

Provisional version

Committee on Legal Affairs and Human Rights

How to prevent inappropriate restrictions on NGO activities in Europe

Report*

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A. Draft resolution

1. The Assembly recalls the importance of the role of dynamic civil society for the good functioning of democracy and pays tribute to all NGOs whose work has strengthened human rights, democracy and the rule of law in their States.
2. The Assembly stresses that all States Parties to the European Convention on Human Rights (ETS No. 5) have agreed to ensure respect for freedom of assembly and association as well as the freedom of expression and of information, and thus to create a favourable environment for the exercise of those freedoms, guided by the case law of the European Court of Human Rights, the Committee of Ministers' Recommendation CM/Rec(2007)14 on the legal status of non-governmental organisations in Europe and the "Joint guidelines on freedom of association" adopted in December 2014 by the European Commission for Democracy through Law (Venice Commission) and the OSCE Office for Democratic Institutions and Human Rights (ODIHR).
3. The Assembly reaffirms its previous resolutions 1660 (2009) and 1891 (2012) on the situation of human rights defenders in Council of Europe member States, as well as [Resolution 2060 \(2015\)](#), [Recommendation 2073 \(2015\)](#), [Resolution 1729 \(2010\)](#) and [Recommendation 1916 \(2010\)](#) on the protection of "whistle-blowers".
4. The Assembly notes that in certain Council of Europe member States the situation of civil society has dramatically deteriorated over the last few years, in particular, following the adoption of restrictive laws and regulations, some of which have been strongly criticized by the Venice Commission, the Commissioner for Human Rights and the Conference of INGOs. In certain member States NGOs encounter various impediments to their registration, functioning and financing. In some member States, despite an appropriate legal framework, certain NGOs such as human rights defenders and watchdog organisations are stigmatised. The Assembly is particularly worried about the restrictions affecting civil society in Azerbaijan and the Russian Federation and about the situation in annexed Crimea and other territories outside the control of state authorities.

* Draft resolution and draft recommendation adopted by the committee on 8 December 2015.

5. As regards the situation of civil society in Azerbaijan, the Assembly recalls its [Resolution 2062 \(2015\)](#) on the functioning of democratic institutions in Azerbaijan and condemns once again the deterioration of the working conditions for NGOs and human rights activists, following changes to the legislation on NGOs imposing inappropriate restrictions on their activities. The Assembly calls on Azerbaijan to amend its legislation on NGOs in accordance with the recommendations of the Venice Commission (Opinions Nos 636/2011 and 787/2014) and to fully and promptly implement judgments of the European Court of Human Rights, in particular those finding violations of the freedoms of association, assembly and expression.

6. The Assembly also expresses strong concern about the so-called “foreign agents law” modifying the Russian legislation on non-commercial organisations to the effect that NGOs receiving foreign funding are obliged to register as ‘foreign agents’. It notes that dozens of NGOs were unilaterally registered as foreign agents by the Minister of Justice and that even the laureate of the Assembly’s 2011 Human Rights Prize, the Nizhniy Novgorod Committee against Torture, was recently forced to close down for this reason. The Assembly is also worried about the adoption, in May 2015, of the “law on undesirable organisations”, the implementation of which may lead to the closure of major international and foreign NGOs working in the Russian Federation. The Assembly calls on Russia to amend the legislation on NGOs in accordance with the Venice Commission Opinions Nos 716-717/2013 and calls on the authorities to implement the remaining provisions of this legislation in accordance with the international standards on the right to freedom of association and other relevant human rights.

7. The Assembly therefore calls upon member States to:

7.1. fully implement the Committee of Ministers’ Recommendation CM/Rec(2007)14 on the legal status of non-governmental organisations in Europe;

7.2. review existing legislation with a view to bringing it into conformity with international human rights instruments regarding the rights to freedom of association, assembly and expression, by making use of the expertise of the Council of Europe, and in particular of the Venice Commission;

7.3. refrain from adopting new laws, which would result in inappropriate restrictions on NGOs;

7.4. ensure that NGOs are effectively involved in the consultation process concerning new legislation which concerns them and other issues of particular importance to the societies;

7.5. ensure an enabling environment for NGOs, in particular by refraining from any harassment (judicial, administrative or tax) and smear campaigns;

7.6. sign and/or ratify the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations (ETS No. 124), if that has not yet been done.

B. Draft recommendation

1. Referring to its Resolution (2016) on “How to prevent inappropriate restrictions on NGO activities in Europe”, the Assembly recommends that the Committee of Ministers:

1.1. call on member States of the Council of Europe to implement its Recommendation (2007)14 and prepare a study taking stock of progress made;

1.2. consider to revise Recommendation (2007)14 in order to adapt it to the new threats to the functioning of independent civil societies;

1.3. continue its thematic debate on the “role and functioning of NGOs in the Council of Europe” in order to follow, on a regular basis, the state of civil society and of the freedoms of association, assembly and expression in the member States of the Council of Europe;

1.4. increase the number of exchanges of views with civil society representatives and provide a fixed framework for such a dialogue;

1.5. consider creating a platform for the exchange of experience and good practices in the area of freedom of association between the member States of the Council of Europe.

C. Explanatory memorandum

1. Introduction

1.1. Procedure

1. The motion for a resolution on “How to prevent inappropriate restrictions on NGO activities in Europe”¹ 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.² At its meeting in Paris on 6 November 2013, the Committee appointed Ms Nataša Vučković (Serbia, Socialist Group) as rapporteur. However, she withdrew from her mandate shortly before the Committee took note of her introductory memorandum on this subject and decided to declassify it at its meeting in Helsinki on 27 May 2014. At its meeting in Strasbourg on 25 June 2014, the Committee appointed me as rapporteur. At its subsequent meeting in Strasbourg on 29 September 2014, the Committee considered a revised introductory memorandum and agreed to declassify it.³ It also authorised me to send a questionnaire to the European Centre for Parliamentary Research and Documentation (ECPRD) and to carry out fact-finding missions to Azerbaijan, Hungary and the Russian Federation. At its meeting on 30 October 2014, the Committee held a hearing with the participation of four experts:

- Mr Jeremy McBride, Barrister and human rights law expert, London,
- Mr Cyril Ritchie, President of the Expert Council on NGO Law of the INGO Conference of the Council of Europe, Strasbourg,
- Mr Kirill Koroteev, Senior Lawyer at the International Association “Memorial”, Moscow,
- Ms Gulnara Akhundova, Programme Manager, International Media Support (IMS), Copenhagen.⁴

2. I was not able to carry out my fact-finding visit to Russia, as the Russian Delegation to the Assembly had decided not to take part actively in the latter’s activities following the suspension of its voting rights by the Assembly. As regards Azerbaijan, I have met a number of NGOs’ representatives in Strasbourg during Assembly’s part-sessions; unfortunately, some of them are now in jail, serving long-term prison sentences. I also had an exchange of views on these issues with Mr Elkhan Suleymanov, member of the Azerbaijani delegation (Independent). In view of the latest developments in this country, and the decision of Secretary General Mr Thorbjørn Jagland to withdraw from the Working Group on human rights issues in Azerbaijan, I do not consider that my visit to Azerbaijan would bring any additional input to the report I am to present to the Committee. As regards Hungary, I carried out a fact-finding visit to this country on 9-10 November 2015.

1.2. Issues at stake

3. The motion for a resolution focuses on unjustified attempts to restrict freedom of association in Europe, such as excessive formal requirements for NGO registration and functioning, unjustified criminalisation of their activities, restriction of access to funding (especially foreign), repression against their members and exclusion from consultations on the adoption of legislation concerning their status, funding and scope of activities, etc. The movers of the motion called on the Assembly to identify the major challenges which hinder the development of civil society in Europe today. They also proposed “to determine how to improve the existing standards for interaction between State authorities and NGOs in order to establish favourable legal, political and economic conditions for the effective functioning of civil society and elaborate guidelines on how the Assembly and national parliaments can reinforce the implementation of these standards”.

4. Before, I embark on the examination of the issues pointed out in the motion for a resolution, I 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.⁵ 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 have a closer look at the problem of the restrictions (mainly legal and administrative) on

¹ Assembly [Doc. 13273](#) of 3 July 2013.

² Reference 3994.

³ AS/Jur (2015) 18 revised.

⁴ The part of the minutes pertaining to this hearing has been declassified.

⁵ 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.

freedom of association which affect NGOs in certain member States of the Council of Europe, without duplicating the work of Ms Reps. Moreover, another important report related to civil society issues and focusing on the state of freedom of assembly is pending before our Committee: “Urgent need to prevent human rights violations during peaceful protests”, rapporteur Ms Ermira Mehmeti Devaja (“The former Yugoslav Republic of Macedonia”, Socialist Group).

2. Freedom of association and its limitations

5. 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, the right to freedom of assembly 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”) and in Articles 19 and 20 of the International Covenant on Civil and Political Rights (“ICCPR”). They are inextricably linked to one another and support a system of checks and balances, which holds the authorities, where need for this arises. However, 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.⁶ The European Court of Human Rights has stressed on many occasions the importance of associations other than political parties to the proper functioning of democracy. According to the Strasbourg judges, “the harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion. It is only natural that, where a civil society functions in a healthy manner, the participation of citizens in the democratic process is to a large extent achieved through belonging to associations in which they may integrate with each other and pursue common objectives collectively”.⁷

6. The Council of Europe has acknowledged the importance of the role of civil society, inter alia by recognising as one of its institutions the Conference of International Non-Governmental Organisations (hereunder referred to as the “Conference of INGOs”), which currently comprises over 400 NGOs holding participatory status. In 1986, the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations,⁸ which contains a definition of an international NGO,⁹ was adopted and entered into force in 1991, but so far, it has been ratified by only 11 member states (mainly Western European states).¹⁰ The Council of Europe has also developed non-binding instruments on NGOs. On 13 November 2002, “the Fundamental Principles on the Status of Non-governmental Organisations in Europe” were adopted following multilateral meetings in Strasbourg.¹¹ 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.¹² Those 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. Recently, in December 2014, the European Commission for Democracy through Law (Venice Commission) and the OSCE Office for Democratic Institutions and Human Rights (ODIHR) adopted “Joint guidelines on freedom of association”,¹³ which contains guidelines for national legislators on regulating the exercise of this freedom, alongside with a compilation of good practices.

⁶ 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 and pursue a legitimate aim mentioned in the Convention. . 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.

⁷ See, for example, *Gorzelik and Others v. Poland*, Grand Chamber, judgment of 17 February 2004, Application No. 44158/98, paragraph 92.

⁸ ETS, No. 124.

⁹ According to its Article 1, the Convention “shall apply to associations, foundations and other private institutions (hereinafter referred to as “NGOs”) which satisfy the following conditions:

- a. have a non-profit-making aim of international utility;
- b. have been established by an instrument governed by the internal law of a Party;
- c. carry on their activities with effect in at least two States; and
- d. have their statutory office in the territory of a Party and the central management and control in the territory of that Party or of another Party.”

¹⁰ <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=124&CM=1&DF=24/03/2015&CL=ENG>.

¹¹ <http://www.coe.int/t/dghl/standardsetting/cdcj/ONG/Fundamental%20Principles%20E.pdf>.

¹² 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 1006th meeting of the Ministers' Deputies.

¹³ Venice Commission and OSCE/ODIHR, [CDL-AD\(2014\)046](http://www.venicecommission.org/Documents/CDL-AD(2014)046), 17 December 2014.

7. Article 11, paragraph 2, of the ECHR and the relevant case-law of the Strasbourg Court clearly stipulate that any restrictions on NGO activities must be prescribed by law, have a legitimate aim (“the interests of national security 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”),¹⁴ and be necessary in a “democratic society” and be proportionate. As stressed by our expert, Mr Jeremy McBride at the hearing in Madrid in October 2014, although the international standards are clear, restrictions imposed on NGOs are, in practice, far too wide and they mainly relate to the objectives and activities of NGOs, the formation and funding of such bodies and the regulatory requirements that are applied to them. An NGO’s objective must not be unlawful and it is legitimate for an NGO to pursue a change in the law, as long as this is done by lawful means and the outcome is not inconsistent with democracy. The case law of the European Court of Human Rights has shown that the objectives of NGOs were too readily interpreted as unlawful or undemocratic by certain States Parties to the Convention. A matter of particular concern are restrictions imposed on NGOs dealing with (national) minority rights issues.¹⁵ Furthermore, while the decision whether to apply for legal personality should be a matter of choice of the NGO,¹⁶ the criteria and procedures for obtaining legal status are often unclear.

8. Other ‘inappropriate’ restrictions might be related to securing foreign funding, when somehow legitimate concerns about, for instance, money laundering or the financing of terrorism, are being used as a justification for stigmatising NGOs. According to Committee of Ministers Recommendation CMRec(2007)14, NGOs should be free to receive both domestic and foreign funding.¹⁷ The functioning of NGOs is also often impeded by excessive regulations and intrusive controls. Sanctions, such as suspension of activities or dissolution of an NGO, are imposed on NGOs where less draconian methods could be used; according to the case law of the European Court of Human Rights, the two above-mentioned sanctions should never be imposed for technical irregularities.

3. Examples of impediments to the proper functioning of NGOs

3.1. General situation

9. In certain Council of Europe member States there is currently a growing tendency to limit NGOs’ activities through the introduction of restrictive legal frameworks, cumbersome and lengthy registration procedures and the running of defamation campaigns with a view to stifling any form of criticism.¹⁸ The NGOs most frequently affected by such restrictions are those which carry out activities in the field of human rights protection. These findings have been corroborated by those of the Council of Europe Secretary General’s Report on [“The State of Democracy, Human Rights and the Rule of Law” for 2015](#),¹⁹ although the latter document does not mention any specific member State of the Council of Europe.

10. 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 unreasonable impediments to their registration. However, in certain countries, and particularly in the Russian Federation and Azerbaijan, one of the main obstacles raised by the authorities is precisely NGOs’ access to funding, particularly to donations from abroad. 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

¹⁴ However, Article 11 § 2 of the Convention does not prevent the imposition of lawful restrictions on the exercise of this freedom by members of the armed forces, of the police or the administration of the State.

¹⁵ See, cases in which the European Court of Human Rights has found violations of Article 11 of the Convention, for example, *House of Macedonian Civilisation and Others v. Greece*, application No 1295/10, judgment of 9 July 2015 or cases concerning impediments to the freedom of association of the “Muslim minority” in Greece: *Bekir-Ousta and Others v. Greece*, Application no. 35151/05, judgment of 11 October 2007, and *Emin and Others v. Greece*, Application no. 34144/05, judgment of 27 March 2008.

¹⁶ According to item 3 of the Recommendation CM/Rec(2007)14, NGOs can be either informal bodies or organisations or ones which have legal personality (see also section B of this recommendation concerning acquisition of legal personality).

¹⁷ According to its item 50, “NGOs should be free to solicit and receive funding – cash or in-kind donations – 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 generally applicable to customs, foreign exchange and money laundering and those on the funding of elections and political parties.”

¹⁸ 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).

¹⁹ See Chapter « Freedom of assembly and association”, at page 54.

Azerbaijani legislation on NGOs does not comply with international standards in respect of democracy and human rights.²⁰ In addition, a new term with a negative connotation, “foreign agent”, has been introduced into Russian legislation.²¹ In Turkey, NGOs working on politically sensitive issues (like the situation of Kurdish minority) are often discredited in the eyes of public following judicial harassment and media campaigns and their activists are often targeted by the anti-terrorist legislation.²² In Hungary, certain NGOs receiving grants from the EFTA member States (mainly Norway) have recently been targeted by the authorities and subject to a smear campaign. Accordingly, I should first like to limit my consideration of the situation of civil society to the above four countries.

3.2. Russian Federation

3.2.1. The “foreign agents” law

11. 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 considerably.²³ 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 abroad²⁴ 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”.²⁵

12. In the Russian Federation, the term “foreign agent” has historically a clear 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.²⁶ The new law has a chilling impact on the work of such NGOs, as their public statements must be accompanied by a notice that they come from “organisations fulfilling the functions of a foreign agent”. 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.

²⁰ Where Russia is concerned, see Expert Council on NGO Law, [“Opinion on the law introducing amendments to certain legislative acts of the Russian Federation regarding the regulation of non-commercial organisations performing the function of foreign agents”](#), OING Conf/Exp (2013)1 of August 2013; [Recommendation adopted by the Standing Committee on behalf of the Conference of INGOs](#) on 30 September 2013, CONF/PLE(2013)REC5; [“Opinion of the Commissioner for Human Rights on the legislation of the Russian Federation on non-commercial organisations in light of Council of Europe standards”](#), CommDH(2013)15 of 15 July 2013, §78; [Venice Commission Opinion](#), No. 716-717/2013 of 27 June 2014. 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; [“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; [“Observations on the human rights situation in Azerbaijan: An update on freedom of expression, freedom of association, freedom of assembly, and the right to property”](#), CommDH(2014)10 of 23 April 2014.

²¹ 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.

²² Supra note 18, p. 68.

²³ [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.

²⁴ 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.

²⁵ 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.

²⁶ Freedom House, [Factsheet on Russia’s NGO Laws](#).

3.2.2. *The law on non-commercial organisations (“foreign agents law”)*

13. The law on non-commercial organisations of 12 January 1996 (as amended on 4 June 2014) 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 State policy, 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).

14. 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 (Article 32 § 4), 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 auditors²⁷ – annually (Article 32 §3). If the funding received is equal to or exceeds 200,000 RUB (approximately 2,800 EUR), it is subject to monitoring by the federal body responsible for financial supervision. In the event of failure to comply with the provisions of this law, severe penalties are provided for, including heavy fines.²⁸

15. Amendments passed on 21 February 2014 extended the power of authorities to conduct unscheduled inspections in relation to all non-commercial organisations, irrespective of whether they are “foreign agents” or not. These powers were added to by the amendments of 4 June 2014, which allow authorities to conduct unscheduled inspections when they consider that the organisation is acting as a “foreign agent” whilst it has not yet applied for registration. These amendments also introduced the power of the competent authority to unilaterally register a non-commercial organisation as a “foreign agent”, thus removing the need for any cooperation from the organisation. The registered organisation does, however, have the ability to appeal the decision to register to a court. Simultaneously, suspension of the activities of NGOs as a sanction for non-registration was removed.²⁹

3.2.3. *Amendments to the Code of Administrative Offences and Criminal Code*

16. Amendments to the Code of Administrative Offences and Criminal Code (20 July 2012) 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.³⁰ 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.³¹ 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 4,200 EUR) or by a prison sentence of up to two years³² (Article 330§1 of the Criminal Code).

3.2.4. *The law on “treason”*

17. Amendments have been made to the Criminal Code in order to redefine the crime of treason.³³ The new definition of this crime gives the authorities broad scope for arbitrary interpretation and for applying it to

²⁷ 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.

²⁸ According to the provisions of the Code of Administrative Offences.

²⁹ [Amendments to Federal Law n. 7-fz on non-commercial organisations](#) (Federal Laws n. 18-fz of 21 February 2014 and n. 147-fz of 4 June 2014) of the Russian Federation

³⁰ See [federal law No. 192-FZ](#) on “making amendments to the Code of Administrative Offences of the Russian Federation”, 2012.

³¹ The criminal penalties prescribed in respect of this new type of offence are a fine of up to 200 000 roubles (approximately 2,800 EUR) 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 1,700 EUR) or a prison sentence or community service order of a maximum of two years.

³² Federal law No. 121-FZ of 2012.

³³ 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

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.³⁴ According to Human Rights Watch, no NGO activist 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.³⁵

3.2.5. The "Dima Yakovlev" law

18. 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 two provisions specifically aimed at NGOs receiving funding from American bodies, as well as Russian-American citizens working in the civil society sector.³⁶ 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 of either Russian NGOs or Russian representative offices 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.

3.2.6. Implementation of the new legislation and other developments

19. In March 2013, the Russian prosecuting authorities began conducting extensive checks on NGOs to determine whether they were complying with the provisions of the "foreign agents" legislation and, if not, to force them to comply.

20. On 6 February 2013, 13 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.³⁷ 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. Although the Constitutional Court ordered some minor adjustments, such as a reduction in the fines provided for, and clarified the definition of "political activity" (which now also includes publishing texts on the Internet, according to the well-established case law of the Russian courts)³⁸ and the rules on the burden of proof, the law remains essentially unchanged.³⁹

21. On 5 June 2014, the Ministry of Justice, in exercising the power granted by the amendments of 4 June 2014, registered five organisations as "foreign agents"⁴⁰ – Association Golos (Moscow), Regional Golos (Moscow), Center for Social Policy and Gender Studies (Saratov), "Women of Don" (Novocherkassk) and

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".

³⁴ 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).

³⁵ See the case of Ivan Moseev, an academic from Arkhangelsk, whose telephone lines were tapped by the Federal Security Service (FSB), HRW, see footnote 24, p. 39.

³⁶ [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.

³⁷ *Ecodefence and Others v. Russia*, Application No. 9988/13; this case has not yet been communicated to the Russian government. For more details, see [Middlesex University London, "Leading Russian Human Rights NGOs launch challenge at European Court to 'Foreign Agent' Law", 6 February 2013.](#)

³⁸ 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).

³⁹ Front Line Defenders, ["Russian constitutional court ruling on foreign agent law opens door to new wave of prosecutions"](#), 17 April 2014.

⁴⁰ Human Rights Watch, ["Russia: Foreign agents law hits hundreds of NGOs"](#), 30 June 2014.

Kostroma Center for Support of Public Initiatives (Kostroma). On 21 July 2014, five other organisations were added to this list – Interregional Human Rights Association “Agora” (Kazan), “Ecozaschita! – Women’s Council” (Kaliningrad), “Public Verdict” Foundation (Moscow) and Human Rights Center “Memorial” (Moscow). On 29 August 2014, the Minister of Justice registered as “foreign agents” two more organisations – the NGO “Soldiers’ Mothers” of St Petersburg, whose leader spoke publicly about the alleged death of Russian soldiers in Ukraine, and the Institute for the Development of Freedom of Information, known for its critical pronouncements.⁴¹ Since 5 June 2014, 95 NGOs have been included in the “foreign agents” register (out of which five on a voluntary basis); a dozen of those organisations have shut down in the meantime and have been excluded from the register (while the Anti-Discrimination Center “Memorial” and Coming Out, both from St. Petersburg, had done so before the Minister of Justice was granted the power to unilaterally register “foreign agents”).⁴² The Minister of Justice proceeds with the creation of the register of “foreign agents”, despite the fact that some of the above-listed organisations are appealing in courts. Moreover, the prosecutor’s office lodged a few civil law suits against NGOs which had failed to register as “foreign agents”,⁴³ nearly thirty NGOs have been involved in administrative court cases because of such a failure and at least six administrative cases are now pending against NGO leaders. Over fifty other NGOs have been warned of a need to register as “foreign agents”, if they planned to carry out “political activities” or receive foreign funding in the future. By mid-November 2015, nearly 100 organisations have been registered as “foreign agents”. The authorities fined a number of NGOs for failing to display “foreign agent” labels on their publications. In November 2015, the Ministry of Justice proposed new amendments to the “foreign agents” law, aimed at banning officials at all levels from maintaining any links with “foreign agent” groups and participating in events organized or co-sponsored by “foreign agents.” If adopted, this measure will make it impossible for NGOs designated as “foreign agents” to carry out normal advocacy work vis-à-vis government officials and agencies.

22. In this context, two cases are particularly shocking. The Committee Against Torture (*Komitet Protiv Pytok*), an NGO from Nizhniy Novgorod, providing legal assistance to the families of persons disappeared during the conflict in North Caucasus, decided to close down following the appeal court’s decision of July 2015 to uphold its inclusion in the ‘foreign agents’ register.⁴⁴ This organisation was the recipient of the Assembly 2011 Human Rights Prize. In December 2014, the Grozny office of the Joint Mobile Group, to which it belongs, was destroyed by fire in a suspected arson attack⁴⁵ and, in June 2015, it was brutally attacked and torn apart by unknown people in masks.⁴⁶ Another striking case is that of the Human Rights Center Memorial, one the best-known Russian human rights organisations, which has been included in the “foreign agents” register. On 28 September 2015, an appeal court in Moscow upheld a 600,000 rouble (nearly 8,450 EUR) fine against this organisation, because of its failure to comply with the ‘foreign agents’ legislation. The HRC Memorial was fined because some events organised by its “sister” organisation – International Memorial (which is not included in the register) – had been announced without the use of “foreign agent” label.⁴⁷ Moreover, on 6 November 2015, HRC Memorial received a notification from the Ministry of Justice, indicating that it had found materials that “undermined the constitutional order of the Russian Federation by calling for the overthrow of the government and a change in the political regime”. The offending items were articles published on the website of the organisation claiming that Russian soldiers were fighting in Ukraine and criticising the imprisonment of opposition demonstrators who had taken part in a peaceful protest on Bolotnaya Square in Moscow in May 2012. On 11 November 2015, the Ministry informed the media that it had passed its inspection report on HRC Memorial to the Prosecutor General for action.⁴⁸ In his statement of 12 November 2015, the Secretary General of the Council of Europe, Mr Thorbjørn Jagland, expressed his concern about these accusations and called on the Russian authorities to protect the activities of human rights defenders.⁴⁹

⁴¹ Amnesty International, [“Russian NGO branded as ‘foreign agent’ after reporting on Russian military action in Ukraine”](#), 29 August 2014.

⁴² As of 9 October 2015. See Human Rights Watch, [Russia: Government against Rights Groups](#).

⁴³ As of 9 October 2015, there have been six.

⁴⁴ See also our Committee’s statement of 27 January 2015 condemning the decision of the Minister of Justice to include this organisation of the list of “foreign agents”.

⁴⁵ See also our Committee’s Chairperson’s [statement of 16 December 2014](#) condemning the harassment of this organisation.

⁴⁶ [Joint Statement by Human Rights Watch, Amnesty International and Front Line Defenders](#), 3 June 2015.

⁴⁷ Human Rights Watch, [Meanwhile in Putin’s Russia, NGOs Face Oppression and Absurdity](#), 2 October 2015.

⁴⁸ Amnesty International, [Accusations against NGO ‘Memorial’ are a vengeful assault on freedom of expression](#), public statement of 13 November 2015.

⁴⁹ [Statement by the Secretary General on the Protocol sent by the Russian Justice Ministry to “Memorial”](#), 12 November 2015.

23. In July 2015, the Russian legislation on non-commercial organisations was again criticised by the Council of Europe Commissioner for Human Rights, who issued an update of his previous opinion on this subject-matter.⁵⁰

3.2.7. Venice Commission Opinion, June 2014

24. The Venice Commission Opinion, delivered on 27 June 2014, examined both the law relating to non-commercial organisations and the amendments made to the Criminal Code with regards to the crime of treason. The Venice Commission recommended that the term “foreign agent” be removed from the law due to the stigmatisation it caused and a reconsideration of the need for a special regime of registration and inspection in relation to NGOs receiving funding from foreign sources. If, however, such changes were not made there was a minimum need to remove the power of authorities to unilaterally register NGOs as “foreign agents” and to ensure that available legal sanctions respected the principle of proportionality. Within the current framework, the Venice Commission also urged Russian authorities to better define the term “political activities” and the instances in which extraordinary inspections can take place in order to prevent arbitrary application. With regards to the law relating to the crime of treason, it noted that the prosecution of treason as such was legitimate, but the provisions needed to be formulated in a more specific manner in order to prevent the prohibition of a “wide category of actions by a wide category of individuals”. Such changes were needed in order to prevent the continuation of the “chilling effect” that such laws had on the freedoms of association and expression within Russia.

3.2.8. The Law on Undesirable Organisations

25. Besides that, a new piece of legislation targeting foreign and international NGOs – the law on “undesirable organisations” - was adopted on 19 May 2015 and is now being scrutinized by the Venice Commission following our Committee’s request.⁵¹ This law criminalizes work for foreign and international non-profit organisations that the government deems to “threaten the constitutional order, security of the State or its defense capacity”. Sanctions against Russian nationals for “involvement” with “undesirable organisations” include administrative fines of approximately 900 euros for the first two offenses; more than two offenses in one year can result in criminal prosecution and up to six years of imprisonment. The activity of an organisation labeled as “undesirable” will be banned on the territory of Russia. It will no longer be able to arrange or participate in any projects or other activities in Russia. Local organisations will be required to refuse any funds from such undesirable groups. Banks and other financial institutions will be prohibited from authorising any financial operation originating from or addressed to such an organisation.⁵²

26. According to many human rights organisations, this law constitutes another tool to harass non-profit entities with foreign origin and Russian nationals cooperating with them. According to OMCT,⁵³ the law lacks a clear definition of what “threatening the constitutional order, security of the State and defense capacity” means. Moreover, it grants the Prosecutor General excessive powers, since he and his deputies are assigned to compile a list of undesirable organisations in cooperation with the Ministry of Foreign Affairs. This unilateral procedure is not only political in nature but it also does not allow the organisations listed as undesirable to have access to any independent judicial review of the decisions affecting them.

27. On July 8, 2015, the Upper Chamber of the Russian Parliament (Federal Council) requested the Prosecutor General and the Ministry of Foreign Affairs to check the compliance of 12 foreign non-profit organisations with the new law on “undesirable foreign organisations”. The Federal Council's list included several American-based organisations such as the Open Society Foundation (OSF), the National Endowment for Democracy (NED), Freedom House, the International Republican Institute (IRI) and the National Democratic Institute (NDI), two NGOs uniting Ukrainian diaspora around the world, and an informal group monitoring human rights in Crimea. On 28 July 2015, the Russian authorities decided, for the first time, to blacklist the US-based charity National Endowment for Democracy (NED), which has supported frontline human rights and other civil society activities in Russia over years. The Office of the Prosecutor General announced that the NED’s work in the country is now effectively illegal and asked the Ministry of Justice to register it as an “undesirable organisation”.

⁵⁰ [CommDH\(2015\)17](#), 9 July 2015.

⁵¹ See synopsis of the meeting on 23 June 2015.

⁵² FIDH and OMCT, [Written Contribution to the 2015 OSCE Human Dimension Implementation Meeting](#), 23 September 2015.

⁵³ OMCT, [Russian Federation: The Observatory deplors the adoption of the bill on “undesirable foreign organisations”](#), 20 May 2015.

3.2.9. Grants from the Russian Government

28. Whilst focusing upon the funding of NGOs by international sources, Russia has continued to support NGOs through its own funding programme. The process involves seven operators allocating funds to specific projects put forward by NGOs. One of the operators involved is *Civil Dignity*. The chairperson of *Civil Dignity*, Ella Pamfilova, was appointed as the Russian Human Rights Commissioner on 18 March 2014. On 30 April 2014, three branches of the NGO *Memorial* (out of which two that were dealing with human rights issues) were provided with grants totalling 3.7 million RUB (75,000 EUR approximately at that time).⁵⁴

3.3. Azerbaijan

3.3.1. Recent changes in the legislation on NGOs

29. Although, the Constitution of Azerbaijan protects the right to freedom of association, in Article 58 and, according to Article 151, binding international agreements prevail over domestic legislation (with the exception of the Constitution itself),⁵⁵ the respect for this fundamental freedom has raised serious concerns in the last few years. NGOs, especially those critical of the authorities, have been encountering particular difficulties. Many of them 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.⁵⁶ Some NGOs have had to apply up to eight times before being registered.⁵⁷ The registration procedure is quite complex: NGOs have to make declarations to several government departments,⁵⁸ 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.

30. 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.⁵⁹ According to the Court, long delays in responding to applications for the registration of associations amount to de facto refusals to register those associations.

31. Amendments to the law on NGOs⁶⁰ 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.⁶¹ These amendments have thus made it more difficult for foreign and international NGOs to open offices.

⁵⁴ For more information see - <http://grants.oprf.ru/grants2014-1/winners/>.

⁵⁵ The Constitution of Azerbaijan as adopted in 1995 and amended in 2002 and 2009.

⁵⁶ 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. See also Expert Council on NGO Law, "[Opinion on amendments in 2009 to the NGO law in Azerbaijan and their application](#)", OING Conf/Exp (2011)2 of September 2011.

⁵⁷ See the information memorandum by Ms Reps, AS/Jur (2014) 03 see footnote 5.

⁵⁸ 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.

⁵⁹ *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 *Tebietü 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.

⁶⁰ Law No. 401, passed in 2000.

⁶¹ 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.

32. 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.⁶²

33. Despite this criticism of the Venice Commission, on the 15 February 2013, the parliament passed fresh amendments to the law on NGOs, the law on grants and the Code of Administrative Offences, further restricting their operations in Azerbaijan (they entered into force on 12 March 2013). Consequently, NGOs are not allowed to receive foreign funding exceeding AZN 200 (EUR 185) without the formal agreement of the Minister of Justice, and non-compliance is punishable by fines or confiscation of property. NGOs are only allowed to receive grants or donations of over AZN 200 by bank transfer. Thus, unregistered NGOs are unable to receive funding; without legal personality, they are unable to open bank accounts.⁶³ This left many NGOs’ leaders with no choice but to operate at the borderline of the strict legal framework, which was later used by the authorities as a pretext for their criminal prosecution⁶⁴ (see below). Moreover, two other sets of amendments were adopted by the parliament, respectively, on 17 December 2013⁶⁵ (entered into force on 3 February 2014) and on 17 October 2014.⁶⁶ The amendments of October 2014 explicitly extended the grant registration requirement to unregistered NGOs (i.e. to their leaders)⁶⁷ and imposed further restrictions on the receipt of donations and grants by NGOs in order to limit foreign funding of NGOs.

34. In his report of 6 August 2013,⁶⁸ the Council of Europe Commissioner for Human Rights Mr Nils Muižnieks noted the restrictive character of the new provisions and, in his additional observations of 23 April 2014, he reiterated his concerns regarding the deterioration of freedom of expression and association in Azerbaijan.⁶⁹ He stressed, in the latter document, that the “cumbersome requirements for registration inevitably drove a number of NGOs to operate at the fringe of law” and that “legislation should not make human rights work impossible”.

35. In September 2014, the Secretary General of the Council of Europe, Mr Thorbjørn Jagland, requested the Venice Commission to assess the Law on NGOs as amended. On 15 December 2014, the Venice Commission issued an opinion in this respect, taking into account all amendments adopted in 2013 and 2014.⁷⁰ Despite some limited positive changes in the legislation, the Venice Commission noted that many of the recommendations contained in its opinion of 2011 had not been addressed, in particular as regards foreign NGOs and the possibility of dissolution. Moreover, the amendments in question introduced new controversial provisions concerning foreign NGOs, the receipt of grants and donations and reporting to the State authorities.⁷¹ According to the Venice Commission, “the cumulative effect of those stringent requirements (...) is likely to have a chilling effect on the civil society, especially on those associations that are devoted to key issues such as human rights, democracy and the rule of law”.⁷² Thus, the Venice Commission recommended that the Azerbaijani authorities simplify and decentralise the registration process, reconsider the requirement for international NGOs to create branches and have them registered, revise the provisions aimed at preventing foreign funding and remove provisions interfering with the internal autonomy of NGOs (such as some reporting obligations and state supervision on internal organisation of NGOs).

⁶² Venice Commission, [CDL-AD\(2011\)035](#), Opinion No. 636/2011 of 19 October 2011, § 85.

⁶³ Amnesty International, Amnesty International, [Guilty of defending rights. Azerbaijan’s human rights defenders and activists behind bars](#), March 2015, p. 9.

⁶⁴ Ibid.

⁶⁵ To the Law on NGOs, the Law on Grants, the Law on Registration and the Code of Administrative Offences.

⁶⁶ On 14 November 2014, the President signed these amendments to the Law on NGOs and the Law on Grants and issued two decrees on their application.

⁶⁷ Amnesty International, supra note 63, p. 9.

⁶⁸ Commissioner for Human Rights, CommDH (2013)14, Report 6 August 2013, p. 20.

⁶⁹ Commissioner for Human Rights, [Freedom of Expression, Assembly and Association deteriorating in Azerbaijan](#), Observations of 23 April 2014, CommDH(2014)10.

⁷⁰ Venice Commission, Opinion on the Law on Non-governmental organisations (public associations and funds) as amended of the Republic of Azerbaijan, adopted at its 101st Plenary Session (Venice, 12-13 December 2014), Opinion 787/2014, [CDL-AD\(2014\)043](#).

⁷¹ Ibid, paragraphs 88-91.

⁷² Ibid, paragraph 93.

3.3.2. Implementation of the new legislation on NGOs

36. In practice, several local and international NGOs, including Human Rights House Azerbaijan, have been prevented from freely carrying out their activities. On 10 March 2011,⁷³ 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.⁷⁴ 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.

37. The government claims to grant financial support to some NGOs. However, only regime-supporting organisations⁷⁵ 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.

38. 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 (EMDS) 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.⁷⁶ 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".⁷⁷ On 26 May 2014, Mr Mammadli was sentenced to 5 and a half year imprisonment by the Baku Court of Grave Crimes.⁷⁸ His colleague, Bashir Suleymanli, executive director of EMDS, was sentenced to three and half year imprisonment.

39. 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.⁷⁹

40. On 13 May 2014, the Serious Crimes Investigation Department of the Prosecutor General's Office opened a case against a number of foreign and local NGOs on charges of abuse of power and forgery (including IREX, Oxfam, International Media Support or National Endowment for Democracy). Since then, a number of prominent human rights defenders and NGO leaders have been arrested on charges of "abuse of power", "tax evasion", "illegal entrepreneurship" or "fraud": Intigam Aliyev (a human rights lawyer and leader of the *Legal Education Society* and member of the INGO Conference's Expert Council on NGO Law), Rasul Jafarov (a founder of the *Human Rights Club*), Leyla Yunus (a prominent human rights lawyer and director of

⁷³ Another organisation, the National Democratic Institute, was also forced to stop operating on 10 March 2011.

⁷⁴ [Баку призвали зарегистрировать "Дом прав человека Азербайджана"](#), 11 March 2014.

⁷⁵ See AS/Jur (2014) 03 in footnote 5 supra.

⁷⁶ [HRW, Azerbaijan: Prominent Election Monitor Arrested](#), 18 December 2013.

⁷⁷ Human Rights House Foundation, ["Free human rights defender and election observer Anar Mammadli"](#), 31 January 2014.

⁷⁸ European Platform for Democratic Elections, ["5.5 years of prison for EPDE board member Anar Mammadli"](#), 27 May 2014.

⁷⁹ Trend, ["Азербайджан должен поменять позицию в отношении ряда международных организаций - Администрация Президента"](#), 17 March 2014.

the *Peace and Democracy Institute*, also charged with treason) and her husband Arif Yunus (a historian).⁸⁰ On 21 July 2014, Hasan Huseynli, leader of a respected NGO based in Ganja, was sentenced to six years of imprisonment on charges of disorderly conduct and possession of knives. All these arrests and convictions took place during the Azerbaijani Chairmanship in the Committee of Ministers and they were condemned by some instances of the Council of Europe (the Secretary General,⁸¹ the Commissioner of Human Rights⁸² and our Committee⁸³) and instances of other international governmental organisations - the European Union,⁸⁴ the Organisation for Security and Co-operation in Europe⁸⁵ and the United Nations⁸⁶ - and several non-governmental organisations.⁸⁷

41. Bank accounts of at least ten NGOs, including the *Media Rights Institute*, *Democracy and Human Rights Centre*, *Human Rights Union*, Azerbaijani Lawyers Association and Institute of Reporters Freedom and Safety and some international organisations (including *Transparency International*, *Oxfam* and *the National Democratic Institute*), and of their leaders were subsequently frozen, which means *de facto* the closure of these NGOs.

42. Moreover, the office of the Institute of Reporters Freedom and Safety was raided and sealed off on 11 August 2014 and its former director, Emin Huseynov, was prevented from leaving the country (subsequently, he went in hiding to Swiss embassy in Baku in August 2014; in June 2015, he was transferred to Switzerland and has recently been deprived of his Azerbaijani citizenship). On 5 September 2014, Azerbaijani security forces raided the premises of IREX, as U.S. – funded NGO and its bank accounts have been frozen.

43. Despite the criticism from international organisations, repressions against human rights activists and NGO leaders continued (with the exception of the pardoning of Mr Hasan Huseynli in October 2014). On 5 December 2014 of a well-known investigative journalist Ms Khadija Ismayilova⁸⁸ was arrested, a few weeks after she had taken part in a side-event during the fourth 2014 PACE part-session in Strasbourg.

44. In the course of 2015, all the above-mentioned activists, who used to be long-standing partners of the Council of Europe, were convicted for long-term prisons sentences: Intigam Aliyev⁸⁹ - for 7,5 years (upheld in appeal proceedings); Rasul Jafarov⁹⁰ - for 6 years and 3 months (in appeal proceedings), Leyla Yunus – for 8,5 years, Arif Yunus – for 7 years (on 12 November 2015, he was released on humanitarian grounds and was transferred to house arrest⁹¹) and Khadiya Ismayilova – for 7,5 years.

45. In its [Resolution 2062 \(2015\)](#) of 23 June 2015, the Assembly referred to the above-mentioned convictions and arrests and called on Azerbaijan to “put an end to systemic repression of human rights defenders, the media and those critical of the government, including politically motivated prosecutions; (...)”

⁸⁰ [Azerbaijan: Increasing repression against civil society severely tarnishes Azerbaijan's Presidency of the Council of Europe Committee of Ministers](#), Observatory for the Protection of Human Rights Defenders, 6 August 2014.

⁸¹ Statement made by Council of Europe Secretary General Thorbjørn Jagland on 11 August 2014; [Secretary General Thorbjørn Jagland expresses concern for human rights defenders in Azerbaijan](#). See also his [statement of 1 August 2014 on the arrest of Leyla Yunus](#).

⁸² [Concerns over the situation of human rights defenders in Azerbaijan, press release of 7 August 2014](#).

⁸³ PACE, AS/Jur, statement of 30 September 2014, at: <http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=5225&lang=2&cat=5>.

⁸⁴ [Statement](#) by the Spokespersons of the European Union External Action Service (EEAS) concerning the conviction of Mr Huseynli of 17 July 2014 and their [Statement](#) of 6 August, concerning the arrest of Rasul Jafarov; see also [European Parliament resolution on the persecution of human rights defenders in Azerbaijan \(2014/2832\(RSP\)\)](#), adopted on 18 September 2014, in which it condemned these arrest “in the strongest possible terms” and stressing that “full respect for human rights, democratic principles, fundamental freedoms and the rule of law lies at the heart of the framework for cooperation within the EaP (Eastern Partnership), and of the commitments made by Azerbaijan within the Council of Europe and the OSCE”, paragraphs P 2 and P1.

⁸⁵ OSCE special representative on media freedom, 5 August 2014, at: <http://www.osce.org/fom/122389>.

⁸⁶ See the call of UN experts of 19 August 2014, [Persecution of rights activists must stop – UN experts call on the Government of Azerbaijan](#), the Special Rapporteur on the situation of human rights defenders, Michel Forst, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye.

⁸⁷ For instance, Amnesty International, [Recent human rights concerns in Azerbaijan](#), September 2014.

⁸⁸ PACE President, Ms Anne Brasseur, [statement of 5 December 2014](#).

⁸⁹ See our [Committee statement of 23 April 2015](#).

⁹⁰ See our [Committee's statement of 21 April 2015](#).

⁹¹ Human Rights House, [Dispatches: An Opening to Seize Upon in Azerbaijan](#), 12 November. This step was welcomed by Assembly's President Ms Anne Brasseur on 13 November 2015.

(paragraph 11.1).⁹² It also called upon the authorities to “review the law on NGOs with a view to addressing the concerns formulated by the Venice Commission” and “create an environment conducive for NGOs to carry out their legitimate activities including those expressing critical opinions” (paragraph 11.7). Similarly, in its Resolution on Azerbaijan of 8 September 2015, the European Parliament called on the authorities to review its legislation on NGOs, strongly condemned “the unprecedented repression against civil society”, underlined that the latter had “a vital role to play in developing the democracy, stability and prosperity” of the country and urged Azerbaijan to “reassess its policy towards independent civil society with a view to facilitating an open and inclusive national discourse in line with international standards”.⁹³

46. On 7 October 2015, the Secretary General of the Council of Europe, Mr Thorbjørn Jagland, decided to withdraw his representative from the Joint Working Group on human rights issues in Azerbaijan, which had been designed to revive the dialogue between civil society and the authorities and is composed of government officials, members of parliament and human rights activists. When announcing his decision, the Secretary General indicated that “the overall situation of human rights defenders in the country has deteriorated dramatically”.⁹⁴ His representative had attended its meetings since October 2014.

3.4. Turkey

47. 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”.⁹⁵ The right to exercise freedom of association is also governed by the Turkish Civil Code⁹⁶ and the Law on Foundations.⁹⁷ 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 foundations which promote 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.

48. 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 (*İnsan Hakları Derneği*, İHD) is a typical example of this kind of state harassment, as prosecution of its directors and branch heads on terrorism charges, including lengthy periods of pre-trial detention, is often on arbitrary grounds. The association has been subjected to heavy financial penalties.⁹⁸

49. 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.⁹⁹ The pro-government media help to discredit these NGOs in the eyes of the general public and of

⁹² See report of the Monitoring Committee, [Doc. 13801](#), Co-rapporteurs: Messrs Pedro Agramunt (Spain, EPP/CD) and Tadeusz Iwinski (Poland, Socialist Group).

⁹³ [2015/2840\(RSP\)](#), paragraphs 9, 3 and 7 of the resolution.

⁹⁴ [“Council of Europe leaves Azerbaijan human rights working group”](#), 7 October 2015.

⁹⁵ [Turkey 2006 Progress Report of 8 November 2006](#), SEC(2006) 1390, p. 15.

⁹⁶ Law No. 4721 enacted on 22 November 2001.

⁹⁷ Law No. 5737 of 20 February 2008.

⁹⁸ Front Line Defender, [“Turkey: Sentencing of four Human Rights Association \(IHD\) members”](#), 25 January 2013.

⁹⁹ See, for instance, the case of four human rights defenders from the İHD, 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”, Front Line Defenders, [“Turkey: Sentencing of four Human Rights Association \(IHD\) members”](#), 25 January 2013. See also the case of the Diyarbakir İHD branch head Muharrem Erbey, prosecuted for terrorism offenses and held in prolonged pretrial detention. The evidence against Erbey, whose trial continues, included no allegation of violent activities, incitement to violence or material support for armed organisations. 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, Le Point, [“L’étudiante franco-turque Sevil Sevimli de retour en France”](#), 20 February 2013.

their potential – national or foreign – donors.¹⁰⁰

50. 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.

51. 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.¹⁰¹

3.5. Hungary

52. On 9-10 November 2015, I carried out a fact-finding mission to Budapest, where I met with representatives of the authorities: members of Parliament (including Mr Gergely Gulyàs, deputy speaker), Mr Csaba Latorcai, State Secretary for Priority Social Affairs in the Office of the Prime Minister; Mr Barna Berke, State Secretary for EU and International Judicial Cooperation in the Ministry of Justice, Mr László Székely, the Ombudsman, civil servants from the Government Control Office (KEHI) and NGO representatives.

53. In Hungary, there are over 81,000 registered NGOs (53,000 associations and 28,000 foundations, according to my interlocutors in the Ministry of Justice). NGOs can be set up for purposes which are in accordance with the Fundamental Law and not illegal.¹⁰² The two traditional legal forms of NGO are the association and the foundation; specific forms of association are alliances, political parties and trade unions.

54. 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.¹⁰³ 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.

55. 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 anytime, 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,¹⁰⁴ a restriction which does not apply to other types of NGO.

¹⁰⁰ See footnote 18, p. 74.

¹⁰¹ The Observatory for the Protection of Human Rights Defenders, “Turkey: Human Rights Defenders, guilty until proven innocent”, May 2012.

¹⁰² Article 3 (4) of Act CLXXV/2011, the “CSO Act”.

¹⁰³ Article 2, paragraph 22 of the “CSO Act”.

¹⁰⁴ Act XXXIII/1989.

56. Since 2010, when Fidesz won a two-thirds majority in Parliament, it has undertaken a renewal of the country's Constitution. The new Constitution (the Fundamental Law) and related laws came into force in January 2012, and these laws have subsequently been amended several times, affecting the functioning of the judiciary and the Constitutional Court. The new Media Act of 2010 was also criticised as limiting the independence of the media. In its [Resolution 1941 \(2013\)](#), the Assembly expressed its concern about "the erosion of democratic checks and balances as a result of the new constitutional framework in Hungary", pointing out the excessively concentrated powers¹⁰⁵ and was also worried about the extent to which the country was complying with the principle of democracy, the protection of human rights and the rule of law. However, it decided not to open a monitoring procedure in respect of Hungary¹⁰⁶ and to follow the situation closely.¹⁰⁷

57. In the meantime, concerns about the deteriorating situation of civil society and restrictions to the freedom of association have been reported by some NGOs¹⁰⁸. In October 2013, a bill apparently inspired by the Russian law on "foreign agents" was tabled in Parliament by three members of the Jobbik party.¹⁰⁹ According to my interlocutors in the Hungarian Parliament, the bill was rejected at the committee stage.

58. Further intimidation of some NGOs was reported after the Fidesz government had been reconducted following parliamentary elections in early April 2014¹¹⁰. The NGOs targeted were those running the "NGO Fund programme" financed by the EEA (European Economic Area)¹¹¹ Grants, i.e. the Hungarian Environmental Partnership Foundation (the "Consortium" composed of Ókotárs, Autonomia, Demnet and Kárpátok foundation), and some of the NGOs receiving such grants. On 14-15 August 2013, newspapers published articles stigmatizing Ókotárs and 13 other NGOs receiving EEA grants, calling them as NGOs "serving foreign interests". On 8 April 2014, Mr János Lázár, head of the Prime Minister's Office, wrote to the Norwegian government, claiming that the NGO Fund money was distributed to NGOs related to an opposition party and questioning the independence of Ókotárs. On 30 April 2014, another senior official from the PM Office called the Consortium "party-dependent, cheating nobodies".¹¹² On 9 May 2014, payments from the three donors (Iceland, Liechtenstein and Norway) as part of the EEA Grants were suspended due to a breach of the agreed management and implementation system by the Hungarian government¹¹³. However, the fund operator continued with payments to Hungarian NGOs.¹¹⁴ This prompted another open statement from Mr Lázár, calling for suspending the NGO Fund. Following this statement, on 28 May 2014 the Hungarian Government Control Office (KEHI) began to investigate the organisations and projects that benefitted from this source of funding. The KEHI has the competence in matters relating to the use of Hungarian public money. Accordingly the competence for carrying out audits, and whether funds from the EEA Grants can be considered "Hungarian public money", has been questioned. The audit was conducted

¹⁰⁵ On "Request for the opening of a monitoring procedure in respect of Hungary", adopted on 25 June 2013, paragraph 6.

¹⁰⁶ Paragraph 14. Despite the recommendation included in 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).

¹⁰⁷ Thus, in June 2015, the Assembly examined the progress achieved in the implementation of [Resolution 1941\(2013\)](#) with respect to issues concerning legislation on freedom of religion, the judiciary and the Constitutional Court as well as the situation of the media and decided to conclude the special examination of these matters; paragraph 3 of [Resolution 2064 \(2015\)](#) on "Situation in Hungary following the adoption of Assembly [Resolution 1941\(2013\)](#)", adopted on 24 June 2015. See also report by the Committee on Political Affairs and Democracy (rapporteur: Mr Robert Walter), [Doc. 13806](#) of 8 June 2015.

¹⁰⁸ Human Rights Watch, "[Wrong Direction on Rights: Assessing the impact of Hungary's new constitution and laws](#)", 16 May 2013.

¹⁰⁹ Report of December 2013 by the Expert Council on NGO Law, "Regulating political activities of non-governmental organisations", OING Conf/Exp (2013) 4. See also [Jobbik tabled the "foreign agent" bill in parliament](#).

¹¹⁰ Report by Amnesty International, [Their Backs to the Wall: Civil Society under Pressure in Hungary](#), 2015.

¹¹¹ The Memorandum of Understanding for the implementation of the EEA Financial Mechanism 2009-2014, between the three donor States (Norway, Iceland and Liechtenstein) and Hungary, constitutes the legal basis for the granting of this type of financial assistance. The NGO Fund programme is run on the basis of a programme agreement of 14 January 2013 signed between the Hungarian Environmental Partnership Foundation and the Financial Mechanism Office ("FMO", based in Brussels, and responsible for the day-to-day operations of the EEA Financial Mechanism). Over 400 NGOs receive money from this fund (working on human rights issues, minority protection, projects for young people, etc.). Its budget amounts to nearly 13 million euros; thus, the EEA is the biggest donor for Hungarian NGOs.

¹¹² Amnesty International report, supra note 110, p. 7.

¹¹³ Because of a unilateral decision by the Hungarian authorities to move the implementation and monitoring of the grants scheme out of central government administration, in breach of the agreements governing the funding; see at: <https://www.regjeringen.no/en/topics/european-policy/norwaygrants/diverse-saker/Suspension-of-funds-to-Hungary/id2008980/>

¹¹⁴ European Liberties Platform, "[Why is the Hungarian government waging a war on civil society?](#)", 25 June 2014.

on 2 June 2014 and the KEHI requested that certain documents to be handed over, but Ókotárs refused to do so. In July 2014, 58 NGOs receiving grants were asked again to disclose project documentation and some of them complied with this request, although they contested its legal basis.¹¹⁵ Moreover, a number of organisations that receive such funding (including human rights and women's right organisation as well as Transparency International) and that were stigmatised by the media in August 2013 have been blacklisted (so called "dirty 13") by the government.¹¹⁶ In July 2014, the Council of Europe Commissioner for Human Rights firmly condemned the stigmatisation of NGOs promoting human rights and democratic values by the Hungarian authorities and called upon the latter to reconsider the basis of the conducted audits.¹¹⁷ In a speech of 26 July 2014, the Hungarian Prime Minister Mr Victor Orbán referred to the NGOs receiving EEA grants by calling them "paid political activists who are trying to help foreign interests", and made other critical comments (using the term "mercenaries") with regard to them in another speech of 15 September 2015.¹¹⁸

59. Despite this criticism, searches of the offices of the organisations distributing the EEA Grants continued: on 8 September 2014, on the basis of allegations of mismanagement, police officers inspected certain organisations – including Ókotárs and Demnet from the "consortium" distributing the EEA Grants – and confiscated their files and computer servers.¹¹⁹ Following their complaints, on 23 January 2015 a district court in Buda found that the searches had been illegal. In September 2014, following the KEHI's request the Tax Authority suspended the tax numbers of the four-organisation "consortium", but the latter appealed to the court. Consequently, on 23 February 2015, the court decided to suspend the suspension of the tax numbers of three organisations of the Consortium, allowing them to freely operate¹²⁰.

60. On 12 November 2014, the KEHI requested the prosecutor to initiate criminal proceedings against the concerned NGOs, on the basis of an audit it had performed. The prosecutor found administrative irregularities only regarding three NGOs (out of 24 NGOs investigated).¹²¹ In the meantime, audits carried out at the request of the Financial Mechanism Office and Norway showed no irregularities in handling the funds. In an interview of 21 October 2015, Mr Lázár stated despite the prosecutor's findings to the contrary that he was still convinced that Ókotárs carried out its activities in an unlawful manner.¹²²

61. During my visit to Budapest, I discussed these issues at length with both the authorities' and NGOs' representatives. NGOs complained about the lack of a remedy against the decisions of KEHI, while the latter stated that they were only making 'recommendations' and complained about the lack of cooperation by some of the audited NGOs. Certain NGOs also complained about the broad scope of the investigation conducted by KEHI (which even questioned the amount of their lawyers' fees) and stressed the professional and non-political character of their work (especially in the field of women's rights). According to the authorities, ways to get out of the current deadlock were to be soon found in cooperation with the donor States and certain terms used in the agreements concerning EEA Grants were unclear and could be reformulated. I was also reassured that the ruling party shared European values and that the government was ready to accept the criticism from civil society.

62. My interlocutors from NGOs also complained about difficulties in communicating with public officials (including the Ombudsman), the introduction of new fees for copies of documents, smear campaigns in the media, verbal attacks coming from government officials, the granting of domestic funding (from the National Cooperation Fund) to NGOs related to the government (almost 27,000 NGOs receive such funding) and the lack of a strategy by the government for civil society. All NGOs agreed that although the legislation on NGOs was very democratic, its implementation posed numerous problems in practice.

63. The authorities explained to me that some of the problems encountered by NGOs in trying to get access to the administration were related to the excessive bureaucracy, whose origin dated from the time of

¹¹⁵ Ibid.

¹¹⁶ Mainly organisations with aims relating to human rights, anti-corruption, gender equality and freedom of speech, including "Transparency International" and the "Hungarian Civil Liberties Union".

¹¹⁷ Press release of 24 July 2014, [CommDH 028\(2014\)](#).

¹¹⁸ Amnesty International report, *supra* note 110, p. 7.

¹¹⁹ [Amnesty International Public Statement Hungarian government must end its intimidation of NGOs, 10 September 2014](#).

¹²⁰ On 28 May 2015, the court decided to suspend the proceedings concerning the fourth organisation and seized the Constitutional Court; on 5 October 2015, the latter gave a ruling, in which it found that the legal provision on which the tax suspension number had been decided was constitutional.

¹²¹ Eötvös Károly Policy Institute, Transparency International Hungary, HCLU, [Hungarian Helsinki Committee, Timeline of governmental attacks against Hungarian NGO Sphere](#), 12 August 2015.

¹²² Ibid, p. 5.

the Austrian-Hungarian rule. Thus, it was not a problem, which was specific to NGOs, but a more general one. In order to solve it, the government is currently working on legislation aimed at simplifying court proceedings and ensuring access to transparent funding for NGOs. In addition, the Human Rights Working Group meets every six months under the auspices of the Ministry of Justice with the participation of 200 NGOs. During my visit, I noticed a general and mutual mistrust between NGOs and the authorities and that the latter were making a distinction between “opposition” and “non-opposition” organisations.

4. NGO legislation in Council of Europe member States: analysis of the replies to the ECPRD questionnaire

64. Following the questionnaire I sent to the parliamentary delegations of all member States, via the European Centre for Parliamentary Research and Documentation (ECPRD), I received replies from thirty one member States: Albania, Andorra, Austria, Belgium, Bosnia and Herzegovina, Croatia, Cyprus, Estonia, Finland, France, Germany, Georgia, Greece, Hungary, Latvia, Lithuania, Luxembourg, the Republic of Moldova, Montenegro, the Netherlands, Norway, Poland, Portugal, Romania, the Russian Federation, Serbia, the Slovak Republic, Slovenia, Sweden, the United Kingdom and “the former Yugoslav Republic of Macedonia”. The replies received are summarised below.

4.1. General legislation on NGOs

4.1.1. In which legal form(s) are NGOs able to operate in accordance with the law? Are they required to acquire legal personality?

65. The term “NGO” is usually not legally defined in most Council of Europe member States (except in Lithuania) and NGOs usually operate in the form of associations, but sometimes they choose the form of other entities (foundations, clubs, trade unions, non-profit companies, etc. – the terminology varies according to the State).

66. In order to acquire legal personality, NGOs (associations) have to register with the competent authority. Delegations of some of the Council of Europe member States indicated that registration, and therefore the acquisition of legal personality, was necessary to be allowed to operate as an NGO (e.g. in Bosnia and Herzegovina, Montenegro, Russia and “the former Yugoslav Republic of Macedonia”). In the United Kingdom, NGOs that intend to conduct certain activities must be registered accordingly (ex: charity, co-operative, industrial and provident society, company limited by guarantee, housing associations, etc.) and acquire the appropriate legal form. Charity is the most common form of registration; such registration is not considered as conferring charitable status as such but rather as recognition of the fact that the legal conditions for such status already exist.

67. In some other member States, associations are able to conduct non-profit activities even without being a legal entity (e.g. in Belgium, Croatia, Cyprus, Finland, France, Germany, the Netherlands, Poland, Romania and Serbia). In Hungary, it may be an “alliance” of 2-3 people; in Poland a “simple association” composed of at least 3 people which has to notify its existence to the competent authority. In Norway, registration in the Register of Non-Profit Organisations is optional. In Estonia and Greece, NGOs do not have to register if they operate as civil law companies (so-called “non-profit making civil law companies” in Greece).

4.1.2. What is the legal status of foreign NGOs and local branches of foreign NGOs? How does it differ from that of national NGOs?

68. In many member States, foreign associations are allowed to operate without any restriction to their activity, if they have legal personality in their home country (e.g. in Austria, Belgium, Finland, France, Germany, Latvia, Luxembourg, the Netherlands, Norway, Slovakia), although in some countries reciprocity is required (for example, in Cyprus or Romania); in Andorra such NGOs must be included in a special part of the register. In Romania, prior approval is required from the government before registering a foreign NGO in court. In Estonia, foreign NGOs do not have any legal status.

69. In most member States of the Council of Europe, foreign NGOs can also create registered associations according to the law of the State in which they operate (e.g. Belgium, France, Germany, Georgia, Greece, Latvia, the Republic of Moldova, Norway, Poland, Slovakia or “the former Yugoslav Republic of Macedonia”) and enjoy the same legal status as national entities. In some countries, members of such associations’ board must meet residence requirements (e.g. in Finland or Lithuania). Most delegations

have also indicated the possibility for foreign NGOs to open branches or other substructures (like offices), with the obligation to register (e.g. Croatia, Cyprus or Norway) and/or to require a permit from the competent authority (Poland). Some delegations indicated that this was the only admitted form for foreign NGOs to operate in their countries and that it required registration in (special) registers (in Bosnia and Herzegovina, Croatia, Montenegro, the Russian Federation, Serbia and Slovenia).

4.2. Registration

4.2.1. *Is the system of NGO registration based on authorisation or merely on notification to the authorities responsible?*

70. Some delegations indicated that their countries' associations' registration system was based on notification (Andorra, Belgium – except for the international non-profit associations created in this country, Cyprus, Finland, France, Latvia, the Netherlands, Norway and the United Kingdom). In some member States, the domestic law also requires prior authorisation from the competent administrative authority (but only Portugal, the Russian Federation and Slovakia clearly indicated that).

4.2.2. *Which authorities are responsible for the registration and supervision of NGOs?*

71. The responsible authorities for the registration and supervision of NGOs (associations) differ from country to country. In many Council of Europe member states, associations are registered and sometimes also supervised by the relevant offices/directorates of the executive (e.g. in Andorra, Belgium – in case of international non-profit associations created in this country, Bosnia and Herzegovina, Cyprus, Greece, Montenegro, the Republic of Moldova, Portugal, the Russian Federation and Slovakia). In other countries, these tasks are fulfilled by general courts (Belgium, Estonia, Germany, Hungary, Poland and Romania), the local administration or representatives of central administration at the local level (Austria, Croatia, France and Slovenia), registers operating under the auspices of the Ministry of Justice (Serbia and “the former Yugoslav Republic of Macedonia”) and other registration agencies/bodies (Finland, Georgia, Latvia, Lithuania, Luxembourg, the Netherlands, Norway and Sweden). Supervision is often ensured by central administration (also in Hungary; Poland – by the district governor ‘starosta’ and in Slovenia) and sometimes by the tax authorities (in the Netherlands or Sweden). In the UK, the Charity Commission is responsible for charities' registration and supervision.

4.2.3. *Does national legislation prohibit unregistered NGOs?*

72. Most of the delegations indicated that their countries' legislation did not prohibit unregistered NGOs; some of them informed about the fines applicable in case of non-observance of registration procedures (Austria and Slovenia). The only exception was Portugal, which indicated that such a prohibition concerned NGOs which did not re-register after 2 years (there is an obligation to re-register after such a period). In the Russian Federation, the law stipulates that only registered NGOs can operate (see also answer to question 4.1.1.).

4.2.4. *Does national legislation prescribe fixed time limits for the registration of an NGO and for notification in the event that registration is refused?*

73. Most of the delegations indicated that their legislation prescribes such time limits in case of associations' registration (which, for the registration of an association, vary from 5 working days, in Estonia, to three months, in Poland). In Bosnia and Herzegovina and Montenegro the responsible authority has to react within the prescribed time-limit of respectively 30 and 10 days; if that is not the case, the registration is deemed “executed”. Finland, France, Germany, Greece, Norway and Sweden indicated that their national legislation did not prescribe fixed time limits.

4.2.5. *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?*

74. Most of the delegations provided detailed information about the requirements for registration (number of members, content of statutes, composition of the board, etc.) and the documents that NGOs had to present to the registration body (including usually application signed by all members, copy of the statutes, copy of the minutes of the constituent convention or general meeting, information about the founders of the NGO, information about the NGO's assets, etc.). According to the answers provided, there are but few countries that do not perceive a fee for the registration of associations (Hungary and Portugal), the majority

of the responding States indicated that administrative fees were imposed on the application for registration (ranging from 10 euros to over 60 euros; in Russia registration of a domestic association costs about 4,000 RUB, but that of a foreign organisation substructure 120,000 RUB; in Norway, registered NGOs also have to pay an annual fee of nearly 16 euros). As regards the duration of the registration procedure - see above (4.2.4.).

4.2.6. Does national legislation require NGOs to re-register after a certain length of time?

75. Almost all delegations replied that such a requirement was not foreseen in their legislation concerning associations (with the exception of Portugal – see above 4.2.3.); in Norway, NGOs which do not pay the annual fee for registration might be deleted from the register and will then have to re-apply for registration – see above 4.2.5.). However, in the event of changes concerning their functioning, the composition of their board or other important changes NGOs are usually obliged to notify them to the relevant authority.

4.3. Dissolution and suspension

4.3.1. On what grounds may an NGO be dissolved or its activities suspended, and which authorities are responsible for taking such decisions?

76. Most of the delegations indicated that associations could be dissolved (voluntarily) upon achieving goals, after the lapse of time for which they have been created, in cases determined in their statutes or in cases of a merger with another association. Bankruptcy could be another reason for dissolving an association. Moreover, associations could also be dissolved if they violated the law by a decision of the competent bodies. Usually, such a decision is made by a judge, but in some countries it falls within the remit of the relevant administrative authority that supervises NGOs (for example, in Austria, Bosnia and Herzegovina, Germany or Slovakia). For example, in the case of Portugal it is made by the President of the National Institute for Rehabilitation for NGOs in the disability field and the President of the Portuguese Environment Agency for NGOs in the environmental field. Lithuania indicated that there were no specific grounds for dissolution or suspension of activities of non-governmental organisations and that the general provisions on legal persons applied in this field. In Norway, due to a long tradition of freedom of association, there are no regulations at all in this matter.

4.3.2. Do effective remedies exist against dissolution and suspension decisions?

77. Almost all delegations indicated that there were legal remedies against dissolution of an association (except in Norway, which indicated that this issue was not “applicable”; Slovenia and Montenegro indicated that was nothing specific on this in their legislation on associations). In the majority of the member States that replied to the questionnaire, associations can appeal against such decisions to the higher court in civil proceedings (for example in Belgium, Latvia or “the former Yugoslav Republic of Macedonia”) or to an administrative court (for example, in Bosnia and Herzegovina, Austria, Germany, Poland and Portugal). Greece and Russia indicated that certain decisions concerning associations could be appealed to the higher administrative supervisory body. In Serbia, there is no appeal against the Constitutional Court’s decision on banning an association.

4.4. Funding and taxation

4.4.1. Are there any restrictions on NGOs’ right to receive and possess assets and funds? If so, what are these?

78. Most delegations indicated that there were no restrictions to the possession of assets and funds as long as the funds (received from donations, membership fees, etc.) would only be used for the achievement of the goals of the association as defined in its statute, and as long as the tax legislation was observed. In the Netherlands, as a rule, municipalities prohibit door-to-door and on-the-street solicitation without a permit. The same applies to organizing lotteries and other games of chance (other than within a closed circle of participants). Other forms of solicitation are not regulated. In Belgium and France, the law provides for some restrictions on the acquisition of real estate properties by donation.

4.4.2. Does national legislation require NGOs to declare any grants received from abroad, or even to seek prior authorisation for them?

79. Most delegations replied that there was no obligation for NGOs to disclose the funds received from abroad or to seek prior authorisation for receiving them (e.g. Croatia, Cyprus, Estonia, Finland, Georgia, Latvia, Montenegro, the Netherlands, Norway, Poland, Slovenia or Sweden). Other countries indicated that such donations were governed by the general rules on financial reporting obligations (for example, in Belgium, France or Portugal). In Greece, grants coming from public or private bodies located abroad should be declared in the context of tax declarations. Andorra replied positively to the above question. In the Russian Federation, NGOs which receive funds from foreign sources shall conduct separate accounts for this type of income.

4.4.3. What penalties are prescribed for infringements of the rules on the funding of NGOs?

80. Usually, NGOs are held accountable for such infringements according to the general rules of criminal and tax law, as in many member States there are no specific penalties prescribed by law regarding such infringements (for example, in Finland, Georgia or Sweden). They may also lose their grants. Dissolution of an association could be the ultimate penalty for such violations of law. Some delegations indicated that their countries' legislation on associations provided explicitly for administrative fines (Bosnia and Herzegovina, Montenegro, Serbia and Slovenia).

4.4.4. Which taxes must NGOs pay? Are there any differences according to the nature of NGOs' activities?

81. Tax regimes differ from country to country, although in almost all of the countries, registered NGOs are exempt from paying income tax on their non-profit activities. However, they must pay other taxes (such as the tax on property, VAT, local tax, etc.), even though certain tax rebates or reductions may apply.

5. Conclusion

82. 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. There are problems with the legislation governing NGO's status, registration, reporting obligations and access to foreign funding. As the example of Azerbaijan shows, provisions which are too restrictive may lead to the criminalisation of human rights activists and, as a consequence, to long-term prison sentences for them. Moreover, stigmatising NGO leaders and human rights defenders *via* the media or *via* the implementation of "foreign agent" or "undesirable organisations" legislation has a damaging and chilling effect on civil society. Thus, the situation of civil society in the Russian Federation and Azerbaijan is of greatest concern and should be closely monitored by the Council of Europe instances.

83. In Russia, the above-mentioned changes in legislation threaten the very survival of civil society and considerably restrict its emergence and development. 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. These negative trends continue, despite a strong criticism both in the country itself and also from abroad.¹²³ Although Russian human rights activists have not been convicted over the "foreign agents" law (unlike in Azerbaijan), the authorities' engagement in implementing this law and the court's readiness to follow the Minister of Justice's or prosecutors initiatives are particularly striking. As stressed by our experts, Messrs Ritchie and Koroteev during the hearing in Madrid, the wide interpretation of the notion of 'political activity' included in the 'foreign agents' law led to its application to cases where NGOs had provided information on the country's human rights record to the media or a UN committee, advocated on environmental issues, raised awareness on corruption, engaged in election monitoring, advocating for improvements in law or provided legal advice to persons detained following demonstrations, i.e. when they pursued activities falling within the definition of NGOs contained in the Committee of Ministers' Recommendation Rec(2007)14.¹²⁴

¹²³ 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.

¹²⁴ See its preamble.

84. Similarly, the situation of local and international NGOs and their leaders is deteriorating ever further, despite the fact that Azerbaijan chaired the Committee of Ministers in the Council of Europe between May and November 2014. 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. I expect that this issue will further be examined by my colleague Mr Pedro Agramunt (Spain, Group of the European People's Party), who has been appointed as rapporteur on "Azerbaijan's Chairmanship of the Council of Europe: What follow-up on respect for human rights?"¹²⁵ In my opinion, the current situation of civil society, and, in general, the human rights situation in this country is unacceptable from the point of view of the values and principles of the Council of Europe, enshrined in its Statute and the ECHR. Since Azerbaijan joined the Council of Europe in 2001, there has been very little progress as regards respect for human rights, democracy and the rule of law; one could even say there that there has been a regression in certain important areas related to the functioning of a democratic State. Therefore, I think it is high time for the Council of Europe to take a clear position on these issues and to put more pressure on the Azerbaijani authorities to implement our Organisation's values in practice (including through the implementation of judgments of the European Court of Human Rights and the recommendations of the Venice Commission, the Commissioner for Human Rights and our Assembly).

85. As regards Turkey, I am particularly concerned about the use of anti-terrorist legislation against some human rights organisations and about the persecution of their activists. Concerning Hungary, following my visit and the Assembly's findings, I do not consider that the situation of civil society is critical. The general legal framework for freedom of association is not problematic at all, but its implementation raises concerns in certain circumstances. The problem of searches and legal proceedings instituted against the NGO Fund operator and some of the NGOs benefiting from the EEA grants shows that NGOs receiving foreign funding and working for values and ideas not shared by the government can be easily targeted by auditing procedures and smear campaigns. However, in a democratic State, the targeted NGOs can defend themselves effectively in the courts. I hope that the authorities, the donor States and the NGOs in question will soon find a solution to continue the funding of Hungarian NGOs without hindrance. This said, I regret the general lack of trust between certain NGOs and the authorities, fostered by the latter's statements criticising "troublesome" NGOs. I consider that the government should refrain from criticising the work of NGOs, even if it does not like the issues on which they are working.

86. In any event, in view of the development on the Russian Federation and Azerbaijan, in particular, the Council of Europe should take a firmer stance to protect civil society as a pillar of any democratic society. A reflexion process on this subject matter has already started within the Council of Europe. For example, the Committee of Ministers has been holding a debate on "the role and functioning of NGOs in the Council of Europe" for many months. Moreover, some proposals are already contained in the document of the Secretary General's Report on "[The State of Democracy, Human Rights and the Rule of Law](#)" for 2015.¹²⁶ According to the Secretary General, at the European level, the Council of Europe could prepare guidelines which would ensure the meaningful participation of civil society in political decision making. It could also have more exchanges with representatives of civil society and revise the guidelines on the participatory status for INGOs within the Council of Europe. At the national level, the Council of Europe could help its member States to align legislation and practice relating to Article 11 of the ECHR, to ensure active civil participation in decision-making processes and ensure that NGOs enjoy clear and consistent legal status allowing them to perform their democratic functions. Besides these (mainly Council of Europe's internal) proposals, I am of opinion that we, as parliamentarians, have an important role to play in this respect. We should, first of all, strongly condemn reprisals against civil society, strongly oppose the adoption of any new legislation that would restrict the freedoms guaranteed in Articles 10 and 11 of the ECHR and ensure that NGOs are properly implicated in the decision/legislation-making process at the national level. Moreover, as stressed by Mr McBride at the hearing in Madrid, too many inappropriate restrictions are being imposed on NGOs to the detriment of public interest in the States concerned. Surprisingly, "controls exercised over profit-making bodies are often less exacting than those that are non-profit making despite the more established propensity of the former for breaking the criminal law". Although I agree with the general need for transparency of the NGOs financial situation (including the funds coming from abroad), I consider that the reporting obligations should not be excessive and hinder the activities of NGOs. Another important issue that has to be highlighted here refers to the funding in general: to what extent NGOs should be funded from abroad without being stigmatized as 'foreign spies'? This is a complex issue, as many NGOs, especially those working on human rights, operate thanks to grants from other States or international or supranational organisations, such as the EU. On the other hand, NGOs which are dependent on funding by their home

¹²⁵ [Doc. 13484](#), reference No 4050 of 23 June 2014.

¹²⁶ See Chapter « Freedom of assembly and association », at page 55.

State may be accused of losing their independence. A balance between both types of funding should be sought; moreover, we should also promote a culture of private (national) donations in order to diversify the sources of funding for civil society. But these issues which would deserve a separate reflection.

87. The analysis of the replies provided by 31 member States to the questionnaire that I sent through the ECPRD shows some important differences in their legislation. Some States have a more liberal approach to NGOs with very little control from the administrative authorities, a crucial role of the courts and no special provisions on the funding of NGOs or infringements concerning rules on financing, while others impose more administrative supervision and have detailed rules on the financing of NGOs. The issue of registration of associations also shows that there are not that many countries which have chosen a minimalist approach to State intervention and that some have difficulties in accepting the existence of non-registered NGOs. Another divisive issue is that of the presence of foreign NGOs. Some States explicitly recognize their operations on their territories (provided that they have legal personality), while others have stricter rules and impose the creation of local branches or other sub-structures. As regards the formalities for the registration of associations, rules in this area vary from country to country; some member States have foreseen time-limits within which the competent authorities should react, while others have not legislated on this issue. To sum up, although my research did not cover all 47 member States of the Council of Europe, it shows that there is still room for improvement as regards NGO legislation in some countries whilst in others, problems are more related to the implementation of the laws.

88. To conclude, I would like to recall that the existence of independent NGOs is crucial for democracy and human rights, which has been recognised by the Council of Europe, in particular in Committee of Ministers Recommendation CM/Rec(2007)14. As stressed in the preamble of this recommendation, NGOs contribute to the development and realisation of democracy and human rights “in particular through the promotion of public awareness, participation in public life and securing the transparency and accountability of public authorities” and they also contribute to “the cultural life and social well-being of democratic societies”. Moreover, I would like to underline that the respect for freedom of association is also interrelated with the existence of freedom of expression (including freedom of media), as NGOs should be able to freely express their opinions and to communicate to the public any information concerning public life or societal issues. In this context, one should not forget about the freedom of assembly, whose realisation also depends on the existence of a vibrant and well-organised civil society. Thus, the three above-mentioned freedoms are the prerequisites for democracy in any State which aspires to be a democratic one. If there are inappropriate obstacles or dangers to their exercise, democracy will be at risk. That is why the Assembly should remain vigilant about any tentative to shrink these freedoms and should take a tough stance if their implementation is threatened.