

# THE PUBLIC CHAMBER OF THE RUSSIAN FEDERATION ACTIVITY AS A GUARANTEE OF CITIZENS' CONSTITUTIONAL RIGHTS TO NGOS

**Irina Bakulina**

In accordance with the Federal Act dated from 19.05.1995 No. 82-FZ "Non-Governmental Organisations", citizens' right of association includes the right to form voluntary organisations to protect their common interests and common goals; the right to join existing NGOs or refrain from joining an NGO, as well as the right to freely leave an NGO. Establishment of NGOs contributes to the implementation of the rights and legitimate interests of citizens; that is why the matter of guarantee of the Russian citizens' right to non-governmental organisations is highly topical today.

The legal sources define citizens' rights as the conditions and means for implementation, the implementation, the protection of the rights and freedoms of citizens by legally stated democratic values, the inviolability of democratic values; the effective work of state bodies, high level of credibility and legal culture, the efficiency of legal liability.<sup>1</sup> In developed democracies public community boards serve to guarantee the citizens' right to join NGOs. Community boards are present in one form or another in most advanced countries.

The governmental concern in the consideration of the citizens' opinion is expressed in the public consultations on various issues involving different social groups. The primary proof of community councils' efficiency is the actual implementation of their recommendations by the state. Therefore, in some states, community councils serve as an effective tool to express public opinion, contribute to the transparency and effectiveness of government bodies and agencies and promote citizens' engagement in policy-making.

According to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters<sup>2</sup>, due to increased access to information and public participation in decision-making the quality of the decision-making and implementation mechanism is improved, a reliable regulation procedure is secured, a reactive and trustworthy relationship between civil society and governments is introduced. However in some cases community boards effectively influence the activity of respective state bodies and in other cases the boards are formal structures.

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<sup>1</sup> Viskulova V.V. Guarantee of citizens' elective rights as a general methodology problem of legal guarantees // Russian legal journal. 2013. N 2. p. 101.

<sup>2</sup> Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Aarhus, Denmark, 23-25 June 1998, available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXVII-13&chapter=27&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-13&chapter=27&lang=en)

In today's Russia there is a necessity to form an all-Russian Public Council out of active citizens truly respected by the public who serve on existing social organisations and represent the interests of different social groups. A new means to implement and grant the citizens' rights to NGOs is the Public Chamber of the Russian Federation.

The Public Chamber of the Russian Federation is a public institution, which aims to establish a relationship between civil society and government bodies, facilitate the citizens' engagement in policy-making to improve the quality and process of implementation of decisions.

The Public Chamber of the Russian Federation in the current legislation is considered an independent civil institution. However, expert opinions disagree on this matter. Most experts believe that the Public Chamber has taken an important place among civil institutions and it has a great public response.<sup>3</sup> Others state that the Chamber is essential to provide public control over executive authority in the Russian Federation<sup>4</sup>.

However, a number of scholars are sceptical about establishing another public chamber. Thus, L.Y. Grudtsyna disputes its value as a symbol of civil society, noting some elements of its illusory nature.<sup>5</sup>

Yu. A. Dmitriev notes that the procedure of appointing members in the Public Chamber as stated in the legislation is neither democratic nor effective in achieving its goals. Under the developing democracy in Russia it means creating another formal body unable to object to negative trends in the social development of the country<sup>6</sup>.

According to L.J. Grudtsyna the procedure of appointing the representatives to the Chamber proves it is merely another advisory body to the head of state with the structure depending mostly on the President's personal preferences. The Federal Assembly of the Russian Federation, the RF Government and the highest judicial authorities do not engage in the formation of the Public Chamber. It poses the risk of masked state control over civil society and its way of development in the present political Russian life.<sup>7</sup>

V.V. Goncharov questions the legitimacy of the RF Public Chamber as a body empowered to exercise control over the legislative (representative) state bodies which contradicts the RF Constitution. Article 3 of the Constitution reads that the holder of sovereignty and the only source of power in the Russian Federation shall be its multinational people who exercise their power both directly and through state and local bodies and local self-government. The ultimate expression of the people's power is the referendum and free elections. The Russian Constitution states that anyone who would arrogate the power of the people shall be held liable, therefore, the Public

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<sup>3</sup> Kabyshev S.V., Vekshin A.L. The Public chamber: its role and function in Russian politics // *Formula of law*. 2005. N 1(4). p. 46.

<sup>4</sup> Goncharov V.V., Kovaleva L.I. Control of executive powers in the Russian Federation by public institutions // *Authority*. 2009. N 1. p.72.

<sup>5</sup> Grudtsyna L.Yu. Pro et contra. The Public Chamber: a symbol of civil society or its illusion? // *Laws in Russia: experience, analysis, practice*. 2006. N 10. p. 120.

<sup>6</sup> Dmitriev Yu.A. Dangerous nostalgia for the past // *Law and life*. 2004. N 77(13). p. 9.

<sup>7</sup> Grudtsyna L.Yu. *Ibid.* p. 120.

Chamber established by the President's directives (not through free elections) a priori cannot exercise control on behalf of the people.<sup>8</sup>

V.V. Goncharov stresses the inconsistency of the Russian President's stand concerning the membership limitation in the Chamber for political parties' representatives (Art. 11 of the Act). The President's Letter dd. from 26.05.2004 particularly notes the need for the close cooperation of political parties and civil structures with the Public Chamber of Russia meant to be the most important council among others. It is particularly reasonable that political parties could serve as instigators for the mechanism of public control over public authorities due to their large number, the rich political experience and historical tradition.

V.V. Goncharov points at the mismatch in the powers of the Public Chamber. For example, it has the right to issue reports on violations of law by any of the executive bodies but it cannot conduct expertise of the President's draft law. V.V. Goncharov argues that the Act intentionally disables the Public Chamber to control Presidential activities and his legislation. Thus, the actual powers of the Public Chamber define its status only as of a body of presidential control over the activities of other governmental branches.<sup>9</sup>

The existence of the aforementioned problems requires improvement of the Federal Act "The Public Chamber of the Russian Federation." According to the author, for this purpose it is reasonable to turn to the practice of similar institutions in foreign countries today.

An important role in the civil society of foreign countries is given to public advisory bodies. Public participation in the adoption process of governmental acts increases the legitimacy of law-making and enhances the efficiency of the activities of state authorities.

Thus, the Economic and Social Council of France (Conseil économique et social), which is a consultative board for the discussion of economic and social issues, was established in accordance with book IX of the Constitution of France in 1958 (Articles 69-71). The Council has 231 members appointed for five years by the most representative socio-professional organisations (about 70% of the total number) or by the Prime Minister's decree (the rest of the members). The Board ensures representation of the major economic and social activities, in particular the following: workers, businesses, liberal professions, mutual aid societies, social work, non-commercial organisations (associations). It includes 69 representatives from workers, 72 representatives from businesses and 40 representatives competent in economic, social, scientific or cultural spheres.

Section 11 of the Constitution of the Fifth Republic focuses on the Council's work and sets out in detail the Council's powers to pass a decision on draft laws. The

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<sup>8</sup> Goncharov V. V. Problems in the organisation and performance of the Public Chamber of the Russian Federation/ V. V. Goncharov // Modern Law. -2010. – No. 4. - p. 50.

<sup>9</sup> Goncharov V.V. The role and function of political parties in establishing and developing the executive authority system in the Russian Federation // The history of state and law. 2008. N 24. p. 7.

Section highlights the mandatory requirement to submit all economic draft laws to the Council.

The Act regulating the Council's work sets out its duty to conduct the examination of draft laws. The Council shall conduct the expertise of all acts and decisions relating to the economic sphere. Also, the government shall send draft laws concerning other spheres to the Council for expertise. Besides, the Council can consider and pass a decision on a particular bill at its own initiative.

The Council is supposed to consult the Government and engage in economic and social policy-making, involve NGOs and professional associations in state policy-making, establish a dialogue between different social and professional groups.

Foremost, the government itself has the right to ask the expert advice of the Council. The advice of the Council can be either mandatory or optional. It is supposed to consult the government on the proposed programme of the law (i.e. the draft laws involving the budget planned for the implementation of its stated goals) or economic and social draft laws, except for budget laws and laws on social security financing. The Economic and Social Council has the right to consider an issue at its own initiative to propose reform.

The government is supposed to submit a report to the Council on the annual performance plan. Every year the Prime Minister reports on the process of informing the Council.

The analysis of the working mechanism of the Economic and Social Council of France serves to reveal the following positive aspects: establishment of the Council is formulated in the Constitution of France; every programme of an economic or social act is submitted to the Council for expertise. Thus, the Council acts as a mandatory platform for discussions.

The Public Chambers of France and Greece do not have an officially stated right for veto but governmental structures are obliged to submit certain documents for approval. In France, public authorities seek the opinion of the Council when making certain decisions. The Public Chamber of Greece has the right of legislative initiative in contrast to the Russian Public Chamber.

The Council of National Minorities of the Czech Republic Government is a body which consults, coordinates and drafts laws regulating national minorities' issues.

Thus, the practice of public advisory boards in foreign countries proves that public chambers are a powerful institution of civil society. Effective public chambers mostly consist of members selected by the public. Theoretically, a public council should represent various social interests to the maximum extent and include representatives of different interests including contradictory ones. The government should engage in discussion and consider the opinions of all parties.

Analysis of foreign practice and its comparison with the functioning of the Russian Federation Public Chamber has clearly revealed the existing problems in the structure and composition of the national Public Chamber. To date, the legislative branch of the Russian Federation has adopted amendments to the Federal Act " The Public Chamber of the Russian Federation" to change the procedure of forming the

Public Chamber. According to the new legislation, the Public Chamber of the Russian Federation shall consist of forty citizens of the Russian Federation approved by the Russian President, eighty-three representatives of the public chambers of the federal subjects of Russia and forty-three representatives of all-Russia public organisations.

These changes will result in the involvement of all the subjects of the Russian Federation in policy-making. However, the author argues that the quality of representation of civil institutions is satisfactory if various social and professional groups are presented by their competent representatives in the Public Chamber. The body of the Public Chamber should be dynamic enough to respond to all political and social changes in the state.

National and foreign practice has proven that there is a political and legal dependence of public advisory councils on the government; the recommendations of the Chamber are non-regulatory, the expertise results are not binding. The Public Chamber as a public coordinator should have the right to legislative initiative, the right to conduct overall voluntary public polls concerning the public approval of the Chamber's decisions on regulatory acts developed by legislative and executive bodies, as well as the Chamber's proposals to make amendments to legislation.

A public poll can be conducted through online voting or in specially equipped premises and voting booths. Positive response of a significant part of the population should justify further compulsory study of the expert decisions of the Public Chamber by competent government authorities. Such an expansion of authorities of the Public Chamber would serve to establish reciprocal feedback between the state and society.

Thus, the Federal act "The Public Chamber of the Russian Federation" requires being amended in order to establish an effective negotiation space between the state and society.