplemented accordingly with a procedure for restricting access to products of these media outlets.

The new Law on “Foreign Agents” entering into force on 1 December 2022 will abolish the Laws on Foreign Mass Media.⁴⁵⁸ Instead of having different registers for different types of

⁴⁵⁴ See for an extended list: <https://data.ovdinfo.org/agents/>.

⁴⁵⁵ Federal Law of no. 102-FZ 30 April 2021 “On Amendments to the Code of Administrative Offences of the Russian Federation”.

⁴⁵⁶ Federal Law no. 443-FZ of 16 December 2019 “On Amendments to the Code of Administrative Offences of the Russian Federation”.

⁴⁵⁷ “Russian Regulator Announces Fines for RFE/RL Outlets under Expanded Foreign Agent Law” <https://cpj.org/2021/01/russian-regulator-announces-fines-for-rfe-rl-outlets-under-expanded-foreign-agent-law/>; “Russian Watchdog Takes First Step toward Punishing RFE/RL under ‘Foreign Agents’ Law”, <https://www.rferl.org/a/russia-radio-free-europe-radio-liberty-foreign-agents-law/31043799.html>; “Administrative Offence Protocols were Filed For Mass Media Foreign Agents” (Russian), https://rkn.gov.ru/news/rsoc/news73270.htm?utm_source=cpj.org&utm_medium=referral&utm_campaign=cpj.oor&utm_referrer=cpj.org.

⁴⁵⁸ Federal Law of 14 July 2022 no. 255-FZ “On the Control of Activities of Persons under Foreign Influence”.

“foreign agents”, it establishes one single registry. However, the severe consequences of being classified as a “foreign agent” will still apply to foreign mass media outlets which are listed in the registry.⁴⁵⁹

cc) Suppression of Independent Mass Media through Content-Related Pressure

In the third phase, the Russian State focussed on content-related restrictions. Those developments were already depicted above.⁴⁶⁰ This part will focus on the amendments to the Law on Mass Media adopted in this context.

According to Article 16 of the Law on Mass Media the activities of a mass media outlet may be suspended or terminated by court decision if the mass media outlet violated Article 4 of the Law on Mass Media repeatedly within twelve months.⁴⁶¹ Roskomnadzor has to inform the mass media outlet in form of written warnings about the violation.

Article 4 of the Law on Mass Media was constantly amended during the last twenty years allowing the suspension or termination of activities of mass media outlets on broad and vague terms, *inter alia*:⁴⁶²

- The dissemination of extremist material⁴⁶³ and distribution of material containing public appeals to carry out terrorist activities or publicly justifying terrorism (Article 4 (1)).⁴⁶⁴
- The dissemination of material containing “obscene language” (Article 4 (1)).⁴⁶⁵ The same Law introduced Article 13.21 CAO which provides for fines up to 100,000 roubles for mass media products containing obscene foul language.
- The dissemination of material and information of organisations, associations or individuals which are listed as “foreign agents” without labelling them as “foreign agents” in the mass media or in information and telecommunication networks (Article 4 (9)).⁴⁶⁶

⁴⁵⁹ On the foreign agent legislation see above.

⁴⁶⁰ See above under freedom of expression.

⁴⁶¹ Additionally, Art. 16.1 Law on Mass Media introduced on 4 July 2003 provides for the suspension of a mass medium for violating the legislation of the Russian Federation on elections and referendums, see Federal Law no. 94-FZ of 4 July 2003 “On Amendments and Additions to Certain Legislative Acts of the Russian Federation in Connection with the Adoption of the Federal Act on Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in Referendums”.

⁴⁶² As to the legal evaluation of the grounds, see above on freedom of expression.

⁴⁶³ Introduced in Art. 4 (1) Law on Mass Media through Federal Law no. 153-FZ of 27 July 2006 “On the Introduction of Amendments to Certain Legislative Acts of the Russian Federation in Connection with the Adoption of the Federal Law “On Ratification of the Council of Europe Convention on the Prevention of Terrorism” and the Federal Law ‘On Counteracting Terrorism’”; on extremism see above.

⁴⁶⁴ Federal Law no. 153-FZ of 27 July 2006 “On the Introduction of Amendments to Certain Legislative Acts of the Russian Federation in Connection with the Adoption of the Federal Law ‘On Ratification of the Council of Europe Convention on the Prevention of Terrorism’ and the Federal Law ‘On Counteracting Terrorism’”.

⁴⁶⁵ Federal Law no. 34-FZ of 5 April 2013 “On Amending Article 4 of the Russian Federation Law on Mass Media and Article 13.21 of the Russian Federation Code of Administrative Offences”.

⁴⁶⁶ Federal Law no. 481-FZ of 30 December 2020 “On Introducing Amendments to Certain Legislative Acts of the Russian Federation Regarding the Establishment of Additional Measures Against Threats to National Security”.

Additionally, to the grounds mentioned in the Law on Mass Media, Article 16 (4) of the Law on Mass Media refers to the procedure in the Federal Law on Combating Extremist Activities for terminating activities of a media outlet.⁴⁶⁷ Article 8 and 11 of the Law on Combating Extremist Activities foresee a similar procedure with warnings which can lead to the termination of activities if the media outlet does not comply with the prohibition to disseminate extremist material or if they engage themselves in extremist activities.⁴⁶⁸

Based on those grounds, Roskomnadzor sent two warnings within one year to Novaya Gazeta on 10 October 2014 as well as on 21 July 2015.⁴⁶⁹ The first warning was based on an article allegedly including “extremist material”, the latter case concerned the use of foul language. On 1 February 2019, the activities of the regional newspaper Novye Kolyesa Igorya Rudnikova in Kaliningrad were terminated through decision of the Kaliningrad Regional Court after the newspaper received two warnings from Roskomnadzor.⁴⁷⁰ The newspaper acted as medium of the local opposition in Kaliningrad and reported about shortcomings of the local government.

After the war started, repressions against mass media reached a peak. The increased pressure against independent media was triggered in particular by the fear of criminal prosecution after the introduction of the “fake news” and discreditation legislation in regard to the Armed Forces which made a coverage of the war impossible.⁴⁷¹

Therefore, on 28 March 2022, the Novaya Gazeta announced to cease operation after it had already received two warnings within one year.⁴⁷² The Novaya Gazeta Europe relocated and continued its work from Riga with 57 employees and three based in Berlin. Other media were blocked, like the websites of TV Rain (Doshd / Дождь) on 1 March 2022 and the radio station Echo of Moscow after receiving a blocking order of the Prosecutor General because both media posted content calling for extremist activities and violence as well as posting knowingly false information about the “special military operation”.⁴⁷³ After this, Echo of Moscow was closed down by the State-affiliated media company Gazprom-Media. TV Rain decided to cease operations in Russia and moved to Riga where it continues its work on

⁴⁶⁷ Federal Law no. 112-FZ of 25 July 2002 “On Amendments and Additions to Legislative Acts of the Russian Federation in Connection with the Adoption of the Federal Act on Combating Extremist Activities”.

⁴⁶⁸ On extremism see above.

⁴⁶⁹ “Vedomosti.ru: Roskomnadzor Issued a Second Warning to ‘Novaya Gazeta’” (Russian), <https://rkn.gov.ru/press/publications/news33674.htm>; Roskomnadzor filed a lawsuit seeking to invalidate Novaya Gazeta's registration as a media outlet with the Basmany District Court of Moscow on 26 July 2022, Novaya Gazeta announced to appeal against those warnings, “‘Novaya Gazeta’ is being closed down the old-fashioned way” (Russian), <https://www.kommersant.ru/doc/5482255>.

⁴⁷⁰ OSCE Representative on Freedom of the Media, Press Release, 4 February 2019, at <https://www.osce.org/representative-on-freedom-of-media/410726>.

⁴⁷¹ For further examples and the legal bases see above.

⁴⁷² “RKN Issued a Second Warning to ‘Novaya Gazeta’ for Mentioning a Foreign Agent NGO Without Labelling” (Russian) <https://tass.ru/politika/14204289?>; OSCE Representative on Freedom of the Media, Twitter Statement, 28 March 2022, at https://twitter.com/OSCE_RFoM/status/1508476184358752266.

⁴⁷³ <https://t.me/genprocrf/1721>; <https://twitter.com/tvrain/status/1498713892628824065>; <https://twitter.com/tvrain/status/1549037747532623873>; “Prosecutor General Demanded Limiting the Access to ‘Dozhd’ and ‘Ekho Moskv’” (Russian), <https://tass.ru/obschestvo/13921819?>; OSCE Representative on Freedom of the Media, Press Release, 3 March 2022, <https://www.osce.org/representative-on-freedom-of-media/513334>.

particular via YouTube, which is still accessible in Russia.⁴⁷⁴ Chief-editor of the independent news website Holod, Taisia Bekbulatova, who is also declared as an individual “foreign agent” since 2021, moved to Tbilisi when the “fake news” legislation was adopted.⁴⁷⁵

On 14 July 2022 Article 3.4 of the Federal Law of 28 December 2012 no. 272-FZ⁴⁷⁶ was supplemented.⁴⁷⁷ It assigns the competence to the Prosecutor General to ban the activities of a foreign mass media outlet registered in the territory of a foreign State and disseminating its products in the Russian Federation if the activities of a Russian mass media outlet was banned or restricted in a foreign State before. The ban could not only encompass the dissemination of material but also the termination of the accreditation of correspondents, the closure of existing offices, a ban on opening offices or the termination of registration or broadcasting licenses as well as freezing money transactions.

Even before the Law entered into force, on 3 February 2022, the Russian Ministry of Foreign Affairs’ announced retaliatory measures against the German media outlet Deutsche Welle, *inter alia*, the closure of its offices, the revocation of the accreditation of all employees as well as the termination of its satellite and other broadcasting.⁴⁷⁸ The Russian authorities decided to take this step after the German Commission for Admission and Supervision (ZAK) denied Russian Today (RT DE) the license to broadcast in Germany.

On 14 July 2022 Article 56.2 of the Law on Mass Media was also supplemented.⁴⁷⁹ It assigns the competence to the Prosecutor General and his or her deputies to suspend the activities of any mass media outlet for three months without a court decision. A suspension includes that the editorial board, the editor-in-chief, journalists, the publisher and the distributor of the media outlet shall not be entitled to carry out their activities. If repeated violations occur, the complete closure of the mass media outlet is possible. The grounds on which the Prosecutor General can base his order are manifold. They reach from unreliable information in regard to the Russian Armed Forces or State bodies performing their powers outside the Russian territory, information showing clear disrespect to the society, the State, official State symbols, the Constitution or bodies exercising State power, information discrediting the Russian Armed Forces to information containing calls for organising unauthorised public events or participation therein, the mass violations of public order or public security, or calls for imposing sanctions on the Russian Federation.

⁴⁷⁴ “Russian independent TV Rain Relaunches from Abroad”, <https://www.reuters.com/business/media-telecom/russian-independent-tv-rain-announces-relaunch-abroad-2022-07-18/>; “Proposed Russian Legislation Threatens 15 Years in Prison for Fake Information about Ukraine Invasion”, <https://cpj.org/2022/03/proposed-russian-legislation-threatens-15-years-in-prison-for-fake-information-about-ukraine-invasion/>; OSCE Representative on Freedom of the Media, Statement, 3 March 2022, at <https://www.osce.org/representative-on-freedom-of-media/513334>.

⁴⁷⁵ “Censor Yourself or Don’t Work At All. Why Squeezed Russian Journalists Are Fleeing in Droves”, <https://cpj.org/2022/03/censor-yourself-or-dont-work-at-all-why-squeezed-russian-journalists-are-fleeing-in-droves/>.

⁴⁷⁶ Federal Law no. 272-FZ of 28 December 2012 “On Measures to Influence Persons Involved in Violations of Fundamental Human Rights and Freedoms, Rights and Freedoms of Citizens of the Russian Federation”.

⁴⁷⁷ Federal Law no. 277-FZ of 14 July 2022 “On Amendments to Certain Legislative Acts of the Russian Federation”.

⁴⁷⁸ OSCE Representative on Freedom of the Media, Press Release, 4 February 2022, at <https://www.osce.org/representative-on-freedom-of-media/511438>.

⁴⁷⁹ Federal Law no. 277-FZ of 14 July 2022 “On Amendments to Certain Legislative Acts of the Russian Federation”.

As consequence of the massive blocking of news websites and social media, Telegram has become a platform widely used in Russia by independent media outlets to broadcast news. However, the financing of independent media is becoming more and more of a problem. On 22 August 2022, news project TJournal announced it will have to stop operating due to financial difficulties caused by its blocking by Roskomnadzor.⁴⁸⁰

b) Evaluation

“[The participating States] further recognise that independent media are essential to free and open society and accountable systems of government and are of particular importance in safeguarding human rights and fundamental freedoms.”⁴⁸¹

The Rapporteur recalls the summary of the developments in the last twenty years culminating in the repressive actions taken in connection to the war by the OSCE Representative on the Freedom of the Media of 19 May 2022:

“(…) in our midst – in the region where we committed ourselves to approach security as a shared concept inclusive of human rights and media freedom – a frightening information black hole has opened. With an information infrastructure completely under control of the government and no room for other news than the State-controlled one, the people in the Russian Federation are left completely deprived from some of their most fundamental rights: their freedom to seek and receive information of all kinds, and their freedom to share their opinions and to express themselves.”⁴⁸²

This assessment represents the preliminary endpoint to a development which was characterised by take-overs of independent mass media through State-owned or -controlled companies and associations as well as repressions against independent mass media. The limitation of foreign influence in the mass media sector since 2014 further restricted the public’s right of access to information from foreign news and information services and hinders the cross-border flow of information which OSCE member States “consider to be an essential component of any democratic, free and open society”⁴⁸³.

⁴⁸⁰ “The History of TJ Ends” (Russian), <https://tjournal.ru/team/714914-istoriya-tj-zavershaetsya>.

⁴⁸¹ Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE 1991, 4 October 1991, para. 26. This general evaluation is spelled out in more detail in the following provisions of the document also with a view to the exchange with foreign countries: “[The participating States] consider that the print and broadcast media in their territory should enjoy unrestricted access to foreign news and information services. The public will enjoy similar freedom to receive and impart information and ideas without interference by public authority regardless of frontiers, including through foreign publications and foreign broadcasts. Any restriction in the exercise of this right will be prescribed by law and in accordance with international standards.” (idem, 26.1).

⁴⁸² OSCE Representative on Freedom of the Media, Regular Report to the Permanent Council, 19 May 2022, FOM.GAL/3/22/Rev.1/Corr.1*), p. 4, https://www.osce.org/files/f/documents/f/b/518631_1.pdf; also OSCE Representative on Freedom of the Media, Press Release, 15 July 2022, at <https://www.osce.org/representative-on-freedom-of-media/522880>.

⁴⁸³ OSCE Representative on Freedom of the Media, Press Release, 16 April 2019, at <https://www.osce.org/representative-on-freedom-of-media/417365>.

In this regard, the Rapporteur reminds of the Joint Statement of the UN, ACHR, ItACHR and the OSCE where they noted that access blocking and bans of media outlets because of disinformation could lead to disproportionate restrictions of freedom of expression. This is particularly true if the Russian Federation uses (as has been seen in the above analysis) the shutdown of Russian State-owned media abroad as a pretext to close independent media outlets in Russia. She recalls that “[p]romoting access to diverse and verifiable information, including ensuring access to free, independent and pluralistic media, is a more effective response to disinformation.”⁴⁸⁴

The restrictions imposed, in particular following the beginning of the war, led to a crackdown of the remaining independent media in Russia bringing about a “State monopoly on information in the Russian Federation”.⁴⁸⁵ International institutions condemned the restrictions on freedom of expression and media freedom, and ordered immediate measures, but were not successful.⁴⁸⁶ Many independent media outlets had to cease operations and, those journalists who could afford to go abroad⁴⁸⁷ relocated in Georgia, Latvia, Lithuania, Germany, Poland, and a few other countries in the EU and now work from there. The independent journalists who remain in the Russian Federation lead courageous lives, try to work like "partisans" and provide information to their colleagues in exile.

3) Legislation on Internet

a) Definition, Law and Practice

The Russian Government perceives the internet as a threat to national sovereignty and to the security of citizens, society and the State as western influence, computer attacks from the territory of foreign States and terrorist and extremist content on the internet are increasing. The discomfort is amplified as transnational (Western) companies and foreign States restrict, *inter alia*, access to Russian media and, therefore, impose on internet users, “[f]or political reasons, a distorted view of historical facts, as well as of events taking place in the Russian Federation and in the world (...).”⁴⁸⁸ Therefore the National Security Strategy sets up guidelines aiming at ensuring information security through limiting foreign influence on the (Russian) internet and monitoring Russian internet users.

⁴⁸⁴ Joint Statement on the Invasion of Ukraine and the Importance of Freedom of Expression and Information, 2 May 2022, at <https://www.osce.org/representative-on-freedom-of-media/517107>.

⁴⁸⁵ See OSCE Representative on Freedom of the Media, Press Release, 3 March 2022, at <https://www.osce.org/representative-on-freedom-of-media/513334>.

⁴⁸⁶ ECtHR granted interim measures claiming that the Russian Federation should refrain from “actions and decisions aimed at full blocking and termination of the activities of Novaya Gazeta, and from other actions that in the current circumstances could deprive Novaya Gazeta of the enjoyment of its rights guaranteed by Art. 10 of the Convention”, ECtHR, ANO RID Novaya Gazeta and others v. Russia, 10 March 2022, app. no. 11884/22.

⁴⁸⁷ “The Project” calculates that at least 504 journalists have left Russia over the last year, most of them after the beginning of the war of aggression, “Novy Mir. A Guide to Russian Media in the Times of Total Censorship”, <https://www.proekt.media/en/guide-en/russian-media-after-war-en/>.

⁴⁸⁸ Decree of the President of the Russian Federation no. 400 of 2 July 2021 “On the National Security Strategy of the Russian Federation”, paras. 48-57; see also Decree of the President of the Russian Federation no. Pr-1895 of 9 September 2000; Decree of the President of the Russian Federation no 646 of 5 December 2016.

In 2017 Article 10.4 of the Law on Information was supplemented requiring news aggregators, like search engines, who disseminate news in Russian language, which have more than one million daily users, to proof the accuracy and legality of the information provided and to stop them from being disseminated if they are unreliable or unlawful. Additionally, Article 10.4 (12) requires that only a Russian legal entity or individual may be the owner of a search engine. Violations of these obligations are penalised under Article 13.32 CAO including fines of up to one million roubles.⁴⁸⁹

In response to perceived increasing external and internal extremist threats especially through the internet, on 1 May 2019, the Law on the “Sovereign Internet” introduced internet surveillance measures.⁴⁹⁰ The law provides for a national internet traffic system which allows the controlling of Russian web traffic and data. It also provides for the development of a national Domain Name System (DNS). In addition, Roskomnadzor was given more powers in monitoring internet control, the management of public communication networks, and in regard to access restrictions to information deemed illegal under Russian Law.

On 12 February 2020 the Russian Government issued a decree allowing Roskomnadzor to slow down the traffic on popular internet platforms if a platform disseminates content which poses a threat to the countries’ security or is prohibited under Russian law,⁴⁹¹ it used the competence the first time against Twitter.⁴⁹²

The fact that foreign influence via internet is perceived as a threat to Russian interests became all the more visible when the so-called “Law on Landing” entered into force on 1 July 2021.⁴⁹³ It targets exclusively foreign natural and legal persons carrying out internet activities on the Russian territory. According to Article 5 they have to register at Roskomnadzor, which is also responsible for the enforcement of these obligations. Foreign persons have to establish a Russian legal entity. The law includes in Article 9 coercive measures to safeguard the fulfilment of the obligations reaching from bans on the distribution of advertising of the foreign entity, a ban on search engines to the complete restriction of access to the information resource.

Since the beginning of the war, the repressive measures against Western internet platforms have increased. On 25 February 2022 Roskomnadzor announced that it will start to restrict partially access to Facebook,⁴⁹⁴ and blocked it almost completely until 4 March 2022.⁴⁹⁵ At

⁴⁸⁹ Federal Law no. 208-FZ of 23 June 2016 "On Amendments to the Federal Law 'On Information, Information Technologies and Information Protection' and the Code of Administrative Offences of the Russian Federation" as amended through Federal Law no. 327-FZ of 25 November 2017 "On Amendments to Articles 10.4 and 15.3 of the Federal Law 'On Information, Information Technologies and Information Protection' and Article 6 of the Russian Federation Law 'On Mass Media'".

⁴⁹⁰ Federal Law no. 90-FZ of 1 May 2019 "On Amendments to the Federal Law on Information, Information Technology and Information Protection".

⁴⁹¹ Decree of the Government of the Russian Federation no. 127 of 12 February 2020 "On Approval of the Rules for Centralised Management of the Public Telecommunications Network".

⁴⁹² "Russia slows down Twitter over 'banned content'", <https://www.bbc.com/news/world-europe-56344304>.

⁴⁹³ Federal Law no. 236-FZ of 1 July 2021 "On the Activities of Foreign Persons in the Information and Telecommunication Network Internet".

⁴⁹⁴ OSCE Representative on Freedom of the Media, Press Release, 27 February 2022, <https://www.osce.org/representative-on-freedom-of-media/513064>.

this time Russian internet users also mentioned difficulties in accessing Twitter and Instagram.⁴⁹⁶ The blocking was justified as a countermeasure in reaction to discriminatory behaviour of Facebook against Russian media since October 2020 as Facebook restricted access for its part to, *inter alia*, RIA Novosti news agency, Russia Today, Lenta.ru and Gazeta.ru.⁴⁹⁷ The actions against Meta culminated in the classification of Meta as an extremist organisation on 28 March 2022 banning the activities of Facebook and Instagram on the Russian territory.⁴⁹⁸ On 20 August 2022 Roskomnadzor announced that it had taken coercive measures against TikTok Pte. Ltd., Telegram Messenger, Inc., Zoom Video Communications, Inc., Discord, Inc. and Pinterest, Inc. in the form of informing Internet search engines of the companies' violations of Russian law as they did not comply with the procedure to remove prohibited content established by the Law on Landing.⁴⁹⁹

b) Evaluation

“Participating States should take action to ensure that the Internet remains an open and public forum for freedom of opinion and expression, as enshrined in the Universal Declaration of Human Rights, and to foster access to the Internet both in homes and in schools (...).”⁵⁰⁰

In addition, there is a commitment to “ensure the basic conditions for (...) unimpeded transborder and intra-State flow of information (...).”⁵⁰¹

The recent legislation concerning the internet⁵⁰² as well as the actions taken against foreign internet platforms are contrary to these OSCE commitments. Instead of safeguarding the function of the internet, and in particular social network sites as important means for communication and information, as an open and public forum for freedom of opinion and expression, the recent developments create an internet environment controlled by the Russian State. Internet surveillance mechanisms as well as shutting down foreign internet platforms violate the right of individuals to seek, receive and impart information, isolating

⁴⁹⁵ The blocking was based on Federal Law no. 272-FZ of 28 December 2012 "On Measures to Influence Persons Involved in Violations of Fundamental Human Rights and Freedoms, Rights and Freedoms of Citizens of the Russian Federation".

⁴⁹⁶ OSCE Representative on Freedom of the Media, Press Release, 27 February 2022, <https://www.osce.org/representative-on-freedom-of-media/513064>.

⁴⁹⁷ <https://rkn.gov.ru/news/rsoc/news74156.htm>.

⁴⁹⁸ Tverskoy District Court of Moscow, decision no. 02-2473/2022 of 28 March 2022, published by https://mediapravo.com/wp-content/uploads/Delo-02-2473_2022.-Motivirovannoe-reshenie.-dokument-obezlichennaya-kopiya.pdf; see also above.

⁴⁹⁹ “Roskomnadzor takes Action Against a Number of Foreign IT Companies” (Russian), <https://rkn.gov.ru/news/rsoc/news74460.htm>.

⁵⁰⁰ Sofia 2004, para. 1.

⁵⁰¹ Istanbul 1999, para. 26.

⁵⁰² See for further developments, not mentioned in this report: OSCE Representative on Freedom of the Media, Press Release, 14 July 2015, <https://www.osce.org/fom/172561>; OSCE Representative on Freedom of the Media, Press Release, 23 April 2014, <https://www.osce.org/fom/117950>; OSCE Representative on Freedom of the Media, Press Release, 20 December 2013, <https://www.osce.org/fom/109885>; OSCE Representative on Freedom of the Media, Press Release, 10 July 2012, <https://www.osce.org/fom/92023>.

them from international sources and hampering the free flow of information.⁵⁰³ This conclusion is highlighted by Article 19 ICCPR which guarantees the right to freedom of expression including the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers.

4) Website Blocking

a) Definition, Law and Practice

Since 2012 several amendments to the Law on Information have been adopted allowing in particular access restrictions on websites. The procedure foreseen in the main provisions (Article 15 et seq. of the Law on Information) varies widely. Some provisions do require prior notice of the owner of a website, whereas other provisions allow immediate restriction of a website even without a court order.

In July 2012 Article 15.1 of the Law on Information was supplemented creating a registry based at Roskomnadzor for websites containing information whose dissemination is prohibited by law.⁵⁰⁴ Prohibited information include, for example, pornographic material of minors, information on how narcotic drugs were manufactured and used, and information about how to commit suicide. If a website is “blacklisted” the owner of the website has to remove the prohibited content upon notice. If he or she does not follow the order, access to the website can be restricted.

However, since its introduction in December 2013,⁵⁰⁵ Article 15.3 of the Law on Information is the centrepiece for website blocking measures. It allows Roskomnadzor upon order of the Prosecutor General or his or her deputies to immediately order the blocking of websites without court order. The procedure set out in Article 15.3 of the Law on Information is unique as contrary to Article 15.1 of the Law on Information a prior notice to the website owner is not necessarily required.⁵⁰⁶ Therefore, it is impossible for the owner of a website to provide evidence to circumvent the blocking. Furthermore, Roskomnadzor has the discretion to define the procedure based on the severity of the infringing content. The range of measures ranges from a notice to the website owner to remove a specific content to the sending of an order directly to the telecommunication service to immediately block a website. The time-frame for the access blocking is also determined by Roskomnadzor.

The grounds contained in the provision are very broad. Access restrictions are possible, *inter alia*, for websites with information containing calls for mass disorders, extremist activities and participation in public mass events held in violation of the established procedure as well

⁵⁰³ See OSCE Representative on Freedom of the Media, Press Release, 14 February 2019, <https://www.osce.org/representative-on-freedom-of-media/411464>.

⁵⁰⁴ Federal Law no. 139-FZ of 28 July 2012 “On Amendments to the Federal Law on the Protection of Children from Information Harmful to their Health and Development and Certain Legislative Acts of the Russian Federation on Restricting Access to Illegal Information on the Internet”.

⁵⁰⁵ Federal Law no. 398-FZ of 28 December 2013 “On Amendments to the Federal Law on Information, Information Technologies and the Protection of Information”.

⁵⁰⁶ Art. 15.1 (13) of the Law on Information explicitly states that the procedure set in Art. 15.1 of the law should not apply to the information mentioned in Art. 15.3 of the law.

as for websites containing material of illegal organisations, e.g. undesirable and extremist organisations. This list of grounds was supplemented in recent years.

Shortly after the entry into force of Federal Law no. 398-FZ Roskomnadzor issued the first blocking orders to the media outlets of the Daily Journal (Ezhednevny Zhurnal), Grani.ru and Kasparov.ru on 14 March 2014.⁵⁰⁷ Roskomnadzor justified its blocking stating that articles and publications published on Daily Journal and Grani.ru about the Bolotnaya square protests of 6 May 2012 called for the participation in illegal mass events. Kasparov.ru called in one of the articles on the Crimean population to resist the Russian annexation of Crimea.

On 18 March 2019 the “fake news” laws as well as defamation laws were adopted.⁵⁰⁸ Article 15.3 of the Law on Information was amended in line with the prohibition of the dissemination of “knowingly unreliable information of public significance” so as to include removal and access restrictions for violations of Article 13.15 (9)-(11) CAO.⁵⁰⁹

On this basis several websites were blocked during the COVID-19 pandemic. For example, on 29 April 2020, Roskomnadzor restricted access to the medical news platform Vademecum upon order of the Prosecutor General. Vademecum published an article about the procedure for settling payments for the provision of medical care to patients affected with COVID-19 and others diseases, who are hospitalised in Moscow, and cited a letter of the Moscow City Insurance Fund allegedly spreading intentional false information.⁵¹⁰

On 18 March 2019, Article 15.1-1 was added to the Law on Information. It corresponds to the introduction of administrative offences in Article 20.1 (3)-(5) CAO sanctioning the dissemination of information “in an indecent form offending human dignity and public morals, clear disrespect for society, the State, official State symbols of the Russian Federation, the Constitution of the Russian Federation or the bodies exercising State power”.⁵¹¹ After receiving an order from the Prosecutor General or his or her deputies Roskomnadzor should notify the hosting provider who is then obliged to inform the owner of the website. The latter has to delete the respective content within one day. If he or she refuses, or if he or she does not act, the telecommunication service provider has to delete the content or to restrict access to the website.

On 30 December 2021 Article 15.3 of the Law on Information was once again extended allowing access restrictions for websites containing false reports of acts of terrorism and information justifying extremist activities as well as terrorist activities.⁵¹²

⁵⁰⁷ See ECtHR, *OOO Flavus and others v. Russia*, 23 June 2020, app. nos. 12468/15 et al., para. 7; see also the unverified list of blocked websites by Sova, “Resources in the Registry of Websites Blocked under the Lugovoi Law” (Russian), <https://www.сова-center.ru/racism-xenophobia/docs/2014/10/d30228/>.

⁵⁰⁸ See above.

⁵⁰⁹ Federal Law no. 31-FZ of 18 March 2019 “On Amendments to Art. 15.3 of the Federal Law on Information, Information Technology and Information Protection”.

⁵¹⁰ OSCE Representative on Freedom of the Media, Press Release, 2 May 2020, at <https://www.osce.org/representative-on-freedom-of-media/451324>.

⁵¹¹ Federal Law, no. 30-FZ of 18 March 2019 “On Amendments to the Federal Law on Information, Information Technology and Information Protection”.

⁵¹² Federal Law no. 441-FZ of 30 December 2021 “On Amending Article 15.3 of the Federal Law ‘On Information, Information Technologies and Information Security’ and Articles 3 and 5 of the Federal Law ‘On Amending Certain Legislative Acts of the Russian Federation’”.

The Law of 14 July 2022 allowed access restrictions based on Article 15.3 of the Law on Information for “false information about the Russian Armed Forces of the Russian Federation or the performance by State bodies of their powers outside the Russian territory”.⁵¹³ The same is true for the “discreditation of Russian Armed Forces and State agencies exercising its functions outside the territory of the Russian Federation” as well as for websites containing “calls for imposing sanctions against the Russian Federation”.

But even before the adoption of this law, the access to 3,000 websites were restricted in the period between the start of the war on 24 February 2022 and 5 May 2022,⁵¹⁴ including Russian and Ukrainian news websites like Current Time (part of RFE/RL), DOXA, The Village, Gordon, Correspondent.Net, Ukrainskaya Pravda, TSN, 24TV, Segodnya, Ukrinform, Leviy Bereg, Fakty, Zaxid.net, Zerkalo Nedeli, Censor.net, Vesti.ua and others.⁵¹⁵ As of 23 August 2022, more than 7,000 websites were blocked because of allegedly false information about the war.⁵¹⁶

The same law of 14 July 2022 supplemented Article 15.3-2 to the Law on Information providing for permanent access restrictions through Roskomnadzor based on an order from the Prosecutor General or his or her deputies for websites which repeatedly contained information listed in Arts. 15.1, 15.1-1, 15.3 or 15.3-1 Law on Information.⁵¹⁷

In 2014 Article 15.4 and Article 15.5 of the Law on Information were supplemented broadening the grounds on which access restricting measures could be taken. However, the procedure is different from the one envisaged in Article 15.3 requiring prior notice of a violation and a court decision or a decision of an authorised federal executive body.

Article 15.4 was introduced with the so-called “Law on Bloggers”, which introduced several obligations for “bloggers” with more than 3,000 daily users, *inter alia*, to verify the accuracy and reliability of information posted. In addition, the Law introduced a new category of websites (“organiser of the distribution of information”) requiring to store information of internet user activities for six months on Russian territory and provide the information to law enforcement agencies.⁵¹⁸ Article 13.31 CAO stipulates administrative fines if the “organisers” do not comply with these obligations after a first warning was issued. This law

⁵¹³ Federal Law no. 277-FZ of 14 July 2022 “On Amendments to Certain Legislative Acts of the Russian Federation”.

⁵¹⁴ “Internet blocks as a tool of political censorship”, <https://reports.ovdinfo.org/internet-blocks-tool-political-censorship#1>.

⁵¹⁵ OSCE Representative on Freedom of the Media, Press Release, 3 March 2022, <https://www.osce.org/representative-on-freedom-of-media/513334>; “The Project” estimates that at least 95 information resources were blocked after the beginning of the war of aggression, “Novy Mir. A Guide to Russian Media in the Times of Total Censorship”, <https://www.proekt.media/en/guide-en/russian-media-after-war-en/>.

⁵¹⁶ “About 7,000 Internet resources have been blocked during six months of military censorship. The big overview” (Russian), <https://roskomsvoboda.org/post/polgoda-voyennoi-cenzury/>.

⁵¹⁷ Federal Law no. 277-FZ of 14 July 2022 “On Amendments to Certain Legislative Acts of the Russian Federation”.

⁵¹⁸ Federal Law no. 97-FZ of 5 May 2014 „On Amendments to the Federal Law On Information, Information Technologies and Information Protection and Certain Legislative Acts of the Russian Federation on Streamlining“.

imposes high burdens on internet users as it equates bloggers in regard to their obligations with mass media.⁵¹⁹

Article 15.5 allows Roskomnadzor to restrict access to websites not complying with the obligations in Article 18, 22 and 23 of the Federal Law of 27 July 2006 no. 152-FZ “On Personal Data”, e. g. to store personal data of Russian nationals inside of Russia.⁵²⁰ For these purposes a register with websites violating the personal data law is established. Additionally, a law on the “right to be forgotten” entered into force on 1 January 2016 and broadened the possibilities to remove content.⁵²¹ It allows Russian citizens to file a de-listing application if links about them are inaccurate, out of date, or irrelevant because of subsequent events or actions taken. However, the provision does not foresee an exception for information which is in the public interest.

Roskomnadzor restricted access to LinkedIn because it failed to comply with the data protection law in 2016.⁵²² The “right to be forgotten” has been used by public officials to remove online content addressing their misconduct and/or corruption.⁵²³

If hosting service providers do not comply with an access restriction order they can be fined up to eight million roubles according to Article 13.41 CAO.⁵²⁴ On 27 January 2021, in connection with the 2021 protests, the social networking sites Facebook, Instagram, Twitter, TikTok, VKontakte, Odnoklassniki and YouTube were fined for not removing calls to minors to participate in unauthorised rallies.⁵²⁵ On 18 July 2022 Google LLC was fined 21 billion roubles by Court ruling as the company did not restrict access on YouTube to a whole range of prohibited content, in particular, “fake news” about the “special military operation” in Ukraine discrediting the Russian Armed Forces and material promoting extremism and terrorism.⁵²⁶

b) Evaluation

“(…) in accordance with the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights and their relevant international commitments

⁵¹⁹ OSCE Representative on Freedom of the Media, Press Release, 23 April 2014, <https://www.osce.org/fom/117950>.

⁵²⁰ Federal Law no. 242-FZ of 21 July 2014 „On Amendments to Certain Legislative Acts of the Russian Federation in Part Clarifying the Procedure for Processing Personal Data in Information and Telecommunication Networks“.

⁵²¹ Federal Law no. 264-FZ of 13 July 2015 “On Amendments to the Federal Law ‘On Information, Information Technologies and Data Protection’ and Art. 29 and 402 of the Civil Procedure Code of the Russian Federation”.

⁵²² “LinkedIn blocked by Russian authorities”, <https://www.bbc.com/news/technology-38014501>; „Russia blocks access to LinkedIn over Foreign Held Data“, <https://www.theguardian.com/world/2016/nov/17/russia-blocks-access-to-linkedin-over-foreign-held-data>.

⁵²³ “Information on the human rights situation in Russia for the OSCE’s Moscow Mechanism”, <https://reports.ovdinfo.org/information-human-rights-situation-russia-osces-moscow-mechanism#3-7>.

⁵²⁴ Introduced into the CAO through Federal Law no. 511-FZ of 30 December 2020 "On Amendments to the Code of Administrative Offences of the Russian Federation".

⁵²⁵ “Russia to Fine Social Media Giants For Keeping Up Pro-Navalny Videos”, <https://www.themoscowtimes.com/2021/01/27/russia-to-fine-social-media-giants-for-keeping-up-pro-navalny-videos-a72756>.

⁵²⁶ https://t.me/rkn_tg/282.

concerning seeking, receiving and imparting information of all kinds, [the participating States] will ensure that individuals can freely choose their sources of information. In this context they will (...) allow individuals, institutions and organisations (...) to obtain, possess, reproduce and distribute information material of all kinds.”⁵²⁷

Website blockings affect many rights and freedoms in particular freedom of expression and freedom to receive information as well as media freedom. According to international human rights standards an interference is justified only if it meets very specific conditions.

Restrictions have to meet the legality standard, meaning they must be “prescribed by law”. For this requirement it is not sufficient that a law is formally enacted. The law must also be sufficiently clear, accessible and foreseeable. Additionally, any restriction must pursue a legitimate aim and has to be proportionate.

The extension of the grounds allowing access restriction measures in the last years and the procedure envisaged in Article 15.3 on the Law on Information requiring no prior notice and no court order are unlikely to meet those standards.

The European Court of Human Rights has already stated that Article 15.1 and Article 15.3 of the Law on Information do not meet the standards stipulated in Article 10 (2) ECHR. They are not “sufficiently foreseeable” and their application “carries a risk of content being blocked arbitrarily and excessively”⁵²⁸ as they do not provide “safeguards capable of protecting individuals from excessive and arbitrary effects of blocking measures”.⁵²⁹ Furthermore, the legal grounds for access restrictions are too vague and broad⁵³⁰ and no effective judicial review is established.⁵³¹ This is particularly true if they lead to collateral blockings of other websites sharing the same IP-address.

Furthermore, according to Article 19 ICCPR, entire website blockings with limited or no due process, no notification of the website owner and without prior court decision are contrary to international freedom of expression standards.⁵³² The same is true under OSCE human dimension commitments which explicitly refer to the ICCPR.

In regard to the recent developments in legislation and practice in Russia, it is also regrettable that the Law on Information assigns broad discretionary powers to Roskomnadzor and thus prepares the ground for arbitrary application.⁵³³ These powers are

⁵²⁷ Vienna 1989, para. 34.

⁵²⁸ ECtHR, *Kharitonov v. Russia*, 25 March 2020, app. no. 10795/14, paras. 38, 42, 46; ECtHR, *Engels v. Russia*, 23 June 2020, app. no. 61919/16, para. 34; ECtHR, *OOO Flavus and others v. Russia*, 23 June 2020, app. nos. 12468/15 et al., para. 44.

⁵²⁹ ECtHR, *Kharitonov v. Russia*, 25 March 2020, app. no. 10795/14, paras. 38, 42, 46; ECtHR, *Engels v. Russia*, 23 June 2020, app. no. 61919/16, para. 34.

⁵³⁰ See e.g. the legal analysis of the term “extremist activities” or “false information”, see above; see also OSCE Representative on Freedom of the Media, Press Release, 20 December 2013, <https://www.osce.org/fom/109885>.

⁵³¹ ECtHR, *Kablis v. Russia*, 30 April 2019, app. nos. 48310/16, 59663/17, paras. 96, 97.

⁵³² See UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Annual Report to HRC, 13 April 2021, A/HRC/47/25.

⁵³³ UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Letter, 1 May 2019, OL RUS 4/2019; OSCE Representative on Freedom of the Media, Press Release, 19 March 2019, at <https://www.osce.org/representative-on-freedom-of-media/414770>.

increasingly used to restrict access to websites of mass media, bloggers and journalists, in particular, after the war started. However, the foundations for excessive website blockings were established long time before.

In conclusion, the application of the Russian legislation in this field leads to a disproportionate restriction of freedom of expression online as well as the right to seek, receive and impart information.⁵³⁴

V) Freedom of Assembly – Legislation and Practice

1) Constitutional Guarantee of Freedom of Assembly

The right to freedom of assembly is enshrined in Article 31 of the Constitution of the Russian Federation, according to which: “Citizens of the Russian Federation shall have the right to assemble peacefully, without weapons, hold rallies, meetings and demonstrations, marches and pickets.” The right to freedom of assembly is subject only to restrictions expressly stipulated in Article 55(3) of the Constitution.

From 1991 until 2004, demonstrations in the Russian Federation were governed by the Decree of the Presidium of Supreme Soviet of 1988, affirmed and adjusted by the 1992 and 1993 presidential decrees.⁵³⁵ In 2004, the Federal Law “On Assemblies, Rallies, Demonstrations, Marches and Picketing” (hereinafter “Law on Assemblies”) was adopted.⁵³⁶ Since then, this law has been amended thirteen times. The following overview and analysis feature key moments in the development of the Russian legislation and practice concerning the freedom of assembly.

2) Definition, Law and Practice

a) Main Features of the 2004 Law on Assemblies

The Law on Assemblies, in its original wording, is based on the notification procedure for public events and does not formally require prior authorisation by the authorities. The organisers are required to submit the notification on holding a public event no earlier than 15 days and no later than ten days before holding the public event (three days before holding collective pickets).⁵³⁷ The single-person pickets are not subject to the notification procedure.⁵³⁸

⁵³⁴ OSCE Representative on Freedom of the Media, Press Release, 26 January 2018, at <https://www.osce.org/fom/368161>.

⁵³⁵ Council of Europe Commissioner for Human Rights, Letter, 21 July 2011, CommDH(2011)31, CommHR/TH/sf 081-2010, para. 2 (hereinafter “2011 Memorandum”).

⁵³⁶ Federal Law no. 54-FZ of 19 June 2004 “On Assemblies, Rallies, Demonstrations, Marches and Picketing”.

⁵³⁷ Art. 7 (1) of the Law on Assemblies.

⁵³⁸ Art. 7 (1) of the Law on Assemblies.

The Law on Assemblies also does not contain any specific provision governing spontaneous assemblies⁵³⁹ – this situation has persisted in the legal regulation of the Russian Federation until today.

While formally, there is no authorisation required, the law foresees that within three days from the receipt of the notification, the authorities are required to deliver to the organisers a “well-motivated” proposal to alter the place or time of holding a public event.⁵⁴⁰ The organisers are then obliged to react to this proposal at latest three days before the event and indicate whether they accept or reject it.⁵⁴¹ The Law on Assemblies then stipulates in Article 5 (5) that the organisers do not have the right to hold a public assembly either when notification is submitted outside of the foreseen timeframe or when “no agreement was reached with the executive authority or the constituent entity of the Russian Federation or local self-government body on the change of the place or time of holding the public event upon its reasoned proposal.”⁵⁴²

When in 2009, the Constitutional Court of the Russian Federation reviewed Article 5 (5) of the Law on Assemblies, it made clear that this provision does not confer on the authorities the right to prohibit the public event; the authorities only have the right to propose changing the place and/or time and such a proposal must be motivated.⁵⁴³ According to the Court, the exhaustive list of the relevant reasons justifying such a proposal “would unreasonably limit the discretion of public authorities in the performance of their constitutional duties.”⁵⁴⁴ Nevertheless, the Court held that the alternative place and/or time should correspond to the event’s social and political objectives.⁵⁴⁵ In case of failure of reaching an agreement on the change of the event’s date or time, the organisers may have recourse to the courts of general jurisdiction (Article 19 of the Law on Assembly), which would review the legality of actions of the public authorities.⁵⁴⁶

b) The 2012-2014 Amendments

The amendments introduced by the Federal Law no. 65-FZ of 8 June 2012⁵⁴⁷ brought major changes to the existing regulation of the right to freedom of assembly in the Russian Federation. These changes can be grouped into several clusters.

First, the 2012 amendments enlarged the scope of persons prohibited from organising public events.⁵⁴⁸

⁵³⁹ Venice Commission, Opinion on the Federal Law No 54-FZ of 19 June 2004 on Assemblies, Meetings, Demonstrations, Marches and Picketing of the Russian Federation, 20 March 2012, CDL-AD(2012)007, para. 36 (hereinafter “VC 2012 Opinion on the Law on Assemblies”).

⁵⁴⁰ Art. 12 (1) (2) of the Law on Assemblies.

⁵⁴¹ Art. 5 (4) (2) of the Law on Assemblies.

⁵⁴² Art. 5 (5) of the Law on Assemblies.

⁵⁴³ Constitutional Court, decision no. 484-OP of 2 April 2009, para. 2.1.

⁵⁴⁴ *Idem*.

⁵⁴⁵ *Idem*.

⁵⁴⁶ *Idem*, para. 2.2; VC 2012 Opinion on the Law on Assemblies, para. 20.

⁵⁴⁷ Federal Law no. 65-FZ of 8 June 2012 “On Amendments to the Code of Administrative Offences of the Russian Federation and the Federal Law ‘On Assemblies, Meetings, Rallies, Marches and Picketing’”.

Second, this law established new duties for the organisers of public assemblies, including taking measures to prevent that the number of participants exceeds the number stipulated in the notification if such excess entails the threat to public order and/or public safety, the safety of participants or risks to damage the property.⁵⁴⁹ Moreover, if the organisers fail to meet their duties stipulated by the law, they bear civil liability for any damage caused during the public event by other participants.⁵⁵⁰ The Constitutional Court of the Russian Federation found this latter provision unconstitutional.⁵⁵¹

Third, under the new provisions, the authorities can now refuse to agree to holding public events in two situations: either in cases when the organiser is a person not allowed to organise the event under the law, or when the venue of the event is defined as an area, where holding of assemblies is prohibited.⁵⁵²

Fourth, according to the new amendment, notification is still not required for single-person pickets; but the local authorities can determine a minimum distance between the single-pickers, which cannot be more than 50 metres.⁵⁵³ The sum of the single-person pickets “united by a single concept and overall organisation” can be declared a public event by the courts⁵⁵⁴ and therefore become ex post the subject of a notification requirement.

Fifth, the 2012 amendments introduce the power of the local authorities to determine additional venues where the holding of public events is prohibited, including when such events disrupt the functioning of vital public utilities, transport or social infrastructure or hinder the movements of pedestrians and/or vehicles.⁵⁵⁵

⁵⁴⁸ This included the persons convicted for the crimes against State security and constitutional order and persons convicted two or more times for the stipulated administrative offences (related to the holding of assemblies) during the time when the execution of the sentence is pending, Art. 5 (2) (1.1) Law on Assemblies (as amended on 8 June 2012).

⁵⁴⁹ Art. 5 (4) (7.1) of the Law on Assemblies (as amended on 8 June 2012). According to a later judgement of the Constitutional Court, the mandatory condition of the administrative liability of the organiser in this scenario is that that “person is directly at fault for the anticipated number of public event participants being exceeded.” Constitutional Court, decision no. 4-P of 14 February 2013; see also Venice Commission, Extracts of the Judgment of the Constitutional Court of the Russian Federation of 14 February 2013 Relating to the Amendments to the Law on Assembly, CDL-REF(2012)012, 12 (hereinafter “VC 2013 Extracts”); see on the duties of organisers already in the original text of the law, VC 2012 Opinion on the Law on Assemblies, para. 41.

⁵⁵⁰ Article 5 (6) of the Law on Assemblies (as amended on 8 June 2012).

⁵⁵¹ VC 2013 Extracts, p. 13.

⁵⁵² Art. 12 (3) of the Law on Assemblies (as amended on 8 June 2012).

⁵⁵³ Art. 7 (1.1) of the Law on Assemblies (as amended on 8 June 2012).

⁵⁵⁴ Art. 7 (1.1) of the Law on Assemblies (as amended on 8 June 2012).

⁵⁵⁵ Art. 8 (2.2) of the Law on Assemblies (as amended on 8 June 2012). The issue of exclusion of certain venues by law was already discussed by VC 2012 Opinion on the Law on Assemblies, para. 34. In 2019 and 2020, the Constitutional Court invalidated local bans on public events in front of buildings of municipal and sub-federal authorities and condemned general bans on assemblies in public places, respectively. See “Russia’s Constitutional Court and Freedom of Assembly”, <https://reports.ovdinfo.org/russias-constitutional-court-and-freedom-assembly#>.

Next, the new law introduced the power of the local authorities to define “specially designated locations” (the so-called “Hyde parks”⁵⁵⁶) which in certain situations may be exempted from the notification requirement.⁵⁵⁷ The law states that when determining such places the objectives of public events, accessibility of the location, compliance with sanitary norms and the like should be taken into account.⁵⁵⁸ As a rule, public events should be held in these areas; holding the events outside of the specifically designated areas is possible only after the agreement with the authorities.⁵⁵⁹ Nevertheless, the law specifies that the authorities can refuse to agree to holding the public assemblies only in the two situations motioned above.⁵⁶⁰ In 2013, the Constitutional Court found the amendment concerning the specially designated places unconstitutional to the extent that it did not establish clear statutory criteria for the local authorities “guaranteeing observance of equal legal conditions for citizens’ exercise of their rights to freedom of peaceful assembly.”⁵⁶¹

In practice, however, according to information provided by human rights NGOs, the specially designated locations are frequently in remote locations without good transport connections and subject to various information requirements (and therefore falling short of the no-notification-procedure, which was originally promoted as the advantage of this concept).⁵⁶² Similarly, the Federal Ombudsman in 2017 said that “[t]he problem is that people are not given the platforms they want for their rallies, but others that are in such remote places that the meaning of the action is lost.”⁵⁶³

Generally, the authorities have applied the Law on Assemblies as amended in a manner that implies authorisation rather than notification procedure.⁵⁶⁴ This was attested, for example,

⁵⁵⁶ “Putin Proposed to Create an Analogue of ‘Hyde Park’” (Russian), <https://www.kommersant.ru/doc/1873572>.

⁵⁵⁷ Art. 8 (1.1) of the Law on Assemblies (as amended on 8 June 2012).

⁵⁵⁸ Art.8 (1.2) of the Law on Assemblies (as amended on 8 June 2012).

⁵⁵⁹ Art.8 (2.1) of the Law on Assemblies (as amended on 8 June 2012).

⁵⁶⁰ Art.8 (2.1) of the Law on Assemblies (as amended on 8 June 2012).

⁵⁶¹ VC 2013 Extracts, p. 15.

⁵⁶² “Russia: No place for protest”, <https://www.amnesty.org/en/documents/eur46/4328/2021/en/>, p. 10; see also “Roadmap of the Ombudsman. Interview with Alexander Shishlov in the Newspaper ‘St Petersburg Vedomosti’” (Russian), https://ombudsmanspb.ru/news/dorozhnaja_karta_ombudsmena_intervju_aleksandra_sh/; broadly; “Special Venues for Rallies: From Idea to Implementation” (Russian), <https://reports.ovdinfo.org/specialnye-ploshchadki-dlya-mitingov#1>.

⁵⁶³ “The Law Does Not Prohibit Children from Going to Rallies” (Russian), <https://www.kommersant.ru/doc/3372715>.

⁵⁶⁴ “Russia: No place for protest”, <https://www.amnesty.org/en/documents/eur46/4328/2021/en/>, pp. 7-10; see also broadly, “The Art of the Ban: How Russian Authorities Refuse Permission for Rallies and Other Protests”, <https://reports.ovdinfo.org/art-ban#1>. In fact, in 2018, the Supreme Court ruled that the authorities’ proposal for alteration of the public event must not be “arbitrary, unmotivated and must contain specific data demonstrating the obvious impossibility of holding this event at the declared place and/or at the declared time due to the need to protect the public interests” (this excludes the inconvenience resulting from the change of traffic routes or movements of pedestrians if the safety conditions are met). Resolution of the Plenary of the Supreme Court no. 28 of 26 June 2018, “On Certain Issues Arising for the Courts When Considering Administrative Cases and Cases of Administrative Offences, Cases Relating to the Application of the Legislation on Public Events”, para. 12. The Court also held that when proposing alteration of the event “the public authorities must offer a specific place and (or) time for the declared public event, ensuring the possibility of achieving legitimate goals of the event and corresponding to its social and political significance.” *Idem*, para. 13.

by the Ombudsman of St. Petersburg who in 2016 admitted that the authorities that “are required to approve the notifications for public events, time and time again reject them on made-up pretexts.”⁵⁶⁵ According to the Federal Ombudsman in 2017, “[d]espite the fact that federal legislation declares the notification procedure for holding public events, the de facto process of choosing the place and time of the event takes on a permissive nature only with the approval of the executive authority of the subject of the Russian Federation or the local government body.”⁵⁶⁶

The Federal Law no. 65-FZ of 8 June 2012 also introduced changes to the CAO. In particular, the fines for the offences of violating the rules governing public assemblies were significantly increased⁵⁶⁷, a new offence was created⁵⁶⁸ and community service was introduced as a possible sanction⁵⁶⁹.

In 2014, the regime on the public assemblies was further restricted, particularly regarding the sanctions. The law introduced as a sanction administrative detention for the administrative offence of violating the rules governing public assemblies.⁵⁷⁰ It also stipulated that the repeated violation of the rules governing the public events may entail new administrative liability.⁵⁷¹

The sanction of administrative detention has been applied with respect to the civil society activists’ involvement in unauthorised public events. As an illustration, in 2018, the human rights activist Lev Ponomarev was convicted for violating the rules governing protests and sentenced to 25 days of administrative detention for posting information about an unauthorised rally aimed to be of peaceful nature.⁵⁷²

Most significantly, under the 2014 amendments, a person can be held criminally liable if that person has committed more than two administrative offences concerning the violation of

⁵⁶⁵ “Roadmap of the Ombudsman. Interview with Alexander Shishlov in the Newspaper ‘St Petersburg Vedomosti’” (Russian), https://ombudsmanspb.ru/news/dorozhnaja_karta_ombudsmena_intervju_aleksandra_sh/.

⁵⁶⁶ “Report on the Activities of the Ombudsman of the Russian Federation for 2016” (Russian), <https://rg.ru/documents/2017/05/17/doklad-dok.html>.

⁵⁶⁷ Art. 1 (3), (6) of the Federal Law no. 65-FZ of 8 June 2012. The Constitutional Court of the Russian Federation demanded that the legislator “make the necessary amendments to the legal regulation of the minimum scales of fines” for the relevant administrative offences. VC 3013 Extracts, p. 17.

⁵⁶⁸ Art. 1 (7), (8) of the Federal Law no. 65-FZ of 8 June 2012 created Art. 20.2.2 CAO (Organisation of a mass simultaneous presence and/or movement of citizens in public places resulting in a breach of public order) and amended Art. 20.2 CAO (Violation of the established procedure for organising or holding assemblies, rallies, demonstrations, marches and picketing).

⁵⁶⁹ Art. 1 (4) of the Federal Law no. 65-FZ of 8 June 2012. According to the Constitutional Court of the Russian Federation the administrative sanction of the community service for the specified offences of may be applied only when the acts “caused damage to human health or the property of a physical individual or corporate entity or the onset of other similar consequences.” Extracts, p. 19.

⁵⁷⁰ See Art. 3 (4), (5) of the Federal Law no. 258-FZ of 21 July 2014 “On Amendments to Certain Legislative Acts of the Russian Federation Regarding the Enhancement of the Legislation on Public Events”.

⁵⁷¹ Art. 20.2 (8), Art. 20.2.2 (4), Art. 19.3 (6) CAO; see Art. 3 (3)-(5) of the Federal Law no. 258-FZ of 21 July 2014.

⁵⁷² Council of Europe Commissioner for Human Rights, Commissioner Calls Upon the Russian Authorities to Release Lev Ponomarev, Statement, 6 December 2018, <https://www.coe.int/en/web/commissioner/-/commissioner-calls-upon-the-russian-authorities-to-release-lev-ponomarev>.

the rules on public events within six months.⁵⁷³ A new provision of the Criminal Code – Article 212.1 – entails the possibility of a prison sentence of up to five years and a fine up to 1 million roubles.⁵⁷⁴ In 2017, the Constitutional Court found this provision constitutional, but required the fulfilment of firm criteria, including the infliction or an “actual threat” of inflicting damage to health, property, environment, public order and safety.⁵⁷⁵

In 2014, the Federal Ombudsman called on the lawmakers to “carefully consider all possible negative consequences of the tightening of liability for infringements” of the rules governing holding of public events.⁵⁷⁶ The Federal Ombudsman claimed that while it was possible to understand the reasoning of the deputies to increase the safety of public events, “in an effort to protect the country from potential upheaval, the initiators of the bill in this version risk achieving the exact opposite effect. The proposed toughening of liability, up to criminal liability, can be described as disproportionate to possible acts.”⁵⁷⁷ The Ombudsman also added that “[p]rohibitions, tightening, and restrictions, persistent struggle with the symptoms rather than with the causes of social ills, always, in the end, lead only to the deepening and sharpening of social problems, radicalisation of protest movements and their derailment from the realm of legality.”⁵⁷⁸ Both, the head of the Presidential Council for Civil Society and Human Rights (in 2016) and the Federal Ombudsman (in 2017) have argued that Article 212.1 should be removed from the Criminal Code.⁵⁷⁹

Nevertheless, the article has been applied in practice. In 2015, the first-ever prosecution and conviction under this article concerned the Moscow activist Ildar Dadin (therefore, Article 212.1 of the Criminal Code is known as “Dadin Article”).⁵⁸⁰ In 2017 the above-mentioned judgement of the Constitutional Court ruled in his favour; ultimately, he was released. Nevertheless, other cases followed.

For example, in October 2019, the Moscow Court of Appeal upheld the criminal sentence of a four-year prison term for the activist Konstantin Kotov for repeated violations of the rules governing public assemblies (in connection with the election-related protests in Moscow in

⁵⁷³ Art. 1 of the Federal Law no. 258-FZ of 21 July 2014.

⁵⁷⁴ Art. 1 of the Federal Law no. 258-FZ of 21 July 2014 The new Article of the Criminal Code is 212.1 (Repeated violation of the established procedure for organising or conducting an assembly, rally, demonstration, march or picket).

⁵⁷⁵ The person can be criminally liable if the violation entailed infliction or the actual threat of inflicting the damage to citizens’ health, property, environment, public order and safety or other values protected by the Constitution; the committed act must have been intentional; the person concerned must have committed at least three administrative offences under Art. 20.2 CAO within the past 180 days and there must have been at least three valid judgements before a new violation of the rules on public events. Constitutional Court of the Russian Federation, decision no. 2-P of 10 February 2017, para. 1 of the operative part of the judgement.

⁵⁷⁶ “Pamfilova Called for an Analysis of the Consequences of the Draft Law Increasing Punishments for Violation of Rules on Assemblies” (Russian), http://www.president-sovet.ru/presscenter/press/pamfilova_prizvala_proanalizirovat_negativnye_posledstviya_zakonoproekta_ob_uzhestochenii_nakazaniya/.

⁵⁷⁷ *Idem*.

⁵⁷⁸ *Idem*.

⁵⁷⁹ “Moskalkova Called for the Abolition of the Article on Violations of Holding Rallies” (Russian), <https://ria.ru/20170227/1488805872.html>; “The Head of the Presidential Human Rights Council Proposed to Remove from the Criminal Code an Article on Repeated Violations at Rallies” (Russian), <https://www.interfax.ru/russia/491985>.

⁵⁸⁰ “Ildar Dadin: Russian Activist Jail Term Quashed”, <https://www.bbc.com/news/world-europe-39050949>.

2019).⁵⁸¹ His sentence was then reduced to a one-and-a-half-year prison term that was served in full.⁵⁸² In 2021, an environmental activist Vyacheslav Yegorov was convicted to 15 months in prison under the same article, which he served.⁵⁸³ In 2020, the Moscow lawmaker Yulia Galyamina was sentenced to two-year sentence on probation under Article 212.1 of the Criminal Code.⁵⁸⁴

Noteworthy, other provisions of the Criminal Code have been used in the context of public protests, notably Article 318 of the Criminal Code (use of violence against public officials).⁵⁸⁵ A survey of the *Novaya Gazeta* has shown that the conduct in political cases under this provision is punished harsher than that in non-political cases.⁵⁸⁶

Questions are also raised regarding the procedural guarantees in judicial proceedings concerning the administrative and criminal liability of protesters.⁵⁸⁷

Regarding the evolution of the legislation, further amendments to the Law on Assemblies have been adopted. For example, under the amendment of 2016 (Federal Law no. 61-FZ of 9 March 2016), the solo picketers with “rapidly erected constructions” became subject of the notification requirement.⁵⁸⁸ From then on, only single picketers without such constructions were not required to submit a notification.

c) The 2020 Amendments

Two laws of December 2020 further restrict the freedom of assembly in the Russian Federation. First, the Federal Law no. 497-FZ of 30 December 2020 modified the previous

⁵⁸¹ “Russia Is Still Penalizing Peaceful Protesters” <https://www.hrw.org/news/2019/10/14/russia-still-penalizing-peaceful-protesters>; “Russia: No place for protest”, <https://www.amnesty.org/en/documents/eur46/4328/2021/en/>, p. 13.

⁵⁸² Idem. See also Constitutional Court of the Russian Federation, decision no. 7-O of 27 January 2020; Andrey Borovikov was sentenced to 400 hours of compulsory labour under the same article. See “Russia: Navalny Supporter Faces Three Years in Jail over Sharing of Rammstein Video”, <https://www.amnesty.org/en/latest/press-release/2021/04/russia-navalny-supporter-faces-three-years-in-jail-over-sharing-of-rammstein-video/>; “The Criminal Prosecution of Arkhangelsk Activist Andrei Borovikov Is Politically Motivated and Unlawful”, https://memohrc.org/en/news_old/criminal-prosecution-arkhangelsk-activist-andrei-borovikov-politically-motivated-and.

⁵⁸³ “Russian Environmental Activist Released!” (Russian), <https://eurasia.amnesty.org/2022/08/08/rossijskij-ekoaktivist-vyacheslav-egorov-vyshel-na-svobodu/>; “Russia Is Still Penalizing Peaceful Protesters”, <https://www.hrw.org/news/2019/10/14/russia-still-penalizing-peaceful-protesters>.

⁵⁸⁴ “Moscow Lawmaker Yulia Galyamina Sentenced to Two Years Probation”, <https://meduza.io/en/news/2020/12/23/moscow-lawmaker-yulia-galyamina-sentenced-to-two-years-probation>.

⁵⁸⁵ “Memorial Considers Olga Bendas, A Person Involved in the ‘Palace Case’ as a Political Prisoner” (Russian), https://memohrc.org/ru/news_old/memorial-schitaet-politzaklyuchyonnoy-figurantku-dvorcovogo-dela-olgu-bendas/; “Memorial: Ilya Pershin, A Participant in the St. Petersburg Rally in Support of Alexei Navalny, Is a Political Prisoner” (Russian), https://memohrc.org/ru/news_old/memorial-uchastnik-peterburgskoy-akcii-v-podderzhku-alekseya-navalnogo-ilya-pershin/; “‘Memorial’ Considers the Man Sentenced for Kicking a FSB Car as a Political Prisoner” (Russian), https://memohrc.org/ru/news_old/memorial-schitaet-osuzhdyonnogo-za-pinki-po-mashine-fsb-politzaklyuchyonnym. (The last case was charged under Art. 167(2) CC).

⁵⁸⁶ “‘If You Come Near Me, I’ll Stick a Pitchfork in Your Throat’” (Russian), <https://novyagazeta.ru/articles/2020/02/13/83892-ya-tebya-zarublyu-musor>.

⁵⁸⁷ See below.

⁵⁸⁸ Art. 7 (1.1) of the Law on Assemblies (as amended on 9 March 2016)..

wording concerning the change of the date and time of the public event. While before, the law was ambiguous regarding the consequences of the rejection of the authorities' proposal, the new law explicitly states that there are only two options. The organiser must inform the authorities in writing at the latest three days before holding a public assembly about accepting the authorities' proposal or rejecting it and cancelling the event under such conditions.⁵⁸⁹

This law also explicitly states that the organiser of the public event does not have the right to hold the event in case of failure to submit the notice within the stipulated time frame, in case of non-acceptance of the authorities' proposal to change the place and/or time of the assembly (previous wording referred to failure to reach agreement on such proposal).⁵⁹⁰ This also applies to the recall of authorisation by the authorities⁵⁹¹ or when the authorities inform the organiser about the impossibility of holding a public event due to a emergency situation, terrorist act or "real threat" of their occurrence.⁵⁹²

The 2020 amendments also allow for the ex-post recognition by court decision of the acts of picketing – in which several persons participate in turn – as a public event⁵⁹³ (and thus requiring prior notification). They also expand the list of places, where the holding of public events is prohibited by law⁵⁹⁴ and specify the duties and prohibitions of journalists covering the public event.⁵⁹⁵

Significantly, the second law of December 2020 (Federal Law no. 541-FZ of 30 December 2020) introduced several funding-related obligations for the organisers of public events. It prohibits funding from certain organisations, notably foreign States, NGOs, international organisations, Russian citizens or entities labelled as "foreign agents", and anonymous donations.⁵⁹⁶

The same law also introduces new rather burdensome financial duties for organisers. Especially, the organisers of public events with the participation of more than 500 people must have a specific account in the Russian bank for fundraising.⁵⁹⁷ The funds received from persons excluded from fundraising must be transferred back to them or the federal budget

⁵⁸⁹ Art. 5 (4) (2) of the Law on Assemblies (as amended on 30 December 2020).

⁵⁹⁰ Art. 5 (5) of the Law on Assemblies (as amended on 30 December 2020).

⁵⁹¹ Art. 5 (5) in connection with Art. 12 (4) (5) of the Law on Assemblies (as amended on 30 December 2020).

⁵⁹² Art. 5 (5) in connection with Art. 12 (7) of the Law on Assemblies (as amended on 30 December 2020).

⁵⁹³ Art. 7 (1.1) of the Law on Assemblies (as amended on 30 December 2020). A similar provision on recognition by the court decision as a public event was also introduced with respect to "mass simultaneous presence and (or) movement of citizens in public spaces, aimed at expressing and forming opinions, making demands on various issues of the country's political, economic, social and cultural life and foreign policy issues.", Art. 7 (1.2) of the Law on Assemblies.

⁵⁹⁴ Art. 8 (2) (3) of the Law on Assemblies (as amended on 30 December 2020).

⁵⁹⁵ See Art. 6 (5), Art. 6 (6), Art. 6(7) of the Law on Assemblies (as amended on 30 December 2020).

⁵⁹⁶ The list includes foreign States or organisations, international organisations or movements, foreign citizens or stateless persons (with the exception of persons residing in the Russian Federation), citizens of the Russian Federation under the age of 16, foreign agents (Russian non-commercial organisations, unregistered public associations and natural persons), anonymous donors and legal entities registered less than a year prior to the transfer. Art. 11 (3) Law on Assemblies (as amended on 30 December 2020).

⁵⁹⁷ Art. 11 (4) of the Law on Assemblies (as amended on 30 December 2020).

(in the case of anonymous donors).⁵⁹⁸ The funds can only be used for the event and any remaining sums must be returned to donors in proportion to their donations within 10 days after the event.⁵⁹⁹ The organisers must submit the report on spending to the authorities after the event.⁶⁰⁰ Violation of these rules may entail liability under the Russian legislation.⁶⁰¹

d) Impact of the COVID-19 Regulations

In the context of the fight against the COVID-19 pandemic, the Russian local authorities took several restrictive measures. On 10 March 2020, the Mayor of Moscow issued a decree banning mass public assemblies of more than 5,000 people.⁶⁰² Other regions soon followed.⁶⁰³ The restrictions on public events have expanded even to the single-person pickets that normally require no prior notification.⁶⁰⁴ According to Amnesty International, while the ban on public protests has been strictly enforced, other mass events (including the concert commemorating Russia's annexation of Crimea in March 2021) have taken place.⁶⁰⁵

In April 2021, the Supreme Court issued a statement, in which it clarified that the newly-introduced crime under Article 207.1 CC ("public dissemination of deliberately false information about the circumstances that pose a threat to the life and safety of citizens") also applies to public assemblies.⁶⁰⁶

A prominent feature of the authorities' response to the protests that have taken place during the validity of the ban on public assemblies (including after the return and arrest of the opposition politician Alexey Navalny in January 2021) was the opening of a criminal cases under the newly amended Article 236 (1) CC (violation of sanitary and epidemiological rules) known as "sanitarnoe delo".⁶⁰⁷ In January-February 2021, several persons (including opposition politicians) were arrested in connection with a criminal investigation under this

⁵⁹⁸ Art. 11 (9) of the Law on Assemblies (as amended on 30 December 2020).

⁵⁹⁹ Art. 11 (10) of the Law on Assemblies (as amended on 30 December 2020).

⁶⁰⁰ Art. 11 (11) of the Law on Assemblies (as amended on 30 December 2020).

⁶⁰¹ Art. 11 (13) of the Law on Assemblies (as amended on 30 December 2020).

⁶⁰² Mayor of Moscow, Decree no. 17-UM of 10 March 2020 "On Amendments to the Decree of the Mayor of Moscow of 5 March 2020, no. 12-UM".

⁶⁰³ "Freedom of Assembly in Russia During the Pandemic: What Happened from March 10 to April 22, 2020", <https://reports.ovdinfo.org/freedom-assembly-russia-during-pandemic#1>.

⁶⁰⁴ "Russia: No place for protest", <https://www.amnesty.org/en/documents/eur46/4328/2021/en/>, pp. 11-12.

⁶⁰⁵ "Russia: Activists Detained under Absurd 'Sanitary Charges' for Social Media Posts in Support of Public Protest", <https://www.amnesty.org/en/documents/eur46/4027/2021/en/>; See e.g. "Dying for a Dose of Putin? With Sagging Rating, Russian President Holds Mask-Optional Rally", <https://www.rferl.org/a/russian-putin-holds-mask-optional-rally/31159976.html>.

⁶⁰⁶ Supreme Court, Review of Certain Issues of Judicial Practice Related to the Application of Legislation and Measures to Counteract the Spread in the Territory of the Russian Federation of Novel Coronavirus Infection (COVID-19) no. 1, 21 April 2020, at <http://www.supcourt.ru/files/28856/>; for an in-depth analysis of the Art. 207.1 CC see above.

⁶⁰⁷ "Russia: Activists Detained under Absurd 'Sanitary Charges' for Social Media Posts in Support of Public Protest", <https://www.amnesty.org/en/documents/eur46/4027/2021/en/>; "Sanitization of the Protest: How Art. 236 of the Criminal Code Became an Instrument of Political Pressure", <https://reports.ovdinfo.org/how-article-236-criminal-code-became-instrument-political-pressure#1>.

article for social media posts calling for public protests (which was seen by the authorities as the incitement to commit the crime under Article 236 (1) CC).⁶⁰⁸

While other restrictions in connection with the COVID-19 have been gradually lifted,⁶⁰⁹ the ban on public assemblies remained in place. Thus, on 14 May 2022, the mayor of Moscow announced the lifting of the requirement of wearing a mask in Moscow as of 15 May 2022.⁶¹⁰ The ban on public assemblies, however, remained in force.⁶¹¹

e) Developments after 24 February 2022

Regarding the legal framework governing freedom of assembly in the Russian Federation at the beginning of anti-war protests, two features are relevant. First, as mentioned above, Russian legislation does not recognize the concept of a spontaneous assembly. Therefore, any public assembly is subject to prior notification. Second, the COVID-19 total bans on public assemblies have continued to be in force, for example, in Moscow, St Petersburg and other cities. In addition, in some cities, the COVID-19 ban on public events, which had been previously lifted, was re-introduced.⁶¹²

Attempts to get authorisation for anti-war protests were not met with success by reference to the COVID-19 regulations.⁶¹³

Against the background of these regulations and practice, the authorities have dispersed the anti-war protests regardless of their peaceful nature.⁶¹⁴

OVD-info reports that in the period from 24 February 2014 to 12 April 2014, the Russian courts ordered 960 arrests relating to protests.⁶¹⁵ In terms of offences, the protesters were held liable under Article 20.2 CAO (for participating in a not-allowed protest) and a newly-created Article 20.3.3 CAO (for discrediting the Russian Armed Forces).⁶¹⁶ It is not common that they were charged under both articles.⁶¹⁷

⁶⁰⁸ Idem.

⁶⁰⁹ "Return to Normal Life. Education, Theaters, Cinemas and Children's Entertainment Centers" (Russian), <https://www.sobyanin.ru/otmena-ogranicheniy-obrazovanie-i-detskie-tsentry>.

⁶¹⁰ "You Can Take Off Your Masks. We Cancel Covid Restrictions for Citizens and Businesses" (Russian), https://www.sobyanin.ru/mozhno-snyat-maski?utm_source=tg&utm_medium=post&utm_campaign=1403221.

⁶¹¹ "Moscow Mayor Cancels Mandatory Masks But Ban on Public Gatherings Remains", <https://www.rferl.org/a/moscow-end-mandatory-masks/31752548.html>; see https://t.me/rian_ru/150583; https://t.me/rian_ru/150638.

⁶¹² "The Protests Are Fought with a Virus" (Russian), <https://www.kommersant.ru/doc/5238194>.

⁶¹³ See e.g. "Astrakhan Authorities Refused to Hold an Anti-War Rally to Protesters" (Russian), <https://www.kavkazr.com/a/vlasti-astrahani-otkazali-aktivistam-v-provedenii-antivoennogo-mitinga/31730168.html>.

⁶¹⁴ See below.

⁶¹⁵ "No to war. How Russian authorities are suppressing anti-war protests", <https://reports.ovdinfo.org/no-to-war-en>. See below.

⁶¹⁶ Idem, pp. 42-43.

⁶¹⁷ Idem and see pp. 32-35.

Currently, the State Duma is considering a bill which would once again amend the Law on Assemblies and fundamentally expand the scope of venues where the holding of public events would be prohibited.⁶¹⁸ This would include, among others, the buildings of *public authorities* and territories directly adjacent to them, railway, bus stations, airports, ports, educational buildings.⁶¹⁹ The bill also empowers the local authorities to determine the venues, where holding of public event is prohibited if it is required due to “historical, cultural or other objective particularities of the subject of the Russian Federation.”⁶²⁰

3) Evaluation

“The participating States reaffirm that (...) everyone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standards.”⁶²¹

The preceding overview of the legislation and practice of the Russian Federation on peaceful assembly shows a clear line of gradual tightening of this right in Russia. The subsequent amendments to the Law on Assemblies, as well as higher sanctions for offences concerning the violation of the rules governing public assemblies, have led up to the point when in 2020, the Council of Europe Commissioner for Human Rights flatly called on “the Russian authorities to overhaul legislation and practice governing freedom of assembly and of expression, including in the context of the pandemic, in order to align them with European human rights standards.”⁶²² The Rapporteur shares this position. The legislation, as it stands today, does not offer sufficient guarantees for the unimpeded exercise of this right.

The right of peaceful assembly is enshrined in Article 21 ICCPR, Article 11 ECHR, and is embedded within the OSCE Human Dimension Commitments. The OSCE/ODIHR and Venice Commission have published Guidelines on Freedom of Peaceful Assembly, which reflect the applicable international standards in this area.⁶²³

Noteworthy, already the starting point of the Law on Assemblies adopted in 2004 (which, as pointed out by the Venice Commission, did and still does not reflect in its title the reference to “freedom of assembly”⁶²⁴) was not without problems. This was highlighted by the Venice Commission, as well as by the successive Council of Europe Commissioners for Human Rights.

The Venice Commission thoroughly reviewed the law prior to its significant amendments in June 2012. A central point of its criticism was the regulation of the notification procedure in

⁶¹⁸ Art. 6 of the Federal Law Project No. 140449-8 “On Amendments to Certain Legislative Acts of the Russian Federation.”

⁶¹⁹ *Idem.*

⁶²⁰ *Idem.*

⁶²¹ Copenhagen 1990, para. 9.2.; see also Paris 1990 and Sixteenth Meeting of the Ministerial Council of the OSCE, 4-5 December 2008.

⁶²² *Idem.*

⁶²³ OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly, 15 July 2020, CDL-AD(2019)017Rev (hereinafter “Guidelines”).

⁶²⁴ VC 2012 Opinion on the Law on Assemblies, para. 9.

connection with the authorities' motivated proposal to change the date or time of public event. After an in-depth analysis⁶²⁵, the Commission concluded that under the wording of the law the organisers simply face two options: either to accept the proposal of the authorities or to give up the event as such (as the latter "will then be de facto prohibited"⁶²⁶). Therefore, the notification procedure under the 2004 Assembly Law "is in substance a request for permission."⁶²⁷

The Commission also criticised other elements of the law, including the too broad discretion it confers on the authorities,⁶²⁸ a potentially ineffective judicial review⁶²⁹ and the lack of a legally-mandated possibility of holding spontaneous assemblies.⁶³⁰ In the Venice Commission's view, the Law on Assemblies "does not sufficiently safeguard against the risks of an excessive use of discretionary power or even arbitrariness or abuse."⁶³¹

The new amendments introduced in June 2012 attracted widespread criticism not only by international human rights monitoring bodies and experts, but also by the Russian national human rights institutions.⁶³²

In 2013, the Venice Commission reviewed the Law on Assemblies, amended in 2012. It criticised several elements of this newly amended law, including the blanket ban on certain persons to organise public events and blanket ban on certain locations,⁶³³ duties of the organisers concerning the number of participants⁶³⁴, the regulation of specially designated places,⁶³⁵ and the newly-introduced power of the authorities to refuse to agree to holding public event.⁶³⁶ For the Council of Europe Commissioner for Human Rights, "[t]he

⁶²⁵ VC 2012 Opinion on the Law on Assemblies, paras. 21-22.

⁶²⁶ *Idem*.

⁶²⁷ *Idem*, para. 30.

⁶²⁸ *Idem*.

⁶²⁹ As the courts would not be able to review the matter before the date of the public event. *Idem*.

⁶³⁰ Venice Commission Opinion 2012, para. 37; similarly, "where notification is given for more than one assembly at the same time, they should be facilitated as far as possible." Venice Commission Opinion 2012, para. 39.

⁶³¹ VC 2012 Opinion on the Law on Assemblies, para. 30.

⁶³² See above, see also "Presidential Council for Civil Society and Human Rights of the RF Proposed that the State Duma Return the Bill on Rallies to the First Reading, 'RBK'" (Russian), http://www.president-sovet.ru/presscenter/press/spch_pri_prezidente_rf_predlozhit_gosdume_vernut_zakonoproekt_o_mitingakh_v_i_chtenie_rbk/.

⁶³³ Venice Commission, Opinion on Federal Law no 65-FZ of 8 June 2012 of the Russian Federation Amending Federal Law no 54-FZ of 19 June 2004 on Assemblies, Meetings, Demonstrations, Marches and Picketing and the Code of Administrative Offences', 11 March 2013, CDL-AD(2013)003, paras. 16-19, para. 41 (hereinafter VC 2013 Opinion on the Law on Assemblies).

⁶³⁴ *Idem*, paras. 21-24.

⁶³⁵ According to the Commission, the law does not stipulate that the discretion of the authorities "must be exercised with due respect for the essential principles of 'presumption in favour of holding assemblies', 'proportionality' and 'non-discrimination'". *Idem*, para. 43. Accordingly, the current regulation of the specially designated places "will hinder rather than facilitate the exercise of the right to freedom of assembly and is therefore incompatible with international standards." *Idem*, para. 44.

⁶³⁶ *Idem*, paras. 45, 46. The Commission also criticised the power of the courts to retrospectively declare "the sum of the single picketers 'united by a single concept and overall organisation'" as a public event and resulting in the administrative liability of the organisers and participants for failure to meet the relevant regulations.

notification procedure – which was already prone to restrictive interpretations in the past – is becoming in practice a de facto obligation to seek authorisation for holding of public events.”⁶³⁷

The Venice Commission also recommended that the sanctions introduced by the 2012 law “be revised and drastically lowered.”⁶³⁸ Similarly, the UN Human Rights Committee was “concerned about the strong deterrent effect on the right to peaceful assembly of the new restrictions ..., which imposes high administrative sanctions on organisers of assemblies who were previously been convicted of similar administrative offences.”⁶³⁹ Similar positions were taken by an array of international bodies regarding the 2014 amendments.⁶⁴⁰

In 2017, the Council of Europe Commissioner for Human Rights concluded, “the 2012 and 2014 amendments weaken the guarantees contained in Article 31 of the Russian Constitution and the 2004 Law on Assemblies and raise serious concerns in light of international human rights standards”⁶⁴¹ and recommended that “the legal framework on public assemblies in the Russian Federation be thoroughly revised.”⁶⁴²

Restrictions on the right to freedom of assembly in the context of the COVID-19 pandemic were applied not only in the Russian Federation, but globally. Nevertheless, in this context, the Commissioner for Human Rights stressed that these restrictions “must not be used to unduly limit human rights and freedoms.”⁶⁴³ This is even more true when after two years

Ibid, para. 30. Such an offence will be “incompatible with the requirement of legality of any interference with the right to freedom of free expression as well as of assembly.” Idem, para. 31.

⁶³⁷ Council of Europe, Commissioner for Human Rights, Follow-Up Memorandum of the Commissioner for Human Rights on Freedom of Assembly in the Russian Federation, 5 September 2017, ComDH(2017)25, para. 31. “By introducing additional restrictions and duties for organisers of events and participants, and by conferring wider discretion to the authorities, the 2012 amendments considerably undermined the existing balance of interests. In the absence of an explicit reference to the presumption in favour of holding public events, such a shift affects the very essence of the Russian legal framework, in that it tends to transform a system of notification to one where authorisation must be sought.” Idem, para. 16.

⁶³⁸ VC 2013 Opinion on the Law on Assemblies, para. 55.

⁶³⁹ UN Human Rights Committee, Concluding Observations on the seventh periodic report of the Russian Federation, 28 April 2015, UN Doc CCPR/C/RUS/CO/7, para. 21.

⁶⁴⁰ UN Human Rights Committee, Concluding Observations on the seventh periodic report of the Russian Federation, 28 April 2015, UN Doc CCPR/C/RUS/CO/7, para. 21; Council of Europe Commissioner for Human Rights, Follow-Up Memorandum of the Commissioner for Human Rights on Freedom of Assembly in the Russian Federation, 5 September 2017, ComDH(2017)25, para. 29.

⁶⁴¹ Council of Europe Commissioner for Human Rights, Follow-Up Memorandum of the Commissioner for Human Rights on Freedom of Assembly in the Russian Federation, 5 September 2017, ComDH(2017)25, para. 15.

⁶⁴² Idem, para. 32, see for specific recommendations paras. 33, 34: inclusion of the explicit “presumption in favour of holding public events”; incorporation of the principles of proportionality and non-discrimination; establish “procedures to ensure that freedom of assembly is practically enjoyed and not subject to undue bureaucratic regulation;” inclusion of specific provisions on “spontaneous and simultaneous assemblies” and “a clear and prompt procedure for solving any disagreements between the organisers of public events and the authorities.” Idem para. 33. According to the Commissioner, “blanket bans on venues for holding public events or persons wishing to hold them should be avoided”; sanctions should be decreased “to comply with the principles of proportionality and necessity.” Idem para. 34.

⁶⁴³ Council of Europe Commissioner for Human Rights, Statement, 23 June 2020, <https://www.coe.int/en/web/commissioner/-/commissioner-calls-on-russian-authorities-to-overhaul-legislation-and-practice-governing-freedom-of-assembly-and-of-expression>.

since the beginning of the pandemic, the restrictions are being lifted in almost all other aspects of life, including activities of similar “mass” character. The continued total bans on public assemblies issued by the local authorities seem to be disproportionate and arbitrary restrictions of the right to peaceful assembly.

The amendments of 30 December 2020 represent the continuation of the previous practice of limiting the right to peaceful assembly. Today, under the text of the law, the organisers have only two options: either to accept the authorities’ proposal to alter the event or to cancel it. Nothing is left from the idea of a notification procedure. The financial duties of the organisers are too burdensome and open the organisers up to further administrative sanctions. If the bill, which is currently under consideration and, among other things, foresees the ban on public events near the buildings of public authorities, is adopted, it will further drastically restrict the exercise of this right in the Russian Federation.

The Rapporteur subscribes to the above-mentioned views of the Venice Commission and other international bodies regarding the subsequent changes of the legislation in this area. In this connection, it must be stressed that according to the European Court of Human Rights, “States must not only safeguard the right to assemble peacefully but also refrain from unreasonable restrictions upon that right.”⁶⁴⁴ According to General Comment No. 37, “State parties have certain positive duties to facilitate peaceful assemblies and to make it possible for participants to achieve their objectives.”⁶⁴⁵

The European Court of Human Rights also held that “the right to freedom of assembly, includes the right to choose the time, place and modalities of the assembly, within the limits established in paragraph 2 of Article 11.”⁶⁴⁶ The Guidelines also stress the “presumption in favour of (peaceful) assemblies”, from which follows that “that the relevant public authorities should remove all unnecessary legal and practical obstacles to the right to freedom of assembly.”⁶⁴⁷ The spontaneous assemblies should equally be facilitated under international standards.⁶⁴⁸ “Any penalties imposed must be necessary and proportionate”.⁶⁴⁹

In light of the above-mentioned, it follows that the current legislation of the Russian Federation on the right to freedom of peaceful assembly and its implementation in practice is incompatible with the OSCE commitments and international standards in this area.

⁶⁴⁴ ECtHR, *Oya Ataman v. Turkey*, 5 December 2006, app. no. 74552/01, para. 36; see also Guidelines, para. 75.

⁶⁴⁵ UN Human Rights Committee, General Comment no. 37, 17 September 2020, UN Doc Res CPR/C/GC/37, para. 24 (hereinafter “General Comment no. 37”).

⁶⁴⁶ ECtHR, *Sáska v. Hungary*, 27 November 2012, app. no. 58050/08, para. 21.

⁶⁴⁷ Guidelines, para. 76.

⁶⁴⁸ ECtHR, *Bukta and others v. Hungary*, 17 July 2007, app. no. 25691/04, para. 36; General Comment no. 37, para. 14; Guidelines, paras. 79, 114; see also Council of Europe Commissioner for Human Rights, Letter, 21 July 2011, CommDH(2011)31, CommHR/TH/sf 081-2010, para. 37.

⁶⁴⁹ Guidelines, para. 222. “Penalties imposed for conduct occurring in the context of an assembly must be necessary and proportionate, since unnecessary or disproportionately harsh sanctions for behaviour during assemblies could inhibit the holding of such events and have a chilling effect that may prevent participants from attending. Such sanctions may constitute an indirect violation of the freedom of peaceful assembly.”
Idem, para. 36.

VI) Summary and Conclusions on Legislative Reforms

The Russian legislation relevant for the radius of action of civil society and analysed in the preceding chapter show three particularities.

First, the amount of reform legislation is staggering, with new laws being passed and amended at extremely short intervals. Whatever law is passed is implemented almost immediately. While neither freedom of expression nor freedom of association or assembly are absolute rights, restrictions should be kept to a minimum according to international standards. They should have a legitimate purpose and be necessary in a democratic society. On the contrary, Russian legislation is obsessed with restricting these rights more and more. These restrictions start from different approaches, but often overlap. Instead of establishing simple, easily understandable and generally acceptable legal rules for the exercise of fundamental freedoms, the authorities in Russia have created an overly complex system. On the surface, the multiplicity of rules may seem to increase legal certainty – and Russia has justified them on this basis before various human rights bodies – but in reality they have the exact opposite effect. Due to the constant change and complexity of the regulations, it is difficult to know which law is applicable in a specific case. In addition, the laws on "foreign agents", "State secrets", "extremism", "terrorism", "homosexual propaganda" and "war speech" use extremely vague and broad terms for which it is impossible to predict how they will be interpreted. Therefore, Russian legislation in this area is clearly incompatible with the rule of law. On the contrary, the multitude of detailed provisions gives the authorities wide discretionary powers and thus provides the basis for arbitrariness.

Second, legislative activity in this area is not constant, but accelerates after 2012, after 2014, after 2019 and after February 2022, which can be seen as a direct response to social and political developments in the country. Whenever there were mass protests, especially but not exclusively by the youth, new restrictive laws followed. The first reforms were a response to the demonstrations related to the parliamentary elections in 2011 and the presidential elections in 2012. After the annexation of Crimea, new restrictive laws were deemed necessary, especially in the area of "extremism" and "foreign agents". In 2019, demonstrations were linked to Alexei Navalny, and again in early 2021. A new round of restrictions was therefore deemed necessary. The latest – and now most restrictive – package of laws was passed after the invasion of Ukraine. The legislative packages in March 2022 and July 2022 were quick reactions to the – albeit brief – anti-war demonstrations after 24 February 2022. The legislative reform as a whole thus did not follow a master plan, but was mainly reactive.

Third, even though there are many different laws, they all go in the same direction and increasingly restrict civil society's room for manoeuvre. Since the starting point is the fear – explicitly expressed by the Russian President – that a "fifth column" could change (and weaken) the Russian State from within, the reforms are mainly aimed at cutting off Russian NGOs from their foreign partners. This is the essence of the law on "foreign agents", which is the most widespread and intensively used tool in the fight against civil society. The idea of "re-russification" of civil society is implemented through increased bureaucratisation. This betrays a specific understanding of civil society. It is not seen as something that grows from below and is built on the free initiative of critically thinking people, which must be protected by the State. Rather, the vision of the Russian bureaucracy is to create and direct their own

civil society, define its priorities and ensure that nothing is derailed. Ultimately, it is about integrating civil society into the vertical of power.

As a consequence of the legislative reforms taken mainly after 2012 and once more reinforced after 24 February 2022 it is difficult for Russian civil society to survive.

C) Identification of Actions Taken by the Russian Government Leading to the Current Human Rights and Fundamental Freedoms Situation in the Country

In accordance with the Joint Statement of OSCE, not only the legal situation but also the practice is to be examined. As shown above, reform laws that restrict civil society's scope of action are implemented quickly and efficiently. However, not all measures directed against civil society can be characterised as law enforcement; there are also other measures taken by the Government (or, more generally, the authorities) that are relevant to the status quo of civil society in Russia. The most important aspects are summarised in the following section.

I) Propaganda

Government actions against civil society in Russia can be seen in light of the statements of President Putin. In a speech delivered in a meeting on socioeconomic support for regions via videoconference on 16 March 2022 he called civil society activists a “fifth column”, “traitors” and “scum”:

“Yes, of course, they will back the so-called fifth column, national traitors – those who make money here in our country but live over there, and “live” not in the geographical sense of the word but in their minds, in their servile mentality. I do not in the least condemn those who have villas in Miami or the French Riviera, who cannot do without foie gras, oysters or freedom as they call it. That is not the problem, not at all. The problem, again, is that many of these people are, essentially, over there in their minds and not here with our people and with Russia. In their opinion – in their opinion! – it is a sign of belonging to the superior caste, the superior race. People like this would sell their own mothers just to be allowed to sit on the entry bench of the superior caste. They want to be just like them and imitate them in everything. But they forget or just completely fail to see that even if this so-called superior caste needs them, it needs them as expendable raw material to inflict maximum damage on our people.

The collective West is trying to divide our society using, to its own advantage, combat losses and the socioeconomic consequences of the sanctions, and to provoke civil unrest in Russia and use its fifth column in an attempt to achieve this goal. As I mentioned earlier, their goal is to destroy Russia.

But any nation, and even more so the Russian people, will always be able to distinguish true patriots from scum and traitors and will simply spit them out like an insect in their mouth, spit them onto the pavement. I am convinced that a natural

and necessary self-detoxification of society like this would strengthen our country, our solidarity and cohesion and our readiness to respond to any challenge.⁶⁵⁰

The words used take up stereotypes of Soviet propaganda such as the idea of the “fifth column” and de-humanise those considered to be enemies with comparisons to insects.

The rhetoric is similar in speeches on the war denigrating the Ukrainian people and stigmatizing them as “neo-Nazis and ultra-nationalists” or calling the government a “pro-Nazi Kiev regime”, repeatedly reproaching them with “genocide” on the people living in Donbass.⁶⁵¹ Comparisons to Nazism are frequent in statements on Western countries as well.⁶⁵² Building up specific narratives about what happened in the past or what happens in present times are also part of the war-rhetoric.⁶⁵³

Putin’s propaganda is directed towards some ideal of “masculine patriotism”⁶⁵⁴ centered on the rhetoric of war, weapons, physical strength, fighting, the greatness and historical mission of the Russian State and a traditionalist conception of the roles of men and women in society.⁶⁵⁵ Gender sensitivity is openly discredited in his speeches⁶⁵⁶ and linked to decadence.⁶⁵⁷ This negative stance is closely connected to the conception of LGBTQI+ rights; LGBTQI+ positions are ridiculed and contrasted to what is understood as “Russian values”.⁶⁵⁸

II) Pressure in Opinion Formation

As explained above, various legal acts are based on a “one-truth policy” considering visions and statements not identical with the version published by the Government, especially the

⁶⁵⁰ “Meeting on Socioeconomic Support for Regions”, <http://en.kremlin.ru/events/president/news/67996>.

⁶⁵¹ See the speech held by Putin on 18 March 2022 in Luzhniki celebrating the anniversary of the annexation of Crimea, “Concert Marking the Anniversary of Crimea’s Reunification with Russia”, <http://en.kremlin.ru/events/president/transcripts/speeches/68016>.

⁶⁵² Idem: “In its attempts to “cancel” Russia, the West tore off its mask of decency and began to act crudely showing its true colours. One cannot help but remember the anti-Semitic Nazi pogroms in Germany in the 1930s, and then pogroms perpetrated by their henchmen in many European countries that joined the Nazi aggression against our country during the Great Patriotic War.”

⁶⁵³ See e.g. the allusion to the production of biological or atomic weapons in Ukraine before the war, “Meeting on Socioeconomic Support for Regions”, <http://en.kremlin.ru/events/president/news/67996>.

⁶⁵⁴ The expression was used by Leonid Volkov in the interview for this report. A similar idea is to link the present-day ideal of masculinity to the Russian “muzhik” of the 19 century, see: W. Engelking, *The Roots and Guises of Legal Populism in Russia*. in: *The Narodniki, Statism and Legalism of Soviet Law and the Political Theology of Ivan Ilyin*, Intersentia, pp. 319 et seq.

⁶⁵⁵ Critics see this ideal as an expression of “gender inequality, exploitation of women, and state repression against those whose way of life, self-identification, and actions do not conform with narrow patriarchal norms”; see “Russia’s Feminists Are in the Streets Protesting Putin’s War”, <https://transversal.at/transversal/0422/feminist-anti-war-resistance/en>.

⁶⁵⁶ “Putin is confident that Russian society is protected from Western gender ‘obscurantism’” (Russian), https://tass.ru/obschestvo/13283543?utm_source=google.com&utm_medium=organic&utm_campaign=google.com&utm_referrer=google.com.

⁶⁵⁷ See his speech on 16 March 2022 (footnote above): “I do not in the least condemn those who have villas in Miami or the French Riviera, who cannot make do without foie gras, oysters or gender freedom as they call it.”

⁶⁵⁸ See above.

Ministry of Defence, to be “disinformation” or “fake news”.⁶⁵⁹ But even without such laws – and in the beginning of the war they did not yet exist – there are other means to exert pressure in opinion formation.⁶⁶⁰

Thus, in educational institutions there were calls for following the official version of the necessity of a “special military operation”, e.g. by organising special programs for children⁶⁶¹ or rallies for students.⁶⁶² The Rectors’ Union issued an appeal “to support our country, our army, which is defending our security, to support our president, who made, perhaps, the most difficult decision in his life, a hard-won, but necessary decision”.⁶⁶³

There are also reports on direct or indirect pressure, for example forced dismissals⁶⁶⁴ or threatening phone calls against those who did not follow the official line.⁶⁶⁵ In the area of culture, concerts and events were banned. Allegedly, a list was drawn up with musical performers whose performances in Russia were considered undesirable.⁶⁶⁶ It was reported

⁶⁵⁹ See above.

⁶⁶⁰ There is a comprehensive documentation “No to War. How Russian authorities are suppressing anti-war protests”, <https://reports.ovdinfo.org/no-to-war-en#1>. Many of the examples are taken out of this compilation.

⁶⁶¹ See the recommendations for schools for conducting lessons for students from grades 7-11 about the war on Ukraine. These lessons were supposed to convey the official point of view of the government about the reasons for the “special military operation”, as well as to condemn anti-war rallies to the children. The training manual sent to teachers quotes the speech of President Vladimir Putin and emphasizes that there is not a war, but a “special military operation”, which is a “forced measure” taken to “save people” and “deter nationalists who oppress the Russian-speaking population of Ukraine”; “‘Our Actions are Self-Defence’. How School Teachers Have to Justify the Invasion in Ukraine - methodology” (Russian), <https://zona.media/article/2022/02/28/propaganda-lessons>.

⁶⁶² See, for example, the decree of St. Petersburg State University of Aerospace Instrumentation (SUAI), published on 1 March 2022, calling to take “measures to prevent crimes and other anti-social activities of students” and “to ensure the educational work aimed at the formation of students all-Russian civil identity, patriotism, civic responsibility, a sense of pride in the history of Russia, the preservation of historical memory, respect for the memory of defenders of the Fatherland and the exploits of Heroes of the Fatherland”; https://docs.guap.ru/rasp_guap_15-15-22.pdf; there are also reports on the gathering of students for rallies on the war; see the reports of the students’ magazine Doxa: <https://t.me/doxajournal/11183>; <https://t.me/doxajournal/11722>.

⁶⁶³ “Letter of the Russian Union of Rectors” (Russian), <https://rsr-online.ru/news/2022/3/4/obrashenie-rossijskogo-soyuz-rektorov/>; The appeal is signed by more than 260 heads of universities (in total, there are about 700 rectors in the union).

⁶⁶⁴ Insofar as university professors are concerned, the following names were provided to the Rapporteur: Tatyana Novikova, Nail Fatkullin, Dmintry Rudakov Anatoly Kanev, Andrey Lavrukhin, Sergey Levitsky, Tatyana Tairova-Yakovleva, Denis Grekov, Roman Melnichenko; all cases are based on information documented in newspaper reports.

⁶⁶⁵ See, e.g. the case of the comedians Denis Chuzhoy, Mikhail Shats and Danila Poperechniy, who signed an open letter against the war, “Russian Comedians who Signed an Anti-War Letter Told about Threats. They Were Told to ‘Be Afraid’” (Russian), <https://meduza.io/news/2022/03/01/rossiyskie-komiki-podpisavshie-anti-voennoe-pismo-rasskazali-ob-ugrozah-im-posovetovali-schemitsya>.

⁶⁶⁶ “Not only ‘DDT’ and Manizha. ‘Fontanka’ publishes a list of banned music performers” (Russian), <https://www.fontanka.ru/2022/07/07/71472080/>.

that concert organisers began to insert in contracts with artists a clause stating that statements about the war with Ukraine or politics are prohibited during performances.⁶⁶⁷

Musicians complain themselves about being blacklisted.⁶⁶⁸ 'GLAVCLUB', a concert venue in Moscow issued a statement that they had to cancel concerts of three artists because of the pressure – based on phone calls and inspections – from the authorities.⁶⁶⁹ In total, there are at least 17 music bands, musicians and even a scientist whose events were cancelled or disrupted because of their anti-war statements, interestingly including Anna Netrebko who had for some time also not been welcome in Western European countries.⁶⁷⁰ A concert with songs of the Ukrainian composer Valentin Silvestrov was disrupted by the police.⁶⁷¹

Pressure is not necessarily only directed against those speaking out against Government politics or the war, but also against those remaining silent. In this context, the initiative of Duma deputies united in the Group for Research on Anti-Russian Activities (GRAD),⁶⁷² is worth mentioning. They argue that members of juries for films or books should be exchanged if they do not voice a clear “pro-special-military-operation” position.⁶⁷³

III) Use of Criminal Law for “Other Purposes”

Silencing opponents by instigating criminal cases against them is well documented in Russian cases before the European Court of Human Rights. One of the most important and obvious case was *Gusinsky v. Russia*⁶⁷⁴ where the accusation of tax evasion was dropped at the very moment Gusinsky agreed – under pressure in prison – to sell his media holding. This is an important case in the context of obtaining a state monopoly in the media market.⁶⁷⁵ The cases against Alexei Navalny where the Court found violations of Article 18 ECHR are notorious.⁶⁷⁶ The November 2018 OSCE Report on Chechnya mentions cases of possessing/planting drugs on the journalist Zhalaudi Geriev and the human rights activist Ruslan Kutaev.⁶⁷⁷ Similarly, Ilja Jashin, Chairman of the Council of Deputies of Krasnoselsky and actively protesting against the war, was sentenced to 15 days of detention for

⁶⁶⁷ “Promoters included the ban of political expression in the contracts with performers. What punishments impend on performers breaching the agreement” (Russian), https://www.rbc.ru/technology_and_media/18/07/2022/62d148df9a7947724236c581.

⁶⁶⁸ <https://t.me/ovdinfo/11266>.

⁶⁶⁹ <https://t.me/ovdinfo/10832>.

⁶⁷⁰ <https://airtable.com/shriuzfgrB91yuD7P/tblZN9hRIKZ2PnjQd>.

⁶⁷¹ <https://t.me/ovdinfo/7708>

⁶⁷² In Russian: группа по расследованию антироссийских действий (ГРАД).

⁶⁷³ “In the State Duma, there were appeals to reconsider the mechanisms on the formation of expert councils of the Cinema Foundation and the Jury of ‘Bolshaya Kniga’” <https://portal-kultura.ru/articles/news/343976-v-gd-prizvali-peresmotret-mekhanizmy-formirovaniya-ekspertnykh-sovetov-fonda-kino-i-zhyuri-bolshoy-k/>.

⁶⁷⁴ See ECtHR, *Gusinskiy v. Russia*, 10 May 2004, app. no. 70276/01.

⁶⁷⁵ See above.

⁶⁷⁶ ECtHR [GC], *Navalnyy v. Russia*, 15 November 2018, app. nos. 29580/12 et al.; ECtHR, *Navalnyy v. Russia*, 9 April 2019, app. no. 43734/14.

⁶⁷⁷ OSCE November 2018 Report on Chechnya, p. 25.

disobeying a police officer, only later he was also accused of discrediting the Russian Army.⁶⁷⁸

There are reports that similar methods are being used against political scientist Yuri Pivovarov and historian Yuri Dmitriev. The former was first charged and then acquitted for negligence after a fire had destroyed a library, but then once more persecuted because of fraud; the procedures were understood to be politically motivated.⁶⁷⁹ Yuri Dmitriev was internationally renowned for having uncovered mass graves from Stalin's Great Terror at Sandarmokh. He was arrested in 2016 on charges of sexual misconduct and production of child pornography; by now he has been sentenced to 13 years of imprisonment. Both in Russia⁶⁸⁰ and internationally⁶⁸¹ it is assumed that the charges were fabricated.

IV) Use of Violence against Civil Society Activists and Media

Physical violence is another means to make non-governmental organisations, human rights defenders, journalists and researchers abandon their activities. Especially after 24 February 2022, many cases of violence were reported during anti-war protests, also involving well-known people. One – out of many – examples would be the case of Grigory Yudin, political scientist and sociologist, Senior Researcher Higher School of Economics. On 24 February 2022, he was arrested during an anti-war protest in Moscow and severely beaten in a police van, until he lost consciousness.⁶⁸² Many more cases have been documented by human rights organisations who claim that the degree of violence has considerably increased⁶⁸³ – many interviewees drew a parallel to the violent suppression of protest in Belarus.

Violence was also used against media workers while covering anti-war rallies. Journalists from Novaya Gazeta, Radio Free Europe/Radio Liberty, Interfax, Pskovskaya Guerniya, Telegraph, Dozhd were detained in several Russian cities including Moscow, St. Petersburg, Belgorod and Pskov.⁶⁸⁴

⁶⁷⁸ “A criminal case was opened against Ilya Yashin for fake news on the Russian Army” (Russian), <https://novayagazeta.eu/articles/2022/07/12/protiv-ili-iashina-vozbudili-delo-o-feikakh-pro-rossiiskuiu-armiiu-news>.

⁶⁷⁹ See “Russia: ‘Crimes against History’”, https://www.fidh.org/IMG/pdf/russie-_pad-uk-web.pdf, p. 28.

⁶⁸⁰ “More than 600 Rights Defenders, Historians and Public Figures Signed Declaration Supporting the Historian Yuri Dmitriyev” (Russian), <https://novayagazeta.ru/news/2020/10/05/164698-boleee-pravozaschitnikov-istorikov-i-obschestvennyh-deyateley-podpisali-zayavlenie-v-podderzhku-istorika-yuriya-dmitrieva>.

⁶⁸¹ Council of Europe Commissioner for Human Rights, Statement, 30 September 2020, at <https://www.coe.int/en/web/commissioner/-/the-russian-authorities-should-end-continuous-judicial-harassment-of-human-rights-defenders>.

⁶⁸² “In Moscow, during an anti-war rally the researcher Grigory Yudin was detained and beaten” (Russian), <https://polit.ru/news/2022/02/25/police/>; “During Anti-War Actions all across Russia more than One Thousand People Were Detained. Among Them is the Sociologist Grigory Yudin. He was brought to OVD unconscious” (Russian), <https://meduza.io/news/2022/02/24/na-antivoennyh-aktsiyah-po-vsey-rossii-zaderzhali-bolshe-tysyachi-chelovek-sredi-nih-sotsiolog-grigoriy-yudin-ego-dostavili-v-ovd-bez-soznaniya>.

⁶⁸³ “No to war. How Russian authorities are suppressing anti-war protests”, <https://reports.ovdinfo.org/no-to-war-en#1>.

⁶⁸⁴ See OSCE Representative on Freedom of the Media, Report, 27 February 2022, <https://www.osce.org/representative-on-freedom-of-media/513064> who said that the continued obstruction of free flow of information and safety of journalists pose serious restrictions to media freedom in Russia.

Not always, however, is the State directly responsible for the use of violence. There are also cases of vandalism and physical attacks on activists by private people. OVD has recorded many cases such as the following: letters ‘Z’ and ‘V’ were written on the apartment doors of the house of an employee of Memorial and of the administrator of the “Protest MSU” Telegram channel. There were also physical attacks with colour on Dmitry Muratov, editor-in-chief of Novaya Gazeta.⁶⁸⁵

Violence against protesters has an important gender dimension.⁶⁸⁶ Russian legislation is not gender-neutral, but contains some special protective provisions linked to the reproductive functions of women. While women were not in the majority in mass protests in Russia in the recent past, they did visibly participate.⁶⁸⁷ The percentage of women arrested is generally lower than that of men.⁶⁸⁸ They are also attacked physically, but much less than men.⁶⁸⁹ But they are in an especially vulnerable position, especially if they are detained alone.⁶⁹⁰ Sexualized violence is a relatively new phenomenon, more noticeable since February 2022.⁶⁹¹ There are also reports on comments of police officers that are based on gender stereotypes.⁶⁹²

⁶⁸⁵ See the “No to War. How Russian authorities are suppressing anti-war protests”, <https://reports.ovdinfo.org/no-to-war-en#1>. Many of the examples are taken out of this compilation.

⁶⁸⁶ See the comprehensive overview “Violation of the right to peaceful assembly for women and girls in Russia from 2010 to 2020”, prepared by OVD-Info in 2020 in connection with the UN Special Rapporteur on freedom of peaceful assembly and association’s request for contributions to his report about women and protest, see also S. Karkkila, Gender aspects of violations of the right to freedom of assembly in Russia: first observations and quantitative data, 20 April 2021 <https://blogs.helsinki.fi/developmentofrussianlaw/2021/04/20/gender-aspects-of-violations-of-the-right-to-freedom-of-assembly-in-russia-first-observations-and-quantitative-data/>; Older women and freedom of assembly in Russia, <https://reports.ovdinfo.org/older-women-and-freedom-assembly-russia#1>.

⁶⁸⁷ According to numbers given by an interviewee in the second action “Freedom to Navalny” on 31 January 2021 there were 24.68% of women; in the fourth action “Freedom to Navalny” on 21 April 2021 there were 30.65% of women, in the anti-war protests from 24 February until 17 March 2022 there were 44.38% of women.

⁶⁸⁸ According to numbers given by an interviewee, since 2015, 413 men and 55 women were criminally prosecuted in relation to manifestations at public events.

⁶⁸⁹ According to information provided to the Rapporteur the ratio is 90 vs. 10 per cent; see, however, “Moscow police beat and torture women after anti-war protests”, <https://en.zona.media/article/2022/03/12/brateevo>.

⁶⁹⁰ See “Undressing in front of cameras, sexism, and pressure: What women face being detained at political rallies (Russian)”, <https://ovdinfo.org/articles/2021/12/10/razdevaniya-pod-kamerami-seksizm-i-davlenie-schem-stalkivayutsya-zhenshchiny>.

⁶⁹¹ See, by way of examples, the following cases: In St. Petersburg, two women arrested during an anti-war protest were forced to undress. “They told me to take off my underwear, to squat several times, and to spread my buttocks,” said one of the arrested women to her defenders, see details at <https://t.me/ovdinfo/13897>; in Nizhny Novgorod, several persons arrested during a protest were detained at a police station overnight, forced to strip down and to squat naked, see details at “‘They forced them to undress and to squat’: how they treated detainees” (Russian), <https://ovdinfo.org/stories/2022/03/17/zastavlyali-razdevatsya-i-prisedat-kak-obrashchalis-s-zaderzhannymi>; a female protester detained at Brateevo Police Department in Moscow was forced to strip and was hit several times with a plastic water bottle. The officer who hit her said, “Putin is on our side. You are enemies of the people... I can ‘kill’ you and get away with it,” see details at “‘Putin is on our side’” (Russian), <https://novayagazeta.ru/articles/2022/03/07/putin-na-nashei-storone-18>.

⁶⁹² See, by way of example, the following description of a policeman’s interaction with a woman detained in Moscow during the mass arrests in the summer of 2019: “One of the law enforcement officers noticed a ring on Zinaida’s finger and started reprimanding her, supposedly saying that she is a married woman who is not to go to protests (!) and that her husband must beat her with a belt for that. Zina did not even know how

On the basis of the data and reports available, it is, however, not possible to estimate if such practices are wide-spread or systematically used to deter women from taking part in protests.

It has to be noted that there are some special gender-oriented methods for the persecution of men as well. As men between the age of 18 and 27 are subject to military service, the threat of being drafted if expelled from university is an additional means of pressure.

V) Violent Dispersal of Peaceful Demonstrations

Another means of suppressing civil society is to disrupt and disperse peaceful assemblies.

As outlined above, the legislation on freedom of peaceful assembly does not offer sufficient guarantees for the unimpeded exercise of this right – mainly due to the de facto authorization procedure, the impossibility of holding lawful spontaneous assemblies, and the total local bans on public assemblies due to COVID-19.

According to the European Court of Human Rights, “an unlawful situation does not justify an infringement of freedom of assembly.”⁶⁹³ Equally, the OSCE/ODIHR and Venice Commission Guidelines state that “the failure to notify should not render the assembly unlawful and must not by itself lead to restrictions on participants or dissolution of a peaceful assembly.”⁶⁹⁴ Even more so, “the presumption in favour of (peaceful) assemblies includes an obligation of tolerance and restraint towards peaceful assemblies in situations where legal or administrative procedures and formalities have not been followed.”⁶⁹⁵

These standards were not followed in Russian practice as shown by reports of international monitoring bodies. For example, in 2015, the UN Human Rights Committee expressed “concern about consistent reports of arbitrary restrictions on the exercise of freedom of peaceful assembly, including violent and unjustified dispersal of protesters by law enforcement officers, arbitrary detentions and imposition of harsh fines and prison sentences for the expression of political views.”⁶⁹⁶ In 2017, the Commissioner for Human Rights noted “a sharp response by the authorities against certain unauthorized but mostly

to answer such an insulting comment”; “‘They Rove About’: How Random Passerbies Can Become Extremists” (Russian), <https://www.ridus.ru/news/305150>.

⁶⁹³ ECtHR, *Oya Ataman v. Turkey*, 5 December 2006, app. no. 74552/01, para. 39.

⁶⁹⁴ OSCE/ODIHR, *Guidelines on Freedom of Peaceful Assembly* (3rd edn, 15 July 2020) CDL-AD(2019)017Rev (“Guidelines on Freedom of Assembly”) para. 112. “In other words, the absence of prior notification and the ensuing ‘unlawfulness’ of the event, which the authorities consider to be an assembly, do not give carte blanche to the authorities; the domestic authorities’ reaction to a public event remains restricted by the proportionality and necessity requirements of Article 11 of the Convention.” ECtHR, *Novikova and others v. Russia*, 26 April 2016, app nos 25501/07, 57569/11, 80153/12, 5790/13 and 35015/13, para. 163.

⁶⁹⁵ *Guidelines on Freedom of Assembly*, para. 21.

⁶⁹⁶ UN Human Rights Committee, *Concluding Observations on the seventh periodic report of the Russian Federation*, 28 April 2015, UN Doc. CCPR/C/RUS/CO/7, para. 21.

peaceful public protests.”⁶⁹⁷ The Commissioner stressed that, “arrests and criminal responsibility of individuals in the context of peaceful assemblies should be avoided.”⁶⁹⁸

In 2019, the Council of Europe Commissioner for Human Rights raised the issues concerning the dispersal of the protests in Moscow on 27 July 2019, which were a response to alleged irregularities during Moscow local elections. The Commissioner criticised that “the police and other law enforcement agencies employed force in this context.”⁶⁹⁹ Referring to the official data, the Commissioner stated that over a thousand persons were arrested during that assembly and pointed to specific instances of protesters being seriously injured as a result of force used by law enforcement officials.⁷⁰⁰

Regarding the 2021 protests after the return of Alexei Navalny to Russia, the Commissioner for Human Rights claimed that “[t]he detention of more than 5.000 demonstrators and of dozens of journalists during the large-scale protests that had remained predominantly peaceful, and the subsequent arrests of some of them based on hasty judicial proceedings fly in the face of Russia’s obligations to uphold freedom of expression, media freedom and freedom of assembly.”⁷⁰¹

According to the official response of the Russian Federation to the joint inquiry by the special procedures of the UN Human Rights Council, in the course of the protests on 23 and 31 January and 2 February 2021 “17.600 people were detained in the constituent entities of the Russian Federation.”⁷⁰²

Concerning the anti-war rallies, the UN Special Rapporteurs stated that “[t]he widespread allegations of the indiscriminate use of force and mass arrests of protesters by the authorities is deeply alarming. The primary responsibility of authorities when policing assemblies is to protect peaceful protesters and to facilitate the exercise of the right to freedom of peaceful assembly.”⁷⁰³

⁶⁹⁷ Council of Europe Commissioner for Human Rights, Follow-Up Memorandum of the Commissioner for Human Rights on Freedom of Assembly in the Russian Federation, 5 September 2017, ComDH(2017)25, para. 22 (“2017 Opinion of the Commissioner of Human Rights”). See also UN Office of the High Commissioner for Human Rights, Russian Federation: “Immediately Release Detained Peaceful Protesters”, Press Release, 29 March 2017, <https://www.ohchr.org/en/press-releases/2017/03/russian-federation-immediately-release-detained-peaceful-protesters>.

⁶⁹⁸ 2017 Opinion of the Commissioner of Human Rights, para. 34.

⁶⁹⁹ Council of Europe Commissioner for Human Rights, Letter, 2 August 2019, CommHR/DM/sf 028-2019.

⁷⁰⁰ *Idem*.

⁷⁰¹ Council of Europe Commissioner for Human Rights, Statement, 1 February 2021, <https://www.coe.int/en/web/commissioner/-/russian-federation-freedom-of-expression-and-the-right-to-peaceful-assembly-must-be-respected>. See Council of Europe Commissioner for Human Rights, Letter, 5 February 2021, CommHR/DM/sf 003-2021 (hereinafter 2021 Letter of the Commissioner for Human Rights).

⁷⁰² Information from the Russian Federation in Response to the Joint Enquiry by Special Procedures of the Human Rights Council Concerning Alleged Violations of the Civil Rights of Participants in the Mass Unauthorized Events in Moscow and Other Major Russian Cities on 23 and 31 and 2 February 2021, 20 April 2021, AL RUS 2/2021, 4.

⁷⁰³ Office of the UN High Commissioner for Human Rights, Press Release, 12 March 2022, <https://www.ohchr.org/en/press-releases/2022/03/russia-un-experts-alarmed-choking-information-clampdown>.

According to OVD-Info, between 24 February and 17 August 2022, there were “at least 16.437 detentions related to anti-war protests.”⁷⁰⁴

Serious questions have also been raised regarding reports of conditions of detentions of protesters⁷⁰⁵ and the conduct of administrative proceedings concerning detained protesters, especially the guarantees of fairness, impartiality and access to legal aid.⁷⁰⁶ In 2014, even the then Federal Ombudsman stated that “the virtual absence of the adversarial nature of administrative proceedings...creates conditions for a kind of ‘conveyor-belt’ condemnations of persons detained for violating the order of holding public events, among whom there may be many citizens who accidentally fall into the ‘hot’ hand of the police.”⁷⁰⁷

VI) Lack of Protection and Ineffectiveness of the Investigation in Free-Speech Related Crimes Against Civil Society Activists and Media

Murders, physical attacks as well as intimidations against civil society activists like opposition politicians and human rights activists as well as media and journalists are well-known in Russia. Those means are not used to silence voices raised against governmental policy creating a climate of fear. The Russian State implicitly supports this development through its lack of protection and its ineffectiveness of investigation in freedom-of-speech related cases.

The problem in most cases of violence against civil society activists is that police refuse to investigate the attacks, vandalism and threats. NGOs have established a table with an overview over all non-investigated cases in the last years.⁷⁰⁸ In an interview, the Rapporteur was told that when lawyers bring cases of inhuman treatment and torture related to freedom of expression to the police, the complaints are merely interpreted as “public information”; therefore, it is not considered necessary to initiate preliminary proceedings.

In other cases, investigations are conducted but they do not suffice international standards. This is in particular true for murders and physical attacks against civil society activists over the last two decades. Russia holds the 10th place on the 2021 Global Impunity Index

⁷⁰⁴ “This number, in addition to street detentions, includes 138 detentions for anti-war posts in social networks, 118 detentions for anti-war symbolics and 62 detentions after anti-war protests.” see “Summary of Anti-War Repressions. Six Months of War”, <https://data.ovdinfo.org/summary-anti-war-repressions-six-months-war#1>; Between 24 February and 13 March 2022, “at least 14.906 people were detained at anti-war rallies in 155 cities of Russia.” see “No to war. How Russian authorities are suppressing anti-war protests”, <https://reports.ovdinfo.org/no-to-war-en#1>, p. 25; see also Joint Communication of the UN Special Procedures to the Russian Federation, 28 March 2022, AL RUS 3/2022.

⁷⁰⁵ “No to war. How Russian authorities are suppressing anti-war protests”, <https://reports.ovdinfo.org/no-to-war-en#1>, pp. 28-31; 2021 Letter of the Commissioner for Human Rights.

⁷⁰⁶ 2017 Opinion of the Commissioner of Human Rights, paras. 26-28; “Russia: No place for protest”, <https://www.amnesty.org/en/documents/eur46/4328/2021/en/>, pp.15-16.

⁷⁰⁷ “Pamfilova Called for an Analysis of the Consequences of the Draft Law Increasing Punishments for Violation of Rules on Assemblies” (Russian), http://www.president-sovet.ru/presscenter/press/pamfilova_prizvala_proanalizirovat_negativnye_posledstviya_zakonoproekta_ob_uzhestochenii_nakazaniya/. See also “The Head of the Presidential Council on Human Rights Said that the Law on Rallies Needs to Be Changed” (Russian), <https://www.rbc.ru/society/03/04/2017/58e175969a7947a58ebee3f>.

⁷⁰⁸ The Rapporteur was given a table with 43 cases of police violence, 27 cases of attacks by third persons, 4 cases of vandalism, and 6 cases of threats, all not investigated by the police.

according to the NGO Committee to Protect Journalists (CPJ), which calculates the number of unsolved journalist murders as a percentage of each country's population.⁷⁰⁹ Between 1992 and 2021, at least 58 journalists were killed in Russia in connection to their work.⁷¹⁰

On 7 October 2006, Anna Politkovskaya, a journalist at the *Novaya Gazeta* was murdered in Moscow. She was known for her critical coverage of the Chechen conflict. In 2009 human rights activist Natalija Estemirova was first abducted and then killed during her investigations of kidnappings, torture and extrajudicial killings in Chechnya. The ECtHR noted in both cases that the following criminal investigations could not be considered as effective in regard to their promptness, reasonable expeditions and the underlying evidence.⁷¹¹

Gadzhimurad Kamalov, founder of the independent weekly newspaper *Chernovik*, was shot on 15 December 2011 in Dagestan. On 9 July 2013, Akhmednabi Akhmednabiyev, deputy editor of the independent news outlet *Novoye Delo*, was also shot from a car in Semender, the capital of Dagestan. The relatives of both victims filed a complaint to the ECtHR, *inter alia*, claiming that the State had failed to carry out an effective investigation into their deaths. The complaints were combined and communicated on 8 October 2021.⁷¹² The UN Human Rights Committee raised its concerns about the "limited progress in investigating serious past and ongoing human rights violations" in the North Caucasus region.⁷¹³

On 27 February 2015, famous and well-known opposition politician Boris Nemtsov was murdered at the Bolshoy Moskvoretsky Bridge in Moscow. At this time, he was an active critic of the Russian government organising rallies and writing reports on the military intervention in Eastern Ukraine. Even if the murderers of Boris Nemtsov were convicted, not all aspects of the murder were revealed, in particular, the instigators and organisers of the murder. Several international bodies condemned the assassination and called for effective investigations.⁷¹⁴ Boris Nemtsov's daughter filed an application in front of the ECtHR claiming that the investigations conducted into the assassination were not effective.⁷¹⁵

⁷⁰⁹ "Killers of Journalists Still Get Away with Murder", <https://cpj.org/reports/2021/10/killers-of-journalists-still-get-away-with-murder/>.

⁷¹⁰ https://cpj.org/data/location/?cc_fips=RS&start_year=1992&end_year=2022&report-builder-type=year&motiveConfirmed%5B%5D=Confirmed; see for further examples not mentioned in this report: OSCE Representative on Freedom of the Media, Press Release, 4 August 2014, <https://www.osce.org/fom/122219>; OSCE Representative on Freedom of the Media, Press Release, 7 December 2012, <https://www.osce.org/fom/97988>.

⁷¹¹ ECtHR, *Mazepa and others v. Russia*, 17 July 2018, app. no. 15086/07, paras. 69-84; ECtHR, *Estemirova v. Russia*, 31 August 2021, app. no. 42705/11, paras. 68-72. Additionally, the lack of protection and the ineffective investigations were repeatedly condemned by international bodies mentioning both cases, e.g. UN Committee against Torture, Concluding Observations on the Sixth Periodic Report of the Russian Federation, 25 August 2018, UN Doc. CAT/C/RUS/CO/6, para. 28; UN Human Rights Committee, Concluding Observations on the seventh periodic report of the Russian Federation, 28 April 2015, UN Doc. CCPR/C/RUS/CO/7, para. 18; UN Human Rights Committee, Concluding Observations on the sixth periodic report of the Russian Federation, 24 November 2009, UN Doc. CCPR/C/RUS/CO/6, para. 16.

⁷¹² ECtHR, *Akhmednabiyev and Kamalov v. Russia*, app. nos. 34358/16, 58535/16 (communicated).

⁷¹³ UN Human Rights Committee, Concluding Observations on the Seventh Periodic Report of the Russian Federation, 28 April 2015, UN Doc. CCPR/C/RUS/CO/7.

⁷¹⁴ OSCE Parliamentary Assembly Special Rapporteur, *The Nemtsov Murder and Rule of Law in Russia*, updated on 30 July 2020, <https://www.oscepa.org/en/documents/officers-of-the-assembly/margareta-cederfelt-sweden/3971-the-nemtsov-murder-and-rule-of-law-in-russia-report-by-osce-pa-vice-president-margareta-cederfelt-20-february-2020/file>; Rapporteur for the Parliamentary Assembly of the Council of Europe (PACE),

Recently, on 7 April 2022, Nobel Peace Prize winner Dimitry Muratov and founder of the Novaya Gazeta was attacked with paint.⁷¹⁶ According to the Novaya Gazeta, Russian authorities failed to investigate the case properly.⁷¹⁷ This incident is one of many against the physical integrity of journalists.⁷¹⁸

VII) Summary and Conclusions on Government Actions

The authorities' actions against civil society show that the ultimate goal is to create a monolithic society based on a certain pre-modern understanding of Russian-ness. Those who oppose it are seen as nails sticking out of the wall; they must be hammered into the wall and disappear. The President's speeches about a "fifth column" and "insects to be spat out" reveal an attitude of deep-seated hatred. The main strategy of the Russian authorities is based on intimidation. Persecution is not hidden, but visible for all especially when it is directed against public figures. The main aim seems to be to get people to give up or leave the country.

For society activists this creates a dilemma. None of the options – leaving, giving up, going to prison – is acceptable. Many have already left. But continuing the work from outside the country is not easy. They do not only have the “normal” difficulties refugees face, but they might be cut off from the flow of information, lose contacts with their colleagues remaining in the country because for the latter it is too dangerous to continue working together, and their legitimacy might be doubted. Those in prison may be considered as role models and “heroes”; yet, in reality they may also be forgotten. Nevertheless, giving up does not seem to be an acceptable option for many. In addition, it is not easy for them to find a job in the official labour market. Therefore, many try to continue their activities, even in the very limited framework they have left.

Shedding light on the murder of Boris Nemtsov, 7 June 2019, Doc. 14902, <https://pace.coe.int/en/files/27722/html>.

⁷¹⁵ ECtHR, *Nemtsova v. Russia*, app. no. 43146/15 (communicated).

⁷¹⁶ https://t.me/novaya_europe/43; “Russian Journalist Dmitry Muratov Attacked with Paint”, <https://cpj.org/2022/04/russian-journalist-dmitry-muratov-attacked-with-paint/>.

⁷¹⁷ “Painted with one colour” (Russian), <https://novayagazeta.ru/articles/2022/07/06/odnoi-kraskoi-mazany>.

⁷¹⁸ OSCE Representative on Freedom of the Media, Press Release, 7 February 2020, <https://www.osce.org/representative-on-freedom-of-media/445666>; OSCE Representative on Freedom of the Media, Press Release, 16 April 2018, <https://www.osce.org/representative-on-freedom-of-media/377914>; OSCE Representative on Freedom of the Media, Press Release, 22 December 2017, <https://www.osce.org/fom/363926>; OSCE Representative on Freedom of the Media, Press Release, 23 October 2017, <https://www.osce.org/representative-on-freedom-of-media/351796>; OSCE Representative on Freedom of the Media, Press Release, 26 May 2016, <https://www.osce.org/fom/243026>; OSCE Representative on Freedom of the Media, Press Release, 30 March 2016, <https://www.osce.org/fom/230601>; OSCE Representative on Freedom of the Media, Press Release, 10 March 2016, <https://www.osce.org/fom/226776>; OSCE Representative on Freedom of the Media, Press Release, 18 September 2014, <https://www.osce.org/fom/123712>; OSCE Representative on Freedom of the Media, Press Release, 30 August 2014, <https://www.osce.org/fom/123072>; OSCE Representative on Freedom of the Media, Press Release, 27 August 2014, at <https://www.osce.org/fom/122997>; OSCE Representative on Freedom of the Media, Press Release, 21 August 2014, at <https://www.osce.org/fom/122907>; OSCE Representative on Freedom of the Media, Press Release, 24 October 2013, at <https://www.osce.org/fom/107416>; OSCE Representative on Freedom of the Media, Press Release, 22 October 2013, <https://www.osce.org/fom/107321>; OSCE Representative on Freedom of the Media, Press Release, 29 May 2012, <https://www.osce.org/fom/90884>.

For the society as a whole the effects are detrimental. The climate of hatred against a specific part of the population closely linked to the international interaction with colleagues and organisations creates a cleavage in society, mistrust and paranoia. As legal norms are vague and open there is no guarantee not to be targeted. Already in the present and still more in the future, Russian society as a whole will be isolated from the outside world. This has also enormous consequences for advances in science as progress depends on exchange in a globalised world. Brain drain is already tangible. As the persecution is directed against those engaged in doing solidarity work, vulnerable groups are particularly affected. This concerns above all ethnic minorities, detainees and women as stated by the UN human rights committees such as the Committee against Torture,⁷¹⁹ the Committee against the Discrimination of Women,⁷²⁰ and the Committee against Racial Discrimination.⁷²¹ The situation is particularly worrying for women, as the problem of "domestic violence" is not taken seriously by the State and women are not adequately protected.⁷²² This becomes even worse the more society is militarised because of the war.

D) Interrelation between the Development of Civil Society in Russia and International Peace and Security

The Russian legislation which increasingly restricts the basic civil freedoms, freedom of expression, freedom of association and freedom of assembly, has to be seen in the context of domestic and foreign policy. Three factors are especially relevant:

First, the country was almost permanently at war since the beginning of the century. The Second Chechen War started in August 1999 and lasted until April 2009.⁷²³ The Georgian five-days-war was short, but had long-lasting consequences for the region.⁷²⁴ Russian military intervention in Syria began in September 2015.⁷²⁵ The Russian-Ukrainian war started in 2014; on 24 February 2022 a full-scale intervention began. These are not wars far away, but wars in the Russia itself or in the immediate neighbourhood.

⁷¹⁹ UN Committee against Torture, Concluding Observations on the Fifth Periodic Report of the Russian Federation, adopted by the Committee at its Forty-Ninth Session (29 October-23 November 2012), 11 November 2012, UN Doc. CAT/C/RUS/CO/5, para. 12.

⁷²⁰ UN Committee on the Elimination of Discrimination against Women, Concluding Observations on the eighth periodic report of the Russian Federation, 20 November 2015, UN Doc. CEDAW/C/RUS/CO/8, para. 16.

⁷²¹ UN Committee on the Elimination of Racial Discrimination, Concluding Observations on the Twenty-Third and Twenty-Fourth Periodic Reports of the Russian Federation, 20 September 2017, UN Doc. CERD/C/RUS/CO/23-24, paras. 11-12.

⁷²² See ECtHR, *Volodina and others v. Russia*, 9 July 2019, app. no. 41261/17; ECtHR, *Tunika and others v. Russia*, 14 December 2021, app. nos. 55974/16 et al.; Convention on Preventing and Combating Violence against Women and Domestic Violence, adopted on 11 May 2011, entered into force 1 August 2014, CETS no. 210.

⁷²³ "The Second Chechen War", <https://reliefweb.int/report/russian-federation/second-chechen-war>.

⁷²⁴ See Independent International Fact-Finding Mission on the Conflict in Georgia, Report, press release at <https://reliefweb.int/report/georgia/report-independent-international-fact-finding-mission-conflict-georgia>.

⁷²⁵ M. Kaim, O. Tamminga, *Russia's Military Intervention in Syria*, in: German Institute for International and Security Affairs Comments, November 2015, at https://www.swp-berlin.org/publications/products/comments/2015C48_kim_tga.pdf.

Second, during the last two decades there was almost constant tension and unrest in society. Hostage takings in the Moscow Musical Theatre⁷²⁶ and in Beslan⁷²⁷ shocked the whole country. Prominent political opponents were jailed or left the country (such as Khodorkovsky⁷²⁸ and Navalny⁷²⁹). Political murders (Anna Politkovskaya,⁷³⁰ Estemirova,⁷³¹ Nemtsov⁷³²) were never satisfactorily solved. Mass demonstrations in the context of parliamentary and presidential elections in 2011 and 2012 were violently quelled;⁷³³ they resumed several times, most visibly in January and February 2019 in the context of Navalny's arrest⁷³⁴ and once more after 24 February 2022 in the context of the aggression against Ukraine.

Third, the geopolitical sphere was unstable, especially in Eastern Europe. The so-called "colour"-revolutions in Georgia (2003 – "Rose Revolution"), Ukraine (2004-2005 – "Orange Revolution"; 2013-2014 – Maidan) and Kirghizstan (2010) were perceived as a threat in Russia.

Repression on the inside and war on the outside are connected to each other as if in a communicating tube. The Russian example shows this very clearly. To start a war with another country, the elite must be sure that there will be no two-front war (with one front inside and one front outside the country). Therefore, restrictive measures are considered necessary in order not to be disturbed during the preparation for war or after it has started. This explains the wave of repressive measures in Russia immediately before, but, above all, after 24 February 2022.

The basis for all international human rights control systems is the idea of an alarm bell ringing when the human rights situation in a country considerably deteriorates. After World War II and the holocaust a general consensus has emerged that how human rights are dealt with inside a country cannot be left to the country alone.⁷³⁵ International control is necessary to avoid a relapse into a dictatorial system endangering peace and security for all.⁷³⁶

The insight into the necessity of international human rights control is therefore based on three premises. First, oppression of civil society may, at some point in time, lead to aggression against others. Second, to avoid that from happening, an alarm system has to be installed. The third premise would be that something can be done to avoid that from

⁷²⁶ ECtHR, *Stomakhin v. Russia*, 8 October 2018, app. no. 52273/07.

⁷²⁷ ECtHR, *Togayeva and others v. Russia*, 18 September 2017, app. no. 26562/07

⁷²⁸ ECtHR, *Khodorkovsky and Lebedev v. Russia*, 25 October 2013, app. nos. 11082/06, 13772/05.

⁷²⁹ ECtHR, *Navalnyy v. Russia*, 15 November 2018, app. no. 29580/12.

⁷³⁰ ECtHR, *Mazepa and others v. Russia*, 17 October 2018, app. no. 15086/07.

⁷³¹ ECtHR, *Estemirova v. Russia*, 17 January 2022, app. no. 42705/11.

⁷³² ECtHR, *Nemtsov v. Russia*, 15 December 2014, app. no. 1774/11.

⁷³³ ECtHR, *Frumkin v. Russia*, 6 June 2016, app. no. 74568/12.

⁷³⁴ 3637 people detained at public events, 4974 cases of violation of the procedure for holding public events in 2019; see T. Chernikova, D. Shedov, *Russian civil society for freedom of assembly and the ECtHR Judgment implementation*, <https://www.einnetwork.org/ein-voices/2020/12/18/russian-civil-society-for-freedom-of-assembly-and-the-ecthr-judgment-implementation>.

⁷³⁵ Helsinki 1992, para. 13.

⁷³⁶ Helsinki 1992, para. 7.

happening. However, there is no satisfactory answer to the question of what to do when the alarm bell rings.

This has been situation with Russia for the last twenty years. It was bound by many international treaties under the UN system, was a member of the Council of Europe and the OSCE. All these institutions have a system for monitoring human rights. Their alarm bells were ringing constantly. But there was no reaction that would have substantially improved the situation. Since all systems of co-operation and supervision are based on goodwill, they cannot work if there is a lack of goodwill.

The Russian “foreign-agent” legislation is a good example of this. It was heavily criticised in all international forums. But in vain. Each new reform has been even more repressive. No change can be expected in the near future.

But the CSCE also started to work under very unfavourable conditions. During the Cold War in the 1970s, there was no real hope that the situation could change quickly. Nevertheless, politicians from East and West began to build trust and prepare for co-operation wherever possible. This must also be a guiding idea for today, even if co-operation is only possible at the lowest level. On this level, at least, it should continue.

E) Recommendations

Over the last thirty years the Russian Federation has been a part of and in intense dialogue with the international community. It has been the addressee of numerous recommendations on the improvement of the human rights situation in the country. Many concrete recommendations call upon Russia to release political prisoners or to repeal repressive laws.

It must be noted, however, that in recent years the Russian Federation has not only failed to follow these recommendations, but on the contrary has reacted in such a way that the situation has worsened. This has been clearly stated by the respective supervisory bodies at numerous occasions.

That does not mean that the recommendations were wrong. On the contrary, they were all adequate and important. The Rapporteur therefore endorses these recommendations fully, but does not repeat them, but rather wants to concentrate on short-time and long-term recommendations in view of the current situation.

I) Recommendations to the Russian Federation

- The Russian Federation is recommended to remain a participating State of the OSCE and to fulfil its commitments in a co-operative spirit, especially those under the Human Dimension of the OSCE.
- The Russian Federation is recommended to uphold the provisions of the Russian Constitution which unconditionally guarantee freedom of expression, assembly and association and allow restrictions only insofar as they are necessary “to protect the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, to guarantee national defence and the security of the State”. The Constitution does not allow "the enactment of laws which abrogate or impair human rights and freedoms" and gives priority to international human rights standards.
- The authorities of the Russian Federation should be aware that they cannot credibly refer to the protection of human rights if they shy away from defending their position before international legal forums. The Russian Federation is therefore recommended to co-operate with UN treaty bodies and submit reports to them when required to do so under international law, and also to continue participating actively in mechanisms of the Human Rights Council including the Universal Periodic Review and to co-operate with special procedure mandate holders. The Russian Federation should also allow country visits if this is provided for under monitoring mechanisms.
- In relation to the legislation on the so-called "foreign agents", it is recommended that the Presidential Council on the Development of Civil Society and Human Rights carry

out a critical assessment of the short- and long-term consequences for civil society in Russia in the light of the provisions of the Russian Constitution and the international standards by which the Russian Federation is bound. This should be done before the new law enters into force on 1 December 2022. The Council's report should be published and publicly discussed.

- The Russian Federation is recommended to preserve the legacy of its co-operation with the Council of Europe. As the Russian Federation itself has accepted to be bound by the judgements of the European Court of Human Rights until 16 March 2022, it should fully implement them and use them to identify the most important issues for Russia's future human rights policy.
- The Russian Federation is recommended – when reforming its legislation – to think not only about the short-term, but also about the long-term consequences of policies aimed at suppressing civil society.

II) Recommendation to the OSCE

- The OSCE is recommended to continue to co-operate with the Russian Federation following up on the legacy of the CSCE dating back to the 1970s.
- The OSCE is recommended to develop a short-term and a long-term strategy for the follow-up on the reports adopted under the Moscow mechanism.
- The OSCE is recommended to take all possible measures not to isolate Russian civil society from the world outside Russia and to provide it with reliable information in every possible way.
- The OSCE is recommended to develop a concerted strategy to support journalists, human rights defenders, lawyers and journalists who have had to flee Russia because of political persecution. It is not only necessary to provide them with a safe haven, but also to enable them to continue their work. In particular, there should be a strategy for supporting – including financially – media outlets that work to implement OSCE standards.
- The OSCE is recommended to continue monitoring the development of Russian civil society and the human rights situation in the Russian Federation, in particular with regard to the consequences of the implementation of laws adopted after 24 February 2022.

III) Recommendation to the International Community

- The UN Human Rights Council is recommended to appoint a Special Rapporteur on the Russian Federation.
- The European Court of Human Rights is recommended to filter the pending cases against the Russian Federation and to identify – on the basis of the newly developed

“impact-assessment-mechanism” – those cases where judgements should be adopted, even if the Russian Federation has declared that it is not bound by them, as they still are very important for civil society.

- The human rights monitoring bodies working on the universal and regional level are recommended to develop a “red-line-mechanism”, i.e. a follow-up procedure for human rights violations that are classified as "serious" in the same way by all monitoring bodies. In this context, the risk that serious violations within a State could endanger peace and security should be taken into account.



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His Excellency
Ambassador Alexander Lukashevich
Permanent Representative
of the Russian Federation to the OSCE
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1220 Vienna
Austria

cc Mr. Matteo Mecacci
Director of the Office of
Democratic Institutions and Human Rights (ODIHR)

cc: Representatives of 38 invoking Participating States

18.08.2022

Your Excellency,

As you are aware, paragraph 12 of the OSCE's Moscow Document was invoked in respect of the Russian Federation on 28 July 2022 by 38 OSCE participating States. With letter of 9 August 2022, they have appointed me as Rapporteur.

The mandate has been defined as follows:

- *To assess the state of Russia's adherence, in law and in practice, to its OSCE Human Dimension commitments and to identify actions taken by the Russian Government over recent years that have led to the current human rights and fundamental freedoms situation in the country.*
- *To assess ramifications of such developments on Russian civil society, on free media, on the rule of law, and on the ability of democratic processes and institutions to function in Russia, as well as on achieving the OSCE's goal of comprehensive security.*



I will undertake this mission in full independence and impartiality, based on the rules of the Moscow mechanism.

As the Russian Federation has decided not to appoint a second expert, I am obliged to carry out the mission as a single rapporteur during the period from 18 August to 31 August 2022.

According to paragraph 6 of the OSCE's Moscow Document the State concerned has to cooperate fully and facilitate the work of the mission of experts.

For this purpose, I ask you for your support in identifying relevant institutions, officials and members of the civil society who are knowledgeable about the questions asked. As the mission has to be completed within two weeks I will send you requests for meetings I consider to be important in separate e-mails and would ask you to forward them to the persons concerned.

For the purpose of the mission it would be recommendable to visit Russia, to speak directly with State representatives and representatives of the civil society and to collect information on the spot. Therefore, I would ask you to arrange a country visit in the shortest interval possible and to guarantee my personal security. Alternatively, it would be possible to arrange zoom meetings.

I would ask you to respond to my letter as soon as possible, preferably until tomorrow, Friday 19 August 2022, at 5 pm.

I thank you for your understanding. May I ask you to confirm the receipt of this letter.

Please accept, Excellency, the assurances of my highest consideration.


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