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UNCERTAIN DEVELOPMENT OF CIVIL SOCIETY IN RUSSIA

ABSTRACT

This analysis is about condition of the civil society in Russia. The article raises issues specifics of the operation of selected non-governmental organizations in the Russian Federation, which under the Act of 20 July 2012 have been recognized in Russia as „foreign agents”. At the beginning the author outlines the specific functioning of the whole of the third sector in Russia, then to show the changes that brought this Act. The author analyzes the legal status of these organizations and presents the political consequences of this law. The general thesis of the article is that Putin’s policies since 2012 led to the inhibition the development of civil society in Russia.

Keywords: NGOs, civil society, the law on foreign agents, civic participation, freedom to association, contemporary Russia

1. INTRODUCTION

Following mass protests in Moscow and across Russia at the end of 2011 and throughout 2012 against alleged fraud during parliamentary and presidential elections, President Vladimir Putin signed-off a raft of punitive laws cracking down on dissent, and freedom of expression and assembly in Russia. Then, in early March 2014, the Russian Federation took active steps to annex the Autonomous Republic of Crimea in Ukraine. Since April 2014, Russia is believed to have been waging a proxy war in eastern Ukraine, through its increasing support of pro-Russian separatists in the Donetsk Peoples Republic and Luhansk Peoples Republic and direct incursion into the territory of Ukraine. This tests the current European security system that has been in place for decades and broader post World War II international agreements. Starting from summer 2014, the EU and the US have imposed an array of sanctions on Russian individuals and businesses in response to the annexation of Crimea and the crisis in eastern Ukraine. On 21 September 2014, Moscow and other big

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cities saw, in all likelihood, the largest anti-war protest in many years (estimates vary from 25 to 50 thousand people) (Opinion of the European Economic and Social Committee on civil society in Russia, 2015).

This article is an attempt to outline the conditions under which included some non-governmental organizations as a result of the Kremlin's policy as outlined. Namely, this refers to the specific regulations, the result of which many non-governmental organizations were called „foreign agents”. The law on „foreign agents” of November 2012 and its amendments have been one of the most important actions aimed against the Russian civil society and started the process of marginalizing the independent sector. The general thesis of the article is that Putin's policies since 2012 led to the inhibition the development of civil society in Russia.

NGOs are transnational actors in global and local civil societies who work with social issues. These are called third sector, where the first sector is public administration, and the second sector – the business sector, i. e. all institutions and organizations whose activity is profit. These organizations are often referred to as voluntary, since their activities are largely based on the action of volunteers. The term „non-profit sector”, occurs in the literature also under names such as „voluntary sector”, „independent sector”, „social economy” (Kietlińska, 2010). Civil society, in general “serves to balance the power of the state and to protect individuals from the state's power (Fukuyama, 2000, p. 7)”. Global civil society consists of actors outside of governments that work on issues across borders.

2. CIVIL SOCIETY IN RUSSIA

For a start it is worth to outline what is the role of non-governmental organizations in Russia. After the collapse of the Soviet Union was started the process of changing the meaning of the various sectors of social activity. Non-governmental organizations, which arose at that time, now and ever, act in a specific political context, economic as well as a consciousness. It is important to keep in mind that changing the political and economic system had a profound impact on the Russians. Citizens underwent specific process of destruction of certain values, because they compulsorily took part in social work. Therefore, many of them, when hear now a request to do something socially, they react with reluctance in a characteristic way. The term „social work” has a negative meaning. The authorities definitely try to discourage people to organize themselves in groups on an individual basis. Voluntary, spontaneous initiatives were not a positive development as opposed to the organization community life. It was desirable thinking and action group. Collective within the meaning of the authorities was a social group, which was characterized by positive norms and joy overcome various obstacles (Wites, 2003).

Non-governmental organizations, which are based on non-profit, are now very diverse, depending on the objective pursued. A large part of are those that simply bring help in material terms – to help the most needy. Other NGOs contribute to the development of education, culture, and sports. A small but very important part are the different kinds of pressure groups acting on behalf of and interests of certain communities or disadvantaged individuals. According to the Ministry of Justice, as of 29 July 2016 shows that in the Russian Federation there are 227 652 registered NGOs (Информационный портал Министерства юстиции Российской Федерации). Interestingly, it is not known how many organizations functions in practice. Some sources report that in this number are even those entities that have already been liquidated. It is estimated that active NGOs is really only a few thousand

(Судьба агента, 2015). Among them are not only the foundations or associations, but also consumer cooperatives, trade associations, political parties or trade unions. Registration procedures and the functioning are quite bureaucratic. Characterized by excessive documentation requirements. Headache for nonprofit is also the existence of various provisions which allow unscheduled audits state. For many years, they are faced with burdensome reporting requirements (NGO Law Monitor: Russia).

The greatest obstacle, however, is the widespread lack of faith communities in the sense of the existence of aid organizations. This is mainly due to the beaten habits and ways of thinking learned from the past. Among the many representatives of the Russian trend it is to treat the relationship with non-governmental organizations as obstacles to their work. Often, the central authorities perceive the existence of aid organizations as a threat – structures that undermine their ability to govern in a given territory (NGO Law Monitor: Russia).

Various kinds of propaganda activities aimed at NGO fall in the society on fertile ground. Centre for Eastern Studies in one of the analysis refers to public opinion polls, which show that few people have direct contact with non-governmental organizations. This makes the possibility of forming an independent opinion on them remain limited. In the opinion of most Russians highest court to defend their rights remain state institutions, especially the president. The Kremlin intentionally seek to perpetuate this belief. Russians are more generally aware that the ousting of Russian non-governmental organizations that could fill the gap as a result of the increasing dysfunctionality of the state in the social sphere and as a tool of defense against the growing repressive administrations, hitting the poorest and least protected social groups (Chawryło & Domańska, 2015).

Besides, according to Charity Aid Foundation surveys from 2014, Russians are seven times less likely to become volunteers than their UK counterparts, and are also less generous with their money (over one year, 41% gave to charity, compared to 64% of UK respondents). Distrust of NGOs, their perceived failure to giving donations to beneficiaries, and lack of transparency were cited by around half of respondents as reasons for not donating money. Meanwhile, surveys show growing passivity and reliance on state action, another possible reason for a lack of interest in NGO's initiatives. Asked by independent pollster Levada Centre in 2014 about the relationship between the state and citizens, 72% of Russians citizens felt that the state should do more to look after people, compared to just 13% who felt that it was up to individuals to take care of themselves (down from 25% in 1990) (Organised civil society in Russia, 2015, p. 1). These changes may reflect growing state control over large sections of the economy, the media and other spheres of activity.

President Vladimir Putin and the Russian government used the 2013 and 2014 year-to strengthen his power and minimize the magnitude of any potential opposition. In recent years, the government passed a series of strict regulations in response to the mass protests of December 2011 by mid-2012. Among the many limitations found herself better control non-governmental organizations and the Internet as well as heavy fines for participating in-favor by the street protests. Expanded the definition of treason which allowed prosecution of international activities in the field of human rights. Introduced huge fines for their participation in the meetings, which will be considered illegal from the point of view of the authorities. In addition, a new law prohibiting „promotion of homosexuality” in the heavily hit in Lesbians, gay, bisexual and transgender (LGBT). That which is unheard of in Poland, provisions allowing for bringing the legal persons in charge of non-governmental organizations that do not comply with such new regulations (Chawryło & Domańska, 2015). At the

same time, the State has made available a lot of funding for the so-called 'socially-oriented' groups, adding this line of division within the NGO community. For instance, it supported the movement "Civil Dignity" (ru. Гражданское достоинство), which hosts a grant contest for NGOs. This grant is no longer available (Оод Гражданское Достоинство, 2013). The 2012 Stability Index of St. Petersburg NGOs, published every year by the Center for NGO Development, found that "human rights organizations have been most vulnerable. Socially oriented NGOs, on the contrary, receive more governmental support, which is reflected in legislation (Индекс устойчивости НКО 2012, 2013)". In fact, successful NGOs in Russia act more like service providers than builders of international civil society (Dufalla, 2014). These organizations can also have international partnerships and actively participate in global civil society (Rochowski, 2013).

3. MAKARYCHEV'S PERCEPTION OF NGOS IN RUSSIA

Andrey Makarychev since 2016 is a Visiting Professor in Johan Skytte Institute of Political Studies, University of Tartu. His research includes Russian foreign policy discourses, international security, regionalism in EU – Russia common neighbourhood (Andrey Makarychev). According to Makarychev's "Civil Society in Russia: between the State and the International Community", there are two general concepts that describe international actors in Russia. One is the idea that transnational actors are "embedded into the regime of functioning political actors, most of all, as their peripheral agents (Makarychev, 2008, p. 31)". In other words, Makarychev said that existing political actors, such as states, are perceived as using transnational actors as instruments, and thus NGOs can be seen as foreign agents in Russia. Thus, while some in the USSR claimed that liberal, democratic policies would eventually lead to a stronger economy and society, others felt that, at least in the short term, they had created chaos and ruin. Furthermore, many NGOs, which represented the ideals of liberal democracy, originated in the West and were perceived as outsiders to the old Soviet system. Thus, their association with foreign groups, along with the fact that their appearance corresponded with the destruction of the old system and the decline of the national economy, correspond with Makarychev's first concept: NGOs, as transnational actors, are seen as "peripheral agents" of foreign powers who may have incentive to better their own geopolitical position at the expense of Russia's (Makarychev, 2008, p. 31).

Makarychev's second concept is that the Russian government believes Russian actors should primarily develop intellectual products that "would primarily be in demand in the region or country" (Makarychev, 2008, p. 31). In other words, the Russian state only gives Russian transnational actors, such as NGOs, freedom to provide services for local or domestic Russian civil society. Meanwhile, NGOs relying on global civil society and neglecting to actively develop local Russian support, bolster the perception of NGOs as foreign agents, in accordance with Makarychev's first concept of NGOs. The formulation of the Foreign Agent Law supports Makarychev's claim. The Soviet legacy also affects Makarychev's second concept of NGOs as service providers, since some citizens still expect the state to provide for them and therefore see little need for NGOs (Makarychev, 2008). In fact, the current Russian Constitution, demands that the Russian government play the role of the ultimate guarantor of housing, education, and even access to culture for all Russians (Chapter 2. Rights and Freedoms of Man And Citizen, 2001).

4. NGO'S AS FOREIGN AGENTS

The Foreign Agent Law demonstrates the precision of Makarychev's concepts. In July 2012, after taking office as president for a third term, Vladimir Putin signed the law on "foreign agents", which came into force in November of that year. The new legislation was not a stand-alone measure, but rather a series of amendments to existing laws. The changes applied to the criminal code and the laws "On Public Associations", "On Noncommercial Organizations", and "On Combating Money Laundering and the Financing of Terrorism".

The central, controversial aspect of the amendments was a requirement that organizations engaging in political sphere and receiving foreign funding must register as foreign agents, even if the foreign funding they receive does not actually pay for political activities. The state determines whether an organization is engaging in political activity based not on the goals defined in its charter, but rather on its involvement in the logistical or financial organization of, or participation in, "political acts" aimed at influencing the decision making of public authorities, changing public policy, or influencing public opinion with respect to government policy (Федеральный закон от 20.07.2012 № 121-ФЗ).

Foreign agents must do financial reports about their political activities on a quarterly basis, file documents describing the composition of their management bodies and activities semiannually, and submit to a state audit annually. While planned audits may only occur once a year, foreign agents are subject to an unlimited number of unscheduled audits. Political activities must be registered with authorities before the group is permitted to participate in them. If a foreign agent refuses to register as such, it is banned from participating in public demonstrations, access to its bank accounts is limited, and it may be subject to a fine of up to 300,000 rubles (\$10,000) or up to two years in prison for its personnel. All foreign donations which are larger than 200,000 rubles (\$6,700) are subject to mandatory monitoring. Foreign agents must mark all materials distributed in the media, including on the internet, as products of foreign agents (Федеральный закон от 20.07.2012 № 121-ФЗ).

In the months after the "foreign agents law" was adopted, several organizations received warnings about inspections in connection with it and other grounds, but starting in early March 2013 the government launched a national campaign of inspections of hundreds of NGOs, unprecedented in its scale and scope. Their range was very wide. Inspectors were ordered to focus on documents showing that the organizations receive support from abroad, and are also involved in political activities. They are looking for any signs of „extremist" action. In many cases, people have not been informed about inspections. Sometimes they denied to present documents authorizing this process. Russian prosecutors said in a public speech that he plans to carry out checks 30–100 organizations in every region of the country (Masowe kontrole w rosyjskich NGOsach, 2013).

Russian President Vladimir Putin described in a public statement that the controls were routine and they were carried out to verify, „as far as the activities of these and other non-governmental organizations correspond to the stated objectives and whether it complies with legal standards of the Russian Federation" (Putin: Przeszukania NGOs, to rutynowa kontrola, 2013). He stressed that the need to ensure that the inspection was not overzealous. On the other hand, a spokeswoman for the Russian Prosecutor General's Office Marina Gridniewa explained that inspections and searches of non-governmental organizations in Russia are detecting illegal extremist groups and the fight against money laundering (Putin: Przeszukania NGOs, to rutynowa kontrola, 2013).

International human rights organization Human Rights Watch said, to date 30 of November 2016

“Russia’s Justice Ministry has designated 148 groups as “foreign agents”, courts have levied staggering fines on many groups for failing to comply with the law, and 26 groups have shut down rather than wear the “foreign agent” label. Organizations targeted include groups that work on human rights, the environment, LGBT issues, and health issues, groups that do polling about social issues. A court forced the closure of AGORA Association, one of Russia’s leading human rights organizations, in response to a Justice Ministry suit alleging that the group violated the “foreign agents” law and carried out work beyond its mandate. The ministry has removed its “foreign agent” tag from 19 groups, acknowledging that they had stopped accepting foreign funding. Accordingly, as of November 30, 2016, the official list of active “foreign agents” consisted of 103 groups” (Russia: Government Against Rights Groups, 2016).

Only four NGOs was registered voluntarily and the leader of at least one NGO faces criminal charges personally (Russia: Government Against Rights Groups, 2016).

In the next few years, government made a few amendments to other laws that affect the functioning of non-profit organizations (Приказ Министерства юстиции Российской Федерации от 21.05.2015 № 116, *Федеральный закон от 23.05.2015 № 129-ФЗ*). Some of the changes, which aroused controversy within the third sector is signing on 6 July 2016 by President Vladimir Putin two federal laws, which together make changes to 21 laws and have been officially designed to provide additional measures against the terrorism and ensure public safety (known as „package Yarovaya”). Concern over many Russian and international organizations due to the fact that these changes cause significant facilitate the use of criminal and administrative penalties in relation to a wide range of people, at the discretion of the government, while increasing penalties for many offenses, most of which are only loosely defined. In addition, the new law requires operators of communication (such as mobile phone providers) and Internet service providers to record and store all the messages and actions of all users, and written records to make available to the authorized state bodies, at their request. While most of the provisions of the package entered into force on 20 July 2016 year, it is clear that for technical reasons, such as lack of certain equipment, certain provisions cannot be implemented as from 20 July 2016 year and even from 1 July 2018 (NGO Law Monitor: Russia).

Representatives of NGOs largely oppose the law and say that it is incompatible with the freedom of their functioning in the Russian Federation. Organizations that need to register as foreign agents believe that the Duma deputies treat Russian NGOs receiving funds from abroad as foreign traitors. According to them, the adoption of the law causes negative effects on many areas of their operation (Ustawa rosyjskiej Dumy o „zagranicznych agentach”, 2012). The law discourages organizations from accepting the most sustainable funding available to them, as there are few domestic sources and the government has been known to discourage Russian businesses from supporting NGOs. Also a large part of the foreign funding given to Russian human rights organizations is aimed at protecting Russian citizens from violations committed by the authorities, making it unlikely that these same authorities would replace such funding. Furthermore, many NGOs fear that taking on the label “foreign agent” will make it simpler for the government to discourage cooperation between state bodies and

civil society. The new law is careful to exempt recognized religious organizations, state corporations, and business groups. This immunizes the Russian Orthodox Church and foreign investors, encouraging their continued support for the regime and ensuring that no powerful entities side with civil society in opposition to the law.

Of particular concern to NGOs is the fact that Russia's 2012 Foreign Agent Law uses the term "foreign agent". This term in Russia is ubiquitously understood as spy or traitor, and it is difficult to avoid the impression that by adopting this law, Russian authorities sought to discredit and demonize certain civil society groups that accept foreign funding (Laws of Attrition. Crackdown on Russia's Civil Society after Putin's Return to the Presidency, 2013). There has also been clearly visible negative public opinion toward NGOs, mostly due to the association with the term "foreign agent". For instance, shortly after the law was enacted, the words "Foreign Agent (loves) USA" were drafted into a building occupied by Memorial – Russian human rights NGO ("Foreign Agents" Law Now in Effect – NGOs' Premises Vandalised. Civil Rights Defenders, 2012).

Unfortunately, in practise for most of human rights organizations was often not possible to get governmental or private grants due to the nature of their work. While funding in Russia was always limited, accessing it has become even harder in the wake of the aggressive demonising of NGOs in the Russian media. The effect of the "foreign agents" law has been to make funding from abroad a high-risk activity. The authorities have signalled to NGOs that they can use foreign funds, but it will cost them dear in terms of their legal situation and reputation. Businesses are also reluctant to support NGOs as this might have unpleasant consequences for them in dealing with the authorities (Агенты народа, 2016, p. 5).

In recent years, key international stakeholders – within the UN, EU, European Parliament, CoE, OSCE – have shared their concerns on the shrinking space for civil society in Russia (Rosja oskarża USA w związku z krytyką ustawy o NGO, 2012). Concern about these actions of the Russian authorities expressed the European Union, the United States and the United Kingdom. France and Germany urged Russian diplomats to submit explanations (Francja chce od Rosji wyjaśnień. Skąd kontrole w NGO?, 2013). Catherine Ashton, the EU high representative for foreign affairs and security policy said the March 2013 inspection wave seemed aimed at "further undermining civil society activities". She said the inspections and the series of recently adopted laws "constitute a trend that is deeply troubling (Statement by EU HR Ashton on the situation of NGOs in the Russian Federation, 2013)". Ashton had previously criticized Law No. 121-FZ, noting the difficulties that Russian NGOs face in obtaining domestic funding and the negative connotations of the term "foreign agent" (Catherine Ashton EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission Statement on the political use of justice in Russia European Parliament/Strasbourg, 2012). Russia's Constitutional Court ruled that several of the law's provisions were unconstitutional, and the Venice Commission of the Council of Europe found that the amendments represent "a step backward for the protection of freedom of assembly" and urged Russia to repeal or revise key provisions (Russian Federation – Opinion on federal law no. 129-fz on amending certain legislative acts, 2016). The Venice Commission, an advisory body of the Council of Europe, has issued several opinions in recent years, which criticized the new rules on NGOs (The list of previous opinion of the Venice Commission concerning Russia, 2016).

In summary, the most important political consequences of these acts is: threat to financial sustainability of Russian NGOs, the loose definition of „political activity” (which resulted in the abuse of power by the control authorities), further damage to credibility of NGOs (the regime has taken many steps to rouse public suspicion of civil society organizations), impeded cooperation of organizations with local authorities, stigmatization by unknown „activists” and examples of phenomena homophobic to „foreign agents”, discrimination (the new law is careful to release the recognized religious organizations, corporations, government and business groups) and more bureaucracy in everyday life.

5. CONCLUSIONS

Essentially, civil society in Russia is facing an existential dilemma. Some human rights observers believe the scale of this crackdown on civil society is unprecedented in the country’s post-Soviet history, and it has even intensified as the Ukrainian crisis started unfolding. The Russian government have introduced a series of restrictive laws, begun a nationwide campaign of invasive inspections of nongovernmental organizations, harassed, intimidated, and in a number of cases imprisoned political activists, and sought to cast government critics as clandestine enemies (Россия: Худшие времена для прав человека в постсоветский период, 2013).

Russian civil society is facing an intimidating array of legal and financial challenges. Quoting the position of the European Economic and Social Committee:

“the human rights and civil society situation in the Russian Federation is deteriorating. The amendments to the law on Non-Commercial Organisations (also known as ‘foreign agents’ law) in combination with other legislative novelties penalise advocacy work, demonise NGOs in the public eye and therefore prevent the development of civil society. The growing number of recent court cases against civil society organisations is a worrying feature. The overall social and political climate has been increasingly hostile toward NGO and independent voices” (Opinion of the European Economic and Social Committee on civil society in Russia, 2014).

Legislative regulations on NGOs are only one indicator of disturbing authoritarian trends since Putin assumed his third presidential term. Pending legislation limiting freedom of expression on the internet, freedom of assembly and speech for sexual minorities, and the return of Soviet-era residency registration requirements, point to an even more dramatic shift away from international norms and a pronounced democratic regression (Allen, 2013). That is mean that Putin’s policies since 2012 led to the inhibition the development of civil society in Russia.

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