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**Participants of EU-Russia Legal Dialogue in 2015**
Welcome by Gernot Erler

Dialogue on legal matters has a long-standing tradition in EU-Russia relations and an even longer one in German-Russian relations. Its main aim was and remains to strengthen democratic institutions and structures on the basis of the rule of law and the market economy.

Over the years, a viable network of German and Russian legal practitioners has been established in the framework of the German-Russian legal dialogue. This network is particularly valuable today – at a time in which, unfortunately, the conditions for dialogue have worsened and mutual trust is on the wane.

While legal dialogue has traditionally been an exchange between judiciaries, I am convinced that a substantive contribution by civil society groups is essential:

First, because legal dialogue is not only about paragraphs, but also mainly about relations between people and between the state and its people. The different topics touched upon in this publication alone show the broad range of interconnections between state, law and civil society engagement.

Second, because civil society dialogue is a main pillar of German-Russian and European-Russian relations. Building trust requires dialogue – also on difficult issues. It requires engaging with each other’s views and understanding mutual perceptions. This is a task that governments cannot accomplish on their own. They need the involvement of civil society groups that are willing to engage in debates across borders.

The EU-Russia Legal Dialogue organised by the EU-Russia Civil Society Forum comprises both aspects. I hope therefore that this project will mark the beginning of a continued and rewarding discussion process in the field of legal cooperation – not only between civil society groups, but also between civil society and the state. I am looking forward to this.

Gernot Erler,
German Coordinator for Intersocietal Cooperation with Russia, Central Asia and the Eastern Partnership Countries
Welcome by Mikhail Fedotov

On behalf of the Russian Presidential Council for Civil Society Institutions and Human Rights, I am pleased to welcome the first results of the EU-Russia Legal Dialogue. The idea of dialogue between Russia and the European Union, in and of itself, deserves support, and even more so if this dialogue is focused on the legal issues involved in promoting human rights and civil society.

Since ancient times, it is well known that dialogue is the best means of seeking truth. It helps us understand, appreciate and accept another party's experience, perceive and correct our mistakes and broaden our horizons. It is particularly important in such a delicate and vital sphere as human rights. None of us in the "global school of human rights" can be a strict teacher to another, but a peer willing to share a good solution to a complex task.

Of course, the legal system in the Russian Federation is substantively different from that of the European Union, but convergence in this sphere is inevitable – in particular, since business, cultural, spiritual and interpersonal relations between Russia and the EU countries are centuries old, sustainable and fundamental. Let’s not forget that most of our legal systems are part of the European continental legal family. Therefore, harmonisation of our legal mechanisms is a natural process from which everyone from Lisbon to Vladivostok can benefit. I am convinced that the EU-Russia Legal Dialogue will make a tangible contribution to building a single legal space.

Prof. Mikhail Fedotov,
Chairman of the Russian Presidential Council for Civil Society and Human Rights
Why do we need an international Legal Dialogue with civil society participation?

In 2013, in the run-up to its EU presidency, Italy faced a challenging situation: the European Court of Human Rights (ECtHR) found the conditions of detention in the country amounted to torture and effectively forced Italy to declare a state of emergency and to eliminate the violations taking place in its prisons. Suddenly the issue was all over the headlines – for the first time in many years of inhumane conditions of detention, affecting tens of thousands of prisoners, because of the government’s inaction despite its being party to the European Convention on Human Rights. It all changed when active human rights groups raised public awareness of the problem and, most importantly, took the case to the ECtHR. This eventually led to a full-scale prison reform in Italy.

There have been other success stories. The Aarhus Convention – the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters; the Istanbul Convention; the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence; and the Law on Public Monitoring of Human Rights in Places of Detention – adopted in Russia in 2008 (although later changed for the worse), would have been impossible without active involvement of organised civil society. These important legal developments on national and international levels have improved the human rights situation.

In our world today, non-profit (or non-governmental) organisations serve as intermediaries between society’s demands on one hand, and the government’s laws and policies on the other. NGOs also act on behalf of those who do not have a voice, including, for example, endangered animal species.

The role of NGOs cannot be overestimated. Over the years, these groups have accumulated knowledge and expertise in providing competent legal services to the public, thus reducing the burden on the state, while helping enhance the protection of specific vulnerable groups and advance a broader agenda on social justice. The benefits of NGOs and citizens serving as experts, as well as spokespersons for broader society in the discussion of legal initiatives and reforms is obvious. Since NGOs come into contact with various parts of society, they can usually provide the most reliable first-hand account of their needs. In addition to this, NGO activists can reach out to a broader public, raising awareness of the need for legal reforms and the rule of law.

However, while NGOs and activist groups are prepared to contribute to better legal mechanisms both locally and internationally, their voices are not always strong enough to be heard and respected. Individually and collectively, challenges such as isolation,
underfunding, the lack of legal instruments to influence government, and sometimes having to face hostility from government – can create major barriers to meaningful NGO participation. In some countries NGOs are not welcome as partners in building the legal institutions and procedures; instead, conservative laws restrict what non-governmental actors are allowed to do. Unfortunately, governments now tend to adopt such repressive practices from one another, making it even more important for civil societies to join their efforts in opposing arbitrary restrictions.

The EU-Russia Legal Dialogue is conceived as a collaborative tool for mutual advancement and enrichment of national legal cultures; it aims to use laws regulating social relations and conflicts to promote mutual understanding between societies and their institutions.

The first step on this path is to facilitate in-depth networking of civil societies around the world. Challenges faced by NGOs are often similar, despite any apparent differences of their national legal systems. By making personal contacts, comparing approaches to solving similar problems and reviewing success stories – e.g. those of initiating and advancing legal reforms – NGOs can develop innovative and creative solutions to pressing social issues. In addition, international contacts enable better coordination of NGO actions in the context of international legal reforms and compliance monitoring.

Until now, NGOs have rarely been included in official intergovernmental exchanges of legal practices, even though citizen participation in such exchanges and in creating new channels for these efforts can make a substantial difference.

The EU-Russia Civil Society Forum is well suited as a working platform for building a comprehensive legal dialogue. Today, the Forum’s 150 member organisations, with diverse expertise located in 20 countries, include many legal experts with a good knowledge of the situation in the field.

Based on the Legal Dialogue’s experience in 2015, we can identify a few specific areas where NGOs in Russia and EU countries could benefit from sharing best practices or engaging in joint action. We intend to tap into this potential and maximise it. It may seem that there are still more questions than answers – and to a certain extent that is normal, since NGOs’ mission is to identify sore points, describe the desired situation, demand a change and work to make it happen. Substantive further progress will require input from a wider range of legal professionals, including judges, practising lawyers, legislators, and academia. We are committed to helping the Legal Dialogue move forward towards this goal.

Polina Baigarova,
project manager, EU-Russia Civil Society Forum
About this Publication

Dear Reader, this publication is an outcome of a series of early meetings and discussions held as part of the EU-Russia Civil Society Forum’s Legal Dialogue Project in 2015. Legal practitioners from non-governmental organisations based in Germany, Russia, Hungary, Slovakia, Poland and Bulgaria spent a few months debating the legal regulation of civil society activities. In this publication, feature sections alternate with project proposals, reflecting the diversity of expertise present in the Forum as well as its members’ shared interests, and providing a starting point for long-term cooperation.

Here we focus on five key topics: NGO legislation; civilian oversight, including that of prisons and social institutions; public interest lobbying; environment, and gender equality. We also examine specific legal issues, strengths and weaknesses, as well as priority areas for future efforts.

The publication opens with the article “NGO actions field – is freedom of association in trouble?” by Birgit Laubach, in which she describes a variety of strategies and restrictions used by authoritarian states around the world to hinder the activities of non-governmental organisations. In fact, governments tend to copy repressive practices from each other. The author concludes that NGOs in these countries need international support, both political and practical.

Balazs Toth and Maria Kanevskaya discuss the current challenge of government pressure on NGOs, using examples from Hungary and Russia. In Russia, a change of legislation regulating the non-profit sector has led to extremely negative consequences – a number of prominent human rights, environmental, social, cultural, and educational NGOs were forced to limit their activities or dissolve, amidst intrusive inspections, trials, and several major donors withdrawing their funding of projects. In Hungary, government attacks against NGOs are so far focused mostly on discrediting the organisations, but apparent similarities with the Russian situation give rise to concerns. Interestingly, both authors end their articles on a positive note. Toth mentions the positive effect of increased NGO cooperation in response to government pressure, while Kanevskaya argues that it is impossible to kill citizens’ initiatives by intense administrative regulation.

The authors emphasise that NGOs, when faced with a hostile environment, come up with new and creative ways of influencing government and broader society. To be successful, NGOs need to adopt effective instruments from one another and join their forces. Helpful initiatives can include an international online platform for monitoring arbitrary restrictions of NGOs’ fields of action (a map of violations) and a coordinated campaign against the adoption of new laws undermining NGO activities.
Many of the Legal Dialogue’s discussions in 2015 focused on the possibility of civilian oversight in Russia and the EU countries. Mikhail Gorny provides a comprehensive overview of the regulatory framework for civilian oversight in Russia. His conclusions are less than favourable: according to Gorny, the regulatory framework in Russia does not facilitate civilian oversight. This does not mean, however, that civilian oversight is impossible. The author advises civil society institutions to make use of every legal option available for civilian oversight and to engage in the development of relevant regional laws.

According to Olga Kocheva, quite a few options are available for civilian oversight in Russia. She uses the example of oversight of social institutions in the Perm Krai to make her point. “The legislation does not contain prohibitions, it simply does not give permissions,” Kocheva explains. Therefore people need to be informed about the full extent of their rights and a culture of civilian oversight needs to be built.

Civilian oversight of places of detention can serve as a good example of the value of sharing best practices across borders. The challenges of protecting the rights of people in places of detention are similar everywhere, but this issue is not particularly popular in any country. Irina Protasova describes the unique Russian experience which has led to real improvements in a few prisons in the past six to seven years. By now, members of the Russian Public Monitoring Commission have developed extensive expertise in engaging with the authorities and are prepared to share the lessons learned with colleagues in other countries. Unfortunately, recent changes in the Russian law may turn civilian oversight into a meaningless exercise. Therefore, it is crucial to draw public attention to this very important topic.

Alessio Scandurra and Suzanna Marietti explain why public opinion can be essential to changing prison conditions. Thus, when the European Court of Human Rights (ECtHR) found Italy in violation of Article 3 of the European Convention on Human Rights (prohibition of torture, inhuman or degrading treatment or punishment) in the Torreggiani case, this judgment gave an impetus to an extensive prison reform. Similarly, the ECtHR’s judgments against Russia have led to significant changes both in the conditions of detention and in the legal framework. However, no systematic analysis has been undertaken of the impact the Court’s judgments had on changes in the prison systems of the Russian Federation and the EU countries.

In her article, Ksenia Mikhailova also refers to the ECtHR judgments in cases relevant to environmental rights. She discusses how the Court’s approach to the implementation of international legal instruments, regardless of their ratification, has influenced the emergence of European standards in the area of environmental protection. According to Mikhailova, this argumentation can be used in urging accession to certain legal instruments or in taking appeals to the Russian Constitutional Court.
Professor Christian Schrader examines the effects of the EU Directive on Corporate Social Responsibility (CSR) of Enterprises and finds that the directive is insufficient, as unfortunately it does not install NGOs as legal watchdogs to safeguard the reporting outcomes. Nevertheless, NGOs in Russia and in the EU can launch a coordinated effort to watch for CSR reports in their respective countries.

The articles by Denis Primakov and by Milan Vetrak and Victoria Mlinarcikova also address the challenge of achieving transparency. They argue that a systematic review of best lobbying practices in the EU and Russia, including the reporting standards, could provide helpful guidance to organisations working to influence the legislative process in their countries.

Birgit Laubach describes in her second article a positive example of how NGOs can influence legislation – namely, the efforts of women's NGOs in Germany aimed at reforming the Criminal Code articles pertaining to rape. It may be hard to believe, but marital rape became a punishable offence in Germany only in 1998. Since then, women's organisations have scored many victories and continue their efforts, in particular, to prevent and suppress domestic violence.

Domestic violence has always been an acute issue in Russia as well, according to Natalia Golosnova, who describes challenges such as the lack of legal support and low level of public awareness in regard to domestic violence victims. This situation creates potential for sharing the lessons learned and coming up with new projects such as training for lawyers and police on how to respond to domestic violence cases, and providing guidance on setting up and running crisis centres and raising public awareness.

Based on the above, a wide range of professionals could benefit from further development of the Legal Dialogue. This publication reflects some of the ideas that came out of 2015 meetings and discussions. In addition to the topics presented in the book, we would like to highlight the rights of migrants and the LGBT community. The EU-Russia Civil Society Forum’s Legal Dialogue can be used to raise and discuss many other issues developing in the European countries.

This collection of articles illustrates the diversity of subject areas and formats that the Legal Dialogue can accommodate. Then it’s up to specific projects to address the issues.
We extend our gratitude to all authors and the editorial team, including the book editor Natalia Golysheva, translators Rumia Aysitulina, Irina Bondas, Susanne Konshak and Irina Savelieva, and proofreader Enid Shelmerdine for their hard work with the texts, and to designers Sylke Renger and Jan-Philipp Fiedler. This publication would have been impossible without their great teamwork and dedication.

We also extend our special thanks to the German-Russian Exchange, the Ministry of Foreign Affairs of Germany and the European Union for support and for their trust in the success of this project.
NGO action field – is freedom of association in trouble?
Birgit Laubach
Elbarlament (Berlin)

How to survive the “illiberal democracy” attack and carry on
Balázs Tóth
Hungarian Helsinki Committee (Budapest)

Removing the outspoken, keeping the conformist, or what’s next for Russian NGOs
Maria Kanevskaya
Association “NGO Lawyers Club” (Saint Petersburg)

Discussion: Initiatives for the future
From 1989 non-governmental organisations (NGOs) were perceived as part of a “third wave” of an irreversible democratisation. Thousands of NGOs have been founded since then. Numerous states undergoing political transitions, and those willing to move closer to become part of the European Union passed liberal NGO laws: Armenia (2001), Lithuania (1996),

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1 The “third wave of democratisation” is a term coined by Samuel Huntington and means a development which started with the Carnation Revolution in Portugal, was followed by Greece and Spain, and spilled over to Latin America, Southeast Asia and some African states. It culminated in the collapse of the Soviet Empire.

2 Rathgeber, Pedersen, & Windfuhr, Act Alliance: Shrinking political space of civil society action, 2011 p. 6 ff.
Kyrgyzstan (1999) and Serbia (2001) defined minimum criteria for the founding of NGOs – two to three people were enough to form an association, and various legal forms were available. Croatia (2001), Serbia (2001), Montenegro (1999) and Albania (2001) passed association laws, regarded as examples of good practice for the work of international non-profit organisations. The conditions that do not allow the founding of organisations were precisely and legally correctly defined in Armenia (2001), Albania (2001), Croatia (2001) and Latvia (1992). The laws of Montenegro (1999) and the Slovak Republic (1997) contain requirements for the state funding of NGOs.

Political developments also affect the freedom of action for civil society players. The events of September 11, 2001 in New York and, subsequently, the declared war on terrorism, formed a turning point. Hopes for a comprehensive democratic development connected with the changes of 1989 have not been fulfilled. This has become obvious today, with the new political situation characterised as the “world in unrest”. In several countries NGOs experience an increasing amount of pressure. According to the State of Civil Society Report 2015, fundamental attacks on civil society organisations were documented in 96 states in 2014. They were aimed at freedom of association, assembly and expression. NGOs working in the political sphere especially have become victims of persecution.

Authoritarian states copying reactionary laws and measures from each other have become a new trend, almost a culture of imitation. In particular, Russia’s Foreign Agent Law was a downright sensation: countries such as China, Egypt, Turkey, Belarus, Ethiopia and Zimbabwe, and also the European Union member state Hungary were inspired to followed suit. In part, they simply “copy and paste” Russia’s undemocratic laws, whose punitive restrictions against foreign organisations are designed to affect national associations. It is noticeable that a process of “democratic recession” is taking place, initially in the former Soviet and Eastern European States.

Fundamental right of modern societies

The freedom of association developed alongside the emergence of modern society. It fosters self-regulation of the society and is a basic requirement for individual freedom and fulfilment. It is part of fundamental communication rights and, therefore, cannot be separated from freedom of assembly and expression. Freedom of association

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3 A draft „foreign agent law“ following the Russian example has been under discussion in parliament since 2013.
4 See: http://www.civicus.org
5 For example Azerbaijan: Since May 2014, the government has frozen the bank accounts of at least 50 CSOs, and in many cases those of their staff members as well. In early 2015, the NGO Law was amended, and now systematically impedes the access of CSOs to domestic and foreign funding; CSOs must now apply to the government to license foreign donors or approve any funded project. The aim of this is to make the funding of any work critical of the government impossible.
protects the general freedom of society as a whole, serving as a specific guarantee of the right of people to form an association and the right to act together to promote civilian objectives. Most constitutions guarantee freedom of association, albeit not in an unlimited way. The freedom of association as established in German Basic Law is considered a fundamental civil right. Associations whose goals or activities counteract criminal laws or are aimed against the constitutional order or the principle of international understanding are forbidden.

Authoritarian states use a variety of ways and limitations to impede or forbid the establishment and active work of associations. This includes administrative and tax penalties and even criminal prosecution:

- First, they ban the establishment of associations. Often, compared with the registered associations, informal groups are persecuted, because they are harder for the state to control and monitor. Many states do not allow the establishment of international NGOs, or do so only as a result of a lengthy bureaucratic procedure.
- The establishment of associations is allowed only for citizens of the relevant state or is encumbered by the necessity of bringing in a large number of founding members. Often, registration is so complicated and bureaucratic, that it practically amounts to a ban on establishing associations.
- The establishment of associations is refused for vague reasons. A re-registration is required for all or particular associations at varying intervals and can be followed

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6 Permanent legislation of the German Federal Constitutional Court, BVerfGE 50, 290, 354; 80, 244, 253
7 E.g. chapter 2, § 1 No. 5 Swedish Constitution. Art. 23 Swiss Federal Constitution; Art. 5 No. 17, 18 Brazilian Constitution. In France it is guaranteed by Art. 2 and 3 of the Law of July 1, 1901. See also Art. 12 of the Charter of Fundamental Rights of the European Union and Art. 11 of the European Convention on Human Rights.
8 It applies to German citizens. For foreign associations there are special sub-constitutional regulations.
9 Art. 9 section 2 of the German Basic Law. Many constitutions contain similar limitations. In the Arab World they are often still justified by religious or moral traditions.
12 In Germany, such associations are called “not registered associations”. These are, for example, citizens’ initiatives which are established spontaneously.
13 For example China, where from now on, all foreign organisations will have to undergo inspection by the security services. The aim of the draft law is to discover “subversion” or the “dissemination of rumours”.
14 For example in Thailand.
15 In France, two people can establish an association; in Turkmenistan, the law requires 500 founding members.
16 World Movement for Democracy, 2012. The report explains that in Russia, the establishment of a gay organisation was refused with the explanation that it undermines the sovereignty of the country, because it leads to a decrease in the population.
by new bans. In Uzbekistan, for instance, all women’s organisations were required to reregister.

- States ban the political activities of NGOs. Such bans are aimed at associations which specifically support human rights, LGBTI rights or ecological issues. Sometimes it is even required that associations’ activities be in line with governmental programmes. Excessive inspections of NGOs by state institutions is another control, which ranges from inspecting the members’ assemblies and boards to the requirement to report each financial transaction. In states such as Belarus, for example, intimidation and threats are commonplace: In 2004 alone, 800 NGOs in Belarus were inspected and had to suspend their activities.

- Boards and members of NGOs face severe penalties. In Kyrgyzstan, for example, the expansion of the paragraph on high treason is currently under debate in Parliament. Political lobbying could then be treated as high treason. In addition, intimidation and threats are often accompanied by public discrimination.

- The work of NGOs cannot be done without freedom of expression, communication and association. Many other restrictions follow on from this basis – such as the censorship of publications. In Thailand, lèse-majesté can be followed by up to 15 years of imprisonment. This is just one example; anti-terrorist legislation based on extremely vague and indefinite legal concepts in many countries is another. In Belarus, “dishonest” claims about the economic, social or political situation of the country are punished with six months of imprisonment. General bans on communication and association are aimed at the fundamental right of conducting joint political demonstrations and networking. There are numerous varieties of limitations: bans on assembling on certain topics, the limitation of the right of assembly to citizens (Cambodia) or strict regulations in terms of liability or compensation for damages occurring during demonstrations (South Africa). Social networking activities on the internet are severely annoying authoritarian states. Digital censorship is commonplace, for instance in the case of closing websites or the access to social media such as Twitter and YouTube.

- NGOs are often closed for vague reasons without any possibility of taking legal action against this. Courts are made unavailable to them.

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17 World Movement for Democracy, 2012, p. 18
18 On January 13, 2014 in Nigeria, associations which support the freedom of LGBTI were banned. The threat of punishment is ten years. (www.icnl.org/research/monitor/nigeria.html; on: February 3, 2014)
20 Associations or their members are called e.g. marionettes of the west or agents.
21 The latest example comes from Egypt, where journalists are threatened with high fines if they report an opinion different from the government’s.
22 Ukraine limited the freedom of expression and the right of assembly at the same time, however, in the meantime, this had to be withdrawn again (Ukraine schränkt Demonstrationsrecht ein, Handelsblatt.com of January 16, 2014). Apart from that, it was ruled that NGOs which receive financial support from foreign organisations have to call themselves “agents” (www.spiegel.de of January 16, 2014).
23 A new draft law supposes to oblige all NGOs in the country to be politically neutral, (www.dw.com/de/maulkorb-für-mutige/a-18575339).
24 See the new control of the internet by the Turkish state. From now on, websites can be closed without a court decision, which de facto puts an end to the separation of powers on the internet. (Karen Krüger, Erdogan vernichtet das freie türkische Internet, faz.net of 6/2/2014; Deutsche Welle, July 7, 2015, www.dw.com/de/maulkorb-für-mutige/a-18575339)
The work of many smaller NGOs depends on financial support. The state exploits this weakness by forbidding funding by international or foreign organisations, in particular if the national organisation supports human rights and other political issues. Another way is to control the distribution of foreign funding directly by the government or through government-owned banks. Finally, certain regulations on taxation – for example particularly high taxes – also serve as a means to oppress NGOs.

Both “new and old autocrats” are interested in two things: controlling their citizens and ruling out foreign influence under the guise of an “anti-colonial fight” or the “protection of the national sovereignty” – be it in the fields of culture, associations or liberalism. The participation of NGOs as partners in the development of laws or political programmes, which takes place in many governments and parliaments, not only in the EU, is anathema to such states. NGOs in authoritarian states act in a pre-emptive and partisan manner. They are always on the lookout for new strategies to enable them to continue their work. They are brave and speak out against intimidation and harassment. They need international political and practical support as well as well-functioning networks.

25 For example the planned “foreign agent law” in Kyrgyzstan, which follows the Russian model in denouncing NGOs receiving foreign funding as “agents”. The law was debated in parliament on December 5, 2013, but was not passed. Research by GIGA has shown that in India, 9,000 NGOs were deprived of the licence to accept funding.

26 Examples for countries where NGOs are included in legislation processes are the EU, France, Germany, the UK, Finland, Estonia and Moldova. See also the Open Government Partnership Movement, which already includes many states, (www.opengovpartnership.org).
How to survive the “illiberal democracy” attack and carry on

In July 2014 Viktor Orbán, the Hungarian Prime Minister, announced that he wanted to build an “illiberal state” based on national foundations, citing Russia and Turkey as examples. The speech received harsh international criticism.

The concept of an illiberal democracy refers to “democratically elected regimes, often ones that have been re-elected or reaffirmed through referenda, [which] are routinely ignoring constitutional limits on

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their power and depriving their citizens of basic rights and freedoms”, as opposed to liberal democracies “marked not only by free and fair elections, but also by the rule of law, a separation of powers, and the protection of basic liberties of speech, assembly, religion, and property”.2

It is important to note that Mr Orbán did not talk about illiberal democracy, he used instead the concept of an illiberal state: a political system which has to be neither liberal, nor necessarily democratic.

In fact, the destruction of rule of law and democracy started before the Prime Minister’s speech of 2014. Right after his Alliance of Free Democrats (Fidesz) won a supermajority in the Hungarian Parliament in 2010, a handful of constitutional and political changes were introduced that systematically undermined the rule of law in Hungary, disrupting the system of checks and balances3.

The adoption of the new constitution without the consent of the opposition, and the widely criticised media regulation, were followed by legislative steps aimed at weakening independent institutions and a widespread curtailing of human rights. These legislative steps were accompanied by the early removal of leaders of independent institutions and the “court-packing”4 of the Constitutional Court. As highlighted by international critics – for example, the European Union and the Council of Europe – several rules adopted by the governing majority fail to comply with democratic values and international standards.

The governmental attacks against Hungarian NGOs are just another step in the process aimed at establishing an “illiberal state”. The organisations challenge state power by fighting to reinforce the rule of law and ensure the protection of human rights, driving society in the opposite direction from where the government wants it to be. This was confirmed by the Prime Minister when he said his government efforts in building “an illiberal state” were obstructed by civil society organisations, and referred to civil society members as “paid political activists who are trying to help foreign interests”.

**Operation No. 1: Creating a hostile public environment against NGOs**

The series of governmental attacks against Hungarian NGOs started with a massive media campaign sharing false facts and statements about the activities of those NGOs which dared to criticise the Government.

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3 For materials analysing the developments since 2010 please visit [http://helsinki.hu/en/kategoria/rule-of-law/documents-rule-of-law](http://helsinki.hu/en/kategoria/rule-of-law/documents-rule-of-law), where materials prepared by three Hungarian NGOs (Eötvös Károly Public Policy Institute, Hungarian Civil Liberties Union, Hungarian Helsinki Committee) are available in English.

4 Court-packing means increasing the size of the Supreme Court and then bring in several new justices who would change the balance of opinion on the Court.
It began in August 2013 when the printed and online versions of the government-friendly Hungarian newspaper Heti Válasz stated that the “Budapest-born American speculator György Soros spent almost half a billion forints last year on “strengthening the ‘civil’ opposition”, or “the ‘civil’ left wing”. The article listed 11 NGOs – including leading human rights and watchdog NGOs – which received grants from the Open Society Foundations, for example, and thus were “kept” by György Soros, who allegedly exerts political influence through them. The article also listed 13 NGOs, which received grants from the EEA/Norway Grants NGO Fund, again, including leading human rights and watchdog organisations. The accusations were echoed by the government-friendly newspaper Magyar Nemzet.

Only four days later the spokesperson for the governing Fidesz party stated at a press conference that pseudo-civil organisations were paid by USA actors to regularly denounce Fidesz and the Hungarian government, particularly in front of forums abroad. When a journalist asked the spokesperson to name the organisations he had in mind, the spokesperson named leading human rights and watchdog NGOs.

These allegations became widespread in every part of the government-friendly media channels, the language of which clearly resembled that used by the communist regime to discredit the democratic opposition movements.5

In December 2014 Prime Minister Orbán declared that he would back legislation to force non-governmental organisations funded from abroad to be specially registered, because it was important to know “who’s in the background” of such groups.6

**Operation No. 2: Administrative procedures against targeted NGOs**

In May of 2014 the government had requested the Government Control Office (GCO) – a state agency vested with the task of auditing state money – to launch an audit into how the EEA/Norway Grants NGO Fund was managed, in order to substantiate the government’s suspicion that the fund’s money is used to indirectly support political organisations or NGOs closely linked to them. This was the first time the government had suggested the possibility that the Ökotárs, the NGO distributing the Norwegian Fund money, might have committed a criminal offence.7

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5 Later on, in a civil procedure launched against the spokesperson and the Fidesz by an NGO, they did not even try to substantiate the spokesperson’s statements, see: [http://helsinki.hu/jogeros-a-hoppal-ugyben-hozott-itelet](http://helsinki.hu/jogeros-a-hoppal-ugyben-hozott-itelet)


7 On May 28, 2014 the secretariat of the EEA/Norway Grants donor states made clear its position in an official letter addressed to Government that the conduct of the proposed audit “cannot be accepted” since according to the respective agreements the implementation of the NGO Fund is the responsibility of the donor states. It was underlined that since the NGO Fund does not receive any funding from Hungarian state budget, no funds from Hungarian state budget are managed by the Ökotárs Foundation in this context.
The following month 58 NGOs supported by the EEA/Norway Grants NGO Fund received a letter of query from the GCO to submit documents related to their projects financed by the NGO Fund. Some of the NGOs questioned the legal basis for the investigation and decided to remove details from their websites instead of sending them to the GCO.

In September of 2014, four members of the NGO Fund consortium had their taxpayer number suspended for being “secretive” and refusing to disclose certain documents. Members of the consortium NGO requested a judicial review of the decision suspending their tax numbers. Although no final decision has been delivered, the execution of the administrative decision had been suspended by the court.

In October 2014 the GCO published its audit report, containing generalised and highly questionable critical conclusions. It was announced that the GCO would initiate a criminal procedure based on the report. However, an independent evaluation conducted by a consulting company commissioned by the Financial Mechanism Office of the Norwegian Fund and published in November concluded that the “selection of the current Fund Operator in Hungary has been an excellent one” and that it is “of critical importance that the NGO Programme in Hungary continues its implementation independently from the Government and operated by the current consortium”.

**Operation No. 3: Criminal procedures and police measures against NGOs**

Although the GCO report was published in October of 2014, a criminal procedure against the Ökotárs had been launched two months earlier on suspicion of fraud. It was based upon the undisclosed criminal report of a member of the Fidesz.

Another criminal procedure was initiated by the GCO on suspicion of “unlicensed financial activities” by Ökotárs for giving out loans to other NGOs, which they had done for years.

In September 2014, in the framework of these investigations, the offices of the Ökotárs and of another organisation DemNet were raided by the police, who showed up in disproportionately high numbers. The head of Ökotárs was escorted home by the police in order to fetch her laptop. The police seized computers, documents, etc., and in the opinion of the representatives of both the Ökotárs and the DemNet the police were mainly interested in the 13 NGOs “blacklisted” by the Prime Minister’s Office earlier – giving rise to suspicions that the criminal procedure was used to access documents the GCO could

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8 The audit report is available in English at: http://kehi.kormany.hu/download/2/b2/c0000/Audit%20Report.pdf.
9 See e.g.: http://hvg.hu/gazdasag/20140903_Feljelentett_a_Kehi_egy_szervezetet_a_nor
10 See e.g.: http://index.hu/belfold/2014/09/08/keszenletisek_akcioznak_az_okotarsnal/
not. Later a criminal court established that the police measure was unlawful, as the charges on the basis of which the criminal procedure was launched were unfounded.

Finally, in November 2014 the GCO made a formal request to the police to initiate a criminal procedure, claiming that the consortium led by the Ökotárs violated the rules on incompatibility, and contributed to the irregular payment of 250 million HUF (€ 813,147.55) by the illicit amendment of grant agreements and accepting non-eligible project costs. It was also reported that the GCO requested the National Tax and Customs Administration to conduct an extraordinary tax audit on the basis of the findings of the report.

No announcement has yet been made on the results of these investigations.

The impact of ‘operations’ on NGOs

As it can be seen from this short summary of events, no NGO activist or employees or leaders have been jailed as a result of the intensive attacks against the NGO sector. One might therefore conclude that nothing serious happened – which might look like a correct statement in light of what is happening to human rights and environmental activists in Russia, but is incorrect if the standard of other EU countries such as Germany or the Netherlands is applied. Here is the example of how the last two years’ developments affected the NGOs.

Fighting all these attacks, unfounded criticism and legal actions poses an incredible extra burden on NGOs. It is obviously more difficult to perform the same project tasks as previously and it is impossible to work as effectively under the pressure of being forced to manage the unexpected workload. A strategic goal of such “operations” might be – beyond discrediting the concerned organisations – to overload the NGOs and thus make them less effective in their original mandate.

These kinds of attacks result in the politicisation of essentially non-partisan activities, which in the eyes of parts of the public discredits everything that NGOs say. The common belief is that a politician would never work for essentially altruistic goals – and many times that might be right.
Some NGOs might also become less likely to request foreign funding or submit applications to the attacked Norwegian source. This obviously weakens the organisations financially.

Finally, some activists might even fear escalating the situation and therefore stop doing their work or suspend their activities.

However, a positive effect has also occurred as a result of all this: cooperation between NGOs increased as they realised the need to make coordinated efforts to combat the attacks. More than 40 NGOs have created a regular platform to discuss the actual events, they have selected those organisations which have professional capacity to work out legal defence strategies in the cases of procedures mentioned above. They have also identified their other weaknesses, which might be new targets of the government, such as labour law related issues, and many of them had their own legal documents audited by independent for-profit companies. Some also decided to introduce new data security regimes, like scanning all basic documents and keeping these electronic files outside of the office. At present the operation of these NGOs seems to be safer than it was some years before.
Removing the outspoken, keeping the conformist, or what’s next for Russian NGOs

Important changes have taken place in Russian legislation in the past few years which have affected the whole third sector. They have led to unprecedented pressure on human rights organisations: some were forced to close and almost all of them have had to limit their activities. Changes have also occurred in the ways NGOs are supported – with several foreign donors withdrawing their backing of Russian projects.

What happened in Russia in the course of a few years that posed new challenges to non-profit organisations and infrastructural changes for which they were obviously unprepared? First and foremost, there were

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amendments to the law on non-profit NPOs that introduced the registration of so-called “foreign agent” institutions. Then on April 8, 2014 the Constitutional Court of the Russian Federation further stigmatised the non-profit NPOs receiving funding from abroad by upholding the ruling that branded them “foreign agents”.

But who are these non-profit organisations now called “foreign agents”? A NPO in Russian is considered to be performing the functions of a foreign agent if it:

- Receives property (including financial contributions) from foreign sources;
- Participates in political activity in the territory of the Russian Federation.

Despite the Constitutional Court’s finding that the definition of “foreign agent” implies no negative assessment of an NPO’s activities, and despite the court’s limited interpretation of the Act, the gist of the Act remains the same: the state does not approve non-profit organisations receiving foreign funding.

The practical significance of the limiting interpretation of the Foreign Agents Act by the Constitutional Court on April 8, 2014 became obvious the same day, when the City Court of St Petersburg rejected an appeal by the Anti-Discrimination Centre Memorial against the decision of the Leninsky District Court that the organisation was a “foreign agent”. As a result the organisation was forced to close, as it considered it impossible to continue its work under this offending label.

Further, the legislator introduced the institution of undesirable organisations, punishing cooperation with them with imprisonment. NGOs in Russia, particularly human rights groups, including environmental organisations, and their directors became hostages to this rigid scenario.

### NPOs and so-called “political activity”

An NPO is considered to engage in political activity on the territory of the Russian Federation if it participates (in particular, by way of funding) in organising and conducting political actions regardless of the purposes stated in its founding documents.

According to the Act, activities in the areas of science, culture, arts, public health care, preventive treatment and health protection, social care, protection of motherhood and childhood, support of disabled people, promotion of a healthy lifestyle, physical education and sports, protection of flora and fauna, charitable activities, and activities aimed

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at assisting charitable and volunteer bodies are not considered political activities. But exceptions to the Act do not work in practice, and even activities performed outside of the Russian Federation and those of scientific and charitable organisations have been deemed political.

NPOs have been declared foreign agents for participating in discussions and round tables, showing and discussing videos, publishing information on the activities of the organisation in the media, analysing the current legislation and proposing their own assessments in terms of necessary amendments to it, participating in the preparation of draft laws, submitting its recommendation to the Constitutional Court of the Russian Federation, protecting the rights of others, declaring an intention to participate in public actions, working on reforms together with state authorities, participating in a bike race, collecting and distributing information on the state of the environment and many other kinds of activity which form the basis of NGOs’ work as representatives of society and distinguish them from the activities of business and the state.

That the Foreign Agents Act exempts activities in the field of science, the protection of flora and fauna from political activities did not prevent such organisations from being branded as foreign agents. Two sociological research bodies from Saratov and St Petersburg were accused of engaging in political activity.

Many NPOs say the Act is unfair and counter productive, because it does not eliminate the most important issue: the label of foreign agents is retained in Russian legislation, and its existence puts the socially beneficial activities of NPOs – which aim at solving current social problems and integrating citizens’ initiatives – on the same level as the work of agents acting in the interest of foreign states, which is intolerable in a democratic society.

**Repressive mechanisms towards NPOs**

Currently, organisations face criminal liability\(^2\) if they deliberately refrain from fulfilling obligations imposed by law on NPOs acting as foreign agents.

Article 19.34 of the Code of Administrative Offences of the Russian Federation imposes administrative liability on NPOs performing the functions of a foreign agent without registering in the relevant register. This includes publishing and distributing materials, including in the mass media and online. These actions are punishable by a fine of 100,000 to 300,000 Roubles in the case of a physical person – representatives of an organisation – and of 300,000 to 500,000 roubles pursuant to legal entities.

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Court practice involving such cases is unambiguous – they are impossible to win. However, in five cases the fine was recalled because of the expiry of the three months limitation period for bringing legal action.

Often it happens that the Ministry of Justice initiates the inspections of an NPO’s activity which reveals no violations of the existing legislation. However, some months later, the prosecutor’s office or the ministry itself conducts another inspection of the same NPO with a completely different result, ascertaining a violation of the legislation and finding that the activities of the organisation are similar of that of foreign agents. What changed within such a short period of time? Nothing in relation to NPO activity – it’s all to do with the state’s perspective.

Consequences of the implementation of the Act and the current situation

The campaign to identify Russian non-profit organisations performing the functions of foreign agents is gathering speed. Within two and a half years of the amendments to the Federal Law On Non-profit Organisations coming into force and the “institution of foreign agents” being introduced, 92 organisations\(^3\) have been included in the register, among them those actively protecting human rights, addressing ecological problems, carrying out educational work and analytical research, raising the quality of social services, protecting victims of discrimination, and implementing anti-corruption activities and public oversight of the work of public authorities with the means available to them under Russian legislation.

Of these, nine organisations voluntarily declared themselves “foreign agents”, and five chose to end their operations. A further three NPOs suffered from the Act, deciding to close down during the process of appeal against the prosecutor’s office actions, but before being included in the register: the LGBT charity Coming out, the Side by Side film festival, and the Memorial charity. At least five organisations are in the process of being closed: the Youth Centre for Consulting and Training in Vologda, the Ozersk municipal socio-ecological NGO Planet of Hope, the Rostov local NGO Eco-Logika, the interregional NGO Committee against Torture, and the Kaliningrad regional NGO for legal and informational programmes Women’s League. It can be said that more than 15 most prominent human rights organisations have become victims of the “register”.

More than 20 organisations were fined for not applying to be included on the register of NPOs acting as a foreign agent. Fifteen lodged complaints to the European Court of Human Rights against Russian state authorities for including them in the register (collective complaint and individual complaints).

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\(^3\) Information correct as of September 20, 2015. This number equals to the number of entries in the register.
It should be mentioned that the Act provides the possibility of being deleted from the register, if, within the course of one year, two conditions are fulfilled: the organisation does not receive any foreign funding or property and does not involve itself in so-called political activities.

As of today, organisations to be deleted from the register are the non-profit foundation Kostroma Centre for the Support of Public Initiatives, the foundation GRANI – Centre for Civic Analysis and Independent Research (Perm), the Youth Centre for Consulting and Training (Volgograd), and the foundation Liberal Mission (Moscow). Other organisations that have the right to be deleted from the register have already filed their applications and are waiting for the relevant procedures to take place. Deletion from the register takes place on the basis of an application by the organisation and an ad hoc inspection by a regional branch of the Ministry of Justice, after which the final decision is taken. The public movement For Human Rights was denied deletion from the register, since foreign property was found in one of its branches.

Seventy per cent of NPOs were included in the register in the past half year, and not during the first year of the Act being in force. The speed of including NPOs into the register rose almost as a geometrical progression.

The labelling of an organisation as a foreign agent is aimed at decreasing the level of civic initiatives in Russian society. This curtails the achievements of the society’s democratic development. Thus, the freedom of speech, developed as a standard by international practices, cannot be applied in everyday life. Public associations, labelled as foreign agents, cannot make use of the opportunities which the Russian legislation offers to them, without being in fear of a new wave of pressure from the state.

It is worthwhile also to note the recommendations of the Commissioner for Human Rights of the Council of Europe, according to whom any long-term use of the term “foreign agent” when referring to NPOs in the legislation and in practice will lead only to a further ostracism in terms of civil society and will limit the activities of such organisations.4

It is evident that the situation calls for the elimination of the term “foreign agent” from Russian legislation, the establishing a real dialogue between society and state and the returning of democratic institutions into the life of Russian society and the state. For this to become reality the Federal Act On Non-Profit Organisations and the Federal Act On Public Associations must be abolished, especially so as the activities of NGOs can be regulated based on the legal framework provided by the Civil Code.

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4 For more details see: Conclusion of the Commissioner of Human Rights of the Council of Europe of July 15, 2013 on the legislation of the Russian Federation on non-profit organisations with regard to the standards of the Council of Europe.
At the same time, it is important to develop public relations to raise the profile of NPOs. It is necessary to show in numbers the amount of investment Russian society has lost, and how many social projects can no longer be implemented.

Despite the unfortunate example of the third sector, it is impossible to kill citizens’ initiatives by administrative regulation. They emerged independently and they will find a way out of the situation and develop further. There will be new initiatives and new projects, which will change lives for the better.
Discussion

Maria Kanevskaya, Association Club of Lawyers, St Petersburg: We discussed how the supposedly not very current topic of “how to establish and register an NGO in different countries” is actually one of the most important. We could create some kind of interactive resource on our project’s website, which would allow us to establish the necessary international cooperation. This could be a map showing where violations of the right of association occurred, plus interactive schedules which every participant of the Forum – using their own login and password – could enter and indicate which violations of this type they had encountered. This online resource would be permanently updated and contain useful and topical information. Here researchers could compile their experiences and the difficulties in registering NGOs in different countries and jurisdictions. For instance, in Bulgaria and Germany NGOs are registered by the courts, whereas in Estonia this can be done online. Setting up an NGO in Europe appears to be easy, but in practice, people encounter quite a lot of problems. In some jurisdictions, for example, in order to establish an organisation, it is necessary to have a certificate of conduct, confirming that the person in question has no criminal record. In Russia, depending on the region, it takes a long time to issue such a document, and applicants always have to explain why they need it.

Pavleta Aleksieva, Bulgarian Centre for Not-for-Profit Law (BCNL), Sofia: Indeed the rules for NGO registration are very diverse in the EU and such an overview could be useful. You may think of building a platform that has functions similar to the Bulgarian informational portal www.ngobg.info. The Forum’s members could register there, have a profile and have access to such information. Also such a platform could be used either by the Forum or by its members to share and publish information including various issues and obstacles in NGO activities in different countries. It could also be used to find partners for joint projects and initiatives, etc. We could participate in preparing the concept for such platform, identifying its functions, and so on.

Maria Kanevskaya: Yes, such a resource can help us to understand in which country the right of association is least limited. Unfortunately, few people do such monitoring, but it is this right of association which creates the general framework for the work of civil society organisations, and it would be helpful to get such information at first hand. A “map of violations” would allow us to understand where NGOs need help, here and now.

Balázs Tóth, Hungarian Helsinki Committee, Budapest: My question is always – but this is really not a legal issue: How do you cope in Russia with the psychological issue, how do you cope with the situation that you cannot get money from abroad, how you plan your life? I am sure that some of your colleagues are leaving the field because they
are threatened, frightened, whatever; so that the fluctuation of your colleagues might make your everyday work more difficult.

**Maria Kanevskaya:** Yes, you have mentioned a very important topic concerning our work. The pressure is really terrible, particularly in the regions. Pressure is exerted on volunteers and their families, and the media participate in it. There is huge psychological pressure, and the people must help each other. Thank you for raising this issue.

**Denis Primakov, Transparency International-R, Moscow:** Talking about a “map of problems” – psychological problems are hard to discover, and it is complicated to locate them in the concrete country. Therefore such a map should rather have a legal character and should not be extended to psychological and social issues.

**Olga Kocheva, GRANI Centre, Perm:** I agree, but still I have to add that there are countries with an absolutely free attitude towards NGOs, whereas in other countries they experience pressure. We should at least add some comments or write that there is pressure, for example from the media.

**Irina Protasova, Interregional Human Rights Organisation Man and Law, Yoshkar-Ola:** We had an idea about this which might be interesting for the whole Forum. It is very topical for Russia, taking into account the defamation of civil society organisations which is taking place at the moment. The idea is to compile material on fundamental changes in EU countries and Russia which occurred thanks to the work of such organisations. Why are NGOs needed in Russia and Europe? It would be useful to carry out an analysis and to make a high-quality publication in which to present the conclusions from this material in these countries.

**Balázs Tóth:** This idea is definitely a good one. I immediately remembered some cases from Hungary. For example, the Hungarian Helsinki Committee challenged the issue of the dismissal of civil servants without justification: such a possibility has been abolished and today it is more difficult to fire someone from the public administration for their political opinion. We also achieved the acknowledgement of the rights of blind people, who formerly were not allowed to enter shops and other places with their guide dogs. Another example: we successfully challenged the severe overcrowding in Hungarian prisons at the ECHR, which led to improvements in our penitentiary system. After these successful legal proceedings, some clients who had been beaten up by the police were awarded compensation, and some of the police officers were jailed for their wrongdoing. I could name many more examples. It would definitely be useful to compile them.
Initiatives and recommendations for 2016-17

- Prepare and disseminate to NGOs a guidebook entitled “How are NGOs established and registered in different countries?”

- Create an interactive resource: “Map of violations”, in which every participant of the Forum can enter difficulties NGOs have encountered in their own countries

- Publish a collection of materials on fundamental positive changes in EU countries and Russia which occurred because of the work of civil society organisations
Civilian oversight in Russia – on paper and in practice
Mikhail Gorny
(Sodruzhestvo, Saint Petersburg)

The Perm experiment with reforming social institutions: Is it possible to break the system?
Olga Kocheva
(GRN, Perm)

“Prison as the measure of civilization” – the threat to Russia’s unique practice of civilian oversight
Iria Protasova
(Man and Law, Republic of Mari El)

Prison overcrowding in Italy: How one human rights NGO has helped find a solution
Susanna Marietti and Alessio Scandurra
(Antigone, Rome)

Discussion: Initiatives for the future
In Russia, the interaction between Civil Society Institutions (CSI) – and governmental bodies is organised on the basis of three principles:

- The CSIs have to abide by the law;
- The state is obliged to support NGOs;
- The government has to entitle citizens and their associations to participate in the state’s decision-making processes.

How is this being put into practice?

From the legal standpoint: starting in 2012, a number of laws were passed which...
aggravate the operation of many CSIs, including the laws on rallies, treason, NGOs as foreign agents and undesirable organisations.

State support: since 2010, federal and regional laws regulating state support of NGOs mainly committed to social issues have been put in force.

Regional developments: until 2010, many territorial entities of the Russian Federation, including, among others, Yaroslavl region, Kaliningrad region, Volgograd region, Krasnodar region and the city of Moscow had their own laws on cooperation between NGOs and the authorities. Such laws have lost their relevance after the adoption of the Federal Law On State Support of Socially Oriented NGOs, which defined directions for CSIs involvement in public governance. Thus it became important to develop citizen oversight of governmental work.

**Strategies for CSI activity**

Our focus is on CSIs whose objectives are connected to civilian oversight of the government. Among others, these are most of the human rights and environmental NGOs as well as public initiatives, resource centres and think tanks.

In order to meet their objectives we use the following two strategies:

- Operating on the basis of the Constitution of the Russian Federation;
- Applying special normative acts that regulate civilian oversight.

No special laws are required for citizen oversight to be able to appeal to the Constitution, as it contains all the necessary provisions. NGOs are operating on the basis of Art. 32 (1) of the Constitution of the Russian Federation that specifies citizens’ rights to participate in managing state affairs both directly and through their representatives.

Art. 29 (4) and (5) declare the right to freely look for, receive, transmit, produce and distribute information in any legal way. NGOs collect information in which they are interested and distribute it via mass media, internet resources or social networks. Such activities are regulated by the laws on access to information and freedom of the press (Federal Law of the Russian Federation No. 2124-1 of December 27, 1991 On Mass Media; and the Federal Law No. 8-FZ of February 9, 2009 On Access to Information about the Activity of Central and Local Authorities). A number of human rights organisations, including Transparency International Russia, Citizens’ Watch, Committee of Soldiers’ Mothers of Russia and The Freedom of Information Foundation refer to this law. Sometimes they also turn to judicial authorities making use of citizens’ rights to complain and appeal the actions of government officials (Federal Law No. 59-FZ of April 21, 2006 On Procedures
for Examining Appeals and Complaints from Citizens of the Russian Federation). In particular, the Human Rights Resource Centre in St. Petersburg and Agora in Kazan are acting on this law.

It should be pointed out that such activities annoy the authorities and all aforementioned NGOs have been labelled as “foreign agents”.

In the case of using special normative acts, CSIs activities are regulated by a number of laws on the interaction between the civil society and the authorities in specific field such as:

- Consumer protection;
- Independent anti-corruption expertise;
- Citizen oversight as such;
- Independent public review and quality assessment of services provided by state institutions.

**Legislation on consumer protection**

The first law laying the groundwork for civilian oversight was most evidently the Federal Law No. 2300-1-FZ of February 7, 1992 On Protection of Consumers’ Rights. This is an actively developing law and is being constantly amended. The last amendment was adopted in July, 2015. Different kinds of nongovernmental associations and consumer rights organisations (associations, unions, etc.) are given extensive rights in exercising citizens’ control. In particular, they are entitled to conduct independent quality reviews as well as product and service safety evaluations, oversee consumer rights protection, file complaints in court on behalf of an undefined group of consumers, and so on.

According to the law, the citizen oversight is performed by consumer groups (associations and unions). This law is successfully used by consumer protection agencies in Moscow, St. Petersburg and Perm.

**Legislation on independent anti-corruption expertise**

In December 2008 the Federal Law No. 273-FZ On Corruption Counteraction came into force (after its publication on December 30, 2008). It mentions the concept of independent anti-corruption expertise. In July 2009 the Federal Law No. 172-FZ On the Anti-Corruption Review of Regulatory Acts and Draft Regulatory Acts was adopted. This law clarifies the term corruptogenic factors, defines principles of anti-corruption review,
lists entities authorised to carry out reviews as well as their potential objects. Yet, most importantly, the law provides a way for independent anti-corruption review.

The objective of the independent anti-corruption expertise is to identify possible corruptogenic factors within regulatory acts and draft legal acts, as well as to increase transparency of the government.


The Order by the Ministry of Justice of the Russian Federation No. 147 from July 27, 2012 specifies the requirements for independent experts as well as the rules for obtaining and revoking accreditations.

According to the Order, independent anti-corruption reviews can be carried out only by accredited individuals and organisations, i.e. NGOs. The mechanism of independent anti-corruption review is widely used in Moscow (by the NGO Lawyers for Civil Society), in St. Petersburg (by the Human Rights Resource Centre) or Kazan (by the NGO Agora).

Legislation on civilian oversight

Starting from 2008, acts of legislations have been passed using the term Civilian Oversight (Общественный контроль).

The Federal Law from June 10, 2008 No. 76-FZ On Public Monitoring of Human Rights in Places of Detention and On Assistance to Detainees regulates the training of observers, objectives of the citizens monitoring committees (CMCs) and defines their rights and powers. Article 15 defines types of CMC activities, which include inspecting detention facilities for monitoring; investigating prisoners’ complaints and suggestions; making proposals on the basis of monitoring reports; submitting relevant materials for review of the ombudsman of the Russian Federation as well as regional ombudsmen and the media; getting involved in decision-making concerning the transfer of prisoners to other facilities.

A major disadvantage of this law is the way the CMCs are formed. The members are now directly appointed by the authorities, and anyone with a dissenting opinion from the official state’s point of view has a hard time to get in. Non-governmental organisations are authorised to nominate candidates for CMCs. However, the final decision on membership is made by the Civic Chamber of the Russian Federation, which is controlled by the government.
On July 21, 2014 the Federal Law No. 212 On Fundamentals of Civilian Oversight in the Russian Federation was passed. The law defines objectives, responsibilities and principles of citizen oversight, describes forms and entities entitled to carry it out, regulates the terms of conducting independent review, and determines its outcome.

However, a closer look at the provisions of the law reveals that in essence, the law creates impediments to conducting independent reviews by the Civil Society Institutions. This can be illustrated with the example below.

The law does not access government activities in the areas of defence and national security, public safety and public order, policing, courts, drug trafficking control, maintenance of orphaned children, and mental health services. The Federal Law No. 212 does not grant public access to overseeing elections and referendums (they are regulated by different set of laws).

The main role in carrying out civilian oversight is given to the civic chambers and councils of the governments. However, these bodies are controlled by the authorities, are prone to manipulation, and therefore are not in a position to oversee governmental actions impartially. NGOs and individual citizens are thus excluded from the scene.

The law ignores the most effective forms of civilian oversight, such as public reporting by officials and public investigation.

There is already some practical evidence of this law causing obstructions to NGO activity. A human rights organisation from Nizhny Novgorod was denied re-registration of its statute that included conducting civilian oversight among its objectives, since the Federal Law No. 212-FZ does not provide NGOs with an option to carry out such activity.

**Example of the Perm region**

The Federal Law from 2008 inspired the birth of regional laws on civilian oversight. The first regional law of that kind was the law No. 888-PK on Civilian Oversight in the Perm Region adopted on December 21, 2011. To this day, this law is the only act of legislation which allows the provision of citizen oversight to its full extent.

According to this law, citizens and their associations are entitled to carry out civilian oversight to ensure their rights and legitimate interests. The control is carried out by
citizens and their associations as well as by a regional monitoring group of observers, and by its members individually.

The law determines the rights of citizens and their associations to make a written report as a result of independent expertise and to receive a formal response to such a report. The report has to be registered with the respective authorities. The review of such report is mandatory and its terms and conditions are regulated in detail.

A separate chapter is dedicated to civilian oversight of the national and municipal health care and social service institutions, where access is restricted. Here, monitoring is established by the regional citizens’ oversight group and its members. The NGOs suggest candidates that have to be approved by the Perm Region Civic Chamber’s commission for civilian oversight.

Non-governmental organisations of the Perm Region and especially from the city of Perm are very effective in monitoring the activities of the public officials and local authorities, keeping an eye on carrying out of the rights and legitimate interests of citizens.

Following the adoption of the federal law on civilian oversight in 2014 (No. 212-FZ), the number of regional mirror legislation is likely to increase rapidly. However, they will merely copy the federal law and, hence, replicate all its shortcomings. Among others, the draft laws from the Republic of Altai or the Ulyanovsk Region are proof.

**Legislation on independent evaluation of services**

Independent evaluation of services is an essential part of civilian oversight. The procedure of initiating and conducting independent review is regulated by a separate law and a number of subordinate acts. Independent consumer evaluation of the quality of services rendered by national and municipal institutions seems to be the area of civilian oversight that the authorities support the most.

Independent evaluation of services has been practised in Russia since 2012, after the Presidential Decree No. 597 On Measures to Implement the State's Social Policy was put into effect on May 7, 2012. It was further expanded in 2013 by a number of supporting legal acts detailing the arrangement of independent evaluation. Specific mechanisms on independent evaluation of educational organisations were established in Moscow, Chelyabinsk Region, Sverdlovsk Region and Rostov Region. Public councils organised and conducted independent evaluation in the sphere of social services in St. Petersburg and Chelyabinsk Region among others.
On July 21, 2014, simultaneously with adopting the law on Civilian Oversight, the Russian parliament approved Federal Law No. 256-FZ On Amendments to Certain Legislative Acts of the Russian Federation concerning independent evaluation of the quality of services rendered by organisations in the fields of culture, social services, healthcare and education. This law defines objectives of independent evaluation, regulates requirements on training, organisation, execution and outcome of independent evaluations of services. The law determines the group and its members as well as the rights and powers of citizen associations for independent evaluation. Corresponding councils have been created and some of them (for example, in St. Petersburg) are effectively working independently from governmental authorities. This makes a difference to other advisory bodies affiliated to governmental authorities.

Let us examine some specifics of normative acts concerning the field of social services (the legal provisions in the fields of culture, health care and education are analogous):

- The basic requirements for independent evaluation are publicity and availability of information about organisations providing services, as well as accessibility to the services, convenience, and competence of the personnel.

- According to the law, the independent review should generally be carried out by a civilian council established by the relevant executive authorities and consisting of NGO representatives. Information on the civilian council’s activity should be published on the executive authority’s webpage.

- Civilian councils identify organisations up for review, formulate objectives, establish evaluation criteria, conduct independent evaluations and present the results and recommendations on improving evaluated organisations’ quality to respective authorities. Information on the findings and conclusions is published on the official overseeing authority’s webpage.

- The overseeing authority is obliged to consider findings of independent evaluations and to perform follow-up investigations.

Civil society institutions make good use of the legislation on independent reviews in many regions of the Russian Federation. The greatest successes in 2014-15 were achieved by the NGOs in St. Petersburg (where the civilian council performed 89 independent evaluations on social care facilities between January-March 2014), in Perm (where 141 polyclinics and 192 hospitals were reviewed by the Centre for Civic Analysis and Independent Research GRANI), and Samara (20 social services institutions were examined by civilian councils).

It is also worth mentioning that some NGOs use a mix of approaches in their work on civilian oversight, from referring to the Russian Constitution, to involving sectoral legislation.
In a nutshell, the regulatory environment in Russia does not exactly promote the establishment of citizen oversight. Sadly, there is also no hope that the legislation will change for the better at any time soon.

What can be done to improve the situation? The main recommendation for CSIs practising citizen oversight initiatives is to make thorough use of the legislative options at hand, including:

- Maintaining membership in existing civilian advisory bodies and civic chambers;
- Establishing special civilian councils according to the law on independent evaluation and ensuring active participation in such bodies;
- Participating in drafting regional laws on civilian oversight (increasing the pull of entities entitled to conduct reviews, as well as developing new forms of civilian oversight);
- Developing amendments to the regional laws on civic chambers and ombudsmen. Such amendments should enable Civil Society Institutions to exercise civilian oversight initiatives more effectively.
The Perm experiment with reforming social institutions: Is it possible to break the system?

Public oversight in Russia was being carried out even before the adoption of the relevant federal laws in 2008 and 2014 and subsequent regional laws, and continues to exist after the introduction of certain restrictions in the legislation. Today it is sometimes said that proposing civilian oversight initiatives in Russia has become impossible. But if you take a closer look, you can see this is not the case.

Of course, the experience of public oversight is not the same everywhere. The Perm Krai (region) is particularly interesting in terms of its history and the diversity of
practice. Here, social activists monitor prisons, penal colonies, orphanages, retirement homes, psychiatric institutions, schools, hospitals, outpatients’ departments, military bases and recruitment offices; services overseen by government bodies, including public transport services, streets cleaning, the sale of drugs and alcohol, gambling houses and anything else that concerns the public. The processes are conducted in consultation with the government, and are seen through to official response and results. In 18 years of civilian oversight, the local authorities have almost become used to it.

Perhaps the best way to get a comprehensive idea of public oversight Perm-style is to look at the monitoring of social institutions. There is evidence of mass actions of inspection and demonstrated results both today and as far back as 12 years ago.

**The development of public control in Perm**

In the Perm Krai, public control began with human rights protection. The task of human rights organisations is to protect the rights of the most vulnerable and those unable to defend themselves. In 1997, human rights organisations visited penal colonies and prisons for the first time. They were hard to ignore, since a large number of penal colonies are concentrated in the region (in some years, 26,000 prisoners and more were detained in the prisons of the Perm Krai).

Another vulnerable group are those who depend on the institutions of social care. Single elderly people, orphans and disabled persons lived under the conditions and rules established in the Soviet era, without the opportunity of having a better life, and completely at the mercy of the institutions’ employees.

Human rights organisations picked up signals of problems existing there – complaints about poor living conditions, illegal punishment or abuse – but nobody knew what was really going on. The public and the media were not interested in the problems of children living in orphanages and nursing homes; they were hardly ever mentioned in the media, as if they did not exist. In 2002 more than 20,000 children were living in state-run children’s homes of the Perm Krai, 80% of whom were classed as orphans, although their parents were still alive (but unable to care for them or had had their parental rights removed).

In 2003, after public consultation, the Governor of the Perm Region announced a six-month trial of public monitoring of children’s homes. During that period, 11 civilian inspectors from seven non-governmental organisations examined 29 institutions, including 14 children’s homes, four homes for the elderly and disabled, and others. As a result, the

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1 In 2015, for example, almost 26,000 suspects, accused and convicted persons are imprisoned in 37 institutions of the Central Administration of the Federal Penitentiary Service of the Perm Krai. At he beginning of 2001, more than 27,500 people were imprisoned there.
authorities received a detailed list of violations of human rights in social institutions, complete with the inspectors' recommendations of the changes.²

Greater public awareness of the problems in children's homes led to a comprehensive examination of the regional support system for orphans, which instigated reform. Consequently, a large number of children were transferred to foster families (after 2003, and within 10 years, the number of orphans living in children's homes in the Perm Krai decreased from 20,000 to 1,000).

In 2003, evidence was collected on massive violations in the centralised supply of food and medicine to children's homes: some of the food and medicine supplied had passed suggested “use by” dates, were overpriced, had not been ordered by the institutions or were supplied in quantities impossible to store. It was also found that the institutions had no means to buy necessary medicine and products. One children's home, for instance, could not even buy common cold medicine. These violations were made public and finally eliminated, with the responsible officials brought to justice.

The technology of public monitoring of social institutions

As a result of the reform, it became clear that most of the serious violations of human rights in institutions of social care were not malicious, but arose simply because of the nature of the system and its operation. There was no rule that people should be taken for a walk if they couldn't move unaided; no place to keep personal items. Children's homes had toys, but they were locked away. It is much more difficult to achieve a change in the general conditions for all than to protect the rights of an individual. But such an approach is much more effective, and worth the effort. Public oversight has proved to be useful and effective in seeking systemic changes. The activists' task was to come, see and record the violations of human rights and strive to change the situation with the help of indisputable arguments and facts.

Nothing was achieved easily. First it was necessary to ensure the activists were allowed into the social institutions, and that the staff and the inmates were able to build up enough trust for them to share their problems. This was not always easy, because those who complained were afraid to be punished. It is only possible to speak of facts if they

² The texts of the conclusions and planned measures to eliminate the violations are accessible at http://www.pgpalata.ru/page/grcontrol/inv
can be proved. Finally, in order to achieve changes, solutions had to be developed and proposed, since the decision-makers themselves were either unable or unwilling to think.

Trust was the key factor. Various people took part in the monitoring, and they all had to act according to common rules. Incorrect behaviour of one observer could undermine the credibility of the process in general. Before the public observers were allowed to start their work, they were trained and instructed. Apart from that, they had to abide by unspoken principles:

- Not to harm the people living in the institution – for instance, not to name persons who filed a complaint, if they did not give permission;
- To avoid hostility towards the employees;
- To inform everybody about the principles, rules and objectives of the monitoring;
- To adhere strictly to the rules and methods used;
- To confirm all facts and put them into the report;
- Not to interfere with the internal life of the institution;
- To respect privacy;
- To avoid conflicts of interest.

An important point is that the ultimate objective of the monitoring was not public denunciations, as in the publication of sensational facts in the media, or glorification and PR for the oversight organisations, but to improve the quality of life of the people affected. The institutions were always given the opportunity to eliminate the violations voluntarily and to implement the proposed recommendations. If the management of the institution was unable or unwilling to solve the problem, information was passed to the next level of authority. Information on violations was spread in the media only in extreme cases, when there was no other way of influencing the decision-makers. As an intermediate result of public oversight, the government often developed plans to change the situation. This was not considered the end point for the observers’ activity, as they continued to track changes until all those promised were implemented.

It is important to mention that social activists came to the social care institutions not only to exert control, but also to help them. They brought gifts, invited experts such as psychologists, lawyers and doctors, presented exhibitions and lectures, showed films, trained and educated staff – in short, they tried to help to solve obvious problems by all means available.
Introducing public oversight into the local legislation

Thanks to advances in the field of public monitoring, the Perm Krai became the first and the only region in Russia to pass a local law granting activists’ access to social care institutions, particularly orphanages, homes for the elderly and disabled people. It was crucial to directly empower social activists to carry out legal monitoring of social care institutions. It created a precedent which could become a model for other regions, and led to the necessary ongoing observation. Without the law, every relationship depended exclusively on personal agreements with institutional authorities and the government, which could change at any time.

The law On Public (Civilian) Oversight in the Perm Krai was adopted in December 2011. Apart from introducing the right to monitor children’s homes, it obliged the authorities to respond to a report made by the public observers on the basis of their activities, and to develop a plan to eliminate violations.

Training in public oversight

There was one organisation which specifically engaged in the development of public monitoring – the Perm Civilian Chamber (not to be confused with the government backed Civic Chamber). This organisation chose the most relevant and current topics, brought together and educated the groups of public observers among colleagues and volunteers, and helped to present the results of monitoring in the best possible way. This was how the monitoring of the quality of public transport, selling of alcohol to minors, cleanliness of streets and the lack of basic medicines in pharmacies were carried out. Twice, in 2008 and 2013, the Chamber organised a large workshop, teaching the techniques of public oversight to everyone interested with each workshop hosting more than 100 participants.

Changes in the law and consumer activity

In recent years, the situation in social care institutions has changed. Cases of serious violations of human rights have become less frequent. Charity and support for children’s homes and retirement homes have become fashionable. Reforms have been implemented and laws adopted, by which social care institutions have become more open and started to publish all information online, including details on public construction and financial activity. Laws were passed to protect the rights of the users of public services. Employees started to talk of the care recipients as their clients and have begun to adopt certain standards of social services.
The year 2014 was notable in the development of public oversight initiative. It was marked by the adoption of the Federal Law on the fundamentals of public oversight in the Russian Federation. It limits the range of monitoring agents to government-controlled civic chambers and civic councils. However, this has not led to suppression of the activities, and the same period saw a surge of public initiative on consumer assessment of the quality of services in social care institutions. Charities’ activists have entered the Public Council under the Ministry of Health of the Perm Krai and, thanks to their membership, the Council now controls the supply of medication in hospitals and continues to examine the availability of high-maintenance medical care. Young mothers assess the accessibility of kindergartens. An association of cyclists plans to evaluate the urban infrastructure. In 2014, an independent evaluation of the quality of all hospitals and outpatients’ departments of the Perm Krai (almost 200 institutions) was undertaken and resulted in hospital ratings based on various criteria. Apart from that, young politicians have become involved in monitoring of the rising prices in retail chains and started to curtail illegally opened gambling houses.

**The ways forward**

It is not true to say that the federal legislation now impedes public oversight. The legislation does not contain prohibitions, it simply does not give permissions. However, neither are special authorisations necessary. The lack of permission restrains the development of public control as a whole, since it forces the authorities to engage in supporting initiatives selectively and with caution. In practice, the opportunity to carry out public monitoring in places where a permission to enter is not required is not restricted.

Of course, the world has become a bit more complicated. Sometimes so-called monitoring is done simply for PR or formal accountability reasons. Therefore it is important to carry out as many real initiatives as possible in order to make clear what such oversight can and should be. When we gather more experience, it will be easier to change the law.

The question remains as to how and in what direction to develop the practice of public oversight. People relate to the technology of monitoring when they see examples which are connected to their interests. The control of institutions providing social services to the population is, as a rule, met by an enthusiastic response, especially if the expected outcome appears to improve people’s lives. One social institution may be monitored from the point of view of the interests of different target groups. For example, for seriously ill patients, access to medication is crucial, and for employed patients it is important that there are no queues for medication, and there exist convenient and simple ways of obtaining information. For parents, it is important that children’s hospitals have beds for mothers staying overnight with sick children, that there are rooms for teaching.
school-age children, and that the wards are equipped with furniture and other items suitable for children.

It is important to cultivate educated consumers and expand their knowledge of their rights. In this regard it is also important to examine the existing experience. It is very likely that the interests of the representatives of the same consumer group are similar, even if they live in different countries. An exchange of experience, evaluation criteria and approaches to solving problems, together with examples from real life showing that everything is possible will encourage the emergence of new initiatives and the spread of civilian oversight.
“Prison as the measure of civilization” – the threat to Russia’s unique practice of civilian oversight

“The degree of civilization in a society can be judged by entering its prisons.”

F. Dostoyevsky

The safety of people in places of detention is an indicator of the government’s attitude towards the most vulnerable groups of people who are under full control of the authorities. The necessity of monitoring penitentiary institutions has been long recognised by the international community. Many countries have signed the Optional Protocol to the UN Convention
against Torture under which the authorities on the state level are obliged to create National Preventive Mechanisms (NPM) against torture. These are control systems initiated and funded by the government and should be independent.

Countries that signed the protocol have set up systems for monitoring penitentiary institutions. Usually, these systems consist of either an ombudsman employing a special department or experts specialising in the issue, or of an ombudsman who involves NGOs in the monitoring process – called the “Ombudsman Plus” model. In any case these mechanisms are governmental and therefore, cannot be fully independent. Against this background, it is particularly crucial to include and enhance the system of civilian oversight, since the National Preventive Mechanism is unable to create and substitute for public a monitoring system without the involvement of NGOs.

Russian experience

The Russian Federation has not ratified the Optional Protocol to the UN Convention against Torture and has therefore not set up the National Preventive Mechanism. Russia has no state system for independent monitoring of human rights in places of detention and confinement. There are government bodies authorised to exercise control within the penitentiary system. These authorities include the prosecutor’s office, which is aimed at protecting the law and its enforcement; regional ombudsmen that can, but are not obliged to, protect prisoners’ rights and visit penal colonies; and Russia’s Commissioner for Human Rights who is authorised to visit detention facilities, but does not have a special department focusing on these questions. Also, regional and federal members of parliament are authorised to visit detention centres and prisons, but this doesn’t occur too often. Often on receiving prisoners’ complaints the MPs go as far as forwarding them to the prosecutor’s office and that’s it. Thus, the general system for state monitoring of human rights in places of confinement in Russia proves to be ineffective.

On the other hand, the system of public monitoring of human rights in places of detention is highly developed in Russia. This system is unique and unrivalled worldwide.

The Russian federal law No. 76-FZ On Public Monitoring of Human Rights in Places of Detention and on Assistance to Detainees came into force on June 10, 2008. Its implementation was a quantum leap in terms of protection of human rights, advocacy of human rights’ values and the promotion of Russia’s civil society. This law is among the few initiated by representatives of the civil society, namely by human rights activists who had studied international public monitoring practices, including those in European countries. The law enabled representatives of NGOs to join special regional public monitoring commissions (PMCs), which were granted full permission to observe places of detention. Consequently, members of the public monitoring commissions have
been authorised – with prior notice but without formally requesting permission from the institution’s administration – to visit any detention places within police, prison or migration centres, special schools and closed-type special educational institutions of the Ministry of Education and other restricted-access institutions.

According to the law, it is sufficient to inform the local authority in charge of the institution about the visit on the same day, even by telephone. The administration is obliged to meet the members of the commission, offer escort, provide access to any part of the institution that may contain detainees, give the visitors the opportunity to review any kind of documents concerning the prisoners’ rights, including medical reports, with the prisoner’s written consent, and to talk to any person within the institution, be it an inmate or a staff member. The commission members can talk to the convicted persons in private in colonies and prisons, while if the person is under investigation and contained in a detention centre the conversation is conducted only in the presence of authorised personnel.

PMCs are given a wide mandate for protecting prisoners’ rights. Following their inspections, members can give recommendations, sum up conclusions and issue year-end reports on the observation of human rights in places of detention. It is important to point out that the enforcement of this law fell on fertile ground: some years before, community workers and human rights activists were volunteering to join the local Public Councils of the Federal Penitentiary Service introducing the elements of public oversight into many Russian regions.

However, this process depended on the good will of the local administrations. Where the officials were aware of the importance of this work, they supported public monitoring, thus there were no tensions after the adoption of the new law. But in other regions officials opposed the practice, which led to conflicts that still exist. The success of the law was also due to its having already been embraced by the entire human rights community that had emerged in Russia, before it came into effect, with many activists in the regions concerned with the issue and willing to monitor penal colonies. Hence, in regions where activists willing to work in penal colonies had been influential, it is safe to say that civilian oversight indeed took off. Every operating PMC monitors around 100 or more institutions a year. In many regions administrations are obliged to adopt PMC recommendations, with the monitoring commissions substantially contributing to raised awareness among prison staff.

Example of the Republic of Mari El

To illustrate how the situation in places of detention in Russia has been changing over the past 6-7 years, we can look at the Republic of Mari El. There have been substantial
improvements in confinement conditions (considering that inmates in colonies are held in detachments/ barracksof 100-150 people, and not in cells), the treatment of prisoners, detainees’ access to legal information on their rights, and the accountability of their abusers. When we talk to the prisoners we learn about their past and present prison experiences. Increasingly they tell us now that the staff is addressing them civilly. The pretrial detention facilities and penal colonies of the Republic of Mari El are not overcrowded. Every prisoner has an individual sleeping place and has access to sanitary products. The barracks are furnished with television sets, refrigerators, shower units, and dining rooms where prisoners can have a cup of tea. The buildings are being renovated and the medical services are improving. Over the last five years the PMC of the Republic Mari El has not received only one complaint alleging torture in a penal colony.

In general, there is a lot of information available on the situation in places of detention in Russia, but not everything runs smoothly. In some remote colonies, for example in the Sverdlovsk Region or the Nizhni Novgorod Region, where cases of open violence have been reported, much still needs to be changed and improved. There are also many open questions concerning medical service. Yet, the PMC is constantly drawing attention to these shortcomings and the situation is changing.

The main problem with human rights protection in places of confinement is that the controlling authorities do not regard it as a top-priority objective. They focus more on defending the state, ignoring the fact that protecting human rights means nothing but protecting the state. There is a distorted perception of human rights activists, who are seen as enemies rather than supporters.

It is the preservation of human rights and not the concealment of human rights violations that improves a government’s standing, but government officials are of a different opinion. Sometimes, even the Russian Federal Penitentiary Service officials are more aware of the priority of human rights protection than officials at the prosecutor’s office.

Risks and dangers of public monitoring in the Russian Federation

Today the changing political situation in Russia and general shift in the approach to democratic achievements and human rights pose direct threats to civilian oversight. In what ways do these threats manifest themselves? The federal law No. 76-FZ does not provide for a transparent selection and appointment procedure for PMC candidates. This allows the Civic Chamber of the Russian Federation – independent only in legal terms,
but effectively an extension of the government – to select candidates for the PMC who can turn civilian oversight into a joke.

Already we are witnessing the Civic Chamber excluding a number of experienced observers from the PMC. Aleksandr Kossov, former chairman of the PMC of the Krasnoyarsk Region and a highly skilled and experienced PMC member, was excluded from the newly elected commission. In addition, there is a danger that representatives of organisations labelled as “foreign agents” will not make it into the next PMC, yet these are the people with the highest degree of experience in the field of public monitoring. Another problem is that a PMC member can only be appointed for three years and may serve for no more than three consecutive terms. In the next two years, the terms of many founding PMC members will come to an end and they will not be eligible for another term, while there are few qualified potential successors. These three factors could possibly create conditions under which a useful law might become moot and will undo all previous achievements. It may happen that successive commissions will be there for the sake of formality and have hamstrung members. This situation is already being seen, for example, in Vladimir Region. In Novosibirsk Region there is no information whatsoever available on PMC activity. In Yekaterinburg the PMC is split into two groups: one is active and keeps the public informed on the situation in penal colonies; the other is extremely close to the Federal Penitentiary Service system and always reports that there are no human rights violations in colonies – whatever happens.

What we see today is that the laws are being tightened, there appear new unfounded prohibitive norms, the law as a whole is ineffective, activists are being branded as “foreign agents” and persecuted, the distribution of information on human rights violations in some spheres is criminalised, for instance in the army. Furthermore, the effectiveness of civilian oversight in other areas is not progressing, for example in regards to orphanages and social care institutions, health care services or psychiatric facilities. It may happen that next the authorities will ban activists from joining PMCs and taking part in monitoring activities, and criminalise the dissemination of information about conditions in places of confinement.

The perspectives of public monitoring practice

At present, human rights activists who are members of Public Monitoring Commissions are the leading group of professionals working in the field of human rights protection in Russia. This community is characterised by great experience, high potential and a strong alliance. Despite Russia’s vast territory, Siberian PMC representatives fruitfully interact with representatives from South Russia or the Volga Region. PMC members share information and support people cross-regionally. This system is tried and tested and has been proven to be highly effective.
As well as building a network of organisations protecting human rights of prisoners within one’s own country, it is also important to build a relationship with similar organisations from abroad. Priority objectives for further work are:

- To develop and expand civilian oversight to other areas than detention;
- To create an international movement of public observers in order to highlight the all-encompassing demand for this initiative and the relevance of this practice;
- To integrate Russia’s PMC system into the National Preventive Mechanisms network of the European states;
- To identify successful initiatives by NGOs in the field of civilian oversight in other countries which are supported by the authorities. This experience needs to be analysed and distributed. Equally, it is important to share experiences in observing and monitoring of penal institutions;
- To create a platform for sharing experiences among NGOs working in the fields of support for prisoners and penal staff education. Such practices can be transferred from one country to another, since humanitarian missions in penal colonies are an extension of civilian oversight;
- To provide training for PMC members in putting together reports and summarising conclusions as well as in external communication and building a dialogue with the public;
- To study colleagues’ experiences, including conducting visits to penal colonies in other countries;
- To analyse and disseminate examples of successful reforms facilitated by civil society activists.

In many European countries the monitoring of penitentiary institutions is relatively young, with NGOs enjoying different levels of authority. In some countries community workers have access to penal colonies without having to be accompanied by officers, in others they do not even have permission to talk to prisoners. At any rate, the problems of prisoners’ rights are similar everywhere. Sharing of experience among professionals in different countries is essential for organisations working in the field of prisoners’ rights protection. There are only a few activists committed to working with prisoners, and it is necessary to support their initiatives by sharing best practices in order to create a sense of community on an international level.
Between the years 1990 and 2010 the number of prisoners in Italy more than doubled while prison conditions deteriorated, becoming severely overcrowded. By January 2010 the situation had become flammable and this led to the Italian government declaring chronic prison overcrowding a national emergency. At that point the number of detainees in Italian prisons was around 68,000 people compared to 30,000 in 1990.

According to the Ministry of Justice, in 2010 the Italian penitentiary system could officially accommodate around 44,500 prisoners, with an overcrowding rate of around 53%.
However, Antigone’s Prison Observatory (a project by an Italian human rights NGO) ascertained the available space was much less, since the official accommodation capacity also included prison facilities and sections closed because of the lack of maintenance funds. The real overcrowding rate, later recognised by the ministry, reached 75%. In most prisons the spaces were crammed, with rooms intended to host recreational or educational activities being turned into dormitories. There were accounts of prisoners having to sleep on the floor.

After the declaration of the state of national emergency the government promised an ambitious plan of prison building, which it never delivered. But after the first normative interventions and because of the continuous activity of civil society organisations, the number of prisoners started to decrease slowly.

This would not have been possible but for two key factors: the rise of civil society groups such as Antigone, focused on monitoring prison life and suggesting ways to better the prison conditions; and the landmark European Court of Human Rights decision in the Torreggiani case of 2013.

Antigone is a small Italian NGO born in 1991 in Rome, which deals with human rights protection in the penal and penitentiary system. It contributes to the public debate on these issues through campaigns, education, media, publications and drafting of legal proposals. In 1998 Antigone launched its Observatory on Italian prison conditions, a project involving around 100 monitors working on a voluntary basis, with the help of a small coordinating staff. Every year Antigone receives special authorisations from the Ministry of Justice to visit all Italian prisons. Reports of the visits are published on the organisation’s website, and end up in the annual Antigone Observatory Report on Italian prison conditions.

Ten years later Antigone launched the prison Ombudsman service, which receives complaints from detainees in prisons and police stations all over the country. The Ombudsman mediates with the prison administrations in order to solve specific problems.

**Significance of Torreggiani case**

In January 2013 the European Court of Human Rights found Italy had violated article 3 of the European Convention on Human Rights (prohibition of torture, and inhuman or degrading treatment or punishment) in the well-known Torreggiani case. At that time there were 65,900 people held in Italy’s prisons.

In July 2009 Italy had already been found to have violated article 3 in the Sulejmanovic case. Mr Sulejmanovic, a detainee of Bosnian origin, had to share his cell with six other
prisoners for two and a half months in the Rebibbia prison in Rome. Each prisoner had about 2.7 square meters at his disposal. Since the Sulejmanovic verdict – which used a Russian case as its precedent (Kalashnikov vs. Russia – 15 July 2002) – thousands of actions have been filed to the ECHR by detainees experiencing the same conditions. The number of complaints reached nearly 4,000, with more than one quarter directly helped by Antigone's lawyers. Besides that, many other applicants have relied on the information provided by Antigone's Observatory to prove their cases.

On January 2013 the Strasbourg judges unanimously decided against Italy in the Torreggiani case, the first complaint to be heard to completion. The Italian government appealed the verdict, with the appeal being rejected in May 2013. Thus the judgment became final.

This new judgment was significant. It was a pilot judgment, which recognised the systemic and non-occasional character of the degrading living conditions in Italian prisons and imposed on Italy the duty to solve the problem of overcrowding within one year, thus suspending other pending cases. Furthermore, the ruling obliged Italy to introduce both a mechanism able to weed out the inhuman and degrading treatment which was present, as well as a mechanism of compensation for the prisoners who suffered from it.

**Prison reform**

Prison overcrowding and violation of prisoners’ human rights became one of the most outstanding news in all Italian media. Nothing like it had happened before.

In order to address a situation in which Italy was at risk of receiving thousands of similar verdicts only a few months before the beginning of its European presidency in June 2014, all the country’s highest institutional authorities began to insist on urgent reforms (above all, the President of the Republic). The Italian government appeared resolute in intervening in the matter. The Ministry of Justice had instituted three special committees on penitentiary issues: two to detail legislative measures against prison overcrowding and the third with administrative measures to effectively intervene into the prison quality of life. In June 2013 Mauro Palma, founder of Antigone and former president of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, was appointed president of this third committee.

"Prison overcrowding and violation of prisoners’ human rights became one of the most outstanding news in all Italian media. Nothing like it had happened before."
The measures proposed by the committee led by Palma primarily included:

- Locking cells only at night for the whole medium-security circuit, with the cells remaining open for at least eight hours a day;
- Creating spaces where prisoners can spend the daytime together – that is, prisons which are organised like a small town with all kinds of services available in the common places. These spaces should be different from detention wings, and give an opportunity to live daily life as similar as possible to life outside prison;
- Facilitating contacts between prisoners and their relatives through the flexible management of visits and phone calls and the use of new technologies.

Some of these prison life reforms are gradually taking place in different parts of the country and are at the core of reorganisation of the prison system that the government has in mind in order to make prison living conditions comply with the European standards. The provision to allow open cells has now been introduced at most of the medium-security prisoners, affecting around 39,000 detainees. The second measure, requiring structural intervention, has stalled because of the lack of financial resources. At the same time, several other measures have been introduced as a matter of law, which include:

- Recourse to pre-trial detention being limited;
- Alternative to detention being given more emphasis, facilitating the access to the alternatives already available – probation, etc. and introducing new ones such as home detention;
- Sentence reduction being raised from 45 to 75 days per six months for those who demonstrate good behaviour;
- For foreign prisoners the last two years of detention being replaced with compulsory expulsion from the country;
- The penal effects of drug legislation being reduced in cases of small quantities of drug;
- A judicial mechanism being introduced to stop inhuman and degrading treatment;
- A judicial mechanism being introduced to provide compensation in terms of money or reduction of sentence where violations take place;
- The national Ombudsman institute being established (though not yet appointed) for people deprived of their freedom.

In February 2014 another very significant normative event occurred: the Constitutional Court repealed the repressive legislation on drugs, in force since February 2006.
All these changes together contributed to a huge decrease of prison population. At the end of July 2015 Italian prisons hosted 52,144 detainees – 16,000 fewer than five years previously. In the meantime prison conditions improved in many respects.

Not all these measures are working smoothly. Antigone’s Observatory task for the years ahead will definitely be that of monitoring the implementation of these important reforms.

**Suggestions for the way forward**

The Torreggiani decision has recently been used as a precedent for similar decisions against Bulgaria and Hungary. These decisions can provide opportunities for change too, as long as civil society is given the institutional possibility and is willing to support this process of reform. Civil society organisations in Europe should be involved in the process to design penal and penitentiary policies, also to counterbalance penal populism, the tendency of political parties to compete with each other to be “tough on crime”, regardless of the efficacy and of the consequences of those policies.

It is up to civil society organisations to contribute to awareness on these issue, and to intervene to promote change, and in these respect strategic litigation. The practice of taking carefully selected cases to national and international courts to promote changes in the law, in practice and in public awareness, can be a powerful tool – as the Torreggiani case proved to be in Italy.
Irina Protasova, Interregional Human Rights Organisations Man and Law, Yoshkar-Ola: We have several ideas. First, is it possible to carry out a comparative analysis on how the decisions of the European Court of Human Rights affected changes in the prison system of the Russian Federation and EU countries? Could we show the states’ reaction to the Court’s decisions, which positive changes took place, and, most importantly – how the state implemented changes in the system on the basis of these decisions? Here, the experience of Russia is interesting, since – thanks to the European Court’s decision on the penitentiary system in the case Kalashnikova, Ananyeva, Trubnikova vs. RF – there really were fundamental changes in the conditions of detention, starting from the legislation. And the state reacted very effectively by creating new task programmes under the Federal Penitentiary System, which included a large amount of funding and which have been improving the prison system of the Russian Federation. There are, however, also negative examples of cases in which public authorities opposed the implementation of the ECHR’s decisions. It would be worthwhile to get to know these examples and to analyse them, also in order to establish a substantial dialogue with our state structures. This is important, because our government has got used to taking not positive, but negative examples of the practice of other states with the aim of toughening our own system and to make it less democratic. We, on the other hand, have made use of the positive examples.

Alessio Scandurra, human rights organisation Antigone, Rome: One more idea: to establish a dialogue among organisations working in the penitentiary system. This topic is not particularly popular in any country. In some countries there are collections of material and analyses of the work of NGOs in the countries themselves, but there is no active exchange of information between states. It would be interesting to organise meetings to show people working on the prison system that the process is similar everywhere, and that they are not alone in their work. The question is what is actually happening in different countries, and what could be transferred both to Russia and to other European countries? I think that such a dialogue would be very useful for European civil society.

Irina Protasova: Another important aspect is an analysis of the legal systems of various countries: how are the rights of prisoners protected, where are higher or lower levels of protection, where is it possible to introduce changes to the legislation in order to better protect prisoners? It is necessary to set up an international database for lawyers who specialise in the fundamental rights of people in detention. Sometimes, we are addressed by lawyers whose clients are in other countries and who do not know the local legislation. For instance, what can be done if the client is denied a meeting with the consul?
Lawyers have to know the demands and rules of working with people in detention, and this also concerns lawyers from the EU. This topic is very urgent.

One last thing: In Russian prisons, people are kept in groups. A concept on how to reform the Federal Penitentiary System and an understanding about the necessity to establish new prisons exist already, but nobody knows how to do this; there is no dialogue about this topic in society. In the course of this project, I learned that in Turkish prisons the transition from group detention to cells took place in the 1990s, and my Italian colleague Alessio Scandurra participated in this process. During our conversation, Alessio outlined how this process could work in Russia, named advantages and disadvantages and who the opponents and supporters of such a reform might be. It would be interesting to initiate a project to compare how public opinion on the prison system is formed in different countries. The topic of changes in prisons is not very current in Europe, and in Russia it is not popular at all. This has to be kept in mind.

Alessio Scandurra: Absolutely. All of us represent organisations which are used to working with closed institutions, and doing outreach work is usually not our strongest point. It would be very interesting to see how the public discussion developed in Turkey back then, but that is a different story.

Olga Kocheva, Centre GRANI, Perm: Listening to Irina and Alessio, I understood that our topic fits well with their proposals. We also deal with the supervision of institutions, but in a “light” version. Probably, the situation there is not that severe; these institutions concern many more people. I am talking about social institutions – hospitals, retirement homes, children’s homes. We are interested in an exchange of experience in this field. It is important that this happens not only unilaterally, since I agree that the Russian experience of public control of social institutions is even more comprehensive in parts. The second step is an analysis of successful legal decisions, after setting up a group of people who know each other well enough. Therefore, we at first have to get people together. For example, when we talked to representatives of a group from Transparency International Germany working on the health care system, we discovered that there are patient groups in Germany who do more or less what we do.

We have a very acute problem in the field of the control of social institutions, which is not being addressed– the control of children’s homes for severely ill children. In fact, children are sent there to die throughout the country. They do not receive any medical support, they are not given diagnoses, etc. Probably, in some European countries it is possible to witness a transformation from a level where everything is extremely bad to a more civilized one. It would be interesting to know of this experience.

Apart from that, it is not only the format of the presentation that is important, but also the educational benefit for both sides. We have already elaborated an approach to public control, both in terms of technologies and of procedures: how to get access, which
Mikhail Gorny, autonomous non-commercial organisation Sodruzhestvo, St Petersburg: The topic of public control and its legal and regulatory framework is something I am personally interested in, and also what we are dealing with in St Petersburg. With regard to this it would be interesting to organise a set of informational and educational events in EU countries and in Russia on the regulation of different forms of public control and the regulation of organisations implementing this control. I would like to get to know how the legal framework works in the countries of the European Union.

Of course, the practice of law enforcement and the general working practice of such organisation would be interesting, too. Why do we need this information? We would get to know how else it is possible to regulate the process of public control with the help of the law, and also which of the practical experiences from the European countries could be used in Russia. And what would be interesting for our European colleagues? They could get to know how the same standards are implemented in the Russian Federation (usually, our experience is rather negative). The legal and regulatory framework of public control in Russia impedes the control itself. That means it would be better if these laws did not exist.

What kind of recommendations would we like to hear from our European colleagues? In my opinion it is very unlikely that there will be changes in the Russian legal framework. I would like to know how the situation could be improved within the existing legislation. We also have some proposals for this. Therefore it would be good to organise concrete educational and informational events such as webinars, the publication of information material, and its dissemination in the social media and via the internet. The most effective thing to do would be to organise events at which all participants could learn from each other and discuss different topics such as the regulatory framework as a whole and some concrete examples.

Katarzyna Batko-Tołuć, Citizens Network Watchdog, Warsaw: To analyse and compare, where and when which model of public control works, seems to be a useful first step for a further exchange of ideas. In Poland, we define the legal framework for civil oversight as a set of legal guarantees for each and every person who wants to get to know more about concrete procedures, practices and laws or who wants to correct them. Of course, when it comes to details we see a lot of obstacles on the level of e.g. access to Parliament (it is much easier for lobbyists and journalists than for the rest of the people). However, the legal framework makes citizens and civic organisations equal in their rights. This system is fair, and I fear that special privileges might destroy it. Considering which model works when and where seems to be a good starting point for an exchange of experience.
Initiatives and recommendations for 2016-17

- Conduct a comparative analysis of the legislations of Russia and EU countries in terms of the rights of prisoners and develop recommendations on how to improve the situation

- Produce a collection of papers entitled “How did decisions of the European Court influence changes in the prison system of the Russian Federation and EU countries?”

- Create an international database of contacts and other information for lawyers working on the protection of prisoners’ rights

- Organise a series of meetings and seminars for human rights activists working in the penal systems of different countries

- Implement a series of informational and educational activities to improve the formats of public monitoring in Russia and the EU (webinars, publication and dissemination of educational material in social networks and via the internet)
Public interest lobbying: The global experience. Which path should Russia choose?

Denis Primakov
Transparency International Russia (Moscow)

Public interest advocacy in Slovakia in the absence of a law on lobbying

Milan Vetrák
Assistant to MPs in the National Council of the Slovak Republic (Bratislava)
Viktoria Mlynarčíková
Pontis Fondation (Bratislava)

Discussion: Initiatives for the future
In Russia there have been several attempts to pass a unified act to regulate activities which promote legislative initiatives and see them into law (in 2000, Bill No. 396138-3 On Lobbyism in Federal Public Authorities and Bill 97801795-2 On the Legal Basis of Lobbyism in Federal Public Authorities), but they were not implemented.

Today you won’t find words like “lobbyism”, “lobbyist” or “lobbying contact” in either the legislature or any court documents. The only exception exists in the provisions of Chapter 7 of the Krasnodar Region Act of 26 May 1997 No. 7-KZ On Lawmaking and Legal Regulations in the Krasnodar Krai, in
which lobbyism is described as “information exchange between the authorised persons and the regional legislative authority of the Krai with the aim of expressing the interests of respective organisations in the regional lawmaking process” (Section 1, Art. 38).

A more complex definition of lobbyism is rendered by the independent Public Relations Institute of Ireland, together with the Chartered Institute of Public Relations, Public Relations Consultants Association and supported by the European Commission, which is in charge of keeping the registry for lobbyists at the EU.

They provide the general definition of lobbyism as “the specific efforts to influence public decision making either by pressing for change in policy or seeking to prevent such change. It consists of representations to any public officeholder on any aspect of policy, or any measure implementing that policy, or any matter being considered, or which is likely to be considered by a public body.”

**Who can be a lobbyist?**

In Canada, the autonomy of lobbyism is stipulated in the Lobbyists Registration Act (1988), according to which the registration of lobbyists must not interfere with free and open access to parliament and the government. The Act divides lobbyists into two categories: professionals and others. For the registration of lobbyists, the office of the Commissioner of Lobbying was established at the Federal Registry Office of Canada. The Commissioner keeps the records of any information presented to him according to the law. On the basis of this work, the Commissioner prepares a report on lobbyists and refers it to the chambers of parliament. The information contained must by systematised according to certain criteria and forms, and be open for verification.

The Canadian Lobbyists Registration Act is unique, since it contains a detailed regulation of sanctions for violating it. It says, for instance, that anybody violating the Act is considered guilty and shall be sentenced to a fine of $25,000 to 100,000, imprisonment from six months to two years, or both a fine and imprisonment.

In the USA, the Lobbying Disclosure Act of 2006 provides strict regulation of the participation of lobbyists in the work of the Congress and executive bodies. Additionally, the new Honest Leadership and Open Government Act of 2007 increased the period during which former Congressmen are not entitled to become active in lobbying to two years, from the previous one year. The provision which allowed Congressmen to accept presents worth

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2 Information of this section was presented by me earlier in the article How to regulate lobbying activities of 2013, written for the association Biznes po pravilam (Business according to rules).
up to $50 was suspended, and the range of people allowed to finance their journeys was limited. The fine for violation of legal provisions was increased to $200,000 (formerly $50,000), and a prison sentence introduced of up to five years. Now, lobbyists have to present their reports quarterly (formerly, every six months). Congressmen convicted of bribery, perjury or other crimes related to illegal lobbying, lose their entitlement to a pension. The requirements for transparency of information relevant both to society and lobbyists were raised. Many prohibitions were extended also to well-paid employees of parliament whose income amounts to at least 75% of the income of Congressmen. According to the new Honest Leadership and Open Government Act, lobbyists and civil servants must be prevented from activities contrary to the code of ethics for people influencing public policies.

In France, the Senate accepted a Code of Conduct for Lobbyists. Individuals can be registered at the National Assembly as lobbyists only on condition that they present photographs and information on their clients. There is no demand for financial reporting.

The specifics of lobbyism in Russia

In Russia, active lobbyists have de facto already emerged. They include individuals, legal entities such as industrial and economic complexes, branches of corporations, professional associations of entrepreneurs and even representatives of executive and legislative authorities. Some members of the State Duma bluntly asked to establish the right to lobby for laws on a paid-for basis, which completely contradicts the spirit of being a legislator: one of the main tasks of members of parliament is to advocate for the interests of voters.

There is a real need to legally define the status of lobbyists in the Russian legislation, as well as to introduce prohibitions on lobbyism for people within the governing authority.

Apart from that, in order to regulate the procedures of registration and reporting, it would be useful to separate the lobbying groups into:

- Persons representing the interests of their own association or corporation;
- Persons who get involved in lobbyism on a paid-for basis.

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The registering body could be the legislative authority on the relevant level.

Before establishing a lobbyists’ association in Russia, it would undoubtedly be useful to develop and introduce a code of ethics. These standards should contain a ban on lobbying by people working in the public service (including work as a deputy in any representative organ), and on giving benefits (gifts) to civil servants. Similar standards have been adopted in the European Union, the USA, Canada and other countries.

Authorisation to control the work of lobbyists has to be given to the registering body. Apart from that, lobbyists must be obliged to disclose publicly their annual report (with accounts) and certified copies of the contracts with the clients; and a list of clients whose interests are represented (as in the case with disclosing the affiliated persons) – on the website of the registering body.

The legal basis for lobbyism in Russia

The National Anti-Corruption Plan for 2014-15 provides that the Government of the Russian Federation has the duty to introduce proposals on the regulation of legal relationships in the field of lobbyism4.

On July 7, 2015, draft law No. 833158-6 On the Procedures of Advocating for the Interests of Commercial Organisations and Individual Entrepreneurs in State and Municipal Authorities5 was submitted to the State Duma. This aims to close loopholes in cases where businesses seek to influence the adoption of laws.

In the draft law, “representatives of interests” are determined as individual entrepreneurs who professionally promote the interests of commercial organisations or individual entrepreneurs with state or local authorities and who are members of one of the self-regulated organisations of representatives of interests.

According to Art. 3 of the draft law, the promotion of interests by a commercial organisation with state authorities is interpreted as verbal or written engagement with the aim of exerting influence on the authority over passing legal regulations or making political, economic or administrative decisions. This definition, however, is not sufficient and offers potential risk of corruption. Additionally, the rights of representatives of interests also include the right to pass analytical and other information, including suggestions on proposed regulations to civil servants. It remains unclear whether draft laws and other legal regulations are included in this kind of material or not. In other words: Is the list of documents to which a representative of interests has access open or exhaustive?

4 See: http://pravo.gov.ru/proxy/ips/?docbody=&nd=102348935
P. 6, Sec. 1, Art. 10 of the named draft law contains provisions for avoiding a “revolving door” situation, in that former civil servants are not allowed to become representatives of interests within one year of resigning from the civil service. This does not correspond to international standards and should be increased to at least three years.

**Conclusions**

The provisions on responsibility (Art. 13) are too general and do not adequately cover the specific character of the new institution.

- The Russian legislation does not contain any special standards for representatives of interests. Their responsibility should be defined separately, since the activities of such representatives can have negative affect on public interests.

- The explanatory note to the law says that such a representative shall carry civil, criminal, administrative and disciplinary liability. While the question of civil and criminal liability is understood, the application of administrative and disciplinary remains unclear.

- There is no implication for civil servants not publicly disclosing their association with lobbying organisations. It is important to establish accountability of civil servants cooperating with lobbyists, as well as to limit the number of representatives to whom the civil servant has the right to talk within the reporting period, and a strict responsibility to disclose the number of such interactions.

On the one hand it is fair to say that the process of establishing a legal framework for lobbying in Russia has already begun. On the other, it will take a long time for the Russian framework to correspond to international standards. This applies equally to non-profit organisations which want to influence social processes in society, including legislative processes.

Currently, the Russian Government does everything possible to limit the influence of the non-profit sector. For instance, an initiative proposed by the Foundation for the Fight against Corruption in 2014 aimed at implementing Art. 20 of the UN Convention against Corruption (unlawful enrichment) was rejected for obvious political reasons.

However, if the state delegates certain social and human rights defending functions to public associations, it also has to allow them to articulate requests from society and to inform the legislator about them.
Public interest advocacy in Slovakia in the absence of a law on lobbying

Slovakia has been an independent state since January 1, 1993 yet still cannot boast a well-developed legal system.

Since there has been no legal act adopted in Slovakia on either lobbying or advocacy, nor on public participation in the legislative process, it is difficult to define any specific Slovak concepts concerning these terms. However, rules on lawmaking recognise participation of the public in this process, and since the concept of the term “the public” is very broad, it includes lobbyists and bodies involved in advocacy, such as NGOs.

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Lobbying

In general, lobbying and lobbyists do not have a very positive reputation in Slovakia and lobbyists are often unjustly seen as being involved in corruption. This is the main reason why no legal act on lobbying has been adopted in Slovakia, even though some draft laws in this regard have been submitted to the Slovak Parliament in the past.

The National Programme for the Fight against Corruption adopted by the Slovak Government on June 21, 2000 declared that a law on lobbying would be introduced in the near future, along with many other legislative measures, in order to eliminate corruption. The same conclusions can be found in the Resolution of the Slovak Parliament No 213 of March 6, 2003. But it took until 2005 for any draft law on lobbying to be submitted to the Slovak Parliament for consideration.

The draft Law on Lobbying 2005 was inspired by respective US regulations on lobbying and the Rules of Procedure of the European Parliament. According to this draft law, lobbying was defined as any activity leading to contacts aiming at influencing the decision-making process of public authorities or the adoption of legislative or non-legislative acts. Management and coordination of such contacts was also included within this definition.

The main subject matter of the proposed law was the central register of lobbyists, established and administered by the Office of the Slovak Parliament and made publicly accessible on its website. This law also outlined a system of licences for lobbyists registered as self-employed. Similar responsibilities applied to Self-Governing Regions and their regional registries. One of the most important obligations and responsibilities of a lobbyist, on a par with that of public officials, is to report about lobbying activities on a quarterly basis or just as a simple announcement in the case of those not officially registered in the central (regional) register. They should also avoid conflict of interests with regard to public officials.

The draft law also excluded three types of activity from lobbying: namely activities aiming to influence the decision-making process concerning the issue of licences, certificates, etc., public procurement procedures, and procedures concerning provision of grants, subventions and so on. As of now this law has not been approved.
Advocacy and public participation in law making

Advocacy is still a very brand new term, at least in the Slovak political and legislative environment, and bodies usually involved in these activities are viewed as the organised groups of the public. Recent rules on lawmaking recognise only the concept of “the public” and make distinction between natural persons and legal persons, and specifically between obligatory and voluntary participants in the legislative process. The public is always considered a voluntary participant, but the same applies to various other bodies not representing the state (such as trade unions, NGOs, civic associations, lobbying agencies). However, trade unions may become obligatory participants in the legislative process in certain exceptional cases laid down by the law. Obligatory participants are usually those exercising state power – ministries, the Office of the Government, the General Prosecutor’s Office, etc. Municipalities are also involved and invited to comment on draft laws if they are directly concerned. Rules on lawmaking do not make any distinction between domestic and foreign stakeholders in the legislative process or between nationals and non-nationals.

Historical overview

The Slovak Parliament adopted its new Rules of Procedure (still in force, but several times amended) in 1996. Its provisions contain blanket measures empowering the Slovak Parliament to elaborate and approve the rules on lawmaking. In 2010 these provisions were replaced by new ones, amended since then, but with almost the same content as the former, especially in regards to public participation in the legislative process. Influenced by the Aarhus Protocol from 1998, the governmental rules on lawmaking were amended to “open the door” to the public.

Participation of the public in the legislative process was introduced in 2001, strongly supported by media and NGOs.

At the beginning of the new millennium, public administration reform gradually brought the right of the public to take part in legislative process, together with the right to make

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regular public speech at the regional parliament session. Nowadays it is incorporated into the Law on Municipalities³.

Recently, the draft Law on Rules of Lawmaking was submitted for legislative review⁴, but has not yet been submitted to the Slovak Parliament. The draft law contains all basic principles and rules on lawmaking, which are already laid down in resolutions of the Slovak Parliament and the government, but it is the first time that the public’s participation in the legislative process has been guaranteed by law and not just by the resolutions and administrative circulars, which often contradict the Constitution. Moreover, the draft law deals with issue of publication of legal acts in Collection of laws, which may be done equally in either electronic or paper form. Unfortunately, the draft law does not mention anything about lobbying and/or advocacy.

Public participation and three levels of legislation

There are three basic levels of legislation in Slovakia with different scale and form of participation of the public, including lobbyists and entities involved in the legislative process advocacy:

1. Parliamentary level

In general, the Slovak Constitution⁵ does not recognise any special right of citizens (or the public) to legislative initiative or the right to take part in the legislative process. The legislative process is governed by Law on Rules of Procedure⁶ of the Slovak Parliament and more in detail by the Rules on Lawmaking⁷ of the Slovak Parliament. However, these rules do not acknowledge that the public has the right to legislative initiative. Nor do they contain any possibility for the public to make comments or suggestions to the draft laws submitted by MPs. Nowadays the public has the following possibilities of influencing the legislative process in the Slovak Parliament:

- Participation in the plenary sessions and/or sessions of the parliamentary committees;
- Meeting with individual MPs (not reported);
- Ability to submit a petition to the Slovak Parliament.⁶

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⁴ The draft law is still in the phase of making comments and suggestions preceding its submission to the Slovak Government for approval followed by the process of its consideration by the Slovak Parliament.
⁶ Right to petition flows from the Slovak Constitution and is laid down in the Rules of Procedure of the Slovak Government too. The Parliament is obliged to consider any petition once it is signed by more than 100,000 people (natural persons) and addressed to it. This is a very strict condition and according to recent statistics there have
2. Governmental level

The legislative process is governed by the Rules on Lawmaking of the Slovak Government. The 2001 reform allowed public participation in the legislative process at this level, as well as introducing the possibility of electronic participation. The electronic form of lawmaking includes obligatory online publication of all draft legal acts, and also gives the public (including lobbyists and advocacy bodies) the opportunity to make comments and suggestions to it. Notification principle in practice strengthened the position of those who wish to comment on draft laws. The public may express its comments and suggestions to the draft law either individually or in a group, although it is not obligatory for the organisation submitting draft law to assess individual comments. Comments submitted by a group are given more weight, as certain groups like NGOs have their own authority to defend comments under an already existing initiative.

In cases where there are more than 500 comments of a similar nature, the entity submitting the draft law to the legislative process is obliged to organise a (public) meeting to discuss7 those comments and to determine if they are directed against the draft law or some of its provisions. If the parties at the meeting are not able to reach a consensus or compromise, the matter is reported to the Cabinet and is considered during its session. Assessment of comments (including comments of the public) is an obligatory part of any legislative material throughout the whole legislative process and it is publicly accessible.

3. Local level

Basic rules on lawmaking are governed at the local level by the Law on Municipalities. At the regional it is level by the Law on Self-Governed Regions which entitles the public, individually or in a group, to express its comments to the draft regulations. There is one exception to the right to make comments, which is “in case of matters of urgency”8. In addition, the public may express its view personally during the sessions of the regional or municipal parliaments. Even though it is not obligatory, the rules of procedure of these parliaments guarantee9 the public the opportunity to make a speech at sessions in order to influence their members in the decision-making process.

been fewer than ten petitions registered by the Slovak Parliament throughout the whole existence of the Slovak Republic (since 1993). In a broad sense, we can mention also right to referendum declared on the basis of citizen´s petition again conditioned by at least 350,000 signatories (very rare).

7 On a voluntary basis it is allowed to organise a meeting with the author or individual comment or with the plenipotentiary of the public representing fewer than 500 people signed under such initiative.

8 Matters of urgency are considered to be matters under extraordinary circumstances, e.g. in case of man-made disasters, potential damage or detrimental effects to the municipal/regional budget.

9 In Bratislava (capital), in the course of every session of its municipal parliament any individual (citizen) has the right to make a speech lasting for 3 minutes starting with fixed timing during such session (4pm) and general restriction for all citizens´ speeches (30 minutes for all speeches).
Supporting mechanisms

In addition to the public having the right to make comments and suggestions to the draft laws (with the exception of those submitted by MPs) and the right to make a speech at the sessions of the local parliaments, the following mechanisms are also available to influence the decision-making process:

- Law on Freedom of Information\(^\text{10}\);
- Making comments to legislative initiatives before the draft legal acts are conceived, to consider whether these drafts pose a significant financial or economic burden; or to those drafts nominated by the Slovak Government for this purpose;
- Initiating procedures against public officials in the event of their conflict of interests pursuant to Constitutional Law on Protection of Public Interest\(^\text{11}\).

“De lege ferenda” considerations

Taking into account the above facts and practical experience, we may conclude that in the future the national legislative activities in the field of lobbying, advocacy and participation of the public in the legislative process should be particularly focused on:

- Adoption of the Law on the Rules of Lawmaking ensuring the right of the public to participate in the legislative process in line with the improvement of the recent legislative manuals and style guides, including alignment of old-fashioned parliamentary publications with modern governmental ones;
- Incorporation of the right to legislative initiative granted to a qualified group of natural persons by the Slovak Constitution;
- Adoption of the Law on Lobbying and Advocacy distinguishing between these two types of activities while respecting constitutional rights of non-professional stakeholders to petition.

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\(^{10}\) The Law No 211/2000 Coll. on free access to information (Law on Freedom of Information), as amended, is very liberal and pro-citizen oriented. Rejection of public information is very restricted and any access to information is due to its constitutional roots enforceable by the courts and sanctioned (penalised).

\(^{11}\) The Constitutional Law No 357/2004 Coll. on protection of public interest concerning activities of public officials.
Denis Primakov, Transparency International-R, Moscow: We discussed questions of lobbyism and advocacy in terms of NGOs. We analysed the European and the Russian experience and the relevant draft legislation. Advocacy is a mechanism that can help NGOs to exert influence on the state and promote their projects at government level and in society. I agree with the suggestion made in the other discussion that we should analyse Russian and European best practices in order to ascertain cases in which NGOs changed the existing situation. This does not concern only the social sphere, but also issues connected to information, ecology, and others. How did the activities of human rights organisations change the legislation and the attitude of people towards certain topics?

Pavleta Aleksieva, Bulgarian Centre for Not-for-Profit Law (BCNL), Sofia: Successful NGO advocacy initiatives need some basic prerequisites: 1) a legal framework that guarantees freedom of association and freedom of assembly according to the democratic standards; 2) a legal framework that prescribes mechanisms for NGOs to participate in decision-making processes; and 3) the capacity of NGOs to advocate. The level of development of both (legislation and practices) in the countries in EU and Russia is different. If the purpose is to exchange knowledge and skills in the area within the Forum this could happen in a conference dedicated especially to this topic.

Viktoria Mlynarčiková, Pontis Foundation, Bratislava: I also think that peer-to-peer contacts and exchange of experience, for instance during study trips, are very useful. This might facilitate more targeted discussions and become a source of motivation and inspiration for further action. In addition, I think that it is necessary to establish contacts not only to colleagues from NGOs, but also with professional lawyers’ associations and politicians.

Initiatives and recommendations for 2016-17

- Review NGOs’ best practices in the area of civil society/NGO participation in lawmaking in the EU countries and Russia; come up with recommendations for improvement
- Facilitate study tours for NGO specialists in advocacy strategies and legislation
- Convene an international conference on transparency and accountability of the legislative process and on mechanisms for NGOs to participate in decision-making processes
The impact of the European Court’s judgments in environmental cases on Russia’s judicial practices

Ksenia Mikhailova
Bellona (Saint Petersburg)

Corporate social responsibility of enterprises – what is the role for NGOs?

Christian Schrader
Fulda University of Applied Sciences

Discussion: Initiatives for the future
In Russia and the European Union, non-profit environmental organisations work within certain legal systems and in accordance with their respective legal traditions. At the same time, both exist within the framework of international environmental law. Environmental rights in some way or another are regarded in connection with the decisions of the European Court of Human Rights (ECtHR) – for those states which are members of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. Since Russia and the EU countries are among them, it does not matter whether the individual countries have ratified any specific
conventions related to the same rights. This legal right is created not on the level of international agreements, but is due to the work of the activists and NGOs which bring environmental issues to the European Court’s agenda.

The basic right to a healthy environment is not stipulated in the European Convention on Human Rights (ECHR). However, the European Court considers the protection of environmental rights in light of the fundamental rights consolidated in the Convention, in cases where violations in the field of ecology or procedural safeguards related to it entail the violation of a fundamental right.

The European Court has developed a consistent practice providing protection of environmental rights in the areas of dangerous industrial activities, the energy sector, the conditions of detention in prisons, the right of individuals and associations to have access to judicial review and to information about the environment, industrial and noise pollution, adequate protection against natural disasters, waste management and the protection of property (Articles 2, 5, 6, 8, 10, 13, Article 1 of Protocol № 1 of the Convention).

Unfortunately, in the past few years the political situation in Russia has dictated an anti-European rhetoric. As part of this trend, the recent decree of the Constitutional Court of the Russian Federation No. 21-P/2015 indicates that decisions of the European Court in cases against Russia are not necessarily binding for Russia, when they contradict the Russian Constitution1. However, European standards, anchored in the decisions of the ECtHR, are in some cases taken into account by national Russian courts.2

The Aarhus Convention

What is meant by the European standard applied by the European Court? It has been developing, albeit not exclusively, on the basis of the 1950 Convention and the entire case law of the European Court.

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2 P. 2 of the Decision of the Plenum of the Supreme Court of the Russian Federation of June 27, 2013, No. 21, ascertains the mandatory application by the Russian courts of all provisions of the ECtHR’s decisions in cases against Russia. It also ascertains the necessity to take into account the ECtHR’s positions in other cases, expressed in decisions which have entered into force, under the condition that the facts of the matter which formed the basis for the decision are analogous to facts of matters dealt with by national courts.
The practice of the European Court shows that many of the documents regulating issues such as civilian oversight in the field of ecology have not been ratified by all member states of the 1950 Convention – among them the Aarhus Convention On Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. However, these documents are included in the European human rights standard and are taken into consideration when assessing whether respondent states comply with the Convention, irrespective of their ratification by the said state.

Reference to the Aarhus Convention in the decisions of the European Court allows it to demand a certain degree of guaranteed protection of rights specified in the European Convention, at a level not lower than provided in the Aarhus Convention.

In particular, the ECtHR ruling in the case of Ivan Atanasov v. Bulgaria of April 11, 2004 claim No. 12853/03, refers to the Aarhus Convention. The Court refers to the position of the Parliamentary Assembly of the Council of Europe, stating that the Court’s case law demonstrates the need to provide guarantees at a level provided by the Aarhus Convention. The same documents are referred to by the Court in its ruling in the case of Grimkovskaya v. Ukraine of July 21, 2011 on claim No. 38182/03.

The Court consistently applies the Aarhus Convention not only to the Convention member states but also in cases where the respondent state has not ratified it, for example, in the case Taskin and others v. Turkey of March 30, 2005 on claim No. 46117/99. In the case of Ivan Atanasov v. Bulgaria the Aarhus Convention was applied, regardless of Bulgaria not having ratified it at the time of the violation of the applicant’s rights.

In its judgment in the case of Tatar v. Romania of January 27, 2009 on claim No. 67021/01, the European Court explicitly referred to the provisions of Articles 3, 4 and 9 of the Aarhus Convention. In the same ruling, the Court also referred to the Stockholm Declaration of the United Nations Conference on the Human Environment of June 16, 1976.

**Other sources of legislation**

The ECtHR takes into account the provisions of the Rio Declaration on Environment and Development of 1992. For example, Principle 15 of the 1992 Declaration – which states that the lack of full scientific certainty on negative effects cannot be used as an excuse for postponing the adoption of effective measures to prevent the damage – is fully integrated into the practice of the European Court (see the judgment in the case of Tatar v. Romania).

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Principle 17 of the Declaration, which refers to the assessment of possible environmental impact, has also been reflected in many decisions of the European Court. This is the so-called “precautionary principle”, which was directly applied in the case of Tatar v. Romania. In this judgment (paragraphs 111-112), the Court separately noted that in addition to national legal mechanisms established by the law on environmental protection, there also existed special international regulations that could have been applied by the Romanian authorities. However, since the authorities failed to carry out a satisfactory preliminary assessment of possible risks inherent to these activities, they failed to take adequate measures to protect the applicants’ right to privacy and, more importantly, the right to a healthy and safe environment.

Thus, the Court explicitly referred to the mandatory application of international legal mechanisms for the protection of the environment as a criterion to assess whether the state has failed to fulfil its positive obligations.

The approach developed by the European Court in terms of the application of international legal instruments other than the European Convention is recorded in the judgment in the case Oneryldiz v. Turkey of November 30, 2004 on suit No. 48939/99. In this case, the ECtHR refers to a number of international legal documents, including the Resolution 1087 (1996) On the Consequences of the Chernobyl Disaster, Resolution 587 (1996) On Problems connected with the Disposal of Urban and Industrial Waste as well as the Strasbourg Convention On the Protection of the Environment through Criminal Law of 1998. Despite the respondent state, Turkey, not having ratified any of these conventions, the Court uses these documents to assess the rightfulness of the state’s lack of action. Thus, the Court points out that although the Strasbourg Convention had not entered into force, the mandatory implementation of measures of criminal liability for harm caused to the environment in accordance with the Convention is closely linked to the protection of the right to life (Section 61). Using the provisions of Resolution 1087 on the consequences of the Chernobyl disaster the ECtHR applies the basic human right to public access to information on potentially hazardous activities (Section 62).

"The reference to them helps to prove the existence of the so-called “European Consensus” on certain issues."

None of these documents has any compulsory effect on the judgments of the European Court or on the activities of those member states which have not ratified the relevant treaties. But reference to them helps to prove the existence of the so-called “European Consensus” on certain issues. This is what the European Court takes as a basis for judgments, which in turn influence domestic legislation, including in Russia. However, particularly in the field of ecology, the implementation of ECtHR rulings is not noticeable yet (unlike, for instance, the findings on the penitentiary system or in terms of the right
to freedom of assembly). It becomes apparent that the “European Consensus” in Europe works as one of the sources for international law, based on the precedents of ECtHR.

The European Court is not bound by its case law. Therefore, potentially any international legal instrument, which generally follows the trend of the development in environmental law, may be recognised by the ECtHR as the source of a principle for the protection of basic human rights as stipulated in the European Convention.

The practice of the ECtHR also references EU Directives. For example, in the case of *Tatar v. Romania*, the Court, stating the applicable international law, refers to the EU Directives 2006/21/EC and 2004/35/EC, despite Romania not being a member state of the European Union at the time of the violation.

Thus, when assessing the balance of the competing interests the Court is guided by general international standards in environmental protection, despite the European Convention being the only document serving as the basis of the claim.

**Application in Russia**

The Russian Federation has not ratified a number of international treaties, including the ones pertaining to civilian oversight in the field of environment, such as the Aarhus Convention. For many years, Russian environmentalists have been fighting for its ratification and implementation, but have received nothing but policy positions and declarations from the government.

How can the international practice of the ECtHR on environmental rights be used in Russia, taking into account the present condition of its legal system? When considering specific cases, international documents applied by the European Court can be argued to be a European standard mandatory for Russia, since it is part to the 1950 Convention. But national courts are unlikely to apply declarative provisions when considering specific cases and especially the provisions of conventions not ratified by the state.

However, the European Court’s position can serve as one of the tools in campaigning for the signing of relevant international legal instruments. In addition, the Constitutional Court of the Russian Federation, despite all its conservatism, takes into account international practice when issuing its judgments, including the decisions of the European Court of Human Rights in cases involving any respondent state.

Apart from that, in some cases the Constitutional Court follows the established European standard, regardless of whether it is consolidated in international treaties. Following the European Court of Human Rights, the Constitutional Court of Russia in one of its
decisions referred to EU Directive 2004/35/EC On Environmental Liability with Regard to the Prevention and Remedying of Environmental Damage, in order to more fully reveal the character of the principles applied by the Constitutional Court in the formation of its position on the protection of forests, and establishing the correlation between causing environmental harm and determining the amount of compensation for the recovery\(^4\). Such references are not specific to cases related to the environment. Thus, ruling on the constitutionality of introducing compulsory non-tax payments for telecoms providers, the Constitutional Court referred to the EU directive as an example of international practice to emphasise the legitimacy of establishing such non-tax payments\(^5\). This decision has nothing to do with environmental issues but it shows that, in principle, the Constitutional Court is prepared to consider European law as specific benchmark.

Therefore, such argumentation can be used when appealing to the Constitutional Court. The Supreme Court of the Russian Federation uses the position of the European Court even more resolutely than the subordinate courts. It may be useful to engage similar practice when applying to the Supreme Court in order to challenge specific legal norms.

\[\text{“In some cases the Constitutional Court follows the established European standard, regardless of whether it is consolidated in international treaties.”}\]

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In November 2014 the EU put into force a directive about corporate social responsibility. This opened new possibilities for the civil society to gain information about environmental pollution caused by industries and to start a dialogue with them. However, the directive leaves many loopholes, and it is up to civil society organisations to find powerful ways to use this instrument.

Industrial enterprises are one of the main polluters of the environment. For a long time pollution was tolerated in the name of economic progress. Industrial development was accompanied by smog and stinking sewage.
Now it can not be tolerated anymore, whatever the extent of the pollution is. The instruments against pollution differ, the most popular being licence requirements or thresholds, controlled by authorities. This command-and-control approach is likely to bring good results. Even so, implementation always falls short because enterprises regard licensing as an external requirement and not as an internal obligation for their own benefit. The public can be empowered to reduce this deficit by getting environmental information from the authorities – and by suing them when they do not fulfill their job against polluters.

**Environmental liability**

Another legal concept linked to pollution is environmental liability. The “polluter pays” principle says that whoever polluted the environment is responsible to pay for the damage. Here is when a new actor comes into view – the person whose rights are affected by the environmental pollution: people getting cancer from air pollution or fishermen suffering loss because of water pollution. They can seek to obtain compensation in direct action against the polluter. This has several disadvantages, too: damage must have occurred, the polluter must be identified, while the burden of proof lies with the victim. And there are types of pollution that fall out of this context, such as the extinction of endangered wild species, because this does not bring individual harm to a person. Only some states grant environmental NGOs legal standing in these cases.

All these instruments are necessary and indispensable. They have become binding since the 1970s when they were introduced by the European Union. Success is now visible as the air in Berlin, Paris and London being cleaner than in Beijing, and the Rhine is cleaner than the Ganges.

But there is still existing pollution, as well as new polluting activities that cannot be easily traced yet. There is evidence that pollution-producing industries have relocated their activities to factories in other countries. New types of environmental protection appear, such as soil protection, which is not yet regulated by the EU. Therefore, it is necessary to make companies care about environmental protection out of self-interest, not driven by administrative commands or liability threats. This is the field of CSR.

**Corporate Social Responsibility**

CSR cannot substitute state environmental regulation, it can only supplement it. CSR is an instrument that seeks to stimulate environmental efforts within the enterprise itself. According to economic theory, enterprises have their core interest in wanting to make profit to satisfy their shareholders. Environmental efforts seem to conflict with this
profit interest, being seen only as producing additional costs and lowering profit. On this reckoning, enterprises must ignore environmental regulations to avoid additional cost. But things have changed.

"Implementation always falls short because enterprises regard licensing as an external requirement and not as an internal obligation for their own benefit."

Economic scientists have discovered new actors in economic processes. Enterprises must not only reward shareholders, but also stakeholders. Stakeholders such as employees, neighbours or civil rights groups are not interested in the profit but in the social effects of an enterprise. Any enterprise has employees and it also has a neighbourhood, a social and natural environment. Employees are interested in having well-paid and safe workplaces. And companies must be interested in having well-educated, healthy and not striking workers. That’s why enterprises are showing interest in being a vital part of their community – by building houses or giving loans to their workers; they are showing interest in public health by supporting local sport club and activities for a worthwhile living environment. In these days of multinational companies and global supply chains, these interests must be global, too. Wherever a company is located it must work together with its local surroundings, whether in Moscow, Munich, Maputo or Mumbai. Under the auspices of sustainable development the responsibility of enterprises ranges from environmental aspects to global development justice: for example, when a multinational enterprise switches production to a developing country to use the less-stringent local work safety rules.

Whenever they do so, corporations should act with social responsibility.

Some industries such as organic food or children’s goods have an immediate connection between their products and CSR. But any enterprise of any industry can gain positive image, customer loyalty or worker motivation by using CSR. Some economists even say that today CSR goes together with any business model to generate attractiveness for investors, lower the costs and increase sales. But at the very basic level in our context CSR is attractive because it serves the companies’ interest in interacting with society, including with NGOs as the leading players in that society.

Duty to report

In 2001 the European Commission issued a Green Paper “Promoting a European framework for Corporate Social Responsibility”, defining that “CSR is a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis”.

1 See: http://www.social-protection.org/gimi/gess/ShowRessource.action?ressource.ressourceld=33473
However, this voluntary approach led to unsatisfying results. Most enterprises were not willing to bring voluntary action. Only 2,500 out of 49,000 big companies made any reporting at all. The way of reporting differed widely because of the diversity in international and national standards, but none of them is binding. For example, all big oil and gas spilling companies report on CSR. Russian oil and gas giant Gazprom did report information on environmental affairs and under social responsibility providing an endless list of cultural, scientific, educational and sport sponsorship. And oil platform catastrophes like Deep Water Horizon did not stop oil companies presenting themselves as saviours of the world. Greenwashing instead of serious information.

Following that in 2014 the EU put a CSR directive into force. It introduces a duty to report on CSR for certain large enterprises that have more than 500 employees. In addition to the annual financial report they have to publish a non-financial statement. It must contain information to the extent necessary for understanding of the undertaking’s development, performance, position and impact of its activity. Impacts to be mentioned are, as a minimum, environmental, social and employee matters, as well as respect for human rights, anti-corruption and bribery matters. Where the undertaking does not pursue policies in relation to one of those matters, they shall provide an explanation for not doing so. Accountants call this comply or explain. Additionally the enterprise must describe its diversity policy applied in relation to the undertaking’s administrative, management and supervisory bodies with regard to aspects such as age, gender, or educational and professional backgrounds.

These statements and descriptions must be open to the public and the companies must be transparent for everyone. The law does not prescribe the publishing outlet. It is for the undertaking to decide whether CRS is reported separately or is included in accounting reports, whether it reports on each company or is summed up in one statement of the trust ownership. The enterprise may use any international or national reporting standard or report by its own method. Furthermore, member states are free to leave more flexibility to companies, when implementing it into national law.

The directive is not what NGOs hoped for, in that:

- The scope reaches only the biggest undertakings, but small and medium enterprises may also have great impact on the environment. A chemical factory with 100 employees causes more pollution than a bank with 1000 employees;

- A long, not exhaustive list of reporting matters leaves it up to the companies which aspects will be mentioned. Some use a language that hides more information than it reveals. Being one of many aspects on this list, environmental issues do not have a prominent status and can be neglected by companies that might have a sinister agenda. But vice versa, human rights NGOs may complain in the same way, regarding that their own subject is only one in a long list;
- The methods and standards of reporting are flexible (no consistency);
- There are no strong instruments for controlling, evaluating and sanctioning CSR reports. The regular accounting auditor or audit firm must only check whether the CSR-information is at all included.

Summing up, the directive is an insufficient first step towards regulating CSR. On the other hand, because of the duty to release CSR information NGOs have the opportunity to check whether a company was acting in a responsible way. Now 18,000 big companies have a duty to report against 2,500 who previously did so voluntarily.

If the civil society actors have access to these reports and are able to comment and criticise them, then the companies might have an adversary. NGOs might blame and shame the greenwashers. A good step for the companies will be to replace trivial marketing-orientated CSR-websites with a set of real socially responsible actions.

The directive is a general step towards abandoning the voluntary reporting which led to highly uneven, incomparable and often publicly unavailable information. And there is a positive example of how the general CSR-directive might be put to work further. In 2013 the EU set up a separate reporting duty for companies in the mining and logging industries in developing countries where corruption and bribery can be rife. Those companies now have to submit annual country specific reports on payments made to the governments. In the future similar binding rules may be introduced for other industrial sectors or might be applied universally.

In general, the 2014 CSR-directive gives EU members states a free hand to add additional requirements. As an example, in 2015 the German Ministry for Justice and Consumer Protection issued a policy for implementing the directive into German accounting law. Initially the ministry argued for transferring only the EU minimum requirements, the usual so called 1:1 implementation. But the policy also suggested adding customer affairs and customer privacy to the list of issues.

Unfortunately it does not install NGOs as legal watchdogs to safeguard the reporting outcomes. In some competition or consumer cases certain NGOs can complain if a company acts in breach of the rules. These rights have proven to be a necessary control instrument by civil society. The UNECE Aarhus convention from 1998 imposes on public authorities obligations regarding access to information, and public participation and access to justice. Why shouldn’t it be transferred to include civil society rights against companies?
Companies are obliged to release CSR-reports. NGOs in Russia and in the EU can start to watch for CSR-reports in their respective country. To be comparable they should agree on a common industry branch, such as the energy industry. Secondly, they should agree on report criteria: does the enterprise use it for comprehensive information about certain environmental aspect, or as a marketing tool or for greenwashing pollution? Finally, it should be discussed how NGOs can use this information to take action for improving the company’s environmental impact.
Ksenia Mikhailova, Environmental Rights Centre Bellona, St Petersburg: We discussed opportunities for cooperation between environmental NGOs. We have two concrete ideas. The first possibility is sharing our experience of how to get information on the ecological profile of particular companies. My colleague Oldag Gaspar suggested we discuss ways to acquire such information and how to use it. Because the legal regulations of our countries are similar, despite different legal frameworks, concrete methodologies in this area would be of interest to both Russian and German NGOs.

Oldag Gaspar, Germanwatch, Berlin: The main challenge is to find a topic equally interesting to both Western and Russian parties. In order to marry the capacities of organisations that do not at first glance appear to have anything in common, we have to offer them an instrument that is already working efficiently in another country. Sweden, for example, is very transparent when it comes to dissemination of information, including that provided by the government. Almost everything is published on the internet. Providing training for colleagues in other countries on such instruments and practices would be of interest to many European and Russian partners alike. Direct contact with colleagues would also be beneficial.

Franziska Sperfeld, Independent Institute for Environmental Issues (UfU), Berlin: To a large extent, the legal framework regulating access to information on environmental issues, and civic participation in environmental protection and court access, is identical in Russia and the European Union and in accordance with the Aarhus Convention. This is reflected, for example, in the Environmental Democracy Index, established by the World Resources Institute. But at the end of the day it is not the wording of a law that matters, but its practice and application. It would be interesting to compare particular procedures in situ. Initially seminars could be organised for activists, lawyers and experts from different countries to share their practical experiences and opinions on how they assess the efficacy of civic participation in environmental issues. Even at this stage, I would envisage some interesting discussions, on the assumption that procedures of developing civil initiatives and formats of discussion differ widely, depending on a country’s culture. Later, similar procedures of civic participation could be identified and their qualitative and cultural features assessed. This also might involve visiting other countries to be able to scrutinise the question more accurately.

Christian Schrader, University of Applied Sciences, Fulda: Actually, this corresponds very well with the topic of my article. I wrote that reports provided by big companies according to the corporate social responsibility directive often fail to contain necessary
information on the ecological aspects of their operation. In fact, it is often rather the opposite and information of such kind is absent. For this reason I think it would also be useful to analyse such reports at international meetings and in seminars.

Ksenia Mikhailova: By the way, on an international level some NGOs are able to request information from foreign governments in case of a threat of transborder pollution. Being familiar with certain procedures and understanding them in detail can be very helpful and relevant.

Oldag Gaspar: The next step could be the promotion of government lobbying: how to lobby effectively in order to have an impact on the development of the legal framework and to get information on the lobby work, on source pollution, factories, or construction projects.

Ksenia Mikhailova: The second project is a joint participation in educational projects: so-called moot courts are simulated court trials modelling a comprehensive legal process. In Germany, the methodology of moot courts for law students is highly developed; it also exists in Russia, but is less developed. We had the idea of organising such a moot court on international environmental law. Probably, the procedure should be based on the European Court of Human Rights. There are procedures on the level of the Court of Justice of the European Communities, but for Russia they are not particularly relevant. Moot courts on environmental cases at ECtHR level could be useful for students and also interesting for German NGOs. The Environmental Human Rights Centre, Bellona, which organises the “Eco-Lawyer” competitions for law students could contribute to organising such a moot court from the Russian side. This could be very beneficial for international cooperation. The teams would have to be international, and in preparing the process young lawyers and law students specialising in environmental law would have to work together.

Christian Schrader: In Germany moot courts are organised as a national competition, with teams from different universities meeting in court on a federal level.

I think this is a good idea. In Germany for example, there are few eco-lawyers working with NGOs. There is concern about the future of this field because of the lack of young experts. Environmental law is a rather specific niche within law studies, and young eco-lawyers need encouragement in practising law for common welfare and environmental protection. Moot courts on environmental law would be a good opportunity for young lawyers to establish contact with colleagues who can help them later in their professional lives. In many moot court trials legislations of other countries are applied. Young professionals would be able to assist each other with regard to a particular question and to give advice concerning respective court decisions. This would be extremely useful.
Ksenia Mikhailova: But there is also more to it. Currently we do not have comprehensive, systematically arranged information on precedents in the ECtHR in the Russian language. ECtHR Environmental law precedents are not in the public domain, it is difficult to find any detailed information. Even from a technical point of view, the search for such cases in the European Court’s database is challenging – they get lost in the mass of cases primarily dedicated to privacy protection. It would be good to generalise the ECtHR practice on environmental cases to make it easier for Russian lawyers to refer to this practice at the Supreme Court of Russia.

Initiatives and recommendations for 2016-17

- Review and compare public access to ecological information in Russia and the EU. Based on the findings, provide recommendations for better access
- Create a methodology to be followed by NGOs in requesting information from government authorities and corporations
- Review the content of required company reports on corporate social responsibility (CSR) with regard to the full disclosure of ecological information
- Conduct training sessions on environmental law advocacy for colleagues from different countries
- Organise a series of the ECtHR-based international moot courts for law students from Russia and the EU
- Review the ECtHR’s case-law in environmental cases for use by domestic courts. Publish a summary of findings, prepare and offer workshops/webinars based on this information
Marital rape: Why “no” does not always mean no. Women’s struggle to reform the German Criminal Code

Birgit Laubach
Elbarlament (Berlin)

“If he beats you, it means he loves you.” How do we change the attitudes towards domestic violence victims in Russia?

Natalia Golosnova
Women’s Lawyer (Yekaterinburg)

Discussion: Initiatives for the future
Marital rape: Why “no” does not always mean no. Women’s struggle to reform the German Criminal Code

People react with surprise when they learn that marital rape become a punishable offence in Germany only in 1998. The right to sexual self-determination was introduced into criminal law in 1973, in response to demands by the women’s movement. But even in 1983 male MPs in the German Bundestag laughed out loud as Green party MP Waltraud Schoppe gave an unprecedented speech on sexism and violence towards women.

1 The German newspaper Die Tageszeitung wrote about a laughing male mob in the Bundestag.
But in 1997 an inter-parliamentary group statement was adopted in parliament on changing the law, an initiative that had been led by female MPs. It followed demonstrations, protests and numerous proposals from women’s organisations, including those running emergency hotlines for victims of domestic abuse, women’s refuges, the German Women Lawyers Association, the National Council of German Women’s Organisations and many other NGOs. The draft law declared marital rape a crime; it stipulated that taking advantage of a defenceless victim, completely in an abuser’s control was also a crime; and it extended the scope of the section to cover the rape of men.

Has the situation for women improved since then? Is it now understood that a woman’s “no” always means no?

Statistics on rape

In Germany, there are few other crimes punished as rarely as rape – although it is one of the most common kinds of violence against women: in Germany (on average) every three minutes a woman is raped. Many victims suffer for their entire lives. But offenders are punished very rarely, although the readiness to report rapes to the police is much higher than it was 20 years ago.

This is confirmed by a 2014 study by the Criminological Research Institute of Lower Saxony. The study shows that in 1994 in Germany, some 22% of reported rapes led to a criminal conviction, whereas in 2012 the number of convictions amounted to only 8%. In 1994, in 30% of cases where there was a conviction, the attacker was unknown to the victim before the crime; in 2012 this was true in only 18% of such cases. Reported cases of violence against women, girls and children by family members rose from 7.4% to almost 28% in the same period. Yet today, the estimated number of unreported rapes is still high. This can be explained by a victim’s fear of her abuser, a feeling of shame, or the assumption that the victim will not be believed.

In 2013, 46,793 crimes against sexual self-determination were reported in Germany, among them 7,408 cases of rape or severe sexual assault. Analyses of estimated unreported cases assume that in each year there are 160,000 instances of rape; of the 8,000 that are reported, only 1,000 prosecutions lead to conviction.

“In Germany, there are few other crimes punished as rarely as rape – although it is one of the most common kinds of violence against women.”
Legislation on rape and legal practice

The elements of rape are determined by Section 177 of the German Criminal Code. In order for Section 177 to apply, it is not enough for the victim to say “no”. The law implies that the offender does not only disregard the victim’s will, but also uses or threatens to use violence or takes advantage of a situation in which the victim is powerless.

The highest German court, the Federal Court of Justice, considers duress a key factor in the act when interpreting Section 177 of the Criminal Code.

There was a representative case of forced anal intercourse between husband and wife, during which the wife explicitly and repeatedly said “no”, and cried in pain. The Federal Court of Justice refused the action, denied conviction and referred the case back to the regional court. This decision stated that the “elements of the crime according to Section 177, paragraph 1, of the Criminal Code (determine), that the victim is in a position in which she has no effective means of defence or self-defence and therefore is subjected to sexual violence, conducted under duress”\(^4\). The wife in this case had refrained from defending herself because of the fear of being beaten and out of concern for her children who were sleeping in the next room.

However, the courts find that a victim is unable to defend herself only when “under an objective ex-ante consideration, she has no opportunity to oppose the possible violent actions from the offender, to flee the situation or to get the help of others, (...) a perception of being unable to defend oneself is not sufficient.”

Thus, the subjective perception of the person affected is significant only if it corresponds to the objective situation. In the named court decision, the woman’s stated fear of being beaten was found to be her subjective perception. It was not proved that this fear was objectively justified. According to the Federal Court of Justice, the regional court would have had to clarify whether the wife could have received the support of her neighbours after calling for it. This case is not isolated, and reflects the regular approach by the Federal Court of Justice\(^5\).

Based on this court practice, non-governmental organisations have been pointing out for years that there is a gap in the protection of victims who say “no”, but refrain from self-defence – for example, through fear. These cases are plentiful. Offenders who expose their victims “only” to psychological violence, are often either not prosecuted or are convicted under Section 240 of the Criminal Code, which implies a much milder punishment than Section 177.

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\(^4\) Federal Court of Justice, decision of 20/3/2012, 4 StR 561/11; Federal Court of Justice, decision of July 4, 2007, 4 StR 345/06.

\(^5\) The conviction of a police officer for sexual assault was overturned because an objective situation of defencelessness was not proved. The police officer threatened a female migrant with measures regarding the immigration law if she did not tolerate sexual actions. Federal Court of Justice, decision of November 17, 2011, 3 StR 359/11.
International law and the necessity for reforms

Federal Court of Justice decision-making does not correspond to the practice of the European Court of Human Rights, which in its fundamental judgment of 2003 found that the German legislation and court practice on rape violates Articles 3 and 8 of the ECHR. This involved a Bulgarian complainant, who was raped twice at the age of 14, although she explicitly refused the sexual intercourse, cried during the offence and repeatedly made clear that she did not consent. In interpreting the legislation and court practice in the signatory states of the European Convention, the ECHR found that the victim could not be required to show physical resistance to the attack\(^6\). According to the German Federal Court, any judgment of the European Court of Human Rights is binding.

On May 11, 2011, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) was passed, and came into force on August 1, 2013 after being ratified by 13 states. This Convention contains binding legal norms to protect women against violence and obliges the signatory states to take wide preventive measures and to offer protection and support to victims. In addition, it obliges the states to evaluate the efficiency of the measures taken. Twenty-three states signed the Convention, including Germany. But Germany has not yet ratified it, because Article 36 of the Convention\(^7\) calls upon the signatory states to penalise non-consensual sexual behaviour.

The women’s rights organisation Terre des Femmes, the German Women Lawyers Association, women’s refuges, the Berlin Initiative against Violence against Women, the German Institute for Human Rights and many other women’s NGOs have called for the amendment of Section 177 of the German Criminal Code, to bring it in line with the international law.

This demand is supported by the Working Group on Legal Issues of the CDU/CSU group in the Bundestag and the Committee of Social Democratic Women of the SPD.

Terre des Femmes conducted a public petition campaign aimed at reforming the criminal law (Section 177 of the Criminal Code) and providing psychological and social support to victims during legal proceedings, which was signed by almost 30,000 people. On May 7, 2014 the signatures were submitted to the Federal Ministry of Justice with the

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\(^6\) ECtHR, decision of December 4, 2005, complaint No. 39272/98 M.C./Bulgaria.

\(^7\) “Article 36 – Sexual violence, including rape:

1 Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised:
   a) Engaging in non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object;
   b) Engaging in other non-consensual acts of a sexual nature with a person;
   c) Causing another person to engage in non-consensual acts of a sexual nature with a third person.

2 Consent must be given voluntarily as the result of the person's free will assessed in the context of the surrounding circumstances. (…)"
demand that the minister implement all international agreements in the announced reform of the law governing sexual offences, particularly the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). In addition, it is deemed crucial to support victims taking legal action, including by giving victims the right to psychological and social support during legal proceedings; extending measures to retain evidence – anonymously and independently of the official investigation; improving training for the police, public prosecutors and courts; and providing better conditions for filing incidental claims.

In 2014, the Federal Ministry of Justice presented a draft bill on amending the Criminal Code to reflect the European demands pertaining to the law governing sexual offences, in order to ratify the Istanbul Convention. This draft bill, however, did not provide for any amendment of Section 177 of the Criminal Code.

The German Women Lawyers Association said: “It is no longer comprehensible that the legislator differentiates in the applicable law, which, on the one hand, makes sexual assault accompanied by violence or the threat of endangering the life or health of the victim punishable according to Section 177 of the Criminal Code, but, on the other hand, even in the case of massive psychological violence, refers to Section 240, Paragraph 1 of the Criminal Code and sentences offenders only to a fine or rather short-term imprisonment (...). As long as the law continues to exist in today’s version, it indicates to potential offenders that the legal right of sexual self-determination does not have to be respected fundamentally and unconditionally, as it is the case, for instance, with property, but that there is a certain leeway, and that it can be worthwhile to exhaust it.”

The protests of women’s rights organisations led to a new draft bill of the Federal Ministry of Justice On the Improvement of the Protection from Sexual Self-determination. Furthermore, the Green party’s parliamentary group presented its own draft bill On the improvement of the protection against sexual violence and rape.

Women’s organisations have already achieved a lot. Their persistent commitment, including scientific and legal expert assessments, campaigns and initiatives, supported by practical assistance by emergency hotlines and women’s refuges, has changed a lot in Germany in recent decades, and not only in terms of culture. The statute of the International Criminal Court, the CEDAW and the Istanbul Convention are good examples of how women have networked on the European and international level. The expansion of
women's refuges and initiatives providing emergency hotlines for victims in Germany as well as the fundamental reform of Section 177 in 1998 were achieved thanks to the tireless efforts of many women. The campaign of German women’s organisations, effective for two years now, will lead to a further reform of Section 177 of the Criminal Code in this parliamentary term. It is long overdue.
Domestic violence has always been an acute issue in Russia. However, it is only recently that it has become the subject of an increasingly broad debate attracting growing public attention. For many years there was no public rejection of violence against women in families; moreover, Russian proverbs show a rather positive attitude to violence, as in: “If he beats you, he loves you.”

At its core domestic violence is an expression of dominance of one family member over another, with the aim of keeping power and control over the weaker individual as a compensation for unsatisfied...
psychological needs. As a rule, it is accompanied by psychological and sexual violence. It creates an unbearable psychological environment within the family, which makes it extremely hard for victims to escape the problem by themselves.

Russian attitudes towards domestic violence are very conservative. Activities by our organisation provide proof of this. For instance, female activists of the Female Lawyer organisation hand out leaflets at protest marches and other public events in support of victims of domestic and sexual violence. When they speak to passers-by, they find that a great number of women face violence from their partners, and that they take it as a given because they do not wish to make the issue public, nor do they see a way of changing the situation. They do not know whom to contact nor do they believe that authorities can help them.

Both relevant surveys and communications with international colleagues have shown that this problem is not specifically a Russian one. However, Russian authorities do very little to protect women against domestic violence or to improve the general standing of women.

MP Elena Mizulina, Head of the State Duma Committee for Family, Women and Children, declared that Russia did not need a specific law prohibiting domestic violence, arguing: “The Criminal Code already includes 68 criminal offences for violence against members of the family.” A public project on family policy, drafted by the State Duma Committee for Youth Affairs, also focuses on conservative family policy (as in, the state should not interfere into the family affairs). It goes without saying that this paper does not mention a ban on domestic violence or that any violation of sexual integrity of an individual is unacceptable.

According to the official data, almost every fourth family in Russia experiences violence.²

There is a popular belief that domestic violence happens only in vulnerable families, with well-educated and well-to-do couples not experiencing this problem. But research data shows that 61.6% of vulnerable families and 38.4% of well-off families in Russia face domestic violence.³ Here, lower-income families with a background of poor education mostly show issues related to alcoholism and physical violence. Better-educated families facing financial constraints are more often prone to economical and psychological violence (sophisticated manipulative behaviour, etc.). The main issues with domestic violence in higher-income families are mostly of physical and sexual nature.

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1 See: http://tass.ru/obschestvo/2112692
2 Ministry of Internal Affairs statistics for 2008 report 40% of all violent crimes happens in families. Published on the MIA website on January 24, 2008.
In vulnerable families, the violence issue has a greater chance of being exposed, as such families are more likely to be attended by social workers or custodial services, e.g. in relation to a child’s behaviour. Domestic homicide also tends to be committed more frequently within marginalised families. Such stories often appear in the media, in reports with pictures and personal stories.

**Legal regulation and situation on the ground**

Our organisation Female Lawyer faces a number of problems when working with women who have suffered domestic violence.

A key issue is the lack of crisis centres. International standards recommend one shelter for each 100,000 of the population.

In Moscow there are only three for a population approaching 15 million people; in Yekaterinburg with its 2 million citizens there is only one crisis centre. The official response to an inquiry shows that there are only 10 beds for the temporary accommodation of women and children in a metropolitan area in Yekaterinburg. This number is extremely low. Victims need psychological recovery programmes, social housing schemes, protection programmes for those at risk or threat of murder, mechanism of compensations for damage, and additional programmes for children who have witnessed violence within their families.

There are some state and non-profit organisations in Russia focusing on helping domestic violence victims, but not enough: fewer than 0.5% of all social care institutions are dealing with this issue. At the same time, social care institutions are being “optimised”, which means the closing of shelters and shutting down of emergency hotlines. Most state institutions can provide help only to those officially registered as citizens in the town or region in question, leaving unregistered people with nowhere to go. Some crisis stations only accept victims referred by the local social care department. As a result, such people are left on their own at the highest point in need – directly after experiencing violence. In this situation they can seek shelter only at privately run crisis centres.

Moreover, there is no adequate legislation in this area in Russia. In most countries, Domestic Violence Prevention Acts have been issued and applied successfully. Currently, 123 countries have laws and legal instruments aimed at fighting violence within families, whereas some countries have also introduced specific legislation regarding marital rape (US, Australia). Some countries have adopted more-complex laws on violence against
women including an array of legal protection measures. All former Soviet states – Ukraine, Kyrgyzstan, Moldova, Georgia, etc., apart from Russia and Armenia – have also adopted legislation against domestic violence.

In the United States with its well-established system of measures against domestic violence, including preventive activities, about 3,000 females die each year. In Russia, this number is three or four times larger, although Russia’s population is half that of the US.

International legal practice is to consider how the act of violence was committed, not the nature of the relationship between the victim and her abuser. Moreover, domestic abuse by the husband is a serious threat to the health and life of a woman because she often has to continue sharing accommodation with him even after divorce or during the criminal investigation.

Among the main measures introduced internationally to help for those facing domestic violence are crisis and rehabilitation centres as well as shelters where the victims can spend the night and have a meal or stay for a longer period. Another measure available abroad but lacking in Russia is the possibility to file for protection order. In some countries an order can be issued to the feuding parties to isolate them from each other and thus save lives. To the contrary in Russia, the practice is to encourage the couple to find an amicable solution in court, which does not always work. It can also happen that during the course of the proceedings a woman withdraws her complaint and puts an end to the investigation.

"The police often use this reason to refuse to register complaints, with women pressing charges and then refusing to go through with the prosecution, for different reasons."

The police often use this reason to refuse to register complaints, with women pressing charges and then refusing to go through with the prosecution, for different reasons. Often it is because of public pressure or even the pressure applied by the perpetrator. If a woman continues to live with her abuser, for instance, for the sake of the children, having a convicted criminal for a partner or husband casts a shadow on other areas of life (taking on certain professional positions, negative credit history, etc.). In making such a decision, a woman sacrifices the protection of her personal rights. And the law does not allow the police to continue their investigation or to provide protection against the wishes of the victim.
Preventing the problem

Prevention is a crucial aspect in resolving any problem. Yet domestic violence prevention is not a top priority at the moment. Responsible officers at local police stations face an immense amount of work and do not always know vulnerable families in their districts. Often prevention work is conducted by NGOs, which explain why domestic violence is unacceptable in their conversations with teenagers and adults.

Legal regulation and the introduction of specific and additional mechanisms would help to solve this problem, at least partly. Establishing a so-called protective order could be an example here.

By using violence the offender forces their partner either to leave home or to continue enduring abuse. The essence of a protective order is that the victim of domestic violence does not have to leave home for this reason. It requires coordinated efforts of the judges and court bailiffs who have to control the execution of the order. A survey conducted by the National Institute of Justice (US) has shown\(^4\) that a protective order is an important tool of protection. Half of the respondents said there were no new abuse incidents under the order. The survey has also revealed that the use of such orders helps to reduce both individual pressures (e.g. the anxiety decreases) and costs for the public (as with rehabilitation expenses). Introducing such a procedure in Russia would help to reduce the number of criminal cases and solve the problems associated with public opinion.

Crisis centres could be helpful for solving the security issues and with regards to protecting women from violence. Some problem areas are already emerging here; these need our attention to improve the situation. First, the quality of legal help is very low. Staff legal advisors working in such centres are more focused on the work of the crisis centre rather than providing legal consultation for its female clients. Quite often it is because of the staff’s lack of experience but, more importantly, there is a lack of understanding within the state authorities that legal protection of females is desperately needed.

Such crisis centres in Russia are also not well protected in terms of physical security. Anyone can enter them, as opposed to the shelters in Western countries where security is a top priority and it is nearly impossible for the domestic abuser to intrude. It is international practice that such shelters have to be established close to the local police station, which is also important.

A complex approach to establishing a nationwide system for the protection of women from domestic abuse would require improving police work, raising their awareness, introducing experts on the topic to staff, as they do it in other countries, whilst also using

the media to inform people of where they can seek help and whom to address. Despite the low number of special shelters for female victims of domestic abuse, local police officers frequently do not know the centres exist and that women could be directed there. There is no information at police stations about such places, although human rights NGOs regularly provide police stations with such information with flyers and leaflets.

The veil of silence over the topic of domestic violence in the media also contributes to the offenders’ sense of impunity. They know that the victim will not approach the police because the complaint will most probably not be registered, which enables the perpetrators to carry out further abuse.

The issue of domestic violence is international in scale, so women all over the world come together to solve this problem. Recently, The Black Dot campaign\(^5\) was launched by a group of female activists from Ireland. Its main aim is to attract attention to the victim in need. Women without an opportunity to speak openly about their problem with domestic abuse are encouraged to draw a black dot on their hands which serves as a signal that the help and attention of relevant services is needed. Within a very short time over 32,000 people worldwide have followed this campaign, but it has also been criticised for potentially doing more harm than good.\(^6\)

Another example of excellent work of the special rescue service is a recent event where an American woman from Florida taken hostage by her partner, asked him to allow her to order a pizza on the phone and called the rescue services instead. The officer on the phone asked some questions, quickly realised that she was in danger and sent police officers to the address. This course of action helped the woman to escape the beatings that had lasted for several days.\(^7\) These are vivid examples which show how knowing who to ask for help on the one hand and high competency of the officer on the other, can save lives.

Happily, there have been an increasing number of public debates on this matter in Russia in recent times; more female NGOs are emerging with a focus on education and advice in this area. But it will be hard to move forward without the participation of the state, without launching more special centres and learning more about international experience.

The ratification of the Istanbul Convention (Council of Europe Convention on preventing and combating violence against women and domestic violence, issued on May 11, 2011, signed by 38 states, ratified by 18 states)\(^8\) is also still an open issue. If Russia signs

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5 See: http://marketium.ru/chernaja-tochka-1/
8 See: http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?CL=ENG&NT=210
in to this Convention, it would have to take on the obligation to establish the minimum standards on preventing domestic violence, protecting the victim and securing the criminal prosecution of offenders. The Convention has also established the GREVIO control mechanism to monitor its implementation by the parties.

It is clear that if Russia wishes to ratify the Convention, it would need to introduce specific legislation and assign extra budget funds; moreover, new institutions and law enforcement bodies need to be created. The courts, prosecution and police need to work appropriately, in cooperation with the local, regional and federal authorities in this area.

Unfortunately, it is highly unlikely that there will soon be a law in Russia on prevention of domestic violence and protection of individuals suffering domestic abuse. People tend to talk about the law against domestic violence along with another hot topic – sexual harassment – once a year only, in the wake of March 8, International Women’s Day. The topic of female rights protection takes centre stage and the legislators talk about how much they have achieved in terms of female protection. But it is not true. The Human Rights Council has submitted a draft Federal Law on prevention of domestic abuse to the President of the Russian Federation, but it has not yet been introduced to the State Duma.
Natalia Golosnova, Women’s Lawyer, Yekaterinburg: At Women’s Lawyer we work on women’s issues – domestic violence, the protection of women’s rights, and equal opportunities for men and women. One of our aims is to improve the legal basis in this area. It would be very helpful for us to have an exchange of experiences and a comparison of the relevant legislation in force elsewhere. A comparative table could outline the laws of different countries in terms of domestic violence and sexual harassment. Additionally, it would be useful to exchange practical skills – for example, with a study trip to crisis centres in various countries – in order to understand how these centres work in Russia and Europe.

Sabine Overkämping, German Women Lawyers Association, Berlin: On behalf of the German and the European Women Lawyers Associations, I would suggest we work on the issue of gender equality. Gender equality and equal opportunities on supervisory and managing boards of companies have been on the agenda for a long time, both in Germany and other member states of the European Union, but this has led to very little positive change so far. We think it is high time we achieved such changes. As there appears to be a similar situation in Russia, civil society cooperation in this area seems worthwhile. Our campaign “Women Shareholders Demand Gender Equality”, which we ran first in Germany and then with colleagues in other EU countries, shows that a set of tools can help to increase female representation in responsible business positions (at management level and below). It would be interesting to know if the situation in Russia is comparable, and, if so, how specific indicators are measured, and what contribution is made by civil society. An exchange of information on the different approaches could, in the context of a master class, lead to further action, including the proposal of new effective tools.

Initiatives and recommendations for 2016-17

- Conduct a comparative review of legislation on women’s rights in Russia and the EU countries, and offer recommendations
- Conduct a master class “Women lawyers from Russia and the EU demand gender equality” to discuss the situation of women in senior executive positions in the EU and Russia. Compare different legal mechanisms, such as quotas, independent commitments, corporate social responsibility, and others
Antigone is an Italian association for the rights and guarantees in the criminal justice system acting since the 1980s. Its members are mainly judges, prison workers, scholars, parliamentarians, teachers and citizens who for various reasons are interested in criminal justice. In particular Antigone promotes processing and debates on the Italian model of criminal law and procedure and its evolution; collects and disseminates information about prison life; is responsible for the preparation of draft laws and the definition of possible lines of amendatory proposals being approved; promotes awareness campaigns related to the development of legal culture. In November 2015 Antigone has applied for membership at the EU-Russia Civil Society Forum. www.associazioneantigone.it

Environmental Rights Centre BELLONA has been working in Russia for the protection of citizens’ rights since 1998. In 2006 a juridical helpdesk for citizens and NGO’s was opened. The lawyers provide legal help for free: consultation, drawing up applications, complaints, requests and questions to federal and governmental bodies. „BELLONA“ provides legal and informational help to citizens and environmental activists and every year leads numerous legal cases that have an important social resonance. Since May 2012 Bellona is a member of the EU-Russia Civil Society Forum. http://bellona.org

The Bulgarian Center for Not-for-Profit Law (BCNL) was founded in July 2001. It’s mission is to provide support for the drafting and implementation of legislation and policies aiming to advance civil society, civil participation and good governance in Bulgaria. The main goals include: support for the development and establishment of a favorable legal and policy environment conducive to an independent civil society, including Bulgarian NGOs; facilitate an improved cooperation between the state and the NGOs and the actual and active civil participation in decision making processes. www.bcnl.org
The Commonwealth Analytical Centre for Public Policy was established in January 2006. The “Commonwealth” NGO supports gifted individuals, particularly children and young people, in developing their potential in social sciences and humanities, politics, and education; engages in educational and cultural activities and promotes human rights; supports nongovernmental organisations, movements, programs and initiatives which provide social assistance to persons with disabilities, war veterans, ex-servicemen and former political prisoners, helping them adapt to a new socio-economic environment and use their potential for human rights focused reform; and engages in charitable activities. Since 2014 Commonwealth is a member of the EU-Russia Civil Society Forum.


The German Women Lawyers Association (djb) was established in 1948. Its members work as attorneys, court justices, in policy positions, public administration, politics and business. The membership is open to every woman currently studying or who has studied law, economics or business, regardless if she is active in her profession. The association is primarily concerned with how the law affects women, children and the aged. From the very beginning, it has been its foremost goal to bring about equality and equal opportunities for women, be it in society, professional life or the family.

www.djb.de

elbarlament was founded during 2013 and is based in Berlin. It is an independent, non-partisan and impartial organisation providing technical assistance, expertise and research to support parliaments, assemblies, governments, administrations and civil society in developing their full potential in order to contribute to good governance, the rule of law and the prosperity of the people they represent through strong, open and effective legislatures as well as other parliamentary instruments and parliamentary driven processes.

http://elbarlament.org
The Hungarian Helsinki Committee (HHC) was established in 1989. It started acting on a permanent basis in 1994-1995. Since then, the organisation has been analysing and – if justified – criticising legislation and legal practice and making efforts to influence the legislative process to ensure that domestic law fully respects the principles of human rights. The HHC is providing legal assistance to those whose human rights have been violated by the public authorities who are responsible for ensuring the exercise of human rights.

http://helsinki.hu

Following the motto “Observing, Analysing, Acting”, Germanwatch has been actively promoting global equity and the preservation of livelihoods since 1991. In doing so, we focus on the politics and economics of the North with their worldwide consequences. The situation of marginalised people in the South is the starting point of our work. Together with our members and supporters as well as with other actors in civil society we intend to represent a strong lobby for sustainable development. We endeavour to approach our aims by advocating fair trade relations, responsible financial markets, compliance with human rights, and the prevention of dangerous climate change. Since March 2011 Germanwatch is a member of the EU-Russia Civil Society Forum.

www.germanwatch.org

Since its establishment in 2007 the Centre for Civil Analysis and Independent Research (Grani Center) Foundation has been supporting socially oriented nonprofit organisations in different types of civil activity, including participation in development and implementation of policies and evaluation of activity of government authority and local government bodies, organizational and managerial development of nonprofit organisations, and effective interaction of nonprofit organisations with bodies of executive power in modernisation projects. Special attention is given to development of citizen self-organized groups’ potential in finding solutions to local problems. Since January 2011 the Grani Center is a member of the EU-Russia Civil Society Forum.

www.grany-center.org
The regional public organisation **Man and Law**, based in the Mari El Republic, is working since 1999. The main vector of the organisation is aimed at promoting respect for human rights by government authorities: police, prosecutors, health workers, social protection and other public bodies. In case of detecting violations of human rights, experts of the department of public investigations of the organisation „Man and Law” render full qualified legal aid to victims. Since May 2011 „Man and Law” is a member of the EU-Russia Civil Society Forum.

www.manandlaw.info

**Pontis Foundation** was established in 1997 in Slovakia. It supports corporate philanthropy, corporate responsibility and is active in development cooperation. Through the projects in the field of democratisation and development abroad, the foundation supports civil society e.g. in Belarus. In 2010 the foundation began implementation of a project aimed at improving the computer literacy of teachers and students in southeast Kenya. Pontis Foundation promotes foreign policy of the Slovak Republic and the European Union, based on democratic values such as respect for human rights and solidarity. Since March 2011 Pontis Foundation is a member of the EU-Russia Civil Society Forum.

http://www.nadaciapontis.sk

**The Third Sector Lawyers’ Club** is an association of lawyers and attorneys working for non-profit organisations. The club is an independent, non-governmental professional association. It offers legal support to non-profit non-governmental organisations and to individuals and groups working to establish such organisations. The club also contributes to the ongoing analysis of compliance with the right to freedom of association, collects data on violations affecting non-profit organisations, and prepares analytical materials on changes in the law and enforcement practices. Since April 2008, the Club has launched a federal helpline offering pro bono legal advice to NGOs, 8-800-3333-068 (calls only from Russia).

http://www.hrrcenter.ru/
Sverdlovsk Regional Public Organisation “Women’s lawyer” was founded in 2002 with the aim to protect women’s and family rights as well as to provide free legal assistance to women in difficult life situations, e.g. victims of sexual and domestic violence. In addition, the organisation supports non-profit organisations in matters of registration, preparation and submission of reports to regulatory authorities. Furthermore, “Women’s Lawyer” provides support of audit supervisory authorities (Ministry of Justice, Tax Inspectorate, Prosecutor’s office, etc.). Since 2014 „Women’s lawyer“ is a member of the EU-Russia Civil Society Forum.
http://женскийюрист.рф

The Independent Institute for Environmental Issues UfU (Unabhängiges Institut für Umweltfragen) is both a research institution and a civil society organisation. Since 1990, UfU has initiated and implemented a number of public benefit research projects, activities and structures to mobilize civic engagement and improve environmental protection. Today, UfU is implementing projects in the following key areas: climate protection & environmental education, environmental law & civic participation, resource management & environmental communication.
www.ufu.de

Transparency International – R is a center for anti-corruption research in Russia since 1999. It has joined Transparency International in October 2000. The primary goal is to create an integrated national anti-corruption system capable to meet three main challenges: shape anticorruption ideology and civic sense of justice; formalize civil control and public access to information concerning work of state structures; help to raise efficiency of current anticorruption measures. Since March 2011 Transparency International – R is a member of the EU-Russia Civil Society Forum.
http://www.transparency.org.ru/