COMMENTS

RESTRICTION OF RIGHTS OF NON-GOVERNMENTAL ORGANIZATIONS IN RUSSIA AS A SUBJECT OF JUDICIAL CONTROL

POLINA VINOGRADOVA,

Law Institute of the Peoples' Friendship University of Russia (Moscow, Russia)

DOI: 10.21684/2412-2343-2016-3-3-103-116

This article examines the issue of the regulation of the Russian state's control over the activities of non-governmental organizations and the limits to that control. Important changes made in 2014–2016 in the regulation of the organization and activity of judicial power show that the tasks of transformation of the judicial power structure, establishment of effective control mechanisms and strengthening of the requirements on substantiation of court judgments have become more topical. Addressing this issue and taking it as the subject of study are motivated by the small number of works dealing with this issue. The task of enhancing the effectiveness of the exercise of their powers by public authorities necessitates consideration of special features of judicial control over disputes related to restriction of rights. The adoption of the Administrative Procedure Code of the Russian Federation and the statutory formalization of special features of judicial control with respect to certain non-commercial organizations imply changes in judicial practice related to challenging the decisions made by public authorities. In addition to special procedural features such changes also facilitate the spread in law enforcement practice of legal arrangements like the 'proportionality test' and determining the balance between competing constitutional values and conditions of public order observance. The analysis carried out by the author reveals tendencies of improvement in legislative action and allows identification of future lines of improvement in judicial practice.

Keywords: judicial control; non-governmental organizations; non-state actors; non-profit organizations; non-commercial organizations; unregistered organizations; undesirable foreign organization.

Recommended citation: Polina Vinogradova, *Restriction of Rights of Non-Governmental Organizations in Russia as a Subject of Judicial Control*, 3(3) BRICS Law Journal 103–116 (2016).

1. Introduction

Consideration of the restriction of rights in the area of the interaction between public authorities and civil society is of particular relevance today. Special attention given to the issue of the state's control over the activities of non-governmental organizations (NGOs) is evidenced by the difference in legislative provisions reviewed by the Constitutional Court of the Russian Federation and recommendations on this issue adopted by the Council of Europe's European Commission for Democracy through Law (the Venice Commission). Addressing this issue and taking it as the subject of study are motivated by the small number of works dealing with this issue.

Mendelson (senior fellow with the Center for Strategic & International Studies Russia and Eurasia Program) and Glenn (executive director of the Council for European Studies at Columbia University) state succinctly that, "Foreign policy increasingly involves non-state actors."[1] According to David P. Forsythe, author and professor emeritus at the University of Nebraska, non-governmental organizations (NGOs) "have advanced some form of liberalism in international relations through their emphasis on individuals and law, as compared with state interests and power."[2] With these particular non-state actors in mind, i.e. NGOs, Mendelson and Glenn point out the following:

> The strategies that international NGOs have used for pursuing the institutionalization of various rights have been, with few exceptions, composed and carried out with relatively little interference or supervision from government bureaucracies or market interests, although the interests of donors, including foreign governments, have shaped NGO activities. In the post-communist cases it makes sense to look closely at the work of NGOs, since they are the actors that provide much of the external support within the country.[3]

The right to freedom of association is guaranteed by international human rights treaties and many national constitutions. Non-commercial organizations (NCOs) –

---

[1] Sarah E. Mendelson & John K. Glenn, *The Power and Limits of NGOs: A Critical Look at Building Democracy in Eastern Europe and Eurasia* 4 (New York: Columbia University Press, 2002).

[2] David P. Forsythe, *Human Rights in International Relations* 214 (Cambridge: Cambridge University Press, 2006).

[3] Mendelson & Glenn, *supra* note 1, at 7–8.

according to Federal law No. 121-FZ, Law on Non-Commercial Organizations, in Russia NCOs fall into six categories, namely, "social and religious organizations, funds, non-profit partnership, private institutions, autonomous non-profit associations, and associations (unions)" – are of paramount importance in modern societies. It should be noted, though, that Russia has never had a strong civil society. These circumstances make it necessary to carry out an analysis of the legal conditions of restriction of rights of non-governmental organizations in Russia.

2. Russian Legislation and International Standards

Article 30 of the Constitution of the Russian Federation states that the "freedom of the activity of public association shall be guaranteed." At the same time, the Constitution sets out certain restrictions:

– The creation and activities of public associations whose aims and actions are aimed at a forced change of the constitutional system and at violating the integrity of Russia, at undermining its security, at setting up armed units, and at instigating social, racial, national and religious strife shall be prohibited (Article 13.5).

– The exercise of the rights and freedoms of man shall not violate the rights of other people (Article 17.3).

– The rights and freedoms of man and citizens may be limited by federal law only to the extent to which it is necessary for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, for ensuring defense of the country and security of the State (Article 55.3).

The right to freedom of association is not an absolute right and, therefore, limitations on this right are possible. Article 22 of the International Covenant on Civil and Political Rights states that restrictions are permissible only when prescribed by law and necessary in a democratic society in the interests of national security or public safety, public order or the protection of the rights and freedoms of others. Similarly, Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) states that the only restrictions permissible are those that are prescribed by law and are necessary in a democratic society in the interests of, for example, national security or public safety. The most important aspect of the definition of "association" especially with regard to public relations is that an association must not distribute any profits that might arise from its activities among its members or founders, but should invest them in the association and use them for the pursuit of the association's objectives.[4] Article 1 of the European Convention on the

[4] Recommendation CM/Rec(2007)14 of the Committee of Ministers of the Council of Europe to Member States on the Legal Status of NGOs in Europe, October 10, 2007, para. 9 (Oct. 25, 2016), available at https://www.coe.int/t/dghl/standardsetting/cdcj/CDCJ%20Recommendations/CMRec(2007)14E_Legal%20status%20of%20NGOs.pdf.

Recognition of the Legal Personality of International Non-Governmental Organizations states that NGOs satisfy the following conditions: they have a non-profit-making aim of international utility; they have been established by an instrument governed by the internal law of a party; they carry on their activities with effect in at least two states; and they have their statutory office in the territory of a party and the central management and control is in the territory of that party or another party. In Federal law No. 7-FZ on Non-Commercial Organizations, a non-commercial organization is defined as "one not having profit-making as the main objective of its activity and not distributing the earned profit among the participants" (Art. 2(1)).

Federal law No. 121-FZ on Amendments to Certain Legislative Acts of the Russian Federation Regulating the Activities of Non-Commercial Organizations acting as Foreign Agents introduced the legal status of a "foreign agent," which pertains to NCOs receiving funding from abroad and participating in activities with underlying political motivations.

> The rationale for the introduction of the status of a "foreign agent" consists… in an attempt to ensure openness and publicity in the activities of non-commercial organizations, exercising the function of a foreign agent, and exercise the organization of the needed social control of the work of non-commercial organizations, participating in political activities in the territory of the Russian Federation and financed from foreign sources. This rationale is… a legitimate one, as states certainly have a right to take steps in order to ensure transparency in matters pertaining to foreign funding of NGOs.[5]

It is clearly in the interest of a state to ensure the transparency of NGOs operating in its territory that receive foreign funding, so as to prevent their misuse for the political aims of foreign countries. Legal steps taken in this regard by a state can be considered to be "necessary in a democratic society in the interest 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"[6] (para. 2 Article 11 ECHR).

> A non-commercial organization is considered to exercise the functions of a foreign agent if ***three conditions*** are met: a) the organization is registered

---

[5] European Commission for Democracy through Law, *Opinion on Federal Law No. 121-FZ on NCOs ("Law on Foreign Agents"), on Federal Laws No. 18-FZ and No. 147-FZ and on Federal Law No. 190-FZ on Making Amendments to the Criminal Code ("Law on Treason") of the Russian Federation*, adopted by the Venice Commission at its 99th Plenary Session (Venice, 13–14 June 2014) (CDL-AD(2014)025), para. 57 (Oct. 25, 2016), available at http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)025-e.

[6] *Id.* para. 111.

> in Russia as a[n] NCO; b) the organization receives monetary assets and other property from foreign states, their state bodies, international and foreign organizations, foreign persons, stateless persons or from the persons authorized by them and/or from Russian legal entities receiving monetary assets and other property from the cited sources; c) the organization participates[,] including in the interests of foreign sources, in political activities exercised in the territory of the Russian Federation.[7]

A non-commercial organization participates in political activities if, regardless of the purposes and tasks cited in the constituent entities thereof, it participates in arranging and conducting political actions for the purpose of influencing the adoption by the state bodies of decisions aimed at changing the state policy pursued by them, as well as in forming public opinion for the cited purposes.

On April 8, 2014, the Constitutional Court of the Russian Federation delivered its ruling on the constitutionality of the legislation obliging foreign-funded NCOs to register as "organizations, performing a function of a foreign agent" in the event that they participate in political activities.[8] The Constitutional Court assessed in its judgment on the constitutionality of the law that "any attempt to find, based on stereotypes of the Soviet era that have effectively lost their meaning under modern conditions, any negative connotation in the phrase 'foreign agent' would be devoid of any constitutional and legal basis."

The forms of political activities can vary widely. In addition to meetings, rallies, demonstrations, marches and pickets, political activities include canvassing in connection with elections and referendums, public appeals to government bodies, dissemination, including with the use of modern information technologies, of their assessments of the decisions made and policies pursued by state bodies as well as other activities which it would be impossible for legislation to list comprehensively. These and other activities organized by and/or carried out with the participation of NCOs are subject to the aforementioned statutes when their goal is that of influencing directly or through forming public opinion changes to state policy.

There is no universal definition of what constitutes an NGO. Although many relevant international and regional documents have attempted to outline the form that such organizations take. The Council of Europe's Recommendation on the legal status of NGOs in Europe states that NGOs are "voluntary self-governing bodies or organizations established to pursue the essentially non-profit-making objectives of their founders or members," and it does not include political parties. The

---

[7] European Commission for Democracy through Law, *supra* note 5, para. 44.

[8] Judgment of the Constitutional Court of the Russian Federation on the Constitutionality of the Regulation of Political Activities by Foreign-Funded NGOs (Sep. 1, 2016), available at http://ksrf.ru/en/Decision/Judgments/Documents/2014%20April%208%2010-P.pdf.

Recommendation goes on to state that NGOs "encompass bodies or organizations established both by individual persons (natural or legal) and by groups of such persons." For the purposes of these guidelines, NGOs that are not membership-based or do not have several founders do not fall under the definition of an association.[9]

Federal law No. 121-FZ "is designed to regulate the activities of non-governmental organizations (NGOs) that receive funding and other resources from foreign sources and engage in political activities."[10] Furthermore, "the law sets the conditions of and the procedure for acquiring this status by means of a registration and regulates the legal responsibility of non-commercial organizations which fail to register as foreign agents."[11] In addition:

> The law provides for the establishment of a register of NGOs acting as foreign agents. In order to carry out its activities as a foreign agent, an NGO must apply to be included in the above register before starting its operation… NGOs acting as foreign agents shall submit to the… [Ministry of Justice of the Russian Federation] registration documents containing a report on their activities and personnel in their governing bodies once every six months, and documents on the expenditure of funds and resources… [and t]he materials published or distributed by these NGOs… The creation of an NGO that infringes on the personal freedoms and rights of citizens, as well as the consistent non-observance of the duties under the Russian legislation on NGOs acting as foreign agents[,] constitute criminal offences.[12]
>
> The law requires all non-commercial organizations (NCOs) to register in the Registry of NCOs, which is maintained by the Ministry of Justice, prior to receipt of funding from any foreign sources if they intend to conduct political activities. Such NCOs are called "NCOs carrying functions of a foreign agent." In addition, Russia ordered the U.S. Agency for International Development to halt its work in Russia by October 1, 2012, alleging that USAID was meddling in domestic politics by providing grants for election monitoring and other programs. As of August 1, 2016, the Registry of NCOs Carrying Functions of Foreign Agents included 137 NCOs, with 17 of them registered voluntarily (mostly because of considerable administrative penalties). The Federal law of March 8, 2015 specified the grounds and procedure for exclusion from the register of NCOs performing functions of a foreign agent. As of August 1, 2016, 21 NCOs had

[9] Recommendation CM/Rec(2007)14, *supra* note 4, "Basic principles," paras. 1, 2.

[10] *Law Regulating the Activities of NGOs Acting as Foreign Agents* (Sep. 1, 2016), available at http:en.kremlin.ru/acts/news/16034.

[11] European Commission for Democracy through Law, *supra* note 5, para. 10.

[12] *Law Regulating the Activities of NGOs*, *supra* note 10.

> been excluded from the Registry because they had been liquidated. Thirteen NCOs that applied for withdrawal from the Registry on the grounds of the absence of foreign funding were also excluded from the Registry (nevertheless they remain in the Registry with their changed status).[13]

If NCOs fail to apply for registration, they will be included in this registry by the competent body. The decision can be appealed in the courts.

> The… provisions [of Federal law on Amendments to Certain Legislative Acts of the Russian Federation (Federal law on Undesirable Activities of Foreign and International NGOs) No. 129-FZ] introduce the definition of undesirable institutions – foreign and international non-governmental organizations whose activities are deemed to pose a threat to Russia's security and basic interests and are therefore undesirable on Russia's territory. This has necessitated amendments to a number of existing laws, including federal laws on Measures Applicable to Individuals Involved in Violating the Basic Human Rights and Civil Liberties of Russian Federation Citizens, on Procedures for Entry and Exit To and From the Russian Federation, the Criminal Code and the Administrative Offences Code.
>
> Under the law's provisions, foreign or international NGOs that pose a threat to Russia's constitutional foundations, defence capability or national security, can be recognized as undesirable on Russian soil. The decision to recognize an organization's activities as undesirable in Russia is taken by the Prosecutor General or Deputy Prosecutor General in agreement with the federal executive bodies responsible for drafting and implementing state policy and legal regulation in the area of international relations. The same officials are responsible for reversing such decisions.[14]

The decision taken by the Prosecutor General or his deputies will be communicated to the Ministry of Justice of the Russian Federation.

> The foreign or international organizations whose activities are recognized as "undesirable" are included in a list administrated and maintained by the Ministry of Justice. The decision on the recognition of the activities of a foreign or international organization as undesirable may be repealed by the Prosecutor General or his/her deputies in coordination with the Ministry

---

[13] The International Center for Not-For-Profit Law (ICNL), Civic Freedom Monitor: Russia (Sep. 1, 2016), available at http://www.icnl.org/research/monitor/russia.html.

[14] *Amendments to Legislative Acts*, May 23, 2015 (Sep. 1, 2016), available at http://en.kremlin.ru/acts/news/49511.

of Foreign Affairs and the NGO may then be taken off the List on the official web-site of the Ministry of Justice.[15]

The consequences for an organization whose activities have been recognized as undesirable are (under Federal law on Undesirable Activities of Foreign and International NGOs):

– prohibition to establish structural units in Russian territory and termination of the activities of structural units previously established in Russian territory;

– prohibition to distribute information material issued by a foreign or international NGO whose activities are declared "undesirable" and (or) to disseminate such information, including through the media and (or) with the use of the Internet or telecommunications networks, as well as to produce or store such information for purposes of distribution;

– prohibition to realize (implement) projects or programs in Russian territory;

– prohibition to use bank accounts and deposits for purposes other than settling for business operations and work contracts, compensating for losses caused by its actions, and paying taxes, duties and fines;

– prohibition to execute operations with funds and other property, one of the parties to which is a foreign or international NGO included in the list for all credit and non-credit financial organizations and provide information about the refusal to the Ministry of Finance. The Ministry of Finance will submit this information to the office of the Prosecutor General as well as to the Ministry of Justice.

In addition, the decision taken by the Prosecutor General or his deputies entails the consequence of "[s]uspension of the rights as a founder of a mass media organ and prohibition to organize and conduct any mass action and public events and to take part in them."[16]

The federal law also stipulates administrative and criminal liability in cases where foreign or international NGOs that have been recognized as undesirable in Russia carry out activities in Russian territory. The directing of activities of an NGO included in the list "participating in" such activities in Russian territory by a person who has been subject to administrative responsibility for committing an analogous offence twice in the course of one year qualifies as a new criminal offence. Sanctions are proportional and will always be proportional to the gravity of the wrongdoing; they will accord with the requirements of legality, legitimacy and necessity in a democratic society.

---

[15] European Commission for Democracy through Law, *Opinion on Federal Law No. 129-FZ on Amending Certain Legislative Acts (Federal Law on Undesirable Activities of Foreign and International NGOs)*, adopted by the Venice Commission at its 107th Plenary Session (Venice, 10–11 June 2016) (CDL-AD(2016)020-e), at 6–7 (Oct. 25, 2016), available at http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)020-e.

[16] *Id.* at 7.

As of October 1, 2016, the registry of "undesirable organizations" includes six organizations: National Endowment for Democracy, OSI Assistance Foundation, Open Society Foundation, U.S.-Russia Foundation for Economic Advancement and the Rule of Law, Media Development Investment Fund and National Democratic Institute.

The Venice Commission has called upon the Russian authorities to work towards a clear definition of "political activities."[17] Dissatisfaction with the definition (in Federal law No. 179-FZ of June 2, 2016) has also been expressed by the Civic Freedom Monitor of the International Center for Not-for-Profit Law:

> Conducting political activity is one of the criteria for an NCO to be qualified as an organization carrying out the functions of a foreign agent under Russia's Law on NCOs. The new definition remains vague and may make it even easier for the government to label almost any activity as "political." Nevertheless, political activities do not include activities in the sphere of science, culture, art, healthcare, prevention and protection of public health, social maintenance, social support and protection of citizens, protection of motherhood and childhood, social support of persons with disabilities, propaganda of healthy lifestyle, physical culture and sports, protection of flora and fauna, charitable activities.[18]

On June 2, 2016, President Vladimir Putin signed Federal law on Amendments to Article 8 of the Federal law on Public Associations and Article 2 of the Federal law on Non-Profit Organizations, which "aims to provide a more detailed definition for the term 'political activity' as applied to non-profit organizations that function as foreign agents. In particular, the Federal law directly sets out the goals, forms and spheres of activity the totality of which allows defining an NPO as a political organization."[19]

3. Proportionality Test

The Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE) and the Commission for Democracy through Law (the Venice Commission) of the Council of Europe jointly developed guidelines on the freedom of association. According to their *Joint Guidelines on Freedom of Association*:

---

17 European Commission for Democracy through Law, *supra* note 5, para. 135.

18 ICNL, *supra* note 13.

19 *Law Specifying Political Activity of Non-Profit Organizations* (Sep. 1, 2016), available at http://en.kremlin.ru/acts/news/52101.

> [T]he principle of proportionality becomes essential in the assessment of whether an association may be prohibited or dissolved… Ensuring that an interference by the state in the exercise of a fundamental freedom does not exceed the boundaries of necessity in a democratic society requires striking a reasonable balance between all countervailing interests and ensuring that the means chosen are the least restrictive means for serving those interests… [T]his should be done by assessing whether a planned interference in the exercise of the right to freedom of association is justified in a democratic society, and whether it is the least intrusive of all possible means that could have been adopted… [I]n matters concerning restrictions placed on an association, the right to receive a fair hearing by an independent and impartial tribunal established by law is an essential requirement to be secured by legislation.[20]

A proportionality test means that when framing restrictions the least intrusive means should be employed. Furthermore,

> [r]estrictions must never entirely extinguish the right nor deprive it of its essence… The principle of necessity in a democratic society requires that there be a fair balance between the interests of persons exercising the right to freedom of association, associations themselves and the interests of society as a whole. The need for restrictions shall be carefully weighed, therefore, and shall be based on compelling evidence. The least intrusive option shall always be chosen. A restriction shall always be narrowly construed and applied and shall never completely extinguish the right nor encroach on its essence. In particular, any prohibition or dissolution of an association shall always be a measure of last resort, such as when an association has engaged in conduct that creates an imminent threat of violence or other grave violation of the law, and shall never be used to address minor infractions. All restrictions must be based on the particular circumstances of the case, and no blanket restrictions shall be applied.[21]

As pointed out in the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association,

> restrictions on access to resources from abroad (or from foreign or international sources) must be prescribed by law, pursue a legitimate aim in conformity with the specific permissible grounds of limitations set out in the relevant

---

[20] Joint Guidelines on Freedom of Association (OSCE/ODIHR Legis-Nr:GDL-FOASS/263/2014), adopted by the Venice Commission at its 101st Plenary Session (Venice, 12–13 December 2014), paras. 112–114.

[21] *Id.* para. 35.

> international standards, as well as be necessary in a democratic society and proportionate to the aim pursued. Combating corruption, terrorist financing, money-laundering or other types of trafficking are generally considered legitimate aims and may qualify as being in the interests of national security, public safety or public order.[22]

The Russian legislation in this field meets the internationally accepted legal standards. Moreover, the right of NGOs to judicial protection is guaranteed in Russia. In the course of an appeal against decisions made by public authorities, a non-governmental organization may submit petitions under the general procedure provided for by the Administrative Procedure Code. Russian legislation does not provide for any special features of judicial examination of this category of cases. Acting in the context of control over the legality of actions taken by public authorities to restrict the rights of non-governmental organizations, the court will establish the circumstances referred to in parts 9 and 10, Article 256 of the Administrative Procedure Code. When examining the legality of decisions or actions (or the omission of actions), the court will establish whether the applicant's rights and lawful interests have been violated, and whether the requirements of the legal acts formalizing the disputed exercise of power or the procedure for making the disputed decision, the grounds for making it, and the consistency of the content of the disputed decision with the legal acts governing the disputed relations have been observed, as well as other procedural issues.

The result of legal qualification is a properly substantiated conclusion made by the court, which will be recorded in the operative part of the judgment. One of the main criteria for the effectiveness of judicial control is the legal sufficiency of delivered judgments and their proper substantiation and cogency. A court judgment is properly substantiated if the facts that are relevant to the case are confirmed by the evidence examined by the court and the conclusions made by the court are based on such facts.

The circumstances outlined above allow arriving at the conclusion that the right of non-governmental organizations to judicial protection and to a fair trial on the basis of the principles of the adversarial relationship and the equality of the parties with the provision of sufficient procedural powers for protection of their rights when performing any procedural action is guaranteed in Russia.

4. Discussion and Conclusion

The availability of a wide range of guarantees for the exercise of their rights by NCOs implies mutually conditioned duties for their operation within the legal

[22] Report to the UN Human Rights Council (Funding of Associations and Holding of Peaceful Assemblies), UN Doc. A/HRC/23/39, April 24, 2013, para. 35.

framework. In this connection, attention should be paid to the impossibility of appealing against the actions taken by non-registered non-governmental organizations.

> Legislation should not compel associations to obtain formal legal personality, but it should provide associations with the possibility of doing so… Legislation should not require associations to go through formal registration processes. Rather, associations should be able to make use of a protective legal framework to assert their rights regardless of whether or not they are registered… An association that obtains legal personality thereby acquires legal rights and duties, including the capacity to enter into contracts and to litigate and be litigated against. Informal associations depend on the legal personality of their members for any such actions required for the pursuit of their objectives.[23]

Not being parties to civil law relationships, non-registered organizations may not have the right of ownership of property or the right of its legal protection, nor enter into contractual relations or be a party to an obligation; additionally, they cannot lodge collective actions with the courts to protect the interests of third parties having interests equal to their own. On the one hand, the absence of any legal status considerably limits the opportunities for the activities of a non-governmental organization, while, on the other hand, it allows avoidance of judicial control over its activities. As a consequence, it becomes impossible to implement constitutional provisions and judicial protection guarantees for the persons whose rights are violated as a result of the activities of non-registered organizations.

The *Joint Guidelines on Freedom of Association* supports this position when it explains clearly:

> [T]he acquisition of legal personality is a prerequisite for an association to gain the legal capacity to, in its own name, enter into contracts, make payments for goods and services procured, and own assets and property, as well as to take legal action to protect the rights and interests of associations, among other legal processes that can be essential for the pursuit of the objectives of associations. It is reasonable to put in place registration or notification requirements for those associations that wish to have such legal capacities, so long as the process involves requirements that are sufficiently relevant, are not unnecessarily burdensome and do not frustrate the exercise of the right to freedom of association. The particular legal capacities thereby acquired may vary according to the type of association concerned…

---

[23] Joint Guidelines, *supra* note 20, paras. 48, 50.

> States may… require that associations that are seeking to enjoy various forms of public support, or that wish to be accorded a particular status (such as being recognized as a charity or public benefit organization), first obtain legal personality.[24]

It is therefore necessary to consider the limited legal capacity of informal associations.

> Where legislation requires certain formalities to be undertaken to establish an association with legal personality, it is good practice for a state to provide for a "notification procedure." In such a procedure associations are automatically granted legal personality as soon as the authorities are notified by the founders that an association has been created.[25]

In summary, the conclusion can be reached that the necessity for resolving the issue of the legal status of non-registered organizations may be determined by legislation, subject to the established guarantees in respect of the activities of non-governmental organizations. Statutory formalization of the notification procedure for recording non-registered organizations also seems to be important for the purposes of judicial control.

References

Cohen S. *The Resilience of the State: Democracy and the Challenges of Globalization* (London: Rienner, 2006).

Crotty J. *Making a Difference? NGOs and Civil Society Development in Russia*, 61(1) Europe Asia Studies 85 (2009).

Forsythe D.P. *Human Rights in International Relations* (Cambridge: Cambridge University Press, 2006).

Frohlich C. *Civil Society and the State Intertwined: The Case of Disability NGOs in Russia*, 28(4) East European Politics 371 (2012).

Keck M.E. & Sikkink K. *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca and London: Cornell University Press, 1998).

Kumar V. *Russia's "Foreign Agent" Law: A Response to American Democratic Promotion Policy*, 1(18) Comparative Politics 90 (2015).

Lang S. *NGOs, Civil Society, and the Public Sphere* (Cambridge: Cambridge University Press, 2013).

---

[24] Joint Guidelines, *supra* note 20, paras. 151–152.

[25] *Id.* para. 154.

Lindblom A.-K. *Non-Governmental Organizations in International Law* (Cambridge: Cambridge University Press, 2005).

Mendelson S.E. & Glenn J.K. *The Power and Limits of NGOs: A Critical Look at Building Democracy in Eastern Europe and Eurasia* (New York: Columbia University Press, 2002).

Information about the author

Polina Vinogradova (Moscow, Russia) – Doctoral Candidate in Legal Sciences, Law Institute of the Peoples' Friendship University of Russia (6 Mikluho-Maklaya Street, Moscow, 117198, Russia; e-mail: vpa.2017@yandex.ru).