The threats of Russian-style NGO legislation to civil society in Azerbaijan

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# Table of Contents

Introduction .......................................................................................................................... 3  
Chapter 1: Post-Soviet civil society: definition and debate .................................................. 6  
  1.1 Civil society and non-governmental organizations ......................................................... 6  
  1.2 The liberal theory .......................................................................................................... 7  
  1.3 Civil society and NGOs in the post-Soviet space .............................................................. 8  
    1.3.1 The Russian Federation ............................................................................................ 9  
    1.3.2 Azerbaijan .............................................................................................................. 9  
Chapter 2: “Managed civil society”: the example of Russia’s Foreign Agents Law .............. 11  
  2.1 Sergej Ljubownikow and “managed civil society” ......................................................... 11  
  2.2 “Managed civil society”: the academic debate ............................................................... 12  
  2.3 Characteristics of a “managed civil society”: Russia’s Foreign Agents Law as an example 12  
    2.3.1 The Foreign Agents Law: Rules and Enforcement ................................................... 13  
    2.3.2 Alliance with the state in order to survive ................................................................. 13  
    2.3.3 State funding incorporates NGOs in state structure ................................................ 14  
    2.3.4 Imposition of government ideology on NGOs ........................................................ 14  
Chapter 3: Recent NGO legislation in Azerbaijan and the effect on civil society ..................... 16  
  3.1 Russia’s Foreign Agents Law and Azerbaijan’s 2013-2014 amendments compared .......... 16  
  3.2 NGO legislation in Azerbaijan since 2013 ................................................................. 17  
    3.2.1 Civil unrest as a cause ............................................................................................... 17  
    3.2.2 Amendments: Rules and Enforcement .................................................................. 17  
  3.3 The consequences of recent NGO legislation in Azerbaijan ............................................. 19  
    3.3.1 Alliance with the state in order to survive ................................................................. 19  
    3.3.2 State funding incorporates NGOs in state structure ................................................ 20  
    3.3.3 Imposition of government ideology on NGOs ........................................................ 21  
Conclusion ........................................................................................................................... 23  
Bibliography ...................................................................................................................... 25
Introduction

The general idea about civil society is that it is a positive actor in international developments. The dominant theory on civil society, the liberal theory, states that civil society leads to political freedom and stability, and that it strengthens democracy. Non-governmental organizations (NGOs) play an important role therein. They have a pluralizing effect on civil society by representing the interests of marginalized groups in society and they challenge state autonomy. However, the example of Russia suggests this is not at all times the case. Sergej Ljubownikow presents a theory about the development of a “managed civil society” in Russia that strengthens the political regime more than it strengthens democracy. This thesis takes a comparative perspective examining to what extent Azerbaijan has copied Russian-style NGO legislation and whether this has had the same effect on civil society as it has in Russia. The research question is: Does the copying of Russian-style NGO legislation result in a “managed civil society” that threatens democracy in Azerbaijan?

Azerbaijan was one of the first of the post-Soviet republics that copied Russian-style NGO legislation. In 2013 and 2014 it adopted a range of amendments on existing laws, which made the scope of the Azerbaijani NGO legislation remarkably similar to the situation in Russia, shaped by the Foreign Agents Law (FAL) of 2012. Critics of the FAL believe that the law has a negative effect on the freedom of NGOs. Research on the consequences of the copying of Russian-style NGO legislation by Azerbaijan is relevant because it provides us with information about the influence of Russia in former Soviet republics and the status of democracy in Azerbaijan. NGOs form the core of a civil society and carry out the interests and the will of the people. If a country has a vibrant and well-developed civil society, it is likely that there is political freedom and stability. Civil society is therefore an important factor in the development of democracy. The copying of NGO legislation in Azerbaijan fits into the academic debate about authoritarian diffusion. According to Ziegler, Central Asian states deliberately adapt legislation that shapes civil society along the lines of the Russian example. These states tend to be more receptive to this kind of autocratic governance than to the alternative, which is liberal democracy. Bader contributes to this debate by showing that post-Soviet states, including Azerbaijan adapted their election laws to the

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5 M. Edwards, Civil society (Cambridge 2014), 15.
7 S. Lang, NGO’s, Civil Society and the Public Sphere (New York 2013), 4.
Russian model.\(^9\) Within the debate the specific topic of copying Russian NGO legislation by Azerbaijan is scarcely covered. Therefore this thesis contributes to our knowledge of authoritarian diffusion.

The shaping of civil society, which in this case likely comes from authoritarian diffusion, can lead to a “managed civil society”. The concept “managed civil society” is described by Sergej Ljubownikow on the basis of three criteria. Firstly, the NGOs at least portray to be working in alliance with the state, because loyalty to the state is needed for NGOs in order to survive. Secondly, NGOs are bounded by the state because they are funded by the state. Lastly, they are ideologically put on the same line as the state by placing members or leaders of NGOs in government functions.\(^10\) Ljubownikow proves this theory in the case of the Russian NGO Law of 2006. In this thesis the concept of a “managed civil society” will be explained in detail in chapter 2, using recent Russian NGO legislation as an example. Ljubownikow’s criteria for the existence of a “managed civil society” will be used in chapter 3 in order to describe the extent to which the copying of recent Russian NGO legislation leads to a “managed civil society” in Azerbaijan.

The methods used in order to conduct this research are process tracing and case studies. Process tracing uncovers the steps by which causes affect outcomes. It establishes a link between different factors, in this case NGO legislation and civil society, and it reveals the causality between them.\(^11\) This link can be referred to as the enforcement of legislation. In addition to process tracing, the method of case studies is used. Russia is the in-depth case study. Azerbaijan forms the comparative case.\(^12\) It is chosen as the comparative case for three reasons. Azerbaijan is one of the first countries of the former Soviet Union that adopted Russian-style NGO legislation. Therefore the consequences on a longer term are better to distinguish than in other former Soviet countries. Secondly, research on Azerbaijan is relatively feasible according to the available sources and information.\(^13\) Lastly, as previously mentioned, we find a gap in the academic debate about authoritarian diffusion according to NGO legislation in Azerbaijan. Based on developments in the legislative field, my hypothesis is: The copying of Russian-style NGO legislation results in a “managed civil society” that threatens democracy in Azerbaijan.

This thesis is divided in three main chapter. The first chapter frames the existing academic debate and structures the examination of contemporary civil society developments in the Russian Federation and Azerbaijan, focusing on post-Soviet civil society and NGOs. Definitions of civil society and NGOs as well as the leading International Relations theory in research about these topics are reflected upon. Chapter two focuses on the concept of “managed civil society”. Sergej Ljubownikow’s theory will be discussed in detail as well as the work of other academics. The most recent Russian NGO legislation functions as a background to which the Azerbaijani NGO legislation is depicted later on in chapter 3. Chapter 2 outlines

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\(^12\) Porta, *Approaches and methodologies*, 209.

\(^13\) Hooper, “Russia’s Bad Example”, 15.
the way in which Ljubownikow’s criteria for a “managed civil society” will be used in chapter 3 to determine to what extent Russian-style NGO legislation has a “managed civil society” as a result in Azerbaijan.
Chapter 1: Post-Soviet civil society: definition and debate

The academic literature about the relation between NGOs, civil society and democracy is to a great extent focused on countries in Africa and South-East Asia. However, after the fall of the Soviet Union, academics started to focus on the development of NGOs and civil society in the former Soviet republics, whereby the focus is on the Russian Federation. Many studies focus on environmental organizations, women’s rights movements or human rights organizations. In this chapter, first the general definitions of civil society and NGOs are discussed. Thereafter the leading theory on civil society, the liberal theory, is reflected upon. Lastly, a short overview of the civil society and NGOs in the post-Soviet space, specifically in Russia and Azerbaijan, is given. The next chapter deepens an important aspect of this debate, the concept of a “managed civil society”.

1.1 Civil society and non-governmental organizations

The recent literature about civil society in general is extensive. The first to use the term civil society was the Enlightenment thinker John Locke. He defined civil society as the way in which people give authorization to the government. It creates conditions for people to live together by installing rules and customs. In contemporary definitions the aspect of strengthening the government by giving it authority over society is less prominently present and the focus has shifted to the strengthening of democracy. Michael Edwards is a contemporary authority in this field and he distinguishes three types of civil society. Civil society can be seen as a kind of society, that acts independently from the government with organizations forming its core. It can also be referred to as a part of society, often seen as the ‘good part’ that opposes the government. Lastly civil society is said to concern the public sector, emphasizing its importance for democracy and the representation of the public opinion.

A definition that became important after 1950 is the “third sector”. It highlights the significance of NGOs and states that civil society acts separately from government and business. Francis Fukuyama disagrees herewith and states that the business sector is an actor within and driver of civil society as well. Besides these authors, also the book of Sabine Lang and articles written by Mercer, Clarke and Neace are used in this thesis to obtain knowledge about civil society.

Concerning research on the development of a “managed civil society”, Sergej Ljubownikow follows a definition of civil society presented by Neace, who defines civil society as “the social space between the individual family and the state” … “made up of autonomous freely chosen intermediary

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16 Edwards, Civil society, 10.
organizations" ... “supported by a system of behavioral norms that includes refined and civil manners”. My thesis only concerns the first part of this definition, focusing mainly on the role of NGOs and the state according to civil society and less on the broader concept of social capital.

Most academic definitions of civil society organizations bring forward that: they are not directly related to the government, making profit is not their priority and they are for a large part run by volunteers who focus on the general interest. Concerning these organizations Ljubownikow uses the term “third sector organizations (TSOs)”. TSOs include a slightly wider range of organizations than NGOs, including the field of family and individual ties. I have deliberately chosen to use the term NGOs to underline that the focus of this thesis is on legislation and not on this broader concept.

1.2 The liberal theory

The liberal theory is the dominant theory about civil society and NGOs nowadays. It states that NGOs are a part of civil society and thereby strengthen it, what leads to democratization. NGOs do this in three ways: by having a pluralizing effect on civil society, by representing the interests of marginalized groups and by challenging the state on national as well as local level. Professor Michael Bratton is considered to be the founder of the idea that NGOs strengthen civil society. Thereafter many scholars followed his line of thought. Two examples are Diamond and Oxhorn, both arguing that a strong civil society can prevent the state from becoming too powerful by pluralizing the range of democratic organizations.

Critique on this theory can be divided in two: general critique and the identification of exceptions. General critique often focuses on the fact that we ascribe more influence to civil society than it actually has on the state. This might occur from biased research. Gerard Clarke for example argues that a falsely positive image of NGOs is created by one-sided literature about this topic. Mercer adds that the promotion of civil society as positive factor can lead to the neglect of other protagonists of democracy. This kind of moderate critique on the liberal theory resulted in new theories on civil society, such as the deliberative theory. This theory attaches more importance to the role of public reasoning, rational consensus and communicative interaction and less to non-governmental organizations. The second group of critical scholars demonstrates that there are countries to which the liberal theory about civil

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20 Lang, *NGO's, Civil Society and the Public Sphere*, 12.
21 Ljubownikow, "An examination", 34.
22 Mercer, "NGOs, civil society", 8-9.
26 Mercer, "NGOs, civil society", 10.
27 Hoppe-Kondrikova, "Struggling for civility", 57.
society does not seem to apply. This is argued by Sarah Henderson, Javeline and Lindemann-Komarova and Sergej Ljubownikow regarding the former Soviet countries.28

1.3 Civil society and NGOs in the post-Soviet space

Literature about civil society and NGOs in the post-Soviet space tends to differ from these general ideas about civil society. Academics who have done research on civil society in post-Soviet states, such as Sarah Henderson and Sergej Ljubownikow, question the fact that NGOs operate independently from the government. Governments often influence NGOs by legislative regulations, by their public rhetoric with respect to NGOs and by their ability to provide access to funding.29 It is noteworthy that academics from within the post-Soviet region, such as Zinaida Golenkova, come up with a similar conclusion. Golenkova highlights the fact that there is no autonomous society in this region, which prevents it from being anti-statist and strengthening democracy.30 None of Edwards definitions of civil society seems to apply to the post-Soviet space. For this thesis I chose to examine Ljubownikow’s theory in the light of the Azerbaijani civil society above the other mentioned academics who demonstrate that former Soviet countries act differently than the liberal theory describes, because Ljubownikow defines NGO legislation as the most important instrument for the state to create such a “managed civil society”.31 This goes well with research on the copying of Russian-style NGO legislation by Azerbaijan. As earlier mentioned, the concept of a “managed civil society” is worked out in detail in chapter 2.

Although the focus of this thesis is on recent NGO legislation in Russia and Azerbaijan, it is important to have some knowledge about the state of civil society and earlier NGO legislation in order to be able to detect a pattern in the legislative development and to fully understand the consequences of the most recently implemented NGO legislation. What Russia and Azerbaijan have in common is the fact that they are both countries of the former Soviet Union. This has influenced their contemporary civil society. Civil society in the Soviet Union was institutionalized. It did not function independently from the state, but was organized by the state. This high degree of influence on civil society is still visible in former Soviet countries.32 The form of and activity within civil society is largely determined by the government.33 Some scholars perceive the existence of marionette NGOs as a legacy from the Soviet Union. These are organizations that are nested within elite structures.34 Since the fall of the Soviet Union, civil society in Russia and Azerbaijan has developed in a rather similar way, which is typical for post-Soviet countries.

29 Henderson, “Civil Society in Russia”, 12.
30 Z.T. Golenkova., “Civil Society in Russia”, Russian social Science Review 40, no.1, 4-18, 4,5,15.
34 A. Uhlin, Post-Soviet Civil Society. Democratization in Russia and the Baltic States (Oxon 2006), 49.
1.3.1 The Russian Federation

After the fall of the Soviet Union there was little attention for NGOs and not much regulation concerning NGOs was implemented. New NGOs arose, but also Soviet marionette NGOs managed to survive. However, policy changed after Putin came to power in 2000 and became more restrictive according to NGOs. This was induced by the so-called color revolutions that occurred in former Soviet republics. Putin linked these events to civil society and foreign influence and meant to prevent Russia from similar risings. In particular two legislative measures are important to mention as precursors of more recent NGO legislation: the establishment of the Public Chamber and the 2006 NGO law.

The Public Chamber is an institution that analyzes draft legislation, monitors activities of government institutions and acquires knowledge about the needs and interests of Russian citizens, in order to improve interaction between the government and Russian citizens. In practice, it has become an instrument for the government to keep control over civil society, since the president has great influence on the appointment of members of the Public Chamber. The NGO Law of 2006 excluded foreigners and stateless persons from founding an NGO in Russia, sharpened the conditions and expanded the required documents needed for NGO registration and allowed the government to investigate NGOs and their activities. From 2008 – 2012 during Medvedev’s presidency, the debate about civil society somewhat opened up. This changed when Putin came back to power in 2012.

1.3.2 Azerbaijan

Civil society in Azerbaijan has developed in a rather similar way since the fall of the Soviet Union. In the years after 1991, the civil society sector developed and started activity in diverse fields of society. In 2003 and 2005 there were attempts to organize revolts against the government, which are by some academics seen as a failed attempt to a color revolution in Azerbaijan. This might have been an incentive for the government to conduct the more repressive policy against NGOs and foreign influence that followed in the subsequent years.

In 2007 the Azerbaijani government established the NGO Support Council, a institution that is similar to Russia’s Public Chamber. The International Center for Not-for-Profit-Law (ICNL) refers to it as a positive development for civil society. Human Rights Watch on the other hand states that experts fear that the Council makes NGOs more dependent on state budget, which leads to vulnerability to political

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36 Uhlin, Post-Soviet Civil Society, 49.
37 Crotty, Hall, Ljubownikow, “Post-Soviet Civil Society Development”, 1253.
38 Evans, “The Public Chamber”, 5.
40 Pape, “Civil Society and the Politics of HIV/AIDS in Russia”, 38.
43 ICNL, “NGO Law Monitor: Azerbaijan”. 
pressure. Furthermore, in 2009 a law that extended the requirements for NGO registration was implemented. This law can be compared to the Russian 2006 NGO law. For this reason a number of NGOs had to close down or stop their activities. ICNL explains that many NGOs do not have the capacity to comply with the requirements.

The state of post-Soviet civil society, explained for the cases of Russia and Azerbaijan, shows that the liberal theory does not seem to apply to Russia, nor do the general ideas about civil society of contemporary scholars such as Edwards and Bratton. A concept that seems more applicable is a "managed civil society". The next chapter further explains this concept using Russia’s recent NGO legislation as an example, before it, in the last chapter, is applied to NGO legislation in Azerbaijan.

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45 Hooper, "Russia’s Bad Example", 13.
46 ICNL, "NGO Law Monitor: Azerbaijan".
Chapter 2: “Managed civil society”: the example of Russia’s Foreign Agents Law

The nature of a “managed civil society” is the ability of the state to dominate and direct civil society.\(^47\) It reflects the ability of the state to manage its relation with society, which has a negative effect on the development of democracy.\(^48\)

2.1 Sergej Ljubownikow and “managed civil society”

Sergej Ljubownikow argues that Russian civil society became dominated by organizations founded and controlled by the Russian state after the NGO Law of 2006. He evinces the existence of a “managed civil society”. Ljubownikow presents three criteria for a “managed civil society”. Firstly, NGOs at least portray to be working in alliance with the state, because loyalty to the state is needed for NGOs in order to survive. Secondly, NGOs are funded by the state and by this, they have become a part of the state’s infrastructure. The state does this either by subsidizing certain organizations, or by putting restrictions on other forms of finance than government funding. Lastly, the state tries to impose this ideology by tightening their relations with NGOs, for example through the appointment of employees or leaders of NGOs to government duty. This can lead to the emergence of so-called marionette or “hybrid” NGOs.\(^49\) Briefly explained, Ljubownikow’s criteria for a “managed civil society” are:

- At least pretending to be working in alliance with state is needed for NGOs to survive.
- State funding incorporates NGOs in state infrastructure.
- Imposition of government ideology on NGOs tightens relations between government and NGOs.

The first time Ljubownikow presented this argument was in his PhD thesis published in 2011. Since then he has continued his research, now being an expert in this field. In 2013, 2014 and 2015, Ljubownikow wrote three other articles about this topic in cooperation with scholars as Hall, Crotty and Rodgers. In the article of 2013, Ljubownikow, Crotty and Rodgers look in more detail on the dependency of Russian NGOs on the state while unraveling a causal link with the situation in the Soviet Union.\(^50\) The article of Crotty, Hall and Ljubownikow of 2014 follows largely the line of reasoning of Ljubownikow’s PhD thesis, showing that the 2006 NGO Law caused the dominance of marionette NGOs over Russian civil society, which harms the development of democracy in Russia.\(^51\) Lastly, the article from 2015 examines the relations between the state and NGOs in three specific Russian cities.\(^52\) The three articles give additional information about Ljubownikow’s idea of “managed civil society”, but do not so much present a

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\(^{48}\) Ibidem, 15.

\(^{49}\) Ibidem, 200-201.


\(^{52}\) S. Ljubownikow and J. Crotty, “Managing Boundaries: The Role of Non-Profit Organisations in Russia’s Managed Democracy”, *Sociology*, October 22, 2015, 1-17.
new perspective on more recent developments in the field of NGO legislation. For this reason it is worthy to use Ljubownikow’s PhD thesis as a starting point for research in this thesis, which analyzes civil society in Azerbaijan as a comparative case to civil society in Russia.

2.2 “Managed civil society”: the academic debate

Researchers of post-Soviet civil society largely tend to agree with Ljubownikow’s point of view. Most of them acknowledge the existence of marionette NGOs. Ljubownikow himself follows the idea of Jo Crotty concerning the concept of these marionette organizations. She argues that the curtailment of civil activities in Russia comes forth out of the emergence of marionette organizations. These organizations pretend to be independent from the state, while in fact they act at the discretion of the government and help the state manage civil society.

Whether we can claim that Russia has a “managed civil society” is debated by academics. Evans for example, states that there is no evidence that Putin has a detailed plan about forming a kind of civil society that answers his will. Sarah Henderson disagrees and argues that the state does create a “managed civil society” and explains the emergence of marionette NGOs as a result of the state favoring certain NGOs by highlighting the causal relations between the Soviet past and Color revolutions in the 2000s. However, she argues that the increase of legal authority is a global phenomenon in democracies as well as in authoritarian states since 9/11. The European Human Rights Advocacy Center (EHRAC) agrees with Henderson’s observation and states that the phenomenon “managed civil society” is not bound to the former Soviet region, however it is the region on which most research about this topic focuses. Unlike Ljubownikow, Henderson argues that the biggest problem of Russian civil society is not restrictive NGO legislation, but rather the ignorance and lack of enthusiasm of the Russian people towards NGOs and civil society. In line with the reasoning of EHRAC this thesis examines the existence of a “managed civil society” in Azerbaijan.

2.3 Characteristics of a “managed civil society”: Russia’s Foreign Agents Law as an example

By applying Ljubownikow’s criteria for a “managed civil society” to more recent Russian NGO legislation, the current development of this phenomenon is analyzed. This functions as a background and comparative case, used when analyzing the situation in Azerbaijan, elaborated in chapter 3. The analysis of recent Russian NGO legislation focused on the FAL is to a certain extent based on academic articles, written by Hodish and Aliyev. Furthermore the observations of Amnesty International (AI), Human Rights Watch (HRW) and the Public Verdict Foundation as well as media reports are taken into account.

54 Ljubownikow, “An examination”, 77.
57 Henderson, “Civil Society in Russia”, 19.
2.3.1 The Foreign Agents Law: Rules and Enforcement

The Foreign Agents Law (FAL), introduced in Russia in 2012, states that NGOs that receive money from foreign donors and at the same time are engaged in political activity, are obliged to register as a “foreign agent”. The term “political activity” is vaguely defined as “organizing political acts in order to exert influence on the making of decisions by state organizations, concerning changes in state policy exercised by them, and influences public opinion in those aims”. From 2012 to 2016 several amendments on this law have been introduced, which mostly make the law more restrictive towards NGOs.

The law aims to bring NGOs and their finances under surveillance of the Russian Ministry of Justice. For that reason NGOs need to provide more information in the form of reports, also the Ministry organizes audits. Non-compliance to the law can lead to the freezing of bank accounts, banning of participation in public events and fines up to 300 000 rubles and 4 years imprisonment.

2.3.2 Alliance with the state in order to survive

Ljubownikow’s first criterion for a “managed civil society” is the fact that NGOs at least portray to be working in alliance with the state, otherwise they cannot operate within civil society. The prosecution that follows the enforcement of the FAL shows that this criterion is evidently present in Russia. According to HRW, 148 NGOs have had to register as a “foreign agent” from 2012 to 2016. 28 NGOs chose to shut down rather than to be registered as a “foreign agent”. Only 21 NGOs have been removed from the Foreign Agents List. At the end of 2016, 101 NGOs were on this list, of which only four registered voluntarily.

According to the Public Verdict Foundation 108 cases of administrative proceedings against NGOs for failing to register were followed by this law, consisting 17 against NGO directors and 91 against the organization. The total of fines that NGOs are required to pay is 12.3 million rubles on the base of 55 enforced judgements. In June 2016 the first case of criminal prosecution of a human rights defender for the violation of the FAL was opened against Valentina Cherevatenko, leader of the NGO Women of the Don. If she will be convicted, she faces two years imprisonment.

In the debate about the consequences of the FAL is no consensus about whether it has led to the closure of NGOs on a large scale. Research of the

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62 1 ruble is approximately €0.016. Average monthly salary in Russia in 2016 was approximately 36 150 rubles.
65 Public Verdict Foundation [with support of the EU-Russia Civil Society Forum and the Civic Solidarity Platform], “Crackdown on civil society in Russia. A brief overview of how the “foreign agents” and “undesirable organizations” laws are enforced in Russia”, June 2016, 1-12, 3.
English newspaper The Economist concludes for example that the law led to a lack of financial resources and was time consuming, but only led in few cases to the closure of the organization.67

2.3.3 State funding incorporates NGOs in state infrastructure

There is little proof that state subsidies are actually given to NGOs by the Russian state. However, besides to non-profit organizations the FAL also applies to state foundations, state corporations and state companies. So the Russian state is on paper able to create and control the civil society sector, as well as to legally allocate funding to civil society.68 The fact that religious organizations that are set up with help from the state are not covered by the FAL substantiates this conclusion.69

The other aspect of this criterion, namely the restriction on forms of finance other than government finance, is more pronounced. The FAL contributes to this in two ways. Firstly, due to Soviet history, the label “foreign agent” has a negative connotation and is interpreted as “spy” or “traitor”. It damages the credibility of an organization and provides organizations with much more difficulty to raise financial resources from Russian funders.70 Secondly, due to the FAL, organizations face difficulties collecting financial resources from foreign funders. These donations have to be screened or are not allowed at all if an organization is not registered as “foreign agent”.71

2.3.4 Imposition of government ideology on NGOs

Concerning the imposition of government ideology on NGOs can be argued that the FAL creates a kind of civil society in line with the government ideology, having the emergence of marionette NGOs as a result. The organizations that have had criminal cases against them vary in terms of geographical location, main issues they focus on and organizational structure. However, the reason for their prosecution seems in most cases the attempt to influence public opinion or the critical evaluation of government policy.72 The Russian newspaper Nezavisimaya Gazeta supports this conclusion and argues that the Russian government tries to thwart NGOs working in a certain field of action.73 The FAL is a method to build a civil society in a way the government wishes it to be, without respect for individual autonomy or democracy.74 Ljubownikow’s criteria for a “managed civil society” largely seem to apply to the consequences of the Russian FAL. It seems that the Russian government does have a plan to manage civil society, unlike Henderson argues. This again does not correspond to the dominant liberal theory on civil society but leads to a unilateral civil society controlled by the government, which has the potential to harm democracy. In

67 Will Russia play tough?”, The Economist, March 28, 2013.
73 “Inostrannye agenty noezjny vlasti”, Nezavisimaja Gazeta (Moscow), Aug. 30, 2013.
74 Crotty, Hall, Ljubownikow, “Post-Soviet Civil Society Development”, 1263.
the next chapter the presence of Ljubownikow's criteria for a "managed civil society" as a consequence of recent NGO legislation are evaluated for the case of Azerbaijan and compared to Russia.
Chapter 3: Recent NGO legislation in Azerbaijan and the effect on civil society

3.1 Russia’s Foreign Agents Law and Azerbaijan’s 2013-2014 amendments compared

According to an article written by Jackson on behalf of the International Forum of Democratic Studies, Russia promotes restrictive NGO legislation in former Soviet countries. Statements with an authoritarian form of government, as Azerbaijan, tend to find these restrictive NGO laws appealing, because they can be used to strengthen their regime by reducing the power of civil society. This concerns the academic debate about authoritarian diffusion, mentioned in the introduction of this thesis. From research concerning the comparison between Russia’s FAL and Azerbaijan’s NGO amendments we conclude that Azerbaijan has not copied the FAL word by word, however the aims and the restrictive character of the 2013-2014 amendments are clearly inspired by Russia’s FAL and therefore we speak of ‘copying’. Research conducted by IFEX, an international network of organizations promoting freedom of expression as fundamental right, concludes that both the FAL and Azerbaijan’s 2013-2014 amendments have the intention “to discredit and demonize groups critical of the government”. According to similarity in methods of restriction, Hooper shows that the fact that the focus is on complicating the registration process that NGOs need to complete in order to receive funding, whereby foreign funding is hampered, is the most evident similarity. Perhaps what makes this comparison most interesting is that the academic literature often names the Russian FAL and the Azerbaijani 2013-2014 amendments in the same breath.

It is important to mention that there are also severe differences between the NGO laws in question. Azerbaijani NGOs, for example, do not need to register as a “foreign agent”, therefore they do not have the connotation of spy which causes funding problems that lead in some cases to the closure of Russian NGOs. In their turn, Azerbaijani NGOs face a different way of prosecution by the government than Russian NGOs do. The following paragraphs elaborate on this topic.

The next paragraph gives a more detailed explanation of the 2013-2014 amendments, elaborating on the causes, aims, enforcement and punishment. In the last paragraph of this chapter, the consequences will be analyzed along the line of Ljubonikow’s criteria, in the same way as chapter 2 did for the Russian FAL. Also there are some comparisons made to the Russian FAL in order to illustrate to what extent the 2013-2014 amendments comply to Ljubownikow’s criteria. This analysis is based on articles written by experts working in the NGO sector, such as Hooper, area specialists such as Ismayil, Muradova and Aliyev and human rights experts such as Guluzade. Also reports of HRW, ECHR, FIDH, the European Commission for Democracy Through Law and media reports are taken into account.

76 Hooper, “Russia’s Bad Example”, 13.
78 Hooper, “Russia’s Bad Example”, 10, 14.
3.2 NGO legislation in Azerbaijan since 2013

3.2.1 Civil unrest as a cause

Chapter one explains that the failed attempt to organize a color revolution in Azerbaijan can be seen as an incentive for earlier restrictive NGO legislation. Some academics argue that protests and riots in 2012 and 2013 have formed an incentive for the Azerbaijani government to come up with more restrictions on civil society. In May 2012 major riots occurred during the Eurovision Song Contest, which was taking place in Baku, the capital of Azerbaijan. Opposition leaders called for protests against corruption and human rights abuses, in which the government was presumed to be involved.80 The protests were put down by government forces.81 In 2013 mass protests occurred again when people believed the government had murdered an Azerbaijani soldier. Some analysts saw these protests as the potential beginning of an “Azerbaijani Spring”. But these riots were again put down by the government.82

Besides civil unrest, other reasons for the introduction on new restrictive NGO legislation in Azerbaijan can be pointed out. For example the overall decrease of influence that foreign diplomacy has on the regime in Azerbaijan.83 However, this is also likely to be a consequence of earlier implemented NGO legislation. NGO legislation can give the government more power over society. It is then no surprise that the suppression of NGOs in Azerbaijan began not long before the presidential election in October 2013.84 Overall it can be said that color revolutions in the former Soviet region led in Azerbaijan, as well as in Russia, to a general fear of foreign countries influencing NGOs.85 This is all likely to have led to the 2013-2014 amendments.

3.2.2 Amendments: Rules and Enforcement

The amendments of 2013 and 2014 placed NGOs in Azerbaijan under strict control of the Ministry of Justice and imposed further limitations on foreign influence and funding.86 The amendments concern the Law on Grants, the Law on Nongovernmental Organizations, and the Code of Administrative Offenses.87

In February 2013 the Parliament adopted amendments that state that foreign donations to NGOs over 200 Manat88 need approval of the Ministry of Justice in the form of a grant agreement.89 NGOs are not

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81 Gerber, “Does Russian Propaganda Work?”, 82.
84 Hooper, “Russia’s Bad Example”, 14.
86 Hooper, “Russia’s Bad Example”, 13-14.
88 1 Manat is approximately €0.50. Average monthly salary in Azerbaijan in 2016 was approximately 490 Manat. http://www.tradingeconomics.com/azerbaijan/wages.
89 Hooper, “Russia’s Bad Example”, 13.
allowed to execute projects without such an agreement.\textsuperscript{90} Further, the amendments impose that all funding must be received through bank transfer. As a consequence, NGOs need a bank account with a state bank, which eases the state control over NGOs.\textsuperscript{91} Lastly, besides tax reports, NGOs are required to deliver detailed financial reports on donations and information on persons or organizations from which donations are received.\textsuperscript{92} The fines for violating the law became five times higher than before.\textsuperscript{93} NGOs can be fined if they do not have a grant agreement within thirty days, if they organize a project without having a grant agreement, if they do not include all the required information in their financial reports and if donations are given in cash instead of by bank transfer. Fines for NGOs can vary between 2500 and 150 000 Manat. Individuals, for example managers of NGOs, can be fined between 250 and 7000 Manat.\textsuperscript{94}

The amendments adopted in December 2013 imposed additional restrictions on the registration of NGOs as legal entities, the grant agreements and the required reporting to the government. By these amendments, non-registered NGOs can officially not be considered recipients of grants anymore.\textsuperscript{95} Individuals that received donations now also need approval in the form of a grant agreement. The Azerbaijani government found this necessary, because NGOs had started to receive funds through the bank accounts of their managers after the amendments of February to circumvent the slow registration process.\textsuperscript{96} The definition of grants was extended in December 2013, now including subgrants and other forms of assistance.\textsuperscript{97} Also, legal representatives of NGOs need to be Azerbaijani citizen from December 2013 on.\textsuperscript{98} Furthermore, the amendments state that foreign NGOs can only have one representation in Azerbaijan.\textsuperscript{99} Concerning the reporting to the Ministry of Justice, NGOs need to deliver additional detailed information about employees and changes in formal data.\textsuperscript{100} Penalties for non-compliance increased and the amendment specifically adds that NGO activity can be suspended on the base of “the creation of obstacles for the elimination of an emergency situation, failing to rectify deficiencies identified by the Ministry of Justice and the violation of the rights of its members”.\textsuperscript{101} The violation of members is vaguely defined. It seems to apply in case of a dispute between an NGO and its member.\textsuperscript{102}

\textsuperscript{90} Human Rights Watch, “Tightening the Screws”, 2013.
\textsuperscript{91} Hooper, “Russia’s Bad Example”, 13.
\textsuperscript{92} Human Rights Watch, “Tightening the Screws”, 2013.
\textsuperscript{93} Ibidem
\textsuperscript{96} EHRAC, “Legislating against foreign funding”, 2016.
\textsuperscript{98} EHRAC, “Legislating against foreign funding”, 2016.
\textsuperscript{100} Ibidem, 3.
\textsuperscript{101} Ibidem, 4.
\textsuperscript{102} Ibidem, 8.
The last amendments that are examined are the amendments introduced in 2014. These amendments add that local NGOs can only receive donations from foreign donors if these donors have an agreement with the Ministry of Justice.\(^{103}\) Also authorities can temporarily suspend or permanently ban national and foreign NGOs in Azerbaijan. And again, administrative requirements have been extended and fines have increased.\(^{104}\) In 2015 an additional series of rules was implemented that does not so much include new regulation but rather secures the implementation of the amendments from 2013 and 2014.\(^{105}\)

### 3.3 The consequences of recent NGO legislation in Azerbaijan

The consequences of the enforcement of the 2013-2014 amendments, which reached its peak in the summer of 2014, seem to be severe.\(^{106}\) The European Court of Human Rights concluded in several cases that the registration process is impeded and often so much delayed that Azerbaijan violates the human rights provisions concerning civil and political rights, set out in the Convention and its protocol.\(^{107}\) On the basis of Ljubownikow's criteria is examined whether this violation leads to a "managed civil society" in Azerbaijan.

#### 3.3.1 Alliance with the state in order to survive

As in the Russian case, the numbers of prosecution following the NGO legislation prove that it is essential for NGOs to work in alliance with the state in order to survive. We can divide the enforcement of the amendments on the Azerbaijani NGO law in 2013 and 2014 in two: the prosecution of organizations and the prosecution of individuals.

The report of Ismayil and Remezaite from 2016 concludes that 29 NGOs were actually subject to prosecution.\(^{108}\) A number of NGOs have their bank account frozen, as a result of which they cannot receive funding or spend money on activities anymore.\(^{109}\) In June 2014 eight NGOs found themselves in this situation.\(^{110}\) Fines are mostly imposed after tax investigations. At least 10 foreign and 17 domestic NGOs were severely penalized by fines.\(^{111}\) Parliament member Fazil Mustafa concluded after the amendments of February 2013 that the fines are likely to be much higher than grants received by NGOs, wherefore they cannot pay these fines and Azerbaijan will face an increase in appeals from Azerbaijani NGOs to the European Counts of Human Rights.\(^{112}\) The Turkish lawyer Alasgar Mammadli states that the 2013-2014

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\(^{103}\) EHRAC, “Legislating against foreign funding”, 2016.

\(^{104}\) FIDH, “Azerbaijan: Increasing repression against civil society severely”


\(^{106}\) Ismayil, “Shrinking space”, 5.


\(^{108}\) Ismayil, “Shrinking space”, 5.

\(^{109}\) Hooper, “Russia’s Bad Example”, 13.

\(^{110}\) Ismayil, “Shrinking space”, 4.

\(^{111}\) Ibidem, 3.

amendments cause the fact that Azerbaijani NGOs are not able to contribute to civil society anymore if they do not comply to the law.\textsuperscript{113}

Striking is the fact that criminal prosecution of individuals happens much more often in Azerbaijan than in Russia. Between 2013 and 2015 almost 40 human rights defenders, journalists and opposition figures have been sentenced to five to eight years imprisonment. This number is increasing each year.\textsuperscript{114} As a direct consequence of the amendments of 2014, 10 NGOs had a case opened against them of which most appeals are rejected.\textsuperscript{115} Well known cases of individual prosecution are those of Rasul Jafarov, the Chair of the NGO Human Rights Club, Intigam Aliyev, a famous human rights lawyer and the Chair of the Legal Education Society, Anar Mammadli, the Chair of the Election Monitoring and Democracy Studies Center and Leyla and Arif Yunus, respectively the director of the Institute for Peace and Democracy and human rights activist. They are prosecuted for non-compliance with the NGO laws and accused of illegal entrepreneurship, tax evasion, the abuse of power, failing to register grants from foreign donors and spying.\textsuperscript{116} These sentenced individuals are generally released after a relatively short period of imprisonment and are afterwards forced to operate within state boundaries.\textsuperscript{117} The Azerbaijani government seems to predominantly use the amendments to prosecute individuals in the NGO-sector that do not work in alliance with the state. This causes a decrease in NGO activity, not necessarily filled up by NGOs working in alliance with the state.

3.3.2 State funding incorporates NGOs in state structure

According to Ljubownikow’s second criterion, a state can incorporate NGOs in the state structure either by subsidizing organizations, or by putting restrictions on other forms of finance. In academic literature or other sources, there is no prove of direct government funding to NGOs in Azerbaijan. The fact that the amendments only include NGOs and not state foundations, state corporations and state companies, as they do in Russia, makes it also rather unlikely that the state is able to do this on a large scale.\textsuperscript{118}

The Azerbaijani government on the other hand clearly puts restrictions on other forms of finance. Since the 2013-2014 amendments it is almost impossible for unregistered NGOs to legally receive donations.\textsuperscript{119} The only way to receive donations over 200 Manat is by bank transfer. In order to have a legal bank account, NGOs have to be registered as a legal entity.\textsuperscript{120} Currently three requirements must be met. Firstly, the donor needs to have permission from the Ministry of Finance to give a donation to an NGO. Secondly, the NGO receiving the donation needs to be registered as a legal entity at the Ministry of Justice.

\textsuperscript{113} A. Mammadli, "Azerbaijan Establishes Total Control over NGOs", Chetin Sual, April 22, 2016.
\textsuperscript{114} Ibidem, 14.
\textsuperscript{115} FIDH, "Azerbaijan: Increasing repression against civil society severely"
\textsuperscript{116} Ismayil, "Shrinking space", 26-30.
\textsuperscript{117} EHRAC, "Legislating against foreign funding", 2016.
\textsuperscript{118} Aliyev, "The impact of Soviet legacy", 3-4.
\textsuperscript{119} Human Rights Watch, "Tightening the Screws", 2013.
\textsuperscript{120} European Commission for Democracy Through Law, "Laws on amendments", 21.
And lastly, a NGO needs to register every agreement with any organization that they entered into concerning donations.\textsuperscript{121} This leads to a substantial decrease in income for NGOs. And even as in Russia, this process costs a lot of time and money that NGOs cannot use for their regular activities. Also, NGOs are obligated to report to many government bodies, such as the Ministry of Justice, the Ministry of Finance, the Ministry of Taxes, the State Employment Agency, the State Statistics Committee and the State Social Protection Fund.\textsuperscript{122} All these government bodies can impose penalties on NGOs.\textsuperscript{123} These penalties directly lead to less financial resources, which makes the work of NGOs less effective.\textsuperscript{124} Forms of finance of Azerbaijani NGOs are limited by the amendments. However, raising local funding isn’t as difficult for Azerbaijani NGOs as it is in Russia because, as said in the introduction of this chapter, the 2013-2014 amendments do not include the “foreign agent” label as the FAL does.

\subsection*{3.3.3 Imposition of government ideology on NGOs}

The enforcement of the 2013-2014 amendments seems mainly focused on the targeting of NGOs with ideologies controversial to the governments ideology, especially those working in the field of human rights. Much less than the Russian government, the Azerbaijani government seems to have the intention to impose an ideology on existing NGOs. The literature about marionette NGOs almost never speaks of Azerbaijan. It is unclear whether the gap that NGOs, targeted by the 2013-2014 amendments, leave in civil society is filled up in anyway.

Fact is that the enforcement of the 2013-2014 amendments mainly focuses on NGOs advancing an ideology controversial to the governments ideology. Human Rights Watch and EHRAC especially warn NGOs that are outspoken, challenge government policies or work on controversial issues to the margins of the law.\textsuperscript{125} The European Commission for Democracy Through Law states that the amendments are intertwined with political discourse.\textsuperscript{126} Hooper goes even further and claims that the Azerbaijani government wants to keep those organizations out so they cannot influence a next generation of human rights defenders and election monitors.\textsuperscript{127} An example of the specific targeting of critical NGOs is the Public Association for Assistance to Free Economy. This NGO has been denied registration seven times in eight months due to minor administrative mistakes in the registration application.\textsuperscript{128} According to the director of the media freedom group Institute for Reporters’ Freedom and Safety (IRFS), the consequence of this enforcement is that fewer NGOs are willing to work on issues related to democracy and human

\begin{footnotesize}
\textsuperscript{121} Ismayil, "Shrinking space", 12.
\textsuperscript{122} Human Rights Watch, “Tightening the Screws”, 2013.
\textsuperscript{123} Guluzade, "Overview of the changes", 9.
\textsuperscript{124} Ismayil, "Shrinking space", 9.
\textsuperscript{125} Human Rights Watch, “Tightening the Screws”, 2013.
\textsuperscript{127} Hooper, “Russia’s Bad Example”, 13.
\textsuperscript{128} Ismayil, "Shrinking space", 11.
\end{footnotesize}
Human Rights NGOs are not only forced out of Azerbaijani civil society, also the working space in this field is made so unattractive that they decide for themselves to concentrate on another field of activity.

The 2013-2014 amendments do not follow the Russian FAL word by word, however they are comparable according to the specific targeting of critical groups and organizations and the part of the methods that is focused on complicating the registration process. The way in which Azerbaijan enforces the amendments is different from Russia, since Azerbaijan focuses much more on the criminal prosecution of NGO leaders and human rights defenders. The development of marionette NGOs seems largely absent in Azerbaijan. The closure of NGOs doesn’t seem to lead to a gap in civil society that is filled up by government friendly organizations, but much more to an overall shrinking of Azerbaijani civil society.

129 Muradova, “Azerbaijan Restricts NGO Funding”.
Conclusion

The copying of Russian-style NGO legislation in Azerbaijan only partially results in a “managed civil society”, described along the lines of Ljubownikow’s criteria. Azerbaijan is introducing elements of a “managed civil society”, but manages it in a way that differs from Ljubownikow’s theory and from Russia’s approach. Although civil society legislation from 1991 to 2009 seemed to develop in a rather similar way in Russia and Azerbaijan, this thesis shows that with the 2013-2014 amendments Azerbaijan chooses a different way of managing its civil society. The Azerbaijani government reduces the power and size of civil society by targeting the financial resources of NGOs and, different than in Russia, by targeting critical individuals with criminal prosecutions. It is remarkable that the space that targeted NGOs leave in civil society in Azerbaijan, is not filled up with marionette organizations that operate in alliance with the state, as it is in Russia.

According to Ljubownikow’s first criterion, there is no prove for NGOs that directly work in alliance with the Azerbaijani state. Although the prosecution of individuals leads to the fact that formerly critical voices now have to toe the line, we cannot speak of an alliance. It rather leads to the disappearance of critics. There is also no prove of state funding to NGOs in Azerbaijan. The second criterion can be partially proven right when referring to the second part of Ljubownikow’s explanation, concerning the restrictions on other forms of finance than government funding. However, this does not seem to incorporate organizations in the state structure, but rather seems to push them out of society. Due to the absence of marionette NGOs there is even less prove for Ljubownikow’s third criterion about the imposition of government ideology on NGOs. We do see the that specific groups are targeted in Azerbaijan, which leads to the disappearance of a certain kind of ideology within civil society, mainly the kind that is promoting human rights and is critical to government policy. As said, this gap does not seem to be filled with organizations on which government ideology is imposed. Therefore my hypothesis, stating that the copying of Russian-style NGO legislation results in a “managed civil society” that threatens democracy in Azerbaijan, has not proven to be right. Although I have to conclude that this hypothesis has not proven to be right in the light of Ljubownikow’s criteria, it is evident that the Azerbaijani government through the 2013-2014 amendments has been deliberately cutback on civil society in Azerbaijan, which leads to a decrease in critical voices.

This conclusion partially follows the leading arguments in the authoritarian diffusion debate, because Azerbaijan does adapt a restrictive kind of legislation that is similar to the Russian one, however Azerbaijan seems to use it to structure civil society in a different way than Russia does. It does strengthen the arguments of Henderson, Ljubownikow and Golenkova who question the fact that NGOs are able to operate independently from the government in former Soviet states. And in this way it also proves that the liberal theory is not applicable to Azerbaijani civil society. The 2013-2014 amendments made it impossible for NGOs, especially those that are critical to the regime, to pluralize civil society, represent marginalized groups in society or challenge state authority. None of the definitions of Edwards seems to be applicable to the contemporary Azerbaijani civil society.
Azerbaijan deviates from the general trend in academic literature on post-Soviet civil society which supposes the existence on marionette NGOs. It is managing civil society in its own way, introducing elements of a “managed civil society” which can threaten democracy in Azerbaijan. However, it does not sufficiently respond to Ljubownikow’s criteria to define it as a “managed civil society”.
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