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Global Perspectives on Freedom of Association: Russian Federation

Elena Kavanagh

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Russian Federation: Mapping the Legal Landscape of Freedom of Association

Elena Kavanagh *

I. Background and History

Russia has experienced various phases of development of its civil society over the course of its history. Two main trends can be identified in the evolution of legislation governing civic associations in Russia. Firstly, there have been periods of state policy that have alternated between tightening and liberalising citizen associations. Secondly, the regulatory framework has become increasingly complex and specific over time. This paper aims to map the legal landscape of freedom of association in Russia while demonstrating Soviet influence on the current legal framework.

The history of freedom of association in Russia is quite extensive. Throughout history, various types of unions, associations, and charities have existed in Russia. During critical periods of Russian history, the freedom of association had a stronger focus. This occurred in the context of transforming national values and exacerbating social relations, particularly when the geopolitical situation was unstable and threatened federal stability.[1]

Following the chronology developed by Gavrilova[2], the development of freedom of association in Russia can be divided into four historical periods: from the tenth until the first half of the 19th century, from the second half of the 19th until the beginning of the 20th century; from 1917 until 1991; and from 1992 until 2012.

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[1] AS Ostapenko, *Political and legal strategies for the development of civic associations in the institutional space of modern Russia* [*Политико-правовые стратегии развития общественных объединений в институциональном пространстве современной России*] (Rostov-on-Don, 2009).

[2] A Gavrilova, 'The Main Stages of the Development of Civic Associations in Russia [*Основные этапы развития общественных объединений в России*] (2017) 5 Humanization of Education [Гуманизация образования], 4-9.

Currently, Russia is experiencing a fifth historical period of the development of freedom of association, which started with legislative amendments[3] and continued with strict control measures regarding freedom of association. These changes reflect the evolving political and legal landscape and have resulted in certain limitations for associations and their members.

The first period of the emergence of the first non-profit organisations in Russia is associated with the adoption of Christianity in Russia back in 988.[4] Under the influence of humanistic principles of the new church-ideological paradigm, the less advantaged part of the society was supported. The church played the main role in developing and managing the charities, with hospitals, orphanages, and schools being created.[5] The second period started before the Russian Revolution. The emerging civil society institutes such as various professional and trade unions, charities, political parties, sports and educational communities were widespread then. The freedom of association in pre-revolutionary Russia is evaluated as a 'phenomenon of bourgeois society, subordinate to the interests of the ruling class, and at the same time as a sign of a modernising society and an emerging civil society'.[6]

The third period, which corresponds to the Soviet era in Russia was characterised by a centralised ideological system with the Communist Party at its core. During this period, there were many different types of youth organisations, such as professional and creative groups, as well as collective farms and distribution cooperatives. Military-patriotic organisations were also present, along with leisure and civic organisations. The diverse range of organisations showed that civil society was gradually developing during that time.[7] The Soviet authorities were favourable to civil society which was given a lot of freedom, while civic associations had to function within clear ideological boundaries. Until 1990, all organisations acted in

[3] Federal Law of July 20, 2012 N121-FZ: *'*On amendments to certain legislative acts of the Russian Federation regarding the regulation of the activities of non-profit organizations performing the functions of a foreign agent*'*.
[4] R Gabdrakhmanova, 'Development of Charity in Russia [*Развитие благотворительности в России]* 2(13) Bulletin of Kazan State Energy University [*Вестник Казанского государственного энергетического университета*] 99.
[5] OE Cherstvaya, 'Historical and Pedagogical Analysis of the Activities of Non-Profit Organisations in Russia' [*Историко-педагогический анализ деятельности некоммерческих организаций в России]* (2012) Bulletin of KSU named after NA Nekrasov [*Вестник КГУ им. Н.А. Некрасова*] v 18 at p 251.
[6] N Kotlyar, 'Public Organisations in Pre-Revolutionary Russia: Issues of Classification' [*Общественные организации в дореволюционной россии: вопросы классификации*] (2021) 6 Genesis: Historical Studies 41-55.
[7] TN Sinyukova, 'Public Organisations of the USSR in the 20-40s: Their Historical and Legal Role [*Общественные организации СССР в 20-40-е годы: их историко-правовая роль*] (2015) News of the Russian State Pedagogical University named after AI Herzen [*Известия Российского государственного педагогического университета им. А И Герцена]* (174) 95-100.

accordance with the 1932 Resolution,[8] in which all societies and unions pledged to participate actively in socialist construction and assist in strengthening the country's defence. The list of associations did not include those pursuing political goals.

The adoption of the USSR Law 'On Civic Associations' on October 9, 1990, marked the start of a new era of liberalisation for associations in Russia.[9] It was adopted on the basis and in development of the following provisions of Article 51 of the 1977 Constitution of the USSR: 'citizens of the USSR have the right to unite in political parties, civic organisations, to participate in mass movements that contribute to the development of political activity and initiative, and the satisfaction of their diverse interests; civic organisations are guaranteed conditions for the successful fulfilment of their statutory tasks'. The Law was based on the UN Universal Declaration of Human Rights, which recognised the right to freedom of association as a fundamental human right.[10]

The current 1995 Federal Law 'On Civic Associations' replaced the 1990 Soviet Law "On Civic Associations" and extended its effect to 'all civic associations created on the initiative of citizens, with the exception of religious organisations, as well as commercial organisations and non-profit unions (associations) created by them'[11].

The 1995 Federal Law 'On Civic Associations' was more favourable to associations than its predecessor, the 1990 USSR Law 'On Civic Associations', with the introduction of new legal provisions. Article 3 has eliminated registration restrictions and abolished the permit process for local associations. It allows associations to have limited legal capacity[12] without registering as a legal entity. This provision is based on the principle of freedom of association established by international law. According to Article 18, civic associations can be created on the initiative of their founders, which now requires at least three individuals instead of ten individuals, as

[8] Resolution of the All-Russian Central Executive Committee, Council of People's Commissars of the RSFSR dated July 10, 1932: 'On Approval of the Regulations on Voluntary Societies and Unions'.
[9] SL Bekhterev, 'The Formation of Public-State Relations in Russia in the 1990s (regional aspect)' [*Становление общественно-государственных отношений в России в 1990-е гг. (региональный аспект)*] (2012) Bulletin of Udmurt University Series 'Economics and Law' [*Вестник Удмуртского университета. Серия «Экономика и право»*] (4).
[10] Article 20.1.
[11] Article 2.
[12] Without registration, such association has the right to disseminate materials about their association, conduct meetings, communicate with state officials, and represent their members in local and state governments. The rights of the legal entity are received after the state registration (Article 21 of the 1995 Federal Law 'On Civic Associations').

stipulated previously in the 1990 USSR Law. During the 1990s, Russian civil society was presented with a unique opportunity to develop a strong civil society due to the progressive laws adopted at the time.

II. The Current Legal Framework for Freedom of Association

As previously mentioned, the main law regulating the right to freedom of association in Russia is the 1995 Federal Law 'On Civic Associations'. It was adopted on the basis and in the development of constitutional norms on the right of citizens to associate. In accordance with Article 30(1) of the Constitution of the Russian Federation, 'everyone has the right to association, including the right to create trade unions to protect their interests'. It also establishes that the freedom of activity of civic associations is guaranteed. According to Part 2 of this Article, no one can be forced to join or remain in any association.

The definition of the civic association is presented in the Arctic 5 of the 1995 Federal Law 'On Civic Associations': '[a] civic association is understood as a voluntary, self-governing, non-profit formation created on the initiative of citizens united on the basis of common interests to realise common goals specified in the charter of the civic association.'

Derived from Article 15 of the 1995 Federal Law 'On Civic Associations', the principles of creation and activity of civic associations in Russia include the principles of voluntariness, equality, self-government, legality, freedom, and publicity.[13] The court plays the role of protecting the right to freedom of association in Russia. The nature of the associations is voluntary, self-governing, and created based on their common interests. The government or court cannot interfere in the work of the association and its internal matters unless the activity of the association violates the legislation of the Russian Federation. Civic associations are free to determine their internal structure, goals, forms and methods of their activities.[14]

Civic associations can be created in one of the following organisational and legal forms: civic organisation, social movement, civic fund, civic institution, civic initiative body, and political party.[15]

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[13] TD Carlina, 'Civic Association: Concept, Main Features, Principles of Creation and Activity' [*Общественное объединение: понятие, основные черты, принципы создания и деятельности*] (2007) 3 Problems of Economics and Legal Practice [*Проблемы экономики и юридической практики*] 83-86.
[14] Article 15 of the 1995 Federal Law 'On Civic Associations'.
[15] Article 7 of the 1995 Federal Law 'On Civic Associations'.

Trade unions are not listed as a type of organisation under the 1995 Federal Law 'On Civic Associations', but they are constitutionally protected under the terms of the general right to freedom of association stipulated in Article 30 of the Constitution. There is a special law regulating social relations arising in connection with the exercise by citizens of the constitutional right to association, creation, activities, reorganisation and (or) liquidation of trade unions – the 1996 Federal Law 'On trade unions, their rights and guarantees of activity'.

Membership is a crucial element for civic organisations and political parties. A register of members is maintained to document membership. In contrast, there is no membership requirement in a social movement, civic foundation, civic institution or civic initiative body. Depending on the territorial scope of activity, national, interregional, regional and local civic associations can be created in the Russian Federation.

The right of citizens to associate is provided for by the relevant generally recognised principles and norms of international law and international treaties to which Russia is a party,[16] which, according to Article 15(4) of the Constitution of the Russian Federation, are an integral part of the legal system of Russia. Article 15 of the Russian Constitution declares a priority of international law over domestic law.

However, during the Constitutional Reform of 2020, the amended Article 79 placed conditions upon this rule, namely that international law should not contradict significant principles of the constitutional order of the Russian Federation. This restriction immediately affected all the international treaties ratified by Russia. It includes the concept of counter-limits in international and national judicial practice, the principle of subsidiarity, the principle of proportionality, the principle of 'sincere cooperation', and the method of 'judicial dialogue'.[17] The term 'constitutional sovereignty of the state' is becoming the most popular paradigm, which is based on domestic fundamental rights and norms as the foundations of the constitutional system.[18]

[16] On March 16, 2022, the Committee of Ministers decided that the Russian Federation would no longer be a member of the Council of Europe. This means that the signed and ratified treaties of the Council of Europe no longer apply. The Russian Federation ceased to be a high contracting party to the ECHR on 16 September 2022, following the cessation of its membership to the Council of Europe.

[17] IN Bartsits, 'Rethinking the Relationship between International and National Law at the Turn of the Epoch (on the Amendment to the Article 79 of the Constitution of the Russian Federation)' (2020) 1 Civil Service [*Государственная Служба*] 33-42.

[18] IM Ilyin, 'Sovereignty in the Doctrine of Constitutionalism: Definition, Problems' (2020) Bulletin CUIT [*Вестник ВУиТ*] 2 (95).

Any foreign or international influence is inadmissible if it violates the requirement of priority of the norms and principles of the Russian Constitution. The concept of 'constitutional sovereignty' is an important instrument that preserves constitutional identity in the modern Russian state. In addition to the domestic discussion,[19] the international community sharply criticised the article.[20] The reason for criticism was the assumption that the provisions of Article 79 conflict with paragraph 4 of Article 15 of the Constitution of the Russian Federation.

III. The Content of Rights of the Freedom of Association

Article 3 of the *1995 Federal Law "On Civic Associations"* specifies 'the right to association' declared in the Constitution in two positive and two negative aspects of the right to freedom of association:

1) The right to create civic associations on a voluntary basis to protect common interests and achieve common goals,
2) The right to join civic associations,
3) The right to refrain from joining,
4) The right to freely leave associations.

These provisions are based on the provisions of Article 30 of the Constitution of the Russian Federation, according to which everyone has the right to association, including the right to form trade unions to protect their interests. Freedom of activity of civic associations is guaranteed by part 1 of this Article, while no one can be forced to join or remain in any association (Art. 30.2).

[19] See T Grizhenko & T Lyazhenko, 'Some Problems of the Correlation of State Sovereignty and International Law in the Context of the New Edition of Article 79 of the Constitution of the Russian Federation' [*Некоторые проблемы соотношения государственного суверенитета и международного права в контексте новой редакции ст.79 Конституции Российской Федерации*] (2021) 4 State Power and Local Self-Government [*Государственная Власть и Местное Самоуправление*] 16-18.

[20] Opinion on draft amendments to the Constitution (as signed by the President of the Russian Federation on 14 March 2020) related to the execution in the Russian Federation of decisions by the European Court of Human Rights, adopted by the Venice Commission on 18 June 2020 by a written procedure replacing the 123rd Plenary Session**,** CDL-AD(2020)009-e.

When it comes to political parties, they are not mentioned in Article 30, devoted to the right to freedom of association. Article 2 of the 2001 Federal Law 'On Political Parties' determines that:

> '…the right of citizens of the Russian Federation to unite in political parties includes the right to create political parties on a voluntary basis in accordance with their convictions, the right to join political parties or to refrain from joining political parties, the right to participate in the activities of political parties in accordance with their charters, as well as the right to freely leave political parties.'

As noted[21] by the Constitutional Court of Russia, Article 30 of the Constitution of the Russian Federation does not directly establish the right of citizens to unite in political parties. However, in Russia, this right, including the right to create a political party and the right to participate in its activities, is an integral part of everyone's right to association. The opportunity for citizens to freely unite into a political party, to form a party as a legal entity in order to act collectively in the implementation and protection of their political interests, is one of the necessary and most important components of the right to association, without which this right would be meaningless; therefore, the Constitution of the Russian Federation protects not only the freedom of activity of political parties, but also the freedom of their creation.

IV. Formal Requirements and Other Restrictions on the Freedom of Association

The right of citizens to create civic associations is realised both directly through the association of individuals and through legal entities - civic associations. The *law* distinguishes between an *association* with *legal capacity and without one.* Article 3 of the 1995 Federal Law 'On Civic Associations' provides for the possibility of creating a civic association without registering a legal entity. A civic association receives its legal status from the moment of its establishment at a meeting or conference, but the full legal capacity begins from the moment of state registration.[22] The Ministry of Justice of the Russian Federation carries out civic association

[21] Resolution of the Constitutional Court of the Russian Federation dated December 15, 2004 N 18-P 'In the case of verifying the constitutionality of paragraph 3 of Article 9 of the Federal Law "On Political Parties" in connection with a request from the Koptevsky District Court of Moscow, complaints from the all-Russian civic political organization "Orthodox Party of Russia" and citizens IV Artemov and DA Savin'.
[22] Article 18 of the 1995 Federal Law 'On Civic Associations'.

registration. Therefore, the formal legal registration as an association is at the discretion of the members, depending on their goals and needs.

Article 16 of the 1995 Federal Law 'On Civic Associations' prohibits the creation and activities of civic associations whose goals or actions are aimed at carrying out extremist activities. Besides that, restrictions on the creation of certain types of civic associations can be established by federal law.

The nature of the restrictions on the associations is reflected in supervision and control over the activities of civic associations regulated by Article 38 of the 1995 Federal Law 'On Civic Associations'. Supervision over compliance with laws by civic associations is carried out by the Prosecutor's Office of the Russian Federation. The Ministry of Justice of the Russian Federation, which makes decisions on state registration of civic associations, exercises control over the compliance of the activities of civic associations with their statutory goals.

International associations are allowed to be created and function in Russia. They are regulated by Article 47 of the 1995 Federal Law 'On Civic Associations': '[a] civic association formed in the Russian Federation is recognised as international if, in accordance with its Charter, at least one of its structural units is created and operates in foreign countries - an organisation, a branch or a branch and a representative office'. This provision is restricted by the 2023 amendment[23] to the Article 15 of the 1996 Federal Law 'On Non-Profit Organisations', according to which the founder (participant, member) of a civic association or NGO cannot be a person included in the list of foreign and international non-governmental organisations whose activities are recognised as undesirable on the territory of the Russian Federation.

The Ministry of Justice performs functions of combating the legalisation (laundering) of proceeds from crime, the financing of terrorism and the financing of the proliferation of weapons of mass destruction, and decides on the inclusion of an organisation in the Registers (lists) of 'foreign agents'.[24] Liquidation of a civic association is carried out by a decision of the

[23] Federal Law of December 25, 2023 N 671-FZ 'On Amendments to Certain Legislative Acts of the Russian Federation'.
[24] Article 38 of the 1995 Federal Law 'On Civic Associations'; 2001 Federal Law'On Combating the Legalization (Laundering) of Proceeds from Crime , and Financing of Terrorism'; 2022 Federal Law 'On Control over the Activities of Persons under Foreign Influence'.

conference or general meeting in accordance with the Charter of the civic association or by a court decision.[25]

According to the Article 37, civic associations are also restricted in the amount and purpose of commercial activity. They can carry out commercial activities only insofar as they serve the achievement of the statutory goals for which they were created and are consistent with these goals. Civic associations can create business partnerships, societies and other business organisations, as well as acquire property intended for conducting business activities. Income from the business activities of civic associations cannot be redistributed between members or participants of these associations and must be used only to achieve their statutory goals.

V. The Role of the Court in Interpreting and Vindicating Freedom of Association

The most authoritative source of law in the Russian Federation is the Constitution of 1993. The law of the Russian Federation is based on a legal code rather than prior legal precedent. Court decisions or precedents are not regarded as legal code, i.e., sources of law, and are not binding in law, although they can be persuasive and frequently serve as legal guidance for courts and legal practitioners. Legislative acts are the primary source of law. Summarising the judicial practice in the court of general jurisdiction, the cases[26] available in courts of general jurisdiction are mainly related to the liquidation of civic associations. At this stage, the court, in relation to the protection of citizens' rights, acts not as a defender of this right but as a supervisory authority.

More curious is the judicial practice of the Constitutional Court of the Russian Federation. The Constitutional Court of the Russian Federation is designed to solve complex legal issues,

[25] Article 26 of the 1995 Federal Law 'On Civic Associations'.
[26] For example, Decision of June 8, 2022 of the Supreme Court of the Russian Federation in the case of the administrative claim of the Prosecutor General of the Russian Federation to invalidate the state registration and liquidation of the civic organisation Professional Union of Lawyers of Russia; Decision of February 25, 2020 of the Supreme Court of the Russian Federation in the case of the administrative claim of the Ministry of Justice of the Russian Federation for the liquidation of the All-Russian civic organisation of disabled people of the war in Afghanistan and military trauma - "Disabled People of War"; Decision of May 20, 2013 of the Supreme Court of the Russian Federation on the application of the Ministry of Justice of the Russian Federation on the liquidation of the All-Russian civic organisation "Russian Short Track Federation".

'decide on the questions of law',[27] and provide direct commentary on the norms of the Russian Constitution. It takes a special place in the system of justice. The most relevant judgment regarding the restrictions on the freedom of association is the case No 1779-O of the Constitutional Court,[28] The Court reveals the non-absoluteness of the right to association and gives an interpretation establishing the competence of public authorities of the Russian Federation in relation to the implementation of monitoring of the activities of civic associations. Therefore, the court accepted the non-absolute nature of everyone's right to association and asserted that the freedom of their activities lies in the fact that they (rights and freedoms) can be limited by federal law to the extent necessary in order to protect, in accordance with Articles 17.3 and 55.3 of the Constitution of the Russian Federation, the foundations of the constitutional system, morality, health, rights and legitimate interests of other persons, ensuring the country's defence and state security.

In the context of other types of appeals by civic associations to the Constitutional Court of the Russian Federation, the most frequent appeals[29] are in relation to the 1995 Federal Law 'On Civic Associations', the 1996 Federal Law 'On Non-Profit Organisations', the 2001 Federal Law 'On the Political Parties', and the 1997 Federal Law 'On freedom of conscience and religious associations'. These laws fall under the jurisdiction of the Constitutional Court of the Russian Federation, which then interprets the constitutional and legal status of civic associations and the procedure for implementing their rights.

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[27] NS Bondar, 'The Constitutional Court in the System of Jurisdictional Bodies (about "Godly Sins" of Constitutional Justice)' [*Конституционный Суд в системе юрисдикционных органов (о «богоугодных грехах» конституционного правосудия*)] (2017) 1 Journal of Foreign Legislation and Comparative Law [*Журнал зарубежного законодательства и сравнительного правоведения*] 28.

[28] Constitutional Court of the Russian Federation Ruling dated July 18, 2017 No 1779-O 'On refusal to accept for consideration complaints from the Kaliningrad regional civic youth organisation "Lider" on violations of constitutional rights and freedoms by provisions Article 14 and 38 of the Federal Law 'On Civic associations', Article 32 Federal Law 'On Non-Profit Organizations' and Article 329 Code of administrative proceedings of the Russian Federation'.

[29] Constitutional Court of the Russian Federation Ruling dated July 16, 2007 No 11-P 'In the case of verifying the constitutionality of certain provisions of Articles 3, 18 and 41 of the Federal Law 'On Political Parties' in connection with the complaint of the political party "Russian Communist Workers' Party - Russian Party of Communists"; Constitutional Court of the Russian Federation Ruling dated March 13, 2018 No 579-O 'On the refusal to accept for consideration the complaint of citizen Sergei Nikolaevich Stepanov about the violation of his constitutional rights by paragraph 1 of Article 241, paragraph 2 of Article 242 of the Federal Law 'On Freedom of Conscience and on religious associations' and part 4 of article 5.26 of the Code of the Russian Federation on administrative offenses'; Constitutional Court of the Russian Federation Ruling of April 8, 2014 No 10-P 'In the case of verifying the constitutionality of the provisions of paragraph 6 of Article 2 and paragraph 7 of Article 32 of the Federal Law 'On Non-Profit Organisations', part six of Article 29 of the Federal Law 'On Civic Associations' and part 1 of Article 19.34 of the Code of the Russian Federation on Administrative Offenses in connection with complaints from the Commissioner for Human Rights in the Russian Federation, the Kostroma Centre for Support of Civic Initiatives Foundation'.