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Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

Honouring of Obligations and Commitments by the Russian Federation

Information note on the functioning of democratic institutions in the Russian Federation

Co-rapporteurs: Ms Theodora Bakoyannis, Greece, EPP/CD, and Ms Liliane Maury Pasquier, Switzerland, SOC

I. Introduction

1. Following the adoption of Resolution 1990 (2014) in which the Assembly decided to deprive the Russian delegation of a number of privileges, following the illegal and unacceptable actions of Russia with regard to Crimea and eastern Ukraine, the Russian delegation withdrew from the work of the Assembly, but co-operation with the Monitoring Committee and its rapporteurs initially continued, albeit in a very limited way. However, following the adoption of Resolution 2034 (2015), in which the Assembly decided to maintain its sanctions, the Russian delegation decided to cease all contact with the Assembly and its organs, including the monitoring rapporteurs. While we continued to follow the developments in the Russian Federation, no fact-finding visits were allowed to take place and dialogue all but ended.

2. The issue of the status of the monitoring procedure was raised by Sir Roger Gale, on whose initiative the Monitoring Committee, on 20 June 2016, held an exchange of views on the recent developments in the Russian Federation and the state of the monitoring procedure in respect of that country. The committee shared our view that it was unacceptable for a country to *de facto* withdraw itself from the monitoring procedure, even on a temporary basis, by refusing all co-operation with the Assembly. The committee therefore decided to consider during its October meeting an information note to be prepared by the co-rapporteurs on the functioning of democratic institutions in the Russian Federation and to organise a hearing on the subject on that occasion.

3. This information note will outline the main developments in the Russian Federation with regard to the functioning of democratic institutions and respect for human rights and rule of law, in line with Russia's obligations and commitments to the Council of Europe in that respect. This note does not pretend to be a complete report on the current situation, nor can it be exhaustive on the subjects covered. It will, among other things, not cover Russia's action with regard to Ukraine or its relations with the neighbouring states in what it considers to be its special zone of interests. These have been succinctly dealt with in the various reports discussed and adopted by the Assembly on these issues since January 2014, and we can only reiterate the findings and conclusions of the Assembly in this regard.

4. At the time of writing, a number of initiatives are taking place that aim to re-establish the dialogue and co-operation between the Assembly and the Russian delegation. The President of the Assembly met the Chairperson of the Russian State Duma in the framework of the CIS conference in St. Petersburg, the Presidential Committee visited Moscow early September and the Chairperson of the Council of the Russian Federation participated in the Conference of Speakers of National Parliaments organised by the Assembly

¹ Document declassified by the Monitoring Committee at its meeting on 11 October 2016.

on 15 September 2016. While we are supportive of any initiative that aims to re-establish and foster dialogue, we wish to emphasise that the relations between the Assembly and the Russian delegation are not part of this information note or indeed the monitoring procedure. In our view, the monitoring procedure should not be drawn into these discussions, it should neither be a hostage to, nor bargaining chip for, the co-operation between the Assembly and the Russian Federation, or vice versa

5. In this context it should also be highlighted that full co-operation with the monitoring procedure of the Assembly is an explicit accession commitment to the Council of Europe² undertaken by the Russian Federation as a country. This commitment remains valid, irrespective of whether its delegation wishes to participate in the work of the Parliamentary Assembly or not. The importance the Assembly attaches to the unconditional participation of member states in the monitoring procedure is also highlighted in Rule 8.2b of the Rules of Procedure of the Assembly. If anything, the developments we outline in this note make it clear that the return of the Russian delegation to the work of the Assembly should be followed by an immediate continuation, and even reinforcement, of the monitoring procedure of the Assembly in respect of the Russian Federation.

II. Background

6. It is important to give a short oversight of the background of the current state of the monitoring procedure with regard to the Russian Federation.

7. On 10 April 2014, the Assembly adopted Resolution 1990 (2014) on the reconsideration on substantive grounds of the previously ratified credentials of the Russian Federation. In this resolution, the Assembly expressed condemnation of the illegal annexation of Crimea, and the action and involvement of the Russian Federation that led to this annexation, in grave violation of international law and in contradiction to Russia's obligations and commitments as a member of the Council of Europe. As a strong signal of its disapproval, the Assembly decided to suspend, until the end of the 2014 session, the voting rights of the Russian delegation as well as the right to be represented in the Bureau, Presidential Committee and Standing Committee of the Assembly and its right to participate in election observations organised by the Assembly. At the same time the Assembly emphasised the need to maintain a dialogue with the Russian delegation, in particular on its adherence to the values and obligations of the Council of Europe. The Assembly therefore decided, at that point, not to annul the credentials of the Russian delegation.

8. While the Assembly considered the sanctions it had applied as a minimum response to Russia's action, with a view to keeping the lines of dialogue and communication open, the Russian delegation and indeed the Russian authorities did not respond to this offer of dialogue by the Assembly. On the contrary, on 18 April 2014 the Russian Duma adopted declaration on "*the anti-Russian resolution of the Parliamentary Assembly of the Council of Europe*". In this declaration, the Duma resolved that it would not participate in the work of the Assembly until all the rights of the Russian delegation had been fully restored and the delegation given the possibility to fully participate in the decision-making processes in the Assembly. This decision effectively closed most of the avenues for dialogue between the Russian Federation and the Assembly. That notwithstanding, limited co-operation initially continued within the framework of the Monitoring Committee. Members of the Russian delegation participated in the work of the ad hoc Sub-Committee on Russia's Neighbourhood Policy with regard to other Council of Europe Member States and a fact-finding visit to Moscow by the co-rapporteurs took place in December 2014. However, following that visit, regrettably no further co-operation in the framework of the monitoring procedure took place.

9. On 28 January 2015, the Assembly adopted Resolution 2034 (2015) on the "Challenge, on substantive grounds, of the still unratified credentials of the delegation of the Russian Federation". In this resolution, the Assembly condemned the grave violations of international law committed by the Russian Federation with regard to the conflict in eastern Ukraine and the illegal annexation of Crimea, which it considered to be in clear contradiction with international law and the Statute of the Council of Europe, as well as of Russia's accession obligations and commitments. As a clear expression of its condemnation of the continuing grave violations of international law by the Russian Federation, the Assembly resolved to suspend the rights of the Russian delegation to vote; to be represented in the Bureau of the Assembly, the Presidential Committee and the Standing Committee; to be appointed rapporteur; to be a member of an ad hoc committee on observation of elections; and to represent the Assembly in Council of Europe bodies as well as external institutions and organisations, both institutionally and on an occasional basis. Again, it emphasised its readiness for dialogue with the Russian delegation, and therefore decided, at that point to ratify the credentials of the Russian delegation.

² [Opinion 193](#) (1996) "Application by Russia for membership of the Council of Europe" § 10.23

10. Regrettably, this offer of dialogue was not taken up by the Russian delegation and, on 12 February 2015, the Assembly received a letter from the Chairman of the Russian delegation Mr Alexey Pushkov, in which he announced that the Russian delegation had suspended all official contacts with the Parliamentary Assembly until the end of 2015, including all visits on behalf of Assembly bodies, including the monitoring rapporteurs. Reportedly anticipating that its credentials would again be challenged and that the Assembly would maintain most, if not all, of its sanctions in respect of the Russian delegation, the latter decided not to present its credentials at the January 2016 session. The Russian leadership made it clear that the decision not to present its credentials was accompanied by a decision to continue its policy of strict non-cooperation with the Assembly and to suspend official contacts with the Assembly, including with the monitoring procedure and its co-rapporteurs.

11. As a result of the decision of the Russian delegation to cease all cooperation with the Parliamentary Assembly, no co-operation within the framework of the monitoring procedure has taken place since January 2015 and despite several attempts from our side, no fact-finding visits by the monitoring rapporteurs could be made to the Russian Federation. That notwithstanding, we have continued to follow the domestic and international developments in respect of the Russian Federation closely from a distance, but it should be made clear that nothing can substitute fact-finding visits and direct contact with the authorities and other stakeholders “sur place”.

III. Civil society and freedom of association

12. Since President Vladimir Putin’s re-election in 2012, which was followed by large-scale protests, a number of restrictive laws, placing limits on the rights to freedom of association, expression and assembly, have been enacted that have created an unfavourable climate for the operation of civil society organisations. In addition, there has been an increased stigmatisation of independent human rights institutions in the Russian Federation by labelling them as “foreign agents” based on their alleged “political activity” and foreign funding. Newly adopted legislation now requires all non-commercial organisations to register with the Ministry of Justice prior to receiving funding from foreign sources if they intend to conduct so-called “political activities”, and they are then considered as carrying out the functions of foreign agents. They then have to mention that they are a “foreign agent” on all their publications and material. The implementation of the Law on Foreign Agents has indeed resulted in harsh action, seemingly aimed at preventing and dissuading civil society organisations from carrying out their work, often forcing them to shut down or face harassment and persecution at the hands of the authorities.

13. According to the Commissioner for Human Rights³ the label of “foreign agent” and the related disproportionate sanctions are seen by the NGOs concerned as a defamation campaign against their critical voices. The environment in which human rights defenders and non-commercial organisations in the Russian Federation are operating has a chilling effect on their action. As already mentioned in the reports by Mr Schennach⁴, obstacles to NGOs’ work have further increased in the context of the events in Ukraine, as NGOs opposed or critical of Russia’s involvement in the conflict have been the target by the authorities aimed at silencing their criticism.

14. To date, the Ministry of Justice has designated 145 organisations as “foreign agents”,⁵ and over 20 organisations have shut down in order to avoid such designation. The Ministry has removed its “foreign agent” label from 13 groups, acknowledging that they had stopped accepting foreign funding. Consequently, on 14 September 2016, the official list of active “foreign agents” consisted of 104 organisations. Most of the registrations were made through unilateral decisions taken by the Ministry of Justice, only four of them having requested to be registered voluntarily. Many NGOs challenged the forced registration as a foreign agent in court but most of them lost their cases. Concerns have especially been expressed about the complex procedure of removal from the “foreign agent registry” A number of applications by NGOs are pending before the European Court of Human Rights.

15. Administrative proceedings have been started against NGOs for their failure to comply with the requirements of the Law on Foreign Agents. For example, the well-known human rights organisations Memorial and the Committee against Torture were sanctioned with fines of 600 000 and 300 000 roubles respectively (about 7 650 and 3 825 euros). The Association “Golos”, – which is the main independent domestic election observation organisation in Russia – was given, a record fine of 1.2 million roubles (16 400

³ [Opinion](#) of the Commissioner for Human Rights on the legislation and practice in the Russian Federation on non-commercial organisations in light of Council of Europe standards: an update, 09 July 2015.

⁴ Doc. 13685 (2015), Doc 13800 (2015).

⁵ <http://unro.minjust.ru/NKOForeignAgent.aspx>.

euros)⁶. The Council for the Development of Civil Society and Human Rights, which is an advisory organ to the President of the Russian Federation, addressed the Federal Russian Ombudsman with a request for judicial review of court rulings imposing the fines.

16. In June 2016, the first criminal case was brought under the Foreign Agent Law against the leader of the NGO Women of Don (Rostov region), Valentina Cherevatenko, who was charged under Article 330.1 of the Criminal Code for “systematic evasion of duties imposed by the law on non-profit organisations performing the functions of a foreign agent” and faces up to two years in prison.

17. In its opinion of June 2014,⁷ the Venice Commission recommended that the controversial term of “foreign agent” be abandoned and considered that the legitimate aim of ensuring transparency of NGO funding from abroad could not justify measures hampering their activities. Involuntary registration should not be possible; the definition of “political activities” is too broad ; legal sanctions should only be applied in case of serious wrongdoing and the imposition of criminal sanctions only in case of extreme misconduct. Moreover enforced dissolution should only be pronounced by an impartial and independent tribunal and be subject to judicial review. The Venice Commission called for the revision of the law.

18. It should be underscored that the shortcomings of the NGO legislation were raised by the Federal Russian Ombudsman as well as the Chairman of the Council for the Development of Civil Society and Human Rights. And yet their recommendations related to the need to amend the legislation have so far been ignored by the authorities. The situation was further aggravated in June 2016 with the adoption of new amendments establishing an even broader definition of “political activities”, allowing for almost all activities being labelled as “political”.

19. In addition, a new category of foreign organisations, “undesirable on Russia’s territory”⁸ was created. whose activities are deemed to pose a threat to Russia’s constitutional order, defence or national security. The law on the undesirable activities by foreign and international non-governmental organisations foresees criminal and administrative liability for foreign or international NGOs recognised as undesirable and carrying out activities on Russian territory, as well as for the persons involved in these activities.⁹ While only foreign or international NGOs can be declared undesirable, domestic NGOs that have collaborated with them could potentially face criminal and administrative charges under this law.

20. To date, the registry of “undesirable organisations” includes seven organisations: National Endowment for Democracy; OSI Assistance Foundation and Open Society Foundation; U.S. Russia Foundation for Economic Advancement and the Rule of Law and National Democratic Institute for International Affairs, the International Republican Institute (IRI), and the New York-based Media Development Investment Fund (MDIF).

21. In its opinion of June 2016,¹⁰ the Venice Commission considered that this law interferes *inter alia* with the freedoms of association, assembly and expression, as well as with the right to effective remedy, and should be amended. The Venice Commission criticised in particular: the vague definition of several concepts; the lack of precision regarding the grounds for an NGO to be considered undesirable; the wide discretion granted to the Public Prosecutor; the lack of specific judicial guarantees; and the blanket prohibitions imposed upon the NGOs. Since the Venice Commission opinion was adopted, two institutions have been added to the list.

22. The restrictions to freedom of association further increased ahead of the September 2016 State Duma elections. Non-governmental election observation and polling organisations were recently targeted by the authorities. The polling organisation Levada Centre was included in the foreign agents registry. The domestic election observer association Golos, that had been registered as “foreign agent” and denied the removal from the list¹¹, was reportedly the target of defamatory reports broadcasted by pro-government media.¹² On 5 September 2016, the offices of the international branch of the human rights group International Memorial were searched by the Russian authorities. Reportedly, the Ministry of Justice was acting on orders of the

⁶ In addition, their chapters Golos-Ural, ‘Golos- Volga’ were imposed fines of hundreds of thousands of roubles.

⁷ [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)025-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)025-e).

⁸ Federal Law of 23.05.2015 N 129-FZ "On amendments of some legislative acts of the Russian Federation".

⁹ <http://en.kremlin.ru/acts/news/49511>.

¹⁰ [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)020-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)020-e).

¹¹ The Council for the Development of Civil Society and Human Rights under the President of the Russian Federation itself had recommended to the Ministry of Justice to review the decision to reject the withdrawal of the NGO Association “Golos”.

¹² <http://www.golosinfo.org/ru/articles/107284>.

General Prosecutor's Office to determine if it should be designated as a foreign agent (another branch of the Memorial Human Rights Centre had already been placed on the register of "foreign agents" in July 2014).

23. In his third party intervention of March 2016 before the European Court of Human Rights in the case of *Svetlana Khusainovna Estemirova v. the Russian Federation*,¹³ the Commissioner for Human Rights considered that this marginalisation of human rights defenders due to the recent changes to the NGO legislation has been particularly serious in the North Caucasus region and especially in the Chechen Republic. According to him, the spiral of violence against human rights defenders and the stigmatisation of their work have had a considerable negative impact on the protection of human rights in the region.

IV. Democratic environment

24. Similarly to the situation we have outlined for civil society organisation, the space for political opposition parties to operate and express dissenting opinions has further narrowed in the recent period, especially those that oppose the Kremlin's policies with regard to Ukraine. This is compounded by what is often described as systematic harassment and intimidation¹⁴ of opposition leaders and opposition activists by the authorities, as well as by civil groups that are seen as connected to the authorities.

25. In the last report on the "Honouring of obligations and commitments by the Russian Federation", the Assembly recalled the concerns, of *inter alia* the Venice Commission regarding the appointment by the President of regional governors, who make up half the membership of the Council of the Federation¹⁵. The Assembly therefore welcomed the entering into force, on 1 June 2012, of the federal "Law on general principles of organisation of legislative and executive governmental authorities of entities of the Russian Federation", which re-introduced the direct election of regional governors instead of their appointment by the President¹⁶. However, on 2 April 2013, President Putin signed the "Law on amendments to certain acts of the Russian Federation", adopted by the State Duma and Council of the Federation in March that year, that allows regional parliaments to cancel the direct election of the governor of the region concerned, replacing it with an indirect election of the governor by the state legislature from among three candidates proposed by the President of the Russian Federation¹⁷. This method was reportedly chosen by a considerable number of regions, including the Moscow district, thus moving away from the progress that was noted by the Assembly in this respect.

26. As already noted by Mr Schennach in his reports¹⁸, there has been a sharp increase in harassment and intimidation of opposition political leaders and others who present political opinions that diverge from those of the government, especially with regard to Russia's illegal annexation of Crimea and its involvement in the conflict in eastern Ukraine. Increasingly harsh and inflammatory rhetoric is aimed at those who express views diverging from those of the authorities, resulting in an increasingly polarised and confrontational political environment. Similarly to the branding of NGOs as "foreign agents", political parties and their leadership that question the official line are often painted as traitors of the Russian nation and/or as *agent provocateurs* of the West.

27. In this context, the murder on 27 February 2015 of former Prime Minister and co-chair of the opposition party RPR-PARNAS, Boris Nemtsov, just before he was to issue a critical report on Russia's involvement in the conflict in Ukraine and the inconclusive official investigation of the authorities into his murder had a chilling effect on opposition activists. On 1 February 2016, Mr Ramzan Kadyrov, the outspoken Governor of Chechnya, published a video showing former Prime Minister Kasyanov, ally of Mr Nemtsov and his co-chair of the RPR-PARNAS party, through the crosshairs of a sniper rifle's scope, when he was visiting our Assembly in Strasbourg. The publication of this video, which was widely perceived as a not-so-veiled threat to the opposition, was decried in international political circles but regrettably did not receive – publicly at least – an official rebuke by the Russian leadership.

28. An issue that is raising concern is the increased frequency of the involvement of conservative social groups linked to the ruling party in quelling protests and harassing opposition figures. A point in case was the attack on a group of anti-corruption activists led by Alexei Navalny', a prominent anti-corruption blogger and opposition activist, by Cossack paramilitaries in Anapa, with the police standing by idly, giving the impression

¹³ <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2908135&SecMode=1&DocId=2369626&Usage=2>.

¹⁴ Doc. 13800 (2015), § 43.

¹⁵ Doc.13018 (2012) § 266 – 275.

¹⁶ Doc. 13018 (2012) § 266 – 273.

¹⁷ <https://sputniknews.com/russia/20130402/180402849/Putin-Signs-Law-Allowing-Regions-to-Cancel-Governor-Polls.html>

¹⁸ Doc. 13685 (2015), Doc 13800 (2015).

of official collusion. It should be noted that it was also Cossack paramilitaries who attacked the punk band Pussy Riot in Sochi when they tried to stage a song mocking President Putin at the time of the Olympic Winter Games. Video recordings posted on social media show that, also at that time, police was standing by idly during the attack.

29. Criminal prosecution is increasingly being used as a tool for repression and intimidation of the opposition. In February 2015 Ludmila Kuzmina, the head of the Samara branch of Golos, was charged with tax evasion. The searches and seizures in the Moscow offices of Golos and the homes of four of its members in July 2015 – ahead of the regional elections – were widely seen as an attempt to hamper the forthcoming election observation and to intimidate the members of the organisation ahead of the elections.¹⁹ As mentioned in the previous sections, Golos has been placed on the foreign agents register, a move widely perceived as political, with the aim of closing it ahead of the run up to the 2015 regional and 2016 legislative elections.

30. On 7 May 2015, the Moscow court sentenced to administrative detention three opposition activists (Aleksandr Ryklin, Sergei Sharov-Delaunay and Irina Kalmykova) who had participated in a peaceful protest in Bolotnaya Square on 6 May 2015 to mark the third anniversary of a violent police crackdown on opposition protesters there in 2012. Amnesty International considers that they were imprisoned solely for peacefully exercising their right to freedom of expression and are prisoners of conscience. Amnesty also denounced violations of the right to fair trial in all three hearings.²⁰

31. The reported harassment of the opposition is seen by many as an effort to thwart the formation of a united political alternative in the 2015 regional elections and in the run-up to the 2016 general elections.

32. On 18 July 2013, the Court in Kirov sentenced Mr Alexei Navalny, who was a candidate in the elections for the mayor of Moscow, to five years in jail on questionable charges. On 8 September 2013²¹ elections for the mayor of Moscow took place. In these elections Mr Navalny lost to incumbent mayor Sobyenin, who ran on the ruling party ticket, but still gathered more than 27% of the vote, far more than originally expected. Mr Navalny and his co-defendant appealed their sentences to the European Court of Human Rights in Strasbourg. On 23 February 2016, the Court ruled that the defendants had been deprived of the basic guarantees for a fair trial and that therefore there had been a violation of Article 6 of the Convention (right to fair trial). In particular the court found that the criminal law had been arbitrarily construed to the applicants' detriment as they were convicted for activities that were indistinguishable from normal commercial activities. Noting Mr Navalny's prominent political position, the Court concluded that by dismissing Mr Navalny's allegations of political prosecution, the Russian courts themselves had given reason for the concern that the real reasons for Mr Navalny's prosecution and conviction had been political. However, as Articles 6 and 7 in relation to this case do not contain any implied or express restrictions that could be subject to a review under Article 18 of the Convention, the Court ruled Mr Navalny's complaint under that article inadmissible²².

33. On 17 November 2013, at its founding congress, Mr Navalny was elected leader of the People's Alliance Party. This party later changed its name to Progress Party. On 28 April 2015, the Ministry of Justice announced that the Progress Party had been withdrawn from the list of authorised parties, following the cancellation of its legal registration due to the party's alleged failure to register its regional branches on time. This decision came ten days after the announcement of the creation of a new opposition movement in which the RPR-PARNAS, the Progress Party, and four other parties united in a joint platform for the 2015 regional elections and 2016 general elections.

34. On 30 December 2014, Mr Navalny was convicted to a suspended 3,5 years' prison term for allegedly fraudulently creaming off money from a distribution contract his company had with the Yves-Rocher company. In the same case, his brother was convicted to 3.5 years in prison. Both the prosecution and verdict were controversial²³ and, according to the Navalny brothers, who filed a complaint with the European Court of Human Rights, politically motivated. As a result of his convictions Mr Navalny was not able to stand as a candidate in the 2016 parliamentary elections.

¹⁹ <https://www.hrw.org/news/2015/07/09/russia-crackdown-election-monitors>.

²⁰ <https://www.amnesty.org/en/latest/news/2015/05/russian-opposition-protesters-locked-up-after-bolotnaya-anniversary-pickets/>.

²¹ As the prosecution had appealed Mr Navalny's conviction of 18 July, the sentence did not come into effect and Mr Navalny maintained his right to be a candidate in the elections for the mayor of Moscow.

²² ECHR 071 (2016).

²³ The company Yves Rocher itself denied that any money was missing or lost.

35. On 13 September 2015, regional elections²⁴ took place in Russia. The main opposition movement led by RPR-Parnas was refused registration in most regions and was only able to field candidates in Kostroma Oblast, where it failed to pass the threshold on Election Day. The conduct of these elections was criticised by domestic election observers. In its final statement on citizen observation of the 2015 regional elections in Russia, Golos²⁵ stated that “the vast majority of election results were predetermined by the decisions and actions made by the authorities and election commissions running the elections at the stage of nomination and registration of candidates and parties, as well as at the stage of the pre-election campaigns”.

36. On 5 September 2016, the well-respected independent polling agency Levada Centre was placed on the list of “foreign agents” by the Ministry of Justice. The Director of the Levada Centre called this decision, two weeks before the election, “political censorship” and devastating for the Levada Centre and said that under such a label it would be impossible for it to do its work.

37. These actions, combined with the clamp down on NGOs and their work, have resulted in a deterioration of the political environment in Russia. This is all the more regrettable as these developments diminish a number of positive developments that were noted with regard to the electoral framework.

38. On 18 September 2016, parliamentary elections took place in the Russian Federation under a new legal framework that reportedly addresses a number of recommendations made by previous election observation missions, including the Assembly. The elections took place under a new mixed majoritarian-proportional system. The threshold in the proportional component has been reduced from 7% to 5 %, which, albeit still high, is an improvement that was recommended by international observers. Moreover, the registration requirements for parties have been eased, resulting in the registration for these elections of 60 of the 74 registered parties in Russia. RPR-PARNAS was registered for these elections. As already mentioned, the Progress Party was refused registration as a party and could therefore not be registered for the elections. In a welcome development, self-nominated candidatures are now allowed in the majoritarian races. However, self-nominated candidates must present the signatures of at least 3% of the eligible voters in the constituency in which they wish to run, which proved to be difficult for many candidates²⁶. On 28 March 2016, in a development that positively affected the trust in the election administration - which has been historically low – former Ombudsperson Ella Pamfilova was elected Chairperson of the Central Election Commission of the Russian Federation, to replace the controversial Vladimir Churov.

39. The Russian Federation invited, without preconditions the OSCE-ODIHR to deploy an international election observation mission to observe the legislative elections on 18 September 2016. Regrettably, no invitation was sent to the Parliamentary Assembly to observe these elections.

40. The United Russia party of President Putin won the elections with 54% of the vote, and 343 seats in the State Duma, which is a considerable increase of mandates over the previous elections when United Russia won 49% of the vote and had 238 mandates. A Just Russia obtained 6% of the votes and the Communist Party and the Liberal Democratic Party of Russia (LDPR) both obtained just over 13% of the votes. These parties are all considered as supporting President Putin. The main opposition parties, Yabloko and RPR-PARNAS failed to pass the 5% threshold in the proportional races to enter parliament.

41. OSCE Observers stated that the elections had been more transparent than previous elections but that “*challenges to democratic commitments remain*”. In particular, it considered that “*The legal framework can serve as an adequate basis for the conduct of elections, but democratic commitments continued to be challenged and the electoral environment was negatively affected by restrictions to fundamental freedoms and political rights, firmly controlled media and a tight grip on civil society*”²⁷. On Election Day, voting was orderly but numerous violations, including ballot stuffing and procedural irregularities in the counting process, were witnessed by international and domestic observers. The domestic observer organisation Golos considered that, while the levels of violations had been lower than in 2011, these elections were still “far from what could be called free and fair.”²⁸

²⁴ Elections for 21 governor's mandates took place and 11 regions elected a new regional parliament.

²⁵ <http://www.golosinfo.org/en/articles/47471>.

²⁶ OSCE/ODIHR Election Observation Mission for the State Duma elections on 18 September 2016, Interim Report 8-29 August.

²⁷ International Election Observation Mission, Statement of preliminary findings and conclusions p. 1.

²⁸ <http://www.bbc.com/news/world-europe-37403242>.

V. Freedom of expression and freedom of the media

42. Russia is ranked 148th out of 180 countries in the Reporters Without Borders 2016 World Press Freedom Index, according to which the pressure on independent media has grown steadily since Vladimir Putin's return to the Kremlin in 2012.²⁹ Amnesty international³⁰ and Freedom House³¹ consider that media freedom has remained severely restricted, through direct state control and self-censorship, with the government setting editorial policy at state-owned television stations which dominate the media landscape while the country's few independent media outlets struggle to remain operational as a result of political pressure.

43. Russia's annexation of Crimea and its involvement in the conflict in eastern Ukraine as well as the launch of air strikes in Syria in September 2015 have been accompanied by tighter restrictions on dissenting opinions and growing pressure on independent media. State control on the media was expanded through legal and economic means, but also through selected censorship and the use of propaganda in the framework of an "information war", as highlighted by the intensification of nationalistic propaganda after Russia's intervention in Ukraine. In this context, the list of classified information was expanded in May 2015 to include information on military losses during peacetime and "special operations", which include, for example, operations in eastern Ukraine. Violations draw a maximum eight-year prison sentence. The new measure has made it difficult for investigative journalists to report on the deaths of Russian soldiers in Ukraine.

44. The Russian authorities have used restrictive laws to curtail freedom of expression. Russia's so-called extremism law gives the authorities broad powers to close down any media organisation deemed to spread extremist information. A lack of clarity over the legal definition of extremism has led to abuse and arbitrary application. Legal obstacles have hampered independent media, including restrictions on foreign ownership of news outlets, warnings, revocation of licences, closure of news outlets and blockage of websites and online platforms.

45. The State communications regulatory agency, *Roskomnadzor*, regularly issues warnings to newspapers and websites. Two warnings in one year can lead to closure. In May 2015, the maximum fines that can be levied on Russian news organisations accused of inciting extremism were increased tenfold by law. The law now foresees fines of up to 1 million roubles for publishing material deemed to incite or justify terrorism or extremism (previously, similar fines were restricted to between 50 000 and 100 000 roubles). *Roskomnadzor* reported that there were 25 000+ websites in its registry as of April 2016. In total it estimates that almost 600 000 sites are currently blocked inside Russia, because they are located on the same Internet Protocol (IP) as sites with information deemed to be illegal.³² These legal provisions and their combined enforcement have increased self-censorship amongst journalists and media outlets.

46. One of Russia's main independent television channels which has been critical of the authorities, *Dozhd* (Rain), has been at risk of going out of business since February 2014, when cable and satellite providers said they would no longer carry the channel's signal. At the end of 2015, *Dozhd* was subjected to inspections by the prosecutor's office and tax authorities, which were reportedly initiated at the request of anonymous citizens regarding the channel's compliance with legislation on countering extremism and terrorism, labour and licensing.³³

47. In May 2016 three senior editors resigned from the leading Russian media group RBC, citing official pressure on independent journalism³⁴. These editorial departures were condemned by the International Federation of journalists (IFJ) and the Russian Union of Journalists (RUJ).

48. Similarly to the Law on Foreign Agents with regard to civil society organisations, the authorities have recently targeted media with a new law regulating media companies financed from abroad. The new bill came into force on 1 January 2016 and requires the media to report all funding they receive from abroad to *Roskomnadzor*. Media outlets will face fines and ultimately closure if they fail to comply with the requirement. The law complements the 2014 law limiting foreigners' share in Russian media to 20%. The law is very broad-reaching as it requires editorial staff of media outlets, broadcasters and publishers to notify

²⁹ <https://rsf.org/en/russia>.

³⁰ <https://www.amnesty.org/en/countries/europe-and-central-asia/russian-federation/report-russian-federation/>.

³¹ <https://freedomhouse.org/report/freedom-press/2016/russia>.

³² <https://russiadigitalrights.org/>.

³³ [Entry](#) on the Council of Europe platform for the protection of journalism and safety of journalists.

³⁴ <https://www.theguardian.com/media/greenslade/2016/may/17/three-russian-editors-resign-amid-threats-to-press-freedom>.

Roskomnadzor quarterly of any money received from foreign States, international organisations and foreign organisations acting as “foreign agents” or non-governmental organisations, foreign citizens, stateless persons and Russian organisations whose participants and/or founders fall into the above categories..

49. Changes to the legal framework have also affected the freedom of expression online. Persons using the internet to express critical opinions have been imprisoned for hate speech or extremism (that is defined as activities that may threaten national security, encourage terrorism or racism). In September and December 2015 for example, courts in Tatarstan, Tomsk and Krasnodar, sentenced respectively two activists and a blogger to prison sentences for “inciting hatred and extremism” after posting *inter alia* online criticism on Russia’s action in Ukraine.

50. The latest anti-terrorism legislation – the so-called *Yarovaya* law – further reinforces government control over communications and subjects social networks to the same legal provisions as media outlets with respect to the crimes of inciting and condoning terrorism. Telecom operators, blog platforms and social media will now have to store all communications and conversations for six months and make them available on request to the authorities, including the police and federal security service. Russian Internet Ombudsman Dmitri Marinichev described the new anti-terrorism legislation as a “death sentence for Russian telecoms”.³⁵

51. Other new legislations, such as the “Data Localisation Law”, which forbids the storage of the personal data of Russian users on foreign servers, the “Right to Be Forgotten Law” requiring internet search engines to delete information at the request of individuals, as well as the new law requiring news aggregators – owners of internet search engines – with more than one million daily users to check the truthfulness of “publicly important” information before its dissemination, are further of governmental interference in electronic information distribution.

52. Cumulatively, these developments threaten the freedom of the media and freedom of expression and are of serious concern as they are a setback for the overall democratic environment. In this context, the judgment of the European Court of Human Rights judgment of May 2016 in the case of *Nadtoka v. Russia*,³⁶ which found a violation of Article 10 of the European Convention on Human Rights, is of great importance. The case concerned the criminal conviction, for insult, of a journalist and the editor-in-chief of the newspaper in which the offending article had been published. The Court found that the offending article had sought to complain of corruption by the Mayor of Novochoerkassk, which was a matter of public concern and discussion of it contributed to political debate.

53. Human rights defenders and journalists reportedly continue to be at risk when working in the North Caucasus, facing harassment, threats and violence. The issue of human rights in the North Caucasus is the subject of a report under preparation in the PACE Committee on Legal Affairs and Human Rights and therefore, despite its importance, we will not focus on it in the present report.

VI. Rule of law (including independence of the judiciary, execution of ECtHR judgments and the use of criminal prosecution to suppress dissent)

54. The rule of law, and in particular the independence of the judiciary and right to a fair trial, has been a long-standing focus of attention for the Assembly. While there have been welcome improvements as a result of reforms implemented by the authorities with assistance from the Council of Europe, such as the establishment of a system of free legal aid, several concerns remain. A full analysis and assessment of the respect for the rule of law and independence of the judiciary in the Russian Federation is outside the scope of this information note. On 12 November 2013, the Commissioner for Human Rights of the Council of Europe, Mr Nils Muižnieks, published his report on this subject following his visit to the Russian Federation. While not exhaustive, his findings remain largely valid. On 25 February 2016, Mr Muižnieks, jointly with his two predecessors, Mr Thomas Hammarberg and Mr Alvaro Gil-Robles, published an op-ed in *The Kommersant* regarding the administration of justice and functioning of the justice system. While welcoming a number of reforms undertaken by the Russian authorities, they highlighted four main concerns that undermine the establishment of an “accessible, transparent, effective and credible” justice system in the Russian Federation that would adhere to European standards. These concerns are: the non-enforcement of national and international court decisions, obstacles to the system of human rights protection, lack of independence of the judiciary and excessive powers of the prosecution.

55. In previous monitoring reports the Assembly recurrently expressed its concern about the lack of independence of the judiciary and its vulnerability to external and internal pressure and interference. The

³⁵ <https://rsf.org/en/news/draconian-new-law-tightens-control-over-communication-russia>.

³⁶ [http://hudoc.echr.coe.int/eng/?i=001-163648#{"itemid":\["001-163648"\]}](http://hudoc.echr.coe.int/eng/?i=001-163648#{).

proceedings and outcome of a number of recent controversial high-profile trials, such as the trials against Nadiya Savchenko and filmmaker Oleh Sentsov, have raised questions with regard to the independence of the judiciary and have given credence to the allegations that they were politically motivated. As mentioned in the sections above, criminal prosecutions are increasingly being used against NGO activists and political parties and movements that are critical of the authorities and their policies. In this context, it should be noted that the Memorial Human Rights Centre produced in October 2015 a non-exhaustive list³⁷ of what it considers to be 50 prisoners, detained or imprisoned on politically-motivated charges.

56. On 17 September 2015, the European Court of Human Rights ruled, in the case *Kovyazin and Others v. Russia* that the rights of the applicants – who had been arrested in the context of the so-called Bolotnaya protests against the allegedly rigged presidential elections in 2011 – had been violated with regard to Articles 5 (right to liberty and security) of the European Convention on Human Rights. Moreover, on 5 January 2016, the Court ruled, in the case of *Frumkin vs Russia* that also concerned the Bolotnaya protests, that there had been violations of Article 11 (freedom of assembly and association), Article 5 (right to liberty and security) and Article 6 (right to a fair trial). As already mentioned above, in its judgment in the case of *Navalny and Ofitserov v. Russia*, the Court noted that the court proceedings in the case against Mr Navalny had raised the concern that the real reason for Mr Navalny's prosecution and conviction had been political.

57. As noted by the Human Rights Commissioner, in addition to lack of independence of the judiciary, the justice system is too much biased in favour of the prosecution, which raises concern with regard to the equality of arms between prosecution and defence and thus the fairness of trials. These concerns are underscored by the current conviction rate of 99.5%.

58. As of 1 July 2016, 10 446 applications against Russia are still pending before the European Court of Human Rights. In 2015, the court delivered 116 judgments in cases against Russia; in 106 of them the Court found at least one violation of the European Convention of Human Rights. At the time of writing, the execution of 1 668 judgements are still pending and being monitored by the Committee of Ministers. *Inter alia*, lack of enforcement of national and international court decisions has been one the recurrent reason for condemnation of Russia by the Court as have been ill treatment and violation of the right to life.

59. In July 2015, Russia's Constitutional Court established that no international treaty or convention had precedence over national sovereignty and that the decisions of the European Court of Human Rights should be upheld only if they do not contradict Russian law. This decision by Russia to disregard its international obligations was written into law by the amendments to the constitutional law on decisions by international courts, which were adopted and promulgated in December 2015. According to these amendments, in case the Constitutional Court finds that a decision of an international court contradicts the Constitution, it may rule that the execution of this decision is entirely or partly impossible and, thus, no action aimed at its execution can be taken. The law thus grants the Constitutional Court the competence to overrule a decision of the European Court of Human Rights and halt its execution, in the framework of the Russian Constitution. This development is highly problematic with regard to the Russia's obligations under the European Convention on Human Rights

60. On 2 February 2016, the Ministry of Justice of the Russian Federation appealed to the Russian Constitutional Court the enforcement of the European Court of Human Rights judgment in the case *Anchugov and Gladkov vs Russia*³⁸, in which the Court had ruled that the blanket ban on voting rights for convicted prisoners was in violation of the Convention (Article 3, Protocol 1). On 19 April 2016, the Russian Constitutional Court ruled that "it was impossible to execute the judgement in the case of Anchugov and Gladkov with regard to amending the legislation in order to exclude from disenfranchisement some categories of convicted persons serving prison sentences", in effect overruling the decision of the European Court of Human Rights.

61. In its opinion on the amendments to the Constitutional Court³⁹, the Venice Commission expressed serious concern with regard to the compatibility of these amendments with Russia's obligations under international law, including Article 46 of the European Convention on Human Rights. *Inter alia* the Venice Commission stressed that the Russian Constitutional Court should not have been given the power to declare international court decisions "non-executable" or given the power to assess the constitutionality of an individual measure of execution such as an order to pay just satisfaction. With regard to the decision of the Constitutional Court regarding the execution of the ECtHR decision in the case of *Anchugov and Gladkov vs Russia*, the Venice Commission stated in the event of a general measure ordered by the Court not being in

³⁷ <http://us6.campaign-archive2.com/?u=0beb3097c1&id=b5de2e6555&e=9baac6221d>.

³⁸ [http://hudoc.echr.coe.int/eng/?i=001-122260#{"itemid":\["001-122260"\]}](http://hudoc.echr.coe.int/eng/?i=001-122260#{).

³⁹ CDL-AD(2016)016.

line with the current Constitution, Russia should by amend its Constitution in order to abide by its international obligations⁴⁰.

62. It should be stressed that the full implementation of the judgments of the European Court of Human Rights is an international commitment to which the Russian Federation has contracted under the European Convention on Human Rights, and which it must strictly respect. This is an essential obligation for all members of the Council of Europe. It cannot be accepted that such a stringent obligation be subject to individual decisions by the Constitutional Court of a member State. Respect for the Convention is an absolute principle and this obligation must be honoured unconditionally. Consequently, we would strongly recommend that the law be changed promptly, to ensure full compliance with the European standards.

VII. Freedom of assembly and human rights

63. Over the last years, the right to freedom of assembly has been reduced, through legislative changes and disproportional police response, including the use of force and routine arrests. Permission to hold street rallies has often been denied or only granted in non-central locations, and violation of the bans have resulted into steep fines and detention.⁴¹ These developments have been a deterrent to the exercise of the right to assembly.⁴²

64. In its Resolution 2116 (2016) on the “Urgent need to prevent human rights violations during peaceful protests” of May 2016, the Assembly noted with concern the recent legal restrictions placed on the right to freedom of assembly in the Russian Federation, referring in particular to an amendment to the law on public gatherings which permits the detention of any person participating in an unauthorised public assembly. The 2014 amendments to the law on public gatherings indeed permit such detention and place criminal responsibility on anyone found to have violated the law more than twice within 180 days. The amendments also introduce new administrative sanctions for violating the rules of assembly.

65. This restrictive new legal framework was enacted in response to the 2012 the Bolotnaya Square events. As mentioned in a previous section, in its judgment of 5 January 2016 in the case of *Frumkin v Russia*,⁴³ the European Court of Human Rights considered that in the context of these events, the authorities did not comply with the minimum requirements in their duty to communicate with the leaders of the rally, which were an essential part of their obligation to ensure the peaceful conduct of the assembly and that the arrest, detention and administrative conviction of Mr Frumkin were grossly disproportionate to the aims pursued. The Court also notes that the arrest, the detention and the ensuing administrative conviction of the applicant and the large number of arrests had a serious potential to deter other opposition supporters and the public at large from attending demonstrations and, more generally, from participating in open political debate⁴⁴.

66. The legal framework deteriorated with the adoption of recently signed package of anti-extremism amendments (known as the *Yarovaya Law*) based on which encouraging people to take part in “mass disturbances” became a crime punishable by five to ten years in prison. The *Yarovaya Law* also gives Russian law enforcement agencies additional powers and places further limits on the rights to freedom of expression, association and assembly. It also contains restrictions on religious practices and bans most “missionary activities” including proselytising, preaching, praying, or disseminating religious materials outside of “specially designated places”. In this respect we were informed about Jehovah’s Witnesses being prosecuted for extremist activity for what seems to be merely attending religious services and practising their faith.

67. In this overall context, the recent Federal Law on Amending Individual Legislative Acts of the Russian Federation that provides the legal foundations for the federal security service’s (FSB) use of military equipment, weapons and “special means” is of concern. This law was signed into force by President Putin on 30 December 2015.⁴⁵ The Russian Presidential Human Rights Council itself had appealed to the President not to enforce the amendments which allow the FSB to open fire on crowds under certain specific circumstances and possibly without warning, in violation to the rights to life and health.⁴⁶

⁴⁰ Ibid, §23.

⁴¹ <https://freedomhouse.org/report/freedom-world/2016/russia>.

⁴² <https://www.amnesty.org/en/countries/europe-and-central-asia/russian-federation/report-russian-federation/>.

⁴³ *Frumkin v. Russia*, Application No. 74568/12, judgment of 5 January 2016.

⁴⁴ Ibid.

⁴⁵ <http://en.kremlin.ru/acts/news/51089>.

⁴⁶ <http://www.rferl.org/articleprintview/27459140.html>;

http://eng.ombudsmanrf.org/events/news/news_of_the_commissioner/view/discussion_with_human_rights_activists_of_amendments_to_law_on_federal_security_service.

68. On 7 December 2015, activist Ildar Dadin was sentenced to three years in jail by a Moscow court for repeated anti-government street protests, even though these were peaceful, making him the first activist convicted under the 2014 legislation on protests. This development was denounced by Amnesty International as a use of the law on public assemblies “to fast-track peaceful protesters to prison”.⁴⁷ In 2015, more than 640 people were detained and accused of participating in unauthorised gatherings.⁴⁸

69. The 2013 federal law criminalising “propaganda of nontraditional sexual relations to minors” has reportedly been used to ban pro-LGBTI rights events.⁴⁹ LGBTI activists have often been denied the right to assembly, even though the Russian Supreme Court judgment of 2014 ruled that LGBTI should be allowed to engage in public activities.⁵⁰ The refusal in 2015 to allow a gay pride parade in Moscow for the 10th consecutive year runs against the jurisprudence of the European Court of Human Rights that in similar cases has found that such refusals were discriminatory and in violation of the freedom of assembly. The broader issue of the rights of LGBTI persons is outside the scope of this note and deserves more investigation.

70. Concerns were expressed regarding the freedom of assembly and the possibility to campaign freely throughout the country in the context of the State Duma elections of September 2016.⁵¹ The restrictive implementation of legislation related to the freedoms of association, assembly and expression brings into question the conduct of democratic elections. The statement of preliminary findings and conclusions of the OSCE/ODIHR election observation mission noted “unequal treatment of contestants by the local authorities and limitations of the freedom of assembly of some opposition parties in certain regions. The notification procedure of campaign events was selectively applied by local authorities to effectively deny permission to contestants to hold rallies or to make permission conditional, for example requiring a change of venue to another one less favourable to the contestant.”⁵²

VIII. Conclusions

71. In this note we have outlined the main developments that took place in the Russian Federation in the last two and a half years with regard to democracy, human rights and the rule of law. As we mentioned in the introduction, we do not claim to be exhaustive and many of the issues we mention deserve further analysis and investigation, preferably in the context of fact-finding visits in the framework of the monitoring procedure that would allow an exchange of information and ideas with all the stakeholders concerned.

72. In general, while we have been able to note some progress on some of the issues we explored, overall, recent developments have raised concern. The situation with regard to the democratic environment and space for civil society to operate and enjoy its rights to freedom of expression and association has especially deteriorated. In order to address these concerns and to counter the trends we have described, the monitoring procedure with the Russian Federation and our dialogue with all the stakeholders concerned should not only promptly continue, but should indeed be intensified, especially if the Russian delegation were to return fully to the work of the Assembly. For our part, we are fully ready to continue our work as co-rapporteurs for the Russian Federation and to visit the country at the earliest possible opportunity. This information note provides a sound basis for the discussions with our counterparts and some of the priorities for our co-operation in the framework of the monitoring procedure.

⁴⁷ <https://www.amnesty.org/en/latest/news/2015/12/russia-peaceful-activist-sentenced-under-repressive-new-law-must-be-released/>.

⁴⁸ <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=22566&lang=en>.

⁴⁹ <https://www.hrw.org/world-report/2016/country-chapters/russia>.

⁵⁰ <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper>.

⁵¹ <http://www.osce.org/odihr/elections/russia/251486?download=true>.

⁵² <http://www.osce.org/odihr/elections/russia/265186?download=true>.