



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



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**Third party intervention
by the Council of Europe Commissioner for Human Rights**

under Article 36, paragraph 3, of the European Convention on Human Rights

**Application n° 9988/13
ECODEFENCE and others v. Russia and 48 other applications**

Introduction

1. On 16 May 2017 the Council of Europe Commissioner for Human Rights (hereinafter referred to as “the Commissioner”) informed the European Court of Human Rights (“the Court”) of his decision to intervene as a third party, according to Article 36, paragraph 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) in the proceedings concerning ECODEFENCE and others against Russia and 48 other applications concerning the Russian Federation. The cases relate to the legislative framework on non-commercial organisations (“NCOs”); specifically, they concern the “Law on Foreign Agents”¹ and its application vis-à-vis the organisations concerned, a number of which are known for their work on human rights.
2. The Commissioner has a mandate to foster the effective observance of human rights; to assist member states in the implementation of Council of Europe human rights instruments; to identify possible shortcomings in the law and practice concerning human rights; and to provide advice and information regarding the protection of human rights and the prevention of human rights violations.
3. Human rights defenders have a central role in ensuring that state policies are consistent with human rights and in defending victims of human rights violations. As such, they are key partners of the Commissioner. In turn, the Commissioner has a specific duty concerning the protection of human rights defenders, as reflected in the Declaration on Council of Europe action to improve the protection of human rights defenders and promote their activities adopted by the Committee of Ministers on 6 February 2008. The Declaration “[i]nvites the Commissioner for Human Rights to strengthen the role and capacity of his Office in order to provide strong and effective protection for human rights defenders by [...] continuing to meet with a broad range of defenders during his country visits and to report publicly on the situation of human rights defenders” and to “intervene[...], in the manner the Commissioner deems appropriate, with the competent authorities, in order to assist them in looking for solutions, in accordance with their obligations, to the problems which human rights defenders may face, especially in serious situations, where there is a need for urgent action”. Further, the Declaration calls on Council of Europe member states to “cooperate with the Council of Europe human rights mechanisms and in particular [...] with the Commissioner for Human Rights by facilitating his/her visits, providing adequate responses and entering into dialogue with him/her about the situation of human rights defenders when so requested.”
4. States have an obligation to protect human rights defenders and to create a safe and enabling environment for their activity, a principle which has been repeatedly emphasised by the Commissioner in the context of his country and thematic work. The relationship with human rights actors from the Russian Federation, including those from civil society, has been particularly important for the Commissioner and his predecessors, and the environment for the work of human rights defenders has been a regular topic of the Commissioner’s discussions with the Russian authorities. Since the enactment of the Law on Foreign Agents in 2012, the Commissioner has raised concerns on a number of occasions about the deteriorating environment for the activity of civil society groups, including that of human rights defenders, in the Russian Federation. Based on his ongoing dialogue with the Russian authorities, national human rights structures, and civil society,² as

¹ The Law on Foreign Agents is a short-hand term for Federal law no. 121-FZ of 20 July 2012 “on Introducing Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of the Activities of the Non-Commercial Organisations Performing Functions of a Foreign Agent”. The law entered into force on 21 November 2012.

² Commissioner Muižnieks carried out visits to the Russian Federation in October 2012 and April 2013. In addition, he went to Moscow as part of a mission that also covered Kyiv and Simferopol in September 2014. Since then he has continued - from Strasbourg - his dialogue and exchanges with the Russian authorities. He received the Russian

well as his continuous monitoring of the situation, the Commissioner published two Opinions, in July 2013³ and July 2015,⁴ on the legislation and practice on NCOs in light of Council of Europe standards. The Commissioner also organised two meetings in Strasbourg (November 2015 and March 2017) with human rights defenders, lawyers and members of leading Russian NCOs, in order to discuss the Law on Foreign Agents and the consequences of its implementation in practice.

5. The availability of resources is essential to the functioning of an NCO. It is well-established that NCOs should be free to solicit and receive funding not only from public bodies in their own state but also from institutional or individual donors, another state or multilateral agencies, subject only to the laws on customs, foreign exchange and money-laundering, as well as those on elections and funding of political parties.⁵
6. The present submission draws from the Commissioner's previous analyses of the Russian legislation and practice on NCOs in light of Council of Europe human rights standards. It is set out as follows: Section I summarises the Commissioner's main observations as regards the legislative framework itself and its compatibility with Council of Europe standards. Section II addresses the key aspects of the implementation of the relevant legislation in practice, as well as its impact upon the environment for human rights defenders. These sections are followed by the Commissioner's concluding observations.

I. Main observations on the Russian legislation on NCOs

7. The key feature of the Law on Foreign Agents is the requirement for NCOs receiving any amount of foreign funding and engaged in "political activities" in the Russian Federation to register as "foreign agents" in a special Register established for this purpose. Apart from the requirement to register, the Law imposes specific requirements for self-identification upon such NCOs. In particular, the label "NCO performing the function of a foreign agent" must appear on any materials published or distributed by NCOs registered as "foreign agents". In addition, "foreign agent" NCOs are subject to different and more extensive reporting requirements, and must maintain separate accounting of funds and other property generated through local and foreign sources. There are sanctions for non-compliance with the requirements of the Law; moreover, the supervision of "foreign agent" NCOs is more stringent than that of other NCOs, as the Law gives public authorities new grounds to audit them. "Malicious" non-compliance (*zlostnoe ukлонenie ot ispolneniya obyazannostey*) with the provisions of the Law entails criminal penalties (up to two years imprisonment) under a new provision in the Criminal Code, Section 330.1.
8. The Commissioner observed that the term "foreign agent" carries with it strong negative connotations, since it has been usually associated in the Russian historical context with the notion of a "foreign spy" and/or a "traitor". The foregoing is confirmed by public surveys conducted by the Levada Centre (a Russian institute for sociological surveys), which show that 62% and 57% of respondents, respectively in September 2012 and December 2016, had negative perceptions of the term "foreign agent". According to the latter survey, the most common associations with the phrase

Federal Ombudsperson in January 2017 and the Head of the Presidential Council on Civil Society and Human Rights in June 2017.

³ Opinion of the Commissioner for Human Rights [CommDH\(2013\)15](#) of 15 July 2013 on the Legislation of the Russian Federation on Non-Commercial Organisations in Light of Council of Europe Standards.

⁴ Opinion of the Commissioner for Human Rights [CommDH\(2015\)17](#) of 9 July 2015 on Legislation and Practice in the Russian Federation on Non-Commercial Organisations in Light of Council of Europe Standards: an Update.

⁵ See Article 50 of Recommendation CM/Rec (2007)14 of the Committee of Ministers of the Council of Europe to member states on the legal status of non-governmental organisations in Europe.

“foreign agent” for respondents were: spy, foreign intelligence agent, infiltrator, recruiter or recruit (45% of respondents); others (7%) indicated that, for them, the phrase evoked notions such as enemy, enemy of the people, enemy of Russia, traitor, hater of Russia, and fifth column.⁶

9. In this respect, Professor Leonid Krysin, Head of the Modern Russian Language Department at the V.V. Vinogradov Institute of the Russian Language of the Russian Academy of Sciences, has explained why the term “foreign agent” has the negative connotation of a spy:

“This is governed not so much by the linguistic characteristics of the words foreign and agent, as by the common usage in 20th century Russian society of the locution foreign agent. This locution was used repeatedly by the authorities and investigative bodies as a standard accusation against tens of thousands of our citizens during the political repressions of the 30s and 40s; this locution was fixed in the accusatory speeches of Soviet public prosecutors, in hundreds of court sentences and extra-judicial decisions, on the pages of Soviet newspapers and in different types of literary texts; this locution entered the consciousness of native Russian speakers – in any case the older generation of today’s Russian speakers – as a synonym for an enemy spy or at any rate someone who serves in the interests of an enemy of ours. No reasoning [as to the neutrality of the definition] can rebut the strong connotation accompanying the phrase foreign agent: ‘acting in the interests of another and moreover enemy state’.”

10. Pursuant to the Law on Foreign Agents, an NCO is considered to carry out political activity if, regardless of its statutory goals and purposes stated in its founding documents, it participates (including through financing) in organising and implementing political actions aimed at influencing decision-making by state bodies intended for the change of state policy pursued by them, as well as shaping of public opinion for the aforementioned purposes.⁸ On 20 May 2016, Federal Law No. 179-FZ was adopted “on Introducing Amendments to Section 8 of the Federal Law “on Public Associations” and to Section 2 of the Federal Law “on Non-commercial Organisations””. Even though a stated objective of those amendments was to define more precisely the notion of “political activity”, the definition was actually broadened, explicitly including many habitual and legitimate activities of civil society groups, such as: participation in public gatherings or debates and speeches; monitoring of elections; making public calls to state authorities in order to influence their actions in law- and policy-making; shaping public opinion on the decisions and policies of state authorities; conducting and publicising polls and other social research; and involving citizens in those activities. Federal Law No. 179-FZ explicitly lists, *inter alia*, “rule of law”, “public order” and “human rights” as spheres that fall within the ambit of the term “political activity”.
11. The Law excludes from the scope of ‘political activity’ activities in the following fields: “science, culture, the arts, health care, disease prevention and protection of health, social security, protection of motherhood and childhood, social support of disabled persons, promotion of a healthy lifestyle, physical well-being and sports, protection of flora and fauna, charitable activities.”⁹

⁶ Levada surveyed 1600 persons throughout the Russian Federation in December 2016. At that time, only 33% of respondents had a neutral view of the phrase “foreign agent”, and a mere 3% had positive associations with the term. See the results of the survey published on 7 February 2017, available online: <http://www.levada.ru/2017/02/07/zakon-o-ekonomicheskikh-organizatsiyah/>.

⁷ See linguistic expertise dated 13 November 2012 by Professor Krysin, transmitted to the Chairperson of “International Memorial” by the Director of the Vinogradov Institute: <http://old.memo.ru/uploads/files/996.pdf>.

⁸ Section 2.2 of the Law on Foreign Agents.

⁹ Section 2, paragraph 12, of Federal Law No. 179-FZ “on Introducing Amendments to Section 8 of the Federal Law “on Public Associations” and to Section 2 of the Federal Law “on Non-commercial Organisations””.

12. In both of his Opinions on the Russian legislation on non-commercial organisations, the Commissioner observed that the provisions on the Law on Foreign Agents introduced unjustified discriminatory treatment for a particular set of organisations, and interfered with the free exercise of the rights to freedom of association and freedom of expression. The main concerns related to: the requirement for NCOs to self-label using the pejorative term "foreign agent"; the broad and vague character of the term "political activity", which increased the likelihood of the Law's arbitrary interpretation; and the disproportionate sanctions, including the possibility of applying criminal charges for "malicious" non-compliance. As outlined below, subsequent amendments to the legislation have made the environment for NCOs deemed to be "foreign agents" even more restrictive.

Amendments to the legal framework on NCOs following the enactment of the Law on Foreign Agents

13. In February and June 2014, a series of amendments were adopted to the legislation on NCOs, which widened the legal grounds for conducting unplanned inspections.¹⁰ On 23 October 2015, Federal Law No. 304-FZ was adopted, extending from three months to one year the statute of limitations for the imposition of administrative sanctions for non-compliance with the Law on Foreign Agents, pursuant to Section 19.34 of the Code of Administrative Offences of the Russian Federation ("the CAO").
14. Other legislative amendments have restricted the possibility of NCOs registered as foreign agents to interact with certain state officials and to perform certain types of public activities. In November 2014, Federal Law No. 355-FZ introduced provisions prohibiting political parties from concluding contracts with NCOs registered as foreign agents. The same law prohibited such NCOs from, *inter alia*, "participating in other ways in electoral and referendum campaigns".¹¹ Federal Law No. 468-FZ, introduced in December 2015, provided that a "special regime" must be formulated by the leadership of the Federal Security Service and the Foreign Intelligence Service for any interaction between their personnel and NCOs registered as foreign agents.¹² In May 2017, reports emerged that the Ministry of Justice intended to introduce new legislation that would further restrict interactions of "foreign agent" NCOs with public authorities, by preventing them from participating in public consultations on draft laws and secondary legislation (*anti-korruptsionnaya ekspertiza normativno-pravovyykh aktov*).¹³
15. In January 2016, the State Duma approved the first reading of draft law No. 949326-6, which stipulates that NCOs registered as Foreign Agents and their members would not be permitted to take part in public monitoring commissions (*obshchestvenno-nablyudatel'nye komissii*) which monitor the situation in places of detention. In the Commissioner's view, removing the possibility for experienced, independent and impartial human rights NGOs – many of which are registered as "foreign agents" –

¹⁰ Two laws introduced the amendments: Federal Law No. 18-FZ of 21 February 2014 "on Amending Section 32 of the Federal Law "on Non-Commercial Organisations"" and Federal Law No. 147-FZ of 4 June 2014 "on Amending Section 32 of the Federal Law "on Non-Commercial Organisations"".

¹¹ The law concerned amended paragraph 4.1 of Section 31 of Federal Law no. 95-FZ "on Political Parties" of 11 July 2001 and paragraph 6 of Section 3 of Federal Law no. 67-FZ "on Basic Guarantees of the Electoral Rights of the Russian Citizens and the Right to Participate in Referendum" of 12 June 2002.

¹² See paragraph 12(a) of Section 2 and Section 3 of Federal Law no. 468-FZ of 30 December 2015 "on Amending Certain Legislative Acts of the Russian Federation".

¹³ See article: "Ministry of Justice intends to prevent foreign agents from participating in public consultations", *Znak*, 16 May 2017: https://www.znak.com/2017-05-16/minyust_hochet_zapretit_uchastvovat_inostrannym_agentam_v_antikorruptsiionnyh_ekspertizah.

to monitor the treatment of persons deprived of their liberty would eliminate a crucial safeguard against torture and inhuman and degrading treatment or punishment.

16. There have been further legislative initiatives relating to NCOs deemed to be foreign agents. A legislative proposal submitted by the Ministry of Justice to the Government on 19 February 2016 would impose additional reporting requirements on NCOs registered as foreign agents.¹⁴ In particular, NCOs declared to be Foreign Agents would have to present to the Ministry of Justice their documentation on any projects funded from foreign sources, planned activities in the framework of such projects, as well as to report on their implementation, and any members of the civil service at state or local level (including in educational institutions) would be prohibited from taking part in activities of “foreign agent” NCOs and from serving on such NCOs’ governing bodies. Such a restriction upon cooperation between civil servants and “foreign agent” NCOs would codify a practice which has already been observed in certain regions of the Russian Federation following the enactment of the Law on Foreign Agents (see paragraph 33). In addition, parliament members from the Communist Party proposed a draft law in February 2017 aimed at preventing NCOs from concealing their status as “foreign agents” from the public; under that proposal, NCOs would be required to display their stigmatising designation as a headline in their publications and on the home page of their web-sites.¹⁵

17. Another piece of legislation, the “Law on Undesirable International or Foreign NGOs”, was adopted in May 2015, allowing authorities to ban the activities of certain international non-governmental organisations (INGOs) deemed to constitute a threat to the constitutional order, national security and defence. As a result of being declared “undesirable”, some major funders – such as the Open Society Foundation and Open Russia - have been obliged to cease operating in Russia,¹⁶ and others – such as the MacArthur Foundation – have themselves ended their activity in Russia to avoid the stigmatising designation.¹⁷ The foregoing developments represent a major reduction in funding for many domestic NCOs.

18. In contrast to the restrictive provisions applying to NCOs deemed to be “foreign agents”, a law which entered into force on 1 January 2017 introduced the category “NCO – provider of valuable public services” (*NKO - ispolnitel’ obshchestvenno-polez’nykh uslug*), which covers “socially-oriented” NCOs (*sotsial’no-orientirovannyye NKO*) not registered as foreign agents.¹⁸ The new status confers upon such NCOs privileged treatment, such as the possibility to benefit from an array of public services, a special regime which includes priority state support, and financial support for a minimum of two years.

II. Overview of the implementation of the federal legislation on NCOs

¹⁴ See Annual Report of the Ministry of Justice on the State’s Supervision on the Activities of NCOs in 2016 published on 14 March 2017, pages 40 to 41, available online: <http://minjust.ru/ru/doklady-ob-osushchestvlenii-ministerstvom-yusticii-rossiyskoy-federacii-gosudarstvennogo-kontrolya-v>.

¹⁵ See article: “NCOs confused in labelling requirements”, *Nezavisimaya gazeta*, 6 June 2017: http://www.ng.ru/politics/2017-06-06/1_7003_nko.html.

¹⁶ The list of “Undesirable” INGOs can be found on the website of the Ministry of Justice of the Russian Federation: <http://minjust.ru/ru/activity/nko/unwanted>.

¹⁷ See the statement of McArthur President Julia Stasch on the Foundation’s Russia office of 21 July 2015, available on-line: <https://www.macfound.org/press/press-releases/statement-macarthur-president-julia-stasch-foundations-russia-office/>.

¹⁸ See paragraph 1 of Section 1 of the Federal Law no. 287-FZ of 3 July 2016 on “Amending Federal Law on “Non-Commercial Organisations” by Introducing a Status of a Non-Commercial Organisation – Provider of Public Valuable Services”.

Interpretation in practice of the notion of “political activity”

19. In addition to the Commissioner, many international and Russian actors have expressed concerns regarding the overly-broad and vague concept of “political activity” in the Law on Foreign Agents. Those expressing concern include the Council of Europe Commission on Democracy Through Law (the Venice Commission), the Expert Council on NGO Law of the Conference of INGOs of the Council of Europe, UN Special Rapporteurs on freedom of association, human rights defenders and freedom of expression, as well as Russian human rights structures, at both federal and regional levels. According to the Chairman of the Presidential Council for Civil Society and Human Rights of the Russian Federation, Mikhail Fedotov, “recent amendments to the definition of “political activity” have “surpassed all expectations in the wrong direction: the law qualifies as political any public activity”.¹⁹ Echoing this view, the Ombudsman of the Perm region, Tatiana Margolina, stated that the amendments *de facto* construe any activity carried out by NCOs as political.²⁰ Similarly, the Ombudsman of the city of Moscow, Tatiana Potyayeva, noted that the amendments did not mention clear and exhaustive criteria as to what constitutes “political activity,” thus contributing to the lack of consistency in its implementation.²¹
20. According to the judgment of the Constitutional Court of the Russian Federation delivered on 8 April 2014, “political activity” may encompass public gatherings, public calls to state authorities, expressing opinions regarding decisions taken by state authorities as well as other actions or speech, “the exhaustive list of which cannot be legally defined”. The Constitutional Court asserted that it was the role of the domestic judiciary to resolve any potential disputes between NCOs and the state authorities when implementing the Law on Foreign Agents.²² However, as the Commissioner has previously noted,²³ judicial practice between 2013 and 2015 was characterised by an overall reluctance by Russian courts to thoroughly assess factual circumstances, to deal with arguments brought by NCOs, and to assess the law’s application in light of the European Convention. In the absence of detailed reasoning in judicial decisions as to why one activity or another should be considered as political, NCOs have been left with no guidance as to whether their activities might fall in that category. On his part, Mr Fedotov has stated that the practice of the implementation of the Law on Foreign Agents has not improved since the revision in 2016 of the definition of “political activity”, but has rather become worse.²⁴
21. A review of the NCOs included in the registry of foreign agents reveals that state authorities tend to qualify much of civil society activity as “political”. Out of the 148 NCOs registered as Foreign Agents on December 2016, 121 groups (or 82%) were conducting activities such as: the promotion of democracy and the rule of law, humanitarian and social assistance, awareness-raising on environmental issues, promotion of independent media and journalism, civic education, and social research. Moreover, it is striking that human rights defenders constituted the largest single category of NCO registered as foreign agents (44, or 30%).
22. As noted *inter alia* in the Facts of individual cases, the relevant authorities have found the following actions to constitute political activity: translating and analysing judgments of the Court (Mass Media Defence Centre in Voronezh); disseminating the Commissioner’s opinions on the Law on Foreign

¹⁹ See interview with Mikhail Fedotov, 26 December 2016: <http://tass.ru/opinions/interviews/3909524>.

²⁰ See “A draft law which clarifies the definition of “political activity” has been submitted to the State Duma”, *Agency of Social Information*, 19 February 2016: <https://www.asi.org.ru/news/2016/02/19/117344/>.

²¹ *Ibid.*

²² See the judgment of the Constitutional Court of the Russian Federation No. 10-P of 8 April 2014, p.38 and 41.

²³ See paragraph, 53, 55 and 59 of Opinion Comm(2015)17.

²⁴ Interview with Mikhail Fedotov, see footnote 20 above.

Agents via an association's website (Soldiers' Mothers of St Petersburg); promoting environmental causes and sustainable development (various applicants); publishing and disseminating a brochure entitled "LGBT: Human Rights in Russia" (SIBALT); reporting on hazing and human rights in the army which was then reflected in a report of the local ombudsman (Soldiers' Mothers of St Petersburg); criticism of the work of law-enforcement bodies using the platform of the Presidential Council for Civil Society and Human Rights, to which an applicant organisation's director – an experienced human rights defender and partner of the Commissioner and the Council of Europe – had been appointed (the Nizhny-Novgorod-based Committee against Torture); and discussions on policy aimed at promoting democratic values, in the framework of the Council of Europe Network of Schools of Political Studies (Moscow School of Civic Education). All of those activities fall under the legitimate exercise of freedom of expression. Local prosecutorial authorities have even qualified a project for preventing HIV transmission – that included distribution of syringes and condoms (NCO Sotsium, in the city of Engels in the Saratov region) - as "political activity".

23. The Commissioner agrees with representatives of human rights structures of the Russian Federation that the application of the Law on Foreign Agents continues to reveal a fundamental uncertainty surrounding the term of "political activity" as interpreted by the executive, prosecutorial and judicial branches.²⁵ He underlines that the activities qualified as "political" under the Law on Foreign Agents are among the most commonly-practiced, basic and natural methods for civil society institutions to perform their work. Moreover, they constitute important elements of the democratic process. In his view, the application of the Law on Foreign Agents against civil society groups advocating for changes in law and practice, or against those scrutinising the human rights compliance of decisions, actions and policies of public authorities, greatly undermines their role as a public watchdog in a democratic society.

Impact of the Law on Foreign Agents upon non-commercial organisations

24. In his Opinion CommDH(2015)17, the Commissioner noted that the Law on Foreign Agents can be misused as a repressive tool against human rights defenders.²⁶ Its broad and vague terms are all the more problematic when considered in conjunction with the types of sanctions it imposes – including disproportionate administrative fines and criminal prosecution in certain cases – and the arbitrary manner in which they have been applied.
25. According to the Presidential Council for Civil Society and Human Rights, implementation of the NCOs legislation in Russia has been aggressive in practice;²⁷ at times, NCOs receiving foreign funding have been registered as foreign agents irrespective of their activities. The Commissioner agrees with the Council that "such practice of implementation, based on legal uncertainty of the current legislation on NCOs performing functions of a foreign agent, leads to a degradation of the

²⁵ In this respect, the Ombudsman of Saint Petersburg stated in the presentation of his 2014 report: "The main problem of the application of the Federal Law "on non-commercial organisations" is the vagueness of the concept "political activity", which does not permit a definitive reply to the question, which activities can be regarded as political". See http://ombudsmanspb.ru/25_03_2015_aleksandr_shishlov_predstavil_v_zakonod

²⁶ See paragraph 48 of CommDH(2015)17.

²⁷ See Recommendations of the Presidential Council for Civil Society and Human Rights following analysis of the draft law on "Amending paragraph 6 of Section 2 of the Federal Law "on Non-Commercial Organisations" in part of clarifying the definition of political activity " adopted on 10 February 2016: <http://www.president-sovet.ru/documents/read/436/>

entire non-commercial sector, to criminalisation of legitimate forms of public activity, bankruptcy and criminal prosecution of the leaders of civil society”.²⁸

Use of administrative sanctions

26. Whereas the Law on Foreign Agents obliges NCOs to register as “foreign agents” if they perform such a function, the Ministry of Justice has the power to identify and register such NCOs on its own initiative. This has resulted in simultaneous application of the different provisions of the Law in such a way as to cause maximum interference with the NCOs concerned: all too often, NCOs have been included in the Register of Foreign Agents in a compulsory manner and at the same time sanctioned administratively for failing to apply for such registration themselves.²⁹
27. While the Russian legal framework does foresee the possibility of issuing a warning to an NCO, allowing such groups to rectify any lack of compliance voluntarily within a one-month period, the Ministry of Justice has wide discretion in this respect. It remains unclear what criteria are used by the Ministry of Justice when assessing the necessity of application of administrative sanctions under Section 19.34 of the CAO as opposed to other - less intrusive - measures, having regard to the Court’s requirement for there to be a “pressing social need” for the interference.³⁰
28. The administrative sanctions for failure to register voluntarily as a foreign agent and/or to label publications accordingly raise serious questions from the point of view of proportionality. Bearing in mind that NCOs, by their very nature, are not engaged in profit-making activities, the fines – which range from 100 000 to 300 000 roubles (between 1,546 and 4,638 Euros) for NCO managers and from 300 000 to 500 000 roubles (4,638 to 7,730 Euros) for NCOs – represent a major burden. In fact, such amounts represent a significant portion of the annual budget of many small Russian NCOs.
29. Despite the findings of the Constitutional Court that the establishment of minimum fines by the law on Foreign Agents was at odds with the principle of proportionality,³¹ heavy fines continue to be applied. The Commissioner observes that Russian courts have been reluctant to follow the standard of proportionality when applying fines on NCOs and their managers, or to weigh the necessity of such sanctions against their negative consequences on the NCOs affected. For example, in April 2016, the All-Russia Movement for Human Rights, a prominent human rights NCO, was fined a total amount of 900 000 roubles (approximately 13,914 Euros) for failing to stamp three publications on prisoners’ rights with the “foreign agents” label. Similarly, the association Golos – which engages in monitoring of elections - was fined a total amount of 1.2 million roubles (18,552 Euros) in April 2016 for not labelling three of its publications. In December 2016, the Tverskoy district court of Moscow imposed administrative fines totalling 600 000 roubles (9,276 Euros) on the Human Rights Centre Memorial – an NGO renowned for its extensive and long-standing work in defence of human rights – for each publication not labelled as being issued by a “foreign agent”. According to the data collected by Russian and international civil society groups, the total amount of fines imposed on NCOs under the Law on Foreign Agents doubled in 2016, representing about 9 000 000 roubles (approximately 139,137 Euros).
30. By the end of 2016, there had been at least 50 cases brought by the Ministry of Justice and other state agencies against NCOs registered as foreign agents for failure to comply with labelling

²⁸ *Ibid*, p.3-4.

²⁹ See paragraph 42 of CommDH(2015)17.

³⁰ See paragraph 52 of CommDH(2015)17.

³¹ See the judgment of the Constitutional Court of the Russian Federation No. 10-P of 8 April 2014, p.53.

requirements (under Section 19.34-2 of the CAO). In the absence of specific official instructions on the exact manner of labelling, NCOs sometimes do so in a discreet manner to avoid drawing attention to the designation they experience as stigmatising. In response, sanctions have been applied arbitrarily by the authorities, as noted by certain members of the Public Chamber of the Russian Federation.³²

31. Following the imposition of such significant fines, a number of NCOs have had no choice but to initiate liquidation proceedings, as they have not been able to cope with the extra-operational expenses incurred. For example, in May 2017, the North Caucasus environmental organisation EcoVakhta announced that it had no funds to pay fines imposed under the Law on Foreign Agents, and that it could not pursue its activities for many months as a result of the six judicial cases initiated against the organisation by state authorities.³³ In November 2016, another environmental organisation, Zelyoniy Mir ("Green World"), announced its self-dissolution, due to administrative burdens following its registration as a foreign agent. In January 2016, the Committee Against Torture, a prominent human rights NGO and long-standing partner of the Commissioner's Office and of the Council of Europe's Committee for the Prevention of Torture, declared bankruptcy as a result of the application of the Law on Foreign Agents.
32. Furthermore, the Commissioner has serious concerns about the imposition of administrative fines on individual managers of NCOs for failure to comply with the Law on Foreign Agents. In particular, he finds the penalties imposed upon Olga Pitsunova - former director of the Saratov-based environmental group "Partnership for Development" - to be grossly disproportionate. Ms Pitsunova was deprived of half of her pensions and disability payments in 2015 due to her inability to pay on time an initial administrative fine of 100 000 roubles in 2014. According to her legal representatives, her income fell below the minimum standards of living as a result.³⁴

Consequences of being labelled as a "foreign agent"

33. Russian national human rights institutions have stated that the "foreign agent" label amounts to a major blow to the reputation of civil society organisations.³⁵ Indeed, state authorities have displayed a negative attitude towards NCOs branded with that label. By way of example, in March 2017, the Ministry of Education branch in the Sverdlovsk region advised local government entities and high schools against cooperating with the Ekaterinburg society "Memorial", because it was registered as a "foreign agent" and due to the potentially negative influence on young persons of its "politicised actions". Reportedly, similar warnings against co-operation of state authorities with NCOs registered as foreign agents have been made in other cities.
34. The Commissioner further notes that the use of the "foreign agent" label has not only affected the ability of NCOs to cooperate with state institutions, but has also affected NCOs in their relations with other partners and the general public. The Commissioner refers to the situation faced by the Centre for the Adaptation and Education of Migrants' Children – a project run by the Civil Assistance Committee (a humanitarian organisation) - which was deprived of funding due to being registered as

³² Elena Topoleva-Soldunova quoted in "NCOs confused in labelling requirements", *Nezavisimaya gazeta*, 6 June 2017: http://www.ng.ru/politics/2017-06-06/1_7003_nko.html.

³³ See article: "Rudomakha announced that EcoVakhta's activities have been paralysed by ongoing judicial proceedings", *Caucasian Knot*, 11 May 2017, available on-line: <http://www.kavkaz-uzel.eu/articles/302541/>.

³⁴ See article: "Bailiffs seized pension and disability benefits of the ecologist Olga Pitsunova", *Obshchestvennoe Mnenie*, 8 November 2016: <https://www.om-saratov.ru/po-sushchestvu/08-november-2016-i42584-pristavy-polnostu-arestova>.

³⁵ See "Ella Pamfilova: working conditions for NCOs in Russia has worsened", *Agency of Social Information*, 7 May 2015: <https://www.asi.org.ru/news/2015/05/07/ella-pamfilova-usloviya-raboty-nko-v-rossii-uslozhnilis/>.

a foreign agent.³⁶ As a result of that label, other charity foundations ceased their cooperation with the centre, which became unable to carry out any further activity for the benefit of migrants' children. More generally, here has been a clear tendency for groups to engage in self-censorship, curtail their activities and become more cautious, and many NCOs have been unable to launch long-term projects as they remain unsure about their ability to operate in the future.³⁷

35. In addition, there have been media smear campaigns, at the federal and local levels, against NCOs based on their status as “foreign agents”. In some cases, such ostracism has had particularly severe consequences on NCOs and their managers. By way of example, a correspondent of a national-coverage channel was shown on television pointing out the door of the apartment of Nadezhda Kutepova, director of Planet of Hope³⁸ - an environmental organisation – and asserting that her organisation was engaged in “industrial espionage funded by US money”. As a result of repeated accusations that she was engaging in subversive actions against the local nuclear industry, as well as threats against her and her children, Ms Kutepova had to flee the Russian Federation.³⁹ Similarly hostile media campaigns against “foreign agent” NCOs have taken place in Moscow, the Volgograd region, the North Caucasus, and other areas. Their message has reverberated across the country and inspired further attacks against individual staff members and human rights defenders. In the Rostov region, for instance, the chairperson of Women of Don was verbally attacked twice in July 2016 by activists of the NOD movement (National Liberation Movement, or *Natsional'no-Osvoboditel'noe Dvizhenie*) for allegedly serving anti-Russian interests of the USA.

Criminal prosecution for “malicious” non-compliance with the Law on Foreign Agents

36. The Law on Foreign Agents also allows for the application of criminal prosecution and imprisonment for the “malicious” non-compliance with the provisions of this Law, which in the Commissioner’s view, is a severe penalty, and one hardly qualifying as being “necessary in a democratic society” and proportionate to the offence of “deliberate non-registration”. It also appears that the objections expressed by the Supreme Court with regard to the relevant provision of the Criminal Code (Section 330.1) - due, *inter alia*, to the absence of public danger - were not duly taken into account.⁴⁰
37. In June 2016, the general department of the Investigative Committee of the Rostov Region initiated a criminal prosecution against Valentina Cherevatenko, chairperson of Women of Don and the Foundation for the Development of the Civil Society and Human Rights, for “malicious” non-compliance with the requirements of the Law on Foreign Agents under Section 330.1 of the Criminal Code. Both NCOs are devoted to human rights, social projects and humanitarian assistance, and were registered as foreign agents respectively in 2014 and 2015.

III. Conclusions

³⁶ See press release: “A pathway apart” of the Civic Assistance Committee published on 21 January 2016: <http://refugee.ru/news/doroga-vroz/>.

³⁷ See paragraph 65 of CommDH(2015)17.

³⁸ Planet of Hope, which is among the present group of applicants, was registered in the city of Ozyorsk in the Chelyabinsk region, a site of heavy radioactive contamination from a nuclear disaster in 1957, and a high incidence of tumours among the population as a result.

³⁹ See Urgent appeal on “Judicial harassment and media smear campaign against the NGO “Planet of Hope” and its director Nadezhda Kutepova”, published by the Observatory for the Protection of human rights defenders on 17 July 2015: <https://www.fidh.org/en/region/europe-central-asia/russia/russian-federation-judicial-harassment-and-media-smear-campaign>.

⁴⁰ See paragraph 73 of the Opinion CommDH(2013)15.

38. The Commissioner finds that the application of Law on Foreign Agents has had a major “chilling effect” on the work of civil society organisations in the Russian Federation. In effect, those organisations have been silenced, marginalised and punished for their legitimate activity in the field of human rights, democracy and the rule of law.
39. As he has stated on several occasions, the Commissioner finds the Law on Foreign Agents to be incompatible with international and European human rights standards. In particular, he emphasises that any continuing use of the term “foreign agent” in the legislation and practice in relation to non-governmental organisations would only lead to further stigmatisation of civil society in the Russian Federation and intensify the chilling effect upon its legitimate activities and speech. The Commissioner considers that the use of that pejorative designation should be abandoned.
40. The Commissioner underlines that the activities qualified as “political” under the Law on Foreign Agents are among the most commonly-practiced, basic and natural methods for civil society institutions to perform their work. Moreover, they constitute important elements of the democratic process. In his view, the application of the Law on Foreign Agents against civil society groups advocating for changes in law and practice, or against those scrutinising the human rights compliance of decisions, actions and policies of public authorities, greatly undermines their role as a public watchdog in a democratic society.
41. As a result of the energetic application of the Law on Foreign Agents, there has been considerable interference with the free exercise of the rights to freedom of association and freedom of expression of many NCOs and human rights defenders, sometimes with severe consequences. Apart from the difficulties in securing funding, such groups and the persons working in them have been subjected to ostracism, harassment, and even physical attacks. Dozens of NCOs have had no choice but to suspend their operations or shut down altogether. The negative effects of the Law on Foreign Agents upon human rights defenders and non-commercial organisations raise questions about the legitimacy of the state’s restrictive measures in light of Article 18 of the Convention.
42. The Commissioner has recommended thorough revision of the legislation regulating the activities of NCOs in Russia, with the aim of establishing a clear and coherent framework in line with applicable international standards.⁴¹ Reporting and accounting requirements should be made the same for all NCOs, regardless of the sources of their funding. The possibility of applying criminal charges for “malicious” non-compliance with the Law in the absence of any real and specified public danger is especially problematic and the relevant provisions should be repealed.
43. Taking into account the systemic nature of the problems identified, the Commissioner believes that substantive changes in this area are not likely to be achieved without multiple measures of a general character. NCOs must enjoy the presumption of lawfulness of their activities in law and practice. They should be free to solicit and receive funding not only from public bodies in their own state but also from institutional or individual donors, another state or multilateral agencies, subject only to the laws on customs, foreign exchange and money-laundering, as well as those on elections and funding of political parties. Reporting requirements should be set up on an equal and non-biased basis regardless of the sources of income.
44. Many of the concerns expressed in the present submission reflect the views of Russian national and regional human rights institutions. The Commissioner expresses the hope that the Russian

⁴¹ See Opinion CommDH(2015)17 of 9 July 2015, Recommendations.

authorities will pursue a genuine dialogue with those bodies, as well as civil society, in order to counter the negative tendencies observed.