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## Committee on Legal Affairs and Human Rights

# How to prevent inappropriate restrictions on NGO activities in Europe

### Introductory memorandum

Rapporteur: Ms Nataša VUČKOVIĆ, Serbia, Socialist Group

#### 1. Introduction

1. The motion for a resolution on “How to prevent inappropriate restrictions on NGO activities in Europe”<sup>1</sup> was forwarded to the Committee on Legal Affairs and Human Rights for report by the Assembly on 30 September 2013, following a recommendation by the Bureau on the same day<sup>2</sup>. At its meeting in Paris on 6 November 2013, the committee appointed me rapporteur.

2. Self-evidently, the existence of a dynamic civil society is crucial to a democratic state, and respect for fundamental rights, particularly the right to freedom of expression and the right to freedom of association, is vital to the proper functioning of civil society. Those freedoms are enshrined in Articles 10 and 11 respectively of the European Convention on Human Rights (hereunder referred to as the “ECHR”), but they are not absolute. The restrictions on their exercise for which the ECHR provides have to be narrowly interpreted, with only convincing and compelling reasons being able to justify them<sup>3</sup>. The European Court of Human Rights has confirmed this on several occasions<sup>4</sup>.

3. The Council of Europe has acknowledged the importance of the role of civil society, inter alia by setting up the Conference of International Non-Governmental Organisations (hereunder referred to as the “Conference of INGOs”), which currently comprises over 400 NGOs holding participatory status. The Conference of INGOs has drawn up, inter alia, the “Fundamental Principles on the Status of Non-Governmental Organisations in Europe”<sup>5</sup>. Furthermore, on 10 October 2007, the Committee of Ministers adopted Recommendation CM/Rec (2007)14 on the legal status of non-governmental organisations in Europe, in which it laid down basic principles concerning the policy to be pursued with a view to their proper functioning<sup>6</sup>. Those two documents contain a set of minimum standards which Council of Europe member States should take into account when establishing their legislation, regulations and practices vis-à-vis NGOs.

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\* Document declassified by the Committee on 27 May 2014.

<sup>1</sup> Assembly Doc. 13273 of 3 July 2013.

<sup>2</sup> Reference 3994.

<sup>3</sup> In paragraph 2 of both Articles 10 and 11 of the ECHR. Restrictions have to be prescribed by law and be necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

<sup>4</sup> See, for example, *The United Macedonian Organisation Ilinden - PIRIN and Others v. Bulgaria (No. 2)*, applications Nos. 41561/07 and 20972/08, judgment of 18 October 2011; *The United Macedonian Organisation Ilinden and Ivanov v. Bulgaria (No. 2)*, application No. 37586/04, judgment of 18 October 2011.

<sup>5</sup> RAP-ONG(2003)4 of 24 March 2003, Fundamental Principles on the Status of Non-Governmental Organisations in Europe.

<sup>6</sup> Recommendation CM/Rec(2007)14 of the Committee of Ministers to member States on the legal status of non-governmental organisations in Europe, adopted by the Committee of Ministers on 10 October 2007, at the 1006<sup>th</sup> meeting of the Ministers' Deputies.

4. I also wish to emphasise that our committee, and our colleague Ms Mailis Reps (Estonia, ALDE) in particular, have for several years been working on the situation of human rights defenders in Council of Europe member States<sup>7</sup>. Taking account of the fact that this issue is closely linked to the one which I am to examine in my capacity as rapporteur, I wish to examine more closely the problem of the restrictions on freedom of expression and of association which affect NGOs in certain member States of the Council of Europe, without duplicating the work of Ms Reps.

## 2. Examples of legal and administrative impediments to the proper functioning of NGOs

### 2.1. General situation

5. In certain Council of Europe member States there is currently a growing tendency to limit NGOs' activities through the introduction of restrictive legal frameworks and the running of defamation campaigns with a view to stifling any form of criticism<sup>8</sup>. The NGOs most frequently affected by such restrictions are those which carry out activities in the field of human rights protection.

6. It should be pointed out in this context that the right to freedom of association includes NGOs' right to receive donations and other forms of funding, and that there should be no impediments to their registration. However, in certain countries, and particularly in the Russian Federation, Azerbaijan and Turkey, one of the main obstacles raised by the authorities is precisely NGOs' access to funding, particularly to donations from abroad, and registration procedures may be long and cumbersome. The Venice Commission, the Commissioner for Human Rights and the Expert Council on NGO Law of the Council of Europe Conference of INGOs have taken the view that the new Russian and Azerbaijani legislation on NGOs does not comply with international standards in respect of democracy and human rights<sup>9</sup>. In addition, a new term with a negative connotation, "foreign agent", has been introduced into Russian legislation<sup>10</sup>, and a bill along the same lines was tabled in Hungary's parliament, although it was recently withdrawn. I should therefore like first to consider the situation of civil society in those four countries.

### 2.2. Russian Federation

#### 2.2.1. The "foreign agents" law

7. Following the adoption in July 2012 of the "foreign agents" law (law on "making amendments to certain legislative acts of the Russian Federation regarding the regulation of activities of non-commercial organisations performing the functions of foreign agents"), the situation of NGOs has deteriorated

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<sup>7</sup> See the report on "The situation of human rights defenders in Council of Europe member States" (Doc. 12957 of 11 June 2012) and Resolution 1891 (2012) of the Assembly of 27 June 2012, or "Strengthening the protection and role of human rights defenders in Council of Europe Member States. Information memorandum about the situation of human rights defenders in the South Caucasus region (Armenia, Azerbaijan and Georgia)", AS/Jur (2014) 03, 24 January 2014.

<sup>8</sup> See in particular the 2013 annual report of the Observatory for the Protection of Human Rights Defenders, "Violations of the right of NGOs to funding: from harassment to criminalization" (*Violations du droit des ONG au financement : du harcèlement à la pénalisation*), jointly published by the World Organisation against Torture (OMCT) and the International Federation for Human Rights (FIDH).

<sup>9</sup> Where Russia is concerned, see OING Conf/Exp (2013) 1, report of 1 August 2013, § 120; Recommendation adopted by the Standing Committee on behalf of the Conference of INGOs on 30 September 2013, CONF/PLE(2013)REC5, [The Opinion of the Expert Council on NGO Law on "The law introducing amendments to certain legislative acts of the Russian Federation regarding the regulation of activities of non-commercial organisations performing the functions of foreign agents"](#); CommDH(2013)15: 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, of 15 July 2013, §78. Where Azerbaijan is concerned, see: Venice Commission, Opinion No. 636/2011 of 19 October 2011 on "the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan", § 117, and "Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to Azerbaijan from 22 to 24 May 2013" CommDH(2013)14 of 6 August 2013.

<sup>10</sup> Russian federal law No. 65-FZ of 8 June 2012 amending federal law No. 54-FZ of 19 June 2004 on assemblies, meetings, demonstrations, marches and picketing, and the Code of Administrative Offences; Azerbaijani law of 11 March 2013 amending the law on NGOs (associations and foundations) of 13 June 2000, law on subsidies of 17 April 1998 and Administrative Code of 11 June 2000.

considerably<sup>11</sup>. That law introduced a number of amendments to existing laws including the Criminal Code and the laws on “public associations”, “non-commercial organisations” and “the combating of money laundering and the financing of terrorism”. Henceforth, any NGO engaging in “political activity” and receiving funding from abroad<sup>12</sup> is obliged to register as a “foreign agent”. Any information published by such an NGO has to be marked “published and distributed by the organisation, performing the functions of a foreign agent”. The concept of “political activity” and the procedure to be followed to register as a “foreign agent” are so vague that some NGOs have asked the Minister of Justice for more details on the matter. Some NGOs have reported that the Minister had replied that he was not “authorised” to answer that kind of question<sup>13</sup>.

8. In the Russian Federation, the term “foreign agent” has more often than not a historical negative connotation and may be regarded as synonymous with “spy” or “traitor”. It is difficult to believe that, by adopting this term, the Russian authorities were not seeking to cast discredit on certain players from civil society<sup>14</sup>. While there are few national sources of funding, NGOs are deterred by the law concerned from accepting funding from foreign sources. Given that a large part of foreign funding is given to organisations which defend human rights, endeavouring to protect Russian citizens from violations committed by the authorities, those same authorities are unlikely to replace such funding from public funds. Consequently, NGOs’ budgets are likely to decline considerably, and some NGOs will be forced to file for bankruptcy.

### 2.2.2. *The law on non-commercial organisations*

9. The law on non-commercial organisations of 12 January 1996 (as amended on 20 July 2012) stipulates that an NGO is considered to be engaging in “political activity” if it participates (particularly through funding) in the organisation and implementation of political activities intended to influence the taking of decisions by state bodies with a view to changing the policy pursued by those bodies, and in the shaping of public opinion to those ends. Those activities are regarded as “political” in every case, irrespective of whether or not the organisation is carrying them out in the interest of the foreign entity which is funding it (Article 2 §6).

10. The law concerned imposes additional requirements on the NGOs termed “foreign agents”, which are also subject to unscheduled audits on new grounds introduced by the law, and are obliged to submit regular reports on, inter alia: (i) the activities and staff of their management bodies – every six months; (ii) the reasons for expenditure and the management of assets – every three months; (iii) their audit, which may be conducted only by Russian auditors<sup>15</sup> – annually (Article 32 §3). If the funding received is equal to or exceeds 200 000 RUB (approximately 4 000 EUR), it is subject to monitoring by the federal body responsible for financial supervision.

11. In the event of failure to comply with the provisions of this law, severe penalties are provided for, including heavy fines of up to approximately 25 450 EUR for legal entities and up to 7 270 EUR for private persons, and suspension or termination of activities for an NGO which is a “foreign agent”<sup>16</sup>. A decision to suspend activities taken by a “designated body” may be the subject of a judicial challenge. An NGO which has had its activities suspended has a period of up to 6 months in which it may remedy the infringement of the law by applying for inclusion on the register of “foreign agents”. Once such an NGO has been registered as a “foreign agent”, it is able to resume its activities<sup>17</sup>.

<sup>11</sup> Russian federal law No. 121-FZ of 20 July 2012 on “making amendments to certain legislative acts of the Russian Federation regarding the regulation of activities of non-commercial organisations performing the functions of foreign agents”, Rossiyskaya Gazeta, 23 July 2012, <http://www.rg.ru/2012/07/23/nko-dok.html>.

<sup>12</sup> The law covers funds received from a wide range of sources, including “foreign states [...], international and foreign organisations, foreign citizens and stateless persons or persons acting for them, and [or] Russian legal entities which receive funds and other assets from the same sources”, Article 2 §6.

<sup>13</sup> See the report by Human Rights Watch: “Laws of Attrition - Crackdown on Russia’s Civil Society after Putin’s Return to the Presidency”, April 2013, p. 21.

<sup>14</sup> [http://www.freedomhouse.org/report/contending-putins-russia/factsheet#.UziMDfl\\_tZ8](http://www.freedomhouse.org/report/contending-putins-russia/factsheet#.UziMDfl_tZ8).

<sup>15</sup> The results of the audit have to be presented to a “designated body” (currently the Minister of Justice), which has to publish them on line or distribute them to the media.

<sup>16</sup> To date at least four NGOs have voluntarily ended their activities for fear of criminal prosecution.

<sup>17</sup> Overview of draft law No. 121-FZ on “making amendments to certain legislative acts of the Russian Federation regarding the regulation of activities of non-commercial organisations performing the functions of foreign agents” [Обзор Федерального закона от 20 июля 2012 года №121-ФЗ «О внесении изменений в отдельные законодательные акты Российской Федерации в части регулирования деятельности некоммерческих организаций, выполняющих функции иностранного агента»], The International Center for Not-for-Profit Law, August 10, 2012, <http://lawcs.ru/images/doc/overview-of-the-russian-foreign-funding-law.pdf>.

### 2.2.3. *Amendments to the Code of Administrative Offences and Criminal Code*

12. The recent amendments (20 July 2012) of the Code of Administrative Offences and Criminal Code introduced heavy penalties for “non-commercial organisations” and their leaders if they fail to comply with the requirements of the law. Among the administrative offences are failure to present in due time and/or in due form the report on the activities of an NGO, failure to obtain its inclusion on the register of “foreign agents” and failure to display the words “foreign agent” on the documents published or distributed by such an NGO<sup>18</sup>. In the criminal-law sphere, two new offences concerning all NGOs were added. Firstly, in respect of the setting up and management of a non-commercial organisation of which “the activities are connected with the incitement of citizens to refuse to discharge their civic duties” or of other unlawful acts (Article 239 of the Criminal Code), the law does not include a clear definition of what constitutes such an activity<sup>19</sup>. Secondly, intentional omission or “malicious” failure to submit the necessary documents for the organisation’s inclusion on the register of “foreign agents” is punishable by a fine of a maximum sum of 300 000 RUB (approximately 6 000 EUR) or by a prison sentence of up to two years<sup>20</sup> (Article 330§1 of the Criminal Code).

### 2.2.4. *The law on “treason”*

13. Amendments have recently been made to the Criminal Code in order to redefine the crime of treason<sup>21</sup>. The new definition of this crime gives the authorities broad scope for arbitrary interpretation and for applying it to human rights defenders participating in international colloquies and exchanging information with their foreign colleagues. The United Nations Committee against Torture has stated that the law could thus be interpreted as prohibiting any exchange of information with the UN about the human rights situation in Russia<sup>22</sup>. According to Human Rights Watch, no NGO has been accused of treason in pursuance of the new law. However, the law on “treason” could be used arbitrarily to justify intrusive surveillance of individuals<sup>23</sup>.

### 2.2.5. *The “Dima Yakovlev” law*

14. Since the adoption of the “foreign agents” law, the Russian authorities have, through other laws, tightened their restrictions on NGOs’ activities. In December 2012, in response to the Magnitsky Act passed by the US Congress, the Russian Parliament passed the “Dima Yakovlev” law, which basically prohibits the adoption of Russian children by American citizens. That law also contains one provision specifically aimed at NGOs receiving funding from American bodies, as well as Russian-American citizens working in the civil society sector<sup>24</sup>. It goes even further than the “foreign agents” law, completely prohibiting “politically oriented” organisations which receive funding from the United States and also prohibiting persons with dual Russian and American nationality from being leaders or members of international or foreign NGOs which engage in “political activity”. However, it seems that not a single NGO has to date been subjected to monitoring under that law.

### 2.2.6. *Implementation of the new legislation*

<sup>18</sup> See federal law No. 192-FZ on “making amendments to the Code of Administrative Offences of the Russian Federation”, 2012, published at <http://www.rg.ru/2012/11/14/koap-dok.html>.

<sup>19</sup> The criminal penalties prescribed in respect of this new type of offence are a fine of up to 200 000 roubles (approximately \$6,500) or a prison sentence or community service order of a maximum of three years. “Propaganda” for such activities may lead to a fine of up to 120 000 roubles (approximately \$3,900) or a prison sentence or community service order of a maximum of two years.

<sup>20</sup> Federal law No. 121-FZ of 2012.

<sup>21</sup> Federal law of 12 November 2012, No. 190-FZ “on amendments to the Criminal Code of the Russian Federation and to Article 151 of the Code of Criminal Procedure of the Russian Federation”. This extends the scope of the three articles of the Criminal Code on “treason”, “espionage” and “disclosure of a state secret”. Furthermore, the Criminal Code has introduced a separate article on “unlawful receiving of information constituting a state secret”.

<sup>22</sup> 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), p.7 (exists in English and in Russian).

<sup>23</sup> See the case of Ivan Moseev, an academic from Arkhangelsk, whose telephone lines were tapped by the Federal Security Service (FSB), HRW, see footnote 13, p.39.

<sup>24</sup> Federal law No. 272-FZ on “measures against persons involved in violations of fundamental human rights and freedoms, of the rights and freedoms of citizens of the Russian Federation” (“Dima Yakovlev” law), adopted on 21 December 2012; full text available at: <http://ria.ru/politics/20121221/915806320.html>.

15. The above-mentioned changes in legislation threaten the viability of civil society in Russia and considerably restrict its emergence and development. This situation has been criticised both in the country itself and also abroad<sup>25</sup>. In practice, the application of the new laws often undermines freedom of expression and freedom of association as enshrined in the leading international human rights instruments and can have a deterrent effect on the exercise of those freedoms.

16. In March 2013, the Russian prosecuting authorities began conducting extensive checks on NGOs to determine whether they were complying with the provisions of the legislation and, if not, to force them to comply. A year later, many cases against several NGOs are pending in Russian courts. Human rights organisations, in particular those defending LGBTI rights and electoral rights, have been the most frequently targeted. Some have had penalties imposed and a few have even had to suspend their activities<sup>26</sup>. Only one NGO (a non-profit partnership, "Promoting competition in the CIS", set up with the support of the Federal Antimonopoly Service) has voluntarily obtained inclusion on the register of "foreign agents"<sup>27</sup>. To put even more pressure on NGOs, a bill amending the law on non-commercial organisations was tabled in parliament on 25 April 2014. Under the bill, the Minister of Justice himself would place the NGOs concerned on the register of "foreign agents"<sup>28</sup>.

17. On 6 February 2013, 11 Russian human rights NGOs lodged an application with the European Court of Human Rights alleging that the "foreign agents" law violated their rights to freedom of association and expression. The case is currently pending in the Strasbourg Court<sup>29</sup>. In August 2013, Russia's former Human Rights Commissioner, Vladimir Lukin, lodged an appeal with the Constitutional Court on behalf of four organisations against both the warnings from the prosecuting authorities asking them to have themselves included on the register of "foreign agents" and the fines imposed on them for failing to register. Another six NGOs have lodged separate applications with the Constitutional Court challenging the "foreign agents" law. On 8 April 2014, the Constitutional Court ruled that the "foreign agents" law complied with the Constitution<sup>30</sup>. Although the Constitutional Court ordered some minor adjustments, such as a reduction in the fines provided for, and clarified the definition of "political activity"<sup>31</sup> and the rules on the burden of proof, the law remains essentially unchanged<sup>32</sup>. Following publication of the ruling, several NGOs reiterated their refusal to register as "foreign agents". The judicial proceedings which had been adjourned pending the Constitutional Court's ruling have now been resumed.

## 2.3. Azerbaijan

### 2.3.1. Recent changes in the regulations on NGOs

18. In Azerbaijan, NGOs critical of the authorities encounter particular difficulties. In July 2009, amendments to the law on NGOs introduced, inter alia, new registration rules and requirements concerning funding. These changes in legislation tightened administrative control of domestic and international NGOs

<sup>25</sup> For instance, in July 2012, grave concern was expressed by [Catherine Ashton, High Representative of the EU for Foreign Affairs and Security Policy](#), [Thorbjørn Jagland, Secretary General of the Council of Europe](#), and [Navi Pillay, UN High Commissioner for Human Rights](#), about the pressure exerted on civil society in Russia. See also Assembly Resolution 1896 (2012) of 2 October 2012 on "The honouring of obligations and commitments by the Russian Federation" and the opinion of the Venice Commission, CDL-AD(2013)003, Opinion No. 686/2012 of 11 March 2013.

<sup>26</sup> As at 25 March 2014, penalties had been imposed on two NGOs, Golos ("the Voice"), a leading Russian NGO specialised in monitoring elections, and the Regional Public Association in Defence of Democratic Rights and Freedoms "Golos" (Moscow), see <http://www.hrw.org/node/115544#header>.

<sup>27</sup> <http://closedociety.org/analytics/>

<sup>28</sup> [http://asozd2c.duma.gov.ru/addwork/scans.nsf/ID/7F6AEBCD3716007643257CC50049FBE8/\\$FILE/508677-6.PDF?OpenElement](http://asozd2c.duma.gov.ru/addwork/scans.nsf/ID/7F6AEBCD3716007643257CC50049FBE8/$FILE/508677-6.PDF?OpenElement).

<sup>29</sup> *Ecodefence and Others v. Russia*, Application No. 9988/13; this case has not yet been communicated to the Russian government. For more details, see: <http://www.mdx.ac.uk/aboutus/news-events/news/russia-foreign-agent-law.aspx>.

<sup>30</sup> For more details on the ruling, see:

[https://www.frontlinedefenders.org/files/fld\\_note\\_on\\_constitutional\\_court\\_ruling\\_on\\_foreign\\_agent\\_law\\_-\\_april\\_2014.pdf](https://www.frontlinedefenders.org/files/fld_note_on_constitutional_court_ruling_on_foreign_agent_law_-_april_2014.pdf).

<sup>31</sup> An NGO is considered as taking part in political activities « if, irrespectively of the goals enumerated in its statute, it takes part (in particular by providing financial support) in organizing and carrying out political actions aimed at influencing the decisions of State authorities or changing State policies or aimed at influencing the public opinion with the above-mentioned purposes», for example by organizing meetings, demonstrations, gatherings, picket lines, electoral campaigns, by disseminating information on the assessment of state authorities' decisions or their policies (included by means of modern technologies). See the decision of the Constitutional Court, p. 38 (in Russian), available at: <http://www.ksrf.ru/ru/Decision/Pages/default.aspx>

<sup>32</sup> <http://www.frontlinedefenders.org/node/25724>.

and were passed by parliament without the prior publication which would have enabled Azerbaijani society to submit comments.

19. Many NGOs, including those critical of the authorities, have seen their applications to register turned down without proper grounds, following either misinterpretation of the provisions of the law or the extension without valid reason of the time taken to process their applications, which has attracted the criticism of the Venice Commission<sup>33</sup>. Some NGOs have had to apply up to eight times before being registered<sup>34</sup>. The registration procedure is quite complex: NGOs have to make declarations to several government departments<sup>35</sup>, they have to register with a special office of the Ministry of Justice in Baku and they have to pay fairly high fees. After registration, NGOs are subject to tax inspections and must comply with restrictive legislation regarding funding from abroad. Under Azerbaijani legislation, if an organisation receives more than two warnings in a year concerning breaches of the law, the authorities may close it down. It should be underlined that this action is taken regardless of the seriousness of the breaches for which the warnings had been issued.

20. The European Court of Human Rights has delivered several judgments concerning failure by the Minister of Justice to take final decisions or to respond within the prescribed time-limits to applications to register associations, and has found violations of Article 11 of the ECHR<sup>36</sup>. According to the Court, long delays in responding to applications for the registration of associations amount to de facto refusals to register those associations.

21. Amendments to the law on NGOs<sup>37</sup> passed in July 2009 introduced new registration requirements for international NGOs: they must now conclude a prior agreement with the Azerbaijani authorities, after first demonstrating that they respect the country's "national moral values" and are not involved in "political or religious propaganda". Agreements are concluded following negotiations between the Minister of Justice and the NGO concerned<sup>38</sup>. These amendments have thus made it more difficult for foreign and international NGOs to open offices.

22. In its opinion of 19 October 2011, the Venice Commission found that the provisions of the 2009 law were vague because "national moral values" and "political or religious propaganda" are not clearly defined. The requirement for foreign NGOs to conclude bilateral agreements with the national authorities is questionable in itself, and the procedures for concluding those agreements are set out in very vague terms. According to the Venice Commission, "the freedom of expression of an association cannot be subject to the direction of public authorities, unless in accordance with permissible restrictions ascribed by law and necessary in a democratic society for narrowly and clearly defined purposes." The new legislation introducing new requirements for foreign NGOs therefore does not meet international standards.<sup>39</sup>

23. In his report of 6 August 2013<sup>40</sup>, the Council of Europe Commissioner for Human Rights also noted that the fresh amendments to the law on NGOs passed by parliament on 15 February 2013 further restricted their operations in Azerbaijan. Following the entry into force of the amendments, NGOs are not allowed to receive foreign funding exceeding AZN 200 (EUR 185) without the formal agreement of the relevant authorities, and non-compliance is punishable by fines. As NGOs are only allowed to receive grants or

<sup>33</sup> The 2003 Law on State Registration and the State Register of Legal Entities provides for a co-operative process for the registration of NGOs. It might even be thought that the time-limits set in Article 8 of the law could result in swift procedures: 30 days as a rule for the registration process, with the possibility in exceptional cases of an extension of 30 days, and a further 20 days if the file is incomplete. According to the Venice Commission, the time-limit set in the Law on State Registration "could be accepted, were it meticulously respected and were the extension of the period truly reserved for 'exceptional cases'". Venice Commission, CDL-AD(2011)035, Opinion No. 636/2011 of 19 October 2011, § 62.

<sup>34</sup> See the information memorandum by Ms Reps, AS/Jur (2014) 03 see footnote 7.

<sup>35</sup> The Ministry of Taxation, the Ministry of Justice, the Ministry of Finance, the Ministry of Labour and Social Protection and the State Social Protection Fund.

<sup>36</sup> *Ramazanova and Others v. Azerbaijan*, application No. 44363/02, judgment of 1 February 2007; *Aliyev and Others v. Azerbaijan*, application No. 28736/05, judgment of 18 December 2008; *Nasibova v. Azerbaijan*, application No. 4307/04, judgment of 18 October 2007; *Ismayilov v. Azerbaijan*, application No. 4439/04, judgment of 17 January 2008. In the judgment in *Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan* of 8 October 2009, application No. 37083/03, the Court found a violation of Article 11 following unjustified dissolution of the applicant organisation.

<sup>37</sup> Law No. 401, passed in 2000.

<sup>38</sup> Venice Commission, CDL-AD(2011)035, Opinion No. 636/2011 of 19 October 2011, § 9. The implementing decree of 16 March 2011 set out the procedures for concluding such agreements.

<sup>39</sup> Venice Commission, CDL-AD(2011)035, Opinion No. 636/2011 of 19 October 2011, § 85.

<sup>40</sup> CommDH (2013)14, Report by the Commissioner for Human Rights of 6 August 2013, p. 20.

donations of over AZN 200 by bank transfer, unregistered NGOs are unable to receive funding; not being legal entities, they are unable to open bank accounts. Recently, on 23 April 2014, the Commissioner for Human Rights reiterated his concerns regarding the deterioration of freedom of expression and association in Azerbaijan<sup>41</sup>.

### 2.3.2. *Implementation of the new regulations on NGOs*

24. In practice, several local and international NGOs, including Human Rights House Azerbaijan, have been prevented from freely carrying out their activities. On 10 March 2011<sup>42</sup>, Human Rights House Azerbaijan, which was established in 2007 as the national office of the Human Rights House Foundation, was forced without warning to stop operating until the conclusion of an agreement with the authorities. Before its closure, Human Rights House had not received any warnings whatsoever about any breaches of the law. In spite of three years of negotiations with the authorities, it has not to date been allowed to reopen<sup>43</sup>. It should be underlined that nothing in the 2009 law makes any provision for NGOs which are already registered and operating to conclude agreements with the Minister of Justice.

25. The government claims to grant financial support to some NGOs. However, only regime-supporting organisations<sup>44</sup> receive funding. Other NGOs are regularly subjected to interference and threats from the authorities. For instance, in February 2012, the Institute for Reporters' Freedom and Safety received a warning from the Minister of Justice stating that the organisation had failed to declare the re-election of its chair. Similarly, on 19 April 2011, the Media Rights Institute was warned by the same Minister that it might incur an administrative penalty, as it had failed to notify him of the appointment of a new chair. According to the Institute, the warning was unfounded because the chair of the organisation had been re-elected, not elected. It should be noted that the law does not stipulate that the Minister of Justice must be notified of re-elections.

26. The Election Monitoring Centre (EMC) was closed down during the run-up to the October 2008 presidential elections because the Minister of Justice claimed that it had not notified him of a change of address and the registration of its regional offices. Its successor, the Election Monitoring and Democratic Studies Centre was finally registered after its application had been turned down several times for various minor deficiencies. On 28 and 30 October 2013, after the presidential elections in Azerbaijan, the chair and two members of EMDS were questioned by the Serious Crimes Investigation Unit of the Prosecutor General's Office regarding the receipt by the organisation of large grants from foreign investors<sup>45</sup>. On 31 October 2013, the Prosecutor General's Office searched EMDS's offices and confiscated documents and two computers. On 16 December 2013, Anar Mammadli, the Chair of EMDS, was arrested and placed in detention on various charges, in particular "tax evasion", "abuse of official authority" and "illegal business activity"<sup>46</sup>. On 21 April 2014, a Baku court held a preliminary hearing and set 28 April 2014 as the date for a full hearing<sup>47</sup>.

27. It is clear that measures of this kind put pressure on civil society and are unacceptable from the point of view of Azerbaijan's international obligations. However, the situation of international NGOs is deteriorating ever further. On 17 March 2014, Fuad Aleskerov, Head of the Law Enforcement Department of the Office of the President, accused NGOs such as Freedom House, Human Rights Watch, Amnesty International and Transparency International of applying double standards to Azerbaijan and making false claims in their reports. He said not only that there should be no co-operation with such organisations but also that it was necessary to combat their double standards and prevent the propagation of misinformation about Azerbaijan<sup>48</sup>.

## 2.4. *Turkey*

<sup>41</sup> [http://hub.coe.int/en/web/coe-portal/press/newsroom?p\\_p\\_id=newsroom&\\_newsroom\\_articleId=1852163&\\_newsroom\\_groupId=10226&\\_newsroom\\_tabs=newsroom-topnews&\\_pager.offset=0](http://hub.coe.int/en/web/coe-portal/press/newsroom?p_p_id=newsroom&_newsroom_articleId=1852163&_newsroom_groupId=10226&_newsroom_tabs=newsroom-topnews&_pager.offset=0).

<sup>42</sup> Another organisation, the National Democratic Institute, was also forced to stop operating on 10 March 2011.

<sup>43</sup> [http://ru.faktxber.com/News\\_h432425.html](http://ru.faktxber.com/News_h432425.html), article published on 11 March 2014.

<sup>44</sup> See AS/Jur (2014) 03 in footnote 7 supra.

<sup>45</sup> <http://civicsolidarity.org/country/id/17>.

<sup>46</sup> <http://humanrightshouse.org/Articles/19944.html>.

<sup>47</sup> <http://www.frontlinedefenders.org/node/25770>.

<sup>48</sup> <http://www.trend.az/news/politics/2253834.html>, article published on 17 March 2014.

28. In Turkey, although civil society is not subject to severe repression as in the Russian Federation and Azerbaijan, attention should be paid to some disturbing recent developments. In July 2004, a new law on associations came into force and was deemed by the European Commission to be “generally in line with international standards”<sup>49</sup>. The right to exercise freedom of association is also governed by the Turkish Civil Code<sup>50</sup> and the Law on Foundations<sup>51</sup>. Nevertheless the number of associations and foundations directly dealing with human rights is fairly limited in Turkey. Legal aid to victims of human rights violations is provided in general by the Bar Associations. There are organisations working for the rights of women and children. The most numerous organisations are those active on behalf of persons with disabilities, but as a rule they only supply personal services. Organisations dealing with prisoners are few. There are also some associations which defend the rights of minorities, and these are placed under the strict supervision of the “Directorate General of Foundations”, a governmental body. However, prosecutors and judges often refuse to register them or threaten them with closure, on the basis of the provisions relating to the official state language.

29. Some human rights advocacy associations are subject to judicial harassment by the authorities. In fact investigations and court proceedings are regularly begun against certain associations. The case of the Human Rights Association (*Ynsan Haklarý Dernegi*, IHD) is a typical example of this kind of state harassment, as prosecution is often on arbitrary grounds and results in heavy financial penalties<sup>52</sup>.

30. The anti-terrorist law, amended in June 2006, extended the list of acts constituting terrorist crimes, while retaining a broad definition of terrorism. These amendments have an impact on associations working, in particular, on the sensitive question of the rights of the Kurds, who are often equated with terrorist groups.<sup>53</sup> The pro-government media help to discredit these NGOs in the eyes of the general public and of their potential – national or foreign – donors<sup>54</sup>.

31. The bureaucratic stipulations for setting up an association are quite onerous, especially for small associations or associations with limited financial capabilities. Inspections are frequent, and administrative fines for poor accounts-keeping or failure to obtain permission before raising money from the public are disproportionate. Associations must have articles setting out their aims and the type and field of their activities. They must present the Minister of the Interior and the administrative authorities of the provinces with yearly reports on activities carried out and financial balance sheets, and are compelled to carry out audits at considerable expense. The accounting system is very complicated and mistakes can easily be made for want of expertise. Indeed, small associations and the branches of NGOs cannot afford to use accountants. The authorities can make more detailed checks on associations if they deem it necessary. As they have insufficient resources to scrutinise all associations, they choose them on an arbitrary basis. Thus the associations dealing with the rights of minorities or politically sensitive questions are kept under close administrative supervision, particularly in the provinces.

32. Bureaucratic stipulations and a lack of simplified rules for small and medium-sized associations prevent the creation of a favourable environment for their operation, especially in view of the fact that the law requires them to inform the local administrative authorities before receiving financial support from abroad and to produce detailed documentation about such support. Moreover, inspections of NGOs receiving funds from abroad are frequent. Although non-compliance with the requirements of the law on associations can no longer be a ground for their dissolution, it may nonetheless result in the imposition of disproportionate fines which may even put a stop to the activities of small associations working in the field of human rights<sup>55</sup>.

<sup>49</sup> [Turkey 2006 Progress Report of 8 November 2006](#), SEC(2006) 1390, p. 15.

<sup>50</sup> Law No. 4721 enacted on 22 November 2001.

<sup>51</sup> Law No. 5737 of 20 February 2008.

<sup>52</sup> <https://www.frontlinedefenders.org/node/21395>.

<sup>53</sup> See, for instance, the case of four human rights defenders from the IHD, who were convicted in January 2013 for prison sentences of between 6 and 7 and a half years for having taken part in an “illegal armed organization”, see at: <https://www.frontlinedefenders.org/fr/node/21421>. Or, the case of the French-Turkish student Sevil Sevimli, who, having taken part in a demonstration on 1 May 2012 in Istanbul, was convicted in February 2013 for 5-year prison sentence for spreading « propaganda » in favour of an extreme left movement, the Revolutionary Party of People’s Liberation (DHKP-C). Initially, she had been accused of having led a branch of this movement, which had been classified as terrorist by Turkey and the EU, and she could incur a prison sentence of 32 years, see at: [http://www.lepoint.fr/societe/l-etudiante-franco-turque-sevil-sevimli-de-retour-en-france-20-02-2013-1630262\\_23.php](http://www.lepoint.fr/societe/l-etudiante-franco-turque-sevil-sevimli-de-retour-en-france-20-02-2013-1630262_23.php)

<sup>54</sup> See footnote 8, p. 74.

<sup>55</sup> The Observatory for the Protection of Human Rights Defenders, “Turkey: Human Rights Defenders, guilty until proven innocent”, May 2012.

## 2.5 Hungary

33. In Hungary, NGOs can be set up for purposes which are in accordance with the Fundamental Law and not illegal<sup>56</sup>. The two traditional legal forms of NGO are the association and the foundation; specific forms of association are alliances, political parties and trade unions.

34. Hungarian legislation imposes no restrictions on the legislative or political activities of NGOs. The definition of what constitutes a “political activity” is fairly precise and raises no problems of interpretation<sup>57</sup>. NGOs are generally free to engage in any form of political activity. Furthermore, the legal and institutional framework guarantees the capacity of NGOs to take part in decision-making processes through a wide range of advocacy, campaigning and lobbying activities. Restrictions on engaging in political activities only apply if an NGO acquires “public benefit organisation” status. In this case, it must not pursue direct political activity, must be independent of the political parties and must not provide them with financial support.

35. Hungarian legislation allows NGOs to take part in the decision-making processes of parliament and government, through general consultation (sending comments on the drafts of new laws) or direct consultation (on the basis of a partnership agreement). In addition, several ministries have established specific procedures for working with NGOs and have set up consultative bodies in their respective spheres. NGOs in Hungary are free to organise workshops or conferences to educate the public on societal problems. They can also criticise policy or the authorities at any time, anywhere, on the basis of the right to freedom of expression embodied in the Constitution. As regards funding which originates from abroad, only political parties may not accept financial support from a foreign government<sup>58</sup>, a restriction which does not apply to other types of NGO.

36. Despite this positive beginning, the position of civil society began to deteriorate with the coming to power in 2010 of the Fidesz party holding a two-thirds majority. Thereafter, a new Constitution (the Fundamental Law) and related laws came into force in January 2012, and these have subsequently been amended several times. These laws have had a negative effect on the independence and administration of justice, placed limitations on the powers of the Constitutional Court, on political participation, on freedom of the media, and on religious freedom, and restricted the rights of women, the LGBTI community and the homeless<sup>59</sup>. Recently a bill similar to the Russian law on “foreign agents” was tabled in Parliament<sup>60</sup>. The bill was not passed but might be tabled again. Thus it would be expedient to look more closely at the latest political and legal changes which might influence the position of civil society in Hungary.

## 3. Conclusion

37. Given the importance of civil society’s role and of the right to freedom of expression and association in a democratic society, it is very disturbing to observe that in some Council of Europe member States more and more restrictions are being placed on the activities of NGOs. I should therefore like to examine this subject more closely, and particularly the impediments which exist to the registration of NGOs, to their free operation and to the possibility of them lawfully receiving subsidies from national and foreign sources.

38. So that the committee is better informed of the current position of NGOs and of their legal and practical difficulties, and in order to ascertain how to guard against inappropriate restriction of the activities of NGOs at national level, I should like to request the committee’s permission to organise a hearing with experts, including academics specialising in the right to freedom of association, and representatives of civil society. Furthermore, I envisage making fact-finding visits to two or three member States where civil society is meeting ever more major obstacles to its free functioning.

<sup>56</sup> Article 3 (4) of Act CLXXV/2011, the “CSO Act”.

<sup>57</sup> Article 2, paragraph 22 of the “CSO Act”.

<sup>58</sup> Act XXXIII/1989.

<sup>59</sup> <http://www.hrw.org/reports/2013/05/16/wrong-direction-rights>. See also the Monitoring Committee’s report on “Request for the opening of a monitoring procedure in respect of Hungary”, Doc. 13229 of 10 June 2013, rapporteurs Ms Jana Fischerová (Czech Republic, EDG) and Ms Kerstin Lundgren (Sweden, ALDE) and Resolution 1941 (2013).

<sup>60</sup> [Report of December 2013 by the Expert Council on NGO Law, “Regulating political activities of non-governmental organisations”](#), OING Conf/Exp (2013) 4.

39. In addition, it would be useful to take stock of legislation at European level on the right to freedom of association. The appended questionnaire is intended to identify possible divergences in the legal frameworks of Council of Europe member States. Accordingly, I should like to ask the committee to authorise me to send this questionnaire to the European Centre for Parliamentary Research and Documentation (ECPRD).

## Appendix

### Questionnaire

#### I. General legislation on NGOs

1. In which legal form(s) are NGOs able to operate in accordance with the law? Are they required to acquire legal personality?
2. What is the legal status of foreign NGOs and local branches of foreign NGOs? How does it differ from that of national NGOs?

#### II. Registration

3. Is the system of NGO registration based on authorisation or merely on notification to the authorities responsible?
4. Which authorities are responsible for the registration and supervision of NGOs?
5. Does national legislation prohibit unregistered NGOs?
6. Does national legislation prescribe fixed time limits for the registration of an NGO and for notification in the event that registration is refused?
7. What minimum conditions have to be met in order to obtain registration of an NGO? What are the cost and duration of the registration procedure?
8. Does national legislation require NGOs to re-register after a certain length of time?

#### III. Dissolution and suspension

9. On what grounds may an NGO be dissolved or its activities suspended, and which authorities are responsible for taking such decisions?
10. Do effective remedies exist against dissolution and suspension decisions?

#### IV. Funding and taxation

11. Are there any restrictions on NGOs' right to receive and possess assets and funds? If so, what are these?
12. Does national legislation require NGOs to declare any grants received from abroad, or even to seek prior authorisation for them?
13. What penalties are prescribed for infringements of the rules on the funding of NGOs?
14. Which taxes must NGOs pay? Are there any differences according to the nature of NGOs' activities?