

2008

International NGO and NPO Committee

Karla W. Simon

Kimberly D. Reed

Recommended Citation

Karla W. Simon & Kimberly D. Reed, *International NGO and NPO Committee*, 42 INT'L L. 655 (2008)
<https://scholar.smu.edu/til/vol42/iss2/25>

This Article is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in *International Lawyer* by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

International NGO and NPO Committee

KARLA W. SIMON* AND KIMBERLY D. REED**

This Year-in-Review focuses on providing updates to certain issues covered by last year's report, including: Russia's law on non-governmental organizations¹ (discussed in the "Legislation/Regulation" section) and Peru's legislation aimed at increasing state control over the non-profit sector (discussed in the "Important Case Law" section); new developments in legislation and regulations affecting the NGO/non-profit sector in various countries; important case law developments in this sector from around the world; and other matters of interest to the sector, such as reports and standards promulgated by international bodies.

I. Legislation/Regulations

A. CHINA

In early 2007, two important developments enhanced the legal and fiscal framework for China's not-for-profit organizations (NPOs)² in ways that are designed to increase both individual giving and corporate social responsibility (CSR) to promote poverty alleviation, social cohesion, and economic development in the country. While often lamenting the extremely low involvement of China's elite in charitable giving, the country's leadership now is clearly striving to increase such activities both in advance of the upcoming Olym-

* Karla W. Simon is a Professor of Law at Catholic University of America. She would like to thank her colleagues Leon Irish and Nasira Razvi of the International Center for Civil Society Law, who did significant research and writing for the International Journal of Civil Society Law (IJCSL) Newsletter throughout 2007. The Newsletter is published on the website www.iccsl.org, and many of the entries and updates in the Newsletter are included in this paper.

** Kimberly D. Reed is Counsel at Hogan & Hartson's Moscow, Russia and Washington, D.C. offices. Ms. Reed wrote the section on Russia and provided overall editing.

1. The terminology used herein to refer to the organizations in this sector is "NGO," "NPO," or "charity," depending on the relevant country's legal nomenclature.

2. This term includes public welfare social organizations or associations, which were established under the 1998 Regulations on Social Organizations, and foundations, established under the 2004 Regulations on Foundations. The latter are required to be "public welfare" organizations.

pics and in the interest of promoting a harmonious society.³ In addition, many Chinese citizens are clamoring for changes that will make charitable giving easier.⁴

1. *Background*

In 2003, the World Bank and the Ministry of Civil Affairs (MoCA) commissioned the International Center for Civil Society Law (ICCSL) and a Chinese expert who works for the Taxation Science Research Institute to produce a study of the procedural and substantive rules regarding the tax benefits for charitable giving in China. This project was supported by the Ministry of Finance (MoF) and the State Administration of Taxation (SAT) and resulted in a report (the "Tax Report").⁵ The Tax Report contained thirty-two recommendations, nineteen of which were substantive and the remainder of which were procedural. The recommendations would fundamentally restructure the then-current system governing giving to charity. The 2007 fiscal changes indicate that they are beginning to be implemented.

2. *Changes in Law*

In March 2007, China's Enterprise Income Tax was completely overhauled (effective January 1, 2008) to eliminate the differences in tax treatment between foreign and domestic companies investing in China. Of particular significance was the decision to permit the same percentage limitation (12 percent) on the charitable contribution deduction for both foreign and domestic companies. This was an increase from 3 percent to 12 percent for domestic companies.⁶

3. *Changes in procedures*

In January 2007, MoF and SAT issued a Notice entitled "On the Policies and Relevant Management Issues Concerning the Pre-tax Deduction of Public Welfare Relief Donations."⁷ This Notice clarifies the following issues with regard to qualification of organizations to receive tax deductible contributions as of January 2007 and the procedures for qualification:

3. People's Daily Online, *China Faces 8 Challenges in Building Harmonious Society: Experts*, Oct. 8, 2006, http://english.people.com.cn/200610/08/eng20061008_309907.html (last visited Jan. 30, 2008).

4. Cao Li & Hu Yuanyuan, *Celebrities, Experts Want New Charity Law*, CHINA DAILY, Mar. 28, 2007, http://www.chinadaily.com.cn/china/2007-03/28/content_837988.htm (last visited Jan. 30, 2008).

5. Leon E. Irish, Jin Dongsheng & Karla W. Simon, CHINA'S TAX RULES FOR NOT-FOR-PROFIT ORGANIZATIONS: A STUDY PREPARED FOR THE WORLD BANK (2004), available at http://siteresources.worldbank.org/INT/CHINA/1503040-1122886803058/20601839/NPO_tax_En.pdf.

6. *Enterprise Income Tax Law of the People's Republic of China*, Order of the President of the People's Republic of China Decree No. 63, Art. 9, (promulgated by the 5th Session of the 10th National People's Congress of the People's Republic of China on March 16, 2007, effective Jan. 1, 2008) *unofficially translated in* Deloitte Touches Tohmatsu at <http://www.deloitte.com/dtt/article/0,1002,sid%253D7114%2526cid%253D150218,00.html> (follow "English Version" hyperlink) (last visited Jan. 30, 2008).

7. Ministry of Finance, People's Republic of China, *Notice of the Ministry of Finance and the State Administration of Taxation on the Policies and Relevant Management Issues Concerning the Pre-tax Deduction of Public Welfare Relief Donations*, available at http://www.iccs.org/pubs/China%20_January_18_Notice%20_2_.pdf (last visited Jan. 30, 2008) [hereinafter "*Notice of the Ministry of Finance*"].

First, tax deductible donations may be made to all “public welfare social associations or foundations established upon approval of the civil affairs administrative department.”⁸ After several years of permitting deductions only if donations were made to several pass-through organizations such as the China Charity Federation, the Government has decided to make the situation much easier for donors. On the other hand, these are new procedures, and it obviously will take a while to implement them.

Second, in order to qualify as a public welfare organization to which such deductible contributions can be made, there must be a “confirmation of the public finance and taxation authorities” that the organization so qualifies.⁹ This confirmation will be made by the appropriate level MoF and SAT officials.

Third, in order to be confirmed as such an organization, the NPO must apply for recognition.¹⁰ It must show, among other things, that it:

- is a non-profit organization;
- is established and managed consistently with the law;
- may not distribute any surplus upon dissolution or termination;¹¹
- may not engage in business activities unrelated to its public welfare purposes;
- has an oversight body that is not “profit-seeking”;¹² and
- has a sound financial and accounting system.

Fourth, the organization must submit the following in order to qualify for recognition:

- an application;
- the document approving its registration; and
- its charter.¹³

The new rules reflect many of the recommendations that originally had been set forth in the Tax Report.

The Notice also clarifies how an organization must handle the donations it receives and how it deals with its donors in the following ways: (1) “No donor may participate by any means in the distributions of the assets of [a qualified] organization, nor may it/he have ownership to such assets;”¹⁴ (2) “[T]he public welfare relief donations they have accepted [must be used] for the scope prescribed by tax laws or regulations, namely, for education, civil affairs, other public welfare undertakings, or for the districts that suffer from natural disasters or the poverty-stricken districts;”¹⁵ (3) The organizations must “separately use the vouchers for public welfare relief donations as uniformly printed under supervision of

8. *Id.* § I.

9. *Id.*

10. *Id.* § II.

11. The law contains a curious statement with regard to current earnings, which must only meet this test: “proceeds and operational surplus are mainly used for the activities aimed at the purposes for its creation.” *Id.* If this means that such proceeds may be invested but are not permitted to be distributed, then the organization would be more like a “typical” charitable organization. There should be more clarity about the intention of this terminology.

12. This appears to create a rule that members of the board must be volunteers and thus to establish a minimal conflict of interest rule.

13. *Notice of the Ministry of Finance, supra* note 7, § III.

14. *Id.* § II(9).

15. *Id.* § IV.

the central or provincial public finance department according to the financial affiliation, and affix their respective special financial seals; and shall issue receipts if any individual asks for it for his donations.”¹⁶

The Notice also clarifies what a donor must do in order to claim a deduction. The donor must submit along with the tax return:

- the certification of the donee organization when it claims the deduction;
- the receipt received from the donee organization; and
- “other materials as required to be submitted.”¹⁷

4. Conclusion

These fiscal/legal changes in China are significant because they reflect the growing importance of charitable giving in a country that has long survived with only state support for public welfare activities. It is also important to note that there is increasing pressure within China to implement practical reforms that will enhance the environment for charitable giving.¹⁸

B. RUSSIA

Consistent with the Kremlin’s ever-tightening control over Russian society as a whole (as seen in its increasing central economic domination, systematic destruction of the independent media, and outlawing or crippling of most opposition political parties), the Russian government’s attitude toward NGOs continues to be suspicious and fairly hostile, presumably due to its belief that many NGOs, particularly foreign NGOs, are fronts for spying or for attempting the overthrow of the government. President Putin, who has stated in no uncertain terms his belief that U.S. NGOs such as the National Democratic Institute and organizations supported by George Soros’ Open Society Institute were responsible for the Orange Revolution in Ukraine, has said that stringent NGO laws are needed in Russia to combat terrorism and stop foreign spies from using NGOs as a cover.¹⁹ The head of the Federal Security Service (the “FSB,” formerly the KGB) was quoted in summer 2007 as saying that there has been a “sharp increase” in foreign intelligence agents taking employment with international foundations and NGOs that specialize in human rights and media in order to spy on Russia.²⁰

16. *Id.* § V.

17. *Id.* § VI.

18. In a signed article in the *China Daily* emphasizing the need for better implementation of rules regarding charities that will ensure their sound financial management, the author makes clear how important charitable giving has become in recent years. See You Nuo, *Charity Funds Need Better Management*, CHINA DAILY, Apr. 3, 2006, http://www.chinadaily.com.cn/opinion/2006-04/03/content_558099.htm (last visited Jan. 30, 2008).

19. See Stephen Kaufman, *U.S. Urges Russia to Quickly Process NGO Re-Registrations*, Oct. 20, 2006, <http://www.america.gov/st/washfile-english/2006/October/20061020162838esnamfuak4.531497e-02.html> (last visited Jan. 31, 2008).

20. Simon Saradzhyan, *Patrushev Says More Spies Work in NGOs*, THE MOSCOW TIMES, Dec. 20, 2006, available at <http://www.cdi.org/russia/johnson/2006-285-23.cfm> (last visited Jan. 31, 2008).

1. 2006 NGO Law

Against this larger backdrop, the 2006 Russian Federal Law “On Introducing Amendments to Certain Legislative Acts of the Russian Federation” (the “NGO Law”)²¹ continues to generate controversy as it formalizes tight government control over NGOs’ activities and causes serious bureaucratic headaches for NGOs operating in Russia. In the eighteen months since the implementation of the NGO Law, the Russian authorities have begun using the law’s ambiguity and overbreadth to shut down or harass several organizations, mostly in the human rights sector.

The NGO Law required all NGOs to register with a new state body, the Federal Registration Service, or Rosregistratsiya, by October 19, 2006, or cease all substantive operations until they became registered.²² Registration, particularly for foreign organizations,²³ is a lengthy process that on its face does not appear substantially more onerous than filling out an IRS Form 1023 in the United States.²⁴ In practice, however, it has been much more difficult due to Rosregistratsiya’s unwritten requirements for certain documents and information not included in the registration instructions and the wide inconsistency in competence among Rosregistratsiya’s registration reviewers. It is not unusual for one NGO to use another’s successful registration application as a template, changing the name and identifying information of the organization, only to have the application rejected by Rosregistratsiya for lack of “required” documents or information that was not requested from the first organization.²⁵ On the whole, though, while many organizations (and human rights NGOs in particular) were rejected several times by Rosregistratsiya, most NGOs that attempted registration and re-submitted their applications after initial rejec-

21. Federal Law of the Russian Federation, On Introducing Amendments to Certain Legislative Acts of the Russian Federation, No. 18-F3 (Jan. 17, 2006) [hereinafter “NGO Law”]. The basic text of the Russian Federal Law on Non-Profit Organizations, No. 7-FZ of January 12, 1996 (with the amendments and Additions of November 26, 1998, July 8, 1999, March 21, 2002, December 23, 2003) is available in English at <http://www.legislationline.org/legislation.php?tid=2&lid=644&less=false>.

22. NGO Law, *supra* note 21 Art. 3.

23. Foreign organizations opening branches or representative offices in Russia must submit a more complex registration form than does a Russian NGO, along with notarized, apostilled, and translated copies of a large list of documents. In addition, they must submit a Russian translation of all NGO laws of their home country that are pertinent to their incorporation and operation as non-profit organizations. Unfortunately, virtually none of the Rosregistratsiya reviewers are lawyers or have any experience with western NGOs, and therefore these documents cause much confusion and delay in the registration review process. For example, many Rosregistratsiya reviewers did not understand that a U.S. non-profit organization need not have a 501(c)(3) determination letter from the Internal Revenue Service in order to be a valid non-profit corporation under state law, and they rejected applications from some U.S.-based organizations on those grounds. This misunderstanding did not end until a U.S. State Department official, two USAID lawyers, and a former U.S. nonprofit law professor practicing with a law firm in Moscow met with the head of Rosregistratsiya and explained the separation between federal and state law in the United States.

24. It is, however, more expensive than in the United States. The Russian Presidential Administration’s own Human Rights Council estimates that setting up an NGO in Russia costs 33% more than setting up a for-profit business and takes much more time (a minimum of about two months versus about ten days for a for-profit business). See Nikolaus von Twickel, *NGOs Buried by Mountain of Paper*, THE MOSCOW TIMES, Aug. 24, 2007, available at <http://www.cdi.org/russia/johnson/2007-181-1.cfm> (last visited Jan. 31, 2008).

25. Some organizations’ registration applications have been rejected because the papers were submitted in a plastic cover or stapled together, despite the fact that there is no law or guideline regarding the physical form of applications.

tions managed to become registered in 2007.²⁶ It is noteworthy, however, that hundreds, perhaps even thousands, of NGOs existing before the NGO Law took effect have not re-registered, and it is impossible to say how many of these continue to operate anyway or how many shut themselves down without attempting the registration procedures and even more burdensome reporting procedures. The official governmental explanation for this is that all such NGOs were illegitimate and therefore knew they could not become registered under the strict new law.

Once an NGO is registered, the onerous nature of the NGO Law becomes apparent. So many reports are required to be submitted to Rosregistratsiya on a quarterly and annual basis that most NGOs have had to dedicate at least one full-time employee (or hire new employees) just to handle reporting requirements.²⁷ NGOs are theoretically subject to random “spot” checks, so it is necessary to keep meticulous accounting records on a day-to-day basis. This has presented a significant financial burden, particularly to small NGOs. On the whole, NGOs in Russia have reported enormous increases in the amount of time, effort, and money they are spending on reporting, taking time and funding away from the charity work they were formed to do.²⁸ Further, the annual report for Russian offices of foreign-based NGOs must set forth all events and activities, with specific dates, that the NGO will undertake in Russia in the following year. If an activity is not in this report, the NGO may not carry it out without filing an application for permission and waiting for one month for any objections or a denial. This requirement has effectively prevented all foreign-based organizations from holding press conferences or programs in response to current events until long after the public has forgotten the event. This is particularly harmful to human rights and democratization NGOs, which are now unable to hold events or press conferences regarding human rights violations, election fraud, violations of laws on free press or civil rights, governmental crackdowns on protests, etc., immediately after they occur.

Another problematic requirement is for all organizations, both Russian and foreign, to track every donation, grant, or other funding and report its donor, how it was spent, and reason and goal for the specific expenditure in a long and detailed report.²⁹ Funding from

26. Although experts worried when the NGO Law was passed that non-Orthodox religious organizations might be targeted for persecution, an amendment to the law in mid-2007, instigated by the powerful Russian Orthodox Church, exempted religious organizations from the NGO Law and subjected them to shortened accounting report procedures. To be fair, though, it should be noted that by law, only Russian Orthodoxy, Judaism, Islam, and Buddhism have full legal standing in Russia, and all other religious groups must prove that they have been registered to operate in the USSR/Russia for at least fifteen years in order to gain legal status. The Catholic Church and some Protestant churches have met this standard, but many other churches (particularly, though not exclusively, less “mainstream” churches) have been unable to do so. Freedom House, *Country Report—Russia 11* (2007), available at <http://www.freedomhouse.org/uploads/ccr/country-7258-8.pdf> (last visited Jan. 31, 2008).

27. NGO Law, *supra* note 21, art. 3(10).

28. For example, one well-known international organization’s Russian affiliate said that its annual report to Rosregistratsiya was 100 pages long and occupied most of the organization’s staff-time for two straight weeks. Another NGO specializing in democratization and human rights issues reported that its staff worked for two months to prepare its annual report, only to have the authorities come back with numerous demands, having no basis in law, that required many additional weeks of follow-up work from its staff, and that the authorities then turned over the matter to the notorious Russian tax inspectors, who began a full audit of the organization, taking even more of the organization’s time.

29. NGO Law, *supra* note 21, art. 3(10).

foreign sources is particularly suspect; it cannot be used for certain purposes, including anything “political.” While this is not particularly unusual among many nations’ NGO laws, the difficulty is that the term “political” remains wholly undefined and therefore has a chilling effect on the uses of foreign funds for activities that might be perceived by the government, even unreasonably, as “political.” Several other key terms in the NGO law are undefined as well, which contributes to a further chilling effect.

2. *Harassment and Closure of NGOs*

Many organizations have been shut down or harassed by government authorities since their registrations. Agora, an association of Russian human rights groups, detailed at least thirty-three cases of reported illegal actions by Rosregistratsiya against NGOs between April 2006 and May 2007,³⁰ but the true number of violations is thought to be much higher since most organizations do not report violations for fear of losing their registration or having the tax inspector suddenly appear at their doors in retaliation for their speaking out.³¹ Some notable examples of shut-downs and harassment since the new NGO Law took effect are:³²

a. International Human Rights Movement

The International Youth Human Rights Movement, a Russian NGO, learned in August 2007 that it had been shut down in June by a court in the city of Nizhny Novgorod, which claimed the organization had failed to submit accounting forms to the local branch of Rosregistratsiya. In fact, the NGO had timely filed the accounting forms with Rosregistratsiya in Moscow as it had been ordered to do upon its registration, and the regional branch’s warning letter had been sent to an address where the organization had not operated for three years rather than its official registered address. Nevertheless, the courts have refused to overturn its decision, and the NGO remains shuttered.³³

b. Tolerance Support Foundation

In August 2006, the Tolerance Support Foundation (TSF), a Russian NGO that works on human rights issues in Chechnya, was raided by the police, who produced no legal basis for the raid, and had its computers and files seized when it could not show the police the licenses for the software installed on the computers. TSF was formed after the liquidation of the Russian-Chechen Friendship Society by court order in 2006 under the extremely vague Russian “extremism” law. It is believed that the police raid on TSF was a

30. See von Twickel, *supra* note 24.

31. Human Rights Watch is expected to release a report in early 2008 detailing the effects of the NGO Law, particularly on organizations engaged in human rights work.

32. Interestingly, it appears that most of the NGOs that have been harassed or shut down are Russian NGOs, as opposed to Russian offices of foreign-based NGOs. This may be due to the fact that closing a foreign-based NGO would have wider political ramifications than does closing a domestic NGO. Perhaps the Human Rights Watch report (referred to in note 31) will shed further light on whether this perception of harsher treatment of Russian NGOs is a fact.

33. Press Release, Freedom House, *Shuttering of International Human Rights Youth Movement by Russian Court Highlights Ongoing Loss of Independent Voices in Russia* (Aug. 17, 2007), available at <http://www.freedomhouse.org/template.cfm?page=70&release=541>.

reprisal for its support of a human rights worker who had been targeted by the authorities for his outspokenness against the government.³⁴

c. Internews

Internews, a Russian NGO that trains journalists and received funding from USAID and other western sources, was raided in April 2007, and its financial records were confiscated, allegedly because its executive director had failed to declare cash he had brought into Russia from abroad. Activists argue that the raid was likely due to Internews' work to educate journalists on international standards for democratic elections ahead of the December 2007 parliamentary and March 2008 presidential elections.³⁵

d. Citizens' Watch

Citizens' Watch, a Russian human rights NGO, was ordered to produce all of its written correspondence, including emails, with anyone outside the office for the period of July 2004 to July 2007. After initially refusing, Citizens' Watch complied because of the fear that its bank accounts would be frozen and its operations suspended if it did not.³⁶ It remains to be seen what action the authorities will take against the organization, if any.

3. Potential Amendments

There were indications coming from the Russian government in late 2007 that the NGO Law may be amended, and a committee has been formed to monitor implementation of the law and suggest improvements. It is generally thought, however, that rather than seeking to decrease the burdens on NGOs, amendments will be aimed at helping Rosregistratsiya deal with the deluge of paperwork it is receiving since it presently requires hundreds of employees solely to review the quarterly and annual reports, not to mention reviewing registrations and other required documents, and following up on perceived errors or violations. Indeed, most experts and NGOs fear that the NGO Law, even as amended, will be increasingly used to dominate the Russian NGO sector and its activities in the same way that the government of Russia has brought so many other areas of Russian society under its iron-fisted control in recent years.

C. OTHER COUNTRIES

Other countries in which new NPO/NGO or charity legislation (including changes in fiscal rules) was adopted include Germany (fiscal),³⁷ Malta,³⁸ Mexico (fiscal),³⁹ South Af-

34. Press Release, Human Rights Watch, *Russia: Crackdown on Human Rights Groups – Seizure of Equipment Part of Kremlin Campaign Against Civil Society* (Aug. 30, 2007), available at <http://www.hrw.org/english/docs/2007/08/29/russia16771.htm>.

35. *Russian Police Raid U.S.-funded Educated Media Foundation*, INTERNATIONAL HERALD TRIB., Apr. 19, 2007.

36. See von Twickel, *supra* note 24.

37. A report on Germany's new "Law for Further Strengthening of Civic Participation" can be found in the November 2007 issue of the IJCSL-Newsletter, along with a link to the new legislation and a report by the Maecenata Institut on the contents of the law. Germany, Int'l Civil Soc'y L. Newsletter (Int'l Ctr. For Civil Soc'y L., Washington, D.C.), Nov. 2007, at 2 available at <http://www.icsl.org/pubs/07-11-IJCSL-N.pdf>.

rica (fiscal),⁴⁰ Tajikistan,⁴¹ and Uzbekistan.⁴² Legislation was proposed in Albania,⁴³ Bahrain⁴⁴ (and is expected to be effective by the end of 2007), Ireland,⁴⁵ and Zambia.⁴⁶

38. The Voluntary Organisations Act, introduced in Parliament in early 2007, was adopted in October. Voluntary Organisations Act, No. XXII (2007) (Malta), available at <http://www.doi.gov.mt/EN/parliamentacts/2007/ACT%20XXII%20English.pdf>.

39. On September 13, 2007, the Mexican Congress approved a new tax law called the "*Impuesto de Contribución Empresarial de Tasa Única*" (IETU), which is a tax that organizations and individuals may pay on business activities as an alternative to the income tax. Mexico, Int'l J. Civil Soc'y L. Newsletter (Int'l Ctr. For Civil Soc'y L., Washington, D.C.), Oct. 2007 at 2, available at <http://www.icsl.org/pubs/07-10-IJCSL-N.pdf>.

40. The Taxation Laws Amendment Act passed by Parliament on August 8, 2007, made two important changes in the tax treatment of public benefit organizations (PBOs). The tax deductible ceiling for donations to qualifying PBOs was increased from 5% to 10% of taxable income in order to promote charitable giving. The ceiling on exempt gross trading income was increased from 50,000 ZAR to 100,000 ZAR. Taxation Laws Amendment Act, No. 8 (2007) (S. Afr.), available at <http://www.acts.co.za/> (follow "Recent Additions to Acts Online" hyperlink) (last visited Jan. 30, 2008).

41. A new law on Public Associations was adopted in Tajikistan on May 19, 2007. Law on Public Associations (2007) (Taj.), available at http://www.icnl.org/knowledge/news/2007/6-15_Tajik_PAs_Eng.pdf (last visited Jan. 30, 2008).

42. A new "Law on Charity" went into effect after being published on May 3, 2007. Law on Charity (2007) (Uzb.), available at http://www.icnl.org/knowledge/news/2007/5-09_CharityLaweng.pdf (last visited Jan. 30, 2008). The law establishes a basis for tax changes, which is especially significant in light of the ongoing effort of the Government to draft a new tax code. On the other hand, a provision of the new Law grants the Cabinet of Ministers the right to monitor and control charitable donations from foreigners, international and foreign organizations, potentially creating new barriers for foreign funders and local recipients of foreign aid. In addition, a new law "On Guarantees of Activities of the Non-State Non-Profit Organizations" entered into force on January 4, 2007. The law was adopted by the Legislative Chamber of Oliy Majlis on October 11, 2006, approved by the Senate on December 1, 2006, and signed by the President on January 3, 2007. Law on Guarantees of Activities of the Non-State Non-Profit Organizations (2007) (Uzb.), available at <http://jahon.mfa.uz/modules.php?op=modload&%20name=News&%20file=article&%20sid=6476&%20mode=thread&%20order=0&%20thold=0> (last visited Jan. 30, 2008).

43. Citing Oneworld Southeast Europe, the IJCSL-Newsletter for February 2007 reported that new legislation was being considered. Albania, Int'l J. Civil Soc'y L. Newsletter (Int'l Ctr. For Civil Soc'y L., Washington, D.C.), Feb. 2007, at 15, available at <http://www.icsl.org/pubs/07-02-IJCSL-N.pdf> (last visited Jan. 30, 2008).

44. Citing the Gulf News, the IJCSL-Newsletter for September 2007 reported that the government has drafted a new law to regulate the operations and activities of NGOs. The new law bans societies from receiving donations and financial aid from inside or outside the Kingdom unless these are approved by the Ministry of Social Development. Societies would also be closely monitored during fund-raising activities to ensure that money collected is being spent on a good cause. The draft law bans giving licenses to societies that have the same objective if they are located in the same area so as to avoid a clash in interests. Bahrain, Int'l J. Civil Soc'y L. Newsletter (Int'l Ctr. For Civil Soc'y L.), available at <http://www.icsl.org/pubs/07-09-IJCSL-N.pdf> (last visited Jan. 30, 2008).

45. The proposed Charities Bill was published in April 2007. The purpose of the Bill is to reform the law relating to charities in order to ensure accountability and to protect against abuse of charitable status and fraud. It also is intended to enhance public trust and confidence in charities and increase transparency in the sector. The Bill, together with the Charities Acts 1961 and 1973 and the Street and House to House Collections Act 1962, will provide for a composite regulatory framework for charities through a combination of new legislative provisions and retention of existing charities legislation, with updating where appropriate. Under the proposed bill, there would be a new independent Charities Regulatory Authority (with a Charity Appeals Tribunal), a Register of Charities, and updating of the law relating to fundraising; however, a new recommended legal structure for charitable organizations, the Charitable Incorporated Organization (CIO), has been left out of consideration and treated as a separate question. Charities Act 2007 (No. 31) (Ir.) available at <http://www.oireachtas.ie/documents/bills/2007/3107/b3107d.pdf> (last visited Jan. 30, 2008). It is still under consideration in Parliament.

Implementing actions with regard to previously adopted legislation were carried out in Japan,⁴⁷ Scotland,⁴⁸ and the United States.⁴⁹

D. IMPORTANT COURT CASES

1. *Canada*

In October 2007, the Supreme Court of Canada decided a case on the definition of “charity” under the Income Tax Act. This was significant because Canadian Supreme Court decisions are exceedingly rare in “charity” cases (the last such decision was in 1999 in *Vancouver Society of Immigrant and Visible Minority Women v. M.N.R.*,⁵⁰ and it came after a twenty-five-year hiatus). In the latest case, *A.Y.S.A. Amateur Youth Soccer Association v. Canada*,⁵¹ Justice Marshall Rothstein concluded that although some sports organizations, other than registered Canadian amateur athletic associations (“RCAAs”), may qualify as charities under the common law, the appellant did not qualify for charitable registration because its purposes and activities were not charitable. The majority judgment confirms

46. The IJCSL-Newsletter for August 2007 reported that Justice Minister George Kunda introduced an “NGO bill” in Parliament. *Zambia*, Int’l J. Civil Soc’y L. Newsletter (Int’l Ctr. For Civil Soc’y L., Washington, D.C.), Aug. 2007, at 10.

The bill calls for the registration and co-ordination of NGOs [and] to regulate the work, and the area of work of NGOs operating in Zambia. If the bill becomes law, it would empower the Interior Minister to form a 10-member board comprised of government members and two representatives from civil society, which would “receive, discuss and approve the code of conduct [of NGOs], and provide policy guidelines to NGOs for harmonizing their activities to the national development plan of Zambia.

Id. The proposal met with widespread criticism, and the bill is under reconsideration according to the September issue of the Newsletter. *Zambia*, Int’l J. Civil Soc’y L. Newsletter (Int’l Ctr. For Civil Soc’y L., Washington, D.C.), Sept. 2007, at 8-9.

47. The new Charitable Status Recognition Committee (similar to the Charity Commission for England and Wales) inaugurated its operations with official appointment of seven committee members as from April 1, 2007. Prior to the new Charity Laws going into effect in 2008, this Committee will work on the development of regulations that will ensure the appropriate implementation of the new Charity Laws. A description of the new laws and the effect they will have on the not-for-profit sector can be found in the October 2006 issue of *The International Journal of Civil Society Law*. M. Miyakawa, *An Outline of Three PBC Reform Related Laws*, 4 INT’L J. CIVIL SOC’Y L. 64 (2006), available at <http://www.iccs.org/pubs/06-10-IJCSL.pdf> (last visited Jan. 30, 2008); Tatsuo Ohta, *Public Benefit Organizations in Japan: Present Situations and Remaining Challenges*, 4 INT’L J. CIVIL SOC’Y L. 72 (2006), available at <http://www.iccs.org/pubs/06-10-IJCSL.pdf> (last visited Jan. 30, 2008).

48. Several implementing regulations for the Charities and Trustee Investment (Scotland) Act 2005 went into effect in 2007, including rules regarding reorganizations, the definitions of the Office of the Scottish Charity Regulator (OSCR) of the terms “charitable” and “charitable purposes,” and the rule regarding references to charitable status in documents. OFFICE OF THE SCOTTISH CHARITY REGULATOR, CHARITY REGULATION IN SCOTLAND-AN OVERVIEW 6-7 (2006), <http://www.oscr.org.uk/Guidance.stm>.

49. Various provisions affecting not-for-profit organizations in the Pension Protection Act (PPA) of 2006 (PL 109-280) were implemented in 2007. Pension Protection Act of 2006, Pub. L. No. 109-280, 120 Stat. 780 (codified as amended in scattered sections of 26 U.S.C. and 29 U.S.C.). These dealt with such issues as donor advised funds, supporting organizations, and controlling organizations. IRS.gov, Pension Protection Act of 2006 Revises EO Tax Rules, <http://www.irs.gov/charities/article/0,,id=161145,00.html> (last visited Jan. 30, 2008).

50. *Vancouver Soc’y of Immigrant & Visible Minority Women v. M.N.R.*, [1999] 1 S.C.R. 10 (Can.).

51. *A.Y.S.A. Amateur Youth Soccer Ass’n v. Canada*, 2007 SCC 42 (Can.).

the existing common law with respect to the determination of what is charitable in the context of sports organizations, indicating that recognition of an organization, such as the appellant, would result in a significant change to the common law beyond the incremental changes mandated by the jurisprudence and would be best left to Parliament.⁵²

This conservative treatment of the definition of charity is consistent with other cases in Canada, where the courts seldom assist in better fitting charity law to the circumstances of the modern world.

2. Czech Republic

The European Court of Human Rights, in a Chamber decision in *Linkov v. Czech Republic*,⁵³ held that the Czech Republic will be required to compensate Vaclav Linkov because the Czech authorities' refusal in 2002 to register his Liberal Party constituted a violation of Article 11 of the European Convention on Human Rights. Upholding the freedom of association of Mr. Linkov and his associates, the Court followed earlier case law⁵⁴ that had placed severe limitations on states' abilities to limit the right to form political parties. The Czech Interior Ministry had rejected the registration application on the grounds that one of the party's goals was inadmissible, but the Court disagreed.

3. Europe

In December 2006, the European Court of First Instance struck down a key piece of European anti-terrorism legislation. The case, *Organisation des Modjahedines du peuple d'Iran v. Council of the European Union*,⁵⁵ annulled a decision of the European Union to label an organization as a "terrorist" organization and to freeze its assets (in 2002). The decision was based on the EU's failure to provide adequate reasons for attaching the "terrorist" label to the organization and process failures in making the determination.

4. Peru

The Peruvian Congress passed a controversial NGO law extending state control over NGOs in December 2006. The law, which created the Agencia Peruana de Cooperación Internacional (APCI),⁵⁶ stipulated that NGOs must register with the APCI and that their work plans should be in line with the development guidelines and priorities established by the state. A constitutional challenge was brought by Luis Miguel Sirumbal Ramos, 8,438

52. See Karen J. Cooper & Terrance S. Carter, *Supreme Court of Canada Confirms the Common Law with Respect to Charity and Sports Organizations*, CARTERS CHARITY L. BULLETIN No. 126, Oct. 17, 2007.

53. *Linkov v. Czech Republic*, (application no. 10504/03), decision of Dec. 12, 2006, available at http://www.coe.int/t/d/kommunikation_und_politische_forschung/presse_und_online_info/Presseinfos/2006/20061207-764-GH-Tschechien.asp (last visited Jan. 30, 2008).

54. *Id.* The case law is discussed in Comparative Civil Society Law Reader for Central European University, available at <http://www.iccs.org/pubs/CEUNGOLawReader.doc> (last visited Jan. 30, 2008).

55. Case T-228/02, *Organisation des Modjahedines du peuple d'Iran v. Council of the European Union* (2006).

56. Ley No. 28875 ("On creation of a national system of centralized cooperation") had modified the activities and powers of the governmental Peruvian Agency for International Cooperation (APCI), available at http://www.iccs.org/pubs/Ley_Nro_27692_Ley_APCI.pdf (last visited Jan. 30, 2008). On Creation of a National System of Centralized Cooperation, Ley No. 27692 (2006) (Peru).

citizens, and members of Congress. In an opinion rendered on August 29, 2007, and published on the website of the Constitutional Court in September 2007,⁵⁷ the Constitutional Court of Peru held the law to be unconstitutional in part because of the possibility of arbitrary application and hence of a violation of the freedom of association.

5. *Russia*

The Supreme Court of Russia upheld the Moscow City Court's ban of the National Bolshevik Party as an extremist organization.⁵⁸ The small fringe party has gained notoriety for its vocal and theatrical anti-government demonstrations. The group's leader said that he did not expect the latest ruling to affect its activities, including participation in the "Other Russia" coalition, a loose movement of anti-Kremlin forces that includes the former chess champion Garry Kasparov.⁵⁹ He said the party would appeal the ruling to the European Court of Human Rights.

II. Other matters

A. AFGHANISTAN

The Aga Khan Development Network (AKDN) held a conference in Kabul in June 2007 called the "Enabling Environment Conference." One of the areas of emphasis was the legal environment for the not-for-profit sector and charitable giving. In connection with the conference, AKDN published a volume of background materials, including a report entitled "Challenges Presented by the Legal, Regulatory, Administrative, and Fiscal Framework for Civil Society."⁶⁰

B. EUROPE

The Committee of Ministers of the Council of Europe has published Recommendation CM/Rec (2007) 14 of the Committee of Ministers to member states "on the legal status of non-governmental organizations in Europe."⁶¹ This document, adopted on October 10, 2007, addresses many of the issues facing NPOs/NGOs in Europe as they seek to become registered and carry out their activities. Bearing in mind the legal restrictions on, for

57. Ramos v. Congress, 0009-2007-PI/TC (2007) (Constitutional Court of Peru), available at <http://www.tc.gob.pe/jurisprudencia/2007/00009-2007-AI%200010-2007-AI.html>.

58. See Joshua Yaffa, *Russia: Top Court Upholds Ban on Party*, N.Y. TIMES, Aug. 8, 2007, available at <http://www.nytimes.com/2007/08/08/world/europe/08briefs-party.html?ex=1344225600&en=56f62cb887d3e491&ei=5088&partner=rssnyt&emc=rss>.

59. Kasparov dropped out of the Russian presidential race in December due to alleged government harassment and the inability of his Other Russia party to find any meeting place in the Moscow region that would allow it to hold its nominating convention there. Agence France-Presse, *Kasparov Drops Presidential Bid Over 'Dirty Tricks'*, ABC NEWS, Dec. 13, 2007, <http://www.abc.net.au/news/stories/2007/12/13/2117669.htm>.

60. See Leon E. Irish & Karla W. Simon, Int. Ctr. For Civil Soc'y L., *Challenges Presented by the Legal, Regulatory, Administrative, and Fiscal Framework for Civil Society* (2007), available at http://www.akdn.org/enablingenvironment/documents/BP7_Legal_Framework_Civil.pdf (last visited Jan. 30, 2008).

61. Evr. Consult. Ass'n, Committee of Ministers, *Recommendation CM/Rec (2007) 14 of the Committee of Ministers to Member States on the Legal Status of Non-Governmental Organisations in Europe*, 1006th meeting, Oct. 10, 2007, available at <https://wcd.coe.int/ViewDoc.jsp?id=1194609&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75> (last visited Jan. 30, 2008).

example, Russian NGOs discussed in the first part of this report, it is important to note that the Council of Europe takes a strong position in favor of the freedom of association, protected by Article 11 of the European Convention on Human Rights. This is clearly consistent with the case law of the European Court of Human Rights discussed earlier.⁶²

62. See *supra* note 53.

