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Non-governmental organizations in Russia: legal aspects

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Abstract

"Non-Governmental Organizations in Russia: Legal Aspects" traces the evolution of post-Soviet Russian legislation on various types of social associations, especially the non-governmental, non-commercial organizations commonly known as "NGO's". The article examines the key provisions of legislation dealing with social associations in general, charitable organizations, non-commercial organizations, and religious associations, including the scope of the laws, bureaucratic registration provisions, and their possible application as tools to restrict organizations the state considers undesirable. The practical application and pitfalls of the laws is analyzed through the case study of *Moscow Branch of the Salvation Army v. Russia* at the European Court of Human Rights. The effects of the 2006 and 2012 amendments to Russian law on social associations and non-commercial organizations are considered. The article concludes with commentary on the authoritarian trend in the development of Russian NGO law which has made it progressively more difficult for civil society, particularly organizations with foreign connections, to operate and thrive in Russia. The author postulates that this trend is significantly inhibiting Russia's social and democratic development.

Keywords

Non-governmental organization, social association, non-commercial organization, civil society, nonprofit, third sector.

Introduction

Arguably, few things are as important to the development of a democratic society as the growth of a vibrant "third sector" – the plethora of non-governmental, non-commercial organizations ranging from charitable and religious groups to wildlife defense funds to consumer protection societies. This article examines the uneven development of the "third sector" in post-Soviet Russia, surveys key provisions of federal laws covering various types of social associations, and identifies common threads running through all of them. It is believed that there is a trend toward progressively greater restrictions, especially on foreign-linked social associations, and that this trend is ultimately counterproductive to Russia's growth into democracy.

A note about terminology.

Russian legislation does not generally use the term "non-governmental organization." The broadest category of voluntary organization formed by citizens is referred to as a "social association" (общественное объединение). The most frequently used term that is the closest to the common understanding of "NGO" is "non-commercial organization." (некоммерческая организация).

In amendments to the Law on Non-Commercial Organizations, the term "non-commercial, non-governmental organization" (некоммерческая неправительственная организация) also appears. This article attempts to use the precise term that appears in the text of the legislation when discussing that legislation, but for the purposes of overall meaning, the term "NGO" is understood to denote any non-profit organization or association working to achieve some desirable social goal and improve the general public welfare.

The Evolution of Russian NGO Law

Russian law on non-governmental organizations includes several laws regulating specific types of organization, including social associations in general,¹ religious associations,² charita-

1 "Federal Law "On public associations" N 82-FZ, 19 May 1995", available at: <http://blacksea.bcnl.org/en/articles/31-russia-federal-law-no-82-fz-of-may-19-1995-on-public-associations.html>.

2 Butler, W.E. (2009), "Federal Law "On Freedom of Conscience and Religious Associations" N 125-FZ, 26 September 1997", *Russian Public Law*. 2nd ed., Oxford University Press, N.Y., pp. 122-127.

ble organizations,³ political parties,⁴ and non-commercial organizations.⁵ Many provisions in these laws overlap, and an individual organization may be subject to more than one of the laws.

As will be set out below, several overarching themes emerge in the legislative requirements. First, most non-governmental organizations, regardless of type, are required to register with the State authorities and cannot operate legally within Russia until the registration application has been approved or after it has been revoked. The processing of registration applications, as well as auditing and the enforcement of other requirements, is handled primarily by the Federal Registration Service (FRS).⁶ Second, when any of the relevant laws is amended, the changes usually set a deadline by which all covered organizations must re-

register in compliance with the new requirements. As will be demonstrated, this requirement has often been used to weed out organizations considered undesirable by the State through the denial of re-registration. Finally, foreign organizations, or organizations founded, sponsored by, or linked to foreign citizens or stateless persons are subject to different, more stringent requirements than domestic organizations. The regulation of foreign organizations, in particular, has become progressively more burdensome since the dissolution of the Soviet Union, especially during the presidency and prime ministership of Vladimir Putin.

A. The 1995 Federal Law on Social Associations.

The first post-Soviet legislation on non-governmental organizations was the Federal Law on Social Associations (N 82-FZ)⁷, adopted on 19 May 1995. As the fairly generic term "social association" implies, this law is very broad in its reach, covering all social associations except religious organizations, commercial organizations, and non-commercial trade associations created by commercial organizations.⁸ A social association

3 "Federal Law "On Charity and Charitable Organizations" N 135-FZ, 11 August 1995", available at: www.icnl.org/research/library/files/Russia/federallawon-charactandorg.pdf.

4 Butler, W.E. (2009), "Federal Law " On political parties" N 95-FZ, 11 July 2001", *Russian Public Law. 2nd ed.*, Oxford University Press, N.Y., pp. 75-110.

5 "Federal Law "On NGOs" N 7-FZ, 12 January 1996", available at: <http://legislationline.org/documents/action/popup/id/4378/>.

6 The FRS maintains a website (most pages are available in Russian only) at <http://www.rosreestr.ru>

7 "ФЗ" is an abbreviation for "Федеральный Закон".

8 "Federal Law "On public associations" N 82-FZ, 19 May 1995", available at: <http://blacksea.bcni.org/en/articles/31-russia->

is defined as a "voluntary, self-governing, noncommercial formation, created on the initiative of citizens on the basis of shared interests for the realization of shared goals, as described in the founding documents of the association" (Article 5). There are several subcategories of social associations with specific definitions. Unlike some later laws, it is also non-discriminatory with respect to foreign nationals and stateless persons, "with the exception of those instances established by the federal laws and international treaties of the Russian Federation" (Article 1).

1. General rights granted to citizens by the law.

Included in the right to association of citizens are: the right to create voluntary social associations for the protection of shared interests or the achievement of shared goals; the right to join or refrain from joining an association; and the right to leave an association without hindrance (Article 3). Unlike the requirements in most later legislation, the law grants citizens the right to form social associations without prior government approval, and permits them to function without registering with the government. However, registration conveys the rights

[federal-law-no-82fz-of-may-19-1995-on-public-associations.html](http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=64&n=82fz-of-may-19-1995-on-public-associations.html).

of a juridical person upon the association (Article 2).

2. The relationship between the State and social associations.

The law prohibits interference by agencies of State power and their representatives in the affairs of social associations, and conversely the interference by social associations with the affairs of agencies of State power. Not unexpectedly, there is an exception for those cases where such interference is permitted by the law (Article 17). As will be shown in the context of later legislation, this exception ends up swallowing the rule to a large extent.

3. Provisions for the registration of social associations.

Although a social association may operate under the statute without registering, it will not have the rights of a juridical person unless it does so (Article 3). The information required to be contained in the registration application is quite extensive. Aside from basic demographic information such as the names, addresses, and telephone numbers of the members of the permanent directing body of the association, the statute requires the submission information regarding the structure and proceedings of the association. This information includes documentation from the general

assembly of the association showing the establishment of the association; the confirmation of its charter; the formation of permanent directing and operating organs; the protocols for the general assembly of structural subdivisions for international, all-Russian, or inter-regional associations; and evidence confirming all the demographic information (Article 21). These documents must be submitted within three months of the inaugural general assembly of the association (Article 21). A decision must be rendered by the Registration Service within a month of submission (Article 22).

4. Grounds for denial of registration.

The enumerated grounds for denial of registration include: if the charter of the association is contrary to the constitution of Russia or its subjects⁹, certain articles of the current law, or the laws on specific types of associations; if not all required documents are submitted, or if the documents are improperly formulated, or if they are submitted to the wrong government agency; if an association with the same name already exists in the jurisdiction; if it is established that the application includes unreliable information; or if the name of the orga-

nization offends the moral, national, or religious sentiments of citizens (Article 23). While most of these provisions do not appear controversial, vague provisions that give much leeway to the registration agency are significantly expanded in subsequent litigation. In addition, as will be discussed in more detail below, the requirement that all documents be properly formulated has given rise to rejections based on technicalities such as spelling errors and usually necessitates the assistance of legal counsel in drafting the application.

5. The rights granted to social associations.

The statute guarantees certain rights to those social associations that are juridical persons (that is, those that are registered with the state) (Article 27). Although the statute does not explicitly exclude these rights from non-registered social associations, this provision acts as a mechanic to encourage registration. For the purpose of achieving the aims listed in its charter (the legal requirements for which were discussed above), a registered social association has the following rights (among several other listed): to freely distribute information about its activities; to lobby organs of government; to conduct assemblies, meetings, demonstrations, marches, and picketing;

⁹ Meaning subnational regional entities, analogous to provinces.

to operate mass media and to publish; to represent and defend its rights, those of its members and other citizens in organs of government and other social associations; and to propose initiatives regarding aspects of public life and to petition organs of government (Article 27). There are two important caveats here: first, the statute points out that social associations formed by foreign or stateless persons may be restricted in their enjoyment of these rights by other federal laws and international treaties; second, that specific types of social associations may be granted additional rights by their appropriate governing laws (Article 27). Both of these caveats are themes that flow through subsequent amendments to legislation on social association.

6. Responsibilities of social associations.

The 1995 Law on Social Associations also lays the groundwork for responsibilities and duties which these associations must carry out; this groundwork is a base that is expanded upon very substantially in subsequent legislation. Some requirements are self-evident: social associations have to comply with Russian law, generally accepted principles of international law relating to the association's sphere of activity, as well as the norms established in its charter

and other governing documents (Article 29). Others are far more specific and are the harbingers of more stringent regulation to come: an requirement to annually publish, or make publicly available, an accounting of the use of its resources; to annually notify the registration service about the continuation of its activity, the place of business for the permanent directing body of the association, and information regarding the directors; to present upon request by the registration service the decisions of the association's governing bodies and empowered representatives, as well as quarterly and annual reports regarding its activities; to permit an agent of the registration service to attend the functions of the association and to render assistance to the agent in familiarizing him with the activities of the association; to notify the registration agency about any changes to details of certain submitted information (and that repeated failure to do so within the allotted three days is grounds for the registration service to petition a court to declare that the association has ceased its activities as a juridical person and should be excluded from the register) (Article 29).

7. The re-registration requirement.

The statute declares its applicability to all social associations formed

before its enactment, requires that they bring their charters into compliance at their next conference or general assembly, and requires that registered social associations reregister by July 1, 1999 under threat of liquidation (Article 52). Although certain social associations may operate without registration under this act, the reregistration requirement and the penalty of liquidation for failing to do so is another recurring theme in the Russian regulation of various types of social associations.

8. The supremacy of international treaties.

This statute, like its progeny, stipulates explicitly that if an international treaty to which the Russian Federation is a party establishes rules different than those in the statute, then the international treaty shall apply (Article 53). This provision is important because Russia is a party to the European Convention on Human Rights and litigation arose in the European Court of Human Rights regarding Russia's implementation of laws regarding certain types of social associations.

9. Conclusion.

The 1995 Federal Law on Social Associations is the most broadly applicable and the most foundational of the legislation governing various types of

non-commercial, non-governmental organizations in Russia. It is also, perhaps by virtue of both its general applicability and the more liberal sociopolitical climate of the time, the most permissive and least stringent in its requirements. Following the initial wave of post-Soviet laws in the mid-1990s, most subsequent amendments imposed additional bureaucratic requirements that made it difficult, and sometimes impossible, for already-existing NGO's in Russia to continue operating. But first, this article will examine briefly the key provisions of laws regulating three "specific types" of social associations: charitable organizations, non-commercial organizations, and religious associations.

B. The 1995 Law on Charitable Activities and Charitable Organizations

The Federal Law on Charitable Activities and Organizations, N 135-FZ, was adopted on 11 August 1995. It is prototypical for the Russian federal laws dealing with "specific types" of social associations, overlaps with the general Law on Social Associations, and sometimes with laws covering other "specific types." Below is a summary of some of the key provisions of the statute that have analogues in similar laws and highlight some of the requirements and restrictions placed on charitable organizations.

1. Charitable activity generally.

The statute defines charitable activity as voluntary activity by citizens and juridical persons that is altruistic (that is, unpaid or paid at a specially reduced rate) involving the transfer of property (including money), altruistic works, services, or other support.¹⁰ In an interesting step that is not uniformly repeated in analogous legislation regarding other types of social associations, the statute contains a fairly broad but, by its wording, exhaustive list of the permissible goals of charitable activity. The list includes social support and protection of citizens, including improvement in the material condition of disadvantaged persons (whether poor, unemployed, mentally or physically disabled); preparing the population for recovery from natural disasters, ecological and industrial catastrophes, and preventing accidents; rendering aid to victims of natural disasters and ecological and industrial catastrophes, social, national and religious conflict or repression, and to refugees and forced resettlers; promotion of strengthening peace, friendship, and agreement between peoples and the prevention of

social, national, and religious conflicts; promotion of strengthening the prestige and role of the family unit in society; assistance in protecting maternity, fatherhood, and childhood; promotion of activity in the fields of education, science, culture, art, enlightenment, and spiritual development; and several other traditional areas of charitable activity (Article 2). Also notable is what is specifically excluded: aiding, materially or otherwise, any commercial organization, or political party, movement, group, or campaign is not charitable activity (Article 2). Foreshadowing similar changes to other laws governing various types of social associations, a 2003 amendment to the same article prohibits the concurrent carrying out of charitable activity with pre-election agitation or agitation with regard to questions of referenda (Article 2).

2. Rights granted to individuals in regard to the carrying out of charitable activity.

All citizens and juridical persons have the right to engage without hindrance in charitable activity on the basis of voluntary participation and free choice in the goals of the activity (subject to the limitations enumerated above) (Article 4). Charitable activity may be carried out individually or united with others, with or without forming a charitable organi-

10 "Federal Law "On Charity and Charitable Organizations" N 135-FZ, 11 August 1995. Article 1", available at: www.icnl.org/research/library/files/Russia/federallawoncharactandorg.pdf.

zation; nobody has the right to interfere with the choice of goal for charitable activity if that goal is among those enumerated in the statute, or with the method of performing that activity (Article 4).

3. Establishment and registration of charitable organizations.

The directors of a charitable organization may be natural or juridical persons, but may not be federal or local government organs (Article 8). The statute sets forth fairly detailed requirements for the highest governing body of a charitable organization, including its composition in accordance with the organization's charter; its areas of competency; the volunteer basis of the members of the body (with no more than one member from the operating bodies of the organization); and that members of the highest governing body may not also perform official functions in the administration of commercial or non-commercial organizations directed by the instant charitable organization (Article 10).

As with the general law on social associations, all existing charitable organizations must be reregistered by the statutory deadline (1 July 1999) or face liquidation through court proceedings (Article 24). However, the denial of registration may be appealed to the courts (Article 9).

4. Conditions and restrictions on the carrying out of charitable activities.

In addition to the limitations imposed by the definition of what charitable activity is and its permissible goals, the statute regulates the means of carrying out the activity. A charitable organization may engage in activity designed to achieve the goals for which it was formed, or any others permitted by the instant law (Article 12); however, it may engage in business activities only for the sake of achieving the goals for which it was formed and the business activities must correspond to those goals (Article 12). In concurrence with the exclusion of political activities from the definition of charitable activities, charitable organizations are prohibited from spending their means and property to support political activities (Article 12).

5. Foreign donors, foreign organizations, and foreign operations.

The 1995 statute does not place heavy special restrictions on foreign organizations or operations. Charitable organizations may operate internationally in accordance with Russian and international law, and may receive donations from foreign or stateless persons, to be used in accordance with the instant law (Article 21). Foreign and stateless persons, as well as foreign and international

organizations, have the right to engage in charitable activity within the Russian Federation in accordance with the instant law (Article 22).

C. The 1996 Law on Non-Commercial Organizations

Federal Law N 7-FZ on Non-Commercial Organizations, adopted 12 January 1996, encompasses most, if not all, of the social associations traditionally thought of as NGO's. This law was one of the targets of the controversial amendments adopted in 2006, which will be discussed below.

Non-commercial organizations generally.

The statutory definition of a non-commercial organization encompasses any organization that does not have as its main objective the earning of profits and which does not distribute any profits among its members.¹¹ A non-commercial organization may pursue any goal aimed toward the public welfare, including charitable, social, cultural, educational, scientific, and several others (Article 2). In contrast to the permissible goals of charitable organizations (*supra*), the list here is illustrative but not exhaus-

tive, permitting any other goal not listed so long as it is aimed toward the general welfare (Article 2). A non-commercial organization may be created in any form permitted by law, including religions organizations, non-commercial partnerships, charitable and other funds, and others (Article 2).

D. The 1997 Law on the Freedom of Conscience and on Religious Associations.

Perhaps the most initially controversial of the laws covering "special types" of social associations was Federal Law N 125-FZ on the Freedom of Conscience and on Religious Associations, adopted 26 September 1997. Some saw it as a step backward in liberality from Perestroika-era legislation, in both content and implementation.¹² Some of the key provisions of the law are outlined below.

1. Freedom of conscience generally.

The Russian Constitution and the Religions law both contain guarantees of religious freedom. The Constitution includes the right to profess alone or together with others any religion or no religion at all, and to freely choose, have and share religions and other beliefs and

11 "Federal Law "On NGOs" N 7-FZ, 12 January 1996. Article 2", available at: <http://legislationline.org/documents/action/popup/id/4378>.

12 See the case of *Moscow Branch of the Salvation Army v. Russia*, below.

to manifest them in practice.¹³ The Law on Religious Associations contains similar guarantees, extending them explicitly to foreign and stateless persons legally on Russian territory,¹⁴ to be abridged by federal law only to the extent necessary to defend "the foundations of the constitutional system, morality, health, and the rights and legal interests of man and citizen and ensuring the defense of the country and the security of the State." (Article 3). The same Article also grants equality before the law regardless of religiosity or lack thereof and protection against an obligation to divulge religious opinions or participate or not participate in religious services.

It is further provided that the Russian Federation is a secular state without any state religion, that all religions are equal before the law, and that none shall participate in governing or political activities (and, conversely, the state will not interfere with religious activity unless it is contrary to the law) (Article 4).

13 Butler, W.E. (2009), "Article 29, Constitution of the Russian Federation", *Russian Public Law. 2nd ed.*, Oxford University Press, N.Y., p. 10.

14 Butler, W.E. (2009), "Federal Law "On Freedom of Conscience and Religious Associations" N 125-FZ, 26 September 1997", *Russian Public Law. 2nd ed.*, Oxford University Press, N.Y., pp. 122-127.

2. *Religious associations generally.*

A religious association is defined as a voluntary association of citizens and other persons permanently and legally present in Russia "formed for the purpose of the joint propagation and dissemination of a faith" and possessing certain enumerated characteristics: religious belief, performance of religious services and other religious rites and ceremonies, and the study of religion and religious nurturing of their followers (Article 6).

Religious associations may be one of two main types: "religious groups" and "religious organizations." (Article 6). As the names imply, religious groups have a less formal status: they are those religious associations that effectuate their activity without state registration or the acquisition of legal capacity as a juridical person (Article 7). By contrast, those religious associations that are registered as juridical persons are "religious organizations" and are subject to special formal rules and requirements analogous to other types of juridical person-social associations (Articles 8-10).

3. *State registration and denial of registration of religious organizations.*

In parallel to the similar provisions in the respective laws concerning charitable and non-commercial orga-

nizations, religious organizations must register with the appropriate federal agency to obtain or maintain their status as a juridical person (Article 11). Registration may be refused if: the purposes or activity of a religious organization is contrary to the Constitution or to the legislation; the organization being created is not deemed to be religious; the charter and other documents submitted do not meet the law's requirements or the information contained therein is not reliable; an organization with the same name has already been registered; or the founders have no capacity to act (Article 12).

As will be amply illustrated by the case of *Moscow Branch of the Salvation Army v. Russia*, the same themes present in the registration mechanics of other types of social associations are also at play with regard to religious organizations. The statute requires that already-existing religious organizations bring themselves into conformance with the law immediately and reregister by a statutory deadline; failure to do so results in the registration service petitioning a court to liquidate the religious organization in question (Articles 11, 14).

4. *Foreign religious organizations.*

Yet another theme repeated in the Religious Associations act, more strongly

than in earlier legislation but not nearly to the extent of Putin-era amendments, is disparate treatment of foreign organizations. The statute provides that although a foreign religious organization may be granted the right to establish a representation in the Russian Federation, it does not have the status of a "religious association" within the meaning of the statute (Article 13). Unlike the procedures for establishing, registering, and operating a domestic religious organization, which are outlined in the statute, such procedures governing representations of foreign religious organizations are left to be established through regulation by the empowered federal agency (Article 13). This peculiarity invites the risk of the agency exercising its broad discretion in an arbitrary manner and this danger was borne out in *Salvation Army*.

E. The case of *Moscow Branch of the Salvation Army v. Russia*.¹⁵

Perhaps no case serves as a better illustration of the pitfalls of the organization registration regime in Russia, its bureaucratic hurdles and potentially ar-

15 *Moscow Branch of the Salvation Army v. Russia*, Application no. 72881/01, European Court of Human Rights, final decision of 5 January 2007", available at: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-77249#{"itemid":\["001-77249"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-77249#{).

bitrary application, than the case of the Moscow Branch of the Salvation Army. A brief summary of the facts from the case follows.

The Salvation Army first operated in Russia from 1913 to 1923, before being dissolved as an anti-Soviet organization.¹⁶ The organization resumed its activities in Russia in 1992, after the dissolution of the Soviet Union, on the initiative of a group of Russian nationals. The branch was promptly registered as a religious organization with status as a juridical person (or "legal entity", as the Court puts it) in Moscow under then-active Soviet-era legislation.

When the Federal Law on the Freedom of Conscience and on Religious Associations (N 125-FZ) took effect on 1 October 1997, it required that all previously registered religious organizations bring their articles of association into conformity with the new law and reregister by 31 December 1999 (the deadline was later extended by a year to 31 December 2000). The applicant Salvation Army branch timely submitted its re-registration application to the Moscow Justice Department, but the application was denied on three grounds:¹⁷

(1) Only 5 members had been present at the meeting where the Branch's governing body adopted its founding documents, rather than the 10 required by the act.

(2) No visas or other documents establishing the lawful residence of the Branch's foreign members were provided.

(3) The Branch was subordinate to the organization's central officers in London and therefore regulated under Article 13 of the act and its implementing regulations.

A district court in Moscow affirmed the decision to deny re-registration in a decision dated 5 July 2000, ruling that the Branch was indeed a representative office of a foreign religious organization and citing additional rationales:¹⁸

(1) The organization's charter, which contained references to organizational ranks such as "Officer Commanding" and the presence of the word "Army" in the organization's name rendered it contrary to Article 13 § 5 of the Constitution, which bans the "founding and functioning of social associations which advocated a violent change in the constitutional principles of the Russian Federation or destruction of its integrity, undermined the security of the State, cre-

16 Id. at 2.

17 Id. at 2-3.

18 Id. at 3.

ated paramilitary formations, or caused social, racial, ethnic or religious division or conflict."

(2) The grounds for judicial liquidation of the Branch set out in its articles of association were inconsistent with Russian law.

(3) The Branch had not disclosed its objectives because its articles of association failed to describe "all the decisions, regulations, and traditions of The Salvation Army."

On 28 November 2000 (just over one month before the re-registration deadline), the Moscow City Court affirmed the judgment on appeal primarily on the basis that the Branch is a representative office of a foreign religious organization.¹⁹

Pursuant to the Branch's failure to successfully re-register by the deadline, the Moscow Justice Department filed a court action for dissolution of the Branch and its removal from the register of juridical persons.²⁰ A Moscow district court granted the action on 12 September 2001 and once again, the Moscow City Court affirmed.²¹

The Branch's losing streak in the courts finally came to an end through

19 Id. at 3-4.

20 Id. at 4.

21 Id.

its collateral attack on the constitutionality of the penalty of liquidation based on purely formal grounds like failure to re-register in time. The Constitutional Court held on 7 February 2002 that re-registration could not be made conditional on the fulfillment of requirements that were introduced after the religious organization was founded and that the only permissible grounds for dissolution were a cessation of activities or if the organization had engaged in unlawful activities.²² Consistently with the Constitutional Court's ruling, a Moscow district court dismissed the action for dissolution upon reconsideration, and the Moscow City Court affirmed.²³

Although the Branch ultimately prevailed in the Constitutional Court, it claimed that the initial refusal to permit its re-registration and the subsequent lapse in its status as a juridical person led to several adverse effects, including diversion of resources to protect its property from seizure, negative publicity, lack of cooperation from local officials, and foreign members' inability to obtain residence registration in Moscow.²⁴ It consequently brought a suit for pecuniary damages in the European

22 Id.

23 Id.

24 Id. at 5.

Court of Human Rights under Articles 9 and 11 of the European Convention on Human Rights (to which Russia is a party).²⁵ ²⁶ The Court ultimately found that the Branch's rights under the convention were interfered with and that this interference was not justified, awarding €10,000 to the Branch.²⁷

Analysis

The Moscow Branch of the Salvation Army's saga exposes several weaknesses in Russia's regulatory regime not only for religious organizations, but also other types of social associations which are covered by laws that are very similar in many important respects.

1. Disparate treatment of foreign organizations and their branches.

At first glance it does not appear unreasonable to have separate, and more stringent, regulation for foreign organizations. It is, after all, within the plenary power of any sovereign state to control the presence of foreign nationals and entities within its borders. In this case, however, there is a disconnect between what is in the state's power, and what is in the state's interest. All religious orga-

²⁵ *Id.* at 9.

²⁶ Article 9 guarantees the freedom of thought, conscience, and religion, while Article 11 protects freedom of association from unreasonable interference.

²⁷ *Id.* at 17-18.

nizations, whether foreign or domestic, are already prohibited by law from engaging in certain activities (e.g., politics, incitement) and in general prohibited from acting in a manner that undermines the integrity of the state. There does not appear to be a strong rationale for why the representative branch of a foreign religious organization (which, like all religious organization would be bound by the aforementioned rules of general applicability) poses any greater or special concern, given the purported equality of all religions before the eyes of the law.

2. Byzantine required formalities.

Although the concept of "substantial compliance" is usually not applicable in civil law systems, including Russia's, the formalities required for achieving and maintaining juridical person status for social associations (especially foreign ones) stand out as excessive to the point of unreasonableness. A case in point from *Salvation Army* is the requirement that at least 10 members be present at the meeting where the founding documents of a religious organization are adopted. The rationale for why five (or nine) would not suffice (and why the general law on social associations permits one to be formed with as few as three) is not apparent. It is also, for in-

stance, not apparent why the registration agency requires proof of the legal presence in the country of the organization's foreign members given that this responsibility would logically rest with the immigration authorities.

The Constitutional Court's decision that a religious organization could not be denied reregistration on the basis of "formalities" seems to be a break from the norm. However, the decision's future applicability appears questionable, given the ever more draconian formal requirements introduced in subsequent amendments to the laws on social associations (especially for foreign associations) discussed below.

F. The 2006 Amendments to Russia's NGO Laws

The innocuous-sounding "Federal Law on the Introduction of Changes to Certain Legislative Acts of the Russian Federation," Federal Law N 18-FZ (enacted 10 January 2006) significantly amended Russia's NGO laws to make it substantially more difficult for many organizations to both register and to remain in good standing as a juridical person with the right to perform activities in Russia.

1. New registration requirements.

The amended law differentiates between different types of structural

subdivisions of foreign non-commercial, non-governmental organizations (NGO's). Structural subdivisions that are "branches" or "representations" (филиалы и представительства) of the foreign NGO are not juridical persons and so are not subject to the normal registration procedure.²⁸ Rather, they are required to undergo a "notification" procedure under the newly inserted (10 January 2006) Article 132 of the Federal Law on Non-Commercial Organizations. On the other hand, structural subdivisions of foreign NGO's that are "divisions" (отделение) are considered in themselves non-commercial, non-governmental organizations subject to "normal" State registration under the newly inserted Article 131 of the Federal Law on Non-Commercial Organizations.

Non-commercial organizations, including "divisions" of foreign NGO's, face new requirements for registration under the amendments. Required documentation includes: an application

28 "Federal Law "On amendments to some legislative acts of the Russian Federation" N 18-FZ, 10 January 2006. Article 3, Section 2" ["Federal'nyi zakon "O vnesenii izmenenii v nekotorye zakonodatel'nye akty RF" N 18-FZ, 10 yanvarya 2006 g."], available at: <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=57689b>. (Amending Article 2 of Federal Law N 7-FZ, 12 January 1996)

signed by an authorized individual indicating his name and contact information; the constituent documents of the organization; the resolution to create the non-commercial organization and the resolution approving its constituent documents, indicating the composition of the directing body that made the decision; information regarding all founders of the non-commercial organization; proof of payment of the State registration fee; and evidence from the foreign country's register of juridical persons or equivalent, confirming the legal status of the non-commercial organization in that country (Article 13.1 of amended Law on Non-Commercial Organizations).

As with all prior Russian legislation on social associations, failure of already existing organizations to reregister by the deadline means that they cannot operate legally until they do successfully register; and may face a motion for liquidation. Some of the key grounds for denial of registration include: if the documentation is not complete, improperly executed, or submitted to the wrong agency (Article 23.1); if the activities of the organization were found to be extremist under the Federal Law on Anti-Extremism (Article 15.1); if the information submitted is found not to be credible/reliable (Article 23, § 5 of the

amended Law on Social Associations); and if the name of the social association offense the moral, national, or religious sentiments of citizens (Article 23, § 6).

2. New monitoring requirements.

The amendments add new monitoring provisions to the 1995 Law on Social Associations. The new monitoring provisions include: access upon request to the operating documents of the organization's permanent operating body; access for representatives of the registration service to all activities conducted by the organization; annual audits of the organization's activities, including expenditures of money and property; and access to information regarding financial and internal activities of the organization, including access to information from financial institutions (Article 38).

3. Additional conditions of liquidation for "divisions" of foreign NGO's.

Divisions of foreign NGO's (which are juridical persons under the law) are subject to liquidation in the case of liquidation of the parent NGO (amended Article 18 of the Law on Non-Commercial Organizations); in case the activities of the organization do not correspond to its founding documents (Article 18); and in case of failure to present required information regarding incoming assets, their allocation, their actual use, prospective

programs of activity, and regarding how natural and juridical persons employ the assets on behalf of the organization (information required by Article 32, § 4 of the amended Law on Non-Commercial Organizations) (Article 18).

G. 2012 Amendments regarding non-commercial organizations "performing the functions of a foreign agent"

The latest amendments to Russian laws on social associations label a wide swath of foreign-linked non-commercial organizations as "performing the functions of a foreign agent" and subject them to an unprecedented range of monitoring and disclosure requirements (Federal Law N 121-FZ, enacted 20 July 2012). Although the law is purportedly based on the American Foreign Agent Registration Act, the requirements may in practice be so burdensome as to cause many organizations to quit the country.

1. The meaning of "performing the functions of a foreign agent."

A non-commercial organization performing the functions of a foreign agent is defined as "a Russian non-commercial organization, which receives money or other property from foreign states, foreign government organs, international and foreign organizations, foreign citizens, stateless persons or their empowered representatives; or from

Russian juridical persons receiving money or other property from the aforementioned sources...and which participates, (among other reasons in the interests of the foreign sources) in political activity carried out on the territory of the Russian Federation." (Article 2, § 6 of the amended Law on Non-Commercial Organizations). Although this definition is broad enough to include every conceivable foreign source of funding, both direct and indirect, its reach is curtailed by the requirement that organization in question engage in political activity. An organization is deemed to engage in "political activity" if "regardless of the goals stated in its founding documents, it participates (including through financing) in the organization or undertaking of political actions with the aim of influencing the decisions made by government organs, aimed at changing the state politics carried out by them, and also at shaping public opinion for the aforementioned goals." (Article 2, § 6).

2. Monitoring and reporting requirements.

Non-commercial organizations performing the functions of a foreign agent are subject to especially stringent monitoring and reporting requirements. First, there is a separate register especially for organizations performing the

functions of a foreign agent. The annual financial statements of such organizations are subject to mandatory audits (Article 32, § 1 of amended Law on Non-Commercial Organizations. These organizations must also submit quarter reports of all income and expenditures; the planned allocation of funds as well as their actual use (Article 32, § 3). All the information disclosed through these reports and audits is published on the internet or other mass media for public consumption (Article 32, § 4). In addition, these organizations are subject to planned annual inspections, as well as unplanned inspections that can be triggered for one of several reasons (Article 32, § 4). Finally, materials published by these organizations in mass media or online must carry a statement that they come from a non-commercial organization performing the functions of a foreign agent (Article 13.1).

Russia's Endangered Third Sector

As the above discussion of the case *Moscow Branch of the Salvation Army v. Russia* illustrated, even the NGO legislation of the relatively free-wheeling 1990s was not without numerous (and possibly unnecessary) bureaucratic hurdles. Even

if one were to look past the increasingly elaborate formalities required for an NGO (especially a foreign NGO) to operate in Russia, to the rights granted by the statutes discussed in Section II, troubling questions emerge. For example, the Law on Social Associations enumerates as a ground for denial of registration if the name of a social association "offends the moral, national, or religious sentiment of citizens." First, who decides whether the name of a social association runs afoul of this clause? A clerk at the registration service? The head of the registration service? A court? The *Salvation Army* battle was waged partly over whether the word "army" in the organization's name and its martial-sounding officer ranks constituted a paramilitary organization or a threat to the state's security—yet another vagary leaving wide discretion to officials to use as a reason (or pretext) for denial of registration. And how many of Russia's citizens have to be offended before the naming clause is triggered? One? One percent? A majority? Uncertainties like these are so ripe for abuse of official discretion that they have the potential to poison otherwise laudable statutory goals like freedom of association and freedom of conscience.

The subject of the preceding discussion predates the ascension to power

of Prime Minister, then President, then Prime Minister, and yet again President Vladimir Putin and his promise of a "strong state" ruled by a "dictatorship of the law".²⁹ The beginning of the Putin era of NGO regulation was marked by a "Civic Forum," a Kremlin-initiated gathering of civic organizations and government representatives meant ostensibly to find ways to empower civil society with the aid and cooperation of the State.³⁰ Despite Putin's assurances that he was not trying to co-opt civil society as yet another instrument of the State, skeptics warned that the event was an image-building exercise to bolster Putin's new status as an ally in the war on terror, or alternatively that it was a trial balloon to see whether NGO's could in fact be co-opted.³¹ Although Putin's true intention may never be known, there has been no sign of liberalization in the registration and operational regime of NGO's. Quite on the contrary, the 2006 and 2012 amendments to the Law on Social Associations and the Law on Non-

Commercial Organizations significantly increased both the requirements for registration and provisions for monitoring, especially of NGO's with foreign links.

The enactment of the 2006 amendments caused consternation in the west and among parts of the NGO sector in Russia. An author for the Heritage Foundation theorized that the law originated as a response to the "color revolutions" in several former Soviet republics, which the Kremlin was convinced were spurred at least in part by foreign-financed NGO activity.³² The Duma softened the bill somewhat at Putin's suggestion after receiving criticism from President Bush and a Congressional resolution denouncing it, but added a new requirement that foreign NGO's would have to notice the Federal Registration service about their receipt and expenditure of funds.³³ Human Rights Watch observed that

Compliance with the 2006 NGO law has proved onerous for numerous NGOs. Vague provisions of the law, together with the government's scope to inspect NGOs for any number of vio-

29 Mereu, Francesca (2000), "Dictatorship of the Law", *The Russia Journal*, No. 62, p. 4.

30 Williams, D. (2001), "Social Activists Size Up Putin; Russian Leader's Overtures Elicit Wary Responses," *Washington Post*, available at: www.highbeam.com/doc/1P2-496062.html.

31 Ibid.

32 Volk, Ye., "Russia's NGO Law: An Attack on Freedom and Civil Society", *The Heritage Foundation*, available at: www.heritage.org/research/reports/2006/05/russias-ngo-law-an-attack-on-freedom-and-civil-society.

33 Ibid.

lations, mean that organizations must spend inordinate amounts of time and money on legal and accounting services to protect themselves from suspension or closure.³⁴

The reaction to the 2012 amendments regarding "non-commercial organizations performing the functions of a foreign agent" was even more outspoken. The law is based on the American Foreign Agent Registration Act³⁵ and is reasonable on its face – it covers only those organizations that receive foreign funding *and* participate in "political activity". NGO's such as Transparency International Russia, however, have expressed skepticism at the comparison, arguing that differences in the burden of proof, legal system, and culture of the general population make the comparison inapposite.³⁶ The term "foreign agent" itself, for instance, is synonymous with "spy" in the minds of many Russians, according to the critics, though the sponsor of the bill in the Duma dismissed the concern

34 Human Rights Watch report on the 2006 NGO Law", available at: www.hrw.org/ru/news/2009/05/13/russia-revise-ngo-law-protect-rights.

35 Burke, Ingrid, "'Foreign agents' under Russia's NGO Law and its US doppelganger", *Russian Legal Information Agency*, available at: www.rapsinews.com/legislation_publication/20120727/263954264.html.

36 Ibid.

as outdated Cold War-style thinking.³⁷ Despite the threat of hefty fines, some NGO's are refusing to comply with the new law, which went into effect in November.³⁸ It appears that concerns about public perception and backlash are not unfounded, as the building of the Memorial rights group found itself graffitied with the words "Foreign Agent [heart shape] USA".³⁹ Other organizations, took more radical steps. The National Democratic Institute withdrew its country director and senior staff to Lithuania citing an "increasingly hostile climate for NGO workers in Russia."⁴⁰

It is, of course, natural for NGO's, like any other type of organization, to find any additional regulation unnecessary and unduly burdensome. But it appears unmistakable that the trajectory of Russian NGO legislation has been to make it more and more difficult to register and operate an NGO in the country. It is not at

37 Ibid.

38 Vasilyeva, N., "Dozens of groups boycott Russia's new NGOs law", *Associated Press*, available at: www.highbeam.com/doc/1A1-c0e7220518da44e2a7361e-a931d3d91e.html.

39 Ibid.

40 Earle, Jonathan, "Amid Crackdown on NGOs, U.S. Group Moves Staff out of Russia", *Moscow Times*, available at: www.themoscowtimes.com/news/article/amid-crackdown-on-ngos-us-group-moves-staff-out-of-russia/471846.html.

all clear, however, that there actually exist a real problem for which stricter NGO laws are the solution, unless one were to acknowledge that Putin's critics are right and that the "problem" is the promotion of democratic values. Concurrently with the increased barriers to NGOs, Russia has trended more authoritarian under Putin's leadership. In one indicator, Freedom House downgraded Russia from "partly free" to "not free" in 2004, the only country in the global survey to receive a downgrade.⁴¹ The two trends go hand in hand, with the crackdowns as manifestations of reduced liberty resulting in fewer organizations working to promote liberty. The trend toward greater restrictions on NGOs probably will not be reversed until Russia takes a turn away from authoritarianism, a result looking more remote as Putin took the presidency again for his third term, now extended to six years from four.

Conclusion

This article surveyed the key provisions of Russian legislation governing various types of social associations, including noncommercial, charitable, and religious

organizations; illustrated the application and problems with the laws in practice through a case study; and examined key provisions of amendments to those laws. It then argued that Russian NGO law, already vague in places and byzantine in others, has become progressively more hostile to the creation and operation of NGO's within Russia. It postulated that this trend is interwoven with the country's turn to greater authoritarianism and that the two trends accelerate each other in a feedback loop.

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Неправительственные организации в России: правовые аспекты

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Аннотация

В данной статье рассматриваются понятие и история внедрения русского законодательства в различные неправительственные организации и последствия влияния этих факторов на развитие гражданского общества в России.

Ключевые слова

Неправительственные организации, общественное объединение, некоммерческие организации, гражданское общество, третий сектор.

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