Abuse of Powers by Prosecutors for the Persecution of **Human Rights Defenders in Russia**

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In April 2013, the Commissioner for Human Rights of the Council of Europe, Nils Muižnieks, wrote in his report on his visit to the Russian Federation that "the prosecutors' office has historically played an important role in the administration of justice in Russia. Its standing vis-à-vis the defense in criminal proceedings and the tendency by judges to support the prosecutor's position are two factors contributing to the 'pronounced prosecutorial bias' in the judicial system" and that "the considerable powers of the Prosecutor's Office related to supervising the observance and application of laws is another issue of concern"[1]. Furthermore, the UN Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, who also visited Russia in April 2013, noted in her report that "the Prosecutor's Office (the prokuratura) is the least reformed institution in the Russian Federation. The Prosecutor's Office is said to exercise excessive prerogative in criminal cases and in its general oversight function"[2].

Unfortunately, the powerful position of the Prosecutor's Office and its wide scope of authority are sometimes not used, as this paper will analyze below, to strengthen the rule of law and protect human rights but to persecute critical voices of government policies, such as independent NGOs and human rights defenders (HRDs).

[1] Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to the Russian Federation, from 3 to 13 April 2013, https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2416108&SecMode=1&DocId=2093492&Usage=2, para. 73-74.

[2] Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul – Addendum – Mission to the Russian Federation (A/HRC/26/32/Add.1), https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/140/44/PDF/G1414044.pdf?OpenElement.

I. The role of prosecutors within the criminal justice system

Since January 2011, the Prosecutor's Office has suffered from an abridged scope of authority because certain crimes were assigned to the new and autonomous Investigative Committee of the Russian Federation. Nevertheless, prosecutors retain a number of important functions within the criminal justice system, such as:

- supervision over the legality of operative and search activities, inquiries and preliminary investigations;
- approval of the conclusion of guilt (the bill of
- indictment) and directing criminal cases to court;
- supporting and pursuing charges on behalf of the State at all stages of criminal proceedings;
- participation in judicial inquiry related to selecting preventive measures (house arrest, pre-trial detention, etc.);
- appealing to higher courts to initiate review of unlawful, unfounded or unjust sentences;
- supervision over the legality of execution of criminal sanctions, as well as actions and
- decisions by administrations of penal bodies and institutions, detention and remand
- facilities;
- participation in judicial inquiry related to changing conditions or relief from punishment, etc.

However, it seems that the prosecution covered up the abuse of powers by law enforcement and investigative bodies in a number of cases against HRDs and civil society activists in recent years, when prosecutors refused to examine their actions properly and review them as illegal despite all the complaints filed to them and appropriate evidence. These relate both to charges brought against HRDs themselves and investigation of incidents of threats received by them, as well as of violent attacks and murders.

Besides, prosecutors may arbitrarily use their powers to persecute civil society activists. This is reflected, for instance, by the case of Evgeny Vitishko, an environmental rights defender from Krasnodar region, who was sentenced to a three-year imprisonment in the prison colony in February 2014 for allegedly damaging a fence that was concealing illegal construction in a protected forested area.

On November 10, 2015, the Kirsanov city court in Tambov region ruled to replace the remainder of Vitishko's sentence with a more lenient form of punishment. The prosecutor taking part in the hearing did not object to this. As a result, he should have been released from prison, but would face restrictions on his freedom of movement, as he was set to remain at his place of permanent residence until the end of his sentence, which is in February 2017. This decision should have come into force on November 21, 2015, on which Vitishko should have been released from prison.

But on November 20, 2015, Vitishko learnt that he would not be released. The prosecutor's office of Tambov region decided to file an appeal against the court's ruling and asked the court to mandate that Vitishko be restricted to staying in Slavyansk-on-Kuban instead of Tuapse, Vitishko's home town, after his release from the prison colony, thereby delaying Vitishko's early release.

On November 23, 2015, Vitishko started a hunger strike to protest against his unlawful detention and made a public statement, criticizing that appeal of the prosecutors' office did not comply with the code of criminal procedure.

On December 3, 2015, the court was expected to hear another appeal on Vitishko's case – the one on granting him parole. However, prosecutors petitioned the court to postpone the hearings till December 25, and Vitishko remained in the colony.

Vitishko was finally released on December 22, 2015 after the prosecutor's appeal against the court's ruling of November 10, 2015, was rejected by the regional court of Tambov.

II. The role of prosecutors outside the criminal justice system: general supervision

In addition to the institution of prosecution, the Russian prosecution service, as against its European counterparts, has traditionally a "general supervisory" function[3]. The federal law "On the Prosecutor's Office in the Russian Federation" rules that "the Prosecutor's Office of the Russian Federation shall be (...) exercising on behalf of the Russian Federation supervision over compliance with the Constitution of the Russian Federation and execution of the laws in force within the territory of the Russian Federation".

According to article 1(2), this entails as follows:

- the supervision over the implementation of laws by the executive branch (except the federal government);
- the legislative branch of the Russian regions (but not the federal parliament); the military; supervisory bodies; heads of commercial and non-commercial organizations;
- monitoring that actions of these bodies comply with the law;
- monitoring the compliance of these bodies with human rights and other freedoms.

In 2005, the law "On the Prosecutor's Office of the Russian Federation" was assessed by the Venice Commission[4]: "The general supervisory function appears as the primary task of the Prosecutor's Office. This approach gives rise to misgivings. Such a broadly defined general supervisory function was a logical component of the system of unity of power and resulted from that system's lack of administrative and constitutional courts and the institution of an ombudsman. The prosecutor therefore combined the functions of different organs within his function of general supervision. The justification for such a broad definition of the role of the Prosecutor's Office vanishes, when other institutions to safeguard the legal order and adherence to civil rights are established. In a democratic law-governed state, protection of the rule of law is the task of independent courts".

The Venice Commission also noted that the law "endows the prosecutor with extremely broad rights" to exercise his supervisory functions. These include the following:

- to enter the premises of any of the bodies over whom supervision is exercised, and to have access to all documents and materials (articles 22 and 27); and
- to require the production of documents, material, and information, to question and require explanations, and carry out reviews (Articles 22 and 27).

[3] Federal law "On the Prosecutor's Office in the Russian Federation" (1992), art. 1(1).

[4] Opinion on the Federal Law on the Prokuratura (Prosecutor's Office) of the Russian Federation (CDL-AD(2005)014). Adopted by the Commission at its 63rd plenary session (Venice, 10-11 June 2005), http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2005)014-e.

Article 22 of the Law states that "officials of the bodies [...] shall be bound to comply immediately with any requests by the prosecutor or his deputy to carry out checks and inspection". Article 6 introduces the principle that all requests by the prosecutor have binding effect and "are subject to unconditional execution". In this context, the Venice Commission underlines that "this once again raises doubts as to whether such powers do not violate the system of balance inherent in the separation of powers, obliterate the division of authority and grant the Prosecutor's Office the rank of an authority above all other bodies. These misgivings are reinforced by the fact that Article 21 of the Law listing the bodies under supervision by the Prosecutor's Office includes, without any differentiation, in addition to public bodies also "governing bodies and heads of commercial and non-commercial organisations".

In its recommendations to the Russian authorities, the Venice Commission referred to the Recommendation 1604 (2003) of the Parliamentary Assembly of the Council of Europe on the role of the public prosecutor's office in a democratic society governed by the rule of law[5], which emphasizes that the various non-penal law responsibilities of prosecutors "give rise to concern as to their compatibility with the Council of Europe's basic principles".

The Venice Commission thus recommended that "a new, comprehensive, politically definitive legal instrument based on different fundamental principles in accordance with democratic norms should be adopted. That would require depriving the Prosecutor's Office of its extensive powers in the area of general supervision which should be taken over by various courts (common courts of law, an administrative court and constitutional court) as well as the ombudsman" and that the approach should be based on the aforementioned Recommendation of the Parliamentary Assembly, suggesting that: "the power and responsibilities of prosecutors are limited to the prosecution of criminal offences and a general role in defending public interest through the criminal-justice system, with separate, appropriately located and effective bodies established to discharge any other function".

Furthermore, in 2012 the Council of Europe's Committee of Ministers in its Recommendation to member States on the role of public prosecutors outside the criminal justice system[6] recommended that "in relation to private legal entities, the public prosecutor should only be able to exercise his or her supervisory role in cases where there are reasonable and objective grounds to believe that the private entity in question is in violation of its legal obligation, including those derived from the application of international human rights treaties", and that "they should exercise their powers independently, transparently and in full accordance with the law".

Unfortunately, these recommendations by the international community have never been implemented by Russian authorities.

Apart from the "general supervisory" function", the prosecutors in Russia are also vested with special supervisory powers in certain areas of law, such as in the field of anti-extremism legislation.

This is reflected by several cases in which the prosecution abused its powers in order to interfere in the activities of HRDs. In 2010, for instance, the author of this article received an official warning of "carrying out extremist activities" from the prosecutor for publishing and disseminating a report on "Xenophobia and discrimination in the Rostov region in 2008". Additionally, the prosecutors of Nizhny Novgorod filed an appeal to

[5] http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17109&lang=en.

[6] https://www.coe.int/t/dghl/standardsetting/cdcj/CDCJ%20Recommendations/CMRec(2012)11E_public%20prosecutors.pdf.

the court in which they requested to classify the monograph "International Tribunal for Chechnya", co-authored by the prominent HRD Stanislav Dmitrievsky, as an "extremist material". Although there were no direct legal consequences for the persons concerned in these cases, the wide media coverage led to significant reputational damage.

But it was during the last three years that the abuse of the "general supervisory" function of the Prosecutor's Office were used against HRDs in Russia.

This was clearly manifested in spring 2013, when the Office of the Prosecutor General launched a massive nationwide campaign of extraordinary (and unannounced) inspections of NGOs that aimed at "forcing them to enter the register of foreign agents". Hundreds of NGOs throughout the country were subjected to these inspections, which were highly invasive and seemed to have the purpose to intimidate these organizations. The campaign was unprecedented in its scale and scope – there has never been such a wide-scale inspection of any legal entities (including not only NGOs, but also commercial companies and state institutions) in the history of modern Russia.

The Prosecutor General in its order of December 27, 2012, no 27-07-2012/14п1861-12в (not published) requested that lower-rank prosecutor's offices, in cooperation with public officers from the Ministry of Justice, the Federal Tax Service, and other agencies, are to conduct inspections of NGOs, particularly those receiving foreign funding and human rights groups.

According to an official report by the Prosecutor General, prosecutors inspected about 1000 NGOs only in the first six months of 2013[7]. The "Closed Society" documented more than 300 NGO inspections during the same period[8]. It found that most of the NGOs targeted by inspections received a certain amount of foreign funding and addressed human rights, environmental protection, government transparency, election monitoring, civic education and religious issues etc. Russian branches of foreign NGOs, such as Human Rights Watch and Amnesty International, were also searched.

On March 2, 2013, the Office of the Prosecutor General published a statement in which it tried to justify its actions. In the statement, it was said that, first, the inspections had been planned in 2012 to examine how NGOs were "implementing the law" in order to "identify positive and negative patterns, difficult issues and ways to resolve them", and, second, that these actions were prompted by "information received" about "banned ultra-nationalist and radical religious organizations"[9]. On April 4, 2013, the Office of the Prosecutor General finally acknowledged that the inspections had been carried out in accordance with the law on "foreign agents" because "the funding [had been] transferred, but in fact no one [had been] registered [as a 'foreign agent']"[10].

In most cases, the inspections were carried out by a team of prosecutors, employees of the Ministry of Justice, and tax officers. Some teams also included officials from the Federal Security Service (FSB), the Ministry of the Interior and its Center for Combatting Extremism, the Federal Migration Service, the fire department, the health department, and other agencies (in total more than 10 state oversight bodies).

The scope of the inspections was far-ranging. In the majority of cases, the Prosecutors' Office representative presented organizations with a notice stating that the inspection would cover

[7] Report by the Prosecutor General to the Council of Federation, 10 July 2013, http://genproc.gov.ru/smi/interview_and_appearences/appearences/83568/.

[8] http://closedsociety.org/analytics/.

[9] http://genproc.gov.ru/smi/news/genproc/news-81834/.

[10] http://ria.ru/incidents/20130404/930940022.html.

the organizations compliance "with current legislation". A document leaked to the media, that provides instructions to local prosecutors' offices on how to conduct inspections, specifically urges them to analyze the sources of foreign funding of NGOs and their involvement in political activities, and any evidence of their involvement in "extremism"[11].

In some cases, the only purpose of these inspections was to intimidate NGOs as the procedures that were carried out resembled rather a police raid than an ordinary inspection. Several organizations claimed that officials thoroughly searched their offices and attempted to probe more intrusively into the offices, such as searching libraries for "extremist" literature and computers. At least one NGO was forced to provide access to emails even though the inspectors had no warrant, while others had their computers seized to allegedly examine them for unlicensed software.

In a number of cases, camera crews from NTV, a television station known for its numerous shows seeking to discredit HRDs, arrived with the prosecutors to film the inspections. It is not clear how NTV learnt about the inspections since the inspections were kept secret. In this context, the Prosecutors' Office justified this action that NTV is just one of the media outlets that are officially accredited with the agency[12].

While the inspectors asked some organizations to register, provide details regarding their funding and taxes, and hand out other financial documents, other inspections were more intrusive. For instance, inspectors asked an NGO in St Petersburg to prove its staff had been vaccinated for smallpox and that the organization has plans for "extinguishing rats and utilizing solid waste"[13].

Another group was told that, among other things, it lacked a diary of emergency drills and failing to measure the air quality in the office work stations[14].

Most inspections lasted for a period of three years. As a result, enormous volumes of paper (in some cases - thousands of pages) had to be copied, stapled, and certified by the organizations' representatives.

The inspections were disruptive and demanding in many cases. In some cases, the inspections lasted for only a few hours, but in other cases they took several days. NGOs also spent much time on responding to follow-up requests in the weeks following the initial inspection.

The prosecutors' inspections as such and the sanctions resulting from them led to numerous trials involving NGOs which, in turn, had a major impact on their work. This led to a significant distraction of human and other resources of these NGOs from their normal activity and, in some cases, it was in fact paralyzed.

According to the data collected by the "Closed Society", about one third of the inspections that were carried out resulted in various sanctions applied by the prosecutor's office or other agencies, and in one quarter of all cases these sanctions directly related to the "foreign agents" law[15] (while others were fined or warned for not observing fire safety requirements and on other grounds).

Overall, the Prosecutor's Office brought administrative charges against at least 8 NGOs (the maximum fine for them was 500000 RUB) and 5 of their directors personally (the maximum fine was 300000 RUB) for not registering the NGO as "foreign agent". Out of these, 4 NGOs and 4

[11] http://static.gazeta.ru/nm2012/docs/zadanie_prokuroru.pdf.

[12] http://www.rbcdaily.ru/society/562949986360386.

[13] http://www.cogita.ru/nko/presledovanie-nko/proverki-v-peterburgskom-obschestve-memorial.

[14] http://www.neva24.ru/a/2013/04/01/Peterburgskie_NKO_gotovjat/.

[15] http://closedsociety.org/analytics/.

directors were found guilty (later the judgments of 2 NGOs and 2 directors were overturned by appellate courts). Only in 3 cases, the courts found that NGOs did not violate any laws while other cases were closed on formal grounds.

After losing some cases, the Prosecutor's Office used a new strategy to persecute HRDs. It filed civil law suits against NGOs "in the defense of the rights and interests of an indefinite circle of persons and/or the interests of the Russian Federation" in order to force them to register as "foreign agents". Such lawsuits were brought against at least 7 NGOs, and the Prosecutor's Office succeeded in each of them (each decision entered into force).

Besides, at least 32 NGOs received a letter from the Prosecutor's Office requesting them to register as "foreign agents" within one month from their date of issue. 18 out of these letters were challenged in court and only 5 were found unlawful. In 2014, these "notices of violations" were seen as legal basis to force NGOs to register as "foreign agents" by the Ministry of Justice.

Finally, several dozens of NGOs (at least 55 known) were officially warned by the Prosecutor's Office of allegedly having some characteristics of "political activity" and, thus, as potential "foreign agents". At least 13 such warnings were challenged in courts (only 5 of these were found unlawful), and 2 were revoked by the Prosecutor's Office itself. These warnings, even though they are seen as "prophylactic measure" that do not lead to any legal consequences, led to reputational damage for those NGOs that received them due to a wide media coverage.

While the Ministry of Justice, responsible to oversee the activities of NGOs, took a 'wait-and-see' approach and complained that it lacked powers to implement it during the first few months after the law on "foreign agents" came into force, it was the Prosecutor's Office that played a decisive role in implementing the new law through conducting inspections.

Although the prosecution is not bound by restrictions imposed by Russian legislation on inspections by all the state controlling bodies (which are regulated in detail by a special federal law) and it enjoys a wide margin of appreciation with regard to the law "On the Prosecutor's Office", it seems that the Prosecution Office acted without a legal basis in 2013. Accordingly, the Prosecutor's Office has the authority to conduct unannounced inspections only when it has received allegations that the organization to be inspected has violated the law[16]. An instruction issued by the Office of the Prosecutor General in 2011 further requires that officials carry out their oversight work of government bodies and other organizations without groundless interference, without duplicating other state bodies' functions, and without excessive demands for documents and information, particularly when such information is publicly available or through other government offices[17].

[16] Federal Law "On the Prosecutors' Office of the Russian Federation," N 2202-1 of January 17, 1992, http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2005)040-e.

[17] Order of the Prosecutor General "On exclusion of the practice of the prosecutorial supervision of evidence unwarranted in interference of state and local authorizes and other bodies and organizations", No.236/7 of August 2011, http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=EXP;n=521692.

As the "Agora" Human Rights Association summarized in a special report on the outcome of the prosecutor's inspections of NGOs in 2013[18], prosecutors committed numerous violations during this campaign:

- information on inspections (their purpose, grounds, list of organizations to be inspected) was not publicized;
- NGOs to be inspected were chosen on the basis of a discriminatory, politically motivated approach;
- absence of legal grounds for inspections;
- duplication of other state bodies' oversight functions and conducting repeated inspections;
- exceeding the limits of the subject of inspections;
- exceeding the legal powers by prosecutors and other state officials participating in inspections;
- demands to provide documents and information which are available through other state bodies or publicly;
- demands to produce and provide documents which the organizations are not obliged to have;
- the use of inappropriate methods and intimidation while conducting inspections.

A number of NGOs refused to cooperate with the inspections, claiming they were unlawful. As a result, the directors of at least 9 NGOs faced administrative prosecutions for failing to meet the prosecutor's demands (a maximum fine of 3000 RUB was to be paid), and 7 of them were fined for that. Besides, at least 3 NGOs faced similar charges as legal entities (a maximum fine of 100000 RUB was to be paid) and 2 of them were fined.

Attempts of the NGOs to challenge the lawfulness of the prosecutors' actions during inspections have not been successful: at least 11 NGOs appealed to courts but were unsuccessful.

Some NGOs and their directors even faced reprisals by the Prosecutor's Office for criticism and attempts to defend themselves and/or other organizations respectively. Thus, although the inspection against "Agora" Association was regarded as unlawful, the publication of its assessment of the inspections and its lawyers who successfully defended NGOs in court led to a second letter which was seen as a legal basis to include them in the register of "foreign agents". Furthermore, the chairperson of the "Renaissance" Center of the Pskov region, the famous opposition politician Lev Shlosberg, was suspended from his position of regional deputy by the Prosecutor's Office. It claimed that his participation, as the NGO's representative, in court proceedings did not comply with the laws on the status of deputies.

After going through all the courts, several human rights NGOs[19] filed a complaint to the Constitutional Court to challenge the constitutionality of the provisions of the Federal law "On the Prosecutor's Office of the Russian Federation".

The appellants considered that the litigated provisions in fact allow to appoint the prosecutor's inspection without any clear motivation and conduct it without any specific regulations. They argued that the law restricts neither the duration nor frequency of inspections. The prosecutor's office is given the right to request information from NGOs arbitrarily which prevents NGOs from their work and may lead to persecution. In addition, the

[18] http://www.ihahr-nis.org/sites/default/files/files/openinform_proverki.pdf.

[19] Human Rights Centre "Memorial," the International "Memorial" Society, the "Civic Assistance" Committee, the "Agora" Association, the Zabaykalsky Human Rights Center, and the "International Standard" Foundation.

unrestrained practice of involving various authorities to participate in the prosecutor's inspection allows to bypass the established limitations on frequency of NGO inspections.

After having examined the case, the Constitutional Court issued a judgment on 17 February 2015[20], in which it ruled that the power granted to prosecutors by the litigated provisions in itself does not contradict the Constitution.

Nevertheless, the practice of abusing this power or acting against the legitimate interests of citizens and organizations was deemed unacceptable. The Constitutional Court stated that, in particular, the prosecutor's inspection of NGOs must be justified, and the organization concerned should be notified of the inspection and its results (and potential violations) thereafter. The inspectors do not have the right to demand any documents which the organization is not obliged to have, as well as any information made publicly available or already possessed by the government agencies. The inspection cannot be repeated on the same grounds (unless to eliminate previously identified violations). Representatives of other controlling bodies have the right to be involved in the inspection only to perform subsidiary (e.g. analytical) functions. There should be a right to appeal against the decisions and actions of the Prosecutor's Office.

The Court also noted that the litigated provisions do not state precisely a time frame and enable prosecutors to determine the deadlines for the execution of their orders. The Constitutional Court decided that this part of the law "On the Prosecutor's Office of the Russian Federation" does not conform to the Constitution. The Court concluded that, until the existing laws have been amended, inspectors should apply the relevant provisions of the law "On Protection of Rights of Legal Entities and Individual Entrepreneurs in the Exercise of State Control (Supervision) and Municipal Control," and that the applicants' cases are subject to revision by courts[21].

The Ministry of Justice subsequently developed a bill to implement the Constitutional Court's decision. On August 20,2015, the government introduced the bill to the State Duma[22], where it passed the first reading on October 16, 2015. The second reading was scheduled for the beginning of June 2016 but it was postponed for an undefined period.

According to the bill, a period of ten working days should be given, starting from the day of receipt of the request, and five working days should be given (in case the request was made during the inspection) to provide the requested information and documents. This period is reduced to one day in the face of a threat of harm infliction to life and health, the environment, the national security, and property of individuals and legal entities, as well as in emergency situations. The time frame of the Prosecutor's Office inspections shall not exceed 30 calendar days from the date of its inception. It may be extended by a decision of the prosecutor or his deputy in exceptional cases but not more than to additional 30 calendar days. Further extensions shall only be possible with the permission of the Prosecutor General of the Russian Federation. In addition, the prosecutor is not entitled to demand the information and documents which the organization is not obliged to have in accordance to have in accordance with the legislative

[20] http://www.ksrf.ru/en/Decision/Judgments/Documents/2015%20February%2017%202-P.pdf.
[21] http://publication.pravo.gov.ru/Document/GetFile/0001201505230001?type=pdf.
[22] http://asozd2.duma.gov.ru/main.nsf/(Spravka)?OpenAgent&RN=865550-6.

requirements, or which are not due to the goals of inspections and are not relevant to the subject of verification, or which have already been passed to the prosecution, as well as any information and documents officially published in the media or posted on the official website of the organization. Although the draft law, if enacted, will respond to some specific issues related to prosecutors' inspections, it will not change the arbitrary use abuse of the prosecutor office's "general supervisory" powers. Thus, in spring 2016, media outlets reported that the prosecutor's office started a new series of inspections against NGOs, following a meeting of the Prosecutor General Office's collegium in the end of March in which he called that particular attention should be paid to the activities of NGOs during the election period and that harsh measures should be taken to respond to their violations against the law[23]. During the summer of 2016, prosecutors also brought at least two new civil law suits against NGOs, working on HIV prevention, before regional court to force them to register as "foreign agents".

Not surprisingly, the Commissioner for Human Rights of the Council of Europe concluded after his visit to the Russian Federation in 2013 that "in the Russian context such a supervisory function, most notably vis-à-vis private legal entities, should be exercised by the court system and national human rights structures, such as federal and regional Ombudsmen"[24]. The UN Special Rapporteur on the independence of judges and lawyers also recommended that "the grounds for the supervisory powers of the prosecution should be reduced and the procedure should be clarified in the law"[25]. Until now, the Russian authorities seemed to have done little to implement these recommendations.

Moreover, the Prosecutor's Office received a new powerful tool to put pressure on NGOs due to a law, the Federal Law "On Amendments to Certain Legislative Acts of the Russian Federation" (the so-called law on "undesirable organizations")[26], that came into effect in June 2015. Accordingly, the activity of a foreign or international NGO may be recognized as "undesirable" if it poses a threat to the fundamental principles of the Constitution, the national defense or the national security. These "undesirable organizations" are not allowed to have subdivisions, carry out projects, produce, store and distribute information, conduct mass actions and public events in Russia, and to use bank accounts and deposits, except for the settlement of obligations of the organization. The recognition of the organization as "undesirable" essentially means to suspend its work in Russia.

The decision on recognition of the organization as "undesirable" is made by the Prosecutor General or his/her deputy, with the approval of the Ministry of Foreign Affairs. The register of "undesirable organizations" is maintained by the Ministry of Justice. The law does not require to state the grounds on which the decision was made and does not entitle the organization to appeal against the initial decision and the registration. The organization which was recognized as "undesirable" is only allowed to appeal against decision according to the standard court procedure.

The law introduces an administrative and criminal liability for the executive of the organization of which the activity is recognized as "undesirable," and those who continue to cooperate with that organization (in the form of management, as well as in the form of participation). The latter faces a fine of up to

[23] https://www.vedomosti.ru/politics/articles/2016/04/18/638030-predvibornie-prokurorskie-proverki.

[24] Op. cit., para. 75.

[25] Op. cit., para. 133.

[26] http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)037-e.

15000 RUB for individuals, up to 50000 RUB for officials, and up to 100000 RUB for legal entities. In case of two repeated violations in one year period, conducting activity or continuing participation in it will be sentenced to prison for up to six years. Finally, the law provides that a foreign citizen or a stateless person, who is involved in the activities of "undesirable organizations", may be refused entry to Russia.

Both national[27] and international human rights experts[28] criticized the vague wording of the law and lack of requirement of motivation for the decisions and judicial review at the stage of decision making poses serious threats of arbitrary use which can lead to less support for the NGO concerned.

Since the law came into effect, 7 organizations have been officially recognized as "undesirable" by the Prosecutor's Office[29]. Notwithstanding the fact that no human rights organization was officially registered as "undesirable organization" as of the time of this writing, the public debate on the adoption of this law and its implementation featured a variety of international human rights NGOs.

The first official request to the Prosecutor's General Office to check the compliance with "undesirable organizations" criteria was made by a State Duma deputy of the Liberal Democratic Party, Vitaly Zolochevsky. His request was referred to civil society organizations, such as Amnesty International, Human Rights Watch, Transparency International, the International Society "Memorial," and the Carnegie Moscow Center on May 25, 2015,[30]. However, the Deputy Prosecutor General, Viktor Grin, stated (published by the media on June 14, 2015), that the request lacks information on the specific facts that could prove threats to the constitutional system, national defense or security of the state having been made by the aforementioned organizations, that foreign NGOs are not relevant for the Russian legal system, and this prevents inspecting them for compliance with the law on "undesirable organizations." The Prosecutor General's Office forwarded the request to the law enforcement and regulatory authorities and vowed to take action in case of receiving any relevant information from them[31].

Among the organizations, that were officially registered, are two US foundations, which acted as major donors of Russian human rights NGOs, the National Endowment for Democracy (NED) and Open Society Foundations (OSF). In a public statement, the Office of the Prosecutor General justified its actions and said that "using the capacity of Russian commercial and non-commercial organizations under its control, the National Endowment for Democracy, inter alia, participated in activities that regarded the results of election campaigns as illegitimate, organized political actions to oppose government policies, discredited the Russian military"[32] (i.e., supporting the legitimate activities of independent human rights NGOs). As a result, Russian NGOs can no longer receive (financial) support from these foundations.

[27] http://president-sovet.ru/files/a2/8d/a28d7854f31b0497d6663331219d5c7c.pdf, http://ombudsmanrf.org/news/novosti_upolnomochennogo/view/zakljuchenie_upolnomochennogo_na_federalnyj_zakon_ot_23052015_acirc.

[28] http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016805990ba, https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2802847&SecMode=1&DocId=2306194&Usage=2, http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)020-e

[29] http://minjust.ru/ru/activity/nko/unwanted.

[30] http://www.rbc.ru/politics/25/05/2015/5563152d9a79470ee203a065.

[31] http://www.vedomosti.ru/politics/articles/2015/06/15/596286-nezhelatelnih-organizatsii-v-rossii-poka-net.

[32] http://www.genproc.gov.ru/smi/news/genproc/news-832994/.

Our analysis has shown that there is a urgent need for a comprehensive reform of the Prosecutor's Office in Russia, ensuring that the prosecution acts as a true guardian of the rule of law and human rights, and preventing it to use its broad powers against HRDs. The recommendations made by the Council of Europe and UN bodies provide an outline of such a reform.

Russia's legislation should be amended to further transparency and hold the prosecution to account for its actions. As of the "general supervisory" function, its scope of authority should be significantly restricted or be transferred to independent institutions, such as courts and ombudspersons.