

**STRUCTURAL INEQUALITY IN THE THIRD SECTOR:
HOW LAW AND LEGISLATIVE DRAFTS PRODUCE, SUPPORT
AND ORGANIZE HIERARCHICAL SYSTEMS AMONG
NON-GOVERNMENTAL ORGANIZATIONS***

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DOI: 10.21684/2412-2343-2016-3-3-117-137

Within the framework of the article the problem of inequality in the Third Sector is defined. The authors tie the production and institutionalization of this inequality with laws that were passed in the sphere of the regulation of non-governmental organizations (NGOs) in recent years as well as with several draft laws. The analysis focuses on the "foreign agent" status. Organizations that receive this status have more obligations and fewer rights in comparison with other NGOs. According to the research, the burden of a foreign agent status can be measured in terms of legal discrimination, but it also may be measured financially. The authors see fit to analyze other existing legal statuses of Russian NGOs, above all the status of an NGO realizing socially valuable projects (SO NGO), and to compare them with the legal status of a "foreign agent" NGO. The analysis shows that foreign agent NGOs and SO NGOs gradually stand at opposite poles of the legal system: the former are synonymous with politically and legally undesirable subjects, whereas the latter step by step become the state-oriented, useful organizations meriting additional support, protection and social, economic and legal benefits.

Keywords: third sector; NGOs; foreign agent; socially oriented NGO; political activity.

* This paper was first presented at the conference "Between the Carrot and the Stick: Emerging Needs and Forms for Non-State Actors Including NGOs and Informal Organizations in Contemporary Russia," organized by Aleksanteri Institute (University of Helsinki, Finland) in collaboration with the Centre for Independent Social Research (St. Petersburg, Russia) in February 2016.

Recommended citation: Anatoly Pronin & Daria Skibo, *Structural Inequality in the Third Sector: How Law and Legislative Drafts Produce, Support and Organize Hierarchical Systems among Non-Governmental Organizations*, 3(3) BRICS Law Journal 117–137 (2016).

1. Introduction and Context

The term “foreign agents law” is used to describe the set of amendments to the statutory acts regulating the activities of non-profit organizations (NPOs) on the territory of the Russian Federation that were passed in the summer of 2012.¹ Only one non-profit organization² that operated on Russian territory entered the Federal Ministry of Justice list of foreign agents voluntarily. In practice, then, the law was not having the intended effect. This situation initiated a wave of investigations by prosecutors against organizations that, in the opinion of regulatory agencies, should be added to the list of organizations functioning as foreign agents. In the spring of 2013, investigations took place into more than 300 organizations conducting activities in 67 regions of the Russian Federation.³

Alongside the investigations, the media formed the public image of a foreign agent as something not very different from a “foreign spy.”⁴ The picture was completed by the judicial proceedings against the most politically active (or the most discriminated against) organizations – in Moscow it was the Golos⁵ scandal,

¹ Федеральный закон от 20 июля 2012 г. № 121-ФЗ «О внесении изменений в отдельные законодательные акты Российской Федерации в части регулирования деятельности некоммерческих организаций, выполняющих функции иностранного агента», Собрание законодательства РФ, 2012, № 30, ст. 4172 [Federal law No. 121-FZ of July 20, 2012. On Amendments to Particular Statutory Acts of the Russian Federation with Regard to the Regulation of Activities of NGOs Functioning as Foreign Agents, Legislation Bulletin of the Russian Federation, 2012, No. 30, Art. 4172].

² The non-commercial partnership *Sodeystviye razvitiyu konkurentsii v stranakh SNG* entered the list of non-profit organizations performing the functions of a foreign agent on June 27, 2013 on a voluntary basis. This NGO was established by *Federal Antimonopoly Service of the RF* in 2009. The appearance of the first volunteers in the registry caused a massive public outcry.

³ There are no official statistics in this sphere. The data provided here is derived from the project *ClosedSociety* ((Mar. 31, 2016), available at <http://closedociety.org/data/checks>).

⁴ About the negative connotation see *Zastavit' stat' "inostrannym agentom"*, comments from Alexej Kudrin, *RadioSvoboda* (Jan. 2, 2014), available at <http://www.svoboda.org/content/article/25215790.html>; Lyudmila Alekseyeva, *"Inostranny agent" – shpion i predatel*, comments from Ludmila Alexeeva, *Finam* (Nov. 21, 2014), available at <http://finam.info/news/lyudmila-alekseeva-inostranniy-agent-shpion-i-predatel/>. A public opinion poll conducted in July 2012 showed that 64% of respondents are against the participation of foreign-funded non-profit organizations in the public and political life of Russia. Press release No. 2071 *Inostrannye dengi dlya rossiyskikh NKO: obshchestvennaya otsenka*, *WCIOM* (Mar. 31, 2016), available at <http://wciom.ru/index.php?id=459&uid=112925>.

⁵ In April 2013, Golos was fined 300,000 rubles. In addition, the head of the organization, Lilia Shibanova, was fined 100,000 rubles. In the summer of 2013, the court dismissed the complaint by the organization over its inclusion in the registry of foreign agents. In the autumn of 2013, the director of Golos

in St. Petersburg it was the trials against the antidiscrimination center Memorial⁶ and the LGBT organizations Vyhod⁷ and Bok o bok.⁸ When the State Duma passed the “foreign agents law” it was regarded by the representatives of the third sector⁹ as a repressive measure against the work of non-profit organizations. The general anxiety felt by non-governmental organization (NGO) employees related to the question of whether they could maintain the flow of their work unhampered and preserve the reputation of their organization rather than to the complication of the daily activities of, and the furnishing of statements by, their organization. As expressed by Svetlana Gannushkina, the “effect on our activities takes on an increasingly negative character.”¹⁰

The wave of investigations by public prosecutors that followed the law’s enactment was connected with dozens of infringements of the law perpetrated by representatives of the executive power. Prosecutors’ investigations in contravention of procedural rules were a topic of heated discussion. After the unscheduled inspections in the spring of 2013, several NPOs received remedial action orders or advisements on the inadmissibility of the federal law infringement; however, in the majority of cases public prosecutors’ offices did not publish any documents as a result of their investigative activities. Organizations whose activities were qualified as political, and that consequently violated federal legislation on NPOs, were added to the “foreign agents” list. Administrative fines were imposed on organizations, the activities of several NPOs were suppressed and some of them decided to begin the process of liquidation.

attempted to liquidate the organization in order to avoid further prosecution as a foreign agent. On September 1, 2014, the Moscow City Court quashed the decision of the Presnensky District Court on the administrative liability of Golos and Lilia Shibanova. However, Golos is still listed in the registry of foreign agents.

⁶ The prosecutor’s investigation found that the activities of Memorial corresponded to the status of a foreign agent (March 2013); the organization’s leaders refused to voluntarily register the organization in the previously mentioned status. The Admiralteysky Court of St. Petersburg appealed the prosecutor’s demand to recognize Memorial as a foreign agent (December 2013), and in April 2014 the decision was confirmed by the St. Petersburg City Court ((Mar. 31, 2016), available at <http://www.spb.aif.ru/society/people/1147690>). Currently, ADC Memorial carries out its activities without registration as a legal entity (<http://adcmemorial.org/>).

⁷ The ANO for Social and Legal Services LGBT organization Vyhod was abolished on 24 July 2014, according to the information from the official website of the Russian Federal Tax Service (<http://egrul.nalog.ru>).

⁸ The organization was liquidated by its creators. According to an interview with Gulya Sultanova, the decision was made in order to avoid prosecution in the future ((Mar. 31, 2016), available at http://upogau.org/ru/inform/ourview/ourview_980.html).

⁹ The “third sector” is a term that describes organizations which are not part of the public or private sector. It encompasses non-governmental and non-profit-making organizations or associations, and it includes charities, voluntary and community groups, cooperatives, etc.

¹⁰ *Chto proiskhodit s NKO: Glava komiteta “Grazhdanskoye sodeystviye” Svetlana Gannushkina o prokurorskoj proverke nekommercheskikh organizatsiy v Rossii*, Moskovskie Novosti, March 21, 2013 (Nov. 3, 2016), available at <http://www.mn.ru/society/20130321/340545531.html>.

At the moment there are 147 non-profit organizations on the list of non-profit organizations functioning as foreign agents.¹¹

The adoption on July 22, 2012 of legislative amendments to the legal acts regulating the activities of non-profit organizations and the subsequent enactment of these acts marked a new stage in the development of the third sector in Russia.

The institution of the socially oriented non-profit organization (SO NPO) that had existed since 2010 was also reconsidered by the Russian government during the affair over “foreign agents.” Projects on the approval of SO NPOs began to appear towards the end of 2011. That is why we offer the proposition that two types of NPOs were constructed – “maleficent” spies receiving money from foreign states and institutional funds and carrying out activities that accord with their interests, on the one hand, and beneficent, useful NPOs providing support to the most socially unprotected groups of society and supported with money from the Russian state, on the other.

The work of NPOs – organizations covering a wide functional spectrum including educational institutions, research centers, philanthropic funds, human rights structures and religious, cultural and sports organizations, etc. – is regulated by the Russian Administrative Code, the Civil Code and the special Law on Non-Profit Organizations.¹² Depending on the type of legal entity and the sphere of its activities, NPOs may be regulated by different structures functioning within the executive branch of power (the Ministry of Justice, the Ministry of Education, and others). The amendments to the law in the summer of 2012 led to the creation of a new status (i.e., category) of non-profit organizations – the status of an NPO functioning as a foreign agent – and introduced a new order of regulation of NPO activities.

When speaking of the Russian “foreign agents law,” first of all it is necessary to explain the status of an NPO functioning as a foreign agent. The law established two obligatory criteria to receive the status of a foreign agent. An NPO performing the functions of a foreign agent is a Russian non-profit organization that, firstly, receives foreign money and other property from foreign states, their state authorities, international and foreign organizations, foreign citizens, stateless persons or their authorized agents from Russian legal persons receiving money or other property from the mentioned sources (excluding companies limited by shares and their branch organizations with the participation of the Russian state),¹³ and, secondly, participates, particularly in the interests of foreign sources, in political activities carried out on the territory of the Russian Federation.¹⁴

¹¹ The official website of the Ministry of Justice of the Russian Federation (Nov. 3, 2016), available at <http://unro.minjust.ru/NKOForeignAgent.aspx>.

¹² Федеральный закон от 12 января 1996 г. № 7-ФЗ «О некоммерческих организациях», Собрание законодательства РФ, 1996, № 3, ст. 145 [Federal law No. 7-FZ of January 12, 1996. On NGOs, Legislation Bulletin of the Russian Federation, 1996, No. 3, Art. 145].

¹³ *Id.* Art. 2, para. 6.

¹⁴ *Id.*

Article 2 of Federal law No. 7 gives the definition of political activity carried out on the territory of the Russian Federation:

[A n]on-profit organization (excluding political parties) is recognized as participating in political activities realized on the territory of the Russian Federation if, without connection with aims and issues mentioned in [the] organization's constituent documents, it participates (in particular by financing) in [the] organization and realization of political actions with the aim to influence the state authority's decision making[,] oriented at the alteration of their policy, as well as [the] formation of the public opinion with the same aims.¹⁵

According to the law, some types of organizations that may not be recognized as political when carrying out their activities include, among others, organizations of science, sport, ecology, culture, art, health-care, social care and the protection of motherhood and childhood.

Thereafter, the status of a foreign agent is tied to the level of financial dependence on foreign sources and also to the type of activities carried out, but activities without connection to the content of the constituent documents. Organs of the Russian executive branch of power (the public prosecutor's office, the Ministry of Justice) have the authority to qualify an NPO's activities as political.

The main public debate played out around the content of the concept "political activities" and around the wide-ranging possibilities as to the concept's interpretation due to the wording of the law. In the course of the unscheduled investigative activities of 2013, public prosecutors made inquiries not only into "political organizations" but also into human rights centers, religious movements and educational, scientific and other institutions whose activities could not be called political according to the law.

A few organizations took the position of active defense of their rights and appealed the prosecutors' decisions to the courts of general jurisdiction all the way to the Supreme Court, but none of them had significant success. After obtaining a decision from the courts of general jurisdiction, they petitioned the Constitutional Court, where their petitions were accepted for hearing as one single case. The hearings resulted in the legal basis for the status of a "foreign agent," that is, the Decision of the Constitutional Court of the Russian Federation No. 10-P of April 8, 2014.¹⁶

¹⁵ Federal law on NGOs, *supra* note 12, Art. 2.

¹⁶ Постановление Конституционного Суда РФ от 8 апреля 2014 г. № 10-П «По делу о проверке конституционности положений пункта 6 статьи 2 и пункта 7 статьи 32 Федерального закона «О некоммерческих организациях», части шестой статьи 29 Федерального закона «Об общественных объединениях» и части 1 статьи 19.34 Кодекса Российской Федерации об административных правонарушениях в связи с жалобами Уполномоченного по правам человека в Российской Федерации, фонда «Костромской центр поддержки общественных инициатив», граждан Л.Г. Кузьминой, С.М. Смиренского и В.П. Юкечева» [Decision of the Constitutional Court of the Russian Federation No. 10-P of April 8, 2014. On the Case of Verification of the Constitutionality of State-

The Constitutional Court formulated its position by explaining what political activity by an NPO means. This judicial body, responsible for constitutional supervision, set down the legal formula of political activity as “organization and realization of political actions with the aim of exerting influence on the decision making of the state authorities or influencing their policy,” as well as “formation of public opinion” and “formation of public mood with the previously mentioned aims.”¹⁷

It must also be mentioned that the Constitutional Court laid out an approximate listing of the forms of political activities that combine political action with the aim of exerting influence to effect changes in state policy:

[A]long with assemblies, meetings, demonstrations, processions and vigils, political actions may be expressed in electioneering and agitation, in public calls to the state authorities, in expansion of own [i.e., personal or self-serving] appraisals of state authorities decisions and policy (in particular, through the internet), and also in other actions, exhaustive legislative determination of which is impossible.¹⁸

Consequently, each of these activities allows adding an NPO to the list of organizations functioning as foreign agents regardless of the actual aims that govern the actions of the representatives of the organization.

On January 21, 2016, on the online federal portal of draft laws, there appeared the project of Federal law “On the changes of par. 6 of art. 2 of the Federal law ‘On Non-Profit Organizations,’ in Part of Their Political Activities.”¹⁹ The draft law contains a list of forms of political activities. Five out of seven on the list were already mentioned in the Decision of the Constitutional Court.²⁰ The new draft law is supposed to add to

ments, Described in Point 6, Article 2 and in Point 7, Article 32 of the Federal law of the Russian Federation on nongovernmental organizations, in Article 29 of the Federal law of the Russian Federation on Public Associations and in Part 1, Article 19.34 of the Code of the Russian Federation on Administrative Violations (in Connection with Complaints from the Commissioner for Human Rights in the Russian Federation, the Fund “Kostromskoy Tsentr Podderzhki Obshchestvennykh Initsiativ” and from the Citizens L.G. Kuzminoy, S.M. Smirenskogo and V.P. Yukecheva) (Mar. 31, 2016), available at <http://doc.krsf.ru/decision/KSRFDecision158063.pdf>.

¹⁷ *Id.* para. 3.1.

¹⁸ *Id.* para. 6.

¹⁹ Проект федерального закона «О внесении изменений в пункт 6 статьи 2 Федерального закона «О некоммерческих организациях» в части уточнения понятия политической деятельности» [Draft Bill on the Amendments to para. 6, Art. 2 of the Federal law on NGOs in Part of Improvement of Legislation on the Specification Criteria of Political Activities] (Apr. 1, 2016), available at <https://regulation.gov.ru/projects#npa=45477>.

²⁰ According to the Decision of the Constitutional Court of the Russian Federation No. 10-P of April 8, 2014 the previously defined forms of political activity include: 1) participation in organizing and holding public events in the form of meetings, rallies, demonstrations, marches or picketing or various combinations of these forms, and the organization and conduct of public discussions, performances;

the definition of political activity the conducting and publishing of public opinion polls as well as other sociological research (as an activity aimed at the formation of public views and feelings). Moreover, henceforth the involvement of citizens in one of the mentioned spheres is also considered political activity.

The affair over the “foreign agents law” did not end at the moment of NPOs’ voluntarily joining “Assistance to the development of competition in the Commonwealth of Independent States” nor with the prosecutors’ investigations in the spring of 2013. Furthermore, it continued with the series of amendments to the law and legal initiatives, complicating the legal status of NPOs functioning as foreign agents and transforming the entire third sector in Russia. And as we can see, the timeline of amendments is still running. After public anti-corruption testimony on February 28, 2016, Draft Law 04/13/01-16/00045477²¹ was delivered to the Russian State Duma.²² Owing to this draft, the Russian legislator is going to reconfirm the criteria of political activities of NGOs stated in the Decision of the Constitutional Court of the Russian Federation No. 10-P of April 8, 2014²³ (mentioned above). At the time this article was written, no hearings were being held in the State Duma, and the draft law was being actively discussed by civil society institutions.²⁴ Shortly, we will outline how that draft law encountered criticism, even from a regional Ombudsman.

2. The Idea and the Aim of the Research

We see the problem in the quick transformation of the third sector caused by the adoption and implementation of the “foreign agents law” and other legislative initiatives regulating this sphere. The aim of our article is to demonstrate the existence of structural inequality in the third sector and to show how statutory acts and their drafts produce and maintain this inequality.

Here we present an outline of the analysis and the main theses that are postulated.

2) participation in activities aimed at obtaining a specific result in the elections, the referendum, to observe the elections, the referendum, in the formation of election commissions, referendum commissions in political parties; 3) public appeal to the state authorities, local self-government, their officials as well as other actions affecting their activities, including those aimed at the adoption, amendment, repeal of laws or other legal acts; 4) dissemination of information, including the use of modern information technologies, assessments of decisions taken by public authorities and their policies; 5) implementation of activities aimed at the formation of social and political views and convictions, including through publication and public opinion polls or other sociological research.

²¹ See the official website of the Government of the Russian Federation (Mar. 31, 2016), available at <https://regulation.gov.ru/projects#npa=45477>.

²² See documents of public testimony on the site of the Presidential Council on the Development of Civil Society and Human Rights (Mar. 31, 2016), available at <http://president-sovet.ru/documents/read/432/>.

²³ See *supra* note 20.

²⁴ See *supra* note 22.

Our analysis proceeds from the starting point that structural inequality inside the third sector exists and is produced by the legal rules, legal discourse and law enforcement in this sphere. It is natural that non-profit organizations work in different professional spheres (tied to education, scientific projects in culture, sport, human rights and so on), but also that initially they all have unequal resources. The idea consists in the fact that before special legal statuses were assigned, NPOs had been more or less equal in the eyes of the state structures, and that their internal life, which along with their other daily activities includes the search for financial resources, had not been defined by their political status. In practice, it had been possible to call successful those NPOs that had formed the most stable and strongest support networks, had been competitive and professional in their own spheres, and had possessed greater material and informational resources and abilities for strategic management and development. New legal initiatives (in particular the “foreign agents law”) not only complicated the work of certain NPOs but also made the mere existence of these organizations dangerous. In this way, we think that inside the third sector there has appeared a new type of inequality that is connected with the legal status of an NPO (i.e., whether an organization is in the list of foreign agents or not) that is anchored in statuses developed in the legal sphere.

When speaking of such statuses, first of all we have in mind organizations-as-foreign agents, and we suppose that the creation of such a label not only arouses public outcry, but also is underlain by political aims: control over the civil society and people’s associations, and also construction of the image of the internal enemy who prevents the quick and harmonious development of Russia. “Foreign agent” is not the only type of NGO that is at the top of the current agenda. In recent years there have appeared socially oriented NPOs that receive financial support from the Federal Ministry of Economic Development and also from the local budgets of sub-federal entities. This status, already mentioned, and other statuses given to NGOs provide not only the special order of functioning and special rules of activities, but also special social practices and strategies of survival. In this manner we proceed from the assumption that changes in legislation have led to changes in the structure of the third sector in Russia: there appeared “black sheep” organizations and ‘showcase’ organizations, regardless of the activities they carry out.

Unfortunately, we have examined the “foreign agent” status in far more detail than the rest of the NPO types, which is why generally we will talk about why “foreign agents” are not equal to other organizations and how this inequality creates conditions for discrimination and prejudice against these NPOs. This discrimination which appeared on the stage with the adoption of the law spreads in the process of its implementation. For this reason we are also interested in the practices of enforcement of the “foreign agents law” by the state authorities, and particularly by the courts. We argue that law enforcement practice reproduces and maintains the discriminatory status of foreign agents and that it complicates and undermines their core activities.

Finally, we insist that consolidation of such a status in statutory acts, as well as its realization at the level of the executive branch of power, creates consequences for the NPOs that go beyond the legal sphere. Organizations seen in the capacity of foreign agents (whether potential or real) that come to the attention of the authorities are under the necessity to invent survival strategies tied to restructuring (the creation of a new legal person or network of organizations) or going out of business. Fears are raised that paralyze the professional activities and strategic planning of the organization's work, as well as the making of important decisions related to resources, projects, partnerships and development. In the organizations, the requirement of self-censorship and total control over statements and every kind of public activity that could be deemed "political" or "unwelcome," or even "harmful," is formed. It is not uncommon to find that some clients, partners and contractors are not prepared to take upon themselves the risks associated with having the status of being in contact with "foreign agents."

As the method of research, we have chosen, primarily, documents analysis (statutory acts, draft laws, official commentaries, law enforcement acts and court decisions), interviews with the administrative staff of "foreign agent" NPOs and also with employees of these organizations, as well as interviews with experts in the field (first of all with lawyers representing the interests of NPOs in the courts). As an additional method we used participant observation, which was available owing to an employment relationship with a foreign agent NPO.

We are aware of the methodological limitations of our work, as we understand that our attention was concentrated on the legal status of a foreign agent and practices connected with this type of NPO. So, in this case the fate of SO NGO is less clear to us (in the part where they go beyond the analyses of statutory acts) and are of a hypothetical character. We expect that our theses can be confirmed or rejected during further discussion and future development of the third sector in Russia.

3. To Be a Foreign Agent

3.1. Political Rights and the Political Sphere

The legal status of a foreign agent differs from other types of non-profit organizations by the additional number of duties and by the absence of symmetrical rights. Carrying out the activities that fit under the criteria of the "foreign agent" definition without the voluntary inclusion into the list of organizations functioning as foreign agents is a violation of an administrative law.²⁵ The measure of liability

²⁵ Кодекс Российской Федерации об административных правонарушениях от 30 декабря 2001 г. № 195-ФЗ, Собрание законодательства РФ, 2002, № 1 (ч. 1), ст. 1 [Code of the Russian Federation on Administrative Violations No. 195-FZ of December 30, 2001, Legislation Bulletin of the Russian Federation, 2002, No. 1 (part I), Art. 1], at Art. 19.34, para. 1.

in the article is the administrative fine at the sum of US\$1,454–\$4,363²⁶ for the administrative staff of the NGO and \$4,363–\$7,272 for the NGO as a legal entity.

Below, we will provide a comprehensive list of duties and bans existing in Russian statutory acts for non-profit organizations operating with the status of foreign agents.

Most under threat of fine is the duty of organizations to provide all published and disseminated information by them with a mark indicating their origin is from a foreign agent.²⁷ We underline that this applies to any informational product coming from the organization with the status of a foreign agent (books, booklets, notifications, programs and material of events, as well as all the information that is disseminated via the media or the Internet). Violation of this rule results in administrative fine in accordance with KOAP RF.²⁸

In addition, an annual report by organizations functioning in the status of a foreign agent is subject to obligatory audit.²⁹ A financial audit is applied to the set of documents that a foreign agent provides each year to the Ministry of Justice, and the procedure is financed from the budget of the organization, so it is an additional financial charge for the NPO.³⁰

When speaking of other material that foreign agents are to provide to the Ministry of Justice, one must mention the statements on current activities and on the organization's administrative staff (once every six months), documents relating to the purposes of financial resources and other property expenditures, in particular from foreign sources (quarterly). We point out the general rule that NPOs which have yearly income less than \$43,633 are not obliged to undergo a financial audit and provide a formalized statement to the Ministry of Justice; customary NGOs have an obligation to publish on the Internet a note on the operational activities of the organization in the following year.³¹ Report documentation by foreign agents must be entered into special forms,³² which contain more than fifty pages, that are validated according to

²⁶ Hereafter, all monetary amounts are calculated in U.S. dollars at the exchange rate of The Central Bank of the Russian Federation as of March 30, 2016. According to the data, which is published daily on the Central Bank's official website ((Mar. 31, 2016), available at <http://www.cbr.ru>), the price of \$1 on that date was 68.7549 rubles.

²⁷ Federal law on NGOs, *supra* note 12, Art. 24, para. 1.

²⁸ Code of the Russian Federation on Administrative Violations, Art. 19.34, para. 2.

²⁹ Federal law on NGOs, *supra* note 12, Art. 32, para. 1.

³⁰ See Федеральный закон от 6 декабря 2011 г. № 402-ФЗ «О бухгалтерском учете», Собрание законодательства РФ, 2011, № 50, ст. 7344 [Federal law No. 402-FZ of December 6, 2011. On Business Accounting, Legislation Bulletin of the Russian Federation, 2011, No. 50, Art. 7344], at Art. 6, para. 5.

³¹ Federal law on NGOs, *supra* note 12, Art. 32, para. 3.

³² For more information about rules on foreign agent NGO's accountability to the Ministry of Justice of the Russian Federation, see Приказ Министерства юстиции РФ от 16 апреля 2013 г. № 50 «О форме и сроках представления в Министерство юстиции Российской Федерации отчетности некоммерческих организаций, выполняющих функции иностранного агента» [Order of the

statutory act by the Ministry of Justice. Failure to provide documentation as specified or to provide it on time or presentation of incomplete or modified information may lead to administrative fine of the organization in accordance with Article 19.7.5-2 KOAP RF (the sum of the fine is \$145–\$436 for the administrative staff of the organization and \$1,454–\$4,363 for the legal entity). The Russian Criminal Code was updated with the addition of Article 330.1 creating a new crime with criminal liability for “fraudulent evasion of the duties required by Russian legislation for the organizations performing the functions of a foreign agent.”³³ The criteria for the “fraud” are not described in the article; it is also not clear exactly which activities provide the formal elements for a definition of the crime. Nevertheless, violation of the article may expose a person to criminal fine at the sum of \$4,363 or at a rate of salary payments for a period of two years, or compulsory community service for a period of 480 hours, or correctional labor, or deprivation of liberty for a period up to two years.

Foreign agents have an obligation to publish every six months, in the media or on the Internet, information on the NPO’s activities (in fact this means that the organization is obliged to provide information to the same extent of thoroughness as in the statement to the Ministry of Justice). Other NPOs are obliged to provide such information only once a year.³⁴

The law requires scheduled inspections for foreign agents, whereas, in general, inspections do not exist for NPOs. However, the law forbids more than one inspection a year.³⁵ Still, unscheduled inspections for foreign agents are aggravated by two additional (to the general procedural) rules: they are carried out (1) spontaneously and (2) without notice. Similar rules exist only for organizations suspected of extremism (paras. 4 and 5, Art. 32 of the Federal law “On Non-Profit Organizations”). The legal reasons for carrying out such an inspection may be limited to a report to the Ministry of Justice that a certain NPO implements activities performing the functions of a foreign agent. Notification may come from any state authority, person or organization, and may even be anonymous.

It is forbidden for foreign agents to participate in any capacity in elections or referendums at any level if the election or referendum takes place in Russia.³⁶ The

Ministry of Justice of the Russian Federation No. 50 of April 16, 2013. On Blanks and Time Frames of Accounting for an NGO’s Functioning as a Foreign Agent] (Mar. 31, 2016), available at <https://rg.ru/2013/05/14/nko-dok.html>.

³³ Уголовный кодекс Российской Федерации от 13 июня 1996 г. № 63-ФЗ, Собрание законодательства РФ, 1996, № 25, ст. 2954 [Criminal Code of the Russian Federation No. 63-FZ of June 13, 1996, Legislation Bulletin of the Russian Federation, 1996, No. 25, Art. 2954], at Art. 330.1.

³⁴ Federal law on NGOs, *supra* note 12, Art. 32, paras. 2 and 3.

³⁵ *Id.* Art. 32, paras. 4 and 5.

³⁶ For more information about guarantees of electoral rights and the right to participate in a referendum, see Федеральный закон от 12 июня 2002 г. № 67-ФЗ «Об основных гарантиях избирательных прав и права на участие в референдуме граждан Российской Федерации», Собрание законодательства

only legal form of participation is in the status of a foreign observer. The proscription against participating in elections is duplicated in the law on the election of the State Duma deputies³⁷ and also in the law on the election of the Russian President.³⁸ When speaking of other forms of political activities, it must be mentioned that it is forbidden for the NPOs to perform the functions of foreign agents in financing political parties and their regional authorities.³⁹ It is forbidden for political parties to sign any contracts with foreign agents.⁴⁰

In addition to excessive duties (formalized statements, financial audits, etc.), foreign agents are subject to legal rules of a “reputational” character. The Ministry of Justice provides an annual statement to the State Duma on the activities of NPOs performing the functions of a foreign agent, including information on their participation in political activities on the territory of the Russian Federation, on their financial resources and money received from abroad, and also information about the results of state control over such NPOs.⁴¹ The media is obliged to inform Roskomnadzor about every fact of receiving money from NPOs functioning as foreign agents.⁴²

At the same time, the Constitutional Court of the Russian Federation denies the existence of any negative characteristics of the “foreign agent” legal status in Russian legislation, consequently, descriptive characteristics of discrimination also do not exist:

ПФ, 2002, № 24, ст. 2253 [Federal law No. 67-FZ of June 12, 2002. On the General Guarantees of Electoral Rights and the Right of Citizens to Participate in a Referendum of the Russian Federation, Legislation Bulletin of the Russian Federation, 2002, No. 24, Art. 2253], at Art. 3, para. 6.

³⁷ For more information about elections to the State Duma of the Russian Federation, see Федеральный закон от 18 мая 2005 г. № 51-ФЗ «О выборах депутатов Государственной Думы Федерального Собрания Российской Федерации», Собрание законодательства РФ, 2005, № 21, ст. 1919 [Federal law No. 51-FZ of May 18, 2005. On Elections to the State Duma of the Russian Federation, Legislation Bulletin of the Russian Federation, 2005, No. 21, Art. 1919].

³⁸ For more information about the election of the President of the Russian Federation, see Федеральный закон от 10 января 2003 г. № 19-ФЗ «О выборах Президента Российской Федерации», Собрание законодательства РФ, 2003, № 2, ст. 171 [Federal law No. 19-FZ of January 10, 2003. On the Election of the President of the Russian Federation, Legislation Bulletin of the Russian Federation, 2003, No. 2, Art. 171].

³⁹ For more information about political parties, see Федеральный закон от 11 июля 2001 г. № 95-ФЗ «О политических партиях», Собрание законодательства РФ, 2001, № 29, ст. 2950 [Federal law No. 95-FZ of July 11, 2001. On Political Parties, Legislation Bulletin of the Russian Federation, 2001, No. 29, Art. 2950], at Art. 30, para. 3, sec. “N”.

⁴⁰ *Id.* Art. 31, para. 4.1, sec. “D”.

⁴¹ Federal law on NGOs, *supra* note 12, Art. 32, para 16.

⁴² For more information about the media, see Закон РФ от 27 декабря 1991 г. № 2124-1 «О средствах массовой информации», Ведомости Съезда народных депутатов Российской Федерации и Верховного Совета Российской Федерации, 1992, № 7, ст. 300 [Law of the Russian Federation No. 2124-1 of December 27, 1991. On the Mass Media, Gazette of the Congress of People’s Deputies of the Russian Federation and the Supreme Soviet of the Russian Federation, 1992, No. 7, Art. 300], at Art. 19.32.

[a]cknowledgement of certain Russian non-profit organizations performing the functions of a foreign agent is objectively based on the fact that they are really involved in such a system of activities where they receive money and property from foreign sources, the law is intended to identify them as a special subject of political activities functioning on the Russian territory. This is not meant to indicate danger coming from such organizations to the authorities of the Russian state or institutions of Russian civil society, even if such NPOs implement interests of foreign resources, that is why efforts to find negative contexts in the wording “foreign agent” rooted in obsolete stereotypes of the Soviet times and do not have any constitutional law grounds.⁴³

In 2014, the Ministry of Justice became eligible to include NPOs on the list of organizations performing the functions of a foreign agent through the pre-trial process.⁴⁴ As well, it was forbidden for the NPOs to use state symbols of Russia, including “The State Flag of Russia, The State Coat of Arms of Russia, The State Anthem of Russia, flags, coats of arms of federative entities, foreign states and religious symbols.”⁴⁵ The procedure for removal from the list was also described in the law at that time (in the event an NPO returned foreign money to the grant holder and did not receive any other foreign money for one year).

Legal initiatives existing in the sphere allow to predict the complication of the situation around the “foreign agent” status and inside the third sector on the whole.⁴⁶ On the level of federative entities, there appear NPOs (i.e., foreign agents) that are deprived of the ability of their administrative staff to participate in local elections.⁴⁷

⁴³ Decision No. 10-P of April 8, 2014, *supra* note 16.

⁴⁴ According to the Federal law No. 147-FZ of June 4, 2014 “On the Amendments to Article 32 of the Federal law on NGOs” (Legislation Bulletin of the Russian Federation, 2014, No. 23, Art. 2932) [Федеральный закон от 4 июня 2014 г. № 147-ФЗ «О внесении изменений в статью 32 Федерального закона «О некоммерческих организациях»», Собрание законодательства РФ, 2014, № 23, ст. 2932] amendments allow executive authorities to force NGOs to register as organizations performing the functions of a foreign agent.

⁴⁵ Федеральный закон от 21 июля 2014 г. № 236-ФЗ «О внесении изменений в отдельные законодательные акты Российской Федерации по вопросам символики некоммерческих организаций», Собрание законодательства РФ, 2014, № 30 (ч. I), ст. 4237 [Federal Law No. 236-FZ of July 21, 2014. On Amendments to Particular Statutory Acts of the Russian Federation on Questions of Symbols of NGOs, Legislation Bulletin of the Russian Federation, 2014, No. 30 (part I), Art. 4237].

⁴⁶ Проект федерального закона от 25 июля 2014 г. № 00/03-16960/07-17/46-13-4 «О внесении изменений в отдельные законодательные акты Российской Федерации в части совершенствования законодательства о некоммерческих организациях, выполняющих функции иностранного агента» [The Draft Bill No. 00/03-16960/07-17/46-13-4 of July 25, 2014. On the Amendments to Particular Statutory Acts of the Russian Federation on the Improvement of Legislation on NGOs Performing the Functions of Foreign Agents]. For more information about the project, see the website (Mar. 31, 2016), <http://www.regulation.gov.ru/projects#npa=24662>.

⁴⁷ *Zheltaya zvezda dlya “inostrannykh agentov”*, Rosbalt, March 13, 2015 (Mar. 31, 2016), available at <http://www.rosbalt.ru/kaliningrad/2015/03/13/1377614.html>.

This prohibition against participating in elections is quite strict. Regional laws forbid “organizations... performing the functions of foreign agents... [from participating] in any kind of activity in local elections,” and such laws guarantee only one election right for foreign agent NGOs and their representatives – to participate in the special status of foreign (international) elections observer.⁴⁸ In our opinion, such regulation may lead to the limitation of election rights through law enforcement.

The idea to forbid the participation of state and municipal civil servants in the activities of foreign agent NGOs is not new, for in the legal sphere it appeared in July 2014.⁴⁹ According to the draft law, the definition of the word “activity” must be interpreted in the broadest of potential meanings, as it was realized in other legal activities. In March 2015 the project was delivered to the State Duma, but it was rejected on September 23, 2015.⁵⁰

3.2. Discrimination Outside the Legal Sphere

The discrimination against foreign agents exists not only in the legal sphere. Laws and other regulations provide a ground for the emergence of other effects related to a specific understanding of the status of a foreign agent and law enforcement.

We did not conduct a poll into what Russian citizens think about foreign agents, so we provide the results of a survey conducted by the Levada Center. In September 2012 they published a report based on a sociological survey in which they asked 1,600 people what a “foreign agent” means.

The responses of the people describe their distinctly negative attitude towards the concept of a “foreign agent.” Sixty-two percent of respondents perceive the term negatively, believing that it is, first of all “a spy, the representative of special services of other states planted into the country, a scout, acting under cover” (ca. 39%) or a “hidden internal enemy, acting in Russia in the interests of other countries, the fifth column” (ca. 23%).⁵¹

But despite the lack of evidence in the form of data-filled charts and diagrams, we are convinced that “foreign agent” now appears in public discourse with negative connotations (along with ‘fifth column’ and other terms) and is part of the vocabulary

⁴⁸ See, e.g., Закон Калининградской области от 18 марта 2008 г. № 231 «О муниципальных выборах в Калининградской области», Калининградская правда, 2008, № 52 [Law of the Kaliningrad Region No. 231 of March 18, 2008. On Local Elections in the Kaliningrad Region, Kaliningradskaja Pravda, 2008, Art. 52], at Art. 8.

⁴⁹ The Draft Bill No. 00/03-16960/07-17/46-13-4 of July 25, 2014, *supra* note 46.

⁵⁰ Законопроект № 735229-6 «О внесении изменений в отдельные законодательные акты Российской Федерации (об установлении дополнительного ограничения для членов Совета Федерации, депутатов Государственной Думы, государственных гражданских и муниципальных служащих)» [Draft Law No. 735229-6. On Amendments to Particular Statutory Acts of the Russian Federation on the Additional Limitation for Public Servants] (Apr. 3, 2016), available at <http://asozd2.duma.gov.ru/main.nsf/%28Spravka%29?OpenAgent&RN=735229-6>.

⁵¹ Information may be found in the recent research from the Levada Center, see <http://www.levada.ru/>.

of hate that is actively promoted in the media. A new wave of discussions criticizing foreign agents arose after the adoption and official publication of the law on “undesirable organizations.”⁵²

Along with the symbolic effects of carrying the name of a foreign agent, there are very specific effects associated with the investment of time, money and the use of human resources. The writing of additional reports for the Ministry of Justice, copying documents while participating in an unscheduled inspection and litigation (sometimes there are a number of parallel cases against officers of the NGO and against the NGO as a whole, and, consequently, in addition the filing of appeal petitions to a number of authorities) all require the organization to use additional resources and absorb additional costs.

According to a research project conducted by one Russian sociological center that took place in November 2015, we can describe the everyday life of foreign agents in the following way.⁵³

Firstly, the financial costs of the organization increase significantly due to an obligatory financial audit required by the Ministry of Justice. The current average market value of an audit varies from \$436 to \$7,564 (depending on the region and the characteristics of the organization). The average cost of an audit in Russia (according to the study) amounts to \$2,908. Before entering the registry, 80 percent of the organizations did not have to undergo the process of the audit. Researchers estimate that the net revenue of auditors comes out at about \$196,349 per year. At the same time, about 5 percent of audit companies refused to conduct an audit of foreign agents (without offering any explanation).

The so-called “agency report” requires serious efforts on the part of the organizations. According to those who took part in the project, the report requires the participation of a minimum of two employees (even though some NGOs have only two or three employees). These two people waste, as estimated by experts, about 284 working hours, which is 10 percent of their annual work time. If we focus on the average cost of a working hour in Russia (about \$2), an organization spends approximately \$1,064 yearly to work on drawing up a report (including payments

⁵² Федеральный закон от 23 мая 2015 г. № 129-ФЗ «О внесении изменений в отдельные законодательные акты Российской Федерации», Собрание законодательства РФ, 2015, № 21, ст. 2981 [Federal law No. 129-FZ of May 23, 2015. On Amendments to Particular Statutory Acts of the Russian Federation, Legislation Bulletin of the Russian Federation, 2015, No. 21, Art. 2981]. This law postulates that executive branch authorities in coordination with the Ministry of Foreign Affairs of the Russian Federation are able to ban the activity of any foreign organization in Russia. The General Prosecutor has the power to make a decision on this, and an “unwanted organization” will be listed in the special registry. If an “unwanted organization” continues to carry on any kind of activity despite the proscription, it will receive an administrative fine (up to 100,000 rubles) or criminal sanctions (up to 500,000 rubles, or up to 5 years of compulsory labor, or up to 8 years of imprisonment) ((Mar. 31, 2016), available at <http://publication.pravo.gov.ru/Document/View/0001201505230001?index=0&rangeSize=1>).

⁵³ The authors of the research requested that their names and that of the organization not be mentioned, because they feared the consequences that might occur following the publication of their research.

to non-budgetary funds). Altogether, the organizations that at the time of the study were listed in the registry of foreign agents spent about \$89,448 in the previous year on writing the reports.

Not only audit and ministerial reports take a bite out of the budgets of foreign agents. Experts have tried to calculate the costs of litigation, as far as they can be estimated without taking into account the fact that the NGOs contest court decisions not only in regional courts, but also in Moscow (the Ministry of Justice of the Russian Federation locates jurisdiction in the Zamoskvoreckij Municipal Court of Moscow). Fifty percent of the organizations that are in the registry as a result of the court's decision challenge its application. The cost of this to these organizations is about \$5,817 in the form of administrative fees and for the heads and/or representatives of the NGOs at least forty hours in the form of time spent; additionally, the preparations for the court hearings (excluding the cost of lawyers) costs an average of \$2,908.

We cannot ignore the fines that have been imposed on NGOs that did not register as a foreign agent on a voluntary basis. The average fine for non-registration is 320,000 rubles (in reality it varies from \$2,908 to \$13,089. If all organizations that were ordered to pay fines do so, the amount comes to \$450,876.)

4. Socially Oriented Non-Governmental Organizations

New legislation has not only created a new type of actors in the field of non-profit organizations, but also completely redefined the structure of the third sector. Organizations with different statuses have different possibilities not only in the legal sphere, but also in connection with financial resources. Thus, depending on the status of an organization (and, in many respects, its loyalty), government grants are allocated for the development of the non-profit sector and community initiatives.⁵⁴

Socially Oriented Non-Profit Organizations (SONPOs), as the legal status provided for by the Russian law on NGOs, appeared in 2010.⁵⁵ The law itself (par. 2.1, Art. 2)

⁵⁴ For more information, see Распоряжение Президента РФ от 17 января 2014 г. № 11-рп «Об обеспечении в 2014 году государственной поддержки некоммерческих неправительственных организаций, участвующих в развитии институтов гражданского общества, реализующих социально значимые проекты и проекты в сфере защиты прав и свобод человека и гражданина» [Resolution of the President of the Russian Federation No. 11-rp of January 17, 2014. On the Providing of State Support for Non-Profit NGOs Participating in the Development of Civil Society, Implementing Socially Valuable Projects in the Sphere of Civil Rights Protection] (Mar. 31, 2016), available at <http://kremlin.ru/acts/bank/38054>.

⁵⁵ Федеральный закон от 5 апреля 2010 г. № 40-ФЗ «О внесении изменений в отдельные законодательные акты Российской Федерации по вопросу поддержки социально ориентированных некоммерческих организаций», Собрание законодательства РФ, 2010, № 15, ст. 1736 [Federal law No. 40-FZ of April 5, 2010. On Amendments to Particular Statutory Acts of the Russian Federation on the Question of SO NGOs' Support, Legislation Bulletin of the Russian Federation, 2010, No. 15, Art. 1736].

defines socially oriented non-profit organizations as “carrying out activities aimed at solving social problems, development of civil society in the Russian Federation, as well as the activities provided for in Article 31.1 of the law on NGOs.”⁵⁶ State corporations, public companies, associations and political parties are not allowed to receive the status of a socially oriented non-profit organization. A key feature of these organizations is the priority for receiving support from public authorities. The law on NGOs⁵⁷ speaks openly about providing state support to this type of NGOs.

In accordance with Russian legislation, SO NGOs are entitled to receive the following benefits:

- reduced payment of taxes and fees;
- a special procedure for procurement of goods, works and services for state and municipal needs;
- financial support through the granting of subsidies;
- procurement of property from specially created federal, regional and local lists of property free of third-party rights;
- information support through federal, regional and municipal information systems, and information and telecommunications networks;
- consulting support;
- assistance in training and further education of employees and volunteers.⁵⁸

Federal and regional executive branch authorities and also local authorities support socially oriented non-profit organizations and prepare and maintain registries of recipients of the support. The registry contains information about the organization, details of its activities and information about the form, size and duration of the support. The rules on these procedures are defined by an order of the Ministry of Economic Development of the Russian Federation.⁵⁹

The policy of state support for SO NGOs is carried out through budgetary allocations within the framework of national and regional programs. For example, the program “Social Support for Citizens”⁶⁰ (approved in 2014) contains a section titled

⁵⁶ Federal law on NGOs, *supra* note 12, Art. 31.1.

⁵⁷ *Id.* Art. 1, 31.3.

⁵⁸ *Id.*

⁵⁹ Приказ Министерства экономического развития РФ от 17 мая 2011 г. № 223 «О ведении реестров социально ориентированных некоммерческих организаций – получателей поддержки, хранении представленных ими документов и о требованиях к технологическим, программным, лингвистическим, правовым и организационным средствам обеспечения пользования указанными реестрами» [Order of the Ministry of Economic Development and Trade of the Russian Federation No. 223 of May 17, 2011. On the Managing of the List of SO NGOs Receiving Support, on the Holding of Their Reports, on the Technological Requirements to the Programming, Linguistic, Legal and Organizational Resources of the Lists Exploitation] (Mar. 31, 2016), available at http://economy.gov.ru/minrec/activity/sections/SocOrientNoncomOrg/doc20110517_17.

⁶⁰ Постановление Правительства РФ от 15 апреля 2014 г. № 296 «Об утверждении государственной программы Российской Федерации «Социальная поддержка граждан», Собрание законода-

“Strengthening the State Support of Socially Oriented Non-Profit Organizations,” with total financing of \$200,712,967 (for 2016 \$25,307,287 was allocated⁶¹). The goal of this program is to increase the amount and improve the quality of social services provided to citizens by ensuring conditions for the effective operation and development of socially oriented non-profit organizations. As part of the program, the Russian government may allocate direct subsidies to individual organizations. In 2015, the Federal Government allocated \$11,133,751 in direct subsidies to these organizations.⁶² For example, the non-governmental educational institution of higher education “Humanitarian University of Trade Unions” in St. Petersburg received \$538,143. The autonomous non-profit organization “Moscow Patriarchate’s Central Hospital of St. Alexis the Metropolitan of Moscow” was granted \$2,574,361.

In 2011, there was a regional program of support for the SO NPOs in St. Petersburg. The budget of the program amounted to 626 million rubles.⁶³ The lead time for the regional program “Social Support for Citizens,”⁶⁴ containing a sub-program “Improving the Efficiency of the State Support of Socially Oriented Non-Profit Organizations,” is 2015–2020. The budget for the sub-program is \$15,998,859 (in 2016 \$989,020 is planned for allocation to SO NGOs).

тельства РФ, 2014, № 17, ст. 2059 [Regulation of the Government of the Russian Federation No. 296 of April 15, 2014. On Adoption of the State Program “Social Support of Citizens,” Legislation Bulletin of the Russian Federation, 2014, No. 17, Art. 2059].

⁶¹ Федеральный закон от 14 декабря 2015 г. № 359-ФЗ «О федеральном бюджете на 2016 год», Собрание законодательства РФ, 2015, № 51 (часть I, II, III), ст. 7230 [Federal law No. 359-FZ of December 14, 2015. On the State Budget for Year 2016, Legislation Bulletin of the Russian Federation, 2015, No. 51 (parts I, II, III), Art. 7230].

⁶² Распоряжение Правительства РФ от 29 декабря 2014 г. № 2767-р «О распределении субсидий, предоставляемых в 2015 году из федерального бюджета на государственную поддержку отдельных общественных и иных некоммерческих организаций», Собрание законодательства РФ, 2015, № 2, ст. 542 [Resolution of the Government of the Russian Federation No. 2767-r of December 29, 2014. On the Assignment of Grants, Provided from the Federal Budget on State Support of Certain Non-Profit Organizations and Other Types of NGOs, Legislation Bulletin of the Russian Federation, 2015, No. 2, Art. 542].

⁶³ Постановление Правительства Санкт-Петербурга от 21 октября 2011 г. № 1451 «О мерах по поддержке социально ориентированных некоммерческих организаций в Санкт-Петербурге», Реестр нормативных правовых актов Санкт-Петербурга, 2011, № 11908 [Resolution of the Government of St. Petersburg No. 1451 of October 21, 2011. On the Measures of SO NGOs’ Support at St. Petersburg, Registry of the St. Petersburg Statutory Acts, 2011, No. 11908].

⁶⁴ Постановление Правительства Санкт-Петербурга от 23 июня 2014 г. № 497 О государственной программе Санкт-Петербурга «Социальная поддержка граждан в Санкт-Петербурге» на 2015–2020 годы», Реестр нормативных правовых актов Санкт-Петербурга, 2015, № 17819 [Resolution of the Government of St. Petersburg No. 497 of June 23, 2014. On St. Petersburg’s State Program “Social Support of Citizens at St. Petersburg in the Years 2015–2020,” Registry of the St. Petersburg Statutory Acts, 2015, No. 17819].

5. Conclusions

In this article we have tried to explain why in our opinion the amendments to the law on non-profit organizations that have already been adopted, and also those which are still under consideration, produce, organize and maintain inequality within the third sector.

We do not claim that before the adoption of the amendments or before the invention of a new legal formula of “foreign agent” and the legal duties behind this formula there was no inequality within the third sector in Russia. Definitely, it existed: the inequality was provided by the amount of resources (financial, informational, human resources, etc.) and by the mechanisms of tactical and strategic management within a concrete organization. Eventually, the inequality can be interpreted in various ways (as the difference in the positions or as the difference in access to power, etc.). In our work we understand inequality as structural conditions which are rooted within the strict legal framework. These special formulas describing the activities of NPOs are used as an instrument of support for one type of NPOs and as an instrument of control and disqualification for the other types.

In this sense, the most stringent legal framework is the status of a foreign agent. It suggests that an organization registered in the Russian Federation carrying out political activities and receiving funding from any kind of foreign sources is obliged to submit an application for entry in the registry of foreign agents. A failure to register on a voluntary basis requires the penalty of an administrative fine. As the executive authorities have the administrative power to add organizations to the relevant registry of NGOs, we believe that it is a violation of the organizations’ rights. The status of a foreign agent is not only a financial, organizational and professional burden. Contrary to the official position of the Constitutional Court, the label of “foreign agent” shuts organizations out of professional networks and relationships and makes some activities unavailable (for example, it is impossible for staff of the foreign agent organization to participate in the electoral process). This status contains explicit ideological connotations.

These are only a few of the consequences that occur in connection with the status of a foreign agent: refusal to cooperate with them, offensive graffiti on the walls of offices, inclusion in the discourse of hate. Foreign agents constantly have to defend their everyday life and practices. They have to prove that they are not a “public enemy” and not a “fifth column.” They also have to seek new strategies to survive, to avoid prosecution and to find new ways and legal forms of work. The search for a new way of living is another point that is in the background of having the status of a foreign agent. There are two draft laws related to the activities of NGOs that are now at the stage of examination. The area of law which consists of rules on how to be a foreign agent may be characterized as turbulent and rapidly changing. Under these conditions the process of strategic and tactical management within NGOs is

becoming more complicated and unpredictable. Administrators are unable to make decisions under conditions of total uncertainty and an unclear understanding what a “foreign agent” will mean tomorrow. Partners, donors and clients are in the same situation: none of them can be sure that the activities of the organization tomorrow (or in the near future) will not be suspended or completely folded. Unfortunately, the organization’s liquidation carries less cost than the exhausting struggle against the “Leviathan” in the courts. The federal law on “unwanted organizations” adopted under the conditions of constant “adding fuel to the fire” on state television makes life more difficult for NGOs. Currently, there are four foundations in the registry of “unwanted organizations,” and most of them cooperated with NGOs in Russia.⁶⁵

Simultaneously with the formation of the status (and the image) of a foreign agent, there is an attempt to create a type of a “good” NGO. “Socially oriented” NGOs or NGOs implementing socially valuable projects are not new to Russian legislation and the public sphere, but now they are in a process of transformation. For organizations that enter the lists of winners of presidential grants for specific projects and current activities it is possible to receive cash and other rewards. In contrast to the status of a foreign agent, SO NGO do not need to publish additional reports (except, of course, grant reports) or become more “transparent.” These organizations also do not need to undergo audits (only in the event they are registered as a foundation). Additionally, there are different rules regarding unscheduled prosecutorial inspections for SO NGO, and so on. While the status of a foreign agent corresponds to an additional set of duties, SO NGOs have an “extra” set of rights and benefits. Thus the government constructs the image of the “positive” NGOs involved in the implementation of state policy in the form of its agents and the “enemy” NGOs living off the money of foreign funds and engaging in “subversion” on the territory of Russia.

The border between these two statuses is blurred. In fact, it includes two quite subjectively evaluated elements. The first of them, of course, is political loyalty. We have no certainty as to whether SO NGOs engage in political activities. We have no certainty as to whether SO NPOs supporting the official line of policy try to avoid criticizing the government and carry out politically committed activities. The second criterion is the subjective measure of “usability” and “social orientation” of the organization. “Useful” in terms of the law means “supporting vulnerable groups.”

Our main concern is related to the worsening position of the foreign agents. We cannot make any positive prognosis when we analyze existing draft laws and the discourse of hate that continues to be reproduced and broadcast by the media. A third sector that is able to think critically and shape the agenda is dangerous and undesirable for the government. A controlled civil society represented by the so-called loyal SO NGOs or non-profit organizations is the goal of the current state policy.

⁶⁵ The Registry of Non-Profit Organizations Performing the Functions of a Foreign Agent (Mar. 30, 2016), available at <http://minjust.ru/ru/activity/nko/unwanted>.

Understanding the limitations and realizing that our experience with SO NGOs is insufficient to build extensive conclusions, we have focused on understanding the status of the foreign agent. Our analysis has demonstrated that, firstly, the structural inequality within the third sector exists, and it is provided by the law. We believe that there has appeared a new type of inequality and discrimination within the third sector, and the law is the basis for it.

Our second thesis is that the status of a foreign agent is characterized by a small number of rights and a large number of additional duties. We are convinced that the transformation of the legal playing field has led to the birth of organizations that are “black sheep”. The implementation of the law reproduces and supports the discriminatory status of foreign agents and makes their core activities impossible.

Finally, the consolidation of this status in the statutory acts, as well as its implementation at the level of executive authorities, produces consequences for NGOs that go beyond the legal sphere.

With the advent of the new legal status of a foreign agent and the formation of law enforcement around it, Russian law itself has become more chaotic and unpredictable.

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