

# Recent Developments in Legislation of the Russian Federation concerning Non-Commercial Organizations

*Artem Rodin\**

The developments in Russia during the recent years attract attention of the international community. 'Is there a progress of democracy? What is the situation with human rights protection? Is there a civil society in Russia and how rapidly does it develop?' These are the questions discussed among European and US analysts as is reflected in newspapers and on TV. The most recent case was the issue of amendments to the legal regulation of NGO activity in Russia. Different points of view were presented during the latest discussions. Even the Council of Europe expressed an opinion while performing a legal examination of the draft of the bill concerning its possible contradictions with legal provisions of the COE. Finally the law passed the State Duma (parliament of Russia) and was signed by the President of Russia. Many believe that the legal developments will affect both existing NCOs and newly established ones. Russian society considers that the new Law introducing a new mechanism of strict control has a political background. One of the most important reasons is the detailed monitoring of the activities of foreign-sponsored NCOs in Russia. The European and American NGOs working in the field of education and culture in Russia will be also affected by the abovementioned legal developments as their activity falls under the scope of the new Law's regulation.

The new federal law of the Russian Federation dated 10 January 2006 No. 18-FZ 'On amending certain legislative acts of the Russian Federation' ('new Law') was officially published on 17 January 2006 and entered into force on April 18, 2006 (i.e. on the 91<sup>st</sup> day since its official publication).

It is necessary to be informed, that generally Russian law lacks such a legal term as non-governmental organization, but has a much more neutral term 'non-commercial organization' which is used in this article. However, these terms have almost the same meaning.

The new law introduced a new governmental body ('Authorized Body') mainly responsible for registration of newly established non-commercial organizations ('NCO') and control over existing NCO which shall be appointed by the Government of the Russian Federation and is not appointed yet. However, the common opinion in Russian society is that the Federal Registration Service, which nowadays is responsible for registration of political parties and works under control of the Ministry of Justice of Russia, will play the role of the Authorised Body. This opinion was supported by expressions of several high-ranked Russian officials, among whom was even the head of the Federal Registration Service.

## Amendments in the procedure of registration of NCOs

The existing procedure of state registration of legal entities in the Unified state register of legal entities ('Register of Legal Entities') performed by the Federal Tax Service of the Russian Federation ('FNS'), applied to both commercial legal entities and NCOs, will formally remain, however, under control of the Authorised Body. FNS transfers all its data contained presently in the Register of Legal Entities on NCO to the Authorized Body. The FRS will continue to file the information about NCOs in the Register of Legal Entities (including NCOs with their establishment, including amendments to the foundation documents of NCOs, amendments of the information about the existing NCOs), but the *decisions on registration, amendments to the charter, etc. will be adopted only by the Authorised Body*. The NCO shall submit

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\* Bachelor of Arts in Law, Peoples' Friendship University of Russia.

its documents amending the information kept in the Register of Legal Entities to the Authorised Body, which adopts the decision on registration or refuse in registration and transfers its own decision and the documents to the FNS for performance of technical work, e.g. inclusion of information into the Computer-based Register of Legal Entities.

No re-registration of existing NCOs, which was stipulated in the first draft of the new Law and was widely discussed in the Russian society, is required under the new Law. The governmental bodies, such as the FNS and the Authorised Body, will maintain their NCO files by themselves. However, the existing NCOs are obliged to fulfil the provisions of the new Law introducing the new control mechanism represented by the Authorised Body since the Law entered into force.

It shall be mentioned that under the current legislation of the Russian Federation, it is possible to create a functioning NCO without registering it with state agencies, such as the FNS or the Authorised body. The unregistered NCO *will not* obtain a status of legal entity and therefore, will not be able to exercise the rights of a legal entity, for example, to maintain a bank account. Therefore, the creation of an NCO without a state registration can not be considered an efficient way of organizing the activity of an NCO due to the fact that the fact of existence of a legal entity is essential for operational, administrative, tax, labour and other essential issues.

The new Law introduced certain amendments to the activity of the foreign NCOs in Russia. They will not be able to provide monetary contributions directly from abroad. They are obliged to operate on the territory of Russia only in form of divisions (considered as a separate form of NCO subject to state registration) or representative offices and branches (separate subdivisions of NCO, not considered as a separate legal entity by Russian legislation and therefore, generally, do not require a state registration with Russian governmental bodies). However, the Authorised Body shall be notified on the resolution on establishment of a branch or representative office within three months from the adoption of the decision and attach to the notification the following documents: foundation documents of the foreign NCO, resolution on the establishment of the NCO's branch or representative office, regulation on activity of branch or representative office, resolution on appointment of the head of branch or representative office, declaration with description of goals and purposes of establishing a branch or representative office of foreign NCO. The Authorised Body shall include the information on branch or representative office of a foreign NCO into the register of branches and representative offices of foreign NCOs and within one month of receipt of the notice provide the head of the respective body with an extract from this register. The Authorised Body may even refuse to enter the branch or representative office of a foreign NCO into the respective register on several formal and substantive grounds, such as incorrect information in the foundation or other documents provided by the foreign NCO or on the ground of contradiction of goals and purposes of a branch or representative office of a foreign NCO to the Russian legislation.

Undoubtedly, the introduction of a branch or a representative office of a foreign NCO into the register is *in fact similar* to the procedure of state registration of a new NCO. Furthermore, due to the fact that the new Law established that a branch or representative office of a foreign NCO gains its legal capacity (ability to exercise rights and take duties of a person) since its inclusion into the register, the inclusion of a branch or representative office of a foreign Company is not only obligatory, but also is of vital interest for the NCO. Factually the new Law established a separate procedure of state registration of separate subdivisions of foreign NCOs in Russia similar to that applied to the newly formed separate NCOs as legal entities. After the analysis of legal provisions of the new Law applied to foreign NCO it should be mentioned that due to the complicated notification/registration procedure and more detailed control over further activity, it is easier and cheaper to establish a Russian NCO which will be sponsored from abroad, than to operate in Russia through branch, representative office or division of a foreign NCO.

Certain limits are placed on founders of NCOs: only foreign individuals who legally stay in the Russian Federation may be founders of NCOs (with an exception for rules established in international treaties). Therefore, under the new Law the foreigners who reside abroad cannot be founders of Russian NCO. As you may see, this provision does not cover foreign legal entities.

## **Legal consequences for existing NCO**

### **1) State registration of amendments to the charter of the NCO**

The state registration of the amendments to the charter of NCOs will be performed in accordance with the procedure and terms established by the Law for initial registration of a new NCO.

According to the new Law, it must be distinguished between the registration of the amendments of specific information about the NCO contained in the Register of Legal Entities and the amendment of its charter.

Concerning the following information, the NCO (represented by its main executive body, such as president or chairman acting as applicant) has to inform the Authorised Body about any changes of the information kept in the Register of Legal Entities (please see below) within three days from their occurrence and present the documents for adoption of the decision on transfer of the documents to the FNS:

- Name of the NCO in Russian and in foreign language;
- Legal form of NCO;
- Address of the executive body;
- Information on founder;
- Information on executive body of NCO;
- Information on branches and representative offices;
- Information on bank accounts of NCO.

In contrast to this time limit of three days, in case of other amendments of the charter, the NCO shall present these amendments of the charter, the decision on amendment of the charter, evidence of state fee payment and address of the executive body for contact purposes to the Authorised Body within three months from adoption of a resolution on such changes (this term is established for initial registration of NCO and also applied to amendments of the charter). In both cases, the Authorized Body makes a decision on state registration of the reported amendments within 14 working days.

Thereafter, the Authorized Body will transmit the information and the documents to the FNS. In accordance with the decision of the Authorized Body, the FNS registers these amendments in the Register of Legal Entities within five working days and reports to the Authorized Body which provides the applicant (main executive body of NCO) with the certificate on state registration of amendments to the Register of Legal Entities within three working days.

The Authorised Body may refuse the state registration of NCO or state registration of amendments to the charter if the charter of NCO contradicts the Russian Constitution or current legislation of the Russian Federation or if the documents necessary for state registration are not fully provided, improperly executed or presented to the improper authority. In this case, the Authorized Body informs the applicant about this in writing within one month from receipt of the documents stating the exact provisions of the Constitution or other legal acts of the Russian Federation whose violation resulted in the refusal of state registration. The refusal of state registration can be challenged before the higher body or the court.

If the NCO does not comply with the state registration procedure mentioned above several times, the Authorized Body has the possibility to file a claim for liquidation of the NCO with the court.

Before the new Law entered into force the FNS managed the registration and amendment process by itself only and the process took five days. With the Authorized Body, a new administrative controlling level will be introduced prolonging the registration procedure by more than 1 month.

## **2) General obligation of the NCO according the new Law**

Generally, the new Law provides that the NCO has to present the following documents to the Authorized Body for control purposes:

- A report on its activity;
- A report on personal composition of its governing bodies;
- Documents on spending funds and use of other property, including those received from international and foreign organizations, foreigners and stateless persons.

Moreover, the branch or representative office of a foreign NCO shall inform the Authorised body on amount of funds received and on other property received, their supposed distribution, aims of their distribution or use, on the programs planned to realize in Russia and on spending of funds and other property provided to individuals and legal persons.

### **Control measures of the Authorized Body**

The Authorized Body is empowered to perform the following control measures concerning an existing NCO:

- To request from executive bodies of the NCO their resolutions;
- To request and obtain information on the financial-economic activity of NCO from state statistical bodies, the FNS, other state control and supervision bodies and credit and other financial organizations (banks);
- To assign its delegates to participate in events organized by the NCO;
- To conduct once a year a control of compliance of the activity of NCO, including spending funds and other property, to purposes defined in the charter of NCO;
- To issue a written warning stating the violation committed by NCO and the term for remedy of such violation (not less than one month) in the event that the activity of NCO infringes legislation of Russian Federation or the activity of NCO conflicts with the purpose of NCO as established in its charter. The written warning may be challenged by the NCO before a higher body or a court.

If the NCO repeatedly fails to present necessary documents to the Authorised Body within the specified period, the Authorised Body may file a claim for liquidation of the NCO with a court. The new Law also amends the Civil Code of the Russian Federation (Article 61) providing as a ground for liquidation of NCO the systematic activity of NCO which conflicts with its purpose established in its charter.

### **Cooperation between the Authorized Body and other governmental bodies**

The governmental bodies of financial control, the FNS, the anti money-laundering body determine whether the NCO's spending and utilization of other property by the NCO complies with its purpose as established in its charter and inform the Authorised Body of the results of their activity. The Authorized Body analyses this information and decides whether the activities of NCO are conflicting with Russian legislation and/or with its own statutes.

### **General results**

It is easy to see from the above mentioned aspects that the state control over NCO will become stricter by the new Law. However, in order to fully examine the consequences arisen for NCOs in Russia with the recent developments in legislative regulation of their formation and activities, it is essential to analyse the practice of application of the new Law by courts and governmental bodies, which will be available within next five to six months.