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**HUMAN RIGHTS DEFENDERS ON
THE FACE OF SHRINKING CIVIL
SOCIETY SPACE
THE CASE OF RUSSIA AND HUNGARY**

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Abstract

Civil society has been acknowledged to be of increasing significance within the political science and the social research, emphasising its role in advancing democracy. However, in the recent years, civil society is facing an unprecedented space shrinking. Governments have worked on restricting public space, spying, found controlling and identifying the NGOs that do not comply with restricting laws as 'foreign agent'. The present master's thesis intends to study and explore the aspects of shrinking space of civil society and its effects on human rights defenders with a comprehensive focus on Russia and Hungary as the case study. I have decided to analyse these two countries with the purpose of demonstrating that restricting civil society is not only a phenomenon in countries with problematic human rights records as Russia but also a practice of fully democratic and the European Union countries as Hungary.

Keywords: Civil Society Space, Human Rights Defenders, freedom of speech, association and assembly, Russia, Hungary,

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List if of Abbreviations

CEE	Central Eastern Europe
CoE	Council of Europe
CSA	Civil Society Association
CSO	Civil Society Organisation
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EEA	European Economic Area
EU	European Union
FIDESZ	Hungarian Civic Alliance with the Christian Democratic People's Party
HRD	Human Rights Defender
KEHI	Government Control Office
LGBT	Lesbian, Gay, Bisexual, Transgender
MSZP	Hungarian Socialist Party
NATO	North Atlantic Treaty Organisation
NED	National Endowment for Democracy
NGO	Non-Governmental Organisation
OSCE	Organisation for Security and Cooperation in Europe
TEU	Treaty of European Union
UDHR	Universal Declaration of Human Rights
UN	United Nation
UNCHR	United Nation Commission on Human Rights
UNHCHR	United Nation High Commissioner for Human Rights
US	Unite States
USAID	United States Agency for International Development
USSR	Union of Soviet Socialist Republics
Venice Commission	European Commission for Democracy through Law
WTO	World Trade Organisation

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Introduction

Starting with Vladimir Putin's shift with Dimitri Medvedev and his return to the presidency in May 2012, aroused the Russia's citizens anger who fled into the streets of Russia. Generally the citizens opposed the elections results and condemned them as being manipulated. Those demonstrations triggered a harsh response from Russian government which started a crackdown on civil society unprecedented in the country's post-Soviet history. The authorities have introduced a series of restrictive laws and have taken a number of measures that harass, demonise and in several cases imprison human rights defenders (hereafter HRDs).¹ The restriction package interferes with the work of civil society organisations (hereafter CSOs), thereby shrinking the space in which CSOs operate. Similarly, as will be discussed throughout this thesis is the case of Hungary. Starting from 2010, Hungary is having a hard time with its democracy, and civil society has found itself in the wrong place at the wrong time falling victim of a series of restriction law and measures. In both countries CSOs and HRDs are in continuous attack, their autonomy is being usurped and they are subject to a number of laws flagging them as "foreign agent", increase stigmatisation rhetoric aimed to undermine their credibility in the eyes of citizens. Among the restriction, the laws and measures taken against CSOs and HRDs seriously interfere with the right to freedom of speech, freedom of association and peaceful assembly. Moreover, the set of measures has created a hostile environment in which CSOs operate and is threatening independent voices of HRDs.

The premises of the current research are rooted in the current debate about the situation and the future of civil society and human rights activism in Russia and Hungary. No consistent research in this area is undertaken and assessing the impact and implications of the measures taken against CSOs and HRDs remains a challenge. The aim of this research will be to comprehensively map the actions restricting civil society, analysing how Russia and Hungary influence each other and discuss the long-term implications of this issue. It will assess how and to what extent the measures taken by

¹ Laws of Attrition: Crackdown on Russia's Civil Society after Putin's Return to the Presidency (2013) 1 Available at < <https://www.hrw.org/report/2013/04/24/laws-attrition/crackdown-russias-civil-society-after-putins-return-presidency>> accessed 30 June 2016

Russia and Hungary are deteriorating the working space of CSOs and affecting the activism of HRDs. The research will analyse the restriction measures adopted in the scale of established human rights. In this present thesis, I will argue that the current laws and measures adopted by Russia and Hungary are shrinking the space of civil society.

Structure

The first chapter offers an explanation of the role of civil society in a democratic State. It will present an overview of the definitions and the implications that the definitions and actors will have to the discussion of this thesis.

The second chapter deals specifically with the rights involved in the shrinking space of civil society. It then explores the States room for derogation from the rights established.

The third chapter will introduce the countries, first giving some historical, legal and political background related to this thesis. Then it will discuss the interplay of the measures taken by Russia and Hungary evaluated compulsively in the wake of interest of each of them.

The fourth chapter will map the laws and measures taken by Russia and Hungary to restrict the space of CSOs and HRDs. It will analyse the rights that those restriction targets and the implications they have for the working space of CSOs and HRDs.

The last chapter will provide a critical analysis of the long-term perspective of the actions. It will also comprehensively elaborate the role of the EU in both countries and the perspective for the regional stability.

Methodology

This thesis is based on desk research. Legal and academic analysis have been carried out through the study of both domestic and international court's judgements, the legal documents, relevant books and academic papers. An in-depth analyses of the European Court of Human Rights (hereafter ECtHR) relevant cases has been carried out to delimitate the international principles that the countries must abide by. Official documents of the European Union (hereafter EU) and other institutions, such as the Council of Europe (hereafter CoE) and the United Nations (hereafter UN) agencies have been consulted.

One possible danger with studying human rights in Russia and Hungary 'from the outside' is lack of objectivity. One may not fully understand 'the other' and too easily fall into the trap of moral judgement. However, in order to ensure the objectivity of the present research, other types of sources have been examined. First, the academic literature has been taken into consideration. Second, the European Convention on Human Rights (hereafter ECHR) principles and ECtHR's jurisprudence and its case-law of cases coming from Russia and Hungary have been carefully studied. Third, regarding specifically the topic of the actions taken by countries that shrink the space of civil society, the main problem experienced at the beginning was that the majority of the sources available were from Non-Governmental Organisations (hereafter NGOs). To ensure the accuracy of the information's taken from NGO reports several reports have been consulted in combination with other local sources.

1. Theoretical Framework

1.1. Civil Society and Their Role

Civil society is of increasing significance within political science and social research, emphasising it broadly to be “the cradle of democracy”.² Civil society actors promote awareness of the rights, assist communities in articulating concerns, shape strategies, influence policy and laws, and press for accountability in decision-making and policy implementation.³ The relationship between the State and civil society is intertwined, by having the State defining the rules and civil society in the watchdog role. Civil society is comprised of associations considered as a source of legitimacy and stability for the government and as an origin of resistance against arbitrary and oppressive government.⁴ A strong civil society guarantees a democratic State where the organised society is a significant component.

The civil society movements were a highly topical theme in the politics of Latin America during the seventies and in Western Europe during the eighties.⁵ Among a myriad of factors two have significantly contributed in the burgeoning of civil society: first is the global democratic trend, and second the end of Cold War which lowered the ideological tensions in many parts of the world.⁶ Civil Society itself has served as the generating motor of regime change and regime transition the latest examples include the North Africa and Middle East regime transformation. Egypt regime change is one of the clearest example what civils society movements are able to archive. Egypt was under an authoritarian regime for years with no strong opposition that could be able to challenge

² Derrick Purdue (ed), *Civil Society and Social Movement: Potential and Problems* (Routledge, London 2007) 1

³ OHCHR, *Civil Society Space and the United Nations Human Rights System: A Practical Guide for Civil Society* 3
<http://www.ohchr.org/Documents/AboutUs/CivilSociety/CS_space_UNHRSystem_Guide.pdf >
accessed 14 April 2016

⁴ Nancy L. Rosenblum, Robert C. Post, *Civil Society and Government* (Princeton University Press, New Jersey, 2001) 1

⁵ Jude Howell, Jenny Pearce, *Civil Society and Development* (Lynne Rienner Publishers, Colorado, 2001) 14, 15; John Ehrenberg, ‘The history of civil society ideas’ in Michael Edwards, *The Oxford Habdbook of Civil Society* (OUP, New York 2001) 15-25; Klaus Eder, ‘The Making of European Civil Society’ (2009) 28 PS 1, 23-25

⁶ Marina Ottaway, Thomas Carothers (ed), *Funding Virtues: Civil Society Aid and Democracy Promotion* (Carnegie Endowment for International Peace, United States 2000) 5

the authoritarian government.⁷ The civil society in the absence political opposition was the only actor able to bring tangible change as was the overthrow of Hosni Mubarak.⁸ Its development has become an extremely relevant factor in the difficult and staggered path toward democracy in Eastern Europe. Over the years, its influence has increasingly been stimulated by a number of factors; the fall of the communist regime and the consequent democratic transition, disenchantment with the economic and political models of the past, a yearning for union in a world that seems ever more insecure, and the rapid rise of NGOs on the global stage.⁹ Today, civil society is the centre of attention on the international stage, not only for the revolution that it brought in Eastern Europe, but also for the significant virtue that civil society continues to promote.

The wave of civil uprisings that swept the Middle East and North Africa has given civil society a significant international role.¹⁰ Generally these civil uprisings improved the society's conditions and brought prosperous reforms as was the case of constitutional reform in Morocco and Jordan and economic reform in Saudi Arabia.¹¹ Whereas, in the case of Egypt and Libya civil society reached a huge success by bringing down from power autocrats after been ruling for a long period, the movement failed to establish a lasting, stable new regime due to the interweaving of a number of factors.¹² Indeed, most international organisations have devised mechanisms to engage with civil society¹³ and regard its participation in their decision making process as

⁷ Nadine H. AbdallaI, 'Civil Society in Egypt: A Catalyst for Democratization?' (2008) 10 INPL 4

⁸ Pounami Basu, *The People's Revolt in Egypt: Tracing its Roots and Effects* (2011) 15 JJIR 1, 1

⁹ Michael Edwards, *Civil Society* (3rd edn, Polity Press, Cambridge 2014) 2

¹⁰ The wave of civil uprisings started with a young fruit and vegetable street vendor in Tunisia on December 17, 2010. Mr Mohamed Bouazizi was confronted by a municipal inspector who challenged him on his rights to sell because he had not obtained a license from the local government authority to do so. Having lost his means of economic livelihood and his dignity being bitten by police Mr. Bouazizi self-immolated with petrol in front of provincial governor's office. This event cause the rise of public demonstrations. The chain of revolts quickly spread not only in Tunisia but in whole region of North Africa and Middle East leading to the ousting of President Hosni Mubarak in Egypt and President Ali Abdullah Saleh in Yemen, the assassination of Muammar Qaddafi in Libya, constitutional reform in Morocco and Jordan, economic reform in Saudi Arabia, the repression of demonstrations in Algeria and Bahrain, and the ongoing conflict in Syria. See further: Ricardo Laremont (ed), *Revolution, Revolt and Reform in North Africa : The Arab Spring and Beyond* (Routledge, New York 2014)

¹¹ See further: Ricardo Laremont (ed), *Revolution, Revolt and Reform in North Africa : The Arab Spring and Beyond* (Routledge, New York 2014)

¹² *Ibid*

¹³ Jan Aart Scholte, 'Civil Society and Democratically Accountable Global Governance' (2004) 39 GO 2, 215

contributing to their legitimacy, accountability, and effectiveness.¹⁴ The former UN Secretary-General Kofi Annan characterised civil society involvement "not an option but a necessity"¹⁵, yet its definition remains a highly contested concept.

What is civil society? Nowadays, the meaning of civil society is indivisible from the notions of political actors and public policy.¹⁶ Thus, one might assume that politicians and policy makers are clear about what they mean when they use these words, and why civil society is so important. Unfortunately, although civil society has become a familiar term, its meaning is still often elusive and has become the subject of discussion. Different scholars have produced a variety of interpretations reflecting the different underlying normative values and commitments.¹⁷ Civil society scholar Michael Edwards describes the concept of civil society as being so unsure of itself that definitions are akin to nailing jelly to the wall.¹⁸ The most common understanding of civil society considers it as a social movement engaged in political opposition.¹⁹ This understanding reflects the role that civil society has played during the regime transitions in post-communist countries and its revolutionary role in initiating the end of autocratic regimes in North Africa and the Middle East, during the so-called "Arab Spring"²⁰. But

¹⁴EU-CSOs relations represent the best example, EU sees CSOs as a legitimising pretext for exporting European neo-liberal values to other countries, a goal which is perceived to lead to policies which contradict the aim of enhancing the legitimacy and effectiveness of EU policies through civil society engagement. See further: Fostering Human Rights among European Politics (Frame), Report on enhancing the contribution of EU institutions and Member States, NGOs, IFIs and Human Rights Defenders, to more effective engagement with, and monitoring of, the activities of Non-State Actors, Large-Scale FP7 Collaborative Project GA No. 320000 (31 March 2015) 121 Available at: < <http://www.fp7-frame.eu/wp-content/materiale/reports/14-Deliverable-7.2.pdf> > accessed 5 July 2016

¹⁵ Kofi Annan, U.N. Secretary-General, Opening Address to 50th Annual DPI/NGO Conference (September 10, 1997) SG/SM/6320.P1/1027; Laura Pedraza-Farina, 'Conceptions of Civil Society in International Lawmaking and Implementation: A Theoretical Framework' (2013) 34 MJIL 3, 607

¹⁶ Sebastian Haunss, Darcy K. Leach, 'Social Movement Scenes: Infrastructure of Opposition in Civil Society' in Derrick Purdue (ed), *Civil Society and Social Movement: Potential and Problems* (Routledge, London 2007) 71

¹⁷ Laura Pedraza-Farina, 'Conceptions of Civil Society in International Lawmaking and Implementation: A Theoretical Framework' (2013) 34 MJIL 3

¹⁸ Michael Edwards, *Civil Society* (3rd edn, Polity Press, Cambridge 2014)

¹⁹ Sebastian Haunss, Darcy K. Leach, 'Social Movement Scenes: Infrastructure of Opposition in Civil Society' in Derrick Purdue (ed), *Civil Society and Social Movement: Potential and Problems* (Routledge, London 2007) 72, 75; Jude Howell, Jenny Pearce, *Civil Society and Development* (Lynne Rienner Publishers, Colorado, 2001) 213-214; Samuel Greene, *Moscow in Movement: Power and Opposition in Putin's Russia* (Stanford University Press, California 2014) 46

²⁰ Arab Spring or Arab Awakening began in Tunisia in December 2010 as a striking phenomenon using methods of civil action to challenge the oppressing authoritarian regimes in the region of North Africa

civil society is also used to describe groups with shared interests or identities, which effectively create cohesive ties among individuals without any explicitly political agenda.²¹ However, the question that we must raise here is who is in and who is out of the definition of civil society? Civil society may include lobbying groups that represent powerful business interests, NGOs with international reach, and local community associations.²² This uncertainty on what civil society includes and what it doesn't, has led to different explanatory theories. Therefore, theories of civil society can be understood as emphasising the different functions of civil society. Theories of civil society mainly revolve around two concepts, political and apolitical civil society.

Political civil society seeks to impact opinion formation through debate, media campaigns and influence State decision-making, thought monitoring, criticism, and lobbying.²³ Apolitical civil society comprises groups that have in common the lack of an explicit political agenda that seeks to influence governmental decisions. This kind of apolitical civil society is put forward by Robert Putnam and Francis Fukuyama, who stress the role of civil society in building social capital by fostering ties among individuals.²⁴ Examples of related groups are community-based organisations, faith-based organisations, sports clubs, cultural organisations, and charities. However, in today's civil society it is hard to draw the line of division because the role and characteristics interplay. For the purpose of this thesis political and apolitical society will be treated indivisibly, as an expression of collective actions. This thesis intends to dwell in the area between the State and the individual citizens. The analysis of both political and apolitical civil society will help us to better understand the whole picture of the civil society situation in Russia and Hungary. Political civil society is often confronted with hostility and seen as interfering with the State's domestic affairs in both Hungary and Russia, but at the same time this hostility is directed at both political and

and Middle East. See further: Adam Roberts et al (eds), *Civil Resistance in the Arab Spring: Triumphs and Disasters* (OUP, United Kingdom 2016)

²¹ Laura Pedraza Farina, 'Concept of Civil Society in International Law making and Implementation: A Theoretical Framework' (2013) 24 MJIL 3, 613

²² Laura Pedraza-Farina, 'Conceptions of Civil Society in International Lawmaking and Implementation: A Theoretical Framework' (2013) 34 MJIL 3, 613

²³ *Ibid*, 614

²⁴ Francis Fukuyama, 'Social Capital, Civil Society and Development' (2001) 22 TWQ 1, 7– 20; Robert Putnam, 'Bowling Alone: America's Declining Social Capital' (1995) 6 JD 1, 65-78

apolitical civil society in those countries. In this context this approach will give us the opportunity to compare the trend of the actions and driving reason in both Russia and Hungary. Civil society could not be seen as separate by politics because the engagement with politics is the real way that they can achieve their goals by pressing and cooperating in policy making.

Another question is whether civil society organisations as non-governmental organisations can pursue any kind of legitimate private interest, including the pursuit of profit like businesses and corporations, or whether this categorisation should strictly be limited to organisations pursuing public interests? For the purpose of this contribution, civil society organisations are understood as non-profit organisations, based on the right to associate, that primarily pursue public policy interests by private means. In this way, they are distinguished from corporate or business organisations, which are for-profit and pursue a primarily private interest, and from inter-State organisations like international organisations, which pursue public interests by public means. The organisations considered here will be those pursuing general interests as described in the UN guide for civil society. The guide defines Civil Society Associations (CSAs) as individuals and groups who voluntarily engage in forms of public participation and action around shared interests, purposes or values that are compatible with the goals of the UN. Those values entail the maintenance of peace and security, the realisation of development, and the promotion and respect of human rights.²⁵

In this way, civil society acts as a “third sector” made up of individuals which is integral to the fight for the protection of human rights, generally referred as Human Rights Defenders (hereafter HRDs) and various types of organisations broadly referenced as Civil Society Organisation (hereafter CSOs) because organisations have usually have a defined structure that reflects they engagement. The main pillar of CSO are NGOs because the NGO sector in most developing countries is formally organised and often subject to certain government regulations, and has developed considerable capacity and experience in the delivery of development projects. CSOs have an

²⁵ OHCHR, Civil Society Space and the United Nations Human Rights System: A Practical Guide for Civil Society 3

important place in the transparency and accountability mechanisms of governance, they are able to investigate public and private activities and to blow the whistle on wrongdoings. This is why in the last two decades there has been an unprecedented explosion in the number of CSOs seeking to influence national and international policy making and implementation.²⁶ Global leaders, activists, scholars, and policy experts have increasingly called for the inclusion of civil society in international governance and in the national implementation of international commitments.²⁷ However, the space that CSOs occupy in public life based on their identity and willingness or ability to engage is not only determined by the willingness or desire to engage of the CSOs, but also the limits set by the State. This configuration is not fixed but fluid and malleable and as I will discuss below, the issue for CSOs space to operate has become an international challenge.

1.2. Civil Society Organisations facing restriction of their space of operation

In the last 10 years, human rights organisations, pro-democracy actors and wider civil society movements in many countries are facing increased restrictions when trying to carry out their work. Governments are erecting legal and administrative barriers, making it more difficult for civil society organisations who receive foreign support and funding to operate. In many countries, human rights NGOs are restricted when they attempt to hold public gatherings, express their views or set up new organisations. For a long time, the governments underestimated the importance of public space but now they are realising that people can make real changes in their societies, so some governments do not want changes, hence they are moving from under regulating that sphere to overregulating it. The collapse of Mubarak's three decade long regime revealed the true power of mass movements.²⁸ Similarly, a decisive factor in the Egyptian revolution was

²⁶ Laura Pedraza Farina, 'Concept of Civil Society in International Law making and Implementation: A Theoretical Framework' (2013) 24 MJIL 3, 606

²⁷ The World Bank, Issues and Options for Improving Engagements Between the World Bank and Civil Society Organisations (March 2005, Washington, DC); Laura Pedraza Farina, 'Concept of Civil Society in International Law making and Implementation: A Theoretical Framework' (2013) 24 MJIL 3

²⁸ See further: Emad El-Din Shahin (ed), *The Egyptian Revolution: The Power of Mass Mobilization and the Spirit of Tahrir Square* in Ricardo Laremont (ed), *Revolution, Revolt and Reform in North Africa : The Arab Spring and Beyond* (Routledge, New York 2014)

the mass mobilisation of citizens, expressed in the outpouring of millions of Egyptians to battle security forces in Tahrir Square.²⁹ Also the uprisings in Europe, Spain and France and the Wall Street occupation movement spurred by disproportionate wealth distribution in the world revealed the true power of public space.³⁰ Thus, fearing those uprising movements, a large number of governments are using legal and regulatory measures to constrain operations, freedom of assembly and association, freedom of speech and potential for activism of civil society. The new trend has subsequently produced a widespread effect of shrinking the space in which civil society operates and carries out their activities.

But first, before going into details I will discuss the definition and the meaning of civil society space. Civic space is defined as the set of conditions that determine the extent to which all members of society, both as individuals and in informal or organised groups, are able to freely, effectively and without discrimination exercise their basic civil rights.³¹ According to the UN Commission on Human Rights (UNCHR), Civil Society Space is the place civil society actors occupy within society; the environment and framework in which civil society operates; and the relationships among civil society actors, the State, the private sector and the general public.³² From this definition we can deduce three main characteristics of civil society space. First, the definition entails the narrow literal meaning of space as physical, tangible concept that civil society occupies in a State. On the other hand it gives a connotation of broader understanding of space referring to the civil society activities and framework under which they operate. As Jon

²⁹ See further: Emad El-Din Shahin (ed), *The Egyptian Revolution: The Power of Mass Mobilization and the Spirit of Tahrir Square* in Ricardo Laremont (ed), *Revolution, Revolt and Reform in North Africa : The Arab Spring and Beyond* (Routledge, New York 2014)

³⁰ Apart from the Arab Spring, the uprisings in Europe were influenced by the book *Indignez-vous* (Time for Outrage) written by former French diplomat Stephane Hessel, movements which firstly started in Spain. Later, in September, 2011 the Occupation of Wall Street occurred which was by inertia spread rapidly in public demonstrations in a number of States in US and in other States all over the world. See further: Manuel Castells, *Networks of Outrage and Hope: Social Movements in the Internet Age* (2nd Polity Press, Cambridge 2015); Stephane Hessel, *Time for Outrage: Indignez-vous* (Marion Duvert tr, Twelve, New York 2014)

³¹ Carmen Malen, 'Improving the Measurement of Civic Space' Report of Transparency Accountability Initiative (T/IA, 2015), 14 Available at: < <http://transparencyinitiative.theideabureau.netdna-cdn.com/wp-content/uploads/2015/05/TAI-Civic-Space-Study-v13-FINAL.pdf> > accessed 25 April 2016

³² OHCHR, *Civil Society Space and the United Nations Human Rights System: A Practical Guide for Civil Society* 5
<http://www.ohchr.org/Documents/AboutUs/CivilSociety/CS_space_UNHRSsystem_Guide.pdf> accessed 14 April 2016

Van Til explains civil society space includes the myriad of places in which individuals and groups daily create some of society's most important products.³³ Whereas, with the product he refers to the work and efforts of civil society to resolve human problems, serving as source of reconstruction for a troubled society.³⁴ Second, the definition recognises the space as the ground where civil society and the State struggle for hegemony.³⁵ Third, the definition distinguished civil society from the State, the market and general public. It is crucial that in a society for the interest of peace, security and economic and social development that individuals are empowered to mobilise and participate, make their voices heard, claim their rights, and build responsive, inclusive and accountable institutions in their communities, societies and countries. Unlike ordinary citizens civil society actors have the capabilities to engage in the promotion of human rights, democracy and the rule of law.

“People and civil society groups often risk their lives to improve the lives of others. They speak out even when knowing they could be silenced forever. They highlight problems that others ignore or might not even know exist. They protect our rights. They deserve their rights.”³⁶

The UN Human Rights Council has recently adopted a series of resolutions, recognising the importance of civil society actors and their need to operate in a safe and enabling environment, including resolutions that highlighted the important role of human rights defenders.³⁷ These resolutions recognise the importance of civil society space for empowering persons belonging to minorities and vulnerable groups, as well as persons espousing minority or dissenting views or beliefs. In that regard, they call upon States to ensure that legislation, policies, and practices do not undermine the enjoyment of their human rights or the activities of civil society in defending their rights. However, despite the increasing international response, civil society is still losing space in many

³³ Jon Van Til, *Growing Civil Society: From Non-Profit Sector to Third Space* (Indiana University Press, United States 2008) xvi

³⁴ *Ibid*

³⁵ Nora Räthzel et al, 'The Space of Civil Society and the Practices of Resistance and Subordination' (2015) 11 JCS 2, 154

³⁶ Ban Ki-moon, UN Secretary-General remarks at the High-Level event on supporting Civil Society (23 September 2013) <<http://www.un.org/sg/statements/index.asp?nid=7116> > accessed 14 April 2016

³⁷ UNHRC Resolution, 'The rights to freedom of peaceful assembly and of association' (30 September 2010) UN Doc A/HRC/RES/15/21; UNHRC, 'Civil society space' (23 December 2014) UN Doc A/HRC/17/27; UNHRC, 'Recognizing the role of human rights defenders and the need for their protection' (18 November 2015) UN Doc A/C.3/70/L.46/Rev.1

countries. Just as restrictive legal environments around the world increased after the “Colour Revolutions”³⁸ in some former Soviet countries, the “Arab Spring” of 2011 triggered a new wave of restrictive measures against popular uprisings, public movements, and civic associations.³⁹ This proliferation of legal restrictions imposed on civil society continues around the world while adding to more traditional forms of repression, such as imprisonment, harassment, disappearances, and execution. One would ask why has space for civil society started to shrink? Space starts to shrink when governments see civil society as a threat. As a result, they employ tactics to discredit and weaken them, thereby shrinking the space in which they can work. The countries that are engaged in measures aimed at restricting space span a wide variety of political systems from fully authoritarian, to democratic ones and extend across essentially all regional, economic, and cultural lines, making the reach of the closing space phenomenon extremely wide. Among Russia and Hungary other countries such as Bangladesh, Indonesia, China, Saudi Arabia, Azerbaijan, Israel, Nigeria, and Venezuela responded to CSOs by using legal means.⁴⁰

Government harassment of independent organisations is as old as the State system itself, but this wave of targeting is perceived as unprecedented.⁴¹ After decades of growing global reach, the field of international support for democracy and human rights faces a worrisome trend: widening and increasingly assertive pushback around the developing and post-communist worlds.⁴² In many States today authoritarian regimes employ traditional repression techniques often complemented by more

³⁸ Specifically the Rose Revolution in Georgia in 2003, the Orange Revolution in Ukraine in 2004 which were civil uprisings opposing the election frauds. For the full list of the coloured revolutions in former USSR see: Pavel K.Baev, A Matrix for Post-Soviet ‘Colour Revolution’: Exorcising the Devil from the Details’ (2011) 14 IASR 2, 7 Similarly, was the EUROMEJDAN in Ukraine which forced the President Viktor Yanukovich and Prime Minister Mykola Azarov to sign an association agreement with the EU developed into a revolution that overthrew the government and sparked a counter-revolution in Ukraine's eastern Donbas region. See further: Andrey Kurkov, ‘Ukraine's revolution: Making sense of a year of chaos’ *BBC* (21 November 2014) Available at: < <http://www.bbc.com/news/world-europe-30131108>> accessed 29 April 2016

³⁹ International Center for Not-for-Profit Law (ICNL), ‘Defending Civil Society’ (2012) 14 IJNL 3, 12
⁴⁰ *Ibid*

⁴¹ Sarah E. Mendelson, *Why Governments Target Civil Society and What Can Be Done in Response*, Report of Center for Strategic & International Studies (CSIS) (April 2015) Available at < http://www.ohchr.org/Documents/AboutUs/CivilSociety/ReportHC/67_CSIS-MendelsonGovTargetCivilSocietyNewAgenda-2.pdf> accessed 1 August 2016

⁴² Thomas Carothers, Saskia Brechenmacher, ‘Closing Space: Democracy and Human Rights Support Under Fire’ (Carnegie Endowment for International Peace, Washington, DC 2014) 1

sophisticated measures. Such measures include legal or quasi-legal obstacles, such as barriers to the formation of organisations, barriers to operational activities, barriers to advocacy and public policy engagement, barriers to communication and cooperation with others, barriers to assembly, and barriers to resources and funding.⁴³ Alongside the fear that civil society movements are able to bring real change in societies as encountered in the case of Colour Revolution and Arab Spring, and the latest ‘attack’ on civil society also demonstrates the impact of other factors. Restriction of space problem of civil society around the world overlooks a diversity of the causes which can better be explained in three main general terms ‘sovereignty and interest’, ‘national security’ and ‘counter-terrorism measures’.⁴⁴ These concepts widely employed by States are malleable and prone to misuse, providing convenient excuses to suppress dissent, whether voiced by individuals or civil society organisations. More explanation on the use of this terms by States to justify their restrictions on civil society will be given throughout this thesis. Closing space for civil society is not a short-term phenomenon but is instead a much larger tectonic movement, with two large trends that come together to drive it; namely, a shift in power and relations between "the West and the Rest"⁴⁵, and the recognition of the power of civil society, which has generated fear in some power holders.⁴⁶ The uncertainty and misuse of those terms is obvious in the contradictory responses launched by United States (hereafter US) after the 9/11 terrorist attacks. After the 9/11 attacks, US president George W. Bush launched the project ‘Freedom Agenda’ which aimed to spread Western democratic values to other less democratic countries, which included support for civil society as a key component. This policy of spreading democracy was seen by some countries as an attack on their sovereignty and with the pure intention to intervene in their domestic affairs. There are

⁴³ European Founders for Social Change and Human Rights (ARIADNE), ‘Report, Challenging the Closing Space for Civil Society: A Practical Starting Point for Founders’ (New York 2015) 5

⁴⁴ *Ibid*, 6

⁴⁵ First was the famous thesis of Samuel Huntington on “clash of civilisation” which launched the idea of segregation and inconsistency of civilisation. See further: Samuel Huntington, ‘The Clash of Civilisation?’ (1993) *Foreign Affairs*; However, after 9/11 the world reflects a clear division in two spheres, the sphere of freedom , democracy, economic and technological prosperity attributed to Western Countries and the sphere of despotism , “failed states” and religious turmoil attributed the rest of the nations. See further: Roger Scruton, *The West and the Rest: Globalisation and the Terrorism Threat* (Continuum, London 2002)

⁴⁶ Thomas Carothers, Saskia Brechenmacher, ‘Closing Space: Democracy and Human Rights Support Under Fire’ (Carnegie Endowment for International Peace, Washington, DC 2014) 6

now many powers in the world and many conversations questioning Western values and their attempts to advance change.⁴⁷ After the 9/11 terrorist attacks, discourse shifted away from an emphasis on human rights and the positive contributions of civil society. The shift can be attributed to the failure of States to differentiate between civil society activities and other activities that might risk their security.

On the other hand, it used to be much easier for the governments to control things within their borders and that is shifting within a globalised world. Contemporary international human rights law and international humanitarian law have established a category of rights that expand beyond State's internal matters by making them issues of international concern.⁴⁸ States now fear for their national security and more and more are drawing policies under the pretext of security reason that restrict the freedoms of civil society seen as a potential threat.

All this led numerous States to begin imposing restrictions on CSOs. Those with autocratic tendencies touted variants of Putin's theory of "managed democracy" of strong presidency weak institutions and control over media, seamlessly morphed into notions of "managed civil society."⁴⁹ However, the ones that will suffer the burden of this unprecedented restriction of civil society space all around the world are the human rights defenders, the vital part of civil society.

1.3. Human Rights Defenders as Front Line Actor of Civil Society Organisations

HRDs are the integral part and the 'front line' actors of civil society organisations. In the following section I will explain what the term HRDs means, what makes their role important, what kind of issues of security and protection they face, and finally what are the protection mechanisms in place to protect HRDs.

The UN General Assembly's adoption of the 1998 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect

⁴⁷ Thomas Carothers, Saskia Brechenmacher, 'Closing Space: Democracy and Human Rights Support Under Fire' (Carnegie Endowment for International Peace, Washington, DC 2014) 6

⁴⁸ The duty to prevent gross human rights violations as mass atrocities or genocide lies first and foremost with the State but if State fails international community can intervene to halt mass violations under the doctrine of Responsibility to Protect.

⁴⁹ *Ibid*, 29

Universally Recognized Human Rights and Fundamental Freedoms⁵⁰ (the Declaration), generally known as the Declaration on Human Rights Defenders was considered a milestone achievement. The declaration offers a multi-level, multi-actor international protection regime for the rights of HRDs, indeed, the Declaration itself does not explicitly use the term HRDs or establish a precise definition. However, the term HRD was used during the slow 14-year long negotiations that led to the adoption of the Declaration.⁵¹

Although the declaration itself does not use the term ‘human rights defender’, in practice, what the declarations refer to is understood from Article 1, which States that: ‘Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.’ However, the Declaration has been criticised for neither providing a precise definition of HRDs nor suggesting a standardised procedure for determining the status of a HRD, leaving these open to interpretation.⁵² In practice, the term ‘HRD’ has been interpreted quite broadly to refer to anyone who carries out peaceful activities in the defence of human rights. This has been useful for civil society groups who argue for the protection of individuals and groups engaged in human rights work around the world, regardless of their profession, gender, race, religion, ethnicity or group association.⁵³

The Office of the UN High Commissioner for Human Rights has provided guidance and interpretation on the details of who should be referred to as a human rights defender through a factsheet entitled Human Rights Defenders: Protecting the Right to Defend Human Rights (the Fact Sheet).⁵⁴ The Fact Sheet delineates HRDs as a term used to describe people who, individually or with others, act to promote or protect

⁵⁰ UNGA Res 53/144 (December 1998) UN Doc A/RES/53/144.

⁵¹ Lucy Harding, *Protecting Human Rights, Humanitarian and Development Actors, Human Rights Defenders Hub Working Paper No.1*(Centre for Applied Human Rights, University of York, 2015) 3

⁵² Martin Jones, ‘Protecting Human Rights Defenders at Risk: Asylum and Temporary International Relocation’, (2015) 19 IJHR 7, 948-949

⁵³ Alice M. Nah, Karen Bennett, Danna Ingleton, James Savage, ‘ A Research Agenda for the Protection of Human Rights Defenders’ (2013) 5 JHRP 3, 3

⁵⁴ UNHRC, ‘Fact Sheet No. 29: Human Rights Defenders: Protecting the Right to Defend Human Rights’ 12 < <http://www.ohchr.org/EN/PublicationsResources/Pages/FactSheets.aspx> > accessed 14 April 2016

human rights, contributing to the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals.⁵⁵ The Fact Sheet emphasises that there is no exhaustive list of the activities that HRDs can do, but they are identified above all by what they do and some of the contexts in which they work. It explains that it is important to note that HRDs are not only found within NGOs and intergovernmental organisations but might also, in some instances, be government officials, civil servants or members of the private sector.

The Fact Sheet States that no ‘qualification’ is required for a person to be considered a HRD, it emphasises that HRDs have responsibilities as well as rights.⁵⁶ The Fact Sheet suggests ‘minimum standards required’ for HRDs.⁵⁷ First, that the person accepts the universality of human rights. Second, that the person’s arguments fall within the scope of human rights regardless of whether or not the argument is technically correct. The critical test here is whether or not the person is defending human rights. For example, a group of defenders may advocate for the right of rural community to own land they have lived for several generations. In this case they may or may not be legally correct on who owns the land but this is not relevant in determining whether they are genuine human rights defenders.⁵⁸ Finally, defenders are required to be engaged in ‘peaceful action’.

1.3.1. The Significance of HRDs

HRDs, as civil society actors, are acknowledged as key contributors to a healthy democracy, embedded in the principle of public participation, and recognised in various authoritative international documents.⁵⁹ In our modern societies, HRDs play a considerable role in addressing any human right on behalf of individuals or groups. HRDs seek the promotion and protection of civil and political rights as well as the

⁵⁵ UNHRC, ‘Fact Sheet No. 29: Human Rights Defenders: Protecting the Right to Defend Human Rights’ 12 < <http://www.ohchr.org/EN/PublicationsResources/Pages/FactSheets.aspx> > accessed 14 April 2016

⁵⁶ *Ibid*, 8

⁵⁷ *Ibid*

⁵⁸ *Ibid*, 9

⁵⁹ Karen Bennett, ‘European Union Guidelines on Human Rights Defenders a Review of Policy and Practice Towards Effective Implementation’ (2015) 19 *IJHR* 7, 909

promotion, protection and realisation of economic, social and cultural rights.⁶⁰ Their range of activities varies from collecting information on violations, supporting victims of human rights violations, securing accountability and preventing impunity, supporting policies, advocating the implementation of human rights treaties, providing human rights education and training etc. However, despite the fact that they play a significant role in securing better freedom and rights for all, they have been and are still in vulnerable conditions all around the world. During 2015, 156 HRDs were killed or died in detention in 25 countries⁶¹ that is 3 HRDs being killed per each week. HRDs face increasingly restrictive and punitive environments in many States around the globe. According to the report of Frontline Defenders for 2015 “Stop Killings” the most problematic regions are Latin America and Asian Pacific, whereas less problematic are North America and Europe.⁶² In many countries extreme violence is being used more frequently, while judicial harassment has become normal in many parts of the world.⁶³ Those who target HRDs have stepped up their efforts to silence them, both within their borders and internationally. According to the annual reports of Front Line Defenders the number of persons being killed or that died in detention in each year is increasing.⁶⁴ HRDs have been criminalised on a range of grounds for non-compliance with registration requirements, conducting ‘terrorist’ activities, threatening ‘national security’, tax evasion, ‘hooliganism’, sedition, corruption, possessing drugs etc.⁶⁵ For this reasons, recognising the vital role of human rights defenders and the violations that they face convinced the UN and regional bodies that protection mechanisms needed to protect both the defenders and their activities. A number of protection mechanisms exist at the international, regional and national levels for the protection of HRDs at risk. At

⁶⁰ UNHRC, ‘Fact Sheet No. 29: Human Rights Defenders: Protecting the Right to Defend Human Rights’12 < <http://www.ohchr.org/EN/PublicationsResources/Pages/FactSheets.aspx> > accessed 14 April 2016

⁶¹ Frontline Defenders, ‘Stop Killing the Human Rights Defenders’ (2015 Annual Report, Dublin) 7 Compared to the year before 2014, Front Line Defenders reported 130 HRDs killed or that died in detention. The rise of the number of the HRDs killed shows worrisome trends in this field.

⁶² *Ibid*, 5,6

⁶³ *Ibid*, 7

⁶⁴ See further: Front Line Defenders, 2015 Annual Report: Human Rights Defenders in the Balance (Ireland, 2014) Available at: < <https://www.frontlinedefenders.org/en/annual-reports>> accessed 14 April 2016

⁶⁵ Alice M. Nah et al. ‘A Research Agenda for the Protection of Human Rights Defenders’ (2013) 5 JHRP 3, 408

the international level, the most significant one is the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms commonly known as the declaration on HRDs. This declaration is an international instrument for the protection of the right to defend human rights. The Declaration reaffirms the rights that are beneficial to the defence of human rights, including, *inter alia*, freedom of association, freedom of peaceful assembly, freedom of opinion and expression, and the right to gain access to information, to provide legal aid and to develop and discuss new ideas in the area of human rights. Elaboration of the Declaration on human rights defenders began in 1984 and ended with the adoption of the text by the General Assembly in 1998, on the occasion of the fiftieth anniversary of the Universal Declaration of Human Rights (hereafter UDHR).⁶⁶ The declaration itself did not create new rights but reaffirms rights that are instrumental to the defence of human rights.⁶⁷ The Declaration is not, in itself, a legally binding instrument. However, it contains a series of principles and rights that are based on human rights standards enshrined in other legally binding international instruments, such as the International Covenant on Civil and Political Rights. Moreover, the Declaration was adopted by consensus by the General Assembly and therefore represents a very strong commitment by States to its implementation.⁶⁸ Also at the international level, UN Charter-based and treaty bodies provide important monitoring mechanisms for the rights of HRDs.⁶⁹ In 2000, the Commission on Human Rights established the mandate⁷⁰ of a Special Rapporteur to report on the situation of HRDs around the world and to enhance their protection in

⁶⁶ UNHRC, 'Fact Sheet No. 29: Human Rights Defenders: Protecting the Right to Defend Human Rights' 19 < <http://www.ohchr.org/EN/PublicationsResources/Pages/FactSheets.aspx> > accessed 14 April 2016.

⁶⁷ UN Special Rapporteur on the Situation of Human Rights Defenders, Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (2011) 5

⁶⁸ UNHRC, 'Fact Sheet No. 29: Human Rights Defenders: Protecting the Right to Defend Human Rights' 19 < <http://www.ohchr.org/EN/PublicationsResources/Pages/FactSheets.aspx> > accessed 14 April 2016.

⁶⁹ Some of the treaty-based committees have individual complaint mechanisms. Further see <<http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx>> accessed 14 April 2016

⁷⁰ The mandate was renewed over the years, currently, from 2014, Michal Frost is holding the position. UNHRC, Res 2000/61, Human rights defenders, (26 April 2000) <<http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Mandate.aspx>> accessed 14 April 2016

compliance with the Declaration on human rights defenders.⁷¹ The Special Rapporteur receives and acts on complaints of violations of the rights of HRDs, conducts country visits, and provides annual reports to the General Assembly and the Human Rights Council on the situation of HRDs, with recommendations for what States can do to increase their protection.⁷² Similarly, the regime of protection will also consider the set of UN Resolutions, above cited, on the importance of promoting and protecting ‘civil society space’ which advocate for building a safe and enabling environment for the defence of human rights.

At the regional level, the European Union (hereafter EU) has issued Guidelines on HRDs to provide guidance to member States on how to engage in the protection of HRDs around the world. EU by adopting Guidelines on Human Rights Defenders is committed to better support the vulnerable and marginalised human rights defenders, women human rights defenders and those operating in remote regions; advocating for the creation of a safe and enabling environment for human rights defenders; and strengthening the implementation of an effective and coherent policy on human rights defenders.⁷³ A good example is also the EU-HRDs mechanism *ProtectDefenders.eu* consisting in a consortium of 12 NGOs to protect defenders at high risk and facing the most difficult situations worldwide.⁷⁴ However, studies also show that implementation of these Guidelines has been hindered by the limited awareness of them by other EU member State missions and local HRDs, as well as poor coordination, weak monitoring, and insufficient feedback on advocacy efforts.⁷⁵ The Organisation for Security and Cooperation in Europe (OSCE) initiated extensive consultations with human rights defenders and other human rights experts across the OSCE geographic regions to develop the OSCE Guidelines on the Protection of Human Rights Defenders, to harness

⁷¹ Further see. Special Rapporteur on the situation of human rights defenders < <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/134/52/PDF/G1413452.pdf?OpenElement> > accessed 14 April 2016

⁷² For a full list of reports, see < <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/AnnualReports.aspx> > accessed 14 April 2016

⁷³ European Union Delegation to the United Nations, ‘EU Council Conclusions on 10th Anniversary of EU Guidelines on Human Rights Defenders’ < http://eu-un.europa.eu/articles/en/article_15216_en.htm > accessed 14 April 2016

⁷⁴ See further: < <https://www.protectdefenders.eu/en/about.html> > accessed 14 April 2016

⁷⁵ Further see: Amnesty International, European Union: Rising to the Challenge of Protecting Human Rights Defenders (2008) EUR 01/009/2008 < <https://www.amnesty.org/en/documents/EUR01/009/2008/en/> > accessed 14 April 2016

better protection and support for human rights defenders by member States.⁷⁶ Also, other regional bodies as are the African Commission on Human and People's Rights and in Latin America, the Inter-American Commission on Human Rights have established Special Rapporteurs on HRDs.⁷⁷

1.4. Conclusion

As outlined above, civil society is of increasing importance for the democracy of a particular State. Civil society actors promote awareness of the rights, assist communities in articulating concerns, shape strategies, influence policy and laws, and press for accountability in decision-making and policy implementation. However, in the recent years, CSOs and HRDs are facing increased restrictions when trying to carry out their work. Governments use legal and administrative barriers, making it more difficult for civil society organisations who receive foreign support and funding to operate. Russia and Hungary the country studies I will elaborate in this thesis in the recent years have taken a number of legal and non-legal measures that have resulted in an unprecedented restriction for the CSOs and HRDs. Both States possess characteristics that will make the discussion and the argumentation in this thesis worth focusing on. Russia is an appalling case study because it is well known for its patchy human rights records. Moreover, what we encounter in the Russian case is that with the passing of the years the situation of human rights gets worse. On the other hand, Hungary owns some different characteristics. As will be discussed in following chapters the shrinking space of CSOs and HRDs in Hungary is a recent year's phenomena. The values of this thesis will be the interesting discussion of human rights situation in a fully-fledged democratic and European Union country that is sliding to autocracy. Moreover, in the shrinking space of CSOs and HRDs in both countries have some interesting interplay which will be further discussed in the following chapters.

As discussed above States are the main actors contributing in the shrinking space of CSOs, at the same time they are the principal duty bears. In the following

⁷⁶ Organization for Security and Cooperation in Europe, 'OSCE Guidelines on the Protection of Human Rights Defenders' (2014) < <http://www.osce.org/odihr/119633>> accessed 14 April 2016

⁷⁷ Further see: Alice M. Nah, Karen Bennett, Danna Ingleton, James Savage, ' A Research Agenda for the Protection of Human Rights Defenders' (2013) 5 JHRP 3, 401-420

chapters, I will argue that the actions taken by Russia and Hungary are deteriorating the space of CSOs and HRDs. I will argue that the measures taken by both States against civil society violate fundamental human rights enshrined in the ECHR and the principles established by the ECtHR.

Further, the shrinking space of CSOs and HRDs in Russian and Hungary expresses concern for the nexus of the human rights in both countries and the stability of the entire region itself. To begin with, chapter two will analyse the human rights and principals involved in the shrinking space of CSOs referring to ECHR and jurisprudence of ECtHR.

2. The Rights Involved in the Shrinking Space of Civil Society

Civil society and HRDs are entitled to certain rights established in different international and domestic binding documents such as conventions and laws, at the same time, these rights create positive and negative obligations for States as the principal duty bearers. However, the shrinking space for civil society has involved interference with some of the core recognised fundamental rights. This chapter will provide a legal discussion of the right to freedom of expression, association and assembly as essential preconditions for the work of CSOs and HRDs. The discussion will focus on the system of protection and guarantees under the ECHR because of its binding status over Russia and Hungary as contracting States and the jurisprudence of ECtHR. The primary focus of this chapter will be to analyse, based on ECtHR's case law, the rights that CSOs and HRDs are entitled to and what room for manoeuvre the ECHR provides to Russia and Hungary in restricting civil society.

2.1. The Right to Freedom Expression, Association and Assembly

Freedom of expression is one of the essential rights guaranteed under the ECHR. Article 10 of the ECHR states:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

According to the ECtHR's well-established case law, freedom of expression constitutes one of the essential foundations of a democratic society, one of the basic

conditions for its progress and for the development of every man.⁷⁸ The ECtHR's jurisprudence under Article 10 has affirmed that freedom of expression encompasses three different aspects: (a) the freedom to "hold" and "express" opinions without interference,⁷⁹ (b) the freedom to "receive" information and ideas,⁸⁰ (c) freedom to impart information and ideas of all kinds by different means.⁸¹ Given the importance of freedom of expression, Article 10 has been broadly and inclusively interpreted, except in cases of incitement to violence, hate speech or rejection of democratic principles it is difficult to find an expression which does not fall within its scope, nevertheless it is the ECtHR that says the final word.⁸² The ECtHR has stated that Article 10 is applicable not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population.⁸³ Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society'.⁸⁴ According to the first paragraph of the Article, freedom of expression extends to everyone and the ECtHR, when interpreting this part, has stated that "everyone" includes both natural and legal persons meaning that CSOs are able to send complains at ECtHR.⁸⁵

Along with, freedom expression, freedom of assembly and association is essential to the subject matter of this thesis. Article 11 of the ECHR provides:

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

⁷⁸ *Handyside v. UK* App no 5493/72 (ECHR, 7 December 1976) para 49.

⁷⁹ *Kokkinakis v. Greece* App no 14307/88 (ECHR, 25 May 1993) para 33; *Lingens v. Austria* App no 9815/82 (ECHR, 8 July 1986) para 4; *Zakharov v. Russia* App no 47143/06 (ECHR, 4 December 2015); *Dyuldin v. Russia* App no 25968/02 (ECHR, 31 October 2007); *Karman v. Russia* App no 29372/02 (ECHR, 14 December 2006).

⁸⁰ *Leander v. Sweden* App no 9248/81 (ECHR, 26 March 1987) para 74; *Autronic AG v. Switzerland* App no 12726/87 (ECHR, 22 May 1990) para 47; *Vereinigung Demokratischer Soldaten Österreichs and Gubi v. Austria* App no 34/1993/429/508 (ECHR, 23 November 1994) para 27.

⁸¹ *Oberschlick v. Austria* App no 47/1996/666/852 (ECHR, 1 July 1997) para 57; *Ozturk v. Turkey* App no 22479/93 (ECHR, 28 September 1999) para 49.

⁸² Jessica Simore, Ben Emmerson, *Human Rights Practice* (Sweet and Maxwell, United Kingdom 2016).

⁸³ *Otto Preminger v. Austria* App no 13470/87 (ECHR, 20 September); *Muller v. Switzerland* App no 10737/84 (ECHR, 24 May 1988); *Freedom and Democracy Party (OZDEP) v. Turkey* App no 23885/94 (ECHR, 8 December 1999) para 37.

⁸⁴ *Handyside v. the UK* App no 5493/72 (ECHR, 7 December 1976) para 49.

⁸⁵ *Autronic AG v. Switzerland* App no 12726/87 (ECHR, 22 May 1990) para 47.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State

The ECtHR has established that freedom of association and peaceful assembly are fundamental rights in a democratic society,⁸⁶ thus, they should not be interpreted restrictively.⁸⁷ Article 11 comprises two related rights, freedom of peaceful assembly and freedom of association with others. It protects the participants and organisers of peaceful assemblies from interference by the State in their activities.⁸⁸ Individuals who are prevented from participating in assemblies or associations, or compelled to join such associations also enjoy protection under Article 11.⁸⁹

Apart from the protection guaranteed in the ECHR the rights to freedom of expression, peaceful assembly and association are enshrined in other core international documents. The International Bill of Rights⁹⁰ as the most important international mechanisms on human rights offers protection and obligates every State party to respect and protect the freedoms of expression, assembly and association. Furthermore, of particular importance is the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms⁹¹ (hereafter HRDs Declaration) because of its direct references to the protection of CSOs generally and HRDs particularly. The Declaration is a soft law document not binding to the signatory States, however, the fact that it contains rights that are already recognised in many legally binding international human

⁸⁶ *Sidiropoulos and others v. Greece* App no 57/1997/841/1047 (ECHR, 10 July 1998).

⁸⁷ *Djavit An v. Turkey* App no 20652/92 (ECHR, 20 February 2003) para 56.

⁸⁸ *United Communist Party of Turkey v. Turkey* App no 19392/92 (ECHR, 30 January 1998) 24-25.

⁸⁹ *Rassemblement Jurassien and Unit Jurassienne v. Switzerland* App no 8191/78 (ECHR, 1979); *Young, James and Webster v. United Kingdom* App nos 601/76, 7806/77 (ECHR, 1982).

⁹⁰ Universal Declaration of Human Rights (UDHR) (Article 20), the International Covenant on Civil and Political Rights (ICCPR) (Article 22), the International Covenant on Economic Social and Cultural Rights (ICESCR) (Article 8).

⁹¹ Adopted 9 December 1998, UNGA Res 53/144.

rights instruments and its adoption by consensus illustrates States' strong commitment towards its implementation.⁹²

The ECtHR has maintained that the rights guaranteed under Article 10 are intertwined with Article 11 in cases related to group activities such as demonstrations.⁹³ The ECtHR has looked at Article 10 while interpreting freedom of assembly and association cases under the Article 11 stating that protection of opinions and the freedom to express them is one of the objectives of the freedom of association.⁹⁴ Similarly, freedom of assembly protect a demonstration that may express ideas that may annoy, shock or offend persons opposed to the ideas or claims it is seeking to promote.⁹⁵ Nevertheless, the most significant similarity between the rights under Article 10 and 11 consists in their formulation. The ECHR itself possesses two kinds of rights, absolute rights and qualified rights. Absolute rights are those rights of the ECHR which are non-derogable under any circumstance, whereas, qualified rights are those which are subject to interference by States in order to secure certain interests.⁹⁶ Reading Article 10(2) and 11(2) we realise that freedom of expression, peaceful assembly and association are qualified rights, subject to restriction by State based on the interests and conditions prescribed in the articles. The restrictions in Article 11(2) are similar to those set out in Article 10(2) of the ECHR. In the following section I will discuss the significance of Article 10 and 11 for the activities of CSOs and HRDs and the final part of this chapter will discuss the possibility of States to derogate from the rights established in the Article 10 and 11 and the limits that ECtHR imposes to State's possibility to derogate.

⁹² OHCHR, Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (July 2011) 59.

⁹³ *Ezelin v. France* App no 11800/85 (ECHR, 26 April 1991) para 52.

⁹⁴ *Fáber v. Hungary* App no 40721/08 (ECHR, 24 October 2012) para 41; *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* App nos 29221/95 and 29225/95 (ECHR, 2001) 86.

⁹⁵ *Fáber v. Hungary* App no 40721/08 (ECHR, 24 October 2012) para 37; *Sergey Kuznetsov v. Russia* App no 10877/04 (ECHR, 23 October 2008) para 45; *Plattform "Arzte fur das Leben" v. Austria* App no 10126/82 (ECHR, 21 June 1988) para 38.

⁹⁶ Louwrens R. Kiestra, *The Impact of the European Convention on Human Rights on Private International Law* (Springer, The Netherlands 2014) 39-44

2.2. The Relevance of Article 10 and 11 for CSOs and HRDs

As stated in chapter one, strong CSOs and free HRDs guarantee a more democratic State by promoting awareness of rights, assisting communities in articulating concerns, shaping strategies, influencing policy and laws, and pressing for accountability in decision-making and policy implementation. CSOs and HRDs are vital in the promotion and protection of civil and political rights as well as the promotion, protection and realisation of economic, social and cultural rights.⁹⁷ In this situation, CSOs and HRDs must be free and guaranteed to enjoy the freedom of expression, peaceful assembly and association under Articles 10 and 11 while carrying out their work. These rights are significant and in the heart of CSOs space. An important feature of civil society space is the extent to which HRDs are able to freely express themselves in public, including criticising government decisions, actions, laws and policies, without harassment or retribution. Freedom of expression is supplemented by the other two other freedoms which guarantee HRDs the possibility to form, join and participate in association with others pursuing a common interest. Similarly, under the freedom of assembly HRDs and CSOs may organise a peaceful assembly to come together in the public sphere and pursue their interests. However, even though these are fundamental rights as discussed above Russia and Hungary are restricting them, in violation of the ECHR. Both Russian and Hungary in justifying their restrictions are putting forward different arguments and excuses which will be discussed throughout this thesis.

Thus, it is essential for CSOs and HRDs, individually or collectively, to have the right to speak out critically against the government on issues relating to human rights and fundamental freedoms while being fully protected.⁹⁸ The ECtHR in its case law has stated that the right to freedom of speech involves the right to discuss government policies and political debates.⁹⁹ In *Kudeshkina v. Russia*, the applicant was a judge

⁹⁷ UNHRC, ‘Fact Sheet No. 29: Human Rights Defenders: Protecting the Right to Defend Human Rights’ 12 < <http://www.ohchr.org/EN/PublicationsResources/Pages/FactSheets.aspx> > accessed 14 April 2016

⁹⁸ International Centre for Non-Profit Law (ICNL) ‘ Report: Defending Civil Society ‘ (2nd edn, June 2012)

⁹⁹ *Faber v. Hungary* App no 40721/08 (ECHR, 24 October 2012) para 35; *Kudeshkina v. Russia* App no 29492/05 (ECHR, 26 February 2009) para 94; *Sergey Kuznetsov v. Russia* App no 10877/04 (ECHR, 23 January 2009) para 47; *Nemtsov v. Russia* App no 1774/11 (ECHR, 15 December 2014)

standing as a candidate in elections for a senior judicial position. During her election campaign, the applicant alleged in a news interview that her program included a judicial reform, condemning the current system as corrupted and under the influence of political powers. Later, after her interview, the Moscow authorities decided that the applicant had committed a disciplinary offense and her office as a judge was terminated. The ECtHR in its judgment stated that political speech and debate over government policies enjoys special protection under Article 10 because it involves serious matters in the public interest such as corruption in the judiciary finding that the applicant's freedom of speech was violated.¹⁰⁰ This judge in our case is a HRD peacefully engaged in protection of human rights according to the definition of HRDs stated in chapter one. She is engaged in protecting the citizen's right to fair trails while combating corruption in the judiciary and protecting her right to freedom of speech.

Moreover, the ECtHR has held that the right to freedom of speech under Article 10 protects the individuals reporting on human rights, government activities and corruption in government.¹⁰¹ In the case, *Saliyev v. Russia*, the applicant was the president of a Russian NGO who had written an article for a municipal State-funded newspaper condemning corruption and the acquisition of shares in a local energy producing company. After the newspaper was distributed on the same day the copies were withdrawn from the newsstands and later they were destroyed. This was done out of fear of possible sanctions related to the content of the applicant's article. The applicant complained that the withdrawal violated his freedom of expression. The ECtHR concluded that the withdrawal of the newspapers containing the applicant's article could be characterised as an act of policy-driven censorship and violated his right to freedom of speech.¹⁰²

In the case of *Matúz v. Hungary*, the applicant was a journalist in the Hungarian State television. By publishing a book detailing documentary evidence of censorship exercised in the State television company he alerted the public to the existence of

¹⁰⁰ *Kudeshkina v. Russia* App no 29492/05 (ECHR, 26 February 2009) para 95

¹⁰¹ *Saliyev v. Russia* App no 35016/03 (ECHR, 21 January 2011) para 78; *Matúz v. Hungary* App no 73571/10 (ECHR, 21 October 2014); *Sergey Kuznetsov v. Russia* App no 10877/04 (ECHR, 23 January 2009)

¹⁰² *Saliyev v. Russia* App no 35016/03 (ECHR, 21 January 2011) para 78

ensorship at the public broadcasting organisation in Hungary. Shortly afterwards, the television company dismissed the applicant claiming he had revealed confidential information in his book. The ECtHR concluded that being mindful of the importance of the right to freedom of expression on matters of general interest, of the applicant's professional obligations and responsibilities as a journalist the interference violated the applicant's right to freedom of expression.¹⁰³

It is natural that, where a civil society functions in a healthy manner, the participation of citizens in the democratic process is to a large extent achieved through belonging to associations in which they may integrate with each other and pursue common objectives collectively. The ECtHR in interpreting the right to freedom of association has held specifically that freedom of association broadly embraces the right of individuals to form or join associations, political parties, religious organisations, trade unions, employer associations, companies, and various other forms of association to collectively express, promote, pursue and defend common interests.¹⁰⁴ Therefore, it is of particular importance for citizens to be able to form and be part of CSOs in order to act collectively in a field of mutual interest and be able to pursue certain goals. The ECtHR has held that the right to form an association is an inherent part of the right set forth in Article 11. That citizens should be able to form a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of the right to freedom of association, without which that right would be deprived of any meaning.¹⁰⁵ It is of particular importance for HRDs to be able to create legal entities to carry out their human rights goals. In today's dynamic societies it is difficult for single voices to bring tangible changes for the citizens, therefore, it is substantial for HRDs to be able to act together in the field of human rights. In the case of *Moscow Branch of Salvation Army v. Russia* the organisation's application to be legally recognised as a religious association was refused by the competent authorities. The ECtHR recognised

¹⁰³ *Matúz v. Hungary* App no 73571/10 (ECHR, 21 October 2014) para 50

¹⁰⁴ See *Sidiropoulos and others v. Greece* App no 57/1997/841/1047 (ECHR, 10 July 1998); *United Communist Party of Turkey v. Turkey* App no 19392/92 (ECHR, 30 January 1998)

¹⁰⁵ *Church of Scientology Moscow v. Russia* App no 18147/02 (ECHR, 24 September 2007) para 73; *Moscow Branch of the Salvation Army v. Russia* App no 72881/01 (ECHR, 05 January 2007) para 59; *Magyar Keresztény Mennonita Egyház & Others v. Hungary* App nos 70945/11, 23611/12, 26998/12, 41150/12, 41155/12, 41463/12, 41553/12, 54977/12 and 56581/12 (ECHR, 08 September 2014)

that pluralism is built on the genuine recognition of, and respect for, diversity and the dynamics of cultural traditions, ethnic and cultural identities, religious beliefs, artistic, literary and socio-economic ideas and concepts. The harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion. ECtHR held that a refusal by the domestic authorities to grant status as a legal entity to an association of individuals amounts to an interference with the applicant organisation's exercise of its right to freedom of association.¹⁰⁶

The right to freedom of association is a right that has been recognised as capable of being enjoyed individually or by the association itself. As stated above individuals have the right to form and join associations and association as long as it is recognised under the relevant State's law it enjoys protection, any attempt to dissolve it will violate Article 11. In the case, *Magyar Keresztény Mennonita Egyház & Others v. Hungary* engaging the protection of right to freedom of association and freedom of religion. The applicant's religious association was de-registered as a result of new legislation passed by the Hungarian parliament. After the new law was adopted under its requirements the applicant was not able to re-register its association and the association itself had lost its privileges guaranteed by previous law. The ECtHR held that de-registration and subsequent requirement for re-registration in order to continue to receive certain privileges constituted an interference with the applicant's rights of freedom of association.¹⁰⁷ In this chapter I discuss some isolated cases of space restriction of CSOs and HRDs to see them in the perspective of ECHR and the principles discussed by the ECtHR. However, I will discuss further in details the actions taken by both States in chapter four.

The Council of Europe is even more explicit on this point stating that NGOs should be free to pursue their objectives, provided that both the objectives and the means employed are consistent with the requirements of a democratic society. NGOs should be free to undertake research, education and advocacy on issues of public debate, regardless of whether the position taken is in accord with government policy or requires

¹⁰⁶ *Moscow Branch of the Salvation Army v. Russia* App no 72881/01 (ECHR, 05 January 2007) para 75

¹⁰⁷ *Magyar Keresztény Mennonita Egyház & Others v. Hungary* App nos 70945/11, 23611/12, 26998/12, 41150/12, 41155/12, 41463/12, 41553/12, 54977/12 and 56581/12 (ECHR, 08 September 2014)

a change in the law.¹⁰⁸ The UN Special Representative on human rights defenders has noted that “NGOs have a right to register as legal entities and to be entitled to the relevant benefits”.¹⁰⁹ The right to register as legal entity and receive benefits is important for the well-functioning of CSOs. As I will discuss in chapter four the actions taken by Russia and Hungary to prevent NGOs from receiving foreign funds is forcing them to shut down.

Civil society representatives, individually and through their organisations, enjoy the right to freedom of peaceful assembly. The ECtHR has stated that the right to freedom of assembly covers both private meetings and meetings in public as well as static meetings and public processions, in addition, it can be exercised by individual participants of the assembly and by those organising.¹¹⁰ The essential objective of Article 11 is to protect the individual against arbitrary interference by public authorities with the exercise of the rights protected. In the case of *Nemtsov v. Russia*, the applicant was a well-known public figure¹¹¹ famous for his strong opposition against the Russian president Vladimir Putin, was arrested during a public protest. The ECtHR held that the arrest and the administrative liability imposed on the applicant without violating the law or the order of police were arbitrary and violated Article 11.¹¹² In *Alekseyev v. Russia*, the case concerned the ban of a gay pride parade, a controversial and strongly opposed issue in Russia. The authorities justified the ban claiming that the parade could harm other people’s feelings and provoke violence for which police cannot guarantee order. The ECtHR held that it would be incompatible with the underlying values of the ECHR if the exercise of ECHR’s rights by a minority group were made conditional on its being

¹⁰⁸ Council of Europe, Fundamental Principles on the Status of Non-governmental Organisations in Europe and explanatory memorandum (13 November 2002, Strasbourg)

¹⁰⁹ International Centre for Non-Profit Law (ICNL) ‘ Report: Defending Civil Society ‘ (2nd edn, June 2012) 7

¹¹⁰ *Barankevich v. Russia* App no 10519/03 (ECHR, 26 October 2007) para 25; *Szerdahelyi v. Hungary* App no 30385/07 (ECHR, 17 April 2012)

¹¹¹ Boris Nemtsov was shot in the back as he walked home late at night in 27 February, 2015 in a killing that shocked Russia. He was engaged in strong political opposition against Putin and lately that year he accused Russia's president of launching an illegal war with Ukraine, prompting Western sanctions and an economic crisis. See further: Sarah Rainsford, ‘Boris Nemtsov killing: Grief, fear and anger one year on’ (*BBC*, 27 February 2016) < <http://www.bbc.co.uk/news/world-europe-35675221> > last accessed 27 Jun 2016

¹¹² *Nemtsov v. Russia* App no 1774/11 (ECHR, 15 December 2014) para 74

accepted by the majority.¹¹³ The ECtHR has also recognised the rights to counter-demonstrate but it has held that it cannot extend to inhibiting the exercise of the right to demonstrate.¹¹⁴ It is the duty of State to make sure that the participants will be able to hold the demonstration without having the fear that they will be subject to physical violence by their opponents.¹¹⁵ Not guaranteeing security of a demonstration can result to space restrictions particularly for demonstrations held by minority groups such as religious, ethnic or sexual minorities. States use the argument of not being able to guarantee security for a particular demonstration contributing to the shrinking space of civil society. In *Alekseyev v. Russia* authorities justified the refusal of the permission for the parade stating that it may provoke violence for which police cannot guarantee order.¹¹⁶

2.3. The Limitations of Article 10 and 11 and the Doctrine of Margin of Appreciation

As stated above the rights guaranteed under Article 10 and 11 are qualified rights subject to restrictions upon the conditions prescribed in part two of the Articles. These two clauses give Russia and Hungary the power to derogate from the rights of Article 10 and 11 and interfere with the rights of CSO's and HRD's rights. In such conditions it is for the ECtHR to find out if the interference is permissible, judging based on the conditions set out in the second paragraphs of Article 10 and 11. In interpreting this paragraph, the ECtHR in every case applies the following four-stage test. They examine, first, whether there was an interference with an ECHR freedom. They then move on to consider whether the interference was “prescribed by law” and whether, third, the purpose of the interference pursued a “legitimate aim” as mentioned in second the paragraphs of the Articles. Finally, they examine whether the interference was “necessary in a democratic society” evaluating it based on two conditions whether there was a "pressing social need" and whether the means employed were "proportionate" to the aim pursued.

¹¹³ *Alekseyev v. Russia* App no 4916/07, 25924/08 and 14599/09 (ECHR, 11 April 2011) para 81

¹¹⁴ *Faber v. Hungary* App no 40721/08 (ECHR, 24 October 2012) para 38

¹¹⁵ *Ibid.*

¹¹⁶ *Alekseyev v. Russia* App no 4916/07, 25924/08 and 14599/09 (ECHR, 11 April 2011) para 81

Prescribed by law implies that the restrictions imposed must have a formal basis in law and be in conformity with the ECHR and other international human rights instruments.¹¹⁷ The ECtHR has identified two conditions that must be satisfied for a norm to be regarded as ‘law’: accessibility and foreseeability.¹¹⁸ The subset of accessibility can be fulfilled if the citizen is able to have an indication that is adequate in the circumstances of the legal rules applicable to given case.¹¹⁹ The foreseeability of the measure requires the norm to be formulated with sufficient precision to enable the person to regulate his conduct. The citizen must be able to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.¹²⁰ In the case *Dzhavadov v. Russia* the authorities refused to register the name of the applicant’s newspaper because the proposed title suggested that the newspaper was affiliated with the Administration of the Russian President. The respondent State justified the restriction based on the media law which required that the information in the application be consistent with “the real state of affairs”.¹²¹ The ECtHR considered that an extensive interpretation of the phrase “the real state of affairs” in favour of the registering authority to refuse registration was not founded on any legal provision clearly authorising it and that this was not reasonably foreseeable for the applicant. Therefore, the ECtHR held that the manner in which the formalities for registration were interpreted and applied to the applicant's exercise of his freedom of expression did not meet the “quality of law” standard under the ECHR.¹²²

The legitimate aim is described in the two articles which list a number of purposes for which restriction of the rights can be justified. What constitutes a legitimate aim can vary from protection of national security or public safety, protection of crimes and disorders, protection of health and morals, to protection of others

¹¹⁷ Alastair Mowbray, *Cases, Materials, and Commentary on the European Convention on Human Rights* (OUP, 2007 United Kingdom) 688

¹¹⁸ *Sunday Times v. UK* App no 6538/74 (ECHR, 26 April 1979) para 49; *Dzhavadov v. Russia* App no 30160/04 (ECHR, 27 September 2007) para 35; *Rekvényi v. Hungary* App no 25390/94 (ECHR, 1999) para 34

¹¹⁹ *Sunday Times v. UK* App no 6538/74 (ECHR, 26 April 1979) para 49

¹²⁰ *Dzhavadov v. Russia* App no 30160/04 (ECHR, 27 September 2007) para 35

¹²¹ *Ibid*, 37

¹²² *Ibid*, 40

rights.¹²³ The criterion of legitimate aim according to the ECtHR jurisprudence is easy to be met, because both Articles list a number of aims according to which States can claim justifications for their actions.

Necessary in a democratic society according to ECtHR's established case law entails two major requirements. That interference corresponds to a "pressing social need" and the actions taken are "proportionate" to the legitimate aim pursued.¹²⁴ Democracy, the ECtHR has stressed, is the only political model contemplated in the ECHR and the only one compatible with it.¹²⁵ By virtue of the wording of the second paragraph of Article 10 and 11 of the ECHR, the only necessity capable of justifying an interference with any of the rights enshrined in those Articles is one that may claim to spring from a "democratic society".¹²⁶

In determining whether a pressing social need exists, the ECtHR has held that particular attention must be paid to the particular facts of the case and to the circumstances prevailing in the given country at the time.¹²⁷ In the other hand, proportionality is at the heart of the ECtHR's investigation into the reasonableness of the restriction, the ECtHR's main role is to ensure that the rights in the ECHR are not interfered with unnecessarily.¹²⁸ Proportionality insists that a fair balance is achieved between the realisation of a social goal, such as the protection of morals or the preservation of public order, and the protection of the fundamental rights contained in the ECHR.¹²⁹

In assessing whether an interference is "proportionate" to the legitimate aim to which the government claims that it responds, the ECtHR and Commission have relied on the principle of "margin of appreciation", which they concede to States when their institutions make the initial assessments of whether the interference is justified.¹³⁰ Thus, State parties have a certain margin of appreciation in assessing whether such a need

¹²³ ECHR, art 10, 11

¹²⁴ *Olson v. Sweden* App no 13441/87 30 (ECHR, 30 October 1992) para 67

¹²⁵ *Christian Democratic People's Party v. Moldova* App no 28793/02 (ECHR, 2006) paras 62-63

¹²⁶ *Barankevich v. Russia* App no 10519/03 (ECHR, 26 October 2007) para 24

¹²⁷ *Lingens v. Austria* App no 9815/82 (ECHR, 8 July 1986) para 43

¹²⁸ Steve Foster, *Human Rights and Civil Freedoms* (Longman, United Kingdom 2003) 46

¹²⁹ *Ibid*, 47

¹³⁰ David J. Harris et al, *Law of the European Convention on Human Rights* (2nd OUP, New York 2009) 349

exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by independent courts.¹³¹

2.3.1. The Doctrine of Margin of Appreciation

The concept of margin of appreciation, which has been developed by the ECtHR, suggests an ambit of discretion. 'latitude or deference of error', or 'room for manoeuvre', given to national authorities in assessing appropriate standards of the ECHR rights, taking into account particular values and other distinct factors with reference to local laws and practices.¹³² The doctrine itself is not found in the ECHR but was developed by the ECtHR.¹³³ The margin of appreciation has three considerations upon which the ECtHR's doctrine is based.¹³⁴ First, the national authorities are in principle better placed than the ECtHR to evaluate local needs and conditions. This has led the national institutions to resist external review altogether, claiming that they are the better judge of their particular domestic constraints and hence the final arbiters of their appropriate margin.¹³⁵ Both Russia and Hungary have raised this argument in the issue of shrinking space of CSOs. Russia after the adoption of several laws that directly attack CSOs and HRDs¹³⁶ particularly those receiving foreign funds, justified their measures under the claim of protecting Russia's national security and sovereignty.¹³⁷ Furthermore, President Putin used the argument of protecting the rights of other citizens

¹³¹ *Faber v. Hungary* App no 40721/08 (ECHR, 24 October 2012) para 32

¹³² Yutaka Arai-Takahashi 'The Margin of Appreciation Doctrine: A Theoretical Analysis of Strasbourg's Variable Geometry' in Andreas Follesdal et al (eds), *Constituting Europe: The European Court of Human Rights in a National, European and Global Context* (Cambridge University Press, United Kingdom 2013) 62

¹³³ However the once the Protocol 15 of the ECHR is ratified the "margin of appreciation" will become part of the ECHR. See further the text: Protocol No. 15 amending the Convention on the Protection of Human Rights and Fundamental Freedoms < http://www.echr.coe.int/Documents/Protocol_15_ENG.pdf> accessed 10 July 2016

¹³⁴ Erik Bjorge, *Domestic Application of the ECHR: Courts as Faithful Trustees* (OUP, United Kingdom 2015) 236

¹³⁵ Eyal Benvenisti, 'Margin Of Appreciation, Consensus, and Universal Standards' (1999) 31 ILP

¹³⁶ These laws and the measures taken by both states resulting in unprecedented attack on CSOs and HRDs will be discussed in detail in the chapter four.

¹³⁷ See further: Human Rights Watch Report, *Laws of Attrition: Crackdown on Russia's Civil Society after Putin's Return to the Presidency* (2013) Available at < <https://www.hrw.org/report/2013/04/24/laws-attrition/crackdown-russias-civil-society-after-putins-return-presidency>> accessed 30 June 2016

when defending the restriction laws.¹³⁸ Hungary in the view of tumultuous events of 2006¹³⁹ for reasons of security declared parts of Budapest “security operational zone” where the public gatherings were forbidden.¹⁴⁰ Second, where there is no consensus among European States on a particular issue, the ECtHR will offer States a wider margin of appreciation on the issue. This category includes cases where there is no consensus among member States on the extent of individual’s rights and what are considered and not considered rights. The idea behind this reasoning rests in the absence of a uniform conception of the rights and the debate on universality of human rights.¹⁴¹ This is what Russia is opting for lately they want to remain in the Strasbourg system but they are asking that Russia is given as wide margin of appreciation as possible. Russia claims that as its civilisation is different from other Western European States, therefore it should be given a wider margin of appreciation.¹⁴² Third is the case that the ECtHR must respect the democratic legitimacy of the States. Viewing the margin of appreciation as a need to balance both State sovereignty and the legitimacy of domestic democratic institutions against the authority of unelected international judges of the ECtHR.¹⁴³ For example, after the *Markin*¹⁴⁴ a controversial case on the issue regarding sex discrimination where the ECtHR ruled against Russia. The ECtHR was addressed to rule whether military servicemen can be refused parental leave when such leave is available to servicewomen. The judgement of the ECtHR found not compatible with the ECHR the refusal of parental leave to men. This decision was bitterly welcomed in Russia. The outcome of the case encouraged the President of the

¹³⁸ Putin talks to German TV: FULL TEXT (RT 5 April 2013) Available at: <https://www.rt.com/politics/official-word/political-russia-schneborn-russian-399/> accessed 30 June 2016

¹³⁹ Protests in Budapest's Kossuth Square began after a recording was leaked in which the socialist prime minister, Ferenc Gyurcsany, admitted his government had lied about the economy before its re-election in April. See further: ‘Hungarian police clamp down on anti-government protests’ *The Guardian*, (3 October 2006) Available at: <https://www.theguardian.com/world/2006/oct/23/1> accessed 10 July 2016

¹⁴⁰ *Szerdahelyi v. Hungary* App no 30385/07 (ECHR, 17 April 2012)

¹⁴¹ Eva Brems, *Human Rights: Universality and Diversity*, (Martinus Nijhoff Publishers, The Netherlands 2001)

¹⁴² See further: Lauri Malksoo (ed), *Russian and European Human-Rights Law: The Rise of the Civilizational Argument* (Brill Nijhoff, The Netherlands 2014)

¹⁴³ Dimitrios Tsarapatsanis, ‘The Margin of Appreciation Doctrine: A Low-Level Institutional View’ (2015) 35 LS 4, 677

¹⁴⁴ *Konstantin Markin v. Russia* App no 30078/06 (ECHR, 22 March 2012).

Constitutional Court of Russia, Valerii Zor'kin to openly criticize the ECtHR and stated that it had crossed the red line of Russian sovereignty.¹⁴⁵

It is not defined what falls within the State's margin of appreciation, which we can use to find out what State acts (or omissions) amount to a violation.¹⁴⁶ Therefore, the margin of appreciation doctrine defers to the sovereignty of States by giving them an indeterminate degree of discretion to determine how interference in a fundamental right is "necessary in a democratic society" to achieve certain interests.¹⁴⁷ Thus, the margin of appreciation doctrine dangerously plays into the hands of illiberal regimes that would use their discretion to suppress peaceful political dissent, CSOs and everyone who tries to speak against them.¹⁴⁸ In our case, this broad room for manoeuvre gives Russia and Hungary the opportunity to exercise control over CSOs and HRDs in principle in compliance with the ECHR. The ECtHR has accepted that there is a difficulty in evaluating what are the 'interests of morals', 'public order', 'national security', or what is necessary for 'the economic well-being of the country', 'the prevention of disorder or crime', 'the protection of health'. Thus, in these cases the ECtHR often accepts that, 'by reason of their direct and continuous contact with the vital forces of their countries, State authorities are in principle in a better position than the international judge to give an opinion on the exact content of the ECHR'.¹⁴⁹ In the situation when civil society is seen as a threat due to the other countries experience as the Arab Spring and Colour revolution is easier for Russian and Hungary to justify their actions. Facing justification of protecting the morals, public order, national security, or the prevention of disorder or crime it is harder for NGO's to hold public gatherings to express their view or stand up against State abuse of human rights.

¹⁴⁵ Lauri Malksoo (ed), *Russian and European Human-Rights Law: The Rise of the Civilizational Argument* (Brill Nijhoff, The Netherlands 2014) 54

¹⁴⁶ George Letsas, 'Two Concepts of the Margin of Appreciation' (2006) 26 OJLS 4, 713

¹⁴⁷ Austin Dacey, *Future of Blasphemy: Speaking of the Sacred in an Age of Human Rights* (Continuum, New York 2012) 99

¹⁴⁸ *Ibid*, 100

¹⁴⁹ *Handyside v. the UK* App no 5493/72 (ECHR, 7 December 1976) paras 48, 49

2.4. Conclusion

As outlined the shrinking space of civil society involves interference with some of the core recognised fundamental rights. This chapter established that the right to freedom of expression, association and assembly enshrined in the ECHR and stated in the ECtHR cases are indispensable conditions for the work of CSOs and HRDs. Therefore, CSOs and HRDs must be free and guaranteed to enjoy the freedom of expression, peaceful assembly and association under Articles 10 and 11 of ECHR while carrying out their work.

However, as seen and discussed above States can restrict those rights as prescribed by Article 10 and 11. Precisely the doctrine of “margin of appreciation” due to its problems leaves States broad room for derogation which creates serious problems for CSOs and HRDs in Russia and Hungary.

It is not defined what falls within the State’s margin of appreciation. Thus, the margin of appreciation doctrine defers to the sovereignty of States by giving them an indeterminate degree of discretion to determine how interference with a fundamental right is “necessary in a democratic society” to achieve certain interests.¹⁵⁰ Russia and Hungary use this handicap that the margin of appreciation” contains rising different arguments, pressing the ECtHR and claiming a broader margin of appreciation as possible.

¹⁵⁰ Austin Dacey, *Future of Blasphemy: Speaking of the Sacred in an Age of Human Rights* (Continuum, New York 2012) 99

3. Russia and Hungary: A Short Historical, Legal, Political Background and the Issue of Civil Society Restriction

This chapter will discuss and elaborate shortly the two country's historical, political and legal backdrop. The main purpose of this chapter will be to briefly describe the two countries and to get an accurate picture of the issue of hostility toward civil society.

3.1. An Overview of Russia's Historical, Legal, Political Background related to the Issue of Civil Society Restriction

Russia is a country with one of the most dynamic historical events in the twentieth century, with almost irreconcilable contradictions, which it is still trying to overcome. In 1991, the Communist party of the Union of Soviet Socialist Republics (hereafter USSR) was dissolved, Gorbachev stepped down, and the republics of the USSR split into independent States. The Russian Federation emerged, with Boris Yeltsin as a popularly elected president who looked to Europe as a future partner.¹⁵¹ After hot debates and political clashes the new constitution was adopted in 1993, strengthening the role of the president, claiming the UDHR as the founding document of the new Russia's constitution and bound the government to observe international conventions.¹⁵² The new Russian Constitution despite the controversial circumstances in which it was adopted, has stood the test of time; its democratic aspirations are beyond question.¹⁵³ During this time Russia showed commitment to sign the UN global treaties and openness toward the EU. Yeltsin government applied to the CoE in 1992 during its "honeymoon with the West" period when it contemplated joining not only CoE, but also, North Atlantic Treaty Organisation (hereafter NATO), and potentially even the EU.¹⁵⁴ Russia joined the CoE in 1996 and with its admission, Russia committed itself to

¹⁵¹ Mary McAuley, *Human Right in Russia: Citizens and the State from the Perestroika to Putin* (I.B. Tauris, London 2015) 9

¹⁵² *Ibid.*

¹⁵³ Bill Bowring 'Russia and Human Rights: Incompatible Opposites?' (2009) 1 GJIL 2, 34

¹⁵⁴ Lauri Malksoo (ed), *Russian and European Human-Rights Law: The Rise of the Civilizational Argument* (Brill Nijhoff, The Netherlands 2014) 56

the ratification of ECHR¹⁵⁵ which they acceded to it in 1998. After joining the ECHR for the first time in its history Russia had allowed an international court, that is, the ECtHR to exercise its authority over the internal Russia matters. In this sense, Russia's membership in the CoE represents its deepest and most visible commitment to the European system of human rights protection.¹⁵⁶ Due to the CoE regime, Russia has *de facto* (although not *de jure*) abolished the death penalty and a growing body of European human rights case law has become part of the Russian legislative framework.¹⁵⁷

However, despite the Russian commitment on paper to respect and protect its citizen's human rights the commitment to human rights was not realised in practice. First, Chechen War¹⁵⁸ broke out from 1994 to 1997, which ended with the Russian Federation's defeat and the Chechens' *de facto* independence for two years and the second Chechen War¹⁵⁹ started in 1999 when Russia was led by the newly appointed Prime Minister, Vladimir Putin.¹⁶⁰ Chechnya represents one of the biggest human rights catastrophes of the post-world war era,¹⁶¹ which bought a series of judgements against Russia in the ECtHR. These terrible events gave the first indication that the 'experiment' of human rights in Russian will not easily succeed.

At first, with the arrival of Putin to power, an era of hope started for civil society. Unfortunately, the enthusiasm rapidly faded due to the events that followed. Putin bought into the Russian's political elite individuals with strong ex-security service

¹⁵⁵ See further: Bill Bowring, 'Russia's Accession to the Council of Europe and Human Rights: Compliance or Cross-Purposes?', (1997) 6 EHRLR 629

¹⁵⁶ Bill Bowring 'Russia and Human Rights: Incompatible Opposites?' (2009) 1 GJIL 2, 56

¹⁵⁷ *Ibid.*

¹⁵⁸ The Russian Federation's Republic of Chechnya in the northern Caucasus declared itself independent from the Russian Federation in 1991. The situation was unstable until 1994 when war broke out. Russian troops entered Chechnya in December 1994, in order to prevent Chechnya's effort to secede from the Russian Federation, and after almost 2 years of fighting, a peace agreement was reached. As part of that agreement, resolution of Chechnya's call for independence was postponed for up to 5 years.

¹⁵⁹ When the Russian incursion into Chechnya began in October 1999, Russia said its objectives were limited to subduing bandits hiding in Chechnya's mountains. However, over time it became apparent that in this second phase of the Chechen war Russia was evidently intent on reversing the humiliating defeat it suffered in Chechnya 3 years prior. The Russian authorities presented the war in Chechnya as a crusade against terrorism and an ultimate attempt to avoid the secession of Chechnya from the Russian Federation

¹⁶⁰ See further: Richard Sakwa (ed), *Chechnya: From Past to Future* (Anthem Press, London 2005)

¹⁶¹ Emma Gilligan, *Terror in Chechnya, Russia and the Tragedy of Civilians in War* (Princeton University Press, New Jersey 2010) 1

elements which took control of key structures (regional, government, security services, the judiciary and popular media) and economic assets.¹⁶² There is no real opposition in the country which has produced an ‘electoral authoritarianism’ without any ruling ideology apart from that of remaining in control, advancing their own material interests, and maintaining Russia’s status in the world.¹⁶³ The number of CSOs during the period of the shift from Yeltsin to Putin had grown significantly representing a substantial role in the lives of Russian people.¹⁶⁴ When Putin first came into power he first showed the willingness to sit and listen to the voices of CSOs.¹⁶⁵

However, what followed was not that simple, the beginning of electoral authoritarianism, removing of the real opposition from the political scene and the control of mass media revealed that the direction of the wind was changing. It all started to change in late 2011 and early 2012. The citizen's movement in Russia at that time was born in response to the blatant falsification of the results of the 2011 Duma elections.¹⁶⁶ The movement was massive, up to a hundred thousand people took to the streets in Moscow to protest, and tens of thousands turned out across the country. According to polls, millions more believed that the balloting had been rigged: Almost 4 in 10 respondents in a March 2012 national survey agreed with the protesters’ claim that the 2011 Duma election was either “likely” (27 percent) or “definitely” (10 percent) dishonest. Roughly the same share, 35 percent, expected the upcoming presidential election to be “dirty”.¹⁶⁷ The movement wanted the nullification of the elections and the scheduling of other fair and transparent elections. But those movements set Kremlin into the motion to adopt new strategies to deal with protesters. As a former KGB agent, it is in Putin’s nature to want to have things under control and at the same time he was afraid of a similar scenario as the ‘colour revolution’ that took place in neighbouring

¹⁶² Mary McAuley, *Human Right in Russia: Citizens and the State from the Perestroika to Putin* (I.B. Tauris, London 2015) 10

¹⁶³ See further: Vladimir Gelman, ‘Political Opposition in Russia: A dying Species?’ (2013) 21 P-SA 3, 226-246

¹⁶⁴ *Ibid*, 135

¹⁶⁵ Bill Bowring ‘Russia and Human Rights: Incompatible Opposites?’ (2009) 1 GJIL 2, 46

¹⁶⁶ Leon Aron, ‘Putin versus Civil Society: The Long Struggle for Freedom’ (2013) 24 JD 3, 70

¹⁶⁷ *Ibid*.

countries.¹⁶⁸ Colour revolutions are symbolically named referring to the series of peaceful uprisings in the former Soviet Union. In Georgia ("Rose," 2003), Ukraine ("Orange," 2004), and Kyrgyzstan ("Tulip," 2005), were popular uprisings against leaders of the time.¹⁶⁹ The revolutions brought to power a new political elite who pledged to transform post-Soviet dens of corruption into modern States.¹⁷⁰ However, despite the victory of coloured revolution to replace the ruling elite no significant changes were encountered in the aftermath of the change because promises of far-reaching change never really materialized and rule of law never took root.¹⁷¹ What followed was an unprecedented campaign of reprisal against civil society movements. The NGO law¹⁷² amended in 2012 and "anti-extremist" law¹⁷³ adopted in 2014 (the latter is officially aimed at fighting terrorism) feature deliberately ambiguous wording that allow authorities to clamp down on any civil activity.¹⁷⁴ A new anti-terror law was passed in June 2016 which seriously threatens the rights and security of HRDs. This new law establishes strict internet monitoring rules and obliges telephone and internet providers to store records of all communications of users, as well as help intelligence agencies to decode encrypted messages.¹⁷⁵ Putin's idea of containment of the power has had the parliament also to adopt laws that stripped Russian CSOs of financial aid from outside the country and restricted freedom of association and assembly. I will continue the discussion on the measures taken against CSOs and HRDs in the following chapter. A characteristic of Russia's civil uprising of 2012 after the presidential elections, discussed in chapter four, was that they were peaceful, HRDs consciously avoided

¹⁶⁸ Lilia Shevtsova, 'The Authoritarian Resurgence: Forward to the Past in Russia' (2015) 26 JD 2, 23

¹⁶⁹ Lucan Way, 'The Real Causes of the Color Revolution' (2008) 19 JD 3, 55-69

¹⁷⁰ *Ibid.*

¹⁷¹ Melinda Haring, Michael Cecire, 'Why the Color Revolutions Failed' Foreign Policy (18 March 2013) Available at: < <http://foreignpolicy.com/2013/03/18/why-the-color-revolutions-failed/>> accessed 29 June 2016

¹⁷² Federal Law No. 121-FZ "On Introducing Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Non-commercial Organizations, Performing the Functions of Foreign Agents," July 20, 2012

¹⁷³ Federal Law of August 7, 2001 No. 115-FZ on Counteracting Legalization (money laundering) of Incomes Received by Criminal Means and of Financing Terrorism amended by Federal Law of May 5, 2014 No.110-FZ.

¹⁷⁴ *Ibid.*, 30

¹⁷⁵ See further: Photograph: Alec Luhn, 'Russia passes 'Big Brother' anti-terror laws' The Guardian (26 June 2016) Available at: < <https://www.theguardian.com/world/2016/jun/26/russia-passes-big-brother-anti-terror-laws>> accessed 30 June 2016

violence and violent means in order to avoid the multiplying of the evil.¹⁷⁶ HRDs are characterised by strong moral foundations, rooted in the quest for dignity in democratic citizenship avoiding the ideological dogmas.¹⁷⁷

Another worrying trend shows the Russia's non-compliance with ECtHR jurisprudence. The complaints of its citizens in ECtHR amount to almost one-third of all complaints brought before the court out of 47 member countries and hundreds of human rights violations are found each year.¹⁷⁸ Putin himself and the Russian political elite in some high-profile cases have criticised the 'polarization' and anti-Russian bias of the ECtHR.¹⁷⁹ Moreover, Russia's tensions with the ECtHR have given rise to the 'civilisation argument'¹⁸⁰ which contends that Russia is a different civilisation and that should be taken into consideration when the ECtHR deals with its cases and it should apply a wide "margin of appreciation" as discussed in chapter two. Russian officials insist that if Russia's historical, cultural and social situations were to be further ignored in the European system of human rights protection, Russia may be forced in the future, to bypass the judgements of the ECtHR.¹⁸¹ This is a worrying situation taking in consideration that the Russian domestic judicial system has problems with corruption and the political influence.¹⁸²

3.2. An Overview of Hungary's Historical, Legal, Political Background related to the Issue of Civil Society Restriction

Hungary was ruled by a communist regime under the influence of the Soviet Union which, with the passing of the years, became more and more liberal until it ended

¹⁷⁶ Leon Aron, 'Putin versus Civil Society: The Long Struggle for Freedom' (2013) 24 JD 3, 63

¹⁷⁷ *Ibid.*

¹⁷⁸ Lauri Malksoo (ed), *Russian and European Human-Rights Law: The Rise of the Civilizational Argument* (Brill Nijhoff, The Netherlands 2014) 2

¹⁷⁹ Bill Bowring 'Russia and Human Rights: Incompatible Opposites?' (2009) 1 GJIL 2, 51

¹⁸⁰ See further: Lauri Malksoo (ed), *Russian and European Human-Rights Law: The Rise of the Civilizational Argument* (Brill Nijhoff, The Netherlands 2014)

¹⁸¹ Lauri Malksoo (ed), *Russian and European Human-Rights Law: The Rise of the Civilizational Argument* (Brill Nijhoff, The Netherlands 2014) 5

¹⁸² Council of Europe, Commissioner for Human Rights, 'As long as the judicial system of the Russian Federation does not become more independent, doubts about its effectiveness remain' (25 February 2016) Available at: < <http://www.coe.int/en/web/commissioner/-/as-long-as-the-judicial-system-of-the-russian-federation-does-not-become-more-independent-doubts-about-its-effectiveness-remain?inheritRedirect=true>> accessed 30 June 2016

in 1989. Due to its liberal communist regime compared to the other communist countries of Central Eastern Europe (hereafter CEE), Hungary was described as the “happiest barracks in the camp”.¹⁸³ After the collapse of the communist regime, Hungary successfully managed a “return to Europe” by establishing democracy and rule of law in the country. It became a parliamentary democracy in 1989 and the new political settlement was the result partly of the elite roundtable negotiations and partly of the political competition between emerging new political parties after 1989.¹⁸⁴ Hungary became member of CoE in 1990 then ratified the ECHR in 1992, following the democratic reforms it joined NATO in 1999, and became a member of the EU in 2004,¹⁸⁵ in the case of the latter two organisations, the intention to join was confirmed by a referendum.¹⁸⁶ Thus a fully-functional democracy was established characterised by the rule of law, free functioning of civil society and pluralism in intellectual life.¹⁸⁷ But over the past years starting from 2010, the country has made a risky shift toward a regime with authoritarian characteristics. Janos Kornai describes this shift as "Hungary's U-turn from democracy",¹⁸⁸ whereas other writers call it a “slide back into authoritarianism”.¹⁸⁹

How did Hungary come to this point? At first, Hungary witnessed the gradual emergence of a two-party system and an increasing polarisation and hostility between the two main parties. In the 2002 and 2006 elections there was a concentration of support for the main political parties, the Hungarian Socialist Party (MSZP) and Hungarian Civic Alliance with the Christian Democratic People’s Party (hereafter

¹⁸³ Béla Greskovits Jason Wittenberg, ‘Civil Society and Democratic Consolidation in Hungary in the 1990s and 2000s’ (2016) <<https://ces.confex.com/ces/2013/webprogram/Paper3303.html>>

¹⁸⁴ Terry Cox, Sandor Gallai, ‘Civil Society Policy and Actions in Post-communist Hungary: Linkages and Contexts’ (2014) 15 PEPS 1, 57

¹⁸⁵ Hungary signed the treaty to join the European Union on April 16, 2003 and became a member on 1 May 2004 <<http://eurlex.europa.eu/legalcontent/EN/TXT/PDF/?uri=OJ:L:2003:236:FULL&from=EN>>

¹⁸⁶ The referendum on accession to NATO was held on November 16, 1997 in Hungary, and 85.33% of the valid votes supported the accession (National Election Office 1997). The referendum on the EU accession was held on April 12, 2003, and 83.76% of the participants voted in favour (Hungarian Government 2011).

¹⁸⁷ Janos Kornai, ‘Hungary’s U-Turn: Retreating from Democracy’ (2015) 26 JD 3, 34

¹⁸⁸ *Ibid*, 34-48

¹⁸⁹ Jan Werner Müller, ‘The Hungarian Tragedy’ *Dissent*, Spring 2011, 5; Bojan Bugarič, ‘Protecting Democracy and the Rule of Law in the European Union: The Hungarian Challenge’ (2014) LSE Discussion Paper Series No. 79/2014

FIDESZ) were each able to obtain more than 40% of the votes.¹⁹⁰ These trends created an increasingly restrictive environment in which policy actors outside government could seek to influence policy. In the 2010 elections, the coalition formed by FIDESZ led by Viktor Orbán won a landslide victory obtaining a two-thirds majority of the seats in the parliament.¹⁹¹ Viktor Orbán defines himself as a Christian conservative and his party as a nationalistic, right-wing conservative party.¹⁹² After those elections, the country's real turn from democracy started. Orbán interpreted his electoral victory as a “revolution”, the two-thirds majority in the parliament gave his government the ability to deploy offensive legislation tactics by pushing legislation through parliament that quickly and systematically rebuilt the entire public legal system.¹⁹³ Parliament, in the cycle between 2010 and 2014 altogether passed 859 different laws, nearly twice as many as the laws passed during the term of office of the first Orbán government.¹⁹⁴ The laws adopted in such acceleration contained so many provisions serving the immediate political purposes of the people in power. Moreover, the new laws were not properly consulted upon with groups of interest nor were they open enough for public debate. According to Hungarian law, draft laws must be made available to the public and put to debate and discussion with the broader community, with the exception of specific laws.¹⁹⁵ The consultation types can be either “general” meaning that anyone can contribute opinions or thoughts on the government’s website, or “direct” meaning that only specific interest groups, presumably to be affected by the law under consideration, will be invited to contribute their opinions.¹⁹⁶ A study of Corruption Research Center Budapest found that only 22 document packages included a summary of the public consultation for a total of 8.5% of all packages.¹⁹⁷

¹⁹⁰ Terry Cox, Sandor Gallai, ‘Civil Society Policy and Actions in Post-communist Hungary: Linkages and Contexts’ (2014) 15 PEPS 1, 57

¹⁹¹ CNN, ‘Center-right Fidesz party sweeps to victory in Hungary’ (26 April 2010) < <http://edition.cnn.com/2010/WORLD/europe/04/26/hungary.election.results/> > accessed 22 June 2016

¹⁹² Paul Lendvai, *Hungary: Between Democracy and Authoritarianism* (Keith Chester tr, C. Hurst & Co Publishers 2012) 14

¹⁹³ Andras Bozoki, ‘Occupy the State: The Orbán Regime in Hungary’ (2011) 19 JCEE 3, 659

¹⁹⁴ Janos Kornai, ‘Hungary’s U-Turn: Retreating from Democracy’ (2015) 26 JD 3, 24

¹⁹⁵ Report of Corruption Research Center Budapest, ‘The Quality of Hungarian Legislation 2013-2014’, (2015) 17 Available at: < http://ec.europa.eu/hungary/about-us/growth-and-jobs/legislation_eu_2014_report_150216_2100.pdf > accessed 2 August 2016

¹⁹⁶ *Ibid*

¹⁹⁷ *Ibid*, 18

Under these laws, the essential elements of democracy including the, media, CSOs, and most importantly the judiciary were attacked.¹⁹⁸ This issue will be discussed in details in the following chapter. The economy sector is confronted with the nationalisation of different sectors involved in service providing.¹⁹⁹ In the judiciary, the reforms were pursued in such a way that would create the opportunity for the ruling party to place people loyal to them on the bench. At first, FIDESZ amended the law for nominating constitutional judges from three-fifths to two-thirds to use its majority to nominate their candidates, then the number of constitutional court judges was increased from eleven to fifteen to fill the four new positions with their own candidates.²⁰⁰ Also, the retirement age for judges was conspicuously reduced from age 70 to 62, below the average age limits, with the result that the older generation was forced to retire. However, this law was turned down by European Court of Justice as incompatible with EU law.²⁰¹ Also the office of the President of the Hungarian Supreme Court was prematurely terminated after he openly criticized the way that the new constitution was being adopted.²⁰²

One of the fundamental reforms that Orbán's government undertook was the change of the constitution, a highly controversial project due to the manner in which it was carried out and the outcome that the new constitution brought. This sort of “*constitutional coup d'état*” due to the grave irregularities in the adoption process, produced in 2011 the Fundamental Law promulgated as the new Hungarian constitution.²⁰³ Armed with a qualified majority in parliament, Orbán granted only two months for parliament and civil society to discuss on the issue. The opposition parties were not included in the parliamentary debate.²⁰⁴ Under the label “society-wide debate”, FIDESZ also circulated a survey calling it a “national consultation” which was not

¹⁹⁸ Matej Avbelj, 'Transformation in the Eye of the Beholder' in Michal Bobek (ed), *Central European Judges Under the European Influence: The Transformative Power of the EU Revised* (Hart Publishing, UK 2015)

¹⁹⁹ See further: Janos Kornai, 'Hungary's U-Turn: Retreating from Democracy' (2015) 26 JD 3, 34-48

²⁰⁰ Bojan Bugarič, 'Protecting Democracy and the Rule of Law in the European Union: The Hungarian Challenge' (2014) LSE Discussion Paper Series No. 79/2014, 9

²⁰¹ *Commission v. Hungary*, Case C-286/12 (ECJ, 6 November 2012)

²⁰² *Baka v. Hungary* App no 20261/12 (ECHR, 23 June 2016) In this recent case the court found that the applicant's freedom of speech was violated and his premature office termination was in violation to the convention.

²⁰³ Kriszta Kovács, Gabor Attila Tóth, 'Hungary's Constitutional Transformation (2011) 7 ECLR 2, 197

²⁰⁴ Andras Bozoki, 'Occupy the State: The Orbán Regime in Hungary' (2011) 19 JCEE 3, 659

accurate speaking professionally, however, only a fraction of voters responded to the survey.²⁰⁵ Due to the fact that only a fraction of the population responded it can not be considered to replace wide consultation with the civil society necessary in the adoption of the constitution. Therefore, the approved constitution was the result of a unilateral governmental process, which did not reflect national wide consensus. The way in which the new constitution was constructed does not value, and creates problems for, individual rights. Without going into details, it includes weakening of the constitutional court, the independence of the judiciary, the role of ombudsman and weakens the respect for freedoms such as freedom of expression and freedom of religion.²⁰⁶

The major problem of the new Hungarian constitution is that it vests so much power in the centralized executive that no real checks and balances exist to restrain this power,²⁰⁷ consequently leading to a Putin-style democracy.²⁰⁸ EU Commission expressed serious concerns over the compatibility of the Hungarian Fundamental Law with EU legislation and with the principles of the rule of law²⁰⁹ and the European Parliament's Tavares report adopted in 2013 harshly criticises the state of fundamental rights in Hungary.²¹⁰ In this way, Orbán from 2010 to 2013, managed to transform Hungary from one of the success stories of the transition from socialism to democracy to a semi-authoritarian regime based on an illiberal constitutional order, systematically dismantling checks and balances and thereby undermining the rule of law.²¹¹

²⁰⁵ Andras Bozoki , 'Occupy the State: The Orbán Regime in Hungary' (2011) 19 JCEE 3, 659

²⁰⁶ See further: Norwegian Helsinki Committee, 'Hungary must provide space for civil society'(2016) NHG Paper Policy No. 1-2016

²⁰⁷ Miklós Bánkúti et al, 'From Separation of Powers to a Government Without Checks: Hungary's Old and New Constitution' in Gábor Attila Tóth (ed), *Constitution for a Disunited Nation: On Hungary's 2011 Fundamental Law* (CEU Press, Hungary 2012) 268

²⁰⁸ Jan Werner Müller, 'The Hungarian Tragedy' Dissent, Spring 2011, 5

²⁰⁹ EU Commission, Press release, IP/13/327. 12.4.2013 (2013) The European Commission reiterates its serious concerns over the Fourth Amendment to the Constitution of Hungary, available at <http://europa.eu/rapid/press-release_IP-13-327_en.htm>

²¹⁰ The Report is named after Rui Tavares, the Portuguese Green MEP, who was the rapporteur. EU Parliament, Report on the situation of fundamental rights: standards and practices in Hungary (pursuant to the European Parliament resolution of 16 February 2012) (2012/2130(INI)) Committee on Civil Liberties, Justice and Home Affairs

²¹¹ Jan Werner Müller, 'The Hungarian Tragedy' Dissent, Spring 2011, 5

3.3. Russian-Hungarian Interplay in the Civil Society Restriction

As I noted earlier, the present Hungarian and Russian forms of government share several features, in this respect, both regimes manifest characteristics of an authoritarian State. As Russia claims to be a different civilisation parallel to Europe and tries to maintain a different approach toward the system of human right protection, the same argument is being raised in Hungary. Orbán's policies are based on two pillars "national unification", and the "central arena of power".²¹² First, the idea of national unification is reflected in the new Hungarian constitution which emphasises the role of religion, traditions and so-called national values. The constitution stresses the role of Christianity in gluing the nation together, which is debatable in a largely secular country; it does not respect the belief system of other religions.²¹³ It is argued that religious institutions should not have constitutionally privileged prerogatives that allow them to mandate public policy to democratically elected governments.²¹⁴ Many make the normative argument that separation State form religion is desirable and even essential to democracy.²¹⁵ National values namely "work, home, family, health, and order" are terms used in the name of "national evolution" as Orbán likes to call it, embedded in the long preamble of the new constitution named "National Creed".²¹⁶ Second, the central arena of power reflects the populist and ethno-nationalistic rhetoric tendencies of the Orbán's government.²¹⁷ He uses the populist rhetoric to justify the government's policies which so far demonstrates to have worked very well as a tactic due to the large support that his party enjoys in general public. Ethno-nationalistic rhetoric reflects the use nationality, culture and Hungarian traditions as was referred in the new adopted constitution. According to Orbán, a democratic State does not necessarily have to be liberal, the prevalence of liberal values in society leads to the strong dominating the weak, therefore, powerful institutions are required to safeguard

²¹² Andras Bozoki , 'Occupy the State: The Orbán Regime in Hungary' (2011) 19 JCEE 3, 649

²¹³ *Ibid*, 660

²¹⁴ Alfred Stepan, 'Religion, Democracy, and the 'Twin Tolerations''. (2000) 11 JD 4, 37-56

²¹⁵ John Rawls, *Political Liberalism* (Columbia University Press, New York 1993)

²¹⁶ Jan Werner Müller, 'The Hungarian Tragedy' *Dissent*, Spring 2011, 6

²¹⁷ Andras Bozoki, 'The Illusion of Inclusion: Configurations of Populism in Hungary' (2012) EIU Working Papers

individuals.²¹⁸ Hungarian authorities have orchestrated a crackdown on human rights groups unprecedented since the end of the communist era, endorsing Russia's methods which will be discussed deeper in chapter four. Prime Minister Orbán has repeated Putin strategy of monitoring foreign-funded civil society organisations, described them as "agents of foreign powers". In a public speech, Orbán accused foreign-funded activists of being political activists committed to the promotion of foreign interests.²¹⁹ Beyond the ideological interplay of Russia and Hungary, their warm relations are best explained referring to economic and politico-strategical interests of each countries which definitely have influence in policies that States follow. For example, in January 2014, the Hungarian and Russian governments reached an agreement over the expansion of the largest Hungarian nuclear power station.²²⁰ A nuclear power plant largely financed, built and supplied by Russian State companies. The concerned in this matter is not the nuclear project itself but is the way in which the decision was made. It was not preceded by public debate among experts, the government's plans were pushed through the parliamentary law factory without the least publicity.²²¹ Russia is Hungary's biggest trading partner outside the EU, and about 80 percent of Hungary's natural gas flows from Russia.²²² After the Crimea crisis of 2014 when Russia incorporated the Crimea into its territory contrary to international law²²³ Orbán is vacillating between a desire for closer ties with Russia and his obligations as a member of the EU and NATO. Even though he decided to support the EU sanction plans against Russian he declared that by restricting the trade with Moscow the EU had "shot itself in the foot".²²⁴ During Putin's visit to Hungary in 2015, he was welcomed by mass protesters carrying banners

²¹⁸ Norwegian Helsinki Committee, 'Hungary must provide space for civil society' (2016) NHG Paper Policy No. 1-2016

²¹⁹ The full text of Viktor Orbán's speech can be found here: <<http://budapestbeacon.com/public-policy/full-text-ofviktor-orbans-speech-at-baile-tusnad-tusnadfurdo-of-26-july-2014/10592>>

²²⁰ The Economist, 'The Viktor and Vladimir show' (14 February 2015) <<http://www.economist.com/news/europe/21643194-germany-and-other-european-countries-worry-about-hungarys-ties-russia-viktor-and-vladimir>> accessed 22 June 2016

²²¹ Janos Kornai, 'Hungary's U-Turn: Retreating from Democracy' (2015) 26 JD 3, 44

²²² The Economist, 'The Viktor and Vladimir show' (14 February 2015) <<http://www.economist.com/news/europe/21643194-germany-and-other-european-countries-worry-about-hungarys-ties-russia-viktor-and-vladimir>> accessed 22 June 2016

²²³ See further: Christian Marxsen, 'The Crimea Crisis – An International Law Perspective' (2014) 74 HJIL 2, 367-391

²²⁴ BBC, Hungarians protest as Putin meets Orban (17 February 2015) <<http://www.bbc.co.uk/news/world-europe-31499654>> accessed 22 June 2016

saying "Putin No! Europe Yes!".²²⁵ Furthermore, Hungary's State-run and pro-government media that are often deeply critical of political opponents and foreign powers, including the United States have adopted a moderate tone toward Russia.²²⁶

3.4. Conclusion

CSOs and HRDs space restriction in Russia and Hungary occurred as a revival of Coloured Revolution and in the wake of Arab Spring. As discussed in this chapter both Russia and Hungary emerged from communism. The fall of communism CEE started a new era of ruling that most of the scholars would wrongly predict its outcome. Francis Fukuyama in an inspiring formulation would refer to those events as "The End of History".²²⁷ Fukuyama argued that the advent of Western liberal democracy may signal the endpoint of humanity's sociocultural evolution and the final form of human government. However, the democratisation of the CEE was not as fast as it was expected and many problems were encountered after the fall of communism. The Russian situation and the Hungarian sliding to autocracy demonstrate that the experiment of democracy is not effortless.

The latest overturn in the field of human rights that followed after 2010 creates serious concerns. The attack in CSOs and HRDs, the control of the media, freedom of assembly and association have created a hostile environment for HRDs. The beginning to slide in autocracy triggered the response of civil society as were the massive movements in Moscow and Budapest. Therefore, the governments responded adopting a number of laws that restrict the space of CSOs and HRDs. The following chapter will discuss further the laws and measures adopted that are shrinking space of CSO and HRDs.

²²⁵ BBC, Hungarians protest as Putin meets Orban (17 February 2015)

<<http://www.bbc.co.uk/news/world-europe-31499654>> accessed 22 June 2016

²²⁶ Anthony Faiola, 'From Russia with love: An energy deal for Hungary' (*Washington Post*, 16 February 2015) <https://www.washingtonpost.com/world/europe/from-russia-with-love-an-energy-deal-for-hungary/2015/02/16/05216670-b134-11e4-bf39-5560f3918d4b_story.html> accessed 22 June 2016

²²⁷ Francis Fukuyama, 'The End of History' (1989) *The National Interest*

4. The CSOs Space Restriction and the Clampdown of HRDs

Both in Russia and Hungary in the recent years we have witnessed an orchestrated crackdown of COSs unprecedented since the end of the communist era. Both countries are using legal and non-legal means to put undue pressure on human rights groups and prevent HRDs from fulfilling their work properly. Hungary's Prime Minister Orbán has repeated the Putin's inspired idea of monitoring foreign-funded civil society organisations, described by State authorities as "agents of foreign powers". Other laws have been enacted which interfere with the individual's freedom of speech, association and assembly. Constantly, in the recent year's key international stakeholders as EU, European Parliament, CoE and UN have shared their concerns about the shrinking space for civil society particularly in Russia and Hungary.²²⁸ In this chapter, I will examine the situation of CSOs and HRDs by discussing the actions taken against them by both countries. I will particularly focus on the recent deterioration of the working space of NGOs and HRDs due to the changes made in legislation.

4.1. CSOs and HRDs Situation in Russia, the Roots of Repression

The results of the December 2011 Parliamentary elections and Vladimir Putin's return to the Kremlin in May 2012 sparked some of the largest protests for 20 years in the capital, Moscow, and other parts of the country.²²⁹ The wave of protests was met with a consistently repressive response. During Moscow's Bolotnaya square protest²³⁰ on 6 May 2012 several dozen protesters were arrested and some detained for more than

²²⁸ Council of Europe, 'How to Prevent Inappropriate Restrictions on NGO Activities in Europe?' (Committee on Legal Affairs and Human Rights Report, Doc. 13940, 8 January 2016, Luxembourg); European Economic and Social Committee, Opinion: Civil Society in Russia (Rex 400, 10 December 2014, Brussels); UNHRC Res 27 Civil Society Space (23 September 2014) UN Doc A/HRC/27/L.24; UNHRC Res 15/21 The rights to freedom of peaceful assembly and of association (6 October 2010) UN Doc A/HRC/RES/15/21

²²⁹ Amnesty International Report, Freedom Under Threat: Clampdown on Freedom of Expression, Assembly and Association in Russia (2013) 7 Available at: < <http://www.amnestyusa.org/research/reports/freedom-under-threat-the-clampdown-against-freedoms-of-expression-assembly-and-association-in-russia>> accessed 24 June 2016

²³⁰ During the Moscow's Bolotnaya square protest thousands of Russians took to the streets in Moscow on Saturday shouting "Putin is a thief" and "Russia without Putin," forcing the Kremlin to confront a level of public discontent that has not been seen here since Putin first became president 12 years ago. See further: Ellen Barry, 'Rally Defying Putin's Party Draws Tens of Thousands' New York Times (10 December 2011) Available at: < <http://www.nytimes.com/2011/12/11/world/europe/thousands-protest-in-moscow-russia-in-defiance-of-putin.html>> accessed 24 June 2016

one year charged with "organising mass riots" and using violence against the police.²³¹ The regulation of the freedom of assembly had been already restrictive and frequently applied repressively, before the Putin-Medvedev reshuffle. Since then, the situation has deteriorated remarkably. A stream of repressive laws has been passed, and the authorities have acquired very broad powers to restrict core freedoms. These include a law that limits public assemblies and raises relevant financial sanctions to the level of criminal fines, a law that recriminalizes libel and a law that expand the notion of "treason" to allow for the penalising of international human rights advocacy.²³² The failure to obtain an authorization renders any public gathering illegal. Huge fines have been imposed for participation in "unsanctioned" rallies, freedom of speech is constantly under strict supervision, religious freedoms are under threat and the ban on the propaganda of "non-traditional sexual relations" to minors has generated stigmatisation, increased discrimination and homophobic violence.²³³ A number of opposition figures faced criminal and administrative charges in cases that were widely viewed as politically motivated.²³⁴ The Russian-Ukrainian conflict and the annexation of Crimea worsened the situation even more.²³⁵ Following, I will elaborate the legal methods adopted since the start of this assault against civil society in late 2011 and the effect they have had in the shrinking space of CSOs and pushing HRDs to the margin of the law.

4.1.1. Freedom of Association and the Law on "Foreign Agent"

Governments follow various ways and use different methods to limit the space of CSOs. Those methods limit the freedom of civil society groups to engage in political

²³¹ European Economic and Social Committee, Opinion: Civil Society in Russia (Rex 400, 10 December 2014, Brussels) 7

²³² Lilia Shevtsova, 'The Authoritarian Resurgence: Forward to the Past in Russia' (2015) 26 JD 2, 30

²³³ See Further: Human Rights Watch Report, Laws of Attrition: Crackdown on Russia's Civil Society after Putin's Return to the Presidency (2013)

²³⁴ Politically motivated persecution of activists and the harsh treatment of the ruling establishment's opponents and critics is ongoing. It is worth noting that several political prisoners were given amnesty and released before the Olympics in Sochi in 2014 (including Mikhail Khodorkovsky and members of the punk group "Pussy Riot" See further: The 2013 Foreign & Commonwealth Office Report, Human Rights and Democracy (United Kingdom, June 2014) Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/322714/40913_Cm_8870_print_ready_v2.pdf accessed 24 June 2016

²³⁵ See further: Amanda Paul, 'Crimea one year after Russian annexation' (2015) Policy Brief of European Policy Center

advocacy and prevent them from accessing particular funding sources so essential for their survival. The coloured revolutions in Georgia, Ukraine and the Arab Spring demonstrated that popular uprisings are able to bring real change in a society. Russian leaders perceived those uprisings to have been driven by foreign-funded NGOs and expressed profound suspicion that foreign or foreign-funded organisations in Russia aimed to undermine the country's sovereignty.²³⁶ Those concerns pushed President Putin on July 2012 to sign the law on "foreign agents".²³⁷ This legislation made amendments to certain legislative acts of the Russian Federation regarding the regulation of the activities of non-commercial organisations. The law imposes an obligation for NGOs receiving overseas funding and involved in "political activities" to register as "foreign agent".²³⁸ The Russian authorities further expanded the existing extremely intrusive State control over NGOs that receive foreign funding as well as representative branches of foreign organisations operating in Russia.²³⁹ This law has become one of the central pieces of the crackdown on civil society in Russia and marked the start of a campaign to marginalise Russian NGOs. The law itself comprises such vague and broad terms that almost all the operating NGOs in Russia are obliged to register as a foreign agent. It stipulates that an NGO is considered to be engaging in "political activity" if it participates in the organisation and implementation of political activities intended to influence the State decision-making by State bodies intended to change State policy pursued by them, as well as in the shaping of public opinion for the aforementioned purposes.²⁴⁰ Such activities are considered political regardless of whether an organisation is conducting them in the interest of the foreign entity that is funding them.²⁴¹ The law covers funding received from a wide range of sources, including "from foreign States, international and foreign organizations, foreign persons, stateless persons

²³⁶ Human Rights Watch Report, *Laws of Attrition: Crackdown on Russia's Civil Society after Putin's Return to the Presidency* (2013) 10

²³⁷ Council of Europe, 'How to Prevent Inappropriate Restrictions on NGO Activities in Europe?' (Committee on Legal Affairs and Human Rights Report, Doc. 13940, (8 January 2016) 9

²³⁸ Federal Law No. 7-FZ of January 12, 1996 on Non-Commercial Organizations (With amendments) Article 2/6, Available at

<<http://www.icnl.org/research/library/files/Russia/RussiaNCOEng.pdf>> accessed 27 June 2016

²³⁹ Human Rights Watch Report, *Laws of Attrition: Crackdown on Russia's Civil Society after Putin's Return to the Presidency* (2013) 12

²⁴⁰ Federal Law no. 7-FZ, Article 2/6

²⁴¹ *Ibid.*

or from the persons authorized by them and/or from Russian legal entities receiving monetary assets and other property from the cited sources”.²⁴² The term “foreign agent” has historically a clear negative connotation and may be regarded as synonymous with “spy” or “traitor” and it is difficult to avoid the impression that by adopting this law, Russian authorities sought to discredit and demonise certain civil society groups that accept foreign funding.²⁴³ The law obliges NGOs that receive foreign funds to indicate the label of "foreign agent" on their websites and published materials.²⁴⁴ Furthermore, it also requires NGOs to submit quarterly information about the purpose of their expenditure and the use of other assets and twice a year a report of their activities which are rules that do not apply to NGOs that do not receive foreign funds. Failure to abide by this regulation is punishable by heavy administrative fines and criminal liability for the NGO leaderships.²⁴⁵

After the adoption of this law, the government launched an unprecedented nationwide campaign of inspections of hundreds of NGOs. The inspections are highly extensive, disruptive, and invasive, and seemed aimed at intimidating NGOs.²⁴⁶ Officials from the Russian tax agency and the general prosecutor’s office raided over two hundred NGOs, including the Moscow offices of Human Rights Watch, Amnesty International, and Transparency International.²⁴⁷ The inspections continue in a permanent manner to investigate if the NGOs were complying with the law. If the NGOs refuse to register as a foreign agent they are fined and the Russian authorities have the power under the law to register them as foreign agents without their consent. Since the entry into force of this law, Russian authorities have designated 134 human

²⁴² Federal Law no. 7-FZ, Article 2/6

²⁴³ Council of Europe, ‘How to Prevent Inappropriate Restrictions on NGO Activities in Europe?’ (Committee on Legal Affairs and Human Rights Report, Doc. 13940, (8 January 2016) 9

²⁴⁴ Federal law no. 7-FZ, Article 24/1

²⁴⁵ Human Rights Watch Report, *Laws of Attrition: Crackdown on Russia’s Civil Society after Putin’s Return to the Presidency* (2013) 25

²⁴⁶ Amnesty International Report, *Freedom Under Threat: Clampdown on Freedom of Expression, Assembly and Association in Russia* (2013) 31

²⁴⁷ Miriam Elder, ‘Russia Raids Human Rights Groups in Crackdown on ‘Foreign Agents’ *The Guardian* (27 March 2013) Available at:

<<http://www.theguardian.com/world/2013/mar/27/russia-raids-human-rights-crackdown>> accessed 27 June 2016

rights groups as "foreign agents" and at least 21 groups have been shouted down.²⁴⁸ The main aim of the law is to demonise and marginalise independent advocacy groups in the eyes of Russia's citizens as being servants and followers of the agenda of their donors. Russia's Constitutional Court on 2014 upheld the law, ruling that there were no legal or constitutional grounds for contending that the term "foreign agent" had negative connotations from the Soviet era, therefore, its use was "not intended to persecute or discredit" NGOs.²⁴⁹ However, the Venice Commission (European Commission for Democracy through Law) opinion, delivered in 2014 recommended that the term "foreign agent" be removed from the law due to the stigmatisation it caused and a reconsideration of the need for a special regime of registration and inspection in relation to NGOs receiving funding from foreign sources.²⁵⁰

Besides the law on "foreign agents", a new legislation was adopted in 2015 targeting the foreign and international NGOs declaring them as "undesirable organisations".²⁵¹ According to this law, a foreign or international NGO can be declared "undesirable" by the Prosecutor General or the Prosecutor General's deputies if they decide that the NGO is a threat to national security. Activities of "undesirable" organisations in Russia are prohibited, and all persons participating in such activities are subject to grave administrative and criminal penalties.²⁵² Both laws and measures taken have resulted in an unprecedented crackdown of CSOs working in Russia. Until today Russia's General Prosecutor Office has declared 12 organisations as undesirable: Which include United States Agency for International Development (USAID), National

²⁴⁸ For the complete list of the NGOs classified as foreign agent follow the link: < <https://www.hrw.org/russia-government-against-rights-groups-battle-chronicle>> accessed 27 June 2016

²⁴⁹ Battle Chronicle, Russia: Government against Rights Groups *HRW* (30 June 2016) Available at: < <https://www.hrw.org/russia-government-against-rights-groups-battle-chronicle>> accessed 27 June 2016

²⁵⁰ Venice Commission Opinion, CDL-AD(2014)025 No. 716-717/2013 (27 June 2014) Available at: < [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2014\)025-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)025-e) > accessed 27 June 2016
Also a complaint about the law on "foreign agents" has been filed by a group of organisations to the ECtHR, but ECtHR has not come with a decision yet.

²⁵¹ Federal Law No. 129-FZ; Council of Europe, 'How to Prevent Inappropriate Restrictions on NGO Activities in Europe?' (Committee on Legal Affairs and Human Rights Report, Doc. 13940, (8 January 2016) 13

Until today Russia's General Prosecutor Office has declared 3 organisations as undesirable: The United States Agency for International Development (USAID), National Endowment for Democracy (NED) and Open Society Foundation-Soros Foundation.

²⁵² International Center for Non-for-Profit Law, NGO Law Monitor: Russia (24 March 2016) Available at: < <http://www.icnl.org/research/monitor/russia.html> > accessed 27 June 2016

Endowment for Democracy (NED) and Open Society Foundation.²⁵³ This law poses major risks especially to foreign CSOs operating in Russia having major consequences regarding the right of freedom of association and questioning the future of this right in Russian Federation.

4.1.2. CSOs and HRDs Pushed Into the Ambit of the Laws

Strong concerns have been raised about the difficult environment in which CSOs and HRDs operate in Russia. Many HRDs are subject to harassment and violence. At particular risk are those who work on issues related to the conflict in the North Caucasus, elections, corruption, xenophobia, nationalism, and LGBT rights. To add more to this concern is the continuous deteriorating of the space in which CSOs and HRDs work.

Russian authorities have amended the Criminal Code regarding the treason statute with several significant revisions that can seriously impede CSOs and complicate the work of HRDs.²⁵⁴ The treason law expands the legal definition of treason in ways that could criminalise involvement in international human rights advocacy.²⁵⁵ The United Nations Committee Against Torture stated that the new law could affect persons providing information to the Committee on torture-related cases in Russia by prohibiting the sharing of information with the Committee or other United Nations human rights organs.²⁵⁶ Moreover, the definitions of the law are so vague that it allow officials to mark any inconvenient figure as a traitor. Under the treason, law peoples have been put under the surveillance of alleged to have helped the foreign States,

²⁵³ Russian Today, 'Upper house approves first list of 12 "undesirable" foreign groups' (8 July 2015) Available at: < <https://www.rt.com/politics/272389-russia-undesirable-groups-list/>> accessed 2 August 2016

²⁵⁴ Criminal Code of the Russian Federation, July 13, 1996 N 63-FZ; For a detailed analyse of the law see further: Chip Pitts, Anastasia Ovsyannikova, 'Russia's New Treason Statute, Anti-NGO and Other Repressive Laws: "Sovereign Democracy" or Renewed Autocracy?' (2014) 37 HJIL 1

²⁵⁵ Human Rights Watch, 'Russia: Worst Human Rights Climate in Post-Soviet Era Unprecedented Crackdown on Civil Society' (*HRW*, 24 April 2013) Available at: <<https://www.hrw.org/news/2013/04/24/russia-worst-human-rights-climate-post-soviet-era>> accessed 24 June 2016

²⁵⁶ United Nations Committee Against Torture, Concluding Observations on the fifth periodic report of the Russian Federation, adopted by the Committee Against Torture (11 December 2016) UN Doc CAT/C/RUS/CO/5, 6 Available at: <<http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.RUS.CO.5-.doc>> accessed 27 June 2016

threatening the Russian territorial integrity and inciting hatred.²⁵⁷ Another law similar to treason law concerning separatism implies criminal liability for any publication criticising or question the rationale of maintaining Russia's current borders, support of opinions regarding the separation of the Caucasus region, or even expressing doubts concerning annexation of Crimea by Russia.²⁵⁸

Another move that was taken by Russian authorities to increase their powers to silence the critics on corruption and power abuse is the re-criminalisation of defamation. Under the Medvedev, defamation was only an administrative punishment, however, when Putin came to power a law that re-criminalisation defamation was adopted.²⁵⁹ The criminal persecution of defamation is being used by public authorities to generate a chilling effect on freedom of expression, and silence the HRDs and NGOs that expose the violation of the human rights by State authorities.

As the last issue, I will discuss the media and freedom of speech deterioration. Freedom of information and media in Russia is under attack. Following the re-criminalisation of defamation, an array of new laws targeted at restricting the press and the internet were adopted in 2014. Several independent media outlets print, radio, online were closed down or forced to change their owner, staff and editorial policy.²⁶⁰ Recent events demonstrate that media is not only under the scrutiny of the law but also under the threat of being raided by police at any time.²⁶¹ Additionally, a law was adopted that limits the foreign ownership of media.²⁶² In 2012 Russian authorities created a web-monitoring mechanism run by Federal Security Service which can demand the removal

²⁵⁷ See further: Human Rights Watch Report, *Laws of Attrition: Crackdown on Russia's Civil Society after Putin's Return to the Presidency* (2013) 40-41

²⁵⁸ Galina Arapova, Svetlana Kuzevanova, 'Russia: Changes in the Sphere of Media and Internet Regulation' *Article 19* (2016) 10 Available at: < <https://www.article19.org/data/files/medialibrary/38337/Russia---LA-Internet-Regulation-English-Version.pdf> > accessed 26 June 2016

²⁵⁹ Radio Free Europe, 'Russian Duma Passes Controversial Defamation, NGO Bill' (2 July 2016) Available at: < <http://www.rferl.org/content/russia-duma-to-vote-on-controversial-bills/24643937.html> > accessed 28 June 2016

²⁶⁰ European Economic and Social Committee, *Opinion: Civil Society in Russia* (Rex 400, 10 December 2014, Brussels) 10

²⁶¹ The Moscow Times 'Police Search Office of St. Petersburg Novaya Gazeta Newspaper' (23 June 2016) Available at: < <http://www.themoscowtimes.com/news/article/police-search-office-of-st-petersburg-novaya-gazeta-newspaper/573308.html> > accessed 1 July 2016

²⁶² Lilia Shevtsova, 'The Authoritarian Resurgence: Forward to the Past in Russia' (2015) 26 *JD* 2, 30

of “harmful” information published without a court order.²⁶³ Even though the law has good purposes as to ban child pornography, narcotics-related content, and information that incites people to death²⁶⁴ its broad terms are open to being used to silence the websites critical to the government. Similarly, the law on Information and Information Technology changed in 2014 allowing websites to be blocked on the prosecutor general's request if they allegedly contain "extremist" content or call for mass riots or unsanctioned gatherings.²⁶⁵ The current situation indicates a wave of laws and restrictions in all the possible areas where CSOs and HRDs carry out their work. In such a restrictive environment the human rights are threatened and the human rights activism is demolished being attacked on its foundations.

4.2. CSOs and HRDs Situation in Hungary the Start of Assault

As discussed in chapter two the right to freedom of association, freedom of expression and the right of peaceful assembly, are guaranteed under numerous international and regional treaties binding on Hungary. Those freedoms and principles guarantee the CSOs and HRDs the rights to peacefully assemble, freedom of association and freedom of expression and any other rights that are in the functions of those rights as is right to access funding and other sources. However, as in the case of Russia, Hungary in the recent years has followed the course of suppression on CSOs. The harassment and the "battle" on civil society have become a manifestation of the Hungarian “U-turn” from democracy.²⁶⁶ What is of concern, is that the Hungarian government is actively shrinking the manoeuvring space of CSOs and HRDs by impeding access to funding, conducting unpredicted and unwarranted inspections and backlisting human rights organisations which receive foreign funding. There is a range of emerging and existing challenges, which in sum contribute to undermining Hungary's functioning as a full-fledged democracy and consequently have a direct result in the

²⁶³ *Ibid.*

²⁶⁴ Human Rights Watch Report, *Laws of Attrition: Crackdown on Russia's Civil Society after Putin's Return to the Presidency* (2013) 54

²⁶⁵ European Economic and Social Committee, *Opinion: Civil Society in Russia* (Rex 400, 10 December 2014, Brussels) 10

²⁶⁶ Janos Kornai, 'Hungary's U-Turn: Retreating from Democracy' (2015) 26 *JD* 3, 37

shrinking space of CSOs. Following, I will discuss the set of actions that Hungary has adopted to shrink the space of CSOs and has created a hostile environment for HRDs.

4.2.1. Freedom of Association and the Government’s “Attack” on NGOs

After the 2010 elections won in a landslide victory by FIDESZ²⁶⁷ a smearing campaign started against Hungarian human rights NGOs in an attempt to gain control over them or silence them by hindering their access to funding.²⁶⁸ As discussed in chapter three newly elected Prime Minister, Viktor Orbán, entered office with a reforming zeal and the intention to rewrite laws, replace high-ranking bureaucrats with party loyalists, and create a new constitution for the country. In chapter one, I discussed that good performance in a democracy is closely linked to a healthy civil society and a backlash in democracy has its effects in civil society itself. It is a symbiotic relation between the two of them and effects on each other are unavoidable. Hungarian case is a good illustration example. The decisive turn in the course started in 2014, a number of Hungarian NGOs came under a sustained attack by the Hungarian government, which has impeded their ability to carry out their activities, had a chilling effect on the right to freedom of association and eroded the space for civil society in the country.²⁶⁹ The attack included prominent outspoken NGOs working on anti-corruption, human rights, gender equality and freedom of speech as well as organisations coordinating grants for this work.²⁷⁰ In April 2014, the Prime Minister’s Office wrote a letter to the Norwegian government alleging that the European Economic Area (EEA) and Norway grants

²⁶⁷ See further: CNN, ‘Center-right Fidesz party sweeps to victory in Hungary’ (26 April 2010) < <http://edition.cnn.com/2010/WORLD/europe/04/26/hungary.election.results/> > accessed 22 June 2016

²⁶⁸ For a detailed chronology of events, see the timeline assembled by the Hungarian Helsinki Committee, Hungarian Civil Liberties Union, Transparency International Hungary and the Eötvös Károly Policy Institute at: < http://helsinki.hu/wpcontent/uploads/Timeline_of_gov_attacks_against_HU_NGOs_12082015.pdf > accessed 4 July 2016

²⁶⁹ Amnesty International Report, *Their Back to the Wall: Civil Society Under Pressure in Hungary*, (Amnesty International, London 2015) 4 Available at: < <https://www.amnesty.org/en/documents/eur27/0001/2015/en/> > accessed 27 June 2016

²⁷⁰ The Observatory for the Protection of Human Rights Defenders, 2015 OSCE Human Dimension Implementation Meeting (23 September 2016) Available at: <http://www.omct.org/files/2015/09/23374/osce_hdim_2015.09.23_written_contribution.pdf> accessed 1 June 2016

(hereafter EEA/Norway Grants) a government-backed funding vehicle for social cohesion projects in central and southern Europe, was financing groups linked to the opposition party.²⁷¹ Even though the Norwegian government and the NGOs concerned denied these allegations the Hungarian government did not abandon its accusations. In such a situation the EEA/Norway Grants suspended its funding to government projects but continued to fund the NGOs operating in Hungary.²⁷² Following this several government officials continued to accuse the NGOs of serving the political interests of foreign powers and financial, even criminal, irregularities.²⁷³ In a speech in July 2014, Orbán stated:

"...if I look at the non-governmental world in Hungary, or at least at those organisations which are regularly in the public gaze – and the recent debate concerning the Norway grants has brought this to the surface – then what I see is that we are dealing with paid political activists. And in addition, these paid political activists are political activists who are being paid by foreigners. They are activists who are being paid by specific foreign interest groups, about whom it is difficult to imagine that they view such payments as social investments, and it is much more realistic to believe that they wish to use this system of instruments to apply influence in Hungarian political life with regard to a given issue at a given moment. And so, if we want to organise our national State to replace the liberal State, it is very important that we make it clear that we are not opposing non-governmental organisations here and it is not non-governmental organisations who are moving against us but paid political activists who are attempting to enforce foreign interests here in Hungary."²⁷⁴

Similarly, in a speech in Hungarian Parliament on 15 September 2014, Orbán again referred to these NGOs, stating:

“We do not want anything more than to see clearly, we want to have clean water in the glass, because we are bothered by insincerity and lies, and

²⁷¹ Amnesty International Report, *Their Back to the Wall: Civil Society Under Pressure in Hungary*, (Amnesty International, London 2015) 6

²⁷² CIVICUS, *Hungarian Civil Society Shocked at the Pace of Increasingly Restrictive Measures: An Interview With Veronika Mora of the Okotars Foundation* (27 August 2014) Available at: < <http://civicus.org/index.php/en/media-centre-129/news-and-resources-127/2100-hungarian-civil-society-shocked-at-the-pace-of-increasingly-restrictive-measures-an-interview-with-veronika-mora-of-the-okotars-foundation-hungarian-environmental-partnership-foundation> > accessed 1 June 2016

²⁷³ Amnesty International Report, *Their Back to the Wall: Civil Society Under Pressure in Hungary*, (Amnesty International, London 2015) 6

²⁷⁴ Csaba Tóth, ‘Full text of Viktor Orbán’s speech at Băile Tuşnad (Tusnádfürdő)’ *The Budapest Beacon* (26 July 2014) Available at: < <http://budapestbeacon.com/public-policy/full-text-of-viktor-orbans-speech-at-baile-tusnad-tusnadfurdo-of-26-july-2014/10592> > accessed 1 June 2016

we don't like it when someone who talks about freedom is a mercenary, or who talks about independence is a kept person.”²⁷⁵

In this way, a stigmatisation rhetoric started against NGOs, with allegations that questioned their work in Hungary. The government alleged unlawful financial contributions to certain political parties and it was these allegations that became the excuse for extensive audits. The audit came to include investigations in 55 organisations that received funding from the EEA/Norway NGO fund, many of which refused to turn over documents and cooperate with the investigative authority.²⁷⁶ The State police raided the offices and even apartments of some of the NGOs as in the case of *Ökotárs* and *DemNet* employees seizing computer, servers and documents.²⁷⁷ Later on, the ride in NGOs was declared unconstitutional by the court unlawful because, according to Hungarian law, the suspicion of criminal activities had not been established.²⁷⁸

The Hungarian Ombudsman and later Amnesty International stated that the Government Control Office (hereafter KEHI) that carried out the audits on NGOs lacked jurisdiction and adequate safeguards to ensure the independence and impartiality of the audit.²⁷⁹ The concern was that President of KEHI is under the direct control of the Prime Minister being appointed and dismissed by him.²⁸⁰ On the other hand, KEHI is a governmental body which means that it has no jurisdiction to exercise control over the

²⁷⁵ The timeline of governmental attacks assembled by the Hungarian Helsinki Committee, Hungarian Civil Liberties Union, Transparency International Hungary and the Eötvös Károly Policy Institute at: <http://helsinki.hu/wp-content/uploads/Timeline_of_gov_attacks_against_HU_NGOs_12082015.pdf> accessed 4 July 2016

²⁷⁶ Norwegian Helsinki Committee, ‘Hungary must provide space for civil society’ (2016) NHG Paper Policy No. 1-2016, 4

²⁷⁷ *Ibid.* The police raids were later ruled illegal, due to lack of reasonable suspicion, however, the government close monitoring continued and the prosecutor’s office conducted further investigations. Also, the NGOs that refused to cooperate were later fined for refusing to cooperate with the authorities.

²⁷⁸ Benjamin Novak, ‘SCANDAL! Court rules raid on Ökotárs Foundation was illegal’ *The Budapest Beacon* (29 January 2015) <<http://budapestbeacon.com/featured-articles/scandal-court-rules-raid-on-okotars-foundation-was-illegal/18781>> accessed 9 July 2016

²⁷⁹ Blanka Zöldi, ‘Ombudsman: KEHI probe of Norway NGO Fund beneficiaries illegal’ *The Budapest Beacon* (30 July 2014) Available at: <<http://budapestbeacon.com/public-policy/ombudsman-kehi-probe-of-norway-ngo-fund-beneficiaries-illegal/10632>> accessed 4 July 2016; Amnesty International Report, *Their Back to the Wall: Civil Society Under Pressure in Hungary*, (Amnesty International, London 2015) 6

²⁸⁰ Amnesty International Report, *Their Back to the Wall: Civil Society Under Pressure in Hungary*, (Amnesty International, London 2015)

funds that come from an international source as is the case of EEA/Norway NGO fund.²⁸¹

On 15 October 2014, the KEHI released the report of its audit. The report contains numerous allegations some of which amount to criminal wrongdoing, including unlicensed financial activity, misappropriation of assets, and fraud, which carry punishments including imprisonment.²⁸² However, a later prosecutor investigation concluded that the organisations involved in the distribution of the NGO funds operated lawfully, having committed only a few minor administrative mistakes.²⁸³

In Hungary, the government perceives members of CSOs that are critical of the government as its enemies, not as its partners.²⁸⁴ Even though in Hungary we do not encounter the situation where freedom of association and assembly is directly restricted by jailing activists and closing down NGOs as in Russia. The impact of high-profile government denunciation, hostile media campaigns, high-profile police raids and politically-motivated audits are already being felt.²⁸⁵ NGOs are likely to be wary of the NGO fund, an important source of funding for the work of NGOs, knowing that their every expense and action may be painstakingly scrutinised for anything that is interpreted as illegal.²⁸⁶

The refugee crisis of summer 2015 drew international attention to the disregard for human dignity in Hungary.²⁸⁷ Orbán was offered assistance from international agencies to help with the reception of refugees, but he quickly refused.²⁸⁸ Moreover,

²⁸¹ Hungarian Helsinki Committee, Hungarian Civil Liberties Union, Eötvös Károly and MERTEK, Disrespect for the European Values in Hungary 2010-2014: Rule of Law – Democracy – Pluralism – Fundamental Rights (21 November 2014) 10

²⁸² Amnesty International Report, Their Back to the Wall: Civil Society Under Pressure in Hungary, (Amnesty International, London 2015) 15

²⁸³ Norwegian Helsinki Committee, ‘Hungary must provide space for civil society’(2016) NHG Paper Policy No. 1-2016, 4

²⁸⁴ Hungarian Helsinki Committee, Hungarian Civil Liberties Union, Eötvös Károly and MERTEK, Disrespect for the European Values in Hungary 2010-2014: Rule of Law – Democracy – Pluralism – Fundamental Rights (21 November 2014) 10

²⁸⁵ Amnesty International Report, Their Back to the Wall: Civil Society Under Pressure in Hungary, (Amnesty International, London 2015) 23

²⁸⁶ *Ibid*

²⁸⁷ For more on Hungarian refugee crises see: Liz Fekete, ‘Hungary: Power, Punishment and the ‘Christian-National Idea’ (2016) 57 RC 4, 39-53

²⁸⁸ *Ibid*, 41

Hungary amended the criminal code and the asylum law considering crime the entering in Hungary through a border fence with up to three years in prison.²⁸⁹ The Orbán started governing through fear of the “other” adopting autocratic laws and reforms aimed at establishing political control of key institutions and eroding all checks and balances.

4.2.2. Media and Freedom of Speech

As discussed in chapter two free and independent media is a basic precondition for democracy. It allows the free expression of one's views and ideas and establishes the basis for citizen participation in public affairs and for controlling State power. The government has no need of occupying all segments of the public sphere as it is sufficient to gain control over media outlets with the greatest audience reach. The unpredictable political interventions that paralyse the media market make media companies vulnerable and ready to submit. A clear case of self-censorship was the firing of the editor in chief of the second biggest news portal *origo.hu* in 2013 in response to publishing a revealing article on unjustified travelling costs of a leading FIDESZ politician; Deutsche Telekom, the holding company of *origo.hu* considered that the decision was the editorial team's “internal decision”.²⁹⁰ State-backed media replaced public radio and television channels.²⁹¹ Their programs heavily under-represented opposition politicians and intellectuals leaning towards the opposition. The government was well aware of the importance of free media and did not hesitate to reorganise the Media Authority, the State regulatory agency, supplementing it with the Media Council, a five-member independent body in charge of the control of media balance with former FIDESZ parliament members.²⁹² The public media are obliged to use material provided

²⁸⁹ Amendments of: the Asylum Law LXXX/2007; Act C/2012 on the Criminal Code; Act XIX/1998 on Criminal Procedure; Also see: Amnesty International Report, Fenced Out: Hungary's Violations of the Rights of Refugees and Migrants (2015, United Kingdom) Available at: <file:///C:/Users/Mandrit/Downloads/EUR2726142015ENGLISH.pdf > accessed 5 July 2016

²⁹⁰ Hungarian Helsinki Committee, Hungarian Civil Liberties Union, Eötvös Károly and MERTEK, Disrespect for the European Values in Hungary 2010-2014: Rule of Law – Democracy – Pluralism – Fundamental Rights (21 November 2014) 8

²⁹¹ See further Hungarian Helsinki Committee, Hungarian Civil Liberties Union, Transparency International Hungary and the Eötvös Károly Policy Institute, Hungary Fact Sheet 1, Undermining Constitutionality' (HDIM. NGO/0109/14, 23 September 2014) Available at: <<http://www.osce.org/odihr/124145?download=true>> 5 July 2016

²⁹² Miklós Bánkuti et al., ‘Disabling the Constitution’ (2012) 23 JD 3, 139

by the news agency controlled by the government.²⁹³ This is a clear example of public media control, whereas, private media is not obliged to take news from the State-owned agency but the latter are offered free of charge. This risk sending in a self-censorship the media that is not able to buy news from expensive independent international agencies. In 2014, the situation has worsened further due to a tax on advertising that financially weakened the private media.²⁹⁴ To be fair Independent media still exist in Hungary (for instance ATV, Klubrádió, and various print publications), however they work under very difficult financial and political circumstances.²⁹⁵

4.3. Conclusion

As outlined in this chapter Russia and Hungary by using legal non-legal methods have undertaken an unprecedented attack on CSOs and HRDs deteriorating their working space. The law on “foreign agents” in Russian has made impossible the work of organisations that receive foreign funds. Some NGOs due to the lack of fund and pressure from authorities have been forced to shut down. Classification of NGOs as foreign agent has demonise and marginalise independent advocacy groups in the eyes of Russia’s citizens as being servants and followers of the agenda of their donors. Moreover, the law on “undesirable organisations” has given the government the right to shut down prominent organisations in Russia.

Similarly, is the case of Hungary regarding the NGOs that receive foreign funds. Hungarian authorities as discussed scrutinised with police rides and extensive audits a significant number of NGOs operating in the country. Russian style rhetoric such as foreign agent is used by Hungarian authorities referring NGOs that receive foreign funds. Further, apart from the law that directly target NGOs, other laws and measures are taken in both States that attack free media, restrict freedom of speech, freedom of assembly and peaceful assembly. Those measures have significantly restricted the space of CSOs and HRDs in Russia and Hungary. Furthermore, due to the several restrictive

²⁹³ Janos Kornai, ‘Hungary’s U-Turn: Retreating from Democracy’ (2015) 26 JD 3, 40

²⁹⁴ See further: Bajomi-Lázár Péter, ‘The Party Colonisation of Media: The Case of Hungary’ (2014) 27 EEPS 3 East European Politics and Societies, Vol. 27, No. 3, 69-89

²⁹⁵ Sustainable Governance Indicator (SGI), 2015 Hungarian Report, (Bertelsmann Stiftung, 2015) 14 Available at: < http://www.sgi-network.org/docs/2015/country/SGI2015_Hungary.pdf > accessed 5 July 2016

measures taken HRDs have self-censored their work to escape from being involved in trouble.

5. Long-Term Perspective of this Action, the EU Membership and the Regional Stability

The trend of shrinking the space of civil society has become a worldwide issue. As discussed above Hungary and particularly Russia fears that events kind of Arab Spring and Colour Revolution may take place in their countries. Therefore, they perceive CSOs and HRDs as “agents” masterminded by foreign States to cause political overthrow, chaos and destabilise their countries. This is why the wave of restrictions was rapidly imposed on CSOs and HRDs squeezing their working space. As discussed in the other chapters the wave of restrictions is triggered out of fear from CSOs and HRDs mixed with political propaganda and ideological confrontation of the East and the allegations of its “Westernisation”.²⁹⁶ At the same time, these events raise the question of long-term perspective, the EU role and regional stability. Accordingly, what response can be given to the crackdown on CSOs rights, prospects of participation of HRDs their situation in Russia and Hungary? What is the role of the EU in the increasing pressure on HRDs in Russia and Hungary, their protection and finally the perspectives of the region?

5.1. Long-Term Perspective

Modern history has reviled that if we do not learn to work with human rights there will be no human rights or human rights movements. The CSOs and HRDs long term panorama in Russia and Hungary is foggy. The strengthening of Putin's autocratic ruling gives little hope for the future of CSOs in Russia. Through the years of his ruling, he has indicated that CSOs are not in his consideration for cooperating to dispense a better governance for the Russian citizens. Similarly, is the case of Hungary, the new set of laws adopted in the recent years has demolished the check and balance mechanisms of the State. In situations where we are faced with constitution uncertainties as in the case of Hungary, it is reasonable to doubt the flourishing of CSOs and free activism of HRDs. Alarming is the status of other fundamental rights: freedom of association,

²⁹⁶ Peter Baker, Steven Erlanger, ‘Russia Uses Money and Ideology to Fight Western Sanctions’ *The New York Times* (7 June 2016) Available at: <<http://www.nytimes.com/2015/06/08/world/europe/russia-fights-vests-ukraine-sanctions-with-aid-and-ideology.html>> accessed 8 July 2016

peaceful assembly and freedom of speech. As discussed in the above chapters due to the legal means employed those freedoms are in serious insecurity. The “war” on NGOs in both countries particularly those that depend on foreign sources have had a significant contribution to the shrinking space of CSOs and HRDs ability to carry out human rights activism. Flagging NGOs as “foreign agents” have created a climate of stigmatisation and has undermined the legitimacy of their work in the public eye. This situation raises serious questions for the nexus of human rights activism in Russian and Hungary. The “war” on NGOs escorted with laws on fighting terrorism and alleged protecting of territorial integrity of the countries has further contributed to the shrinking space of CSOs and HRDs.²⁹⁷ The shrinking space of CSOs in Russia and Hungary also reflect the diversity of views found in the “anti-globalization movement”, political interest and ideological differences between the liberal Western countries and “managed democracies” of Russian style.²⁹⁸ The restriction of NGOs to receive foreign funding is the best example of these differences. The situation of CSOs in Russia and Hungary as former communist countries has had a continuous problem. Former communist countries suffer from the lack of civic spirit, therefore, outside funding for civil society mushroomed over the past twenty years in Russian and Hungary.²⁹⁹ Thus, CSOs which highly depend on external funding to carry on their work on human rights is mutilated by the laws and measures that restrict their access to funding and sources. Allowing NGOs to have access only to public State sources risks the possibility of governmental capture of NGOs that accept public funds.³⁰⁰ As discussed in previous chapters the restriction laws tend to focus only on political activities, however, the broad use of terms leaves a wide room for abuse. It is generally accepted the fact that governments do enjoy the right to political sovereignty and are clearly entitled to set some limits on what outside actors can do to influence their domestic political life. For example,

²⁹⁷ For further information on the laws on fighting terrorism and their effects on CSOs see: John Clark, ‘Civil Society in the Age of Crisis’ (2011) 7 JCS 3, 241-263

²⁹⁸ Peter Baker, Steven Erlanger, ‘Russia Uses Money and Ideology to Fight Western Sanctions’ *New York Times* (7 June 2015) Available at: <<http://www.nytimes.com/2015/06/08/world/europe/russia-fights-west-ukraine-sanctions-with-aid-and-ideology.html>> accessed 9 July 2016

²⁹⁹ Thomas Carothers, Saskia Brechenmacher, ‘Closing Space: Democracy and Human Rights Support Under Fire’ (Carnegie Endowment for International Peace, Washington, DC 2014) 53

³⁰⁰ *Ibid.*

almost every State has restricted NGOs from funding political parties.³⁰¹ Adopting restrictions that prevent funding for human rights projects indicate alarming effect for the current and future human rights activism.

5.2. European Union Role

The end of communism in CEE signalled the ultimate victory of democracy and rule of law over the legacy of totalitarianism in these countries. In contrast to this optimistic view, history is not over, the consolidation of the authoritarian regime in Russia and rising of illiberalism in Hungary represents a major challenge to EU and democracy strengthening in CEE. All those who expected that more than a decade of 'EU accession' for CEE legal regimes would lead to an irreversible break with the totalitarian past were simply naive.³⁰² Bojan Bugarič argues that institutions of liberal democracy cannot be created overnight, instead, it is a process that requires time, support and endorsement by the people. The EU role in the shrinking space of civil society has significant differences due to the fact that Hungary is part of NATO and EU, whereas, Russia stands quite far from EU perspective. However, the existence of the EU makes the danger of rising illiberalism less dramatic for both countries.

How well is the EU equipped, legally and politically, to defend democracy and the rule of law in its member States? The case of Hungarian shows, that the EU has quite limited legal and political powers to effectively prevent the slide to authoritarianism. In the case of Hungary EU is facing a unique historical situation it is confronted with the first EU member State ever sliding into an authoritarian illiberal political regime.³⁰³ As discussed in throughout this thesis the attacks on CSOs and the adoption of the new constitution breached the mechanisms of check and balance undermining the rule of law in the country. Hence, the new Hungarian constitution is in conflict with the "fundamental values" of EU enshrined in the Article 2 of the Treaty of European Union

³⁰¹ International Center for Non-for-Profit Law, NGO Law Monitor: Russia (24 March 2016) Available at: < <http://www.icnl.org/research/monitor/russia.html> > accessed 27 July 2016

³⁰² Bojan Bugarič, 'Protecting Democracy and the Rule of Law in the European Union: The Hungarian Challenge' (2014) LSE Discussion Paper Series No. 79/2014, abstract

³⁰³ *Ibid*, 1

(hereafter TEU), such as democracy, the rule of law and respect for human rights.³⁰⁴ In this case, TEU offers legal means to deal with this case. Namely, Article 7 of TEU empowers the Council to determine whether “there is a clear risk of a serious breach by a Member State of the values referred to in Article 2”.³⁰⁵ If the Council finds the existence, not only a clear risk, of a serious and persistent breach of EU values by a member State, it can even suspend certain rights of the member State as the right to vote in the Council.³⁰⁶ The question that arises is whether Hungarian actions represents a clear risk of a serious breach of principles from Article 2, as defined by Article 7(1). As I argued in in the above chapters, there is little doubt that the new constitutional order, particularly those provisions which systematically undermine or even remove the independence of the judiciary, media and other independent bodies, and the unprecedented shrinking space of CSOs undermine the very foundations of the rule of law in Hungary.³⁰⁷ However, the Commission avoided using the protection mechanism foreseen in the Article 2 and 7 of TEU, instead adopted declarative measures, opened a monitoring procedure and mandated a rapporteur to evaluate the situation in Hungary.³⁰⁸

In the case of Russian-EU relation, the situation is much more complicated. Russia is neither part of EU nor part of NATO and sees them both as unions that threat the Russia’s stability. During the years Russia has maintained a hostile approach toward EU, especially in the recent years. After the annexation of Autonomous Republic of Crimea in 2014, the EU-Russia relations are in the worst situation since the end of Cold

³⁰⁴ Treaty of European Union, 26.10.2012, Official Journal of the European Union, C 326/17. Article 2

³⁰⁵ Treaty of European Union, 26.10.2012, Official Journal of the European Union, C 326/17. Article 3

³⁰⁶ Article 7/3

³⁰⁷ Kim Lane Scheppele, ‘What Can the European Commission Do When Member States Violate Basic Principles of the European Union? The Case for Systemic Infringement Actions’ (2013) Available at: <http://ec.europa.eu/justice/events/assises-justice-2013/files/contributions/45.princetonuniversityscheppelesystemicinfringementactionbrusselsversion_en.pdf> accessed 8 July 2016

³⁰⁸ EU Commission Press release, The European Commission reiterates its serious concerns over the Fourth Amendment to the Constitution of Hungary, (2013) IP/13/327. 12.4.2013 Available at: <http://europa.eu/rapid/press-release_IP-13-327_en.htm> accessed 8 July 2016; Council of Europe, Parliamentary Assembly, Request for the opening of a monitoring procedure in respect of Hungary (Report Doc. 13229, 10 June 2013) Available at: <<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=19777&lang=en>> accessed 9 July 2016

Tavares Report, On the situation of fundamental rights: standards and practices in Hungary, Committee on Civil Liberties, Justice and Home Affairs (June 2013) 2012/2130(INI) Available at: <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2013-0229+0+DOC+XML+V0//en>> accessed 8 July 2016

War.³⁰⁹ Since April 2014, Russia is believed to have been waging a proxy war in Eastern Ukraine, through its increasing support of pro-Russian separatists and direct incursion into the territory of Ukraine.³¹⁰ This triggered the EU and the US to impose an array of sanctions on Russia and its businesses in response to the annexation of Crimea and the crisis in Eastern Ukraine.³¹¹ EU has recently agreed on the decision to extend the sanctions on Russia.³¹² Apart from the sanctions the EU has no other means to force Russia to comply with democratic values especially in the case of shrinking space of CSOs. Russia is only part of CoE, the latter except suspending a member has no other means to implement decisions or make its members accountable.³¹³ In April 2014, for instance, the Parliamentary Assembly suspended Russia's voting rights over what the EU ruled was the illegal annexation of Crimea.³¹⁴ However, EU is powerless as they witness the cascade of laws and regulations, in particular, the "foreign agent" law, the restriction on media freedom and other rights of CSOs and HRDs.

ECtHR is the only hope for CSOs and HRDs in Russia to achieve justice. As seen in the above chapter ECtHR has reached a number of decisions on judgements against Russia helping and providing justice for certain cases and also influencing the domestic regulation on certain rights. However, even the ECtHR is not fully-fledged guarantee for CSOs and HRDs the existence of loopholes in the doctrine of "margin of appreciation" leaves room for abuses. The State authorities know that rising different arguments as argument of "different civilisation" in Russia and "traditional values" in Hungary can later be used to exercise pressure on ECtHR for a broad "margin of appreciation". Several complaints have been made to the ECtHR before and during the writing of this thesis regarding the attacks on CSOs and HRDs, "foreign agent" law and "NGO shutdown". The ECtHR's outcome will be of particular importance with regard

³⁰⁹ Theodor Tudoroiu, 'The European Union, Russia, and the Future of the Transnistrian Frozen Conflict' (2012) 26 *EEPS* 1,

³¹⁰ European Economic and Social Committee, Opinion: Civil Society in Russia (Rex 400, 10 December 2014, Brussels) 6

³¹¹ *Ibid.*

³¹² Laurence Norman, Gabriele Steinhäuser, 'European Ministers Wrestle With Future of Russia Sanctions' *WSJ* (20 June 2016) Available at: < <http://www.wsj.com/articles/european-ministers-wrestle-with-future-of-russia-sanctions-1466450621> > accessed 8 July 2016

³¹³ Committee for the Protection of Journalists (CPJ), *Balancing Act: Press Freedom at Risk as EU Struggles to Match Actions with Values*, (United Book Press, New York 2015) 22

³¹⁴ *Ibid.*

to the future space restriction of CSOs and HRDs in Russia and Hungary. Of particular interest will be how Russia will welcome the ECtHR decisions due to the rising tensions and Russia's strong dissatisfaction with ECtHR practice. A promising sign for the improvement of CSOs and HRDs rights is also the EU-Russia Civil Society Forum³¹⁵ a network of thematically diverse non-governmental organisations from Russia and the European Union established as a bottom-up civic initiative, independent from governments.

5.3. Regional Stability

Shrinking space of CSOs and the squeeze of working conditions of HRDs are becoming a worldwide phenomenon. As discussed more than 50 countries around the world have introduced measure that constrains CSOs and restrict human rights advocacy.³¹⁶ The case with Russia and Hungary as encountered in this thesis is complicated in many directions. As discussed in the above chapters Russia's hostility toward the CSOs embraces in itself the clashes of western liberalisation with Russian rise of political authoritarianism. Aware of the potential for a Colour Revolution in Russia itself, the Kremlin adjusted its regional foreign policy endeavouring to reach the goal of "limiting the infiltration of Western influence in the region and the expansion of NATO membership".³¹⁷ What can be done to stop the erosion of the human rights in Russia? The situation is not very clear in what can be done because right now nothing proved to be successful. The situation gives the impression that the EU is playing it wrong at the moment and is risking the regional stability. The sanctions that the EU have posed on Russia is helping to create the hostile approach fuelling the existing national feelings, it is strengthening the anti-Western feelings in the region. A better solution is that instead of sanctions that were renewed a couple of days ago, European leaders work together towards a wider continental community that includes Russia. Which I think they have not been doing or paying attention to, instead of going in the other direction. When just saying this argument it sounds appealing, however, there are

³¹⁵ See further: <<http://eu-russia-csf.org/about-us/>> accessed 8 July 2016

³¹⁶ Karen Bennett et al, 'Critical Perspective on Security and Protection of Human Rights Defenders' (2015) 19 *IJHR* 7, 887

³¹⁷ Chip Pitts, Anastasia Ovsyannikova, 'Russia's New Treason Statute, Anti-NGO and Other Repressive Laws: "Sovereign Democracy" or Renewed Autocracy?' (2014) 37 *HJIL* 1, 87

ones who strongly disagree with this argument. They think that strong sanctions should be imposed upon Russia in such situation.³¹⁸ Their argument is based on the lessons learned from the Georgian-Russian War in August 2008 and the repetition of the same strategy with the annexation of Crimea in 2014.³¹⁹ After the Georgian-Russian War the EU-Russia relations took a different turn, however, the EU engaged in partnership programs to normalise the situation which was finalised with the accession of Russia in World Trade Organisation (WTO) in 2012.³²⁰ The thought that Russia might build on its experience from the war against Georgia, and go as far as to invade Ukraine, did not cross any decision maker's mind.³²¹ The tightening relations of EU-Russian impairs the working conditions of CSOs and sets worrying trends for the future of human rights activism in Russia.

Similarly, the in the case of Hungary as seen the application of TEU mechanism is a far-reaching process and the EU intervention should be the last resort mechanism. However, as the current conditions are in Hungary it clearly indicates that the situation is far from "self-regulating".³²² On the contrary, Orbán government seems to be determined to continue with the constitutional revolution continuing undermining the rule of law and checks and balances in the country which is not good signals for the nexus situation of CSOs there. Building democracy and the rule of law is ultimately a political process which requires a sustained involvement of civil society in the creation of basic political institutions.³²³ Current situation of Hungarian civil society is far from what is supposed to stand for in the country hitting in question the working space of CSOs in the future processes.

In situations when it is difficult for EU to influence and press particularly Hungary and also Russia for this issue it raises the need for another approach. As seen

³¹⁸ See further: Viljar Veebel, 'Lessons From the EU-Russia Sanctions 2014-2015' (2015) 8 BJLP 1, 165-194

³¹⁹ See further: Anke Schmidt-Felzmann, *Is the EU's Failed Relationship with Russia The Member States' Fault?* (L'Europe en Formation, 2014) 40-60

³²⁰ *Ibid*, 46

³²¹ *Ibid*.

³²² Bojan Bugarič, 'Protecting Democracy and the Rule of Law in the European Union: The Hungarian Challenge' (2014) LSE Discussion Paper Series No. 79/2014, 34

³²³ *Ibid*, 2

the shrinking space of civil society is not only creating concerns for the situation of human rights in and Russia and Hungary, but also may have an influence on the regional stability. Therefore, the EU and other international actors should act carefully not to worsen the situation further, but instead, work and bring forward strategies for effective solutions to issues of shrinking space in both countries.

Conclusion

Modern history has demonstrated that achievements in human rights have always been difficult and time requiring. Nevertheless, one thing is obvious that the situation of human rights generally has had the trend of improving. The case of Russia and Hungary exhibits another trend. Both countries are embracing characteristic of an autocratic State which has taken a worrying trend starting from late 2010, beginning of 2011. The wave of restrictions escalated quickly from conspiracy allegations to legal measure that forced NGOs to be registered as “foreign agent” escorted with a verbal war on them diminishing their credibility in the eyes of the public.

As discussed CSOs and HRDs are confronted with high-profile government denunciation, hostile media campaigns, police raids and politically-motivated audits. Out of fear of repetition in their countries of the Coloured Revolution or Arab Spring, Russian and Hungary are restricting core freedoms such as freedom of association and freedom of peaceful assembly. As discussed the massive protests in Hungary in 2010 and in Russian late 2011 triggered the wave of restrictions in both countries. Alarming is also the freedom of speech in both counties one of the essential rights in a democratic society. This wave of restriction of CSOs and other rights endured in the course of actions undertaken by both countries indicates that they are sliding to autocracy. Moreover, space restriction is not only affecting those against whom laws are directly applied who may suffer violations of human rights, because problematic applications of the provisions that restrict NGOs have also a chilling effect. This chilling effect is pushing CSOs and particularly HRDs to self-censor themselves out of fear that the law will be used against them. This chilling effect integrated with the lack of legal security and breach of check and balance mechanisms of State seriously impede CSOs and HRDs.

Furthermore, as encountered by the comprehensive approach in this study the interplay of shrinking space of CSOs demonstrated problematic trends for the future stability of the region of CEE countries and their aspiration toward the EU. In such conditions, more research is needed to assess ways how CSOs and HRDs can respond

and how other international actors or State can help to press repressive governments and support for a vibrant civil society.

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