

AMENDMENTS TO THE FEDERAL LAW ON PUBLIC ASSOCIATIONS: TOWARDS FURTHER RESTRICTION OF THE RIGHT TO ASSOCIATION AND THE FREEDOM OF ACTIVITY OF NGOS

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Abstract: *on December 25, 2018, and then, on May 20, 2019, the Ministry of Justice developed Draft Federal Laws on Amendments to the Federal Law N 82-FZ “On Public Associations” in terms of establishing a notification regime for activities of public associations that are not legal entities. Both drafts laws have already passed public discussions and anti-corruption expertise. The provisions of the bills significantly duplicate each other, and, according to many experts, are repressive in relation to civil society. This article will address what groups of citizens fall into the category of an “unregistered public association”, the essence of the most significant amendments. The author will also examine how the adoption of amendments to the Law will affect the constitutional right of citizens to freedom of association.*

Keywords: *public organizations (associations), registration of NGOs, freedom of association, constitutional rights of citizens.*

ПОПРАВКИ К ФЕДЕРАЛЬНОМУ ЗАКОНУ «ОБ ОБЩЕСТВЕННЫХ ОБЪЕДИНЕНИЯХ»: НА ПУТИ К ДАЛЬНЕЙШЕМУ ОГРАНИЧЕНИЮ ПРАВА НА ОБЪЕДИНЕНИЕ И СВОБОДЫ ДЕЯТЕЛЬНОСТИ НКО Майорова К.И. (Российская Федерация)

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Аннотация: *25 декабря 2018 года, а затем 20 мая 2019 года Минюстом были разработаны проекты Федеральных законов «О внесении изменений в Федеральный закон «Об общественных объединениях» в части установления уведомительного порядка деятельности общественных объединений, не являющихся юридическими лицами». Оба законопроекта уже прошли публичные обсуждения и антикоррупционную экспертизу. Положения законопроектов во многом дублируют друг друга, и, по мнению многих экспертов, являются репрессивными по отношению к гражданскому обществу. В настоящей статье будет рассмотрено, какие группы граждан попадут под категорию «незарегистрированных общественных объединений», сущность наиболее значимых изменений, а также отразится ли принятие поправок на конституционном праве граждан на свободу объединений.*

Ключевые слова: *некоммерческие организации, регистрация НКО, свобода объединений, конституционные права граждан.*

According to Art. 5 of the Federal Law N 82-FZ “On Public Associations” May 19, 1995 (hereinafter - the Law on Public Associations, the Law) public association is a voluntary, self-governing, non-commercial formation, created on the initiative of citizens, united on the basis of common interests for the realization of common goals specified in the charter of a public association. According to Art. 18 of the Law, the legal capacity of a public association as a legal entity arises from the moment of state registration of this association. However, certain types of non-profit organizations as can realize socially useful functions without such registration, in other words - without having the status of a legal entity. Take the case of social movements that are mass public associations and pursue social, political, and other socially useful goals (Art. 9 of the Law on public associations). Also, the status of a legal entity is currently not necessary for public amateur bodies that are created by citizens in order to jointly solve various social problems arising in their place of residence, work or study (Art. 12 of the Law on public associations). Public associations that are not legal entities have a wide range of powers. In particular, they can freely distribute information about their activities; hold meetings, rallies and demonstrations, processions and picketing; represent and protect their rights, the legitimate interests of their members and participants in government bodies; make proposals to state and local authorities (Art. 27 of the Law on Public Associations).

The need for a public organization to obtain the status of a legal entity arises, firstly, when acquiring the relevant status is obligatory to carry out statutory activities (for example, Art. 3 of the Federal Law N 95-FZ On Political Parties, July 11, 2001). Secondly, subject to state registration, a non-profit organization is given more extensive legal opportunities in the public sphere. For example, such organizations get the opportunity to participate in the formulation of decisions of state authorities and local governments, participate in elections and referendums as it is prescribed by Law (Article 27 of the Law on public associations). Thus, the need to acquire these opportunities, a broader scope of legal capacity is the main reason for creating a legal entity.

As the main reason for the adoption of the amendments outlined in the draft law prepared on December 25, 2018 (hereinafter - the draft law 1) [1], the Ministry of Justice indicated “the absence of relevant, systematic information about public associations that are not legal entities.” This information is necessary “to submit applications to the court for compensation for harm in civil proceedings and to make a statement prohibiting the activities of a public association that is not a legal entity”[2]. In the case of adoption of the draft law 1, the law will come into force after nine months from the date of its official publication. From this point on, within a month from the date of a decision to create a public association that is not a legal entity the head (person who is a member of the governing bodies) of this association must submit to the Ministry of Justice or post on the Internet inter alia:

- a notification of the creation of the public association;
- information on the head and members of governing bodies of the organization;
- information about the territory within which the public association operates.

Then this information must be submitted annually. Associations created before the day of entry into force of the amendments will have to post on the Internet or submit to the Ministry of Justice a report on the continuation of their activities. Failure to fulfill this obligation will result in a ban on further activities of a public association. Moreover, the draft law 1 states that unregistered organizations acquire their rights only from the date of posting the notification of the creation/ the continuation of their activities. Such additional conditions for the emergence of rights of public associations violate Article 30 of the Constitution of the Russian Federation that guarantees the right of association, the freedom of activity of public associations and their equality before the law.

The wording of the draft law 1 is so extensive that it covers any group of two people who meet permanently. For instance, a committee created by parents of schoolchildren to discuss, among other things, the problems of insufficient school funding, low-quality of education, insufficient technical equipment of the school (in other words, to discuss socially significant issues) may be considered as a public association. This group will have to adopt a charter, annually publish a notice of its activity. According to the draft law 1, if a public association does not submit the notice of activities, it may be deprived of such fundamental rights as the right to freely distribute information about its activities and the right to hold meetings, rallies, and demonstrations, processions, and pickets. A meeting is considered as “the joint presence of citizens in a specially designated or adapted place for the collective discussion of any socially significant issues” [3]. Therefore, in case of non-fulfillment of the obligation to post a notice on the activities, this parent committee can be liquidated. They will not be able to assemble anymore. Otherwise, the group may be liquidated in court. In the case of the continuation of its activities, the participants face administrative and criminal liability. This practice is found in states that are far from the ideals of democracy. Take the case of Belarus. In 2005, Article 193.1 was added to the Criminal Code of Belarus. According to it, participation in an unregistered organization threatens with imprisonment for up to two years [4]. It should be noted that a similar mechanism was previously provided for the introduction of the register of non-profit organizations - “foreign agents,” after which a number of organizations that fell under these requirements refused the status of a legal entity.

The risk group will include, inter alia, organizations such as established in 2012 Human Rights Alliance for Heterosexuals for LGBT Equality, opposing discrimination and advocating for respecting equal rights for LGBT people. It has not been registered in the state register but conducts public events such as protests and rallies. Also, adverse consequences may occur for the social-political movement "Spring", which was denied the registration. This organization aims to change the corrupt regime, build a system based on democracy and human rights and for this purpose holds public events. In particular, in November 2018 "Spring" held a rally, timed to the beginning of consideration of the question of establishing the border between Chechnya and Ingushetia by the Constitutional Court of Russia at Kadyrov Bridge in Saint – Petersburg. The Kommersant newspaper cites the words of lawyer Ivan Pavlov that the law “On public associations” itself is not modern: “Society learned to cope without official status in order to implement non-commercial initiatives that the government does not like without registration” [5]. The senior lawyer of "Team 29" Max Olenichev noted in an interview with Novaya Gazeta: "the new register will become another tool of pressure on civil society ... The situation when public organizations try to work without state registration is an adequate response to work in authoritarianism. Over the past six years, the state has cleared the field of civic activism among registered NGOs, but it lacks effective mechanisms for monitoring the activities of unregistered organizations" [6].

In the draft law prepared on May 20, 2019, the list of documents submitted in the notification regime was expanded [7]. The head of the organization must additionally provide information on:

- statutory goals of the organization;
- information on the participation of NGOs in political activities in the Russian Federation;
and, what is especially important - information about the receipt by the head (a person belonging to the governing bodies) of funds and other property from foreign states, their state bodies, international and foreign organizations, foreign citizens, stateless persons or persons authorized by them and (or) from Russian legal entities receiving money and other property from these sources.

The inclusion in the notification the information on the receipt of funds and other property from foreign sources of the creation of a public association and in the message on the continuation of its activity is unjustified for several reasons, in particular: control over information on individual's income is beyond the competence of the Ministry of Justice of the Russian Federation; monetary funds and other property received from foreign sources by individuals cannot be transferred to an organization that is not a legal entity, since such organizations cannot have accounts and carry out operations with monetary funds or other assets[8].

To conclude, the draft laws contain inaccurate wording, provide for restrictions for non-registered public associations, introducing the so-called notifying nature of their activities. The regulation proposed by the draft laws is omnipresent and puts the widest circles at risk of criminal liability. Experts believe that the proposed changes carry risks for all-Russian and inter-regional NGOs, structural units of which are unregistered public associations, since a ban on their activities may lead to the liquidation of the umbrella organization. It is obvious that the changes proposed by the Ministry of Justice are not aimed at ensuring the transparency of the activities of unregistered public associations, but at removing confidentiality and establishing control over the income of individuals who are heads of such organizations or are members of their governing bodies, as well as to limit the opportunities of those organizations whose activities contradict the basic, official course of the state. The draft laws impose disproportionate restrictions on citizens, and, therefore, the right to freedom of association enshrined in the Constitution (as well as in the European Convention) is under threat.

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