Russia’s “foreign agents” legislation: the case of “International Memorial.”

by

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A thesis submitted to the Faculty of Graduate and Postdoctoral Affairs in partial fulfillment of the requirements for the degree of

Master of Arts

in

European, Russian and Eurasian Studies

Carleton University
Ottawa, Ontario

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Abstract

The thesis will analyze the “foreign agents” legislation adopted in the Russian Federation. The analysis will be carried out at the intersection of political and legal realms. The thesis will aim to posit the laws within the theoretical framework of “authoritarian legality” and the “dual state” system introduced by Schmitt and Fraenkel, simultaneously exploring the law’s instrumental role in contemporary Russia.

The thesis’s legal part will explore existing regulations and the legal repercussions of the “foreign agent” designation. It will also be aimed at comparing the “foreign agents” legislation’s provisions with its United States counterpart and the newly adopted domestic legislation of 2022.

The thesis’s empirical part will focus on the covert consequences of the “foreign agent” designation and the “survival strategies” adopted by designated persons to maintain their functioning. Specific attention will be paid to the “International Memorial” case as an overtly politicized example of the legislation’s usage.
Acknowledgements

I thank my grandmother Galina for always standing by my side and my grandfather Vitaly for shaping me into the man I am.

I thank Professor Piotr Dutkiewicz for his indispensable help and guidance.

I dedicate this thesis to the memory of Boris Nemtsov, Anna Politkovskaya, and other victims of the Russian regime.
# Table of Contents

**Abstract** ........................................................................................................................................... ii

**Acknowledgements** ......................................................................................................................... iii

**Table of Contents** .............................................................................................................................. iv

**List of Tables** ...................................................................................................................................... vi

**Chapter 1: Introduction** ..................................................................................................................... 1
  1.1 Research question .......................................................................................................................... 1
  1.2 Scope of the thesis .......................................................................................................................... 6
  1.3 Literature review .......................................................................................................................... 7
  1.4 Theoretical framework .................................................................................................................. 12
  1.5 Research methodology .................................................................................................................. 20

**Chapter 2: The state** ......................................................................................................................... 24
  2.1 Introduction to the political analysis ............................................................................................ 24
  2.2 The preconditions of the “foreign agents” laws’ adoption ............................................................. 25
  2.3 Authoritarian turn ......................................................................................................................... 38
  2.4 “Authoritarian legality” ................................................................................................................ 41
  2.5 Components of Russia’s “authoritarian legality” ........................................................................ 44
  2.6 Restrictive legislation .................................................................................................................... 55
  2.7 Political analysis preliminary conclusions .................................................................................... 61

**Chapter 3: The law** ............................................................................................................................. 62
  3.1 Introduction to the legal analysis .................................................................................................... 62
  3.2 The “foreign agents” legislation’s evolution .................................................................................. 63
  3.3 Legislative changes of 2022 .......................................................................................................... 76
  3.4 Legal restrictions applicable to “foreign agents” .......................................................................... 82
# Table of Contents

3.5 The duties of “foreign agents” ................................................................. 90

3.6 Administrative and criminal liability of “foreign agents” ...................... 100

3.7 “Foreign agents” v. FARA ...................................................................... 104

3.8 Legislative ambiguity ........................................................................... 110

3.9 Legal analysis preliminary conclusions ................................................. 117

## Chapter 4: Civil society ........................................................................ 118

4.1 Introduction to the empirical analysis ................................................... 118

4.2 Designation stigma ................................................................................ 119

4.3 “Survival strategies” ............................................................................. 124

4.4 “International Memorial” .................................................................. 130

4.5 Empirical analysis preliminary conclusions ......................................... 139

## Chapter 5: Conclusion ......................................................................... 140

5.1 Theoretical conclusions ....................................................................... 140

5.2 General conclusions ............................................................................ 142

5.3 Declining predictability of legislative trajectories ................................ 147

## Bibliography ......................................................................................... 151
List of Tables

Table 1. Criteria used for the "foreign agent" designation under existing regulation................ 78
Table 2. Comparison of restrictions applicable to “foreign agents” under existing regulation and Federal law N 255-FZ ........................................................................................................................................................................ 89
Table 3. Reporting duties of “foreign agent” under Federal law N 255-FZ. .......................... 94
Chapter 1: Introduction

1.1 Research question

After large-scale protests in 2011-2012, Russia’s civil society faced an unprecedented wave of pressure coming from the state. Adopting new laws and amendments marked a symbolic end to the era of relative liberalization and freedom of civic activism, which evolved in the 1990s. The “foreign agents” concept was introduced in 2012 and originally aimed at nonprofit organizations (NPOs) financed from abroad and involved in political activity. The “foreign agents” legislation was further amended and expanded in 2017, 2019, and 2020 by including new categories of juridical and natural persons. In 2022, a new federal law was introduced to substitute scattered legislative acts by generalizing them and specifying their provisions.

According to the state, the law’s initial purpose was to provide “openness and transparency”\(^1\) to such NPOs’ functioning and establish a “due public control”\(^2\) mechanism. First propagated as a mechanism for promoting transparency, the “foreign agents” legislation quickly became a state tool to gain political leverage over civil society. It likewise contributed to the reinforcement of power vertical. While existing regulations never prohibited foreign funding for nonprofit organizations (or, later, other juridical and natural persons), they imposed stringent restrictions on designated persons and incorporated administrative and criminal liability measures.\(^3\) Purely legal repercussions

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2 Gosudarstvennaya Duma, "Poyasnitel'naya zapiska k proektu Federal'nogo zakona "O vnesenii izmenenij."\n
were supplemented with “reputational” damages of mandatory information labeling and registry inclusion. The vague and expansive terminology of the laws “fail[ed] to have a sufficient relation to the declared aims of increasing transparency and safeguarding civil rights, freedoms, and interests of the society and the State.”

The legislative pressure intensified over the years along with “Russia’s deepening autocratization.” The supposed political rationale behind implementing and harshening the “foreign agents” regulations fitted the typical pattern of authoritarian behavior aimed at countering dissent, avoiding unrest, and minimizing legitimacy contestation. While the present thesis will argue that sole appeal to Russia’s political regime is insufficient to cover the multitude of shades behind the interplay between politics and law in the country, it will rely on the Russian regime’s authoritarian nature to posit the “foreign agents” legislation within the theoretical framework of “authoritarian legality.” The twisted relationship between Russia's political and legal dimensions predetermines the need to stay away from a one-sided vision of the “foreign agents” laws and provide comprehensive integrative research at the intersection of political and legal sciences.

The tightening grip of the state over the neck of civil society led to multiple cases of “foreign agents” designations over the decade of the laws’ existence. Fearful of detrimental consequences of their designation or unwilling to comply with the legislative provisions, designated persons adopted specific “survival strategies” to alleviate or

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eliminate the risks of designation. The thesis will focus on the types of “survival strategies” adopted by designated persons and, simultaneously, will pay specific attention to the case of “International Memorial” – an organization that became a peculiar victim of the “foreign agents” acts’ repressive nature.

The “International Memorial” case became one of the most notable politically driven examples of the laws’ application. Established in 1989 by Leo Ponomarev and Andrey Sakharov, the “International Memorial” society was the pioneer and the locomotive of exploring Soviet-time political repressions. In 2014, the organization was designated as a “foreign agent” and, since then, has been facing various constraints and intense pressure from the Russian state. Ultimately, in December 2021, the Supreme Court of the Russian Federation adjudicated in favor of the Society’s dissolution following the request of the Prosecutor General’s Office based on the organization’s “systematic violation of labeling rules.”

“International Memorial” became a suitable target, clearly not favored by the state. Its findings did not align with the ever-changing narrative of the growing regime’s support of the Soviet Union and attempts to monopolize historical memory. Identification of the USSR’s repressive nature was viewed as an extension of foreign beneficiaries’ interest in the “vilification” of the Soviet Union and the organization’s poignant activity. This viewpoint was supported by the remarks of the Prosecutor General’s Office’s representative made during the court proceeding on the dissolution of the “International Memorial.” He explicitly stated that “Memorial” “almost entirely focused on the distortion

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of historical memory – primarily of the Great Patriotic War” and “by speculating on the
topic of political repressions “International Memorial” create[d] a deceitful image of the
USSR as a terrorist state.”

From a brief overview of the laws and their impact on civil society, it might be
observed that the “foreign agents” legislation is closely tied to the state’s political
ambitions and incentives. Still, it cannot be merely portrayed as a legal or political
instrument. Instead, it represents one of the unique examples of integrative tools utilized
by the state to counter regime contestation. The thesis will present a comprehensive,
versatile assessment of the “foreign agents” legislation based on a joint theoretical
framework combining political and legal realms. It will be argued that the nature of
Russia’s legal system and the “authoritarian legality” originating from the state’s regime
predetermined the emergence of the “foreign agents” legislation as a tool ensuring the
regime’s intactness.

As discussed in the thesis, Russia’s “authoritarian legality” relies on a strong sense
of historical continuity. Although it was not invariable during Russian history’s imperial,
Soviet, and post-Soviet periods, the modern iteration of Russia’s “authoritarian legality”
rests on the legacy of its predecessors. The thesis will focus on the Soviet system’s
attributes which might have served as the preconditions for the rise of “authoritarian
legality” in post-Soviet Russia. This analysis will serve as an introduction for further
research focusing on historical peculiarities and attributes of Russia’s “authoritarian
legality” along with the patterns of its continuous inner evolution.

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The thesis will argue that “authoritarian legality” encompasses the convoluted interplay between law and politics in the country and defines the use of law in its very instrumental manner. The present analysis will uncover the “foreign agents” legislation’s “politicized” nature and, among other things, link it to the system of “dual state” constituting one of the structural elements of “authoritarian legality.” Simultaneously, “foreign agents” legislation will be posited within a broader compendium of restrictive normative acts regulating the legal status of “undesirable” and extremist organizations. The thesis will evaluate the commonalities of mentioned acts with regard to the state’s political goals underlying their adoption and implementation and discuss the extent of the “foreign agents” laws’ uniqueness vis-à-vis other acts as the products of “authoritarian legality.”

The thesis will attempt to provide a unique depiction of the mutual interdependence of Russian law and politics and analyze the extent of the state’s instrumental use of the law for political oppression and managing civil society. It will likewise serve as a generalized invitation to further research on the topic. Based on the mentioned goals, the thesis will aim to respond to the two primary research questions:

**Q1.** How does the Russian state use law to gain political leverage over civil society?

**Q2.** In what ways did the legislation block civil society activities?
1.2 Scope of the thesis

The current thesis will cover multiple laws adopted in the Russian Federation from 2012 to 2022 and comprising the collective “foreign agents” legislation. The legal part of the thesis will trace the dynamic of legislative expansion, analyze the contents of the laws, and identify their distinct features. Special attention will be paid to comparative legal analysis to trace differences between existing regulations and the law, which will be enacted in December 2022. Additionally, the norms of Russia’s “foreign agents” legislation will be compared to the United States Foreign Agents Registration Act (FARA) provisions due to the Russian state’s recurring references. Legal analysis will be based on legislative and other normative acts of the Russian Federation, court decisions, and the federal legislative act of the United States of America.

The thesis’s political part will attempt to identify political preconditions that impacted the adoption of the “foreign agents” legislation and explore the system of “authoritarian legality” that predetermined the usage of the law by the state in an instrumental way to gain political leverage. The state’s political rationale will be explored through official statements, speeches, and court decisions related to the “foreign agents” legislation.

The empirical part will include the case of “International Memorial” and other “foreign agents.” The thesis will analyze the typical response provided by designated persons following their designation as “foreign agents.” Additionally, the thesis will evaluate the covert “extralegal” repercussions designated persons face.
1.3 Literature review

Though much was said about how the Russian state utilizes the “foreign agents” legislation to pursue its political goals, academic literature still lacks a comprehensive and versatile assessment of it. An existing scholarship primarily focuses on one specific dimension, legal or political. The thesis will attempt to fill the gap by conducting joint research appealing to both political and legal realms of the laws without favoring one over the other.

Existing legal analysis often shifts the focus toward international law at the expense of domestic legislation. The article by Jacqueline Van de Velde9 demonstrates this narrowing approach. It puts the “foreign agents” legislation within the framework of international public law and compares its provisions with the International Covenant on Civil and Political Rights (ICCPR) norms. The author leans toward identifying safeguards granted by international public law against the “foreign agents” legislation. The author does not provide a substantial overview of domestic regulations or case law. The analysis of judicial practice is limited by the Russian Constitutional Court’s decision stating that there were “no legal or constitutional grounds for contending that the “foreign agent” term had negative connotations from the Soviet era.”10

Much of the legal literature is devoted to placing Russia’s “foreign agents” legislation within the broader framework of the “foreign agents” laws enforced worldwide. Authors11 not only voice their concerns about Russia’s laws and compare procedural

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elements but even analyze the Russian counterpart’s norms’ potential applicability to American legislation. Other scholars stick to a broader comparison and consider multiple jurisdictions but emphasize that in Russia, “registering as a “foreign agent” carries a stigmatizing label,”\(^{12}\) unlike in other countries.

Some researchers prefer to concentrate on “survival strategies” implemented by designated persons. Such explorations underline the negative effect of legislation and demonstrate the hidden repercussions of designation but drift toward purely empirical data based on testimonies of “foreign agents.” Nevertheless, these works provide a valuable exploration of the designated persons’ responses to the designation, including “legal compliance, stimulated compliance, diversification or evasion of state demands.”\(^{13}\) They also demonstrate that the law itself, rather than “the alleged consequences of foreign donor activity, will have repercussions for … civil society.”\(^{14}\) The categorization of “survival strategies” and the strategies themselves will comprise the empirical part of the thesis.

Russian academic literature on the topic is limited. It is mainly dominated by pro-government scholars supporting the “foreign agent” concept and trying to justify its existence by providing a questionable rationale. Some articles\(^{15}\) demonstrate an elevated level of suspicion toward every foreign entity present in Russia, from consulting and auditing firms to religious organizations. Other works\(^{16}\) do not focus solely on “foreign agents” but portray all international organizations and foreign media as carrying out a

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disruptive policy against Russia. They state that such organizations have a “constant manipulative effect on the modern youth”\textsuperscript{17} and call for countering actions that might lead to a “color revolution scenario” in the country. An article by Kondrashev\textsuperscript{18} represents a rare exception within Russian academic literature. The author discusses the pitfalls of the “foreign agents” laws and compares Russia’s norms to those adopted in foreign countries (USA, Australia, Hungary). However, due to the recent legislative changes and the accelerated pace of the legislation’s application, the arguments provided by the author need to be elaborated, expended, and aligned with enacted regulations.

The concept of “authoritarian legality” comprising the centerpiece of the thesis’s theoretical framework has not been thoroughly theorized, and its use in academics tends to stay “infrequent.” Its definition appears to depend on the author’s will solely. Simultaneously, “authoritarian legality” is often confused (or conflated) with other similar notions, such as “rule by law”\textsuperscript{19} (not to be confused with the “rule of law”). Without a clearly defined conceptual framework, the difference between these notions becomes, indeed, elusive and, in its essence, vastly depends on one’s lexical choice.

Generally, there were several overt attempts to conceptualize “authoritarian legality.” However, there is hardly any type of unanimity toward its strict understanding. Conceptualization is primarily left at the authors’ discretion:

(1) In a relatively defined way, “authoritarian legality” appeared as “authoritarian legalism” in the 1999 work by Kanishka Jayasuriya, concentrating on the

\textsuperscript{17} Elishev, “Specsłużby inostrannyh gosudarstv,” 122.
“rule of law” in East Asia. The author defined two distinct interconnected characteristics of “authoritarian legalism”: “the use of law as an instrument of state building or a set of techniques to rationalise the state”\(^{20}\) and the “disjunction between private rights and public autonomy”\(^{21}\) leading to the emergence of “dual state”\(^{22}\) and depoliticization of economic sphere. The distinction between “authoritarian legality” and “dual state” concepts is essential to the present thesis since they contain differing attributes. It shall be agreed that the emergence of “authoritarian legality” leads to the appearance of the “dual state” as its structural component in individual cases.

(2) Anthony Pereira utilized the “authoritarian legality” concept to explore the peculiarities of legal systems in South America, namely, Brazil, Chile, and Argentina. The author did not provide any definitive understanding of what stands behind the use of “authoritarian legality” and, thus, applied it broadly to describe how the law was “manipulated, distorted, and abused”\(^{23}\) under authoritarianism and to present the interconnection between the “rule of law” and political realm in countries above.

(3) In the unpublished version of their work dedicated to Asian authoritarianism, Weitseng Chen and Hualing Fu defined “authoritarian legality” as “[referring to] legality and the rule of law as promoted by strong authoritarian states, where a merely instrumental commitment to law could nonetheless develop and even solidify without radical democratic and/or political reform.”\(^{24}\) Additionally, the authors underlined


\(^{22}\) The concept of “dual state” will be explored separately based on the findings regarding “authoritarian legality.”


that “authoritarian legality” constitutes a “space where legality, authoritarianism, democracy, and legitimacy are intertwined and cause a great deal of ambiguity, coupled with divided views and competing evaluations of its operation.”

(4) Later, Hualing Fu and Michael Dowdle applied the concept to describe China’s legal system and defined it loosely as an “attribute and a subset of the authoritarian state, which is used to prevent and manage political challenges and punish political enemies, real or imagined.” Simultaneously, the authors identified the main characteristic of “authoritarian legality” – the existence of a “dual system,” namely the coexistence of a “normative state where legal rules matter and a prerogative state where politics trumps.”

The present thesis will combine political and legal approaches to fill the gap in existing academic scholarship on the topic. The novelty of the research will originate from adopting the “authoritarian legality” theoretical framework to explore the interconnection between politics and law in Russia. The thesis will identify the multitude of approaches to understanding “authoritarian legality” and provide a unique definition applicable to the type of legality adopted in Russia. Additionally, existing regulations will be contrasted with the norms scheduled to be enacted in December 2022. This type of comparative legal research will become one of the first substantial scholarly analyses of future provisions. It will serve as a fruitful basis for future research on the topic.

25 Chen and Fu, “Authoritarian Legality.”
27 Fu and Dowdle, "The Concept of Authoritarian Legality," 67.
1.4 Theoretical framework

Today, almost everyone agrees that civil society is essential to democracy. At the same time, it might still exist in non-democratic regimes “if its constituent elements operate by some set of shared rules.” However, the goals of civil society in democratic and non-democratic regimes differ. In democracies, civil society serves public interests by limiting state power, preventing democratic governments from “potential abuses and violations of the law,” and stimulating political participation. More broadly, within a democratic system, civil society “legitimates state authority when that authority is based on the rule of law.” In autocracies, civil society's role depends on the state's assertiveness. A few authoritarian states, such as Turkmenistan, outlaw non-state associations entirely by granting registration rights only to those groups “that the ruling … elite believe do not pose a threat to their hold on political power.” Other states prefer to allow the existence of civil society within specific legal and political boundaries.

The scholarship is not unanimous in assessing modern Russia’s political regime as it is generally perceived as combining characteristics inherent to various types. For instance, Michael McFaul offered the concept of “managed democracy” as, according to the author, the regime created and utilized formal democratic institutions but “their real capacity to influence the actions of the state [was] severely limited.” Russia might as well be portrayed as an “illiberal democracy” as it fits the traditional criteria of “ignoring constitutional limits on [its] power and depriving [the] citizens of basic rights and

29 Diamond, "Rethinking Civil Society," 7.
30 Diamond, "Rethinking Civil Society," 5.
freedoms.” Russian illiberalism might even take a distinct form of ‘sovereignism’ propagating “defending national sovereignty as a key element” of the regime. However, identifying Russia as a ‘managed’ or ‘illiberal’ democracy does not turn its regime into a full-fledged democracy. It merely classifies it as a “carefully constructed and maintained” “semi-authoritarian” hybrid regime.

Other authors identify the Russian political regime as purely or predominantly authoritarian, penetrating national and sub-national (local) levels in a “centralized party-based” way. And while debates regarding the shades of Russia’s political regime might have been of use before, the recent developments indicate its unequivocal turn to the “fully authoritarian” spectrum. The first reason for such a confident statement is the 2022 invasion of Ukraine which not only subverted international order but demonstrated the regime’s extreme reliance on the will of the ruling elite (namely, President Putin). Another reason is the adoption of the “foreign influence” law in July 2022, which became a symbolical marker of the state’s deteriorating attitude to civil society and the enhancement of activities aimed at minimizing, controlling, or subverting its functioning. It is worth agreeing with Andrei Kolesnikov, who rightly noted that Russia “turned out to be a fully mature authoritarian regime” and now includes “elements of totalitarianism,” such as President Putin’s call for the “natural and needed self-cleansing of society.”

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Since, at least for the present thesis, the Russian political regime has been identified as “authoritarian,” it does not mean that the laws adopted by the Russian state shall be automatically deemed dependent on political will. As will be later observed, the “authoritarian legality” system adopted in Russia led to the emergence of the “dual system,” providing for the simultaneous existence of two parallel legal dimensions. The duality of the legal system predetermined the appearance of a reserved space not generally susceptible to arbitrary political interference and coexisting with the state of “exclusionary” law enforcement where the norms can be bent to satisfy the needs of the ruling elite. Generally, the law appears to be critical to the Russian state. President Putin “consolidated his power through law by […] canceling elections of local governors and appointing his own handpicked candidates.”39 He later declared that the constitutional amendments of 2020 were “to ensure Russia’s further development as a legal, social state, to […] strengthen the role of civil society.”40 But, as once said by Joseph Raz, “conformity to the rule of law also enables the law to serve bad purposes.”41 While preserving the illusory democratic shell, the regime's authoritarian nature predetermines the instrumental and relatively twisted use of law as a mechanism to “assure state hegemony in society.”42

All authoritarian regimes resist creating autonomous spaces where “multiple discourses can be developed and promoted.”43 More specifically, they are not necessarily interested in eradicating civil society. Instead, the state might encourage those elements of civil society “that it considers helpful to its mission of establishing a civil society that

collaborates and … beholden to the state." Authoritarian regimes limit the public discourse and impose an array of restrictions on the functioning of civil society, such as “formal censorship regime, the physical repression of political activists, journalists, and writers, or a range of more indirect forms of pressure.” However, overt contradiction yields to maintaining a democratic shell by “co-opting or censoring elites and using propaganda to boost their popularity” and manipulating information.

The Russian regime views the activities of civil society in the public sphere as legitimacy contestation. Still, the government does not seek to eliminate civil society. The Russian regime’s (and legal system’s) duality caused the ambiguity of the state’s attitude towards civil society and forced it to balance contrasting interests. As follows, the state combines “supporting ‘harmless’ or pro-governmental civil society organizations while simultaneously suppressing or obstructing others” in an authoritarian manner. Those who do not fit into the state discourse are viewed as “promoters of counter-discourses, challenging the maintenance of the government’s own political legitimacy.”

The role of law in authoritarian regimes rarely gets the focus of attention and is ordinarily looked down on. The law is viewed one-sidedly as a mere tool of “efficient and disciplined exercise of state power” within the decorative legal system, which might, however, to varying degrees, preserve judicial institutions as a “fig leaf for a naked grab of power.” The law is always authoritarian in the formal sense since it guides the everyday behavior of persons and is backed by state coercion. However, the law of authoritarian

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44 Kirsti Stuvoy, ”The Foreign Within: State-Civil Society Relations in Russia,” Europe-Asia Studies 72, no. 7 (2020): 1104.
45 Lewis, ”Civil Society and the Authoritarian State,” 331.
47 Stuvoy, ”The Foreign Within,” 1104.
48 Lewis, ”Civil Society and the Authoritarian State,” p. 333.
50 Moustafa, ”Law and Courts,” 287.
regimes has a “tendency to validate and facilitate oppression and violence,” thus turning the legal provisions into a political weapon. For this reason, a typical attitude to normative acts adopted in authoritarian regimes is usually expressed condescendingly: authoritarian constitutions and other acts are presumed to “not serve as normative benchmarks” but as a type of the state’s legal window-dressing. The same conclusion follows from the “paternalistic” vision of individual regimes. Henry Hale, for instance, points out that in highly paternalistic societies constitutions are not generally implied to be followed or obeyed and shape how the “formalities of […] formal institutions are disregarded, violated, and manipulated”. At the same time, authoritarian constitutions might contain “brutal candor” as they can “solve coordination problems among members of the regime itself.”

In occasional cases, states might bound themselves to what is known as “authoritarian constitutionalism.” It is typically understood as “a system of government that combines reasonably free and fair elections with a moderate degree of repressive control of expression and limits on personal freedom,” with Singapore being the most prominent example.

By disregarding or overlooking the multitude of legal dimensions in authoritarian regimes, researchers make an incorrect generalization that downplays the role of law in such regimes. It is systematically portrayed as entirely or predominantly subservient to the political will of the sovereign or the state, which only appears to be true to a certain extent.

55 Law and Versteeg, "Constitutional Variation,” 166.
The issue shall be observed at the intersection of several theoretical approaches for greater validity. For the thesis’s purposes, the state and law in Russia will be viewed as operating within the system of “authoritarian legality,” which lacks an unambiguous definition in academic scholarship and will be explicitly defined for the thesis. The concept of “authoritarian legality” will serve as the basis of the thesis’s theoretical framework and will allow us to position the “foreign agents” legislation within the larger pattern of interrelation (and interdependence) between politics and law in Russia.

“Authoritarian legality” will be assessed along with the concept of “dual state” comprising its integral component. Richard Sakwa popularized the “dual” character of the Russian state in 2010 through the representation of the struggle between the “normative state” and the “administrative regime.”57 In Sakwa’s division, the former stood for “the formal constitutional order,” whereas the latter identified the “world of informal practices, factional conflict, and para-constitutional political practices.” Sakwa took after Fraenkel and Schmitt, who attempted to demonstrate the manifestations of state duality in the first half of the XX century by analyzing the legal aspects of the Nazi regime. While Sakwa was correct in identifying the duality of the Russian system of politics and law, his division is not entirely compatible with the form of duality existing within the pattern of Russia’s “authoritarian legality.” For this reason, the present thesis will rely on the works of Fraenkel and Schmitt as essential parts of exploring the broader concept of “authoritarian legality” and posit the “dual system” within its boundaries. It will simultaneously note its distinctive historical and philosophical aspects.

Lastly, although the “foreign agents” laws do not explicitly outlaw foreign funding or ban the functioning of designated persons, the designation forces them to develop so-called “survival strategies.” Understood broadly, these strategies include multiple types of responses adopted by designated persons to alleviate or negate the risks of their designation. Persons designated as “foreign agents” “admit that it has become all but impossible to continue their work […] because of the serious administrative, financial, and moral sanctions” and must “adapt to the new rules of the game generated by the foreign agent law.” “Survival strategies,” as follows, stand for the variations of adaptation processes “foreign agents” undergo after their designation. These strategies range from forced dissolution due to the inability to maintain functioning without foreign funding to judicial protection and contestation of the new legal status.

Strictly put, the strategies demonstrate how designated persons react to their designation and whether they prefer to comply with imposed requirements, contest their designation and registry inclusion, or strongly oppose the laws. Whereas various authors identify multiple categories of “survival strategies,” the most generalized division of “strategies of adaptation” proposed by Maria Tysiachniouk includes four main techniques: compliance, simulation, informalization, and diversification. This division will serve as the empirical basis for the thesis’s exploration of “strategies” adopted by designated persons. Additionally, the “International Memorial” case will serve as an example of an attempt to take on a “survival strategy” of judicial protection severely contested by the state.

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60 Tysiachniouk, “Civil Society,” 625.
As for the hypotheses, based on the abovementioned theoretical aspects, the thesis will test the following ones:

**H1.** Due to Russia’s legal system’s peculiarities and its authoritarian political regime, the Russian state uses the law as a political tool to eliminate the contestation of the regime’s legitimacy.

**H2.** By utilizing the “foreign agents” legislation to impose restrictions on designated persons, the Russian state damages the development of civil society and forces designated persons to adopt “survival strategies.”
1.5 Research methodology

The thesis’s research methodology will combine political and normative research methods. The rationale behind such a choice is predetermined by an existing interrelation between political and legal realms in Russia. Legislative bodies do not exercise a high level of discretion since they mainly consist of the ruling party representatives and loyal opposition forces. The means of opposing the penetrating will of the state are severely limited by the “subservient judiciary” and “loyalist security forces.” Legislative norms are often vaguely defined or inconsistently interpreted. In given conditions, the public law system becomes an extension of the state’s internal policy fueled by the ruling elite’s agenda and finds itself at the intersection of politics and law. Such an arbitrary and highly politicized legal regime “allows the Kremlin to pursue political goals through the courts unfettered.”

The interconnection of law and politics in Russia, thus, calls for the usage of combined tools. The exploration of political factors underlying the adoption and implementation of the “foreign agents” legislation can hardly be separated from their legal embodiment without the risk of losing credibility. On the contrary, a purely legal analysis would present a one-sided and incomplete picture detached from political reality.

Policy analysis. State policy toward “foreign agents” will be analyzed through the lens of the state’s incentives and in close connection with the concept of “authoritarian legality.” Policy analysis will aim to (1) identify political preconditions and the state’s rationale leading to the adoption of “foreign agents” legislation, (2) overview the regime’s

entrenching authoritarianism, (3) analyze the system of “authoritarian legality,” its structural components and distinct characteristics, and (4) posit “foreign agents” legislation within the system of “authoritarian legality” and link it to other normative acts comprising restrictive legislation. Policy analysis will be utilized in Chapter 2 to explore the position of the Russian authorities. In Chapter 4, the method will be used to analyze the case of “International Memorial” (in the form of a case study analysis) and the hidden political repercussions of “foreign agent” designation.

Apart from evaluating existing responses, policy analysis will include predicting the trajectories of legislative evolution in Chapter 5. The urgency of such projection originates from recent legislative amendments and Putin’s ambiguous statements on the so-called “traitors of the nation” and the “fifth column.” Additional attention must be paid to the contents of Putin’s speeches dedicated to “foreign agents” due to his specific role in the system of Russia’s “authoritarian legality.” The speeches of the Prosecutor General’s Office’s representatives during court proceedings on the dissolution of the “Memorial” will also provide an insight into the state’s position. They will help identify the dominant narrative toward organizations attempting to contest the state-imposed agenda.

**Doctrinal legal research** is a purely legal, distinct type of research. It will be applied in Chapter 3 to analyze normative acts regulating “foreign agent” designation. This body of legislation is comprised of numerous acts, such as the federal laws “On nonprofit organizations,” “On media,” “On sanctions for individuals violating fundamental
human rights and freedoms, rights and freedoms of the citizens of the Russian Federation,”68 and others. The goal of the method’s application will be to identify (1) the norms regulating the legal status of “foreign agents,” (2) the legal grounds for the “foreign agents” designation; (3) legal requirements and duties imposed on “foreign agents,” (4) types of administrative and criminal liability, and (5) the extent of legislative ambiguity.

Additionally, doctrinal legal research will be applied to authoritative sources, including case law (which does not comprise precedents in the Russian legal system) and scholarly legal writings (such as the Venice Commission’s opinions69). Doctrinal legal research will be used straightforwardly, without assessing the context of legislation, to identify the “validity and the precise meaning of a legally relevant text.”70 Since the impact of politics on legislative activity in Russia is overwhelming, the primary purpose of doctrinal legal research will be to capture the embodiment of the state’s political rationale in a written form.

**Comparative legal research** contrasts similar or identical institutions adopted in different jurisdictions and identifies their commonalities, similarities, or differences. Within the thesis, it will be applied in Chapter 3 and have a combined doctrinal and historical character. It will expose the rules, institutions, and procedures and their application in the United States and Russia in dynamic. The Russian officials’ persistent appeal to the United States legislation in public speeches and explanatory notes dictates the

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choice of the United States as a foreign jurisdiction. Besides, it had a pronounced effect and inspired the adoption of Russia’s counterpart. The designation of ‘Russia Today’ and ‘Sputnik’ as “agents of the foreign principals” under FARA in 2017 served as a formal pretext for introducing Russia’s anti-media “foreign agents” law.

The Russian state (namely, President Putin) claims that the Russian “foreign agents” legislation is “significantly softer”71 and has lower liability than its American counterpart. References to American legislation became a crucial part of the Russian state’s discourse and served as a justification for the imposition of similar domestic regulations. Comparative legal research will allow us to compare (1) the regulatory framework of legislative acts, (2) types of administrative and criminal liability, and (3) specific consequences and duties faced by “foreign agents” in both jurisdictions. The result will respond to two primary questions: to what extent are two legislations similar (different), and are the Russian state’s claims about FARA and its punitive nature sustainable?

Comparative legal analysis will be similarly utilized to trace the dynamics of the Russian laws’ evolution by contrasting different versions with each other and identifying varying provisions. It will expose the general trajectories of the evolution of legislative provisions regulating "foreign agents'" restrictions, duties, and liability.

Chapter 2: The state

2.1 Introduction to the political analysis

The given chapter will be dedicated to the “foreign agents” legislation’s political realm. Exploring political preconditions leading to the adoption of the initial “foreign agents” law in 2012 will be presented as a retrospective policy analysis. Given the deep interconnection between political and legal dimensions in Russia, mentioned type of analysis will allow us to understand the political rationale impacting the state’s perception of threats coming from the civil society and requiring the state’s response in the form of legislative novelties’ introduction. The “foreign agents” legislation will, thus, be viewed through the prism of its derivative role with regard to political incentives. The method of retrospective policy analysis will be similarly applied to provide an overview of Russia’s political regime’s gradual shift under Presidents Yeltsin and Putin.

The policy analysis findings will provide insight into the “authoritarian legality” system determining the interrelation between politics and law in Russia. Historical and philosophical drivers of “authoritarian legality” will be supplemented with analyzing the “dual state” system originating from the works of Fraenkel and Schmitt. This complex vision of the Russian political-legal system of “authoritarian legality” will form the core theoretical framework of the thesis.
2.2 The preconditions of the “foreign agents” laws’ adoption

When speaking about the use and role of law in Russia, it is worth paying attention to the underlying political motivation and “drivers” of legislative initiatives. Since, as mentioned in the introductory part of the thesis, the Russian legal system functions within the framework of “authoritarian legality,” the adoption and implementation of laws might be beneficial for the Russian elites. Identifying the main factors that could lead to adopting the “foreign agents” legislation is needed to assess its political meaning and role properly. Thus, we will understand whether the bill's introduction addressed the issues which impacted the Russian state (regime) or challenged its legitimacy.

(A) Protests of 2011-2012.

In December 2011, the outcome of elections to the State Duma ignited a series of chained protests in Russia, with Moscow being the center of unrest. The protesters opposed the election results, which “domestic and international observers said were tainted by ballot-stuffing and fraud”\textsuperscript{72} on behalf of the ruling United Russia party. Later, in 2017, ECHR acknowledged that the results were “seriously compromised”\textsuperscript{73} and affected by “the extent of recounting, the unclear reasons for ordering it, the lack of transparency, and the breaches of procedural guarantees in carrying it out.”\textsuperscript{74} In the ECHR’s view, mentioned aspects supported the “suspicion of unfairness.”\textsuperscript{75} Another reason for the outburst of full-fledged protests in 2011 became the “swap” between President Medvedev and Vladimir Putin, serving at the time as the Head of the Russian Government. The experts noted that


\textsuperscript{73} Davydov and others v. Russia, no. 75947/11, § 312, ECHR 2017.

\textsuperscript{74} Davydov and others v. Russia, § 336.

\textsuperscript{75} Davydov and others v. Russia, § 336.
the “Putin-Medvedev position swap, announced in September, was taken as an insult. Dmitry Medvedev has since been dismissed as irrelevant; Putin was booed.”  

The state reacted in a mixed manner. The protests had a moderate effect on federal policy. At the end of December 2011, President Medvedev “announced the reform aimed at the liberalization of the political system,” namely, the return of direct gubernatorial elections and easing the political parties’ registration procedure. Vladislav Surkov, being the First Deputy Head of Presidential Administration, underlined the “absolute reality and naturalness” of the protest movement and spoke favorably about the protesters, and underlined that the authorities could not “arrogantly dismiss their opinions.” At the same time, Vladimir Putin commented vaguely by mentioning “people who have the passport of the citizen of the Russian Federation, but [act] in the interests of foreign states and on foreign money” and referring to the opposition as “bander-logs.” While his initial reaction was “to downplay [the protest’s] significance,” it became more apparent that the public demanded a response, which Putin provided in the form of “holding pro-government counter-demonstrations and manipulating media coverage in his favor.” After all, the protest did not result in any significant alteration of state policy. While some experts supposed that “mass protests scared [the system],” others focused on the personality of

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79 Shishkunova, “Sistema uzhe izmenilas’.”
81 Putin, "V pryamom efire."
83 Carnegie, "More than Moscow."
Vladimir Putin and his interest in countering the surge of civic unrest amid the upcoming reelection to the Kremlin. In their opinion, it was hard to imagine that Putin would “have trouble blunting the force of opposition activity and offering average Russians at least a taste of the reform for which they [were] clamoring.”

Vladimir Putin’s victory in the first tour of the 2012 presidential elections was expected. According to the polls carried out by “Levada-Center” (later designated as a “foreign agent”) in January 2012, the majority of Russians (78 percent) had no doubt Vladimir Putin would be reelected president, whereas 53 percent believed Putin would win in the first tour. Despite the widespread belief in Putin’s odds, the public considered the results compromised as “multiple violations during the voting process” were observed, primarily by “GOLOS” – a voters’ association founded shortly before the 2011 elections and designated as a “foreign agent” in 2013. On May 6, 2012, one day before Putin’s inauguration, the opposition held a rally sanctioned by the Moscow authorities. What “began peacefully with a marching band and Muscovites waving placards lampooning Mr. Putin and his government turned into a large-scale confrontation between the protesters and police forces. Four hundred forty-nine protesters were detained, and dozens were later sentenced to prison terms for “mass riots” and “violence against representatives of the power” within the so-called “Bolotnaya Square case” ["Bolotnoe delo"].
The protests of 2011-2012 did have one noteworthy result. The state’s response to demonstrations changed as the authorities started to act sharp. The government “headed towards tightening of legislation [and] consistently persecuting its political rivals – the participants and organizers of protest actions.”\textsuperscript{90} The enhancement of administrative liability for violations during meetings, demonstrations, assemblies, and picketing became an illustrative example of the shifting attitude. The amendments increased\textsuperscript{91} the fines imposed on demonstration organizers, introduced mandatory labor as a new punishment, and prohibited the “mass simultaneous presence of citizens in public places”\textsuperscript{92} if it might cause a public disturbance.

(B) Foreign involvement.

The protests accelerated the transformation of another political realm – the state’s attitude to the abstract “foreign interference” in the country’s internal policy. The narrative of foreign involvement in domestic politics was not new; in 2004, during his annual address to the Federal Assembly, President Putin made an important statement about human rights organizations that did not evolve into a full-fledged state policy but did have a crucial symbolical meaning. He claimed that the priority for some organizations was “to receive financing from influential foreign foundations, [serve] dubious group and commercial interests.”\textsuperscript{93} In his view, such organizations were dependent on their foreign puppet-masters and “simply [could not] bite the hand that [fed] them.”\textsuperscript{94} The organizations’ alleged

\textsuperscript{94} Putin, "Annual Address."
dependence originated from President Putin’s perception of threat coming from civil society. He was convinced that “NGOs had become pawns of foreign governments. NGOs provided a convenient cover for intelligence-gathering activities, and their dependence upon funding from Western philanthropic foundations ensured that they would follow the lead set by their Western masters.”95

Over time, appealing to the “Western origin” of Russian NPOs became a recurring discourse. The so-called “color revolutions” occurring in Russia’s closest neighborhood triggered an elevated sense of danger in the state. In the aftermath of Ukraine’s “Orange revolution,” the authorities switched from domestic rivalry, which was no longer perceived as a vital threat to the external sources of unrest, namely, foreign organizations and secret services. In the Kremlin’s view, they were “responsible for all successful or failed color revolutions, if not for all the fateful political events of the last quarter-century in (and possibly outside) the post-Soviet region.”96 The authorities shared the belief that “it was foreign-funded NGOs that played a key role in […] overturning the presidential election results in Ukraine”97 and that they needed to “further weaken civil society”98 to prevent such turmoil in Russia.

The repercussions of the “Orange revolution” partially explain the shifting paradigm of anti-Western attitude within the Russian elite. The same applies to amending NPOs legislation in 2006, which brought the duty of all organizations to “disclose the

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98 Kuchins, "Russian Democracy."
The anti-foreign discourse was not yet adopted as a policy. Still, it was already observable that “Russia began cracking down on potential sources of domestic opposition. Having noted the involvement of Ukraine’s civil society in the grassroots activism that made the Orange Revolution possible,”\footnote{Peter Dickinson, "How Ukraine's Orange Revolution shaped twenty-first century geopolitics," Atlantic Council, November 22, 2020, https://www.atlanticcouncil.org/blogs/ukrainealert/how-ukraines-orange-revolution-shaped-twenty-first-century-geopolitics/} the state started to drift toward stricter regulation of civil society activities. Simultaneously, the Kremlin’s strategists “began using the media more actively to promote a new counter-revolutionary politics, in which a constant theme was that the West now constituted Russia’s enemy.”\footnote{David G. Lewis, Russia’s New Authoritarianism. Putin and the Politics of Order (Edinburgh: Edinburgh University Press, 2020), 106.}

The famous 2007 “Munich speech” became a unique curve of President Putin’s anti-Western public sentiments. While answering the audience’s questions, Putin made a crucial point regarding foreign ties with Russian civil society. He stated, "when these non-governmental organisations are financed by foreign governments, we see them as an instrument that foreign states use to carry out their Russian policies. [...] there is no democracy here, there is simply one state exerting influence on another.”\footnote{Vladimir Putin, "Speech and the Following Discussion at the Munich Conference on Security Policy," Kremlin, February 10, 2007, http://en.kremlin.ru/events/president/transcripts/copy/24034.} The logical continuation followed in the President’s subsequent annual address when he mentioned those who made “skillful use of pseudo-democratic rhetoric”\footnote{Vladimir Putin, "Annual Address to the Federal Assembly," Kremlin, April 26, 2007, http://en.kremlin.ru/events/president/transcripts/24203.} in the context of “an increasing influx of money from abroad being used to intervene directly in our internal affairs.”\footnote{Putin, "Annual Address."} There was hardly any doubt that President Putin was addressing civil society

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104 Putin, "Annual Address."
organizations, namely “the human rights and democracy movements [that] were supported by forces intent on weakening Russia.”

The discourse of foreign influence was steadily becoming ever-penetrating. Following the December protests of 2011, while talking about those foreign sources who “swing” ["pokachivayut"] the country to make it “feel that they have power over us inside our country,” Vladimir Putin called for “enhancing liability of those who perform the tasks of foreign states regarding influencing the internal political process.” Amid the adoption of the “foreign agents” legislation in June 2012, during his meeting with the Head of the Council of civil society development and the Human Rights Ombudsman, President Putin made an unequivocal statement that “it still matters whether they [nonprofit organizations] received money from [the Department of State] or some of our Russian structures because as the conventional wisdom has it, he who pays the piper calls the tune.” It was getting more apparent that the topic of civil society’s foreign financing was becoming of more importance to the state and led, among other things, to “a more general drive to exclude external influences after a wave of post-election protests in 2011.”

The topic of foreign interference in the form of orchestrated “color revolutions” persisted over the years and was not discarded as outdated. In 2020, Nikolai Patrushev, Secretary of the Russian Security Council, expressed the state’s opinion regarding West-induced antigovernment activities. He stated that “to influence sovereign states, the

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107 Putin, "PresedateP Pravitel'stva."
Western states have been using extensive tools for many decades. First, measures of informational-propagandist and political-diplomatic pressure are taken. If they do not stimulate the leaders of a particular state to adjust the state line "in the right way," scenarios for organizing a change of government by initiating quasi-spontaneous mass uprisings come into play.”110 In January 2022, after an attempted coup in Kazakhstan, President Putin claimed that the measures taken by Collective Security Treatment Organization (CSTO) overtly demonstrated that the member states would not allow to “realize the scripts of the so-called color revolutions.”111

In 2021, state incentive to counter alleged foreign interference was institutionalized by establishing a “Temporary commission for state sovereignty protection and preventing interference in the internal affairs of the Russian Federation” under the auspices of the Federation Council. The Commission’s report of December 2021, apart from making a standard reference to the “color revolutions” scenarios, paid a sheer amount of attention to the “foreign agents.” The Commission identified the ways of “foreign agents’” interference in internal politics, including the distribution of “fraudulent or one-sided information to cause mistrust to the Russian electoral system, particular Duma elections, their results.”112 “Foreign agents” were likewise blamed for stimulating “protest (i.e., wittingly illicit) activity on the Russian soil.”113

(C) Manageable civil society.

113 Sovet Federacii, "Ezhegodnyj doklad."
Neither the protests of 2011-2012 nor the alleged foreign interference in Russia’s domestic policy can be evaluated separately as they supplemented one another in shaping the authorities’ decision to introduce “foreign agents” legislation. However, the picture would be incomplete without one more essential element – the Russian state’s vision of civil society. While it is true that the image of civil society and its content underwent noticeable changes during the third presidential term of Vladimir Putin, the story of constructing a model of “controlled” or “manageable” civil society started in the early 2000s and was founded mainly on Russia’s historical legacy.

Formalized civil society was non-existent during the Soviet era. Every organization, let it be the All-Russian society of nature protection or the Association of Soviet Jurists, was under state control. There was no space for political dissent, either. Soviet citizens were dragged into the omnipresent Communist Party’s area of gravity in one way or another (for instance, through their membership in Komsomol – an officially independent yet highly reliant on the ruling party youth organization). Those who managed to stay aside from direct involvement in official organizations found themselves “isolated and unable to mobilize strong opposition to the regime.”

Generally, “face-to-face primary groups became a substitute for civil society.” The situation started to change shortly before the demise of the Soviet Union, in 1985, with “tens of thousands of unofficial groups and political parties” emerging in response to the processes of glasnost’ and perestroika inspired by Mikhail Gorbachev. During the March Plenum of the CPSU, Gorbachev openly supported the idea of supplementing the Soviet Constitution with the norm providing

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115 Rose, "Rethinking Civil Society," 22.
“political and social organizations with equal opportunities to participate – surely, in legal, democratic forms – in socio-political life, fight for the realization of their charter purposes.”\(^{117}\) The last years of the Soviet Union were marked by the emergence of informal organizations shaping the nascent civil society. Still, Gorbachev’s cautious democratization attempts were severely constrained by the uneasy institutional conditions and the orientation toward the revival of “the bedraggled Soviet economy,”\(^{118}\) which could potentially “sour the atmosphere for reform in other areas.”\(^{119}\) Gorbachev’s achievements were limited, but they were a necessary precondition for civil society’s further transformation.

The fall of the Soviet Union gave way to the time of the 1990s – one of the periods of Russia’s most extreme internal turbulence. Still, the Russian authorities are depicting the period as a breakdown similar to a “civil war”\(^{120}\) to contrast it with the current swing of things. However, the liberalization of the system “with elements of political pluralism and competition”\(^{121}\) in the 1990s led to the transformation of civic activism in the country. At the same time, it was severely impacted by the Soviet legacy. The decades of prior state control over social behavior “had so stifled individual initiative and the incentive to actively engage in […] activities, that […] civil society struggled to develop into a meaningful, influential force.”\(^{122}\) Apart from problems with social engagement, activism

\(^{117}\) Materialy Plenuma Central’nogo Komiteta KPSS, 11, 14, 16 marta 1990 g. (Moskva: Izdatel’stvo politicheskoj literatury, 1990), 6.
suffered from the “fragmentation of independent movements”\textsuperscript{123} that emerged during the 
\textit{perestroika} period and were mostly local. The 1990s civil society model is best described as “a small group of reform-oriented organizations supported primarily by Western donors eager to support Russia’s fledgling democracy.”\textsuperscript{124} Yeltsin’s administration had no tangible way to facilitate or guide the emergence of civil society due to the unprecedented scale of social tensions and instability it was dealing with.

Vladimir Putin’s ascendance to power launched a new era of state-civil society relations with “increasing centralization of power.”\textsuperscript{125} The purpose of civil society was reinvented; it evolved into a distinct concept – “civil society in the service of the nation or state”\textsuperscript{126} as the authorities started to share the approach that “civil society in Russia must develop in tandem with the strengthening of Russian statehood”\textsuperscript{127} to be successful. President Putin articulated the unique mission of Russia’s civil society in his 2001 speech. He noted that nongovernmental organizations and the whole Russian society were capable and needed to share with the state “the responsibility for socioeconomic and political processes.”\textsuperscript{128}

Still, the reinvention of civil society was driven “by the ideology of putting the state first”\textsuperscript{129} and in many ways reiterated the Soviet approach by equipping the state with “alternative routes for the mobilization of citizens in accordance with its own agenda.”\textsuperscript{130}

\begin{footnotes}
\footnotetext[129]{Ljubownikow, “The state and civil society,” 160.}
\footnotetext[130]{Ljubownikow, “The state and civil society,” 161.}
\end{footnotes}
This “state comes first” orientation explains the state’s attempt to “institutionalize” civil society, for instance, through the network of public chambers. They served the dual purpose of encouraging public participation in policy matters and restricting “any autonomous societal activity that might possibly provide the basis for organized opposition.” Another example of direct state involvement in shaping civil society was the emergence of state-led political movements, such as Nashi and Molodaya Gvardia. Through political associations, the state was “trying to mobilise [the youth] in support of the current political regime,” especially amid ongoing “color revolutions” in Russia’s neighborhood.

The centerpiece of state engagement became the financing it generously provided to nonprofit organizations. Following the Public Chamber’s initiative, the first grant competition was introduced in 2006 to support organizations involved in “the development of the institutes of civil society.” After 2007, the average annual state subsidy to nonprofit organizations reached approximately 1.2 billion rubles. In 2010, the state introduced the category of “socially oriented NPOs” and envisaged such organizations' exclusive measures of predominantly monetary support. At first, state financing did not come at a price. The Moscow Helsinki Group, one of Russia's most prominent and oldest human rights organizations and “outspoken critics of the Putin government,” were

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receiving state money. Later, however, grant applicants were “expected to demonstrate unconditional loyalty and total obedience to the governmental policies,”\textsuperscript{137} namely to abstain from inappropriate gestures, such as “expressing dissent or working with “foreign agents.”\textsuperscript{138} Ultimately, the state preferred to get directly involved in civil society activities and established its nonprofit organizations. The process was launched in 2015 with the creation of three government-controlled entities. The record was set in 2019, when the state created “no less than eight similar structures, mostly in the form of autonomous noncommercial organizations.”\textsuperscript{139}

The state’s shared belief in alleged foreign interference in Russia’s domestic policy through civil society organizations backed by the notorious example of “color revolutions” led to the growing orientation for constructing a “manageable” type of civil society. As might be seen from a brief overview above, the state’s involvement in civil society issues was broadening over the years. It came a long way from merely providing measures of financial support to imposing “stringent administrative liability [NPOs] constantly risk falling foul of”\textsuperscript{140} and restricting income streams. While it is true that the “reinvention” of the civil society paradigm came from perceived internal and external factors, one more dimension encompasses all the manifestations of the state’s growing control.

\textsuperscript{138} Zakharova, “Vladimir Putin Loves Civil Society.”
2.3 Authoritarian turn

Gorbachev’s attempts to reconstruct the totalitarian regime within perestroika “accelerated the process of democratization”\textsuperscript{141} but led to the seemingly imminent fall of the Soviet Union, incapable of adapting to the new reality and overcoming the contagious diffusion of internal controversies. The regime which emerged after the Soviet rule was, quoting well-known politician Grigory Yavlinsky, “neither democratic nor communist, neither conservative nor liberal.”\textsuperscript{142} It was resting on the fear of the communist comeback and hardly defined itself strictly. While maintaining democratic attributes, the state was swinging from one extreme to another. Liberal reforms met with the military resolution of the 1993 constitutional crisis; formal commitment to human rights issues bordered on the harsh character of the Chechnya campaign; the elections were “free but not fair.”\textsuperscript{143}

Yeltsin’s reforms did create “new space for independent political, social, and economic activity”\textsuperscript{144} as his administration, among other things, “did not attempt to impede the nonprofit sector.”\textsuperscript{145} Cautious steps were made toward greater federalization and decentralization of power following Yeltsin’s famous “take as much sovereignty as you can swallow.”\textsuperscript{146} But the state was constantly struggling with the crippling consequences of political and economic instability along with the drastic impoverishment of the population and cessation attempts by Chechnya and Tatarstan. At the same time, due to Yeltsin’s declining ability to govern, power often “rested in the hands of unelected

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\textsuperscript{142} Grigory Yavlinsky, "Russia's Phony Capitalism," \textit{Foreign Affairs} 77, no. 3 (1998): 69.


\textsuperscript{144} Lipman and McFaul, "Managed Democracy," 117.


assistants and advisers, including his immediate family”\textsuperscript{147} and the notorious \textit{semibankirschina}. Thus, no matter how one defines the Yeltsin era with its turbulent, troubled, and controversial history, it is hard to disagree that Vladimir Putin inherited a “flawed and skewed pluralistic system.”\textsuperscript{148} He, in turn, was in charge of substantive regime transformation as he filled the nascent hybrid political system he inherited with new meaning.

Authoritarian turn of the Russian regime under early Putin was observed by analysts through the “consolidation of presidential power, the marginalization of the legislature, the weakening of civil society, the muzzling of an independent media and the reduction in the independence of regional politicians.”\textsuperscript{149} The state preserved the shell of democracy and federalism, but political relations were guided mainly “by informal, clientalistic, and extraconstitutional practices.”\textsuperscript{150} It began to function within President Putin’s “carefully crafted system of rule by the presidential administration.”\textsuperscript{151} namely, the “\textit{vertical of power}” ["vertikal’ vlasti"]. Back in 2000, President Putin declared the construction of a “more rigid vertical of power”\textsuperscript{152} an essential part of the state-building process. Later that year, he elaborated by saying that the vertical was not the purpose all by itself, but the state “needed to create the conditions for preserving the unity of the state and [making it] efficiently manageable.”\textsuperscript{153} The process of vertical creation unavoidably hit the remnants

\textsuperscript{147} Graeme Gill and Roger D. Markwick, \textit{Russia’s Stillborn Democracy? From Gorbachev to Yeltsin} (Oxford: Oxford University Press, 2000), 204.
\textsuperscript{149} Graeme Gill, ”A New Turn to Authoritarian Rule in Russia?" \textit{Democratization} 13, no. 1 (2006): 58.
of Yeltsin’s low-grade federalism. Newly adopted laws provided President Putin with the power to “dismiss popularly elected governors and to dissolve regional assemblies.”\textsuperscript{154} In 2004, shortly after the Beslan hostage crisis, regional voters were deprived of the right to elect regional officials entirely. Direct elections were substituted with the presidential candidacy nomination, which, though requiring regional legislative bodies’ consent, turned into a “top-down appointment procedure.”\textsuperscript{155} The greater attention to the vertically organized state-building process became one of the first and most remarkable steps toward Russia’s undisputable authoritarian turn.

While authoritarian regimes might utilize different methods and tools of governance, they are relatively unanimous in their desire to minimize or eliminate the threat of legitimacy contestation. Among other things, they might use their power to adopt and enact normative acts to target specific groups. Introducing the “foreign agents” legislation is an illustrative example of such practices. It is not unique, as it comprises a broader range of “restrictive” legislation.\textsuperscript{156} Instead, the distinctive features of Russia’s legal system and political regime, combined with several external and internal factors, predetermined the emergence of the “foreign agents.” The thesis argues that the “foreign agents” legislation became a product of Russia’s “authoritarian legality.” Being a unique form of legality adopted by the Russian state, it relies on its authoritarian nature and defines the type of interrelation between politics and law. It simultaneously includes the “dual state” system in the form of two parallel embodiments of Russia’s legal system, namely, a dangerous combination of the “politicized” and “normative” systems.

\textsuperscript{154} Ross, “Federalism and Electoral Authoritarianism,” 360.
\textsuperscript{156} Along with the laws on “undesirable organizations” and combating extremism, which will be explored later in the chapter.
2.4 “Authoritarian legality”

Different approaches can be utilized to analyze and explain the emergence of the “foreign agents” legislation. It might be viewed as the manifestation of the Russian state’s response to the liberal democratic turn of Western society. Adopting “foreign agents” laws, thus, fitted within the pattern of “military buildup combined with domestic repression and a more conservative antidemocratic nationalism.” The state turned toward a more isolated form to counter the diffusion of Western democratic values in multiple areas, including science, as the “foreign agents” law “provided the pretext for the deportation of many Western scientists.”

Relatively similar is the approach connecting legislative novelties with the state’s fear of “color revolutions.” As indicated above, the timing of legislative initiatives coincided with the wave of antigovernmental protests following the compromised elections of 2011-2012. For this reason, some scholars pointed out that “it was this very anxiety about outside influence on internal Russian political processes […] that led to [the] passage” of the “foreign agents” legislation. The strangling regulation kept expanding as the perceived threat was growing. For this reason, the frequency of the “foreign agents” laws’ usage intensified when the Russian authorities observed a “CIA-orchestrated color revolution […] when massive protests erupted after Alyaksandr Lukashenka claimed victory in a falsified presidential election.” Hence, the adoption and further

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implementation of the “foreign agents” legislation is a reasonable (in the state’s view) measure of precaution against foreign intrusion.

There might exist other theoretical frameworks. Yet, most of them significantly narrow the scope of research as they either make internal political processes dependent upon the state’s response to perceived (actual) external threats or reduce it to the mere manifestation of Russia’s authoritarianism cracking down on civil society without paying significant attention to the underlying legal peculiarities. The theoretical basis of the “foreign agents” legislation’s research shall be maintained at the intersection of several theoretical approaches.

The concept of “authoritarian legality” shall serve as one of the central parts of a broader integrative theoretical framework yet to be defined to frame the interconnection between politics and law in authoritarian regimes. As previously mentioned, the concept lacks an agreed definition in existing academic scholarship. For this reason, it shall be tailored for the thesis to fathom the peculiarities of Russian legality. Since “authoritarian legality” comprises various forms and methods of authoritarian use of the law (including the use of formal institutions), the manifestations of such legality will differ in different states and depend on several political, social, and historical attributes. A strictly defined concept will allow us to conceptualize and generalize unique features of the Russian legal system combined with the regime’s authoritarian nature.

Why cannot “authoritarian legality” and “dual state” concepts be used interchangeably? They are, indeed, occasionally used as similar or identical ones. Nevertheless, the “authoritarian legality” might not necessarily manifest in the emergence of a “dual state.” It might take another form, such as “authoritarian constitutionalism.”
During the 1990s, Russia preserved a sheer amount of “authoritarian legality” as President Yeltsin frequently favored presidential decrees over legislative acts. His draft of the 1993 Constitution was meant to further enhance presidential dominance by “giving [him] almost unlimited power to appoint and dismiss the government.” President Yeltsin created a hybrid system that “regulate[d] relations between the regime and society on the basis of conflicting and irreconcilable principles.” Still, it did not transform into the “dual state” system as it lacked an ideological foundation, clear manifestations of the state’s ubiquitous arbitrary involvement, and the expansively blurry boundaries of the “political” sphere.

For the reasons listed above, “authoritarian legality” for the thesis’s purposes will be defined as a “unique form of legality which is adopted by the Russian state to preserve control over political processes through the instrumental use of the law characterized by arbitrary and discrentional application and regulate the functioning of the Russian society and which is based on the authoritarian nature of Russia’s political regime and comprises a set of distinct political, social, and historical characteristics.”

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2.5 Components of Russia’s “authoritarian legality”

The system of “authoritarian legality” predetermines how the state uses the law to counter legitimacy contestation, manually and arbitrarily engage in political processes and law enforcement, and outlaw specific types of behavior which are considered malicious for the preservation of the state and the regime. Adopting the “foreign agents” legislation satisfied all the indicated incentives. Now, it is worth identifying, which components comprise “authoritarian legality” and advocate for the instrumental use of law in Russia.

(A) The system of “dual state.”

Concerning Russia, the concept of “dual state” was popularized by Richard Sakwa, who applied it to describe the twisted reality of the Russian regime. He depicted it as a constant struggle between the “normative state” and the “administrative regime.”163 The former represented the “formal constitutional order,” the shell of democratic (or seemingly democratic) game rules. The latter constituted a paraconstitutional realm relying on factional conflict, informal networks, and practices. According to Sakwa, such a system emerged due to the presidency’s efforts “to dominate all other institutions” and gain “unprecedented authority to intervene and manage political processes.”164 As a result, the system’s paraconstitutional component undermined “the emergence of a vibrant civic culture and civil society and … denied the supremacy of the normative state.”165

In many ways, Sakwa’s understanding of the Russian “dual system” was built upon the study by Ernst Fraenkel – a lawyer and political scientist who portrayed the duality of the Nazi regime’s system. This duality originated from the existence of two competing

realities that regulated two separate realms. The first component, the “prerogative state”\textsuperscript{166} [Massnahmenstaat], regulated the Third Reich’s political sphere. It was not “legal” in the strict sense of the word as it was governed “neither by objective or subjective law, neither by legal guarantees nor jurisdictional qualifications.”\textsuperscript{167} Virtually, the “prerogative state” was regulated by arbitrariness within which the authorities “exercise[d] their discretionary prerogatives.”\textsuperscript{168} In the absence of due legal regulation, “the decisions of the courts [were] corrected by the police authorities”\textsuperscript{169} who were driven by the impulse of political desirability. Hence, the border between the “prerogative state” and the “normative state” was shifting as the law was suspended where the “prerogative state” “require[d] the ‘political’ treatment of private and non-state matters.”\textsuperscript{170} The nature of the “normative state” also provided means for great discretion. German administrative law understood discretionary power as an attribute of the executive power, so governmental bodies belonging to the “normative state” operated “under statutory provisions which [were] usually so vague that they [were] only general enabling clauses.”\textsuperscript{171} The scope of discretion, however, was confined within their “clearly defined jurisdiction,”\textsuperscript{172} whereas the jurisdiction of the “prerogative state” organs was unlimited.

Fraenkel’s thoughts on the “dual system” are often compared with the ones presented by a German jurist and a prominent member of the Nazi party, Carl Schmitt. Despite Schmitt’s questionable (at best) political affiliation, his views on the division of state domains were mainly affirmed by Fraenkel. In his “Political theology,” Schmitt

\textsuperscript{167} Fraenkel, \textit{The Dual State}, 2.
\textsuperscript{168} Fraenkel, \textit{The Dual State}, 2.
\textsuperscript{169} Fraenkel, \textit{The Dual State}, 39.
\textsuperscript{170} Fraenkel, \textit{The Dual State}, 58.
\textsuperscript{171} Fraenkel, \textit{The Dual State}, 69.
\textsuperscript{172} Fraenkel, \textit{The Dual State}, 70.
divided the “state of exception” (similar to Fraenkel’s “prerogative state,” but not identical) and the “normal state” (virtually Fraenkel’s “normative state”) along the line of “sovereignty.” The distinction between Fraenkel’s “prerogative state” and the “state of exception” was manifested in the articulate role of the “sovereign.” For Schmitt, the “sovereign” was the key (and sole) figure to decide whether there was an emergency (an “exception”) and “what [needed to] be done to eliminate it.”\footnote{Carl Schmitt, \textit{Political Theology, Four Chapters on the Concept of Sovereignty} (Chicago, University of Chicago Press, 2005), 7.} Schmitt understood the “exception” as “a case of extreme peril, a danger to the existence of the state, or the like.”\footnote{Carl Schmitt, \textit{Political Theology}, 6.} Deciding upon the “exception,” the sovereign stood “outside the normally valid legal system.”\footnote{Carl Schmitt, \textit{Political Theology}, 7.} Still, they simultaneously belonged to the legal order as he decided “whether the constitution need[ed] to be suspended in its entirety.”\footnote{Carl Schmitt, \textit{Political Theology}, 7.} Schmitt viewed the “exception” as a necessary condition of state survival. At the same time, Fraenkel argued that “the dual state [was] unbalanced by definition, with an inbuilt primacy for the political”\footnote{Lewis, \textit{Russia’s New Authoritarianism}, 79.} over the normative.

Robert Sharlet was the first scholar to apply the “dual state” concept to evaluate the Soviet legal system. In his work on Stalinism, he claimed that “Soviet legal culture under Stalinism [could] be most clearly understood within what [could] be described as a dual system of law and terror.”\footnote{Robert Sharlet, “Stalinism and Soviet Legal Culture,” in \textit{Stalinism: Essays in Historical Interpretation} (New Brunswick: Transaction Publishers, 1999), 155.} Sharlet offered to modify the “duality” approach to adapt it to the Soviet realities and construct a theoretical framework analyzing “continual tension between legality (zakonnost’) and party-orientation (partiinost’) in the administration of
justice in the USSR.” Other scholars later used the “dual system” framework to analyze the system of Soviet law. Gordon Smith viewed it as a coexistence of two legal systems: a system that “maintain[ed] law and order, enact[ed], and enforce[d] the law, and adjudicate[d] disputes” and an “arbitrary and repressive system used to punish critics of the regime.” This approach was harshly criticized by Mikhail Antonov, who stated that describing the Soviet legal system as a combination of two parallelly existing systems could lead to jurisprudential confusion. He rightly noted that, in the strict sense of it, a “parallel system of justice existed only for a relatively short period in the years of Stalin’s purges.” Instead, Antonov insisted on the duality of Soviet legal thinking, not its legal system, as it was legal thinking trying to maintain a “synthesis between the formal and realist dimensions of law.”

Present in the Soviet Union, the “dual state” was mainly resurrected in the new Russia. Richard Sakwa claimed that a “divergence between the administrative regime’s culture of power based on manual interventions and the rules-based constitutional state” was already on the rise under Yeltsin and “exercised to shape the outcome of the 1996 presidential election.” While one might concur with this viewpoint, it is worth indicating that the system’s duality was not well-articulated at the time, in part due to the incomplete “authoritarian turn” of the system. Additionally, during Yeltsin’s period and shortly during President Putin’s first terms, the “duality” of the system was primarily exercised in the

179 Sharlet, “Stalinism and Soviet Legal Culture,” 156.
181 Smith, Soviet Politics, 137.
183 Antonov, “Legal Realism,” 505.
form of “telephone justice” [“telefonnoye pravo”] understood by Alena Ledeneva as “the practice of making an informal command, request, or signal in order to influence formal procedures or decision-making.”186 The symbolic uprising of the “dual state” system dividing the “prerogative” and the “normative” state in the strictest sense of Fraenkel’s work can be traced back to the Yukos case, which started in 2003. Referring to the case, Robert Sharlet underlined that it demonstrated “prerogative authority manipulating the normative process as political expediency has trumped legality in a classic exercise of ad hoc legal policy.”187 The “dual state” system developed along with Russia’s transformation from a “relatively competitive regime in 1999”188 to a more authoritarian one and became entrenched in the reinstated system of “authoritarian legality.” The final ascendance of the “dual system” can be linked to President Putin’s return to power in 2012. It is when Russia, according to its Constitutional Court’s retired judge Gadzhiev, was facing the choice of “either using archaic forms of realpolitik when one must live according to the rules of cynical realism which might provide a momentary success or turn to the morally based realism which cannot bear political fruits within one electoral cycle but will bear [them] in a distant historical perspective.”189 Under the impact of political circumstances, the choice was made in favor of the “dual state.”

Still, there is one aspect of the Russian “dual state” system, which is often omitted – the “modesty” of the “prerogative state” (“state of exclusion”). Like other politicized cases, those related to “foreign agents” comprise an aberration. In the strictest sense of the

word, they are the “exception” (in Schmitt’s words) decided upon by the authority, which did not become the new normality. It is understandable that such cases resonate with the public and demonstrate the state’s inclination to enlarge its control in every sphere of public life. They likewise create pitfalls and obstacles for those in need since the indiscriminate machine of designation targeted numerous organizations (such as “OVD-Info,” “Agora,”190 and many others) whose work is of high importance to Russian society. What is usually left outside the brackets is the “everyday law,” the “normative state” operating outside the political realm. Yes, there is always a chance of state interference as the border between “political” and “ordinary” is blurry. As rightly noted by Jan Suntrup, the “dual state” system is a “highly dynamic construction without clear borders.”191 This conclusion derives from Fraenkel’s views of “the continuous expansion of the prerogative state, which eventually threatens the existence of a normative state.”192 Nevertheless, at least as of now, the “everyday law” regulating cases of routine need, let it be a lawsuit over “a botched home repair”193 or “the privatization process,”194 constitutes the norm of the Russian legal system. Popova emphasized that "in legal areas with low political salience […] the Russian judiciary functions reasonably well."195 In the lack of external control and not being bound by politically-fueled incentives, "judges decide cases in accordance with their bona fide interpretation of the law,"196 and the Russian citizens admit that "the decision in their case

190 “OVD-Info” is an independent human rights project providing legal support to persons in detention, especially those detained for “political” violations. “Agora” is an independent community of lawyers providing legal support to persons accused of “political” crimes and those who suffered from human rights infringements. These organizations became prominent participants of highly politicized criminal and administrative cases. Both organizations will be later mentioned in Chapter 5 with regard to “survival strategies.”
191 Jan Christoph Suntrup, “Between prerogative power and legality – reading Ernst Fraenkel’s The Dual State as an analytical tool for present authoritarian rule,” *Jurisprudence* 11, no. 3 (2020): 344.
192 Suntrup, “Between prerogative power and legality,” 344.
194 Hendley, "Telephone Law," 255.
195 Popova, "Putin-Style "Rule of Law," 68.
196 Popova, "Putin-Style "Rule of Law," 68.
was fair and the judge professional."\textsuperscript{197} Despite the lack of trust in the courts in Russian society (in 2020, 54 percent\textsuperscript{198} of the respondents told "Levada Center" that they did not fully trust the judiciary or did not trust it at all), the non-political embodiment of the Russian judiciary is functioning in a seemingly consistent, impartial, and fair manner. Thus, in more than 30 million cases\textsuperscript{199} adjudicated by the Russian courts in 2021, politicized cases, including ones involving “foreign agents,” however atrocious, still tend to constitute an exception.

(B) Historical legacy.

The Soviet legal system was, without any doubt, highly politicized in the sense of extreme ideological orientation. The judiciary’s auxiliary role became entrenched as “the soviet courts were designed to render a specific “class justice” and be guided in that by the communist party.”\textsuperscript{200} In the ideologically backed Soviet legal paradigm, the law was viewed as “the expression of the will of the classes which had won the victory and kept the governmental power in their hands,”\textsuperscript{201} following the teaching of Vladimir Lenin. Individual rights were deemed subservient to the more significant cause and the needs of the communist society. In Article 5 of the Fundamentals of Civil Legislation of the USSR and the Union Republics adopted in 1961, civil rights protection was made dependent upon “their purpose in socialist society in the period of communist construction”\textsuperscript{202} – an escape clause allowing the state to consider any deviant behavior void or malicious. While

\textsuperscript{197} Popova, "Putin-Style "Rule of Law,"" 69.
\textsuperscript{201} Gsovski, "The Soviet Concept," 3.
constructing a seemingly democratic façade, the Soviet legal system was in reality “a tool of the state and […] the rule of law gave way to unbridled arbitrariness.”

The 1977 Soviet Constitution reiterated the main feature of Soviet state governance – its adherence to the principle of “socialistic legality.” The embodiment of this legality was under borderless state control. The Constitution’s Article 6 did not provide any ground for an alternative since it underlined that “the leading and guiding force of Soviet society and the nucleus of its political system, of all state organizations and public organizations, [was] the Communist Party of the Soviet Union.” It might not be entirely accurate to evaluate the system as a combination of two distinct elements as Smith did. Still, the model of Soviet legality did possess characteristics reminding of Fraenkel’s duality of “prerogative” and “normative” states. Simultaneously, the CPSU’s guiding and dominant role virtually entitled it to decide what constituted the “exception” within the framework of Soviet legality. For this reason, it shall be appropriate to say that the Soviet legal system combined the elements of Fraenkel’s and Schmitt’s theoretical approaches. The situation hardly changed over time. The right to decide upon the limits and presence of an “exception” is still a prerogative of the federal executive and, to a lesser extent, legislative power. In highly politicized cases, such as the ones related to “foreign agents,” the state exercises vast arbitrariness and discretion.

Much has been said about the “dual state” concept and its manifestation in the Soviet system. However, one more frequently forgotten historical peculiarity vastly impacted the emergence and further entrenchment of “authoritarian legality” in the USSR.

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and, consecutively, the Russian Federation. Russia’s (as well as the Soviet) legal system belongs to the civil (continental, Romano-Germanic) legal tradition. The civil-law system typically “uses statutes and comprehensive codes as a primary means of ordering legal material and relies heavily on legal scholars to ascertain and formulate its rules.”

In contrast to common-law systems, where the judge is independent and “not accountable to administrative superiors,” the judiciary’s role is subsidiary in Romano-Germanic legal tradition. Even though civil legal tradition “discourages spontaneous and divergent interpretation of laws by judges,” it severely constrains the judiciary’s autonomy, which is forced to abide by the provisions imposed from above by legislative (primarily) and executive branches of power. Legislative norms, being the centerpiece of Romano-Germanic legal tradition, are shaped by elected officials with clear political (or party) affiliation and the “conception of a prince who stood above the law” originating from the Justinian Code. Taking after the legacy of continental legal tradition, Soviet legality inherited the dependent role of the judiciary and the obvious misbalance toward politicized legislation formed by elected (appointed) officials, which was later reintroduced in Russia.

(C) Philosophy of Russia’s “authoritarian legality.”

When asked to name the philosophers and scientists who shaped his set of values (later to be transformed into the values of Russian society), President Putin mentioned Ivan Ilyin, Nikolay Berdyaev, and Lev Gumilev. Gumilev’s works, despite the lasting controversy behind his theory of “passionarity” [passionarnost] and its overt impact on

President Putin’s idea of the “Eurasian union” and his sense of the Russian nation’s exceptionality, do not tell us much about the doctrinal (ideological, philosophical) thinking behind the system of “authoritarian legality.” However, the analysis of Ilyin’s “Foundations of state apparatus” provides a powerful insight into the philosophical foundation of the existing “authoritarian legality” system and the dynamics of its development under President Putin.

Ilyin’s views partially aligned with those presented by Schmitt since he asserted that the principle of legality should be followed “unequivocally and observably,” but at the same time, he recognized that equality before the law could be violated for the sake of “overt justice” (“exception,” following Schmitt’s logic). Ilyin negated the “dualistic” character of the Russian state. To him, there was the sole force of the ruler leading the “nation, the state, and all of its establishments.” The emergence of power contestation was deemed by Ilyin the “beginning of the collapse.” Ilyin also identified three critical arguments which are extremely important for analyzing the ideological basis of the “foreign agents” legislation. First, no foreigner (or man of other faith) can be the Russian “dictator, chief [vozhd’], or monarch.” Secondly, while foreigners were not to be deprived of public rights, they were to be restrained by the boundaries of local ethnic or religious self-governance. Finally, a broader dogma voiced by Ilyin stated that “any undermining of the authority or the good reputation [along with disloyal agitation] of the governing bodies shall be punished in a criminal order, through the swift process.”

210 Ilyin, Tvorcheskaya ideya, 497.
211 Ilyin, Tvorcheskaya ideya, 500.
212 Ilyin, Tvorcheskaya ideya, 500.
213 Ilyin, Tvorcheskaya ideya, 497.
214 Ilyin, Tvorcheskaya ideya, 497.
The system of “authoritarian legality” was steadily developing throughout Russian history. In conjunction with historical premises, Russian philosophy contributed to the emergence of the system perceiving “alien” influence as a threat, relying on a powerful state vertical along with the consolidation of power within its framework, and securing the regime’s preservation through oppressive mechanisms. One might draw parallels between Ilyin’s viewpoints and President Putin’s. Still, “authoritarian legality” is not personalized; the current regime neither invented nor owns it. Yes, the system was not the same during Russian history's imperial, Soviet, and post-Soviet eras. Over the last century, it drifted from a highly ideologized iteration to the version building almost exclusively upon the regime's authoritarian nature and its desire to ensure its intactness. However, there has always been a sense of “authoritarian legality’s” continuity. Thus, today, just like during the ruling of Nicholas I, Russia’s “authoritarian legality” is, in essence, the state’s protective policy of “constructing a strong police state capable of overcoming destabilizing factors in the form of liberal thoughts diffusion,”215 which imminently transform into “revolutionary jolts.”216

2.6 Restrictive legislation

“Foreign agents” legislation became essential to the “authoritarian legality” system. Essential, but not unique. It constitutes one of the legal elements of the system. While the “foreign agents” category is autonomous and self-sufficient in its application, analyzing it as a detached, independent phenomenon would be an understatement and create a fragmented image of “authoritarian legality.” The “foreign agents” legislation is a part of an immense compendium of intertwined legislative acts targeted against Russia’s civil society.

(A) “Undesirable organizations.”

The law regulating the designation of juridical persons as “undesirable organizations” was signed into law by President Putin in May 2015. Under the new norms, the activities of foreign or international nongovernmental organizations could be deemed “undesirable” if they threatened “the foundations of the constitutional order of the Russian Federation, the defense capability of the country or state security.” As in the case of “foreign agent” designation criteria, the concrete manifestations of listed threats were defined loosely and could differ immensely.

The “undesirable organizations” might be evaluated as the second, more stringent type of designation potentially applicable to nongovernmental organizations with elevated liability measures. In 2021, even participation in an “undesirable organization’s”

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218 Russia’s existing legislation does not properly define foreign or international nongovernmental organizations. Apparently, they shall be understood according to the similar norm contained in the Article 2 of the Federal law “On nonprofit organizations.” It defines a “foreign nonprofit nongovernmental organization” as an “organization not having the acquisition of profit as the main goal of its activities and not distributing acquired profit among participants, created outside the territory of the Russian Federation in accordance with the legislation of a foreign state, founders (participants) of which are not governmental bodies.” Such organizations hold activities in Russia through their branches, divisions, and representative offices.
activity became\textsuperscript{219} subject to administrative liability. Organizations designated as “undesirable” are prohibited\textsuperscript{220} from creating or distributing information, establishing structural divisions, and implementing projects (programs) in the Russian Federation. Financial organizations must refuse to conduct money and property transactions by “undesirable organizations.” Strictly speaking, designation as an “undesirable organization” leads to the paralysis of its activities. Being involved in an “undesirable organization’s” activity after the imposition of administrative liability, providing financial services, or gathering money for such an organization, the organization of its functioning lead to criminal liability under Article 284.1 of the Russian Criminal Code\textsuperscript{221} with potential imprisonment terms ranging from one to six years.

Similar identities of the “undesirable organizations” and “foreign agents” legislative acts rely on four main arguments. First, the “undesirable organizations” bill’s explanatory note referred (in a more verbal form) to the same political preconditions that affected the adoption of the “foreign agents” legislation. It underlined that “internal political, military, and international conflicts […] create[d] grounds for the development of […] destructive organizations – bearers of terroristic, extremist, and nationalistic ideas. […] The implementation of suggested measures will allow [the state] to strengthen the efficiency of countering the activities of foreign structures threatening the security of the state, shaping the threats of “color revolutions” or facilitating the emergence of hot spots

\textsuperscript{220} Federal'nyj zakon ot 28.12.2012 N 272-FZ.
on an interethnic and interconfessional basis.”222 Second, “undesirable organizations” legislation targets the same group of juridical persons, namely nongovernmental organizations in the forms of nonprofit organizations and, more rarely, media. Third, both legislations can supplement each other. Often, the “foreign agents” and the “undesirable organizations” legislations supplement each other in law enforcement. For example, after the Prosecutor General’s Office had designated the “Project” [“Proekt”] media as an “undesirable organization,” the Ministry of Justice designated its founder and editor-in-chief as “foreign agents.”223 In 2022, “Bellingcat” and “The Insider” media were designated as “undesirable organizations” after their prior designation224 as “foreign agents” in 2021. Hence, the “undesirable organizations” law can be considered the second “designation stage.” Lastly, the “undesirable organizations” law took after the “foreign agents” legislation’s legal ambiguity (which will be later discussed in the thesis). It uses ambiguous, vague, and extensive notions and delegates the designation power to the administrative authority – the Prosecutor General’s Office – without establishing a judicial oversight mechanism.

(B) Anti-extremism legislation.

The Federal law “On combating extremist activity”225 comprises the third pillar of restrictive legislation formed within the framework of “authoritarian legality.” Chronologically, this legislative act might be considered the forerunner of subsequent

novelties. It was harshly criticized for reasons that are usually expressed concerning the “foreign agents” legislation. In 2012, the Venice Commission stated that “the Extremism Law, on account of its broad and imprecise wording, [gave] too wide discretion in its interpretation and application, thus leading to arbitrariness. […] Where definitions [lacked] the necessary precision, a law [could] be interpreted in harmful ways.”

The style of using anti-extremist legislation changed dramatically over time. In 2021, anti-extremism legislation was used by the Prosecutor General's Office and the Moscow City Court to recognize the organizations established by the opposition leader Alexey Navalny, namely, FBK and “Citizens’ rights protection fund” [“Fond zashchity prav grazhdan”] as “extremist” ones. Such a move was deemed politically motivated by human rights defenders’ groups. They claimed that recognition of Navalny’s organizations as “extremist” was the manifestation of the Kremlin’s attempt to “crack down on the rights to freedom of expression and association” and “silence their critics.” Shortly before the notorious court’s decision, the lawmakers amended the anti-extremist law and supplemented it with electoral restrictions. Under the new provisions, citizens of the Russian Federation “involved in the activities” of extremist organizations were prohibited from being elected to any governmental or municipal position. In 2022, after Russia invaded Ukraine, the usage of anti-extremist legislation became a part of the state’s

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229 Федеральный закон от 04.06.2021 N 157-ФЗ "О внесении изменений в статью 4 Федерального закона "Об основных гарантиях избирательных прав и права на участие в референдуме граждан Российской Федерации" и статью 4 Федерального закона "О выборах депутатов Государственной Думы Федерального Собрания Российской Федерации" // Собрание законодательства Российской Федерации. 2021. N 23. ст. 3916.
concerted efforts to counter anti-war protests and dissent. Thus, the Prosecutor General's Office demanded to limit access to several media outlets distributing information calling for “extremist activity.”\textsuperscript{230} The state proceeded with the instrumental usage of anti-extremist laws to minimize or eradicate the sources of alternative opinions by recognizing Meta Platforms, Inc. (a United States-based company owning Facebook, Instagram, and WhatsApp social networks) as an “extremist organization.”\textsuperscript{231}

The latest cases of the anti-extremist legislation’s usage demonstrate its proximity to the “foreign agents” legislation regarding politically driven applicability. First, just like the “foreign agents” legislation, the anti-extremist laws are more frequently used to tackle opinions contradicting the generally accepted state-imposed approach. Second, the anti-extremism laws, as noted by the Venice Commission, operate ambiguous and blurry notions which provide grounds for recognizing a wide range of activities as “extremist” ones. Over the years of its existence, the wording of the law’s provisions did not undergo sufficient changes. Third, while a clear-cut interrelation between designation as a “foreign agent” and the “extremist” recognition cannot be established, several examples indicate the existence of such a connection. For instance, before their recognition as “extremist organizations,” previously mentioned Alexey Navalny’s entities were designated\textsuperscript{232} as “foreign agents” in 2019.

Additionally, individual Russian officials draw parallels between “foreign agents” and “extremist activities.” In June 2022, the Chairman of the State Duma commission on

\textsuperscript{230} “Gengurokatura potrebovala ogrаничені доступ k "Ekhu Moskvy" i "Dozhdyu," TASS, March 01, 2022, https://tass.ru/obschestvo/13921819.
the investigation of facts of foreign interference in the internal affairs of Russia declared that “foreign agents involve Russian children in extremism”\textsuperscript{233} with the use of “beautifully designed publications”\textsuperscript{234} containing a “bomb stepping on which causes a great tragedy.”\textsuperscript{235}

Lastly, the official rhetoric and the instrumental character of the anti-extremism laws’ application demonstrate its use as a “decoy to cover up [the state’s] violation of civil liberties and punish dissent or anyone who tries to escape official control.”\textsuperscript{236} In this sense, as the “foreign agents” legislation, the anti-extremism laws gradually became another tool of the state’s “authoritarian legality.”

\textsuperscript{234} DUMATV, "Piskarev rasskazal."
\textsuperscript{235} DUMATV, "Piskarev rasskazal."
2.7 Political analysis preliminary conclusions

The chapter managed to posit the “foreign agents” legislation within the theoretical framework of “authoritarian legality.” It has been noted that the scholarly concept of “authoritarian legality” is not elaborated enough to satisfy the needs of the “foreign agents” legislation’s analysis. The chapter diverted from the academic literature’s narrow vision of “authoritarian legality” as a “catch-all label for the role of law under authoritarianism” and identified it as a complex phenomenon predetermining the interrelation between politics and law in Russia. Thus, the proposed definition of “authoritarian legality” and its structure might serve as the basis for future combined research on Russian legislation.

The chapter argued that the restoration of the “dual state” system comprising one of the elements of Russia’s “authoritarian legality” primarily occurred during President Putin’s return to power in 2012. The “dual state” advanced as an imminent result of the regime’s growing authoritarianism. Simultaneously, it developed characteristics differing from those adopted within the framework of “Soviet duality.”

The chapter explored the political circumstances surrounding the adoption of the “foreign agents” legislation and the subsequent development of “authoritarian legality.” The growing authoritarianism of the Russian state and the perception of external threats predetermined the approach adopted by the state vis-à-vis civil society. It likewise contributed to the progressing incentive to guarantee the regime’s preservation by minimizing or eliminating legitimacy contestation through the imposition of restrictive legislation.

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Chapter 3: The law

3.1 Introduction to the legal analysis

The chapter will explore the legislative provisions comprising the so-called “foreign agents” legislation and their evolution. The analysis will be performed in purely legal terms abstract from political or social rationale addressed in separate chapters. Instead, the present chapter will aim to construct a comprehensive overview of the “foreign agents” legislation.

The research will take several primary directions. First, the exploration will trace the laws’ evolution, building upon the norms introduced within major legislative expansions. Second, concrete restrictions imposed on persons designated as “foreign agents” will be identified, along with potential exemptions from the laws’ applicability. Third, specific attention will be paid to the ambiguity or unclarity of legal notions – one of the major concerns voiced by the legislation’s critics. Fourth, the chapter will overview liability measures introduced for those designated as “foreign agents” and domestic safeguards against designation. Fifth, Russia’s “foreign agents” laws will be contrasted to their United States’ counterpart – FARA (Foreign Agents Registration Act)238 – systematically mentioned by Russia’s governmental officials as the Russian laws’ predecessor.

Ultimately, based on the information provided, the chapter will aim to identify the primary problems and discrepancies of the legislation and assess them as the factors contributing to the laws’ expansive or arbitrary application.

238 Foreign Agents Registration Act, 22 U.S.C. ch. 11, subch. II, §§ 611 et seq.
3.2 The “foreign agents” legislation’s evolution

The “foreign agents” legislation emerged in 2012 as a bill amending the Federal law “On nonprofit organizations”\(^{239}\) \(^{240}\) and introducing the notion of a “nonprofit organization functioning as a foreign agent.”\(^{241}\) The new law specified that a nonprofit organization (NPO) was to be viewed as a “foreign agent” if it was acquiring “money or other property”\(^{242}\) from a variety of foreign sources, including but not limited to foreign states, international organizations, foreign citizens, or Russian-based juridical persons\(^{243}\) and natural persons receiving money or property from abovementioned sources. Another criterion of a “foreign agent” NPO was its engagement in “political activity,” defined loosely. Under the bill’s provisions, “political activity” could take the forms of (1) “arranging and conducting political actions”\(^{244}\) to influence “the adoption by the state bodies of decisions aimed at altering their state policy”\(^{245}\) or (2) “shaping public opinion”\(^{246}\) for the purposes mentioned above. Specific manifestations of “political activity” were introduced later, in 2016.

The bill’s primary purpose, according to its explanatory note, was to “equip Russian society with the elements of due control over the activities of NPOs financed from foreign sources and pursuing political goals, including those in the interests of their foreign

\(^{239}\) Federal'nyj zakon ot 12.01.1996 N 7-FZ.
\(^{240}\) While many scholars and analysts refer to Russia’s nonprofit organizations as “nongovernmental,” the legal notion of “nonprofit organizations” will be used onwards to distinguish them from “commercial organizations” – another type of Russian juridical persons seeking to gain profit as the main goal of functioning.
\(^{241}\) Federal'nyj zakon ot 20.07.2012 N 121-FZ.
\(^{242}\) Federal'nyj zakon ot 20.07.2012 N 121-FZ.
\(^{243}\) The phrase “juridical person” is used to distinguish such an entity from “natural person” (generally, human). The usage of such terminology is based on the dichotomy applied in Russian civil law. The phrase “juridical persons” might be used interchangeably with the word “organization.” Both natural and juridical persons might be referred to as “persons” or “entities” (“legal entities”).
\(^{244}\) Federal'nyj zakon ot 20.07.2012 N 121-FZ.
\(^{245}\) Federal'nyj zakon ot 20.07.2012 N 121-FZ.
\(^{246}\) Federal'nyj zakon ot 20.07.2012 N 121-FZ.
The note claimed that the bill would not “worsen the status of nonprofit organizations” but, instead, provide a “needed publicity and transparency” to their functioning. The bill did not meet any severe resistance. The Russian government unequivocally supported the bill. The Supreme Court of the Russian Federation raised cautious concerns about the wording of a newly introduced Article 330.1 of the Criminal Code establishing criminal liability for the “malicious evasion” of “foreign agent” duties. The Court argued that it remained unclear violation of which duties constituted a criminal offense. Additionally, the ambiguous and “evaluative” nature of the “malicious” term and the lack of “socially dangerous consequences” of a crime distinguishing it from an administrative violation did not fully align with the legal certainty principle and could cause law-enforcement troubles.

The Civic Chamber of the Russian Federation – a consultative body designed to coordinate “socially important interests” of the Russian citizens, civil society, and public authorities – provided the most substantial remarks. In its view, several proposed

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247 Gosudarstvennaya Duma, “Poyasnitel'naya zapiska k proektu Federal'nogo zakona "O vnesenii izmenenij v otdel'nye zakonodatel'nye akty Rossiskoj Federacii v chasti regulirovaniya deyate'nosti nekомерческих организаций, вовлеченных в деятельность иностранных агентов".”

248 Gosudarstvennaya Duma, “Poyasnitel'naya zapiska k proektu Federal'nogo zakona "O vnesenii izmenenij v otdel'nye zakonodatel'nye akty Rossiskoj Federacii v chasti regulirovaniya deyate'nosti nekомерческих организаций, вовлеченных в деятельность иностранных агентов".”


252 Gosudarstvennaya Duma, "Oficial'nyj otzyv na proekt federal'nogo zakona N 102766-6 "O vnesenii izmenenij v otdel'nye zakonodatel'nye akty Rossiskoj Federacii v chasti regulirovaniya deyate'nosti nekомерческих организаций, вовлеченных в деятельность иностранных агентов"."

253 Gosudarstvennaya Duma, "Oficial'nyj otzyv na proekt federal'nogo zakona N 102766-6 "O vnesenii izmenenij v otdel'nye zakonodatel'nye akty Rossiskoj Federacii v chasti regulirovaniya deyate'nosti nekомерческих организаций, вовлеченных в деятельность иностранных агентов"."
provisions contradicted the bill’s initial purpose. The major flaw of the bill, according to the Chamber, originated from an “unjustifiably expansive interpretation of political activity” and the usage of wording with no normative content, such as “political actions” or “shaping public opinion.”

The bill was signed into law in July 2012 and enacted in November 2012. While the lawmakers disregarded the most worrying concerns, the bill’s final version underwent some changes. Following the Supreme Court’s comments, amendments to the Criminal Code’s Articles 239 and 330.1 were specified. Religious organizations, state corporations, state companies, and state-established juridical persons were excluded from the scope of application. The legislature listed specific areas of activity, such as science, culture, charity, and others, which did not constitute “political activity.” The norm introducing administrative liability was omitted.

The law imposed various duties on “foreign-agent” NPOs. First, a publicly available registry of “foreign-agent” NPOs maintained by the Ministry of Justice was created. An NPO was to apply for mandatory registry inclusion if it intended to function as a “foreign agent” after its state registration or before the “commencement … of activity as a nonprofit organization functioning as a foreign agent” if a juridical person had already been established. Failure to comply with this requirement could lead to the suspension of NPO’s activities for up to six months following the Ministry of Justice’s


decision. Such a suspension consisted of suspending the rights of “the founder of mass
media,”\textsuperscript{257} forbiddance to hold mass events or public activities and use bank accounts.

Second, materials created or distributed by a “foreign agent” were to be labeled
with an indication that they were “published and (or) distributed by a nonprofit
organization functioning as a foreign agent.”\textsuperscript{258} The absence of exact technical wording
requirements left space for law-enforcement ambiguity. Failure to comply with the unclear
labeling requirement opened the way to administrative liability.

Third, the law imposed specific reporting duties. “Foreign agents” were to submit
to the Ministry of Justice reports on their activities and personal composition of the
governing bodies semiannually, data on the purposes and actual spending of monetary
assets and using property acquired from foreign sources quarterly, and audit statements
annually. “Foreign-agent” NPOs were to publish reports on their activities on the Internet
or provide them to mass media for posting semiannually. In addition to Rosfinmonitoring’s
compulsory control of money or property transfers from a foreign source of value
exceeding 200 000 rubles\textsuperscript{259} (irrespective of an NPO’s legal status\textsuperscript{260}), financial statements
of designated NPOs were to undergo a mandatory audit. “Malicious evasion” from the duty
to submit reports was criminalized. Criminal sanctions included fines, compulsory labor,
corrective labor, or imprisonment for up to two years. Subsequent amendments\textsuperscript{261} fixed the

\textsuperscript{257} Federal'nyj zakon ot 20.07.2012 N 121-FZ.
\textsuperscript{258} Federal'nyj zakon ot 20.07.2012 N 121-FZ.
\textsuperscript{259} Federal'nyj zakon ot 20.07.2012 N 121-FZ.
\textsuperscript{260} From here on, “legal status” is used to refer to the range of rights and duties of juridical and natural persons originating from their
organizational form or “foreign agent” designation.
\textsuperscript{261} Federal'nyj zakon ot 12.11.2012. N 192-FZ “O vnesenii izmenenij v Kodeks Rossijskoj Federacii ob administrativnyh
initial lack of administrative liability measures. They established penalties for misreporting and “breaching the order of functioning.”

“Foreign-agent” NPOs became subject to specific governmental inspections. Whereas scheduled inspections were not to be carried out more frequently than yearly, unscheduled inspections were allowed. They were not limited by frequency and could be performed due to several legal grounds. Such grounds included an expiry of the redress term defined in a Ministry of Justice’s warning, the receipt of information from natural persons, juridical persons, or media publications regarding “foreign agent’s” potential extremist activity, and the acquisition of information from public or local authorities showing an NPO’s violation of the “foreign agents” legislation.

In 2016, the notion of “political activity” was elaborated and supplemented with specific manifestations. This modification will be discussed in the following subchapter as it did not make up a full-fledged addition to the regulations but is essential for understanding the regulatory ambiguity of the “foreign agents” legislation.

The first expansion occurred in 2017. Following the United States Ministry of Justice’s decision to designate Russia Today and Sputnik as “foreign agents,” the Russian officials decided to expand the regulations to include the media reciprocally. The adopted notion of a “foreign media functioning as a foreign agent” turned out to be extensive. The amendments referred to any “juridical person registered in a foreign state or foreign

262 Federal'nyj zakon ot 12.11.2012. N 192-FZ.
structure not forming a juridical person”\textsuperscript{265} and exercised extraterritoriality as foreign media with no divisions or representation in Russia were exposed to “foreign agent” designation.

The new definition contradicted the one already included in the Federal law “On media,”\textsuperscript{266} identifying as “media” specific forms of juridical persons distributing information \textit{periodically}. The periodicity criterion was discarded for foreign juridical persons, thus immensely expanding the scope of the law’s applicability. Foreign funding criterion migrated from the Federal law “On nonprofit organizations” and was supplemented with distributing messages and materials “intended for the general public.”\textsuperscript{267} Involvement in political activity was not recognized as an essential feature of a “foreign agent” media. The duties of a designated media matched the ones designed previously for NPOs. Mandatory registry inclusion occurred based on the media’s voluntary application or the “documents received [by the Ministry of Justice] from the governmental bodies of the Russian Federation.”\textsuperscript{268}

While the 2017 amendments were limited, they marked the vector of further legislative expansion. The logical continuation of legislative evolution continued with the novelties of 2019. Although they were generally concordant with the lawmakers’ logic toward the media and scarcely constituted a significant deviation, alteration, or modification of the legislative basis, the amendments enlarged the regulatory framework. They shall be perceived as the \textbf{second expansion} of the “foreign agents” legislation.

\textsuperscript{265} Federal'nyj zakon ot 25.11.2017 N 327-FZ.
\textsuperscript{266} Zakon RF ot 27.12.1991 N 2124-I.
\textsuperscript{267} Federal'nyj zakon ot 25.11.2017 N 327-FZ.
The Federal law “On media” was supplemented with the norms regulating the “registry of foreign media functioning as a foreign agent”\textsuperscript{269} previously mentioned exclusively in the Ministry of Justice’s administrative order\textsuperscript{270}. The decision regarding registry inclusion was to be made by the Ministry of Justice in coordination with the Ministry of Foreign Affairs. The scope of applicability broadened and included new subjects in its gravity area. Now, Russian natural and juridical persons could be designated as “foreign agents” if they were receiving foreign funding and (A) distributing the messages and materials produced or distributed by a “foreign agent” media or its Russia-based organization or (B) participating in producing and distributing such messages and materials. The initial norms’ extraterritoriality was modified. Under new amendments, any “foreign-agent” media, along with unregistered juridical persons and natural persons, were obliged to establish a Russia-based organization within one month of their designation. Further distribution of information could be carried out by the mentioned entity only, information about which was subject to mandatory registry inclusion.

The government introduced a precise technical format indicating the media’s designation. Such an indication was to be placed “at the beginning of each message (material) of a foreign media under the heading or, in the absence of a heading, immediately before the beginning of such a message (material).”\textsuperscript{271} New requirements specified the size

\begin{footnotesize}
\begin{enumerate}
\item Prikaz Ministerstva yusticii RF ot 28.03.2018 N 58.
\item Prikaz Federal'noj sluzhby po nadzoru v sfere svyazi, informacionnyh tehnologij i massovyh kommunikacij ot 23.09.2020 N 124 "Ob utverzhdenii formy ukazanija na to, chto soobschheniya i materialy inostrannogo sredstva massovoj informacii, vypolnyayushchego funkci inostrannogo agenta, i (ili) rossijskogo yuridicheskogo lica, vypolnyayushchego funkci inostrannogo agenta, rasprostranyayemye na territorii Rossijskoj Federacii, sozdany i (ili) rasprostraneny ukazannymi licami, a takzhe trebovanij i poryadka razmeshcheniya takogo ukazaniya" // "Oficial'nuy internet-portal pravovoj informacii." 2020. N 0001202010190038.
\end{enumerate}
\end{footnotesize}
and color of an indication’s font, its placement within a message (material), the volume of sound in an audio or video fragment, and other details.

The core framework of legislative novelties relied on the Federal law “On nonprofit organizations.” Under the amendments, its legislative provisions applied to “foreign-agent” media unless they were “exceptionally applicable to organizations created in the form of nonprofit organizations.” The rules of norms’ application were contained in the abovementioned Ministry of Justice’s administrative order.

Legislative changes were supplemented with measures of administrative liability enacted for the “foreign agent” media. The previously existing regulation penalizing the “breach of the order of functioning” was modified and singled out as a separate article within the Code of Administrative Offences of the Russian Federation. Article 19.34.1 identified three types of violations leading to administrative liability: the initial breach of the order of functioning or failure to comply with the requirements originating from a “foreign agent” designation; second and gross violation. Repeated violations occurring more often than twice within one year constituted gross violation. Finding a “foreign agent” media guilty of one of the mentioned violations sufficed to “limit access to the information resource” of such a media, namely, its website.

In December 2020, the amendments comprising the third expansion brought the most substantive changes. First, the new norms pulled unregistered public associations
into the laws’ area of gravity. Under Articles 3 and 5 of the Federal law “On public associations,” the right to create public associations can be pursued directly (without acquiring the rights of a juridical person) or in the organizational form through establishing and registering a juridical person. Registered public associations are regulated by the Federal law “On nonprofit organizations” and, hence, had to follow the rules of the “foreign agents” legislation since its introduction in 2012. A newly introduced regulatory framework targeted direct forms of public associations. Mechanisms imposed on unregistered public associations remained relatively unchanged from those used for NPOs. A unique registry was created to include such associations, in addition to the registries of NPOs and media of 2012 and 2017, respectively.

Second, the legislative framework’s extension to all natural persons, irrespective of their affiliation with a foreign media or participation in distributing “foreign agents” messages or materials, formed the centerpiece of the changes. From then on, any natural person, including foreign citizens and stateless persons, could be designated as a “foreign agent” if they carried out political activity and (or) “purposeful data collection in the areas of [Russia’s] military, military-technical activity” in the “interests of a foreign state, its governmental bodies, an international or foreign organization, foreign citizens, or stateless persons” due to the influence of an (A) foreign source or a (B) domestic source acting in a foreign source’s interests. The criterion of foreign funding was found insignificant for a “foreign agent” designation, but the law mentioned it as a means of influence. The notion

279 Federal'nyj zakon ot 30.12.2020 N 481-FZ.
280 Federal'nyj zakon ot 30.12.2020 N 481-FZ.
and definition of political activity were borrowed from the Federal law “On nonprofit organizations.” Natural persons who fell under the stated criteria were to apply for mandatory inclusion in the list of natural persons functioning as “foreign agents.” The registry of natural persons designated as “foreign agents” was created in 2022\(^{281}\).

Three categories of natural persons were exempt from the duty to apply for list inclusion:

(A) Diplomatic representatives, consular officers, and officially invited representatives of foreign governmental bodies and international organizations.

(B) Foreign journalists accredited in Russia, including those designated as “foreign agents” under the media regulation.

(C) Other persons by the Ministry of Justice’s decision.

The last category raised uncertainty as any natural person could be arbitrarily exempted from mandatory list (registry) inclusion. Nevertheless, the exemption procedure bore an amount of complexity since it required\(^ {282}\) a Ministry of Justice’s decision to be agreed upon by the Federal Security Service, Foreign Intelligence Service, Federal Protective Service, and the Ministry of Defense. It was left unclear whether all the mentioned governmental bodies were to participate in the procedure since the law and the Ministry of Justice’s administrative order referred to the “interested parties”\(^ {283}\) without specifying the extent of their involvement.


\(^{283}\) Prikaz Ministerstva yusticii RF ot 28.06.2021 N 106.
Criminal liability of natural persons was enacted by a separate amendment to the Criminal Code of the Russian Federation. It modified\textsuperscript{284} Article 330.1 and introduced two types of criminal offenses: (1) dereliction of duty to apply for the “foreign agents” list inclusion committed by a person previously punished for an administrative offense and (2) failure to apply for the list inclusion committed by a person involved in data collection in the areas of military and military-technical activities if such data “could be used against the security of the Russian Federation.”\textsuperscript{285} Administrative liability of natural persons functioning as “foreign agents” was enforced\textsuperscript{286} later, in 2021. Amendments to the Code of Administrative Offences of the Russian Federation brought Article 19.7.5-4, penalizing two activities: failure to report information to a designated governmental body and breach of duty to indicate the “foreign agent” status.

The lawmakers never left electoral legislation behind, either. Since 2014, the legislative body has restricted or limited the electoral presence of “foreign agents.” Before 2014, only foreign citizens, stateless persons, and international organizations were not allowed to “carry out activities facilitating or hindering the nomination of candidates, candidates’ lists, the election of registered candidates, the initiative to hold a referendum and the holding of a referendum, the achievement of a certain electoral or referendum result.”\textsuperscript{287} The novelties of 2014 added “foreign-agent” NPOs to the list and broadened the scope of prohibited activities by including an ambiguous “as well as participating in

\textsuperscript{285} Federal’nij zakon ot 30.12.2020 N 525-FZ.
electoral campaigns, referendum campaigns in other forms”288 phrase. The range of “outlawed” “foreign agents” further enlarged289 along with the legislative expansion by adding unregistered public associations, foreign media, and Russian juridical persons listed in the registry of “foreign agent” media.

Extending the “foreign agents” regulation to natural persons became a premise for future electoral revisions in 2021. Those changes formed more of a “logical” addition rather than an expansion since they did not drastically enlarge the scope of applicability, nor did they drag new persons into the laws’ sphere of influence. Still, they introduced two unique notions to the Federal law “On the basic guarantees of electoral rights and the right to participate in a referendum of the citizens of the Russian Federation”290: a “candidate affiliated with an entity [person] functioning as a foreign agent”291 and a “candidate being a natural person functioning as a foreign agent.”292

A candidate was considered affiliated with a “foreign agent” if they were managing a “foreign-agent” NPO, public association, media, or serving as its founder, manager, participant, or an employee within the two years preceding an electoral campaign. Affiliation was likewise present when a candidate was involved in political activity and received money and (or) other material aid from an NPO, public association, or a natural person designated as a “foreign agent” within the mentioned period.293 The second type of candidate was, unsurprisingly, a natural person, information about whom had been

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290 Federal'nyj zakon ot 12.06.2002 N 67-FZ.
291 Federal'nyj zakon ot 20.04.2021 N 91-FZ.
292 Federal'nyj zakon ot 20.04.2021 N 91-FZ.
293 Federal'nyj zakon ot 20.04.2021 N 91-FZ.
included “in the list of natural persons functioning as a foreign agent and (or) … in the registry of foreign media functioning as a foreign agent.” Electoral novelties constrained candidates affiliated with “foreign agents” or functioning as “foreign agents”; the primary goal of the amendments was to indicate the persons’ designation status whenever their statements were used in campaign materials, in public speeches, and during public events.

\[294\] Federal'nyj zakon ot 20.04.2021 N 91-FZ.
3.3 Legislative changes of 2022

Russian officials’ growing dissatisfaction with perceived foreign interference in domestic politics and the country’s invasion of Ukraine in February 2022 incentivized further changes and marked the most substantial legislative development. In April 2022, “at a time of heightened distrust and hostility toward the West when President Vladimir Putin has warned Russians to watch out for traitors,” the deputies of the State Duma introduced a bill “On control over the activities of persons under the foreign influence.” The bill’s explanatory note underlined the need to “consolidate and actualize” scattered norms contained in multiple legislative acts. Apart from a purely technical motivation, in the authors’ view, the bill would facilitate the “protection of interests and ensuring of the Russian Federation’s security, its sovereignty, and territorial integrity, rights, and freedoms of its citizens, as well as ensuring an immediate response to international unlawful acts by countering foreign interference in the affairs of the state, Russian society, exercise of rights and freedoms of the citizens of the Russian Federation.”

State Duma adopted the bill in June 2022. It was signed into law by President Putin in July 2022 and will be enacted after December 1, 2022. The law represents the most restrictive iteration of the “foreign agents” legislation and substantially expands the scope of its applicability:

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297 Gosudarstvennaya Duma, “Poyasnitel'naya zapiska k proektu federal'nogo zakona “O kontrole za deyatel'nost'yu lic.”
(A) As of now, designation criteria depend on the legal status of a potential “foreign agent” and are indicated in the following table:

<table>
<thead>
<tr>
<th>Subjects / designation criteria</th>
<th>NPO(^{300})</th>
<th>PA(^{301})</th>
<th>M(^{302})</th>
<th>D(^{303})</th>
<th>NP(^{304})</th>
</tr>
</thead>
<tbody>
<tr>
<td>Receiving money and (or) other property from a list of foreign sources.</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>-</td>
</tr>
<tr>
<td>Being engaged in political activity in Russia, including one in the interests of a foreign source.</td>
<td>+</td>
<td>+</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Being engaged in political activity in Russia in the interests of a foreign state, its governmental bodies, international or foreign organization, foreign citizens, or stateless persons.</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>+</td>
</tr>
<tr>
<td>Purposeful data collection in the areas of [Russia’s] military, military-technical activity.</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>+</td>
</tr>
<tr>
<td>Creating and (or) distributing messages and materials created and (or) distributed by a “foreign agent” media and (or) Russian juridical person founded by a “foreign agent”</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>+</td>
<td>-</td>
</tr>
</tbody>
</table>

\(^{299}\) If otherwise noted, NPO stands for “nonprofit organizations,” PA stands for “public associations,” M stands for “media,” D stands for “distributors of messages and materials created and (or) distributed by a “foreign agent” media” NP stands for “natural persons.”

\(^{300}\) Federal'nyj zakon ot 12.01.1996 N 7-FZ.

\(^{301}\) Federal'nyj zakon ot 19.05.1995 N 82-FZ.

\(^{302}\) Zakon RF ot 27.12.1991 N 2124-I.

\(^{303}\) Zakon RF ot 27.12.1991 N 2124-I.

\(^{304}\) Federal'nyj zakon ot 28.12.2012 N 272-FZ.
media and (or) participating in the creation of aforementioned messages and materials.

<table>
<thead>
<tr>
<th>Table 1. Criteria used for the &quot;foreign agent&quot; designation under existing regulation (created by the author).</th>
</tr>
</thead>
</table>

As mentioned before, the presence of one of the criteria suffices for a natural person’s designation as a “foreign agent.” Both criteria must be present in the case of NPOs and public associations. After the new law has been enacted, the definition of a “foreign agent” and the designation criteria will become unified for all persons. According to the law’s Article 1, a “foreign agent” will be understood as a “person that has received support and (or) is under the foreign influence in other forms and engaged in [the types of] activities” introduced by the law. According to Article 4 of the law, such activities include political activity and “purposeful data collection in the areas of military, military-technical activity.” These activities are supplemented with the vague “distribution of printed, audio-, audiovisual, and other messages and materials” intended for public use “and (or) participation in the creation of specified messages and materials.” Thus, once enacted, the law will target any organization creating or distributing information. The financing of mentioned political activity, data collection, and information distribution can similarly lead to the “foreign agent” designation.

(B) While the notion of “political activity” did not undergo substantial changes compared to prior regulations, the lawmakers made one worrying correction. Article 2 of the Federal law “On nonprofit organizations” stated that engagement in specific areas, such as science, culture, art, or charity, did not constitute political activity. As follows,

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305 Federal'nyj zakon ot 14.07.2022 N 255-FZ.
306 Federal'nyj zakon ot 14.07.2022 N 255-FZ.
307 Federal'nyj zakon ot 14.07.2022 N 255-FZ.
308 Federal'nyj zakon ot 12.01.1996 N 7-FZ.
NPOs engaged in such activities could not be designated as “foreign agents.” The novelties of 2022 limit this exemption in a peculiar way. According to the new law’s norm, involvement in exempted types of activities guarantees against designation only if “such activities do not contradict the public interests of the Russian Federation, the foundations of public order of the Russian Federation, other values protected by the Constitution of the Russian Federation.”

Due to the uncertainty of legislative provisions and the norm’s expansive character, there arises the risk of arbitrary application.

(C) In addition to mentioned limitations, the law provides a logical and long-awaited development of the scope’s expansion. Since December 2022, any person (juridical or natural) will become vulnerable to the “foreign agent” designation. Currently, commercial organizations are exempt from the “foreign agents” requirements. For this reason, registering a commercial organization became one of the NPOs’ “survival strategies,” which will be discussed in Chapter 4. Apart from including commercial organizations, the new law listed specific categories that will not be subject to potential “foreign-agent” designation. They include:

1) Russian governmental bodies, “juridical persons controlled by the Russian Federation, the regions of the Russian Federation, municipal bodies,” state-owned companies and corporations, other juridical persons under their control, managing bodies of state non-budgetary funds.

2) Religious organizations, political parties, employers’ associations, chambers of commerce and industry registered in accordance with the law.

309 Federal’nyj zakon ot 14.07.2022 N 255-FZ.
310 Federal’nyj zakon ot 14.07.2022 N 255-FZ.
3) Specific persons indicated in Article 5 of the Federal law “On the legal status of foreign citizens in the Russian Federation”\textsuperscript{311} (such as heads of diplomatic missions and consular offices, trade missions’ employees, and others).

(D) The new law introduces the concept of “foreign influence” – one of the criteria needed for designation. The vague and extensive nature of the notion creates preconditions for the law’s arbitrary application. Under “foreign influence,” the law understands “the provision of support by a foreign source to a person and (or) impact on a person, including by coercion, persuasion, and (or) other means.”\textsuperscript{312} The “support” no longer comes down to acquiring financial support (being funded by a foreign source). Instead, it is defined loosely as “the provision of money and (or) other property by a foreign source, as well as the provision to a person by a foreign source of organizational and methodological, scientific, and technical aid, aid in other forms.”\textsuperscript{313} The inclusion of “other forms and means” predetermines the possibility of qualifying virtually any type of interaction with a foreign source as being under “foreign influence.” The list of foreign sources includes (1) foreign states, their governmental bodies, international and foreign organizations, foreign citizens, stateless persons, foreign structures without a juridical person, “persons empowered”\textsuperscript{314} by these sources, (2) Russian citizens and juridical persons receiving money or other property from mentioned sources or acting as intermediaries for receiving such money or property, (3) Russian juridical persons with

\textsuperscript{312} Federal'nyj zakon ot 14.07.2022 N 255-FZ.
\textsuperscript{313} Federal'nyj zakon ot 14.07.2022 N 255-FZ.
\textsuperscript{314} Federal'nyj zakon ot 14.07.2022 N 255-FZ.
foreign citizens or stateless persons as their beneficiaries, (4) other persons under the influence of the sources.

The law changes the notion of “intermediary in receiving money and (or) other property from a foreign source”\textsuperscript{315} understood as a Russian citizen or juridical person “transferring money and (or) other property from a foreign source or a person under the direct or indirect influence of such a source.”\textsuperscript{316} Although it defines a person under control as a “juridical person under direct or indirect control manifested in its obligation to execute directions, orders, and perform actions”\textsuperscript{317} in other forms, the law does not specify the control criteria. For this reason, it is left unclear how the state will determine one’s being under the control of a foreign source.

(E) Apart from introducing a united “foreign agents” registry irrespective of the person’s legal status, the law envisages the creation of a “united registry of natural persons, affiliated with foreign agents”\textsuperscript{318} and, as follows, the usage of a new category of “affiliated persons.” Under this category, the law understands a natural person that is (was) (A) managing a “foreign-agent” juridical person, public association, other association of persons, foreign structure without a juridical person and is (was) its founder, member, participant, executive, or employee, (B) carrying out political activity, and (C) receiving money and (or) other property from “foreign agents” or intermediaries. Today, the law does not specify any legal consequences of designation as a “natural person affiliated with a foreign agent.” Still, it mentions that such persons are not subject to “foreign-agent” restrictions. Hence, now the legal status of such persons is left unspecified.

\textsuperscript{315} Federal’nij zakon ot 14.07.2022 N 255-FZ.
\textsuperscript{316} Federal’nij zakon ot 14.07.2022 N 255-FZ.
\textsuperscript{317} Federal’nij zakon ot 14.07.2022 N 255-FZ.
\textsuperscript{318} Federal’nij zakon ot 14.07.2022 N 255-FZ.
### 3.4 Legal restrictions applicable to “foreign agents”

New legislative provisions further broaden the restrictions imposed on “foreign agents.” The new law of 2022\(^{319}\) generalizes the rules and combines them in a unified Article 11. Due to the law's current “pending” status, these limitations shall be contrasted to the ones already in place depending on the legal status of a “foreign agent.” The comparison of normative provisions contained in existing laws and the law of 2022 is provided in the table below (the differing provisions are highlighted in bold):

<table>
<thead>
<tr>
<th>Restrictions under enacted regulation</th>
<th>Restrictions under 255-FZ(^{320})</th>
</tr>
</thead>
<tbody>
<tr>
<td>Natural persons included in the registry of “foreign agents” cannot be appointed to federal, regional, and municipal governing bodies (section 8, Article 2.1 of the Federal law “On sanctions for individuals violating fundamental human rights and freedoms, rights and freedoms of the citizen of the Russian Federation”(^{321})).</td>
<td>Natural persons included in the registry of “foreign agents” cannot be appointed to governmental bodies or be public or municipal servants (par. 1, Article 11).</td>
</tr>
<tr>
<td>Inclusion of a natural person in the registry of “foreign agents” can be a ground to deny</td>
<td>Natural persons included in the registry of “foreign agents” cannot be election or referendum commissions’ members (par. 1, Article 11).</td>
</tr>
<tr>
<td>Including a public servant or a natural person in the “foreign agent” registry might be a</td>
<td></td>
</tr>
</tbody>
</table>

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\(^{319}\) Federal'nyj zakon ot 14.07.2022 N 255-FZ.

\(^{320}\) Federal'nyj zakon ot 14.07.2022 N 255-FZ.

access to classified information to a public servant or a natural person (Article 22 of the Federal law “On classified information”)*322). ground to deny access to classified information (par. 2, Article 11).

- All “foreign agents” are prohibited from participating in commissions, committees, consultative, advisory, expert, or other councils organized by governmental bodies (par. 3, Article 11).

Since 2018*323, public associations (in the form of registered nonprofit organizations) designated as “foreign agents” cannot nominate candidates to public monitoring commissions overseeing compliance with the rights of detained and convicted persons (section 3, Article 10 of the Federal law “On public control over securing human rights in places of detention and on assistance to persons in places of detention”)*324).

“All foreign agent” public associations cannot nominate candidates to public monitoring commissions*325 (par. 4, Article 11).

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The 2018 amendments\textsuperscript{326} prohibited “foreign agent” NPOs from carrying out an independent anti-corruption assessment of draft legislation (section 1.1, Article 5 of the Federal law “On the anti-corruption assessment of legal acts and draft legal acts”\textsuperscript{327}).

<table>
<thead>
<tr>
<th>“Foreign agent” NPOs, unregistered public associations, and “foreign agent” media were prohibited\textsuperscript{328 329} from “promoting or opposing candidates, lists of candidates, the election of registered candidates, initiating a referendum or holding a referendum, achievement of a specific result in election, referendum as well as participating in other forms in electoral campaigns, referendum campaigns.” In 2021\textsuperscript{330}, unregistered public associations, foreign media and Russian juridical persons designated as “foreign agents” were also prohibited from activities mentioned above (par. 6, Article 3 of the Federal law “On the basic guarantees of electoral rights and the</th>
</tr>
</thead>
<tbody>
<tr>
<td>All “foreign agents” are prohibited from carrying out an independent anti-corruption assessment of legal acts (draft legislation) (par. 5, Article 11).  |</td>
</tr>
</tbody>
</table>

All “foreign agents” are prohibited from promoting or opposing candidates, lists of candidates, the election of registered candidates, initiating a referendum or holding a referendum, achievement of a specific result in an election, referendum, achievement of a particular result in an election, referendum as well as participating in other forms in electoral campaigns, referendum campaigns (par. 6, Article 11).

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\textsuperscript{328} Federal'nyj zakon ot 24.11.2014 N 355-FZ.

\textsuperscript{329} Federal'nyj zakon ot 20.04.2021 N 91-FZ.

\textsuperscript{330} Federal'nyj zakon ot 20.04.2021 N 91-FZ.
right to participate in a referendum of the citizens of the Russian Federation”.  

<table>
<thead>
<tr>
<th>In 2014332, “foreign agent” NPOs were prohibited from donating to the electoral funds of candidates, registered candidates, electoral associations, and referendum funds. In 2021333, the restriction was expanded to include Russian juridical persons listed in the registry of “foreign agent” media (par. 6, Article 58 of the Federal law “On the basic guarantees of electoral rights and the right to participate in a referendum of the citizens of the Russian Federation”).</th>
<th>All “foreign agents” are prohibited from donating to the electoral funds of candidates, registered candidates, electoral associations, and referendum funds (par. 6, Article 11).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Since 2021335, transferring and (or) receiving money, transferring and (or) acquiring other property from NPOs, unregistered public associations, and natural persons designated as “foreign agents” to organize and carry out a public event is forbidden (section 3, Article 11 of the Federal law “On meetings, rallies, demonstrations, marches, and picketing”).</td>
<td>Transferring and (or) receiving money, transferring and (or) acquiring other property from “foreign agents” to organize and carry out a public event is forbidden. “Foreign agents” cannot organize public events (par. 7, Article 11).</td>
</tr>
</tbody>
</table>

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331 Федеральный закон от 12.06.2002 N 67-ФЗ.  
332 Федеральный закон от 24.11.2014 N 355-ФЗ.  
333 Федеральный закон от 20.04.2021 N 91-ФЗ.  
334 Федеральный закон от 12.06.2002 N 67-ФЗ.  
The amendments of 2014\textsuperscript{337} prohibited political parties from receiving donations and reaching deals (settling contracts) with “foreign agent” NPOs (par. 3, Article 30 and par. 4.1, Article 31 of the Federal law “On political parties”\textsuperscript{338}).

Donations from all “foreign agents” to political parties and their regional divisions are prohibited as well as reaching deals between political parties (their divisions) and “foreign agents” (par. 8, Article 11).

While the idea of prohibiting “foreign agents” from educating minors was on the rise amid the adoption and implementation of the so-called “Law on educational activities,”\textsuperscript{339} a similar restriction was never adopted.

“Foreign agents” cannot be involved in educational (outreach) activities\textsuperscript{340} for minors and (or) teaching activities in state and municipal educational institutions. “Foreign agent” organizations cannot carry out teaching activities for minors (par. 9, Article 11).

As in the case of banning “foreign agents” educational and teaching activities, a similar restriction has not been adopted until now.

“Foreign agents” are prohibited from producing information products for minors (par. 10, Article 11).

“Foreign agents” can neither participate in the procurement regulated by the Federal law “On procurement of goods, works, services by individual types of juridical

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\textsuperscript{337} Federal'nyj zakon ot 24.11.2014 N 355-FZ.
\textsuperscript{340} The translation does not fully uncover the contents of such an activity and the intricate meaning of the legislative novelty. The verbatim translation of “enlightening activity” ["просветительская деятельность"] however, would likely acquire a pretentious character. In general, mentioned activity covers various types of teaching activities beyond approved educational programs.
“Foreign agent” NPOs cannot be recognized as “providers of socially useful services” – a category introduced in 2016 and eligible for priority state and municipal funding (par. 13, Article 31.1 of the Federal law “On nonprofit organizations”).

Money deposited by “foreign agent” NPOs or in their favor is no longer insured under the state system of deposit insurance (section 2, Article 5 of the Federal law “On deposit insurance in the banks of the Russian Federation”).

All “foreign agents” cannot receive state financial support, even for artistic purposes (par. 12, Article 11).

Money deposited by “foreign agents” (except natural persons) is not insured under the state system of deposit insurance (par. 13, Article 11).

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344 Federal'nyj zakon ot 12.01.1996 N 7-FZ.
345 The law regulating “socially oriented nonprofit organizations” was enacted in 2010. The lawmakers specified the types of activities which shaped an NPO’s “social orientation.” Such NPOs were entitled to significant measures of support on the federal, regional, and municipal levels, mostly in the form of subsidies, benefits, and exemptions, including those related to taxation. In 2016, the category was supplemented with a more specific type of “providers of socially useful services” – nonprofit organizations satisfying one of the two criteria: (1) providing socially useful services of due quality for one year or (2) due realization of projects in one or several priority areas using the grants of the President of the Russian Federation or grants for the civil society’s development. According to Article 2.2 of the Federal law “On nonprofit organizations,” an NPO can be recognized as a “socially oriented” one only if it is not functioning as a “foreign agent” and does not have tax or fees liabilities.
The bill prohibiting “foreign agents” from using a simplified taxation system has recently been introduced to State Duma.\(^{348}\) As of now, there are no “foreign-agent” restrictions, limitations, or duties under the Tax Code of the Russian Federation.

<table>
<thead>
<tr>
<th>“Foreign agents” must follow restrictions and prohibitions under the Tax Code of the Russian Federation, including norms regulating the use of a simplified taxation system (par. 14, Article 11).</th>
</tr>
</thead>
<tbody>
<tr>
<td>“Foreign agents” must follow the restrictions and prohibitions under the Federal law “On the procedure of making foreign investments in business entities of strategic importance for ensuring the defense of the country and the security of the state”(^{351}) (par. 16, Article 11).</td>
</tr>
</tbody>
</table>

Cognate restrictions are not contained in enacted federal legislation since mentioned activities can only be carried out by commercial organizations, which are not recognized as the objects of current “foreign agents” legislation.

| “Foreign agent” NPOs cannot use a simplified form of book-keeping (including simplified accounting (financial) reports) introduced in 2014\(^{349}\) (par. 5, Article 6 of the Federal law “On accounting”\(^{350}\)). |
| “Foreign agents” cannot maintain significant objects of critical information |

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infrastructure and carry out activities to ensure the security of significant objects of critical information infrastructure (par. 17, Article 11).

“Foreign agents” cannot participate as experts in state ecological assessment or organizing and carrying out an ecological assessment (par. 18, Article 11).

<table>
<thead>
<tr>
<th>Table 2. Comparison of restrictions applicable to “foreign agents” under existing regulation and Federal law N 255-FZ (created by the author).</th>
</tr>
</thead>
<tbody>
<tr>
<td>The lawmakers followed the route of strengthening legal restrictions imposed on “foreign agents.” The main trends that can be traced are as follows:</td>
</tr>
<tr>
<td>(1) Broadening the scope of the “foreign agents” legislation’s applicability by expanding individual regulations to all “foreign agents,” irrespective of their legal status.</td>
</tr>
<tr>
<td>(2) Introducing restrictions specific to commercial organizations due to their inclusion into the new law’s area of gravity.</td>
</tr>
<tr>
<td>(3) New restrictions severely constrain “foreign agents” in previously untouched areas, such as taxation or state (municipal) procurement.</td>
</tr>
<tr>
<td>(4) Further limiting “foreign agents’” access to control over public authorities by eliminating their right to participate in consultative and expert boards and carry out assessments.</td>
</tr>
<tr>
<td>(5) Significantly limiting “foreign agents’” access to domestic funding by eliminating their right to acquire state support.</td>
</tr>
<tr>
<td>(6) Prohibiting “foreign agents” from accessing two groups of Russians, namely minors and students of state and municipal educational institutions.</td>
</tr>
</tbody>
</table>
3.5 The duties of “foreign agents”

Designation as a “foreign agent” does not solely impose damaging restrictions. It also makes designated entities subject to specific duties depending on their legal status. As before, due to the emergence of the new legislation, existing duties will be contrasted with those scheduled to be enacted in December 2022. Whereas listed persons have other duties originating from their legal status, such duties do not constitute the object of the thesis’s analysis. Therefore, only “foreign agent”-specific duties will be analyzed.

(A) Reporting duties.

Nonprofit organizations\textsuperscript{352} are subject to state control under Article 32 of the Federal law “On nonprofit organizations.”\textsuperscript{353} Submitting reports to the Ministry of Justice constitutes one of the NPOs’ duties, except for one specific case. NPOs not founded or managed by foreign citizens (foreign juridical persons) and receiving money or other property worth less than 3 million rubles over the reference period (but not from foreign sources) are exempt from reporting duty. Instead, they can submit information in an accessible form confirming the continuation of functioning. However, other NPOs are subject to reporting duties which vary substantially depending on the organization’s legal status.

Most nonprofit organizations must send \textit{annual} reports to the Ministry of Justice no later than April 15 following the reference period. Such reports shall include information on NPOs’ (1) activities, the personal composition of their governing bodies

\textsuperscript{352} In accordance with Article 6 of the Law of the Russian Federation “On media,” “foreign media functioning as a foreign agent” has rights and duties of a nonprofit organization under the Federal law “On nonprofit organizations.” Unless mentioned otherwise, NPOs’ duties likewise apply to “foreign media – foreign agents.” Juridical or natural distributing messages or materials produced or distributed by a “foreign agent” or participating in their production bear the duties under the Federal law “On nonprofit organizations” in accordance with the Ministry of Justice’s Administrative order.

\textsuperscript{353} Federal'nyj zakon ot 12.01.1996 N 7-FZ.
and employees, and (2) the purposes of spending money and using other property, including those received from foreign sources. “Foreign-agent” NPOs are subject to different reporting terms. They must provide the information indicated under (1) *semiannually* along with the actual expenditures and property usage and data under (2) *quarterly*. Additionally, such NPOs must disclose information regarding programs in progress and their implementation along with corresponding documents (or information about not holding any public events during the reference period) – *annually*; programs announced for implementation and related records on public events – *before the commencement of the program (its part)*. Under aforementioned Article 32 of the Federal law “On nonprofit organizations,” annual accounting (financial) reports of “foreign agent” NPOs are subject to mandatory audit. Information on submitting audit statements to the state information resource of accounting (financial) reports must be presented *annually* to the Ministry of Justice.

Compared to NPOs, **unregistered public associations** have a contracted range of reporting duties. Under Article 29.1 of the Federal law “On public associations,” associations included in the registry must inform the Ministry of Justice *quarterly* about (1) the amount of money and (or) other property received from foreign sources over the reference period, (2) the purposes of spending money and using other property, actual expenditures, and property usage, (3) changing of information previously indicated in the notice on functioning as a “foreign agent” submitted following the Ministry of Justice’s Administrative order.\(^\text{355}\)

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\(^{354}\) Federal'nyj zakon ot 12.01.1996 N 7-FZ.
\(^{355}\) Prikaz Ministerstva yusticii RF ot 01.06.2021 N 92 "Ob utverzhdenii poryadka vedeniya reestra nezaregistrirovannyh obshchestvennyh ob"edinений, vypolnyayushchih funkciи inostrannogo agenta, poryadka i srokov uvedomleniya obshchestvennym ob"edinением, funkcioniruyushchim bez priobreteniya prav yuridicheskogo lica, o poluchenii (namereni k poluchat') denezhnih sredstv
Under Article 6 of the Law of the Russian Federation “On media,” the Ministry of Justice determines the parameters of the NPOs’ duties’ applicability to persons distributing messages or materials produced by “foreign-agent” media or participating in their production. Procedural aspects of the law’s applicability are defined by the Ministry of Justice’s Administrative order. According to it, **natural persons included in the registry of “foreign agent” media** must *quarterly* submit reports on their activities and documents on the purposes of spending money and using other property, including those received from foreign sources. Apart from that, such natural persons are obliged to establish a Russian juridical person that must abide by the regulations enacted for NPOs with the peculiarities under the Administrative Order N 214 (Appendix N 3). The duties of **Russian juridical persons distributing information** partially align with those of NPOs since the Administrative Order regulates them in conjunction with the norms of the Federal law “On nonprofit organizations.” They are subject to presenting reports on (1) the personal composition of governing bodies and employees – *semiannually*, (2) receiving and spending money and (or) other property – *quarterly*, and (3) submitting audit statements – *annually*. As in the case of NPOs, annual accounting (financial) reports must undergo a mandatory audit. **Natural persons** designated under the Federal law N 272-FZ

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356 Zakon RF ot 27.12.1991 N 2124-I.
358 Federal'nuy zakon ot 12.01.1996 N 7-FZ.
must report on their activities within the functions of a “foreign agent,” including information about the purposes of using foreign funding and actual expenditures.

Designated nonprofit organizations and media must semiannually post reports on their activities and the continuation of functioning on the Ministry of Justice’s website (www.minjust.ru).

Article 9 of the newly adopted Federal law “On control over the activities of persons under the foreign influence” systematizes the duties of “foreign agents.” It does not distinguish duties specific to individual natural or juridical persons. However, it might be concluded from the list that specific reporting duties apply solely to organizations due to their character (such as regarding the changes to the organization’s charter). The table below lists the types of information which shall be provided by the “foreign agents” within their reporting duties under the 2022 law with reference periods (the differing provisions are highlighted in bold):

<table>
<thead>
<tr>
<th>Required information (par. 6, Article 9)</th>
<th>Periodicity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reports on activities, including reports on implementing programs and fulfilling other documents used for public events (information about not holding any public events), the purposes of activities, structure, functioning territory, address (location) of the governing body, changes to the organization’s charter.</td>
<td>Semiannually</td>
</tr>
</tbody>
</table>

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360 Federal'nyj zakon ot 12.01.1996 N 7-FZ; Federal'nyj zakon ot 19.05.1995 N 82-FZ.
362 Federal'nyj zakon ot 14.07.2022 N 255-FZ.
363 Federal'nyj zakon ot 14.07.2022 N 255-FZ.
<table>
<thead>
<tr>
<th>Reporting Duty</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reports on the founders (members, participants) and the personal composition</td>
<td>Semiannually</td>
</tr>
<tr>
<td>of governing bodies and employees.</td>
<td></td>
</tr>
<tr>
<td>Reports on foreign sources, amounts of money and property received from</td>
<td>Quarterly</td>
</tr>
<tr>
<td>such sources, including information about bank accounts used for the “foreign</td>
<td></td>
</tr>
<tr>
<td>agent’s” functioning, the purposes and amounts of their alleged and actual</td>
<td></td>
</tr>
<tr>
<td>distribution (spending, using), on receiving organizational and</td>
<td></td>
</tr>
<tr>
<td>methodological, scientific, and technical aid, aid in other forms from the</td>
<td></td>
</tr>
<tr>
<td>foreign sources.</td>
<td></td>
</tr>
<tr>
<td>Information regarding submission of an audit statement to the state resource.</td>
<td>Annually</td>
</tr>
<tr>
<td>Information about programs intended for implementation and other documents</td>
<td>Annually / before the program’s commencement</td>
</tr>
<tr>
<td>laying out public events.</td>
<td></td>
</tr>
<tr>
<td>Changes to the information indicated above.</td>
<td>Quarterly</td>
</tr>
</tbody>
</table>

Table 3. Reporting duties of “foreign agent” under Federal law N 255-FZ (created by the author).

As might be observed from the table, the reporting duties did not undergo significant changes but were slightly expanded to include additional data regarding the functioning of “foreign agents.” Since the law has recently been adopted, the distinction between the duties of organizations and natural persons and the procedural aspects of performing specified duties are yet to be identified by the Ministry of Justice.

(B) Media registration requirement.

One specific requirement applies solely to the foreign media designated as a “foreign agent.” Under Article 25.1 of the Law of the Russian Federation “On media,”³⁶⁴

³⁶⁴ Zakon RF ot 27.12.1991 N 2124-I.
a juridical person registered in a foreign country, a foreign structure without an established juridical person, or a natural person designated as a “foreign agent media” must establish a Russian juridical person within a monthly period following their designation. The distribution of “intended for the public printed, audio-, audiovisual, and other messages and materials” must be carried out by the Russia-based organization established by a “foreign agent media.” If the entities above had established an organization in the country prior to the designation, they must inform the Ministry of Justice regarding such juridical persons. The information about existing or newly established organizations is included in the registry. Since the inclusion, Russia-based legal entities must follow the norms adopted for nonprofit organizations. The legislative novelties of 2022 do not alter this duty.

(C) Labeling requirements.

Arguably, the labeling requirements make up the most “visible” part of the “foreign agents’” duties. Generally, the law constates specific indication requirements to the information produced or distributed by a “foreign agent” to demonstrate the legal status of such an entity to the public. As with the reporting duties, labeling requirements depend on a “foreign agent” type within the “juridical-natural person” dichotomy or, in the case of juridical persons, an entity’s organizational form. The informal implications and the societal perception of such indications are discussed in other chapters of the present thesis.

Labeling requirements relate to the distribution and creation of information. The law of the Russian Federation “On media” states that “the messages and materials of a media functioning as a foreign agent and (or) a Russian juridical person functioning as a foreign agent distributed at the territory of the Russian Federation must be supplemented

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365 Zakon RF ot 27.12.1991 N 2124-I.
with the indication that mentioned messages and materials are produced and (or) distributed accordingly by a foreign media functioning as a foreign agent and (or) a Russian juridical person functioning as a foreign agent.”\textsuperscript{366} The same rules apply to natural persons included in the registry of “foreign agent” media. The distribution of messages and materials without proper indication is prohibited. The exact technical format of indications is regulated by the Federal Service for Supervision of Communications, Information Technology, and Mass Media (Roskomnadzor).\textsuperscript{367}

The regulations are slightly different for other “foreign agents.” Natural persons (excluding those listed in the registry of “foreign agent media”) must indicate their designation status whenever they address public or local authorities, public associations, and educational institutions. Materials directed by unregistered public associations and nonprofit organizations to the addressees mentioned above “\textit{and other organizations}”\textsuperscript{368} must indicate their “foreign agent” status. Additionally, materials produced and (or) distributed by the founders, members, participants, managers, or members of the governing bodies of unregistered public associations and nonprofit organizations must indicate their affiliation with “foreign agents” whenever they “carry out political activities at the territory of the Russian Federation.”\textsuperscript{369} Information about the activities of listed entities distributed in the media must likewise indicate the legal status of such entities.

Federal law “On control over the activities of persons under the foreign influence”\textsuperscript{370} moderately modifies requirement duties. According to par. 1 of Article 9,
“foreign agents” must indicate their status whenever they carry out activities listed in Article 4 of the law (political activity, distribution of messages and materials, purposeful data collection), including cases of addressing public authorities, educational institutions, “other bodies and organizations.”371 Additionally, “foreign agents” must inform their founders (participants), beneficiaries, and employees (workers) about their designation status (par. 2, Article 9 of the Federal law N 255-FZ).

(D) Notification duties.

This category envisages duties preceding entities’ designation as “foreign agents.” A nonprofit organization intending after its “state registration to carry out activities as a nonprofit organization functioning as a foreign agent”372 must apply for registry inclusion before the commencement of such activities.

Unregistered public associations receiving foreign funding and participating in political activity or intending to do so must373 inform the Ministry of Justice (1) within ten working days before the commencement of political activity if the association had been receiving money or other property from foreign sources for one year; (2) within ten working days after receiving money or other property if the association had been engaged in political activity for a year, or (3) within ten working days before receiving foreign funding and commencing political activity if the association intends to receive money and property from foreign sources and participate in political activity in Russia. Unregistered public associations are exempt from mandatory application submission if money and (or) other property were returned to the sender within three working days since their deposition.

371 Federal'nyj zakon ot 14.07.2022 N 255-FZ.
373 Prikaz Ministerstva yusticii RF ot 01.06.2021 N 92.
The procedure differs for the “foreign agent” media since the law does not contain any application duties meant to be performed before the media designation. A Ministry of Justice’s Administrative order N 216374 mentions media’s application as a legal ground for registry inclusion. However, neither the Order nor the Federal law “On media”375 (in conjunction with the norms of the Federal law “On nonprofit organizations”376 applicable to “foreign agent” media) specifies any timelines or peculiarities of application submission. The only adequately defined notification duty appears after the media’s designation. As mentioned, “foreign agent” media must establish a Russia-based juridical person. The information about an established entity must be provided to the Ministry of Justice within a month following its state registration.377

**Natural persons** designated under the Federal law N 272-FZ378 must apply for registry inclusion within ten working days since the commencement of political activity in the interests of a foreign source and (or) purposeful data collection.379 Foreign citizens residing permanently outside the Russian Federation and intending to arrive in the country to carry out activities of a “foreign agent” must inform the Ministry of Justice about their intention no later than one month before they arrive in the Russian Federation.380

Article 7 of the newly adopted Federal law “On control over the activities of persons under the foreign influence” straightforwardly defines notification duty by stating that “a

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375 Zakon RF ot 27.12.1991 N 2124-I.
376 Federal'nyj zakon ot 12.01.1996 N 7-FZ.
379 Prikaz Ministerstva yusticii RF ot 28.06.2021 N 106.
380 Prikaz Ministerstva yusticii RF ot 28.06.2021 N 106.
person intending to function as a foreign agent must **before the commencement of their activities** submit to the designated body an application for registry inclusion.”381 A natural person permanently residing abroad and intending to function as a “foreign agent” after their arrival in the Russian Federation must inform the Ministry of Justice **before entering the Russian Federation.** If the state identifies a person that failed to apply, the Ministry of Justice includes such a person in the registry within ten working days following the identification.

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381 Federal'nyj zakon ot 14.07.2022 N 255-FZ.
3.6 Administrative and criminal liability of “foreign agents”

Since its introduction, the “foreign agents” legislation made a noticeable step toward stricter liability. As of now, it comprises measures of administrative and criminal liability. Due to the peculiarities of the Russian legal system, only natural persons are subject to criminal liability under Article 19\textsuperscript{382} of the Criminal Code of the Russian Federation. In contrast, administrative liability can be equally imposed on juridical and natural persons. Measures of administrative liability are now represented in two significant ways:

(A) Liability under the Code of Administrative Offences of the Russian Federation.\textsuperscript{383}

Liability under the Code is contained in Articles 19.34, 19.34.1, 19.7.5.2, 19.7.5-3, 19.7.5-4. Violations themselves underwent specific evolution. For instance, Article 19.34 initially established NPOs’ liability for carrying out activities without registry inclusion. Later, it was expanded with newly introduced offenses, such as publishing or distributing “foreign agents’” materials without proper indication in 2019\textsuperscript{384} and production of materials within the political activity of an NPO’s founder, member, participant, executive, or employee without a proper “foreign agent” indication\textsuperscript{385}.

The articles encompass vast manifestations of “foreign agents’” behavior targeting every category of “foreign agents.” While most of the sanctions have monetary nature, specific repeated violations might lead to criminal liability. Repeated misreporting under Articles 19.7.5-2 – 19.7.5-4 may constitute the previously mentioned “malicious evasion”

\textsuperscript{382} Uголовный кодекс Россиjsкой Федерации от 13.06.1996 N 63-ФЗ.
\textsuperscript{383} Кодекс Россиjsкой Федерации об административных нарушениях от 30.12.2001 N 195-ФЗ.
\textsuperscript{384} Федеральный закон от 16.12.2019 N 443-ФЗ.
\textsuperscript{385} Федеральный закон от 24.02.2021 N 14-ФЗ.
of “foreign agents”’ duties forming Article 330.1 of Russia’s Criminal Code. In such a case, criminal liability is imposed on “foreign agents”’ employees or “foreign agents” themselves (in case such an “agent” is a designated natural person).

(B) Other measures of administrative liability.

The state exercises broad influence on “foreign agents.” As indicated above, “foreign agent” NPOs must disclose information regarding active and planned programs. Under Article 32 of the Federal law “On nonprofit organizations,” the Ministry of Justice can direct a “motivated decision to prohibit […] the announced for implementation or implemented […] program (its parts).” While the law refers to the “motivated” character of the decision, it does not specify its criteria or grounds. Having received the Ministry of Justice’s decision, “foreign agent” NPO must stop the program’s implementation or abstain from commencing its implementation. Failure to comply with the Ministry’s decision will lead to the organization’s dissolution following the court decision based on the lawsuit submitted by the Ministry (par. 12, Article 12 of the Federal law “On nonprofit organizations”). The dissolution of a “foreign agent” NPO might likewise occur in the case of continuous misreporting (par. 10, Article 12).

The state can restrict access to the information resources of “foreign agents.” This restriction applies to “foreign agent” media and Russian juridical persons established by them. If guilty of violating the Code of Administrative Offences, such entities are subject to state restrictions following the court decision under Article 15.9 of the Federal law “On information, information technologies, and protection of information.” The network

386 Federal’nyj zakon ot 12.01.1996 N 7-FZ.
387 Federal’nyj zakon ot 27.07.2006 N 149-FZ.
operator must block access to the information resources of mentioned entities within one day after receiving data from the Federal Service for Supervision of Communications, Information Technology, and Mass Media (Roskomnadzor).\textsuperscript{388}

Criminal liability under Article 330.1 of the Criminal Code of the Russian Federation\textsuperscript{389} was enhanced since its initial introduction. Before the amending of 2020, the malicious evasion of the duty to submit documents needed for an NPO’s mandatory registry inclusion constituted the only criminal offense. The vague “malicious evasion” was expanded to include unregistered public associations. The breach of the order of functioning of a “foreign agent” media was criminalized\textsuperscript{390} along with the dereliction of duties of a “foreign agent” included in the registry of “foreign agent” media previously exposed to administrative liability under section 2 of Article 19.34.1 of the Code of Administrative Offences. At last, lawmakers criminalized failure to apply for mandatory registry inclusion committed by persons previously subject to administrative liability under section 1 of Article 19.7.5-4 of the Code of Administrative Offences or natural persons designated as “foreign agents” and gathering data in the areas of military and military-technical activity of the state. Penalties vary and are left at the discretion of the court. They include fines (up to 300 thousand rubles or in the amount of salary or other income of the convict for the period of two years), community service (up to 480 hours), corrective labor (up to two years), compulsory labor (only under section 3 of Article 330.1, up to five years) or imprisonment (up to two years in general or five years under section 3).

\textsuperscript{388} Postanovlenie Pravitel'stva RF ot 06.07.2020 N 990 “O poryadke vzaimodejstviya Federal'noj sluzhby po nadzoru v sfere svyazi, informacionnyh tehnologij i massovyh komunikacij s inostrannym sredstvom massovoj informacii, vypolnyayushchim funkci inostrannogo agenta, ili uchrezhdennym im rossijskim yuridicheskim licom, a takzhe o poryadke ograniucheniya i vozobnovleniya dostupa k informacionnomu resursu sotvetstvuyushchego lica i informirovaniya grazhdan (fizicheskih lic) o takom ograniuchenii” // Sobranie zakonodatel'stva Rossijskoj Federacii. 2020. N 28. st. 4440.
\textsuperscript{389} Ugolovnyj kodeks Rossijskoj Federacii ot 13.06.1996 N 63-FZ.
\textsuperscript{390} Federal'nyj zakon ot 30.12.2020 N 525-FZ.
Reference to “foreign agents” is likewise contained in the Criminal Code’s Article 239. Section 2 of the Article imposes criminal liability for the “creation of a nonprofit organization (including a nonprofit organization functioning as a foreign agent) […], activities of which are associated with inciting citizens to refuse from performing civic duties or committing other illicit acts, as well as the management of such an organization […].” Section 3 of the Article additionally criminalizes participation in such an organization and promotion of its activities. Currently, sections 2 and 3 have never been used by the state to prosecute “foreign agents.” Article 239 is used mainly against “communities which law-enforcement bodies deem as “destructive cults.” As a result, the lack of law enforcement practice does not allow us to evaluate the extent of the Article’s applicability to “foreign agents.”

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391 Ugolovnyj kodeks Rossijskoj Federacii ot 13.06.1996 N 63-FZ.
3.7 “Foreign agents” v. FARA

The Foreign Agents Registration Act (FARA)\(^{393}\) is often referred to as the counterpart of Russia’s “foreign agents” legislation. Moreover, the Venice Commission stated that “the Russian authorities declared that the “Foreign Agent” law was modeled on the 1938 US Foreign Agent Registration Act.”\(^{394}\) Russian officials systematically referred to FARA’s existence as a justification for the Russian analog’s adoption. Shortly after the introduction of the “foreign agents” legislation in July 2012, President Putin commented on the new legislative act in the following manner:

“What I want to say in this respect is that, first, the registration requirement applies only to organisations engaged in political activity and receiving funding from abroad. I think that we in Russia have the right to pass the same kind of law as was passed in the United States back in 1938 and has been in force there ever since. They passed this law to protect themselves from foreign influence and have used it for decades, and so, why should we not do the same here? Certainly, the US law was passed in 1938, but it is still in force today. No one has abolished it and it is still in use.”\(^{395}\)

Comparisons with the US legislative act became a recurring topic for the Russian state. They were utilized primarily to underline the “softer” character of domestic “foreign agents” legislation and underline the “harsher” nature of liability in the United States following the “foreign agent” designation. For instance, in December 2021, President Putin reiterated that the main difference between mentioned laws is that “in the United States, if you have not shut down, you face criminal liability, up to five years in prison. […] We do

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\(^{393}\) 22 U.S.C., § 611 et seq.
nothing like that. We do not prohibit the work of these organizations; we just want [them] to clearly explain and disclose the sources of funding for their operations.”396 When President Putin made the cited comment, criminal liability under Article 330.1 of Russia’s Criminal Code had been in place for nine years.

Since FARA became a noticeable object of attention of the Russian state, it is worth comparing its basic provisions to those of the Russian “foreign agents” legislation. Such comparison will allow us to address the references and provide an unbiased analysis of whether there is a commonality between the legislative acts and to what extent the Russian state’s claims regarding the domestic laws’ “softer” character are credible. The answer to the question will become a needed addition to the political part of the thesis.

(A) Objects of the laws.

Under section 611, FARA recognizes as “person” any “individual, partnership, association, corporation, organization, or any other combination of individuals,” making the scope of applicability broader than the one currently in place in Russia. However, section 613 provides explicit exemptions from the requirements for a vast range of persons, including, but not limited to, those engaging or agreeing to engage only in activities “not serving predominantly a foreign interest” (section 613(d))397 or “in activities in furtherance of bona fide religious, scholastic, academic, or scientific pursuits or of the fine arts”398 (section 613(e)). As follows, the law exempts many organizations from its requirements. While Russian “foreign agents” legislation does exempt specific types of activities from

397 22 U.S.C., § 613(d).
398 22 U.S.C., § 613(e).
comprising “political activity,” as mentioned before, such exemptions do not tend to be universally applicable and depend on case-by-case discretion.

(B) “Foreign principal.”

Arguably, the essential difference between the two legislative regulations is the concept of “foreign principal” adopted by FARA and included in section 611(b). Unlike Russia’s “foreign agent” legislation which (in specific cases) recognizes the receiving of foreign funding as the sole ground for one’s designation, FARA only applies to those relations where there is an interconnection and, thus, interdependence between the “foreign principal” and the “foreign agent” (strictly, “agent of a foreign principal”). It must be proved that under section 611(c), a potential “foreign agent” satisfies two principal criteria: acting “at the order, request, or under the direction or control, of a foreign principal”\(^{399}\) and engaging in “political activities for or in the interests of such a foreign principal.”\(^{400}\) On the contrary, Russia’s legislation recognizes participation in political activities, including, but not exceptionally, “in the interests of foreign sources”\(^{401}\) (Article 2 of the Federal law “On nonprofit organizations”) as sufficient for one’s designation. For the laws’ application, foreign sources are defined loosely. Their role comes down to ambiguous “funding” without reference to interrelation or subordination between foreign sources and those designated as “foreign agents.”

(C) Duties.

FARA identifies three primary obligations of “foreign agents”:

\(^{399}\) 22 U.S.C., § 611(c).
\(^{400}\) 22 U.S.C., § 611(c).
\(^{401}\) Federal'nyj zakon 12.01.1996 N 7-FZ.
1. **Registration requirement**: any “agent of a foreign principal” shall file with the Attorney General a registration statement within ten days since the commencement of activities in such a status. The Attorney General shall retain one copy of registration statements in the permanent form “open to public examination and inspection at [...] reasonable hours.”

According to section 618(f), failure to comply with the registration requirement allows Attorney General (if in their judgment an entity is serving as an “agent of foreign principal”) to make an application to a district court for an order “requiring compliance with any appropriate provision” of the regulation. The stage of obtaining a court ruling is omitted in the Russian case. The Ministry of Justice exercises greater discretion uncontrolled by the judiciary. Under paragraph 7 of Article 32 of the Federal law “On nonprofit organizations,” any nonprofit organization that “did not apply for [registry] inclusion” and satisfies the formal criteria becomes subject to the “foreign agent” designation by the Ministry.

2. **Disclosure requirement**: “agents of foreign principals” must file copies of “informational materials” distributed within the United States to the United States Department of Justice within 48 hours after the beginning of the transmittal and supplement materials with a “true and accurate statement [...] that such a person is registered as an agent” of a foreign principal.

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403 22 U.S.C., § 616(a).
404 22 U.S.C., § 618(f).
405 Federal'nyj zakon 12.01.1996 N 7-FZ.
406 Federal'nyj zakon 12.01.1996 N 7-FZ.
407 Federal'nyj zakon 12.01.1996 N 7-FZ.
408 22 U.S.C., § 614(a).
409 22 U.S.C., § 614(c).
As previously mentioned, the Russian legislation imposes the duty to disclose information regarding programs scheduled or implemented by nonprofit organizations. Such programs are subject to mandatory state control. Simultaneously, specific Russian “foreign agents” must disclose other information indicated in the law to the public on the Ministry of Justice’s website.

3. **Recordkeeping requirement**: “foreign agents” shall keep all written records of their activities and maintain mentioned records within three years after the termination of their status. Records shall be readily available for governmental inspection. Contrary to its Russian analog, FARA does not prescribe “agents of foreign principals” to submit reports to the state with varying periodicity. Neither does it force registered persons to undergo a mandatory audit or keep the right to organize unscheduled inspections not limited in time or scope.

**(D) Liability.**

While it is true that FARA contains measures of criminal liability leading to imprisonment for the period of up to five years (in general) or six months (in the case of a violation of subsections (b), (e), or (f) of section 614, subsection (g) or (h) of section 618) or fines of up to USD 10 000 and 5 000 respectively, the legal grounds for conviction are explicitly laid out by the statute and follow the regulations contained in the same legislative act. At the same time, as analyzed before, the causes of criminal liability of Russian “foreign agents” are questionable since they are based on the vague and unspecified concept of “malicious evasion” of duties. Hence, it is worth noting that FARA regulations

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409 22 U.S.C., § 615.
410 22 U.S.C., § 618.
clearly define the boundaries of lawful behavior and include foreseeable legal consequences of violating provisions.

Overall, the duties imposed on the “agents of foreign principals” under FARA do not bear punitive or detrimental legal consequences for the functioning of such agents. They do not excessively constrain the ordinary way of agents’ functioning. Simultaneously, governmental bodies do not exercise broad discretion regarding one’s designation (registration) as an agent. Public authorities do not have the right to arbitrarily interfere with the agents’ activities through compulsory state control and (or) state-led inspections.
3.8 Legislative ambiguity

Since its adoption, the “foreign agents” legislation has been criticized for ambiguous, often vague, wording. Now, after a decade of the laws’ existence, individual flaws still affect their application. Legal unclarity, apart from having practical difficulties for those affected by the laws, directly violates the principles and standards elaborated by international practice. The European Court of Human Rights (ECHR), in its Ozturk v. Turkey decision, stated that “a norm cannot be regarded as a “law” unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able […] to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.” Simultaneously, the ECHR continuously held that “many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice.” Still, speaking of the “organizational and methodological support” notion included in the 2020 amendments, the Venice Commission stated unequivocally that the category can be considered “so vague and susceptible to broad interpretation that the provision cannot be deemed to be foreseeable.” The same criticism applies to other norms since they do not specifically indicate what type of behavior constitutes punishable acts. The central problem of the legislation, as follows, is its unforeseeable character and the blurred nature of the legal consequences which might arise because of one’s behavior.

(A) “Political activity.”

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411 Ozturk v. Turkey [GC], no. 22479/93, § 54, ECHR 1999-VI.
412 Rekvenyi v. Hungary [GC], no. 25390/94, § 34, ECHR 1999-III.
413 Council of Europe, "On the compatibility with international human rights standards."
The Civic Chamber’s concern before the law’s adoption in 2012 became life as the legislation absorbed notions lacking normative content. “Political activity” became the most notorious example of legislative ambiguity. Initially, the notion was not defined at all. The right to interpret the contents and manifestations of such activity was delegated to law enforcement and courts. The laws did not distinguish “political actions” from “nonpolitical actions,” either. Without a clear legal definition, they could only be perceived as evaluative political, not legal, notions. The laws violated the principle of legal clarity and, thus, exacerbated the ambiguity and expansive character of “political activity.”

Despite reasonable concerns and remarks from civil society and the professional legal community414 cautiously characterizing the notion as “notably vague,”415 lawmakers did not make any tangible attempt to specify the notion. Minor clarification was provided by the Constitutional Court of the Russian Federation. Although it did not deem the law unconstitutional, the Court slightly clarified the types of “political actions.” According to the Court’s decision, such types could be “extremely versatile: in addition to meetings, rallies, demonstrations, manifestations, and picketing, political actions [could] be manifested in election campaigning and referendum campaigning, public appeals to state authorities, [and] distributing … assessments of decisions made by governmental bodies and the policy carried out by them.”416 The Court concluded that “exhaustive legislative determination of [political actions’] list [was] unfeasible.”417 Four years after the law’s

417 Postanovlenie Konstitucionnogo Suda RF ot 08.04.2014 N 10-P.
adoption, in 2016, the notion of “political activity” was specified. The amendments conceptually took after the cited Constitutional Court’s decision and introduced three essential changes:

1. They listed the forms of political activity. These forms included, among other things, involvement in conducting demonstrations, meetings, manifestations, activities aimed at “achieving a specific result in elections, a referendum,” public appeals to governmental bodies aimed at impacting the activities of such bodies; shaping “socio-political views and beliefs.”

2. They limited the scope of “political activity” by referring to the areas of “state-building, protection of the foundations of the constitutional order of the Russian Federation, [its] federal structure …, sovereignty protection and ensuring [its] territorial integrity …, ensuring the rule of law, legal order, state and social security” and others. Still, the scope of mentioned activity manifestations remained quite extensive.

3. They defined the purposes of “political activity,” which included “influencing the development and implementation of state policy, formation of governmental bodies, local governments, their decisions, and actions.”

The amendments hardly overcame the notion’s ambiguity and failed to limit its broad nature. Since then, the notion has remained untouched and still provides means for encompassing activities outside the scope of the “political sphere.” The Venice Commission stated in 2020 that the definition of “political activity” “is too broad and
covers activities of NCOs and individuals that are not political in the strict sense.” The Commission also acknowledged that, given the broad nature of the notion, “individuals are likely to be deterred from a wide range of activities that are not only fundamental for a healthy society but also for their own development and well-being.”

Providing the list of “exempted” activities (the ones which do not constitute “political activity” in the lawmakers’ view) under Article 2 of the Federal law “On nonprofit organizations” was similarly questionable as it did not result in limiting the notion’s expansive nature. Contrary to legislative provisions, the Ministry of Justice designated organizations involved in “exempted” fields, such as charity funds “KAF” (focusing on philanthropy development) and “Humanitarian Action” (assisting HIV-infected citizens), as “foreign agents.”

(B) “Foreign funding.”

The criterion of “foreign funding” became another demonstration of legislative ambiguity. First, the law provides grounds for designating any nonprofit organization as a “foreign agent” irrespective of the amount of foreign funding received. Potentially, any transfer from a foreign source can cause the designation of an organization distantly related to the “political activity.” Additionally, the lack of causality between foreign funding and political activity involvement can create a possibility of “foreign funding” provocation that

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422 Council of Europe, "On the compatibility with international human rights standards."
423 Council of Europe, "On the compatibility with international human rights standards."
424 Federal’nyj zakon ot 12.01.1996 N 7-FZ.
can be used by “pro-government groups to designate as a “foreign agent” any oppositional public organization.”  

Second, without clearly defined technical requirements for “foreign funding,” the courts exercise extreme discretion in interpreting legislative provisions. In its 2014 decision, the Constitutional Court indicated that the “money or another property [had to] be not only transferred (directed to) a nonprofit organization but accepted by it; if it [refused] to receive them and returned [them] to the foreign source, especially when such actions [were] taken before the involvement in political activity, the self-declaration as a nonprofit organization functioning as a foreign agent [was] not required.”  

The courts, however, did not seem to share the Constitutional Court’s approach. For instance, in the case of the “Anti-Corruption Foundation” (FBK), the court considered the seizure of bank accounts insufficient to limit the organization's ability to return the money as, stated by the court, it “did not prevent the administrative plaintiff from returning the funds through other accounts or petitioning the investigative bodies to lift the seizure to return the funds.”  

Another example is the case of the “GOLOS Association” – a Russian nonprofit organization established for electoral rights protection. Contrary to common sense, the court adjudicated that a foreign deposit in transit – the deposit sent by a juridical person to the bank but not yet posted to the organization’s bank account – was “the property of the [Association].”  

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427 Kondrashev, “Inostranye agenty v Rossii,” 103.
428 Postanovlenie Konstitucionnogo Suda RF ot 08.04.2014 N 10-P.
429 Kassacionnoe opredelenie SK po administrativnym delam Vtorogo kassacionnogo suda obshej yurisdikcii ot 10 iyunya 2020 g. po delu N 8a-11419/2020[88a-10736/2020].
430 Reshenie Zamoskovoreckogo rajonnogo suda goroda Moskvy ot 17.03.2015 po delu N 2-1114/2015.
Third, the Venice Commission rightly raises the topic of “indirect funding” introduced in 2020 through the “intermediary” category. The Commission argues that “it is questionable why the definition of “foreign funding” was expanded to include indirect funding that was received from Russian nationals or organizations acquiring funds from foreign sources or acting in the capacity of intermediaries.”

Simply put, by adding the “intermediary” notion to the law, the law limited the ordinary functioning of natural and juridical persons. Closely tied to this issue is the question of potential “status transfer” when an entity is designated as a “foreign agent” for receiving funding from a “foreign agent.” For instance, receiving funding from “Memorial” designated as a “foreign agent” became the legal ground for mandatory registry inclusion of “OVD-Info” – Russia’s human rights protection organization. In its 2021 report, “OVD-Info” provided examples of journalists designated as “foreign agents” for being paid by “foreign agent” media and concluded that any type of contact with “foreign agents” “can bear additional risks of registry inclusion” and lead to the “status transfer” due to arbitrary law enforcement.

(C) “Foreign influence.”

The notion of “foreign influence” has already been discussed before. Still, it is worth mentioning that the introduction of this category became another case of legislative ambiguity. As of now, it is too soon to conclude what the boundaries of “foreign influence” in law enforcement practice will be. The same applies to administrative and criminal liability, which has not yet been adapted to the needs of the new law. Nevertheless, it is

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essential to say that “foreign influence” goes beyond the existing designation criteria and encompasses an excessive multitude of interactions with foreign sources. More specifically, the indication of aid “in other forms”\textsuperscript{434} constituting “foreign influence” might lead to potentially adverse expansion of the law’s applicability and unpredictable legal repercussions for those affected by the regulations.

(D) “Malicious evasion” of duties.

The abovementioned arguments apply to the notion of “malicious evasion” of “foreign agents” duties comprising the crime under Article 330.1 of the Criminal Code of the Russian Federation. In the absence of specifications contained in the legislative acts, the existing wording of the Article contradicts the principle of legal clarity and foreseeability. The ECHR’s position toward the foreseeability of administrative offenses, namely whether “the applicant’s act, at the time when it was committed, constituted an […] offence defined with sufficient precision,”\textsuperscript{435} similarly applies to criminal wrongdoing. Arguably, the criterion of foreseeability must be considered with elevated attention since crimes are recognized as “socially dangerous” acts under Russian law. ECHR systematically ruled that “only the law can define a crime and prescribe a penalty […] and the criminal law must not be extensively construed to an accused’s detriment.”\textsuperscript{436} However, the current version of Article 330.1 does not provide a clear and unambiguous understanding of what behavior constitutes the “malicious evasion” of duties.

\textsuperscript{434} Federal’nyj zakon ot 14.07.2022 N 255-FZ.
\textsuperscript{435} Zaja v. Croatia, no. 37462/09, § 93, ECHR 2016.
\textsuperscript{436} Cantoni v. France [GC], no. 17862/91, § 29, ECHR 1996.
3.9 Legal analysis preliminary conclusions

The chapter traced the evolution of the “foreign agents” legislation and identified the continuous expansion of its scope of applicability. A retrospective analysis was supplemented with exploring the main distinctions between existing regulations and the norms of the newly adopted Federal law “On control over the activities of persons under the foreign influence.” It has been noted that the new law introduces ambiguous and unclear notions and a new category of “natural persons affiliated with foreign agents” lacking explicit legislative content.

The chapter illuminated a broad range of restrictions and duties imposed on “foreign agents” depending on their legal status. It was indicated that the newly adopted federal law enhances and expands existing restrictions and limits the exercise of specific rights, freedoms, or privileges by “foreign agents” (such as access to state funding and tax benefits or production of information materials for minors).

Legislative ambiguity depicted in one of the subchapters showed the flaws of the “foreign agents” laws and underlined the potential for their indiscriminate and arbitrary application originating from the vague and unspecified characters of their norms. The ambiguous content of the “foreign agents” legislation will demonstrate the laws’ politicized character resulting from the intentional unclarity of individual “foreign agents” provisions.

Specific attention was paid to comparing Russia’s “foreign agents” legislation and the United States FARA. The reason for such a comparison originated from the Russian state’s continuous references to American legislation. The findings will be used in the thesis’s concluding part to evaluate the credibility of the Russian officials’ claims.
Chapter 4: Civil society

4.1 Introduction to the empirical analysis

The present chapter will identify the implicit effects of the “foreign agent” designation. It will reveal that designation does not come down to legal consequences listed in the previous chapter. Instead, designation as a “foreign agent” requires adopting the so-called “survival strategies,” allowing the designated persons to continue work or terminate their activities. The reasons for adopting “survival strategies” might vary and include, among other things, the inability to reject foreign funding and substitute it with domestic sources of income, unwillingness to comply with the “foreign agents” regulations, or even the unprecedented pressure from the state.

Along with adopting “survival strategies,” designation stigma likewise belongs to the spectrum of “hidden” designation consequences. Specific Soviet-bred connotations with the term “agent” predetermine negative societal perception and turn labeling requirements from a legal instrument to the mechanism of forming the dichotomy of “ours-theirs.” The chapter will dedicate specific attention to the standard narrative of the “foreign agents’” commonality with the Soviet “enemies of the people” (“enemies of the workers”) and will aim to identify whether the “foreign agents” are, indeed, became the reincarnation of the long-forgotten Soviet stigma.

Lastly, the “International Memorial” will be evaluated as a distinct and, to a certain extent, a unique demonstration of the state’s overly politicized use of the “foreign agents” legislation to dispose of an “unfit” organization. The “Memorial’s” case will be analyzed as a manifestation of the state’s attempt to monopolize historical memory by eradicating civil society groups promoting challenging discourses.
4.2 Designation stigma

“This law does not ban anyone from having one’s own opinion on an issue. It is about receiving financial aid from abroad during domestic political activities. That is the point. The law does not even keep them from continuing these political activities. [...] There are no restrictions in it at all.” In today’s circumstances, this comment of President Putin on the “foreign agents” legislation can hardly be taken as ultimate truth. After a decade of their existence, the “foreign agents” laws overstepped the legal boundaries and finally evolved into a genuinely politicized instrument of the Russian state. While the words of President Putin regarding the lack of restrictions cannot be deemed accurate, it would be likewise inaccurate to treat existing restrictions merely as causes of “unpleasant” legal consequences. The overarching nature of the “foreign agents” legislation predetermined the emergence of hidden repercussions not mandated by the legislative acts.

The core of the “covert” effects is, without any doubt, the stigmatization effect. The labeling requirement to which “foreign agents” become subject was earlier discussed in Chapter 3 within the framework of legal analysis. Nevertheless, this requirement is not purely legal. Many critics, including the Council of Europe’s Commissioner for Human Rights, underlined that the phrase “foreign agent” “ha[d] usually been associated in the Russian historical context with the notion of a “foreign spy” and/or a traitor and thus carries with it a connotation of ostracism or stigma.”

It barely comes as a surprise that, to a certain extent, the “foreign agent” category can be traced back to the legacy of Soviet historical memory. In the media, equating

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“foreign agents” with Stalin’s “enemy of the people” became a recurring topic. In his 2021 interview, Dmitry Muratov, “Novaya Gazeta’s” editor-in-chief and a Noble Peace Prize laureate, clearly expressed that “when they say: “Foreign agents,” they mean enemy of the people.” While such a parallel might be plausibly adopted at a domestic level, it is worth identifying the principal distinction between the two notions to avoid further terminological confusion.

First, although the “foreign agents” category is likewise used to identify the alleged opponents of the state, “enemies of the people” were an ideological category based primarily on Stalin’s concept of the intensification of class conflict on the path to socialism. Under Article 131 of the 1936 Soviet Constitution, “people encroaching on public, socialistic property, [were] the enemies of the people.” At the same time, it was not merely about property rights. Back in 1926, the Criminal Code of the RSFSR was supplemented with a new liability measure – the “declaration as an enemy of the workers,” which was primarily applied to the convicts found guilty of violating Articles 58.1-58.18 of the Code.

Second, as follows from above, declaration as an “enemy of the workers” (“enemy of the people”) was a measure of criminal liability. Unlike in the case of “foreign agents,” criminal penalty was imposed instantaneously, without preceding administrative liability. Taming as an “enemy of the people” was used against those convicted of “anti-Soviet

activities,” counterrevolutionary activities, espionage, and sabotage [“vreditel’stvo”] under aforementioned Articles 58.1-58.18 of the Criminal Code of the RSFSR. Similar provisions were contained in the Criminal Codes of Ukrainian and Belarussian SFSRs.

Third, both organizations (except for commercial ones before December 1, 2022) and natural persons can be designated as “foreign agents.” The Criminal Code of the RSFSR did not recognize organizations as subjects of criminal liability. Under Articles 2-4 of the Criminal Code of RSFSR, natural persons, including citizens of the RSFSR, citizens of other Soviet republics, and foreign citizens, could be found guilty of crimes. Hence, only natural persons could be designated as “enemies of the people.”

Thus, the designation as an “enemy of the people” led to more detrimental and long-lasting consequences and was meant to ostracize a person found guilty of opposing the Soviet machine. Although similarities might be found between “enemies of the people” and “foreign agents,” the resemblance is purely empirical and is not based on any sufficient basis. If we allow ourselves to return to the legal analysis briefly, it should be noted that Russia’s Constitutional Court commented on the perceived “coloring” of the “foreign agent” phrase. In its 2014 decision, the court stated that any attempt to find negative connotations in the notion was “based on the stereotypes that were developed during the Soviet period and, in essence, have lost their meaning in modern realities.”

Notwithstanding, the politicized character of the notion was unlikely lost to the public. In 2017, “Levada-Center” (designated as a “foreign agent” carried out a poll dedicated to analyzing the public perception of the “foreign agents” legislation. Fifty-seven percent of the respondents agreed that the “foreign agent” notion caused “likely

444 Postanovlenie Konstitucionnogo Suda RF ot 08.04.2014 N 10-P.
negative associations; 33 percent indicated neutral emotions caused by the term. The most recurring association with a “foreign agent” for 45 percent of the respondents was “a spy, recruiter, foreign intelligence, enemy within, [“zaslannyj kazachok”], infiltrator [“lazutchik”], recruited [agent].” A survey conducted by Polina Malkova in 2020 demonstrated that sixty-six percent of the surveyed concurred with the statement that “foreign-funded NGOs serve[d] the interests of their donors.”

Mandatory information labeling undermines public trust in the “foreign agents” and the general attitude toward foreign funding. Virtually, by designating persons as “foreign agents,” the state intentionally marks them as “unreliable” in the eyes of the public. In such a way, it establishes a division “regarding whether a person or organization is ‘inside’ or ‘outside’ the Russian state.” Being “outside” for this purpose stands for being “against” the state and the nation. “Foreign agent” designation was never truly focused on countering “foreign meddling” with Russian domestic affairs. Instead, it was (and still is) about creating an “enemy” image. This approach corresponds to the views of Alexander Dugin, a prominent modern Russian philosopher having “ideological connections” with President Putin. In “Putin’s new formula. The basics of ethical politics” Dugin articulates that the “existence of the “fifth column” in Russia itself [was] no longer compatible with life, peace, and order in the society. […] Putin shall realize in its entirety that […] the West is our enemy, and it decided to give us the last fight.”

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446 Levada-Centr, “Zakon o nekommercheskih organizaciyah.”
“Foreign agents” became a suitable target as the linkage with “foreign funding” and Western ties along with potentially “subversive” activities satisfied the need to construct an “internal enemy,” or the “enemy within.” The “foreign agent” narrative turned out to be a successful attempt as for the public, “the existential enemy [became] imbued with all the affect and emotion of a deeply personal psychological challenge.”\(^{451}\) Therefore, the labeling requirement can barely be viewed as a legal obligation imposed on “foreign agents.” Instead, it is a means of implementing the enemy narrative through public stigmatizing.

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\(^{451}\) Lewis, *Russia’s New Authoritarianism*, 111.
4.3 “Survival strategies”

Although the “foreign agents” laws do not explicitly outlaw foreign funding or ban the functioning of designated “foreign agents,” the designation forces them to develop so-called “survival strategies” to either maintain functioning with the changed legal status or abandon work and dissolve the organization (in case of juridical persons). The need to adopt “survival strategies” shapes the second significant hidden repercussion of the designation. While various authors identify multiple survival strategies, the most generalized division of “strategies of adaptation”\textsuperscript{452} by Maria Tysiachniouk includes four main techniques which will be used as the empirical basis for present research:

**Compliance** understood as the “maximum conformity with Russia’s legal requirements,”\textsuperscript{453} might take the following forms:

(A) **Voluntary registry inclusion** tends to stay a relatively infrequent practice. It was mainly disregarded by NPOs in 2012-2014 when the Ministry of Justice was not empowered with the right to mandatory registry inclusion. Later, the situation did not change drastically, although occasional examples of voluntary applications exist. For instance, in 2020, the Center for social initiatives development “Proektoriya” applied\textsuperscript{454} for registry inclusion. The application was preceded by the designation of the Center’s donor – Project Harmony, Inc. (a US-based nongovernmental organization) – as an “undesirable organization.”\textsuperscript{455} “Russia behind bars” [“Rus’ sidyashchaya”] – a Russian charity fund assisting convicts and their families – voluntarily applied for registry inclusion in 2018.

\textsuperscript{452} Tysiachniouk, "Civil Society," 625.
\textsuperscript{453} Tysiachniouk, "Civil Society," 626.
\textsuperscript{454} "Centr «Proektoriya» vnesli v spisok inoagentov," RBK, April 23, 2020, https://www.rbc.ru/rbcfreenews/5ea0a0749a794741c1838324.
The fund admitted that the European Commission’s grant partially funded three of its legal clinics.456

(B) **Rejecting or returning foreign funding** is another infrequent practice. As mentioned before, the “GOLOS” Association was designated as a “foreign agent” in 2013 for receiving foreign funding, which was not assigned to the organization’s account and remained a “deposit in transit.”457 Despite the Association’s rejection of transfer and return of foreign funding, it did not save “GOLOS” from designation. Some organizations could not reject foreign funding as they depended on foreign investments. The “Memorial” human rights center claimed in 2015 that the organization had “a huge budget, and the Russian state [did not] provide us with alternative financing options. […] Such independent and generous donors are hard to find in Russia.”458

(C) **Judicial defense** is a popular strategy adopted by organizations (and natural persons) disagreeing with their designation. The path of judicial protection was chosen by the “International Memorial,” which tried to contest its designation and, later, its dissolution. The court proceeding on the dissolution of the “International Memorial” will be analyzed in a consecutive subchapter. Submitting a lawsuit rarely leads to registry exclusion. Various Russian courts continuously dismissed the claims submitted by “foreign agents,” including, but not limited to, those by “Meduza”459 media, the public association “Open Petersburg”460 [“Otkrytyj Peterburg”] working in the area of social projects, and

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456 Valerij Romanov and Andrej Latinskij, "Minyust vključil Fond pomoshchi osuzhdennym Ol'gi Romanovoj v reestr inoagentov," RBK, May 08, 2018, https://www.rbc.ru/society/08/05/2018/5a00b80d9a7947466d5e663e.
Russian journalist Yuri Dud'. In February 2022, the HIV-service fund “Humanitarian action” [“Gumanitarnoe dejstvie”] became the first organization to be excluded from the “foreign agents” registry based on the court’s decision without rejecting foreign funding. Nevertheless, after the Ministry of Justice’s claim, the “foreign agent” designation was returned to the fund by the court in June 2022.

(D) **Dissolving the organization** becomes the only visible prospect for some “foreign agent” organizations. One of the most recent examples would include the “Committee against Torture” [“Komitet protiv pytok”] (in 2022).

**Simulation**, or, as the author puts it, “simulated compliance,” is seemingly following the rules while searching for other ways to maintain functioning. This survival category is made up of:

(A) **Rebranding (creating a new legal entity)** provided one of the most straightforward and viable opportunities for nonprofit organizations. The main reason was the exclusion of commercial organizations from the scope of the “foreign agents” legislation. As stated above in the legal section of the thesis, since December 2022, all organizations will become exposed to potential “foreign agent” designation. Hence, reregistering an organization as a commercial was a temporary solution caused by the legislative loophole. “Institute of regional press” [“Institut regional'noj pressy”], one of the oldest Russian nonprofit organizations, was registered as a nonprofit partnership in 2003.

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and designated as a “foreign agent” in 2014. Despite submitting a lawsuit to the ECHR, the organization’s head established a separate entity as a commercial organization (limited liability company).

(B) **Concealing foreign funding** might take the form of channeling money through an organization not indicated on the NPOs’ financial reports. For obvious reasons, it is impossible to evaluate the number of organizations that have adopted this strategy based on the information from open sources. Generally, the channeling strategy is questionable since it creates a potential for another organization’s designation. As mentioned in the Zamoskvoretsky District Court’s decision’s rationale, receiving funding from the Memorial Human Rights Centre was indicated as one of the grounds for designating “OVD-Info” as a “foreign agent.” However, using another organization might not necessarily be linked to foreign funding but manifest as the “rearranging” of activities involving another organization that had been established before designation. For instance, after its designation in 2015, “Resource human rights protection center” [“Resursnyj pravozashchitnyj centr”] transferred its activities to a nonprofit organization that “had not been receiving any funding from outside.”

(C) **Engaging in “unwritten agreements”** with the Ministry of Justice’s local divisions is similarly impossible to evaluate using the information from open sources since it does not constitute an entirely legal practice.

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The informalization strategy transfers the NPOs’ activities into the informal field. They might operate without registration, within an association, or from abroad. Tysiachniouk refers to the case of “Dront” – a Nizhny Novgorod-based ecological center designated as a “foreign agent” in 2015. After the center’s designation, its ex-employees continued to work as an unregistered social movement\(^{469}\) (a form of unregistered public association). Being reasonable in 2016, such a change of legal status today is doubtful since unregistered public associations became vulnerable to “foreign agent” designation in 2020. Accordingly, some organizations prefer to continue their work without proper registration or identifying themselves as unregistered public associations (bound by specific regulations). For instance, the “Committee against tortures” designated as a “foreign agent” in June 2022, underwent dissolution. Still, it maintained operations as an informal union of human rights defenders under the name “Crew against tortures”\(^{470}\) [“Komanda protiv pytok’”] without establishing a legal entity. Emigration (relocation) becomes an option for some “foreign agents,” especially those involved in the media. Accordingly, the managers of “Radio Free Europe/Radio Liberty” [“Radio Svoboda’”] and “Current Time” [“Nastoyashchee vremya’”] offered\(^{471}\) their employees to relocate to Kyiv and Prague after the media's designation as “foreign agents.”

When “foreign agents” adopt a diversification strategy, they establish a separate entity that shares functions with the original organization or operates in its way. The diversification strategy might be adopted in conjunction with the channeling of foreign

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funding to the newly organized legal entities, primarily those in the form of commercial organizations, due to their exclusion from the “foreign agents” legislation’s scope (as of now). Still, it is worth indicating that natural persons designated as “foreign agent media” must establish a Russia-based juridical person within one month after their designation. Due to the lengthy process of establishing a nonprofit organization, such persons tend to establish commercial organizations in the form of limited liability companies (LLC). Commercial organizations registered by “foreign agents” will become subject to mandatory registry inclusion in such a case. Following this logic, the Ministry of Justice included\textsuperscript{472} LLCs formed by “foreign agent” journalists previously employed by “Open media” [“\textit{Otkrytie media}”] (designated as an “undesirable organization”) and the organization established by Aleksey Venediktov\textsuperscript{473} (ex-editor-in-chief of “Echo of Moscow” [“\textit{Ekho Moskvy}”]) in the registry of “foreign agents.”

As might be observed, although the “foreign agents” laws do not prohibit designated persons from continuing their activities, designation leads to the need to adopt “survival strategies” to minimize the risks associated with the new legal status. While the dissolution of an organization appears to be one of the most frequent and straightforward choices, “foreign agents” do not automatically follow this route and invent other ways of maintaining their functioning in the ever-changing legal and political landscape. However, the case of “Memorial” (which has chosen the path of judicial protection) demonstrates that the adoption of “survival strategies” does not necessarily guarantee “survival.”


4.4 “International Memorial”

“International Memorial” (International Historical Educational Charitable and Human Rights Society “Memorial”) was one of the most notable Russian nonprofit organizations. It traced its history to 1987 and the creation of a Moscow initiative group Memorial which was later transformed into the All-Union Voluntary History and Education Society Memorial. One of the new “Memorial’s” leaders became Andrey Sakharov – a prominent Soviet physicist, dissident, and Nobel Peace Prize laureate. The “Memorial’s” original mission was to collect “archival materials, documents, testimonies, and memoires about the era of totalitarian political repression.”

Even though designation under the “foreign agents” legislation causes negative repercussions for all designated persons and forces organizations to adopt “survival strategies,” the case of “International Memorial” still represents a rare exception to the general practice.

(A) “Foreign agents” dissolution.

To begin with, using “foreign agents” legislation to dissolve an organization is a rare occasion. The dissolution of the “GOLOS” association was partially based on the organization’s prior administrative violations of the “foreign agents” laws. Still, it was not the sole and dominant legal ground for the organization’s dissolution. In 2013, “GOLOS” became the first organization the Ministry of Justice targeted for violating the “foreign agents” legislation. The Ministry stated that the organization failed to register as a “foreign

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agent” despite acquiring foreign funding and involvement in political activity. In 2016, during the court proceeding regarding “GOLOS’s” dissolution, the Ministry of Justice’s central claim was dealing with the association’s failure to “align the charter with the [amended] civil legislation”\textsuperscript{477} and, thus, relied on a different legal rationale. The same logic was present in the Ministry of Justice’s lawsuit against the public association “For human rights” [“Za prava cheloveka”] (designated as a “foreign agent” in 2014 and, after registry exclusion, in 2019\textsuperscript{478}). Just as in the case of “GOLOS,” the charter’s discrepancy to the legislative provisions\textsuperscript{479} (which, according to the association’s statement, was discovered four years later since the charter’s adoption and the Ministry of Justice’s approval\textsuperscript{480}) became the legal ground for the association’s dissolution claim. A more apparent reference to the “foreign agents” legislation’s violations was contained in the Ministry of Justice’s lawsuit against human rights organization “Agora.” According to its attorney, the Ministry insisted on dissolution primarily due to the organization’s involvement in “shaping public opinion, being a foreign agent, and taking actions to get out of the registry”\textsuperscript{481} and the organization’s violations of information labeling requirements.\textsuperscript{482}


The legal rationale behind the Prosecutor General’s Office’s claim to dissolve “International Memorial” was following its violations of the “foreign agents” provisions. The Office stated, among other things, that “multiple analytical, informational, and other materials, systematically published and distributed by the Society [on the “Internet”] and, hence, available to the public, [were] not accompanied by the indication that they had been published and (or) distributed by a nonprofit organization functioning as a foreign agent.”

In the Office’s view, the “Memorial” Society “demonstrate[d] continuous disregard for the [“foreign agents”] law” by committing numerous offenses, dealing exclusively (in the Office’s lawsuit) with failures to comply with the labeling requirement.

(B) Excessive liability.

Another concerning point regarding “Memorial’s” dissolution is the excessiveness of dissolution as a measure of administrative liability. It contradicts international obligations, which the Russian Federation was bound to at the moment of the court’s decision’s issuance. The Council of Europe’s Venice Commission reacted swiftly to the dissolution order. It indicated that “the penalty of liquidation of an NGO should only be reserved, as a last resort measure, for extreme cases of serious violations threatening democracy.”

The ECHR earlier expressed the same approach, which stated that the involuntary dissolution of an NGO is “the most drastic sanction possible in respect of an association and, as such, should be applied only in exceptional circumstances of very
serious misconduct.” A similar opinion was shared by the members of Russia’s Presidential Council for Civil Society and Human Rights before the court proceeding. They claimed that “the mandatory liquidation of the oldest public organization [represents] an extreme measure. […] suggested sanction is disproportionate to the violation’s totality and unjust since, over the last 14 months, the monitoring bodies did not identify a single violation by the “International Memorial” of its duties to comply with the law.”

Court-mandated dissolution of a nongovernmental (nonprofit in the Russian case) organization based on insufficient allegations is perceived to be violating the freedom of association guaranteed by international legal standards. In its 2021 assessment of the amendments to the “foreign agents” legislation of 2020, the Venice Commission reiterated the types of reasons providing the state with the right to interfere with the nongovernmental organizations’ activities. These reasons included “(1) national security or public safety; (2) public order; (3) public health or morals; or (4) the rights and freedoms of others.” The prosecution barely provided sufficient proof of “Memorial’s” goal to infringe on any of the mentioned areas. For this reason, it is hard to disagree with the assessment by the Office of the UN High Commissioner for Human Rights, stating that “the liquidation proceedings brought against International Memorial and HRC Memorial [appeared to be] aimed at preventing the organisations from continuing their human rights work and levied against them in response to such work […]”; the actions taken against them appear[ed] manifestly

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486 Tebieti Muhafize Cemiyeti and Israfilov v. Azerbaijan, no. 37083/03, § 63, ECHR 2009.
disproportionate in regard to the irregularities upon which they [were], for the most part, based.”

The Permanent Mission of the Russian Federation to the United Nations Office discarded cited claims by indicating that “the materials distributed [by the “International Memorial”] were […] aimed at shaping perceptions about the permissibility of extremist activity.” Nevertheless, the Russian state’s explanation can be deemed questionable since the Prosecutor General's Office’s lawsuit and the subsequent court mandate were not based on the alleged violations of anti-extremist regulations by “International Memorial” but, instead, on failure to comply with the “foreign agents” rules. Thus, the proportionality and legality of the court-mandated dissolution of “Memorial” following the breach of the “foreign agents” norms stays open to further discussions.

(C) Political background.

It was briefly discussed before that the “GOLOS” association was designated as a “foreign agent” shortly after the law’s adoption in 2012. The designation might be considered a necessary pretext for the subsequent organization’s dissolution due to the organization’s active involvement in Russia’s electoral processes. Likewise, to a certain extent, politically driven was the dissolution of “Agora,” whose attorneys were participating in multiple criminal cases “known as political” ones. Mentioning the organization’s involvement in political activities was an essential part of the Ministry’s lawsuit. The Ministry of Justice similarly accentuated the political orientation of “OVD-

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Info.” It stated that on the project’s website, the Prosecutor’s Office found information regarding the “illegal prosecution of political activists for committing conventional crimes in connection with their political position.”

Also, as underlined by “OVD-Info,” the “foreign agent” designation occurred at the backdrop of the organization’s campaign against the “foreign agents” laws.

While in mentioned and other cases political “underbelly” is convoluted and cannot be unequivocally attributed to the public authorities will, the dissolution of “International Memorial” was directly connected by the Prosecutor General’s Office with its political stance and activities. Prosecutor Aleksey Zhafyarov representing the Prosecutor General’s Office in the court proceeding on the “Memorial’s” dissolution, made four principal arguments illuminating the political reasoning underlying the dissolution claim. First, he declared that “Memorial,” though initially established to restore historical memory, over time turned into an organization whose activity was “mainly aimed at falsifying the history of [the] country, gradually reformatting the mass consciousness of the population from the memory of the winners to the need for repentance for the Soviet past.” Secondly, Zhafyarov accused “Memorial” of reckoning Nazi criminals and collaborationists among the victims of the Soviet terror and “whitewashing” them. Third, the prosecutor indicated that by “speculating on the topic of political repressions of the XX century, [“Memorial”] [was] creating a fraudulent image of the USSR as a terrorist state.” Fourth, Zhafyarov

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496 Memorial, ”Vystupleniya storon v preniyah.”
indirectly stated that the “Memorial” was competing with the state’s functions: “[…] by the law, [Prosecutor General’s Office] and MIA are the bodies empowered to carry out activities on rehabilitating the victims of political repressions. […] over the last two years, there was not a single appeal of the International Memorial to MIA or [Prosecutor General's Office] regarding the recognition of persons as the victims of political repressions.”

What follows from the cited excerpts? Most importantly, the state was concerned by the Society’s active participation in promoting other, not government-imposed, discourses regarding political repressions and, more broadly, the Soviet era. The Washington Post’s editorial board rightly noted that the “Memorial’s” “reminder of the past pain[ed] Mr. Putin, who want[ed] to airbrush away such dark memories and replace them with [a] gauzy recounting of Soviet triumphs.” Human Rights Watch’s Deputy Director Rachel Denber reiterated the same thought by saying that the dissolution “made clear the relentless determination of authorities to wrestle back total control over public discussion and memory related to the atrocities of the Stalin era, the Gulag, and more broadly, Soviet-era repression.” The use of the “foreign agents” legislation in this manner was purely instrumental and targeting civil society to “wipe the national memory about state repressions.” For this reason, the Prosecutor General’s Office needed to accuse the “Memorial,” among other things, of depicting the USSR as a “terrorist state.” During his meeting with the members of the Human Rights Council, President Putin

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499 Memorial, "Vystupleniya storon v preniyah."
forestalled the prosecution’s stance by blaming the Society for trying to protect international organizations “included [in our country] in the list of terrorist and extremist organizations.” It gets apparent that the “Memorial’s” vision of political repressions, even purely factual and aimed at crystallizing the truth, contradicted the widely adopted and established position promoted by the state and its intention to monopolize historical memory.

Undoubtedly, “Memorial’s” activities were viewed through the prism of its foreign funding (irrespective of its actual presence). Prosecutor Zhafyarov underlined the idea of “someone paying” for the “Memorial’s” proposal “to be ashamed and repent of our [...] hopeless past.” Violations of labeling requirements by the organization “claiming the honorary role of the nation’s conscience” occurred as it did not “want to remind in every publication about those who paid for this conscience.” The authorities did their best to accentuate the foreign involvement and to persuade the Russian public “to focus on foreign foes instead of crimes committed” by the Soviet regime. The need to articulate the reference to foreign involvement aligned with the official discourse on the foreign “opponents’” input in the destructive activity. Citing President Putin, “Russia cannot be conquered, it can only be destroyed from inside […] Who did this? Those who were serving other, alien interests, not connected with the interests of the Russian and other peoples of the Russian empire, Soviet Union, and the Russian Federation.” Whereas multiple

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502 Memorial, "Vystupeniya storon v preniyah.”
503 Memorial, "Vystupeniya storon v preniyah.”
504 Memorial, "Vystupeniya storon v preniyah.”
505 Memorial, "Vystupeniya storon v preniyah.”
persons were designated as “foreign agents” over the last decade, the example of “International Memorial” happened to be the most notorious one, demonstrating the embodiment of the state’s “enemy” discourse.
4.5 Empirical analysis preliminary conclusions

The chapter identified two main covert effects of the “foreign agent” designation – the stigmatization associated with the “labeling requirement” and the need to adopt “survival strategies” after one’s designation. The labeling requirement was viewed as the manifestation of the state’s inclination to distinguish “foreign agents” in the eyes of the public, lower the credibility of the information provided, and link their activities to the interests of their “foreign masters.” The deliberate and continuous use of the word “agent” was additionally intended to invoke connotations originating from Soviet time. Still, the chapter found a principal difference between the “foreign agent” and the “enemy of the people” notions due to the incomparably more punitive nature of the latter.

“Survival strategies” were explored based on division proposed by Maria Tysiachniouk and relied on the empirical data to demonstrate the multitude of responses developed by designated persons after their designation. The strategies were assessed separately from conclusions regarding their efficiency. Nevertheless, the “International Memorial” case was used to demonstrate a failed “survival strategy” countered by the state’s efforts.

The story of “International Memorial” became an essential addition to the thesis’s empirical part as it showed the conspicuous political motivation of the state’s willingness to dissolve the organization. It illuminated the state’s attitude toward civil society actors attempting to counter the state-promoted narratives and the state’s desire to monopolize historical memory.
Chapter 5: Conclusion

5.1 Theoretical conclusions

The concept of “authoritarian legality” became the backbone of the thesis’s theoretical framework. The thesis argued that currently adopted approaches to “authoritarian legality” do not fully satisfy the Russian system’s analysis needs. For this reason, the thesis offered a new understanding of the concept to reintroduce it as an integrative politico-legal notion relying on the Russian system’s distinctive characteristics. The thesis promotes the idea of Russia’s “authoritarian legality’s” continuity and links it to the legacy of the Soviet Union. Further research on the topic might be supplemented with the historical overview of the Russian Empire’s legality type and provide a multi-faceted fundamental analysis of Russian politico-legal continuity. Additionally, further development of scholarly research on “authoritarian legality” might incentivize the analysis of the interconnection between law and politics in authoritarian regimes and identify the unique characteristics inherent to different states.

As follows from the present research, the Russian state uses the law as a political tool to eliminate the contestation of the regime and target persons challenging its intactness. However, the application of the “authoritarian legality” demonstrates the twisted interconnection between politics and law in modern Russia, which is primarily impacted by the existence of the “dual state” system shaped by Schmitt and Fraenkel and popularized by Sakwa. It was noted that the Russian “authoritarian legality” combines two parallel realms differing in their attitude to the normative basis. The distinction between the two subsystems is elusive and shifting, providing for a great discretion of the state and its arbitrary involvement in the cases deemed to be “political.” The “foreign agents”
legislation became another instrument of the “politcized” subsystem (“prerogative state” or “state of exception”) applied manually to suit the political interests of the Russian elite. Adoption and implementation of the “foreign agents” laws (as well as other “restrictive” acts) allowed the Russian authorities to decide upon the boundaries of “acceptable” participation in public life and gain control by forming a “manageable” type of civil society through targeted application of the laws. It was noted that the “dual state” system was not invented by the current regime but became a seemingly imminent result of the regime’s progressing authoritarian orientation and the shifting attitude toward civil society. The influence of perceived external threats similarly added to the state’s sensation of the “need to defend itself.”

The “foreign agents” legislation was analyzed as a product of Russia’s “authoritarian legality.” While the “foreign agents” regulations have specific attributes dictated by legal and political needs, they share many commonalities with other normative acts. It was argued that the “foreign agents” laws comprise a broader range of “restrictive” legislative acts (along with the laws on “undesirable organizations” and anti-extremist legislation) and are not unique in terms of the state’s political goals. The “foreign agents” laws became another symptom of Russia’s “authoritarian legality,” but not the disease itself. For this reason, they shall be evaluated closely with the broader scope of normative acts in consecutive research.
5.2 General conclusions

The thesis managed to combine theoretical and empirical approaches and posit the “foreign agents” legislation at the intersection of legal and political dimensions. Based on the present research findings, several primary conclusions might be drawn.

The Russian authorities never admitted that adopting the “foreign agents” laws was politically motivated. The essence of the laws was continuously linked to Russian society's needs and ensuring the country's security. As President Putin put it in 2021, Russia needed to “protect [itself] from potential external interference in [its] domestic affairs, […] from anyone using any kind of tool in Russia to pursue their goals that have nothing to do with our interests.”508 Still, there is hardly any doubt that the “foreign agents” legislation is, indeed, the political instrument of the Russian state.

The “International Memorial” became the most notorious and illustrative example of the laws' “politicized” nature. The cited arguments of the Prosecutor General’s Office’s representative Aleksey Zhafyarov supported concerns about the political nature of the persecution with the use of the “foreign agents” legislation. Constant references to the denigration of the Soviet legacy, accusations of reckoning Nazi criminals as the victims of the Soviet terror, and mentions of the “Memorial’s” service to the “foreign masters” clearly had nothing to do with the Society’s alleged violation of the labeling requirements. The rationale voiced by the prosecution, thus, lifted the veil of the true meaning behind the imposition of the “foreign agents” laws. The same conclusion about the laws' covert

political nature can be drawn from the expanding practice of their application to silence domestic critics of Russia’s war against Ukraine.

Lastly, President Putin’s constant references toward the United States FARA law and the “softer” character of the Russian legislation do not stand under scrutiny. Comparative legal analysis carried out within the present thesis demonstrated that, unlike Russia’s “foreign agents” laws, FARA does not impose stringent restrictions or duties on the entities designated as the “agents of the foreign principal.” Neither does it include nongovernmental organizations in its scope of applicability but, instead, focuses on the functioning of commercial organizations, predominantly lobbying ones. The abovementioned causality is essential for designation in the United States; a person cannot be arbitrarily designated merely for receiving financial support from abroad.

Arguably, Russian officials’ (namely, President Putin’s) persistent indications of the FARA’s punitive nature shall be treated as the formal justification for the existence of domestic “foreign agents” laws. Simultaneously, they serve the purposes of propaganda. After the United States Ministry of Justice’s decision to mandate the designation of Russia’s “Sputnik” and “Russia Today” as the “agents of foreign principals” in 2017, President Putin stated that “the people who are doing this […] used to do a lot of chest thumping calling themselves the Number One Democrats in the world. And the freedom of the press has always been put on a pedestal as a beacon of democracy.”

Mentions of FARA cannot be deemed credible and are detached from reality. They represent another manifestation of the “anti-Western” incline of the current Russian regime.

Generally, from a purely legal perspective, Russia’s “foreign agents” legislation does not prohibit designated persons from carrying out activities. Nevertheless, legal restrictions and duties imposed on designated persons significantly limit their capabilities. In addition to existing restrictions, the 2022 federal law further worsened the legal status of “foreign agents” by depriving them of accessing state funding, creating and distributing information intended for minors, providing teaching services in state and municipal educational institutions, being public or municipal servants (in the case of natural persons), participating in electoral processes in any way, and participating in the governmental bodies’ advisory, expert, or other councils. The state further deepened the division between “foreign agents” and other persons by providing individual categories of “non-foreign-agent” persons with significant benefits and exemptions in taxation, funding, and bookkeeping.

As follows, the legislative provisions impose stringent limitations on the functioning of “foreign agents” and do not merely come down to the need to search for other sources of funding (in case a “foreign agent” intends to apply for registry exclusion). As held by ECHR in its Ecodefence and Others v. Russia decision, “the cumulative effect of these restrictions – whether by design or effect – is a legal regime that places a significant “chilling effect” on the choice to seek or accept any amount of foreign funding, however insignificant, in a context where opportunities for domestic funding are rather limited, especially in respect of politically or socially sensitive topics or domestically unpopular causes. The measures […] cannot be considered “necessary in a democratic society.”

Potential administrative and criminal liability measures are not only characterized by

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510 Case of Ecodefence and Others v. Russia, no. 0614JUD000998813, § 186, ECHR 2022.
worrying ambiguity but do not correspond to the gravity of the violations. ECHR unequivocally stated that the “fines provided for by the Foreign Agents Act cannot be regarded as being proportionate to the legitimate aim pursued.” The consequences likewise vastly depend on the state’s political will. This dependence was demonstrated by the “International Memorial’s” case when the violation of labeling requirements led to the disproportionate liability measure of mandatory dissolution due to the state’s dissatisfaction with the organization’s activities.

Therefore, the analysis of “survival strategies” within the present thesis was not occasional. It provided a convincing picture of the “foreign agent” designation’s hidden effects. The restrictions and duties imposed on “foreign agents” do not solely cause legal disturbances but lead to the tough choice between maintaining functioning with the risk of administrative and criminal liability or quitting. According to the data provided by “OVD-Info,” as of August 2022, ninety-nine nonprofit organizations terminated their activities through dissolution or reorganization, leading to their exclusion from the registry of legal entities. While evaluating the meaning of the number in quantitative terms is hardly helpful, it is worth saying that these organizations might have continued their work without the “foreign agents” regulations. The most worrying part is that, as mentioned previously, many designated juridical and natural persons provided services essential or helpful to Russian society.

A “foreign agent’s” decision to proceed with functioning leads to the imminent stigmatization through labeling requirements. As rightly noted by Moser and

511 Case of Ecodefence and Others v. Russia, § 185.
Skripchenko\textsuperscript{513}, mandatory information labeling creates a division between the persons being “inside” and “outside” (namely, “foreign agents” along with “undesirable organizations” and extremist organizations labeled for political reasons) the Russian state. Through mandatory labeling, the state lowers the public’s faith in the “foreign agents’” information’s credibility and, among other things, contributes to the uncontested dominance\textsuperscript{514} of state-owned channels and information agencies in the list of most trusted sources of information.

It is doubtful that the state did not keep in mind or realize the negative connotations caused by the term “agent” founded on the Soviet historical memory. Even if the choice of wording was occasional, it could have at least been aligned with already existing provisions. Article 1005 of the Russian Civil Code envisages the brokerage contract, under which “one party (agent) shall undertake for remuneration to perform legal and other actions on the instruction of the other party (principal) on his behalf, but at the expense of the principal or on behalf and at the expense of the principal.”\textsuperscript{515} While the cited norm applies solely to contracts, it could have served as the lawmakers’ guidance for introducing the criterion of causality between a “foreign agent’s” activities and a “foreign principal’s” interests, as envisaged in the FARA. As indicated above, the current version of Russia’s “foreign agents” legislation does not take causality into account and, thus, provides for extensive designation discretion.

\textsuperscript{513} Moser and Skripchenko, “Russian NGOs and Their Struggle,” 599.


5.3 Declining predictability of legislative trajectories

Within the analysis’s legal part, the thesis observed the steady expansion of the “foreign agents” laws, the broadening of its scope, and the penetrating and ambiguous character of the 2022 legislative changes. Although there might be a strong temptation in scholarly circles to predict the further patterns of legislative expansion, several principal factors affecting the credibility of such predictions shall be acknowledged. These factors do not rely on legal controversies or hardships and are purely political in essence. Being a product of “authoritarian legality,” Russia’s “foreign agents” legislation is highly dependent on the legality’s political underbelly and the subsequent evolution of the Russian political regime.

(A) Russia’s “anti-Western” turn.

The Russian elite’s “deeply entrenched belief that Russia is a distinct civilization that has little in common with the West,”\textsuperscript{516} taking after Ilyin, Gumilev, and other Russian philosophers, aggravates the confrontation between Russia and the West. The Russian state’s progressive “anti-Westernism” became one of the essential drivers of Russian politics. One of the most illustrative examples would be the so-called Unfriendly Countries List\textsuperscript{517} adopted in 2022 amid Russia’s invasion of Ukraine. The List demonstrates the growing confrontation between Russia and the West manifesting in openly anti-Western steps taken by the Russian government. The same anti-Western orientation similarly applies to other legislative and normative acts. Although the “foreign agents” laws have

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\textsuperscript{516} Michael Hirsh, “Putin’s Thousand-Year War,” \textit{Foreign Policy}, March 12, 2022, https://foreignpolicy.com/2022/03/12/putins-thousand-year-war/.

\textsuperscript{517} Rasporyazhenie Pravitel'stva Rossiskoj Federacii ot 05.03.2022 N 430-r "Ob utverzhdenii Perechenya inostrannyh gosudarstv i territorij, sovershayushchih v otnoesheni Rossiskoj Federacii, rossijskih yuridicheskikh lic i fizicheskikh lic nedruzhestvennye dejstviya" // Sobranie zakonodateltstva Rossiskoj Federacii. 2022. N 11. st. 1748.
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been “widely applied to organizations that challenge the Kremlin,” those are the anti-Western sentiments that constitute an important, almost integral, part of the political rationale behind the amending and implementing of the “foreign agents” acts. As underlined in the thesis’s political part, the Kremlin’s fear of “color revolutions” and foreign (more specifically, Western) influence became one of the political premises of the “foreign agents” laws’ adoption. It is hardly a doubt that by “foreign,” the Russian state understands the “Western.” In February 2022, BBC’s Russian division noted that “more than 90 nonprofit organizations created for developing and deepening Russo-Chinese relations” were included in the Ministry of Justice’s registry of NPOs. Nevertheless, none of them were designated as “foreign agents,” despite the overt financial assistance received by these organizations from Beijing.

(B) Russia’s war against Ukraine.

Although President Putin’s decision to invade Ukraine in February 2022 fits within the pattern of progressing “anti-Westernism,” the war formed the circumstances in which the Russian state was forced to counter potential dissent and unrest among the opponents of war inside the country. Despite the Russian government’s persistent reluctance to use the term “war,” the state de-facto imposed military censorship in the country by introducing measures of administrative and criminal liability for the distribution of “fakes” regarding the Russian Armed Forces’ actions in Ukraine, restricting access to independent media (such as “Rain” [“Dozhd’”] and “Echo of Moscow” [“Ekho

and planning to denounce the European Convention on Human Rights.\textsuperscript{522} Human rights experts underline that “the level of control and censorship the Kremlin has imposed infringes on both the freedom of expression and the rights of access to information.”\textsuperscript{523} The Kremlin’s “wartime” measures are targeted against the diffusion of competing narratives about the ongoing war, and the introduction of a renewed “foreign agents” law in July 2022 became one of such measures. Over time, the “foreign agents” laws evolved into the Russian authorities’ “go-to malign tool for their war of attrition against civil society.”\textsuperscript{524} Hence, the state will unlikely abandon the “foreign agents” legislation in its fight against independent media and civil society activists. Still, the dynamics of its expansion and application will hugely depend on the unfolding of the war and the need to alleviate the growing dissatisfaction with the wartime hardships.

(C) The regime’s transformation.

Undoubtedly, the impact of foreign factors has already caused a change in the domestic environment. It appears to be nearly impossible to foresee the direction of further regime transformation and where it might lead Russian society. Some experts, such as Francine Hirsch, claim that since the invasion of Ukraine, Russia has been “rapidly becoming a totalitarian state.”\textsuperscript{525} A similar thought by Andrey Kolesnikov was previously indicated in the thesis’s political part. To the Guardian’s editorial, “accounts of schoolchildren and their parents detained in police cells after laying flowers at the

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\item \textsuperscript{521} Dar’ya Kucheryavyh, "Genprokuratura potrebovala ogranichit’ dostup k «Ekhu Moskvy» i «Dozhdyu»," \textit{Lenta.ru}, March 01, 2022, https://lenta.ru/news/2022/03/01/genprok/.
\item \textsuperscript{522} Il’ya Fursev, "Rossiya denonsiruet Evropeiskuyu konvenciyu po pravam cheloveka," \textit{RBK}, March 15, 2022, https://www.rbc.ru/politics/15/03/2022/6230bc7a9a7947059b1cbbf.
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Ukrainian embassy suggest escalation to totalitarian levels of repression.” No matter how we define the evolving Russian regime, it is clear enough that its inner transformation will predetermine the configuration of legality adopted in Russia, which might drift toward transitioning to “totalitarian legality.” In such a case, the “foreign agents” legislation (as well as other “restrictive” laws) will become the hostage of an expanding “state of exception” within the “dual system” and the shifting border between the “normative” and the “extralegal” realms. Additionally, the encapsulation of the regime (and, thus, the country) and living under the “enforced autarky” might call for the rethinking of the “enemy” discourse by aligning “foreign agents” with the notorious Soviet “enemies of the people.”

The factors listed above affect the potential credibility of predictions regarding the fate of the “foreign agents” legislation. At the same time, the swift changes of the “foreign agents” legislation and the adoption of the 2022 federal law with vague notions and extensive restrictions do not provide grounds even for cautious optimism. It is becoming apparent that the state has chosen the path of further worsening the “foreign agents’” position. It is worth noting that the amendments fixating revised administrative and criminal liability measures have not yet been adopted. Based on the previous consistent liability enhancement, the new laws will unlikely invoke the “softening” of measures.

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