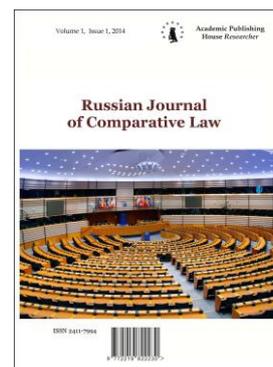


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Published in the Slovak Republic  
 Russian Journal of Comparative Law  
 Has been issued since 2014.  
 E-ISSN 2413-7618  
 2017, 4(2): 103-105

DOI: 10.13187/rjcl.2017.2.103  
<http://ejournal41.com>



## Reviews

**Tymofeyeva A. Non-Governmental Organisations under the European Convention on Human Rights: Exceptional Legal Standing. Monografie. RWW Science and New Media Passau-Berlin-Prague, 2015. 338 p. ISBN 978-3-9816855-9-6**

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### Abstract

The author elaborates on the legal standing of non-governmental organisations (NGOs) under the European Convention on Human Rights. This objective of this book is to reveal the unique status of the NGOs in proceedings before the European Court of Human Rights. The significance of their status as enshrined by the European Convention is much stronger in comparison with international regulation stipulated by other central human rights treaties. Special attention is paid to exploring the status of non-governmental organisations acting in the capacity of an applicant. The author shows that not all the procedural rights set forth by the European Convention can be effectively implemented by the NGOs. Yet the author scrutinizes the best practices of involvement of NGOs in the process having been able to attain significant amounts of just satisfaction for victims of violations.

**Keywords:** European Convention on Human Rights, European Court of Human Rights, non-governmental organisations, applicant, legal standing, just satisfaction.

The monograph written by Dr. Alla Timofeyeva of the Charles University in Prague, entitled "Non-governmental organizations within the framework of the European Convention on Human Rights: an exclusive legal position" (Tymofeyeva, 2015) explores the topical issue connected to legal status of NGOs as enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter the European Convention).

The monograph stands out for its rich empirical and bibliographic base. Nearly 500 decisions and judgments by the ECHR are analyzed by the author. This analysis is substantiated with references to many authoritative monographs books and articles in English, French, and Czech languages. The author must be commended for using the documents from the collections of the library in the European Court of Human Rights and in the library of the Cambridge University (the Squire Law Library in Cambridge). The sources of international human rights law are also analyzed in detail by the author. Much attention is paid to the provisions of international treaties, both at the UN level and at the regional level (Mayer, 2011).

The author begins the first chapter with delving into the issues of interpreting the concept of "non-governmental organization" against the background of the doctrine of international law (Lindblom, 2005; Tomuschat, 2008; Willetts, 2002), provisions of universal human rights treaties, and regional human rights treaties (at the level of Asia, Africa, America, Europe). Taking into

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account the main purpose of the book, i.e., examining the legal status of NGOs within the framework of the European Convention, the author briefs the reader with consolidated main theses related to the exploration of the definition of "non-governmental organizations" in theory of international law and in selected international documents. The author elaborates on the main features of NGO which culminates in the following: "NGO is an association, independent of public authorities, whose goal is different from making profit", i.e. we are talking about non-profit organizations. The status of NGOs differs from the status of political parties.

Most of the international human rights documents require that NGOs should be officially registered nationally, in the state where they operate, and their actual activity should be in accordance with the law. As a rule, NGOs at the universal level are expected to cooperate with the UN and other organizations that are part of its system and act, in accordance with their goals.

Moreover, the definition of NGOs in the European Convention itself is analyzed. In particular, the author departs from Article 34 of this Convention, according to which NGOs can file a complaint to the European Court of Human Rights. Yet for the purposes of filing a complaint to the Court, the status of the victim is considered important under the said Article 34 which reads:

*"The Court may receive applications from any person, nongovernmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right"*.

Thus, the Convention provides that "victim" is a person whose rights provided by this treaty are personally or directly violated by measures or actions of the state. In theory, there are three types of victims: direct, indirect, and potential. The author suggests that in order to qualify for standing in the process under the requirement of each of these types of victims, NGOs need to be officially registered. Examples of other types stand in, except NGOs, are contemplated in the book under the meaning of Article 34 of the European Convention. These are commercial entities and political parties (Fura-Sandstom, 2007; Emberland, 2014). In addition, the author elaborates on the four main roles that NGOs can perform during the proceedings before the ECHR: 1) the applicant; 2) the third party; 3) the representative of the applicant; 4) the source of information (Mayer, 2011).

The special term "Article 34 NGO" (NGOs within the meaning of Article 34 ECHR) is suggested by the author following the example of a well-known human rights organization "Article 19". The following definition of an NGO is provided by the author within the framework of the Convention: "a commercial or non-commercial legal entity, with or without official registration, which does not directly participate in the exercise of state powers and has a sufficient degree of independence from state control. Such an organization should have a status of the victim, in accordance with the case law of the ECHR (in the original – "The definition of the term 'Article 34 NGO', for the purposes of this study, is a profit or non-profit making legal entity, with or without formal existence, which does not directly participate in the exercise of governmental powers and has a sufficient degree of independence from governmental control. Such an organisation must have victim status in accordance with the Court's case-law").

The second chapter of the book is devoted to examination of individual rights which, in the author's opinion, can be applied to non-governmental organizations within the meaning of Article 34 of the European Convention. A list of articles of the Convention is provided the violations of which can be ascertained by the above-mentioned NGOs (Articles 6-10, 11, 13 and 14). These subjects can file a complaint with the ECHR, where they can claim that they are victims of violations of rights enshrined in the additional protocols to the European Convention (Articles 1 and 3 of the First Protocol to the European Convention, Articles 2, 3 and 4 of Protocol No. 7 and Article 1 of the Protocol No. 12 to the European Convention). The possibility to seek recognition of violation of these rights is illustrated by special examples from the practice of the European Court of Human Rights.

The final chapter of the book entitled "Fair compensation based on Article 41 of the Convention" is divided into three parts. In the first Section, general description of international compensation mechanisms based on the guidelines of the United Nations and other organizations is provided. The author emphasizes that one of the most important documents in this area is the draft articles entitled "Responsibility of States for internationally wrongful acts", adopted by the UN General Assembly on December 12, 2001.

The second Section focuses on consideration of mechanisms for providing fair compensation under the European Convention. The author deals with individual elements of compensation, such

as pecuniary damage, non-pecuniary damage, and costs incurred (cost and expenses). The European Court of Human Rights shall on its own initiative indicate the period during which the compensation must be paid. This period makes usually three months from the date of entry into force of the judgment by the European Court of Human Rights. The Court also determines the interest rate (default interest) that must be assessed and paid to the applicant in the event that the payment of fair compensation is not transferred within the prescribed period. They are usually set at the rate of the marginal lending rate of the European Central Bank, plus three percentage points.

Further, the book refers to the largest amounts of fair compensation which the European Court of Human Rights had awarded in its judgments entailing non-governmental organizations. Practice shows that these amounts reached millions and even billions of euros. A striking example of one such situation is the judgment by the European Court of Human Rights in the case of *OAO NK YUKOS v. Russia* where the Court determined the sum of 1.8 billion euros as a fair compensation for violations of property rights committed against the company.

In this regard, the author attempts to answer the question why the amounts of fair compensation determined for the NGO for the loss of property are often higher than the amounts awarded to the relatives of the victims for violating Article 2 of the European Convention (the right to life). The conclusion is justified with the observation that by protecting the property rights the European Court of Human Rights awards compensation for material damage and in the case of the loss of life such compensation covers immaterial damage.

In conclusion, it is argued in the book that legal status of NGOs on the basis of the European Convention is exceptional. In the sense of Article 34 of this Convention, the similar status as NGOs is provided not only for non-profit entities, as stipulated by theory of international law and most international treaties, but also for political parties and commercial entities. In order to file a complaint to the European Court of Human Rights, non-governmental organizations are not required to be registered in the state where they carry out their activities. The main issues for NGOs are independence from public authorities. It must be stressed, however, that the status of NGOs within the framework of the European Convention may vary depending on the role it plays in the proceedings before the European Court of Human Rights and, subsequently, in the execution of judgment before the Committee of Ministers of the Council of Europe. In the author's opinion, non-governmental organizations as applicants under the European Convention enjoy a very favorable procedural position with a wide range of rights. No other international document provides NGOs with such a range of guarantees in the field of human rights protection.

Dr. Alla Timofeeva undertook a considerable research work and wrote a monograph which, undoubtedly, takes a worthy place in range of studies, both in the field of the European Court of Human Rights and in the area of legal status of NGOs.

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