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COMPILATION
OF VENICE COMMISSION OPINIONS
CONCERNING FREEDOM OF ASSOCIATION¹
(revised in December 2019)

¹*This document will be updated regularly. This version contains all opinions and reports/studies adopted up to and including the Venice Commission 121st Plenary Session (6-7 December 2019).*

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I. Introduction

The present document is a compilation of extracts taken from opinions and reports/studies adopted by the Venice Commission on issues concerning the freedom of association. The aim of this compilation is to give an overview of the doctrine of the Venice Commission in this field.

This compilation is intended to serve as a source of reference for drafters of constitutions and of legislation relating to freedom of peaceful association, researchers as well as Venice Commission members, who are requested to prepare comments and opinions on such texts. However, it should not prevent members from introducing new points of view or diverge from earlier ones, if there is good reason for doing so. It merely provides a frame of reference.

This compilation is structured in a thematic manner in order to facilitate access to the topics dealt with by the Venice Commission over the years.

The compilation is not a static document and will continue to be regularly updated with extracts of newly adopted opinions or reports/studies by the Venice Commission.

Each opinion referred to in the present document relate to a specific country and any recommendation made has to be seen in the specific constitutional context of that country. This is not to say that such recommendation cannot be of relevance for other systems as well.

The Venice Commission reports and studies quoted in this Compilation seek to present general standards for all member and observer states of the Venice Commission. Recommendations made in the reports and studies will therefore be of a more general application, although the specificity of national/local situations is an important factor and should be taken into account adequately.

Both the brief extracts from opinions and reports/studies presented here must be seen in the context of the wider text adopted by the Venice Commission from which it was taken. Each citation therefore has a reference that sets out its exact position in the opinion or report/study (paragraph number, page number for older opinions), which allows the reader to find it in the opinion or report/study from which it was taken. In order to shorten the text, further references and footnotes are omitted in the text of citations; only the essential part of relevant paragraphs is reproduced.

The references religious organizations are to illustrate their aspects related to the freedom of association. For a full description of what the Venice Commission has adopted on this topic, see the concerned opinions.

Venice Commission opinions may change or develop over time as new opinions are given and new experiences acquired. Therefore, to have a full understanding of the Venice Commission's position, it would be important to read the entire Compilation under a particular theme. Please kindly inform the Venice Commission's Secretariat if you think that a citation is missing, superfluous or filed under an incorrect heading (Venice@coe.int).

**This document has been classified restricted on the date of issue. Unless the Venice Commission decides otherwise, it will be declassified a year after its issue according to the rules set up in Resolution CM/Res(2001)6 on access to Council of Europe documents.*

II. Definition of Freedom of Association

A. Freedom of association as a key human right

“Freedom of association is an individual human right which entitles people to come together and collectively pursue, promote and defend their common interests.”

CDL-AD (2011)03 – Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §39

“It is a complex right which encompasses elements of civil, political and economic rights. Its civil right element protects individual against unlawful intervention by the state into the individual wish to associate with others. The political right element helps individuals defend their interests against the state or other individuals in an organised and hence more efficient way. Finally, the economic right element allows individuals to promote their interests in the area of labour market, especially by means of trade unions.”

CDL-AD(2011)03 – Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §40

“The combination of the three elements makes the freedom of association a unique human right whose respect serves in a way as a barometer of the general standard of the protection of human rights and the level of democracy in the country.”

CDL-AD(2011)03 – Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §41

“Freedom of association should form the basis of any pluralist democracy. All groups in society should therefore have the freedom to participate in associative life as this contributes towards the development of a strong democratic civil society.”

CDL-AD(2011)03 – Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §79

“Freedom of association [...] guarantees the freedom of natural persons and legal entities to collaborate on voluntary basis within the context of an association without public interference in order to realise a common goal.”

CDL-AD(2011)03 – Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §39

“Freedom of association should be recognized to all persons, including foreigners, and not limited to citizens [...]”

CDL-AD(2014)01 – Opinion on the draft law on the review of the Constitution of Romania, §82

“Civil society organisations (hereinafter, “CSOs”) play an important role in modern democratic societies. They enable citizens to associate in order to promote certain goals and/or pursue certain agendas. As a form of public engagement parallel to that of participation in the formal political process, CSOs have to cooperate with public authorities while at the same time keeping their independence. Members of CSOs, as well as CSOs themselves, enjoy human rights, including freedom of association and freedom of expression. These rights are enshrined in numerous international legal instruments, such as the 1948 Universal Declaration of Human Rights (Articles 19 and 20), the 1966 International Covenant on Civil and Political Rights (Articles 19 and 21), and the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (Articles 10 and 11). The Venice Commission has stressed the

importance of the freedoms of association, expression and assembly, as well as of the prohibition of discrimination in several previous opinions”

CDL-AD(2017)015 – Opinion on the Draft Law on the Transparency of Organisations receiving support from abroad of Hungary, §15

B. Relation with other human rights

“Freedom of association is an essential prerequisite for other fundamental freedoms.”

CDL-AD(2011)03 – Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §45

See also

CDL-AD(2012)01 – Opinion on the Federal law on combating extremist activity of the Russian Federation, §64

“The right to freedom of association is intertwined with the right to freedom of thought, conscience, religion, opinion and expression. It is impossible to defend individual rights if citizens are unable to organize around common needs and interests and speak up for them publicly.”

CDL-AD(2011)03 – Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §102.

“Freedom of expression and opinion (Article 10 of the ECHR and Article 19 of the ICCPR) is partially dependent upon free association. As such, freedom of association must also be guaranteed as a tool to ensure all citizens are able to fully enjoy their rights of expression and opinion, whether practiced collectively or individually.”

CDL-AD(2010)02 – Guidelines on political party regulation by OSCE/ODIHR and Venice Commission, §37

“[...] [F]reedom of association without freedom of expression amounts to little if anything. The exercise of freedom of association by workers, students, and human rights defenders in society has always been at the heart of the struggle for democracy and human rights around the world, and it remains at the heart of society once democracy has been achieved.”

CDL-AD (2011)03 – Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §101

“Right to Property

15. The right to property is granted by Article 1 of Protocol I to the ECHR, by virtue of which “every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law”. In the 2014 Joint Guidelines on Freedom of Association, the Venice Commission and ODIHR note that “associations may also receive funding for their activities from private and other non-state sources, including foreign and international funding. States should recognize that allowing for a diversity of sources will better secure the independence of associations” (par. 218).”

CDL-AD(2019)002 – Report on Funding of Associations, § 15.

III. International and national Frame of Reference

A. International and European standards

“The freedom of association is enshrined in Article 20 of the Universal Declaration of Human Rights which declares:

- ‘1. Everyone has the right to freedom of peaceful assembly and association.*
- 2. No one may be compelled to belong to an association.’ ”*

CDL-AD(2011)03 – Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §35

“The ICCPR grants the freedom of association in its Article 22 which states:

- ‘1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.*
- 2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.*
- 3. Nothing in this Article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning freedom of association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.’*

The beneficiaries of the rights under the ICCPR are individuals, but they may enjoy their rights in community with others. The right of freedom of association is one of those rights under the ICCPR that is enjoyed in community with others.”

CDL-AD (2011)03 – Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §36

“The Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (General Assembly resolution 53/144 (A/RES/53/144), 8 March 1999 can also be regarded as a frame of reference, although non-binding.”

CDL-AD(2011)03 – Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §50

“The *ECHR* contains a largely similar provision, Article 11, under which:

- ‘1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.*
- 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.’ ”*

CDL-AD (2011)03 – Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §37

“The protection of personal opinions guaranteed by Articles 18 and 19 of the ICCPR and Articles 9 and 10 of the ECHR is one of the purposes of the guarantee of freedom of association.”

CDL-AD(2011)03 – Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §100

“Non-governmental organizations engaged in human rights advocacy are traditionally considered as particularly vulnerable and, hence, in need of enhanced protection. Both at the universal and regional levels, special instruments have been adopted over the past decades codifying the standards applicable to human rights defenders. The UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Human Rights Defenders) confirms that ‘everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels’ (Article 1) and stipulates that States have to adopt measures to ensure this right.

The UN Declaration on Human Rights Defenders provides specifically (Article 13) that ‘everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means in accordance with Article 3 of the present Declaration’. The right of access to funding is to be exercised within the juridical framework of domestic legislation – provided that such legislation is consistent with international human rights standards.”

CDL-AD(2013)03 – Joint Interim Opinion on the Draft Law amending the Law on non-commercial Organisations and other legislative Acts of the Kyrgyz Republic, §17,18

“Relevant international legal documents also include the Recommendation of the Committee of Ministers of the Council of Europe Rec(2007)14 on the Legal Status of Non-Governmental Organisations in Europe (hereafter: *Recommendation Rec(2007)14*); the Council of Europe Fundamental Principles on the Status of Non-governmental Organisations in Europe of 2002 (hereafter: *Fundamental Principles*); the 2014 Joint Guidelines on Freedom of Association issued by the OSCE/ODIHR and the Venice Commission (hereafter: *Guidelines on Freedom of Association*);³ as well as relevant OSCE commitments under the 1990 Copenhagen Document and the 1999 Istanbul Document, which stress individuals’ right to freedom of association, including through non-governmental organisations.”

CDL-AD(2018)006-e Ukraine – Joint Opinion on Draft Law No. 6674 “On Introducing Changes to Some Legislative Acts to Ensure Public Transparency of Information on Finance Activity of Public Associations and of the Use of International Technical Assistance” and on Draft Law No. 6675 “On Introducing Changes to the Tax Code of Ukraine to Ensure Public Transparency of the Financing of Public Associations and of the Use of International Technical Assistance”, §16.

“Collective dimension of the freedom of association

7. The fundamental and universal right of freedom of association is enshrined in various international human rights instruments, especially Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter, “ECHR”), Article 20 of the Universal Declaration of Human Rights, Article 22 of the International Covenant on Civil and Political Rights (hereinafter, “ICCPR”), Article 12 of the Charter of Fundamental Rights of the European Union, Article 16 of the American Convention on Human Rights (hereinafter, “ACHR”),

and Article 10 of the African Charter on Human and Peoples' Rights.³ Although European and other international treaties conceptualise the right to freedom of association as an individual right, it equally contains a collective dimension. The right is to be enjoyed alone or in community with others (cf. Article 18 Universal Declaration). Without this collective dimension, the effective realisation of the right would often not be possible. For the associations, as representative bodies of their founders and members, the right to freedom of association implies the freedom to pursue the common interests of those founders and members by performing activities toward that goal. Associations shall be free from outside intervention in the determination of their aims and activities, and of the scope of their operations.⁴ Within the framework and for the effective enjoyment of that freedom they are also entitled to other civil and political rights, including in particular the freedom of expression and the freedom of assembly. Associations are also entitled to right to privacy and right to property.”

CDL-AD(2019)002 Report on Funding of Associations, §7.

“Positive obligations

8. Although formulated primarily as a freedom from intervention, the right to freedom of association also implies a positive obligation on the part of the State authorities. As the ECtHR has held: “*a genuine and effective respect for freedom of association cannot be reduced to a mere duty on the part of the State not to interfere (...). Accordingly, it is incumbent upon public authorities to guarantee the proper functioning of an association or political party, even when they annoy or give offence to persons opposed to the lawful ideas or claims that they are seeking to promote.*”⁵ This may require facilitating and protective regulations, including regulations to protect associations against interference by non-state actors. The State must also create an enabling environment in which associations can effectively operate. As stated in the Venice Commission/OSCE/ODIHR Guidelines on Freedom of Association: “*It is vital that the role and functioning of associations and the right to freedom of association be effectively facilitated and protected by member states’ constitutions and other laws. Practice shows that a specific law on associations is not essential for the proper exercise and protection of the right to freedom of association. Instead, it is sufficient to have a number of legal regulations in place that serve the purpose of facilitating the establishment and existence of associations.*”

CDL-AD(2019)002 Report on Funding of Associations, §8.

B. Reference to national standards

“[...] [T]he Venice Commission recalls that the mere fact that an association does not fulfill all the elements of the legal regulation concerned does not mean that it is not protected by the internationally guaranteed freedom of association. In *Chassagnou and Others v. France* the ECtHR emphasized the autonomous meaning of ‘association [...]’: ‘The term ‘association’ [...] possesses an autonomous meaning; the classification in national law has only relative value and constitutes no more than a starting-point’.”

CDL-AD(2011)03 – Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §92

“The way in which national legislation enshrines this freedom and its practical application by the authorities reveal the state of democracy in the country concerned. Certainly States have a right to assure that an association’s aim and activities are in conformity with the rules laid down in legislation, but they must do so in a manner compatible with their obligations under the Convention and subject to review by the Convention institutions.”

CDL-AD(2011)03 – Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §72

“Therefore, requirements in domestic law must be compatible with the obligation of the State to protect freedom of association.”

CDL-AD(2011)03 – Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §80

C. Legislative process requirements

Recommendation CM/REC(2007)14 stipulates that “NGOs should be consulted during the drafting of primary and secondary legislation which affects their status, financing or spheres of operation”.¹⁹ Conducting a public consultation with civil society organisations prior to the adoption of legislation directly concerning such organisations therefore constitutes part of the good practices that the European countries should strive to adhere to in their domestic legislative processes.

The Venice Commission is further aware that on 20 April 2017, the Ministry of Justice organized an enlarged meeting of the Human Rights Working Group, where the Draft Law was discussed. Whereas the efforts of the Hungarian authorities to consult some civil society organisations merit praise, according to the information on the event available to the Venice Commission, the meeting was only open to civil society organisations active in the area of human rights protection and did not involve organisations operating in other areas, though the Draft Law is to apply to them as well. It may be that a wider consultation on the Draft Law could have avoided some of the technical drafting difficulties which were drawn to the Commission’s attention.”

CDL-AD(2017)01 – Opinion on the Draft Law on the Transparency of Organisations receiving support from abroad of Hungary, §§ 27, 28.

“In this connection, attention is drawn to Council of Europe *Recommendation Rec(2007)14*, which stipulates that “NGOs should be consulted during the drafting of primary and secondary legislation which affects their status, financing or spheres of operation”. This is also stressed in the *Guidelines on Freedom of Association*, which furthermore stress that legal provisions concerning associations should “be adopted through a broad, inclusive and participatory process, to ensure that all parties concerned are committed to their content.” Conducting a public consultation with CSOs prior to the adoption of legislation directly concerning such organisations therefore constitutes part of the good practices that the European countries should strive to adhere to in their domestic legislative processes. To guarantee effective participation, consultation mechanisms must provide for adequate timeframes and allow for input at an early stage and throughout the process, both when the draft is being prepared by the government and when it is discussed before Parliament (e.g. through the organisation of public hearings). (...)”

CDL-AD(2018)006-e Ukraine – Joint Opinion on Draft Law No. 6674 “On Introducing Changes to Some Legislative Acts to Ensure Public Transparency of Information on Finance Activity of Public Associations and of the Use of International Technical Assistance” and on Draft Law No. 6675 “On Introducing Changes to the Tax Code of Ukraine to Ensure Public Transparency of the Financing of Public Associations and of the Use of International Technical Assistance”, §30.

“OSCE participating States have specifically committed to ensure that “[l]egislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives” and to “secure environments and institutions for peaceful debate and expression of interests by all individuals and groups of society”. The

OSCE has also recognized the vital role that civil society has to play in this regard. Moreover, the fact that, as the authorities indicated, everyone in Hungary was able to send their comments on the Bill via email to the Parliament, in the absence of a formalised and transparent system of feedback by the authorities to the comments posted, does not exempt national authorities from acting in accordance with Recommendation CM/Rec(2007)14. The Commission has repeatedly stressed this – procedural – element of the quality of the legislative process: conducting a public consultation with civil society organisations prior to the adoption of legislation directly concerning such organisations therefore constitutes part of the best practices that the European countries should strive to adhere to in their domestic legislative processes and an important element of the rule of law.”

CDL-AD(2018)035-e Hungary – Joint Opinion on Section 253 on the special immigration tax of Act XLI of 20 July 2018 amending certain tax laws and other related laws and on the immigration tax, §46.

IV. Content of Freedom of Association

A. Positive and negative obligations

“The freedom of association encompasses the right to found an association, to join an existing association and to have the association perform its function without any unlawful interference by the state or by other individuals. Freedom of association entails both the positive right to enter and form an association and the negative right not to be compelled to join an association that has been established pursuant to civil law.”

CDL-AD(2011)03 – Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §42

“There are in fact two fundamentals underpinning the principle of freedom of association – that is the personal autonomy where the individual has a right to join or not to join (the negative freedom) and the freedom of natural persons and legal entities to collaborate on a voluntary basis within an organizational context without government intervention, in order to realise a mutual goal.”

CDL-AD(2011)03 – Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §68

“Freedom of association entails both the ‘positive’ right to enter and form an association and the negative right not to be compelled to join an association that has been established pursuant to civil law. The ‘negative’ freedom of association has been dealt with in many cases before the European Court of Human Rights.”

CDL-AD(2011)03 – Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §66

“The positive aspect of freedom of association implies the right to form and join an association.”

CDL-AD(2011)03 – Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §70

“The ‘negative’ right of freedom of association implies that no one can be forced to form and join an association.”

CDL-AD(2011)03 – Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §68

B. Goals and objectives

“These objectives must comply with the requirements of a democratic society. In this context, it should however be reminded that in the assessment of compliance of the objectives of an association with domestic law, the authorities should always start out with a presumption of lawfulness.”

CDL-AD(2014)04 – Opinion on the Law on Non-Governmental Organisations(Public Associations and Funds) as amended, of the Republic of Azerbaijan, §48.

“While the Venice Commission and the OSCE/ODIHR are ready to acknowledge that in principle a legal provision concerning facilitating irregular migration, in light of the case-law of the European Court of Human Rights, may pursue the legitimate aim of prevention of disorder or crime under the second paragraph of Article 11, they stress that the legitimate aims must not be used as a pretext to control NGOs or to restrict their ability to carry out their legitimate work nor as a means to hinder persons from *applying* for asylum. The reasoning presented by the Hungarian authorities and the surrounding rhetoric of the criminal provision under examination raise serious doubts about the legitimacy of the aim behind the draft provision.”

CDL-AD(2018)013-e Hungary – Joint Opinion on the Provisions of the so-called “Stop Soros” draft Legislative Package which directly affect NGOs (in particular Draft Article 353A of the Criminal Code on Facilitating Illegal Migration), §80.

“As mentioned above, under draft Article 353A(5), an activity shall be regarded as organisational activity for the purposes of the offence under draft Article 353A(1) *in particular* if a) the person organises border watch at the external borderlines of Hungary b) prepares or distributes information materials or entrusts another with such acts, c) builds or operates a network. Freedom to act with regard to the rights and freedoms of third country nationals by democratic means, for example, by using advocacy and public campaigning, production of information materials, are the types of activities aimed at advancing democratically the issues of human rights and public interests. These activities, including specifically providing information and legal aid and assistance in relation to existing procedures for applying for asylum and on human rights-based arguments to lodge appeals and make full use of the appeal procedures (including before international bodies) are protected under international law, including the ECHR. Indeed, under international law states are obliged to ensure asylum seekers a system of effective judicial remedies. The draft provision as such is in contradiction with the right to freedom of expression, the principle of “presumption in favour of the lawful formation, objectives and activities of associations” and the principle of “freedom to determine objectives and activities, including the scope of operations”.

Indeed, paragraph 101 of the Guidelines notes that in practical terms, “*the exercise of freedom of expression and opinion also means that associations should be free to undertake research, education and advocacy on issues of public debate, regardless of whether the position taken is in accordance with government policy or advocates a change to the law.*” The draft Act proposes a new category of content-related speech limitations which are not directly related to the materialization of the illegal migration and therefore giving the prosecution too much discretion and running counter to the role of assistance to victims by NGOs recognised in international law. The Venice Commission and the OSCE/ODIHR reiterate that the draft provision should exclude “preparing or distributing informational materials or entrusting another with such acts” from its scope. At most only the preparation/distribution of information materials *intentionally and explicitly encouraging circumventing the law* could give rise to criminal prosecution.”

CDL-AD(2018)013-e Hungary – Joint Opinion on the Provisions of the so-called “Stop Soros” draft Legislative Package which directly affect NGOs (in particular Draft Article 353A of the Criminal Code on Facilitating Illegal Migration), §§83-84.

“It must be recognised that it is necessary for States to raise revenue through taxation and that this involves taxation of lawful activities. Taxation is used by all countries to dissuade activities that, while lawful, are not considered in the public interest, such as taxation of environmental or health hazards. On the other hand, taxation should not be designed, nor used to discourage the exercise of the freedoms of expression and association. States may in fact support certain activities which are deemed to be in the public interest (“public utility”), but this should be done either through financial contributions or through tax exemptions on private donations in favour of the associations that carry out such activities, and not by imposing taxes or placing burden on associations pursuing other goals not labelled as “public utility”. Migration-supporting activities can be considered, in some countries, to be in the public interest.”

CDL-AD(2018)035-e Hungary – Joint Opinion on Section 253 on the special immigration tax of Act XLI of 20 July 2018 amending certain tax laws and other related laws and on the immigration tax, §47.

“The Venice Commission and ODIHR recognise that levying taxes is absolutely necessary for the effective functioning of a government. Consequently, one cannot argue that levying taxes, is *per se* illegitimate. Taxes may be imposed in a general manner (e.g. on income or consumption) or on specific activities. Taxes may reflect political policies and preferences. Taxes may even be imposed to finance certain activities.

Nevertheless, taxes shall not be imposed for the purposes, or have the effect of dissuading persons, including legal persons, from lawfully advocating along a particular political or societal point of view. In the case of *United Macedonian Organisation Ilinden-Pirin v. Bulgaria*, the ECtHR considered that: “[Measures] *should not be used to hinder the freedom of association of groups disliked by the authorities or advocating ideas that the authorities would like to suppress. Therefore, in cases where the circumstances are such as to raise doubts in that regard, the Court must verify whether an apparently neutral measure interfering with a political party’s activities in effect seeks to penalise it on account of the views or the policies that it promotes. (...) Indeed, Article 18 of the Convention provides that any restrictions permitted to the rights enshrined in it must not be applied for a purpose other than those for which they have been prescribed.*”

CDL-AD(2018)035-e Hungary – Joint Opinion on Section 253 on the special immigration tax of Act XLI of 20 July 2018 amending certain tax laws and other related laws and on the immigration tax, §68-69.

V. Expression of Freedom of Association

A. Exercise of freedom of association

“As a civil right and political right, freedom of association grants protection against arbitrary interference by the State, for whatever reason and for whatever purpose, and it is an indispensable right for the existence and functioning of democracy. [...]”

CDL-AD(2011)035 – Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §44;

See also

CDL-AD(2011)036 – Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §62

“In *Gorzelik and Others v. Poland* the ECtHR held as follows: ‘The most important aspect of the right to freedom of association is that citizens should be able to create a legal entity in order to act collectively in a field of mutual interest. Without this, that right would have no meaning’.”

CDL-AD(2011)03 – Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §71

“It lies at the heart of the freedom of association that an individual or group of individuals may freely establish an association, determine its organization and lawful purposes, and put these purposes into practice by performing those activities that are instrumental to its functions.”

CDL-AD(2011)03 – Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §65

“The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfill means that States must take positive action to facilitate the enjoyment of basic human rights. “

CDL-AD(2011)03 – Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §47

“States have to respect the freedom of association by not interfering, for instance by means of prohibitions, into the operation of associations. They have to protect the freedom by ensuring that its exercise is not prevented by actions of individuals. And they have to fulfill this freedom by actively creating the legal framework, in which associations can operate. The obligation to respect means that the State must refrain from interfering with or curtailing the enjoyment of human rights.”

CDL-AD(2011)03 – Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §66

“Non-governmental organizations (NGOs) play a crucial role in modern democratic societies, allowing citizens to associate in order to promote certain principles and goals. Such public engagement, parallel to that of participation in the formal political process, is of paramount importance and represents a crucial element of a healthy civil society. Members of NGOs, as well as NGOs themselves, enjoy fundamental human rights, including freedom of association and freedom of expression.”

CDL-AD(2013)03 – Joint Interim Opinion on the Draft Law amending the Law on non-commercial Organisations and other legislative Acts of the Kyrgyz Republic, §15

B. Restrictions on the exercise of freedom of association

“No restrictions may be placed on the exercise of the right of associations to protect their rights “other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, the protection of public health or morals or the protection of the rights and freedoms of others.” Restrictions on the freedom of association are to be construed strictly; only convincing and compelling reasons can justify restrictions on the freedom of association.”

CDL-AD(2011)03 – Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, § 63

“[...] The legitimate purposes for a limitation to the right of freedom of association are national security, public safety, prevention of disorder or crime, protection of public health and morals or the protection of the rights and freedoms of others. There must furthermore be a pressing social need for restricting this fundamental right.”

CDL-AD (2011)03 – Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §44

“Only indisputable imperatives can justify interference with the enjoyment of freedom of association under the European Convention.”

CDL-AD (2011)03 – Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §85

a. Legal basis of the restriction

“Any restrictions on free association must have their basis in law of the state constitution or parliamentary act, rather than subordinate regulations, and must in turn conform to relevant international instruments. Such restrictions must be clear, easy to understand, and uniformly applicable to ensure that all individuals and parties are able to understand the consequences of breaching them. Restrictions must be necessary in a democratic society, and full protection of rights must be assumed in all cases lacking specific restriction. To ensure restrictions are not unduly applied, legislation must be carefully constructed to be neither too detailed nor too vague.”

CDL-AD(2010)02 – Guidelines on political party regulation by OSCE/ODIHR and Venice Commission, §49
See also

CDL-AD (2011)035 – Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §103

“In the view of the Human Rights Committee, for the interference with freedom of association to be justified, any restriction on this right must cumulatively meet the following conditions: (a) it must be provided by law; (b) it may only be imposed for one of the purposes set out in paragraph 2; and (c) it must be “necessary in a democratic society” for achieving one of these purposes.”

CDL-AD(2011)03 – Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §57

“In accordance with ECHR practices, an association that seeks to obtain legal personality may not be hindered in so doing, unless such restriction is prescribed by law and necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others. In certain limited circumstances, where there are indications that a religious group is likely to be pervaded by abuse and exploitation, denial of legal status may be in congruity with the requirements in the limitation clause of Article 9 (2) of the ECHR. But these circumstances should be carefully drawn, since by hypothesis the group has not yet come into formal legal existence at the time it is seeking registration.”

CDL-AD(2010)05 – Interim Joint Opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §67

“The Venice Commission recalls that according to the ECtHR’s case-law “*a norm cannot be regarded as ‘law’ unless it is formulated with sufficient precision to enable the citizen to*

regulate his conduct”. The law must be accessible to those it applies to and formulated with sufficient precision to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.”

CDL-AD(2016)02 – Opinion on federal law no. 129-fz on amending certain legislative acts (Federal law on undesirable activities of foreign and international non-governmental organisations), §41.

“As the European Court of Human Rights (ECtHR) held in the case of *Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan*, for domestic law to meet the requirement of legality, “*it must afford a measure of legal protection against arbitrary interferences by public authorities with the rights guaranteed by the Convention. In matters affecting fundamental rights it would be contrary to the rule of law, one of the basic principles of a democratic society enshrined in the Convention, for a legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate with sufficient clarity the scope of any such discretion and the manner of its exercise*”.

CDL-AD(2016)02 – Opinion on federal law no. 129-fz on amending certain legislative acts (Federal law on undesirable activities of foreign and international non-governmental organisations), §45.

“Further, the severe administrative fines and in particular criminal sanctions may have a potential to deter those involved in civic activity, and the public at large from participating in an open debate on social media, for instance. The chilling effect of the severe penalties is further amplified by the vaguely-worded legislation which fails to give a precise legal definition for what constitutes “participation in the activities” and what actions constitute a breach of law in case of an individual associated with the conduct of a “listed NGO”.

CDL-AD(2016)02 – Opinion on federal law no. 129-fz on amending certain legislative acts (Federal law on undesirable activities of foreign and international non-governmental organisations), §58.

“For a restriction of fundamental rights to be permissible, it has to be prescribed by law in clear and precise terms and must be foreseeable.”

CDL-AD(2018)035-e Hungary – Joint Opinion on Section 253 on the special immigration tax of Act XLI of 20 July 2018 amending certain tax laws and other related laws and on the immigration tax, §56.

“The terms used in this provision are somewhat vague and imprecise. The special tax is imposed on donations supporting activities which, not only “directly”, but also “indirectly” aim at promoting migration. The reference to the term “indirectly” makes the provision overly vague and broad and offers too little guidance for the public, the donors and the civil society organisations to understand when the tax may be imposed.”

CDL-AD(2018)035-e Hungary – Joint Opinion on Section 253 on the special immigration tax of Act XLI of 20 July 2018 amending certain tax laws and other related laws and on the immigration tax, §58.

“67. The Government has not opted for a consultation period before the new draft legislative package was submitted to Parliament on 29 May 2018. During the visit, the delegation was informed that everyone would be able to send their comments on the Bill under consideration via email to the Parliament.

68. However, this possibility does not exempt national authorities from acting in accordance with Recommendation CM/Rec(2007)14 on the Legal Status of Non-Governmental Organisations in Europe. This Recommendation stipulates that “NGOs should be consulted during the drafting of primary and secondary legislation which affects their status, financing or spheres of operation” (para. 77). Moreover, the Explanatory Memorandum to the Recommendation clarifies that “it is essential that NGOs not only be consulted about matters connected with their objectives but also on proposed changes to the law which have the potential to affect their ability to pursue those objectives. Such consultation is needed not only because such changes could directly affect their interests and the effectiveness of the important contribution that they are able to make to democratic societies but also because their operational experience is likely to give them useful insight into the feasibility of what is being proposed” (par. 139).⁴⁰ According to paragraph 106 of the Guidelines of Freedom of Association: “Associations should be consulted in the process of introducing and implementing any regulations or practices that concern their operations.”

69. The Commission has repeatedly stressed this – procedural – element of the quality of the legislative process: conducting a public consultation with civil society organisations prior to the adoption of legislation directly concerning such organisations therefore constitutes part of the good practices that the European countries should strive to adhere to in their domestic legislative processes.⁴¹ The CM Recommendation refers to a consultation phase during the drafting process of a specific piece of legislation. The Commission and the OSCE/ODIHR note that the ‘public consultation’ to which the Government refers does not satisfy the above-mentioned requirements.”

CDL-AD(2018)013-e Hungary – Joint Opinion on the Provisions of the so-called “Stop Soros” draft Legislative Package which directly affect NGOs (in particular Draft Article 353A of the Criminal Code on Facilitating Illegal Migration), §§ 67, 68, 69.

“A. Laws of general application

61. The general reasoning of Bill No. T/333 amending certain laws relating to measures to combat illegal migration, as in the previous version of the package, refers to the draft package as the “Stop Soros Act package”. Although it is questionable whether the draft legislative package can be described *stricto sensu* as *ad hominem* legislation, a legislative technique previously criticised by the Venice Commission,³⁷ the Explanatory Note refers to a particular individual. It may therefore reasonably be considered as directing this legislation towards an individual, which is problematic from a rule of law perspective. It is inappropriate for a State to direct laws against individuals since, as a general principle laws should apply to all persons equally. This is especially so in the current context when there was a virulent campaign including discriminatory anti-Semitic statements by politicians.³⁸ The Venice Commission and the OSCE/ODIHR recall that the principle of “Equality before the law” is one of the benchmarks of the Rule of Law principle, which requires the universal subjection of all to the laws and implies that laws should be equally applied, and consistently implemented.³⁹ It is therefore recommended that the authorities refrain from referring to the legislative package in this way and remove this expression from the explanatory note. They could simply use the official title of “facilitation of illegal migration” which covers the substance of the bill more accurately.”

CDL-AD(2018)013-e Hungary – Joint Opinion on the Provisions of the so-called “Stop Soros” draft Legislative Package which directly affect NGOs (in particular Draft Article 353A of the Criminal Code on Facilitating Illegal Migration), §61.

b. The test of justification of the restriction

“The Venice Commission also recalled that any restriction of these must meet a strict test of justification: *‘Any restriction of the right to freedom of association must according to Article 11.2*

of the ECHR be prescribed by law and it is required that the rule containing the limitation be general in its effect, that it be sufficiently known and the extent of the limitation be sufficiently clear. A restriction that is too general in nature is not permissible due to the principle of proportionality. The restriction must furthermore pursue a legitimate aim and be necessary in a democratic society’.

CDL-AD(2012)01 – Opinion on the Federal law on combating extremist activity of the Russian Federation, §64

“Any limitations [...] which restrict their right to free association must be constructed to meet the specific aim pursued by authorities. Further, this aim must be objective and necessary in a democratic society. The state has the burden of establishing that limitations promote a general public interest unable to be fulfilled absent the limitation.

CDL-AD(2010)02 – Guidelines on political party regulation by OSCE/ODIHR and Venice Commission, §50

“Paragraph 24 of the OSCE Copenhagen Document states, regarding proportionality:

‘The participating States will ensure that the exercise of all the human rights and fundamental freedoms set out above will not be subject to any restrictions except those which are provided by law and are consistent with their obligations under international law, in particular the International

Covenant on Civil and Political Rights, and with their international commitments, in particular the Universal Declaration of Human Rights. These restrictions have the character of exceptions. The participating States will ensure that these restrictions are not abused and are not applied in an arbitrary manner, but in such a way that the effective exercise of these rights is ensured. Any restriction on rights and freedoms must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of that law’.”

CDL-AD(2010)02 – Guidelines on political party regulation by OSCE/ODIHR and Venice Commission, §52

“Restrictions imposed upon both freedom of association and freedom of expression must not exceed what is ‘necessary in a democratic society’; this means that the interference must correspond to a pressing social need and be proportionate to this need. The Venice Commission and the OSCE/ODIHR recall that under international standards, freedom of expression extends also to information or ideas which may be found offending, shocking, and disturbing.”

CDL-AD(2013)03 – Joint Interim Opinion on the Draft Law amending the Law on non-commercial Organisations and other legislative Acts of the Kyrgyz Republic, §39

“Proportionality should be considered on the basis of a number of factors, including:

- The nature of the right in question
- The purpose of the proposed restriction
- The nature and extent of the proposed restriction
- The relationship (relevancy) between the nature of the restriction and its purpose

Whether there are any less restrictive means available for the fulfillment of the stated purpose in light of the facts.”

CDL-AD(2010)02 – Guidelines on political party regulation by the OSCE/ODIHR and the Venice Commission, §52

“Any limitation on the formation or regulation of the activities of political parties must be proportionate in nature. Dissolution or refusal of registration should only be applied if no less restrictive means of regulation can be found. Dissolution is the most severe sanction available

and should not be considered proportionate except in cases of the most significant violations. In the Parliamentary Assembly of the Council of Europe (PACE) Resolution 1308 (2002), the PACE stated in paragraph 11 that ‘a political party should be banned or dissolved only as a last resort’ and ‘in accordance with the procedures which provide all the necessary guarantees to a fair trial.’”

CDL-AD(2010)02 – Guidelines on political party regulation by the OSCE/ODIHR and the Venice Commission, §51

“Non-governmental organisations engaged in human rights advocacy are traditionally considered as particularly vulnerable and, hence, in need of enhanced protection. [...]”

CDL-AD(2014)02 – Opinion on Federal Law No. 121-FZ on non-commercial organisations (“Law on foreign agents”) and on federal laws No. 18-FZ and No. 147-FZ on Federal Law No. 190-FZ on making amendments to the Criminal Code (“Law on treason”) of the Russian Federation, §20

“International human rights standards make it clear that restrictions to the freedom of association are justifiable only if they are “necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.” The European Court of Human Rights has consistently stated that because of “the essential nature of freedom of assembly and association and its close relationship with democracy there must be convincing and compelling reasons to justify an interference with this right.” Any restriction on the right to freedom of association and on the rights of associations, including sanctions, must be prescribed by a precise, certain and foreseeable law; it must pursue one or more legitimate aims; and it must be necessary in a democratic society, which presupposes the existence of a “pressing social need”, and respect the principle of proportionality. “

CDL-AD(2018)006-e Ukraine – Joint Opinion on Draft Law No. 6674 “On Introducing Changes to Some Legislative Acts to Ensure Public Transparency of Information on Finance Activity of Public Associations and of the Use of International Technical Assistance” and on Draft Law No. 6675 “On Introducing Changes to the Tax Code of Ukraine to Ensure Public Transparency of the Financing of Public Associations and of the Use of International Technical Assistance”, §34.

“At this point, it must be reiterated that international standards do not only require that any restrictions to the freedom of association be based on a legitimate aim – which seems to be absent in the present case – but also require that the measures chosen are necessary and proportional. A fair balance must be struck between the interests of persons exercising the right to freedom of association, associations and the interests of society as a whole; the need for restrictions needs to be carefully weighed and backed up by compelling evidence to ensure that the least intrusive option is always chosen and that restrictions are narrowly construed.”

CDL-AD(2018)006-e Ukraine – Joint Opinion on Draft Law No. 6674 “On Introducing Changes to Some Legislative Acts to Ensure Public Transparency of Information on Finance Activity of Public Associations and of the Use of International Technical Assistance” and on Draft Law No. 6675 “On Introducing Changes to the Tax Code of Ukraine to Ensure Public Transparency of the Financing of Public Associations and of the Use of International Technical Assistance”, §39.

“While it is in line with the case law of the European Court of Human Rights, as well as with previous statements made by the Venice Commission and the OSCE/ODIHR, that “states have a right to satisfy themselves that an association’s aim and activities are in conformity with the rules laid down in legislation”, they must do so “in a manner compatible with their obligations under the European Convention” and other international instruments. It is thus understood that state bodies should be able to exercise some sort of limited control over non-commercial organisations’ activities with a view to ensuring compliance with relevant legislation within the civil society sector, but such control should not be unreasonable, overly intrusive or disruptive of lawful activities. Excessively burdensome or costly reporting

obligations could create an environment of excessive state monitoring which would hardly be conducive to the effective enjoyment of freedom of association.”

CDL-AD(2018)006-e Ukraine – Joint Opinion on Draft Law No. 6674 “On Introducing Changes to Some Legislative Acts to Ensure Public Transparency of Information on Finance Activity of Public Associations and of the Use of International Technical Assistance” and on Draft Law No. 6675 “On Introducing Changes to the Tax Code of Ukraine to Ensure Public Transparency of the Financing of Public Associations and of the Use of International Technical Assistance”, §40.

“The interference with the right to freedom of expression/association must pursue legitimate aims. Concerning specifically the freedom of association, Article 11(2) ECHR states that the only restrictions permissible are those that are “prescribed by law and are necessary in a democratic society in the interest of national security or public safety, for the prevention of disorder or crime, for the protection of health and morals or for the protection of rights and freedoms of others”. As noted in paragraph 34 of the Joint Guidelines on Freedom of Association, “the scope of these legitimate aims shall be narrowly interpreted”. In a similar vein, Article 10(2) permits restrictions which are “prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation of the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary”. Articles 19(3) and 22(2) ICCPR limit restrictions on freedom of expression/association on similar grounds.”

CDL-AD(2018)035-e Hungary – Joint Opinion on Section 253 on the special immigration tax of Act XLI of 20 July 2018 amending certain tax laws and other related laws and on the immigration tax, §66.

“80. While the Venice Commission and the OSCE/ODIHR are ready to acknowledge that in principle a legal provision concerning facilitating irregular migration, in light of the case-law of the European Court of Human Rights, may pursue the legitimate aim of prevention of disorder or crime under the second paragraph of Article 11, they stress that the legitimate aims must not be used as a pretext to control NGOs or to restrict their ability to carry out their legitimate work nor as a means to hinder persons from *applying* for asylum. The reasoning presented by the Hungarian authorities and the surrounding rhetoric of the criminal provision under examination raise serious doubts about the legitimacy of the aim behind the draft provision.”

CDL-AD(2018)013-e Hungary – Joint Opinion on the Provisions of the so-called “Stop Soros” draft Legislative Package which directly affect NGOs (in particular Draft Article 353A of the Criminal Code on Facilitating Illegal Migration), §80.

VI. Legal status and registration of an association

“The right to form an association is an inherent part of the right set forth in Article 11 ECHR. The ability to form a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of the right to freedom of association, without which that right would be deprived of any meaning.”

CDL-AD(2011)03 – Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §71

“The Venice Commission considers that ‘burdensome constraints or provisions that grant excessive governmental discretion in giving approvals prior to obtaining legal status [of an association] should be carefully limited’.”

CDL-AD(2010)05 – Interim Joint Opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the

criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR, §68

“As the recognition of the association as a legal entity is an inherent part of the freedom of association, the refusal of registration is also fully covered by the scope of Article 22 of the ICCPR and Article 11 of the ECHR.”

CDL-AD(2011)03 – Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §52

“The Venice Commission reiterates that to make it mandatory for an association to register need not in itself be a breach of the right to freedom of association.”

CDL-AD 2011)03 – Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §54

“The Venice Commission is of the opinion that domestic law may require some kind of registration of associations, and that failure to register may have certain consequences for the legal status and legal capacity of the association involved.”

CDL-AD (2011)03 – Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, § 56

“According to Article 11 of the ECHR and the case law of the European Court of Human Rights, the right to freedom of association not only guarantees the right to form and register an association, but also includes those rights and freedoms that are of vital importance for an effective functioning of the association to fulfil its aims and protect the rights and interests of its members; the freedom of association presupposes a certain autonomy.”

CDL-AD(2011)03 – Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §61

“However, the Venice Commission recalls that such a legal requirement may not be an essential condition for the existence of an association, as that might enable the domestic authorities to control the essence of the exercise of the freedom of association.”

CDL-AD(2011)03 – Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §77

“Arbitrary denial and discriminatory practices in denying an organization registration also touch upon the relationship between the enjoyment of freedom of association and freedom of expression and their interdependence. The former right may be seriously affected by the extent to which the latter freedom is guaranteed.”

CDL-AD(2011)03 – Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §98

“The Venice Commission and OSCE/ODIHR stress that NGOs should not be required to seek authorisation in order to establish branches, whether within the country or abroad.

It is true that foreign non-governmental organizations may be required to obtain authorization to operate in a country other than the one in which they have been established. However, they should not be required to establish a new and separate entity for this purpose. Foreign non-governmental organizations may be subjected to the same accountability requirements as other

non-governmental organizations with legal personality in their host country, but these requirements should only be applicable to their activities in that country.”

CDL-AD(2013)03 – Joint Interim Opinion on the Draft Law amending the Law on non-commercial Organisations and other legislative Acts of the Kyrgyz Republic, §§42, 43

“Mandatory registration for associations in order to acquire legal personality is not as such in breach of the right to freedom of association, as the Commission has observed in its 2011 Opinion. However, registration should not be an essential condition for the existence of an association, as that might enable domestic authorities to control the essence of the exercise the right to freedom of association.”

CDL-AD(2014)04 – Opinion on the Law on Non-Governmental Organisations(Public Associations and Funds) as amended, of the Republic of Azerbaijan, §44.

VII. Non-Governmental Organisations (NGOs)

A. Legal status of NGOs

“The legal status of NGOs is also the subject of two non-binding Council of Europe instruments, namely the 2002 Fundamental Principles on the Status of Non-governmental Organisations in Europe and the 2007 Recommendation CM/Rec (2007) of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe. The two documents contain a comprehensive set of recommendations that should serve as minimum standards guiding member states of the Council of Europe in their legislation, policies and practice towards NGOs.”

CDL-AD (2011)03 – Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §52

“Over the past three decades, special instruments related to the legal status of NGOs have been adopted in the Council of Europe framework. The most important of them is the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations (Convention No. 124), adopted in 1986 and entered into force in 1991. [...] It is often quoted as an authoritative source with respect to the definition of an NGO and the mutual recognition of their legal status and capacity in various European countries.”

CDL-AD (2011)03 – Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §54

“The Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (General Assembly resolution 53/144 (A/RES/53/144), 8 March 1999, constitute a relevant frame of reference at the level of the United Nations.”

CDL-AD(2011)03 – Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §50

B. Registration of NGOs

“While NGOs can operate without legal personality, on an informal basis, the acquisition of the personality is the precondition for various benefits. However, the Venice Commission recalls that such a legal requirement may not be an essential condition for the existence of an association, as that might enable the domestic authorities to control the essence of the exercise of the freedom of association.”

CDL-AD(2011)03 – Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §58

See also

CDL-AD(2011)03 – Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §120

“The principles and protection laid down in the ICCPR and the ECHR consequently apply also to non-registered NGO’S. This implies that, as the recognition of the association as a legal entity is an inherent part of the freedom of association, the refusal of registration is also fully covered by the scope of Article 22 of the ICCPR and Article 11 of the ECHR”.

CDL-AD(2011)03 – Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §93

“To condition the views, activities and conduct of an NGO before allowing it to obtain the legal personality necessary for its operation, goes against the core of the values underlying the protection of civil and political rights. It clashes with the whole ideological framework underlying democracy such as pluralism, broadmindedness and tolerance.”

CDL-AD(2011)03 – Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §120

“The Venice Commission recalls that under international standards, a system of prior authorization of some or all of the activities of an association is incompatible with the freedom of association. In addition, the Commission finds such a system would almost inevitably be impracticable, inefficient and costly, as well as likely to generate a significant number of applications to courts, with a consequent unwarranted transfer of workload (and danger of clogging up) to the judiciary.”

CDL-AD(2013)02 – Interim Opinion on the Draft Law on Civic Work Organisations of Egypt, §61

C. Funding

a. General remarks

“Specific standards which relate to the ability of associations to access financial resources can be found in the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (General Assembly resolution 36/55), which in Article 6 (f) explicitly refers to the freedom to access funding, stating that the right to freedom of thought, conscience, religion or belief shall include, *inter alia*, the freedom ‘to solicit and receive voluntary financial and other contributions from individuals and institutions’. [...]”

“It bears recalling in this context that the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has stated that the right to freedom of association not only includes the ability of individuals or legal entities to form and join an association but also to seek, receive and use resources – human, material and financial – from domestic, foreign, and international sources. In the Special Rapporteur’s view, measures which compel recipients of foreign funding to adopt negative labels such as ‘foreign agents’ constitute undue impediments on the right to seek, receive and use funding. [...]”

“On the point of financial reporting and accountability, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has stated that ‘associations should be accountable to their donors, and at most, subject by the authorities to a mere notification procedure of the reception of funds and the submission of reports on their accounts and activities’,

and has called upon States to 'adopt measures to protect individuals and associations against defamation, disparagement, undue audits and other attacks in relation to funding they allegedly received'. [...]"

"Interfering with financial transactions of a structural unit of a foreign non-commercial organization is a serious interference with the work of such organizations, and should be limited only to the most serious offences affecting national security, the public order, health and morals, or the rights and freedoms of others. References to 'the constitutional order' should be removed from the new wording of Article 17, as proposed by the Draft Law."

CDL-AD(2013)03 – Joint Interim Opinion on the Draft Law amending the Law on non-commercial Organisations and other legislative Acts of the Kyrgyz Republic, §19, 57, 70, and 88

"The Explanatory Notes to the two draft laws justify their adoption by the need to enhance the publicity of information on the financing of public associations, in particular when they benefit from public support, including tax privileges, and from international technical assistance. This aim is not *per se* mentioned as a legitimate aim in the above international instruments. In this context, the *Guidelines on Freedom of Association* indicate that "the state shall not require but shall encourage and facilitate associations to be accountable and transparent". The former UN Special Rapporteur on the rights to freedom of peaceful assembly and of association specifically warned against the misuse of transparency as a pretext for "extensive scrutiny over the internal affairs of associations, as a way of intimidation and harassment"

"At the same time, publicity or transparency in matters pertaining to funding may be required as a means to combat fraud, embezzlement, corruption, money-laundering or terrorism-financing. Such measures may qualify as being in the interests of national security, public safety or public order (...)"

CDL-AD(2018)006-e Ukraine – Joint Opinion on Draft Law No. 6674 "On Introducing Changes to Some Legislative Acts to Ensure Public Transparency of Information on Finance Activity of Public Associations and of the Use of International Technical Assistance" and on Draft Law No. 6675 "On Introducing Changes to the Tax Code of Ukraine to Ensure Public Transparency of the Financing of Public Associations and of the Use of International Technical Assistance", §§35, 36.

"The new reporting requirements are also highly problematic with regard to the prohibition of discrimination as enshrined in international human rights instruments, in several respects. First, associations should not be required to submit more reports and information than other legal entities, such as businesses, and CSOs with legal personality should be subject to the administrative, civil and criminal law obligations and sanctions generally applicable to other legal persons. However, the Venice Commission and OSCE/ODIHR delegation was informed that if the draft laws were adopted, the number of tax reports required from public associations would exceed the number of reports required from the business sector."

"Second, it is not clear why the draft laws single out public associations, whereas other organisations, such as charitable organisations, foundations, professional and creative unions are not addressed. The Explanatory Notes to the draft laws do not answer this question. The Venice Commission and the OSCE/ODIHR delegation was not given any convincing reasons why CSOs which are organised as public associations should be subject to particularly demanding transparency rules, when compared with other legal entities and non-profit organisations. What is more, some interlocutors (including law enforcement officials) stated that other entities, such as charitable organisations and foundations, which were set up e.g. to provide consultation services, constituted a far more relevant risk area in terms of money-laundering and connected crimes."

CDL-AD(2018)006-e Ukraine – Joint Opinion on Draft Law No. 6674 "On Introducing Changes to Some Legislative Acts to Ensure Public Transparency of Information on Finance Activity of Public

Associations and of the Use of International Technical Assistance” and on Draft Law No. 6675 “On Introducing Changes to the Tax Code of Ukraine to Ensure Public Transparency of the Financing of Public Associations and of the Use of International Technical Assistance”, §§43, 44.

“The new disclosure obligations furthermore interfere with the right to privacy, which is protected by international human rights instruments and applies to associations,⁵⁸ since they require the submission and public disclosure (on the Internet) of information on the public associations’ managers, certain employees, donors and beneficiaries. It must be noted that the right to privacy may be interfered with only if necessary in a democratic society, within the limits of proportionality. Furthermore, in paragraph 64 of *Recommendation Rec(2007)14*, it is stipulated that all reporting by CSOs “should be subject to a duty to respect the rights of donors, beneficiaries and staff, as well as the right to protect legitimate business confidentiality”. Generally, a donor’s desire to remain anonymous should be respected. However, the need to respect private life and maintain confidentiality are not absolute and should not be an obstacle to the investigation of criminal offences. In the present case, the authors of the draft laws have not substantiated any possible risk that the current legislation may hamper the investigation of criminal offences.⁶¹ In particular, public disclosure – on the Internet – of personal and financial information on the public associations’ employees, donors and beneficiaries cannot be justified with such considerations. Also, adequate safeguards should be in place to ensure that the personal data that will be collected, processed and stored during that process are protected against misuse and abuse in line with international standards, particularly the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.”

CDL-AD(2018)006-e Ukraine – Joint Opinion on Draft Law No. 6674 “On Introducing Changes to Some Legislative Acts to Ensure Public Transparency of Information on Finance Activity of Public Associations and of the Use of International Technical Assistance” and on Draft Law No. 6675 “On Introducing Changes to the Tax Code of Ukraine to Ensure Public Transparency of the Financing of Public Associations and of the Use of International Technical Assistance”, §46.

“Section 253 on special immigration tax imposes a 25% tax on the financial support to an immigration-supporting activity carried out in Hungary. The tax is not levied on the activities carried out, but on the funding these NGOs receive.

The Venice Commission and ODIHR consider that in some instances, taxation may constitute not only a restriction on the right to property, but also as an interference with individuals’ and entities’ freedom of expression and freedom of association.”

CDL-AD(2018)035-e Hungary – Joint Opinion on Section 253 on the special immigration tax of Act XLI of 20 July 2018 amending certain tax laws and other related laws and on the immigration tax

“The right of associations to seek financial and material resources

18. The right of associations to seek financial and material resources is primarily protected as an inherent part of the right to freedom of association and has been confirmed in various international soft-law instruments. It is seen as an important condition for an association to be able to exist and to exercise its functions and fulfil its mission in an independent way. In interpreting article 22 of the ICCPR, the U.N. Human Rights Committee has recognized that fundraising activities are protected under Article 22, and funding restrictions that impede the ability of associations to pursue their statutory activities constitute an interference with the freedom of association. The Committee accordingly has issued a number of important decisions concerning the restrictions on NGOs’ access to foreign funding and the implications of such restrictions under Articles 19 and 22 of the ICCPR guaranteeing, respectively, the freedom of expression and the freedom of association. For example, in communication No. 1274/2004, the Human Rights Committee observed that “*the right to freedom of association relates not only to the right to form an*

association, but also guarantees the right of such an association freely to carry out its statutory activities. The protection afforded by article 22 extends to all activities of an association [...]. The Committee likewise has raised a number of concerns and recommendations in concluding observations to states regarding restrictions on access to funding for NGOs.”

CDL-AD(2019)002 Report on Funding of Associations, §18.

“69. Consequently, the Venice Commission considers that in such an important matter as the scope of restrictions imposed on the right of associations to seek and secure financial and material resources, the provisions –imposing for instance reporting obligations as to the sources of funding- should use very clear and precise terms in order to give the associations to understand their liabilities and obligations and in order therefore to meet the criteria of “legality” under Articles 10(2) and 11(2) ECHR and Articles 19 and 22 ICCPR.”

CDL-AD(2019)002 Report on Funding of Associations, §69.

b. Foreign-funded NGOs

a. Prohibition or restriction of foreign funding

“The Venice Commission reiterates that, while foreign funding might give rise to some legitimate concerns, it shall not be prohibited unless there are specific reasons to do so. Even then, foreign funding should never be object of an outright ban.”

CDL-AD(2014)04 – Opinion on the Law on Non-Governmental Organisations(Public Associations and Funds) as amended, of the Republic of Azerbaijan, §63.

“In its 2014 Opinion on the Law on Foreign Agents of the Russian Federation, the Venice Commission also acknowledged that ensuring transparency of NGOs receiving funding from abroad in order to prevent them from being misused for foreign political goals pursues a prima facie legitimate aim and can be considered to be “necessary in a democratic society in the interest of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others”, as stated in paragraph 2 of Article 11 ECHR. However, the Venice Commission added that although “*states have a right to satisfy themselves that an association’s aim and activities are in conformity with the rules laid down in legislation, (...) they must do so in manner compatible with their obligations under the European Convention*” and under other international legal instruments. In particular, these legitimate aims should not be used as a pretext to control NGOs or to restrict their ability to accomplish their legitimate work, and should not result in seeking to stigmatise and ostracise some of the civil society organisations solely on the basis of foreign funding.”

CDL-AD(2017)01 – Opinion on the Draft Law on the Transparency of Organisations receiving support from abroad of Hungary, §41.

“Foreign funding of NGOs is at times viewed as problematic by States. The Venice Commission acknowledges that there may be various reasons for a State to restrict foreign funding, including the prevention of money-laundering and terrorist financing. However, these legitimate aims should not be used as a pretext to control NGOs or to restrict their ability to carry out their legitimate work, notably in defence of human rights. The prevention of money-laundering or terrorist financing does not require nor justify the prohibition or a system of prior authorisation by the government of foreign funding of NGOs. [...]

“The Venice Commission believes that it is justified to require the utmost transparency in matters pertaining to foreign funding. An administrative authority may be entrusted with the competence to review the legality (not the expediency) of foreign funding, using a simple system of notification – not one of prior authorisation. The procedure should be clear and straightforward, with an

implicit approval mechanism. The administrative authority should not have the decision-making power in such matters. This should be left to the courts.”

CDL-AD(2013)02 – Interim Opinion on the Draft Law on Civic Work Organisations of Egypt, §40 and §43

“Article 63 provides for a system of prior authorisation for an Egyptian NGO to receive foreign funding and carry out the related activities, which as such is not in line with international standards. In addition, it fails to provide a clear legal basis for refusing the authorisation to receive the funding. This system should be replaced by a system of mere notification with the possibility for the Co-ordination Committee to object on the basis of Article 59 of the Draft Law only.”

“The UN Declaration on Human Rights Defenders provides specifically that ‘everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means in accordance with Article 3 of the present Declaration’. The right of access to funding is to be exercised within the juridical framework of domestic legislation – provided that such legislation is consistent with international human rights standards. This implies *inter alia* that there can be no discrimination among NGOs, notably on the basis of the nature of the activities which they carry out.

Funds raised by the NGO as gifts, donations or voluntary contributions are therefore part of the legitimate resources of the NGO.”

CDL-AD(2013)02 – Interim Opinion on the Draft Law on Civic Work Organisations of Egypt, §§48, 51-52

“In its opinions, the Venice Commission has observed three main justifications that are typically advanced by States:

a. Ensuring openness and transparency: Virtually all the examined States that have adopted laws imposing restrictions, including reporting/public disclosure obligations, on the foreign financing of associations, justify these acts by the need to ensure transparency of financing of the NGO sector.

b. A second justification invoked by States is contributing to the prevention of terrorism and money laundering.

c. A third justification pertains to the protection of the State and its citizens from disguised interference by foreign countries or other foreign entities.

80. In its previous opinions, the Venice Commission accepted that the latter two justifications may, in principle, fall under the legitimate grounds for imposing restrictions on the right to freedom of association enlisted in Article 11(2) of the ECHR and Article 22(2) of the ICCPR. Thus, the Venice Commission confirmed that there may be various reasons for a State to restrict foreign funding, including the prevention of money-laundering and terrorism financing⁹⁶. Concerning the aim of ensuring transparency, the Commission considered that this aim would not by itself appear to be a legitimate one, but may be a means to achieve one of the legitimate aims under the second paragraph of Article 11 ECHR. Therefore, the Commission considered that ensuring transparency of NGOs receiving funding from abroad in order to prevent them from being misused for foreign political goals can be considered to be “necessary in a democratic society.

81. The Commission recalled however that restrictions on the freedom of association can, however, be considered to pursue legitimate purposes only if they aim to avert a real, and not

only hypothetical danger. Any restrictions therefore can only be based on a prior risk assessment indicating “plausible evidence” of a sufficiently imminent threat to the State or to a democratic society. Abstract “public concern” and “suspicions” about the legality and honesty of financing of NGO sector, without pointing to a substantiated concrete risk analysis concerning any specific involvement of the NGO sector in the commission of crimes, such as corruption or money-laundering cannot constitute a legitimate aim justifying restrictions to this right.⁹⁸ The Human Rights Committee added that the reasons prompting the authorities to restrict foreign funding should thus be case-specific and evidence-based.

CDL-AD(2019)002 Report on Funding of Associations, §79, 80, 81.

b. The label of “foreign agent”

“Many sources have already commented upon the choice of the term ‘foreign agent’. The Venice Commission cannot but concur with those who consider this term unfortunate. As rightly noticed by the Council of Europe Commissioner for Human Rights, the term ‘has usually been associated in the Russian historical context with the notion of a ‘foreign spy’ and/or a ‘traitor’ and thus carries with it a connotation of ostracism or stigma’. [...]”

“It follows that being labelled as a ‘foreign agent’ signifies that a NCO would not be able to function properly, since other people and – in particular – representatives of the state institutions will very likely be reluctant to co-operate with them, in particular in discussions on possible changes to legislation or public policy.”

“The Venice Commission considers that the imposition of the very negative qualification of ‘foreign agent’ and the obligation for the NCO to use it on all its materials cannot be deemed to be ‘necessary in a democratic society’ to assure the financial transparency of the NCO receiving foreign funding. The mere fact that a NCO receives foreign funding cannot justify it to be qualified a ‘foreign agent’.”

CDL-AD(2014)02 – Opinion on Federal Law No. 121-FZ on non-commercial organisations (“Law on foreign agents”) and on federal laws No. 18-FZ and No. 147-FZ on Federal Law No. 190-FZ on making amendments to the Criminal Code (“Law on treason”) of the Russian Federation, §§54, 55 and 60

“Registering NCOs as foreign agents without their consent amounts to depriving them of the right guaranteed by Article 11 ECHR to form an association in a free manner. This measure is not proportionate to the objective of protecting the public interest of sovereignty of the state, as the authorities always have full discretion to check whether the association’s aim and activities are in conformity with the rules laid down in the legislation. In addition, depriving the association of its own discretion to define its aims and objectives when registering impinges on the freedom of expression of its members. [...] Authorizing the authorities to register groups in civil society as foreign agents at their discretion and without the prior consent of the relevant groups is a very invasive measure which represents a disproportionate interference with the right to freedom of expression.”

CDL-AD(2014)02 – Opinion on Federal Law No. 121-FZ on non-commercial organisations (“Law on foreign agents”) and on federal laws No. 18-FZ and No. 147-FZ on Federal Law No. 190-FZ on making amendments to the Criminal Code (“Law on treason”) of the Russian Federation, §63

c. Foreign funding as a criterion for differential treatment

“Foreign funding of NGOs is at times viewed as problematic by States. There may be various reasons for a State to restrict foreign funding, including the prevention of money-laundering and terrorist financing. However, these legitimate aims should not be used as a pretext to control

NGOs or to restrict their ability to carry out their legitimate work, notably in defence of human rights.”

CDL-AD(2014)02 – Opinion on Federal Law No. 121-FZ on non-commercial organisations (“Law on foreign agents”) and on federal laws No. 18-FZ and No. 147-FZ on Federal Law No. 190-FZ on making amendments to the Criminal Code (“Law on treason”) of the Russian Federation, §68

“The Venice Commission has explained above, in connection with the procedure of prior authorisation of fund-raising activities, that the applicable Egyptian legislation on specific forms of activities (demonstrations, public events, television campaigns and so on), coupled with the financial reporting obligations and the publicity and transparency requirements which are imposed on associations suffice to enable the Egyptian authorities to put an end to illegal activities. Sanctions may be applied. For foreign NGOs, the procedure of licensing provides an additional possibility for the Egyptian authorities to make sure that the legal requirements of Articles 56 and 57 should be met. The Venice Commission therefore finds that there is no justification for closely monitoring foreign NGOs.”

CDL-AD(2013)02 – Interim Opinion on the Draft Law on Civic Work Organisations of Egypt, §62

“It bears recalling in this context that the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has stated that the right to freedom of association not only includes the ability of individuals or legal entities to form and join an association but also to seek, receive and use resources – human, material and financial – from domestic, foreign, and international sources. In the Special Rapporteur’s view, measures which compel recipients of foreign funding to adopt negative labels such as ‘foreign agents’ constitute undue impediments on the right to seek, receive and use funding.”

CDL-AD(2013)03 – Joint Interim Opinion on the Draft Law amending the Law on non-commercial Organisations and other legislative Acts of the Kyrgyz Republic, §57

“The prevention of money-laundering or terrorist financing does not require nor justify the prohibition or a system of prior authorisation by the government of foreign funding of NGOs.”

CDL-AD(2014)02 – Opinion on Federal Law No. 121-FZ on non-commercial organisations (“Law on foreign agents”) and on federal laws No. 18-FZ and No. 147-FZ on Federal Law No. 190-FZ on making amendments to the Criminal Code (“Law on treason”) of the Russian Federation, §68

“Law 121-FZ does not make the legal status of ‘foreign agent’ conditional on any minimal amount of funding received from abroad or on any minimal period of time during which a NCO would have to receive foreign funding. Thus, a single Rouble/Euro/dollar sent by a foreign citizen to the bank account of a NCO would turn this NCO, provided the political activities element is present, into a foreign agent and make it subject to a set of additional legal obligations. Moreover, the Law does not distinguish between various forms of ‘funding and other property’. Thus, a NCO regularly funded from abroad, a NCO which receive an international prize for its activity, or a NCO receiving a laptop from an international business company would, again provided the political activities elements is met, be all considered as ‘foreign agents’. Such a situation is obviously extremely problematic and it is hardly imaginable that the law is intended to cover all these very different situations. The Venice Commission finds that if foreign funding continues to be viewed as necessitating a specific treatment, the law should at the very least define what features (minimum amounts, duration, sources) it must have for it to fall within the scope of application of the law.”

“The Russian authorities certainly have the right to submit non-commercial organisations receiving foreign funding to a certain control and to impose upon them reporting and auditing obligations. However, the current Law lacks minimum requirements in the amount of the used money and the length of operation.”

CDL-AD(2014)0 – Opinion on Federal Law No. 121-FZ on non-commercial organisations (“Law on foreign agents”) and on federal laws No. 18-FZ and No. 147-FZ on Federal Law No. 190-FZ on making amendments to the Criminal Code (“Law on treason”) of the Russian Federation, §§70 and 88

“It stems from international instruments that differentiated treatment is possible in this case only and in so far as the treatment pursues a number of legitimate aims, such as prevention of money laundering and terrorism and proportionate to the legitimate aims pursued, not going beyond what is strictly necessary to achieve those aims. These criteria correspond to the conditions of limitations on the right to freedom of association foreseen by Article 11(2) of the European Convention on Human Rights and Article 22(2) of the ICCPR.”

CDL-AD(2017)01 – Opinion on the Draft Law on the Transparency of Organisations receiving support from abroad of Hungary, §34

“During the visit to Budapest, the Venice Commission was informed that no new, separate register was to be established for organisations receiving foreign funding. Rather, the information is to be added to the already existing register of civil society organisations which is regulated by Act No. 181/2011 on the *Court Registration of Civil Society Organisations and the Related Rules of Procedure*. This solution is to be welcomed, as creating a separate register might strengthen the perception that the Draft Act aims at stigmatising certain civil society organisations, based solely on their source of financing.”

CDL-AD(2017)01 – Opinion on the Draft Law on the Transparency of Organisations receiving support from abroad of Hungary, §47.

“Third, the fact that individual persons who receive income from donors of international technical assistance – a term which is not defined in draft law No. 6675 – are also subject to extensive reporting and disclosure obligations⁵⁶ gives rise to concern and seems to be a breach of the prohibition of discrimination. The Venice Commission and the OSCE/ODIHR have not been provided with any justification as to why such obligations are introduced specifically in relation to international/foreign donors but not in relation to domestic donors, and only for certain individuals such as private entrepreneurs but not for legal entities (except public associations) who receive the same types of income. The Explanatory Notes to the draft laws remain silent on this matter. In this connection, the delegation was concerned to hear that donor involvement in international technical assistance in Ukraine could be considerably affected by the proposed measures.”

CDL-AD(2018)006-e Ukraine – Joint Opinion on Draft Law No. 6674 “On Introducing Changes to Some Legislative Acts to Ensure Public Transparency of Information on Finance Activity of Public Associations and of the Use of International Technical Assistance” and on Draft Law No. 6675 “On Introducing Changes to the Tax Code of Ukraine to Ensure Public Transparency of the Financing of Public Associations and of the Use of International Technical Assistance”, §§43, 45.

“124. First, the Venice Commission pointed in its opinions to the differentiated treatment among foreign-funded associations on the basis of the nature of the activities carried out; this may be done by applying the restrictions to associations carrying out “political activities”, for example, or by excluding certain types of associations.¹⁶² The authorities should demonstrate convincingly that the legitimate aim pursued by restricting the rights of some associations does not apply to the others. The Commission has found that when the authorities fail to prove the legitimate grounds for exempting some associations, doubt is cast on the legitimacy of the restrictions imposed on the others.

125. Secondly, unequal treatment between the civil society sector and other legal persons/non-state entities, for instance, the business sector, may raise issues when the State

fails to provide specific justification for it and demonstrate that there are legitimate grounds for imposing for example additional reporting obligations only to associations.¹

126. The third case concerns the context in which a draft law regulating foreign funding of associations is submitted and discussed in the country and the ensuing risk of stigmatisation. The use of specific negative labels such as “foreign agent” or the dissemination of disparaging statements through the press or media campaigns clearly pursues an objective of stigmatisation.

127. Finally, the specific reporting and public disclosure obligations imposed upon foreign funded associations, as opposed to domestic funded associations, and the resulting differentiated treatment between the two categories also needs to be justified with objective and cogent reasons and there should be a relationship of proportionality between the means employed (the scope of reporting and disclosure obligations imposed on foreign funded associations) and the goal pursued by the different treatment. The “motives” which have inspired the Government are to be taken into account in this context. It is true that there exist essentially different factual circumstances surrounding respectively a foreign funded and a domestically funded association. However, the difference between factual circumstances should be able to justify the difference in treatment. For this reason, the response to the complaint under the substantive question (on whether the additional reporting and public disclosure obligations imposed on foreign funded associations are in line with the freedom of association or not) will also be the response to the question on whether there are reasonable and objective justification of the difference in treatment in relation to discrimination under Article 14 ECHR.”

CDL-AD(2019)002 Report on Funding of Associations, §§124-127.

d. Foreign-funded NGOs involved in political activities

“Under Article 6(2) of the Law on Non-Commercial Organizations, for a NCO to count as a ‘foreign agent’, it needs – in addition of being registered as a NCO and receiving foreign funding – to participate in political activities exercised in the territory of the Russian Federation. [...]”

“In *Zhechev v. Bulgaria*, the European Court of Human Rights rightly claimed that the term ‘political’ is ‘inherently vague and could be subject to largely diverse interpretations’. Law 121-FZ seeks to define the ‘political activities’. Yet, when doing so, it resorts to other, equally vague and unclear terms such as ‘political actions’, ‘state policy’, or ‘shaping of public opinion’.

Moreover, the scope of the activities which the law deems not to be ‘political activities’ is unclear. ‘Activities in the field of... science’ are excluded, but it is unclear whether a scientific activity can only be conducted by a university or a recognized scientific institute, or also by a NCO which e.g. conducts research on the compliance of the Russian policies with the international human rights treaties. ‘Activities in the field of ... arts’ are equally excluded, but it is uncertain whether an artistic expression of criticism of public authorities is also excluded from the application of the law. [...]

These activities are guaranteed both in the Russian Constitution and in the international human rights treaties. They cannot be deemed to be ‘in the interests of foreign sources’, but have to be considered in the interest of Russia and the Russian population. [...]

CDL-AD(2014)02 – Opinion on Federal Law No. 121-FZ on non-commercial organisations (“Law on foreign agents”) and on federal laws No. 18-FZ and No. 147-FZ on Federal Law No. 190-FZ on making amendments to the Criminal Code (“Law on treason”) of the Russian Federation, §§ 71, 78, 79 and 80

“Federal Law n° 121-FZ appears to afford the Russian authorities a rather wide discretion. As a result, it is difficult for NCOs to know which specific actions on their part could be qualified as ‘political activities’ and which activities are exempted from this qualification. [...]

CDL-AD(2014)02 – Opinion on Federal Law No. 121-FZ on non-commercial organisations (“Law on foreign agents”) and on federal laws No. 18-FZ and No. 147-FZ on Federal Law No. 190-FZ on making amendments to the Criminal Code (“Law on treason”) of the Russian Federation, § 81

[...] [T]he unclear meaning of the term is not the only problematic aspect of the provisions relating to “political activities. The experience of the application of the law during the first months after its entry into force shows that the NCOs which have been subject to law enforcement measures were mostly active in the field of human rights, democracy and the rule of law. [...]. All of these activities belong among the classical activities exercised by NGOs and, especially, by human rights defenders and the engagement in them should therefore not entail any negative consequences for NCOs, including additional legal obligations.

In addition, the scope of ‘political activities’ is limited to activities carried out ‘*for the purpose of influencing the adoption by the state bodies of decisions aimed at changing the state policy pursued by them, as well as in forming public opinion for the cited purposes*’ [...]. Thus, two NCOs receiving foreign funding and engaging in the same type of activities would or would not count as a ‘foreign agent’ depending on whether their actions are or are not in line with the state policy. [...]

“The Venice Commission is therefore of the opinion that the definition of ‘political activities’ needs to be carefully *reformulated* – and consistently applied – so as not to target human rights defenders and NCOs advocating, by lawful means and within the limits of the national legislation, peaceful changes of governmental policy.”

CDL-AD(2014)02 – Opinion on Federal Law No. 121-FZ on non-commercial organisations (“Law on foreign agents”) and on federal laws No. 18-FZ and No. 147-FZ on Federal Law No. 190-FZ on making amendments to the Criminal Code (“Law on treason”) of the Russian Federation, §§ 83, 84 and 86

e. Additional supervision and sanctions in respect of foreign-funded NGOs

“Recommendation CM/Rec(2007)14 states that ‘*NGOs can be required to submit their books, records and activities to inspection by a supervising agency where there has been a failure to comply with reporting requirements or where there are reasonable grounds to suspect that serious breaches of the law have occurred or are imminent*’ (par. 68), and ‘*NGOs should not be subject to search and seizure without objective grounds for taking such measures and appropriate judicial authorisation*’ (par. 69).

The way in which the law is applied in practice does not seem to be consistent with this standard. More than 200 extraordinary inspections of NCOs were carried out in 2011-2012; other inspections followed after the entry into force of Law 121-FZ. The reasons and legal grounds for these inspections in many cases did not appear to be clearly defined. The extent of the inspections differed. [...]

“The Venice Commission recommends that the practice of inspections be brought in line with international standards. Extraordinary inspections should not take place unless there is suspicion of a serious contravention of the legislation or any other serious misdemeanour. Inspections should only serve the purpose of confirming or discarding the suspicion and should never be aimed at molesting NCOs and preventing them from exercising activities consistent with the requirements of a democratic society.”

CDL-AD(2014)02 – Opinion on Federal Law No. 121-FZ on non-commercial organisations (“Law on foreign agents”) and on federal laws No. 18-FZ and No. 147-FZ on Federal Law No. 190-FZ on making amendments to the Criminal Code (“Law on treason”) of the Russian Federation, §§95, 96, and 98

“The dissolution of a NCO and the prolonged suspension, amounting to its de facto dissolution should be limited to the three grounds recognised by the international standards: bankruptcy; long-term inactivity and serious misconduct. They should only be applied as a last resort, when all less restrictive options have been unsuccessful. Enforced dissolution of a NCO may only be pronounced by an impartial and independent tribunal in a procedure offering all guarantees of due process, openness and a fair trial. The effects of the decision on dissolution should be suspended pending the outcome of judicial review. Severe criminal sanctions should only be applied in case of serious wrongdoing and should always be proportional to this wrongdoing.”

CDL-AD(2014)02 – Opinion on Federal Law No. 121-FZ on non-commercial organisations (“Law on foreign agents”) and on federal laws No. 18-FZ and No. 147-FZ on Federal Law No. 190-FZ on making amendments to the Criminal Code (“Law on treason”) of the Russian Federation, §106

“During the visit to Budapest, the Venice Commission was informed that no new, separate register was to be established for organisations receiving foreign funding. Rather, the information is to be added to the already existing register of civil society organisations which is regulated by Act No. 181/2011 on the *Court Registration of Civil Society Organisations and the Related Rules of Procedure*. This solution is to be welcomed, as creating a separate register might strengthen the perception that the Draft Act aims at stigmatising certain civil society organisations, based solely on their source of financing.

The Draft Law also regulates a “deregistration” procedure. According to Article 4, if the money or other assets allocated from abroad to an organisation which has been registered as an organisation receiving support from abroad, do not reach the relevant threshold in any of three consecutive fiscal years, the organisation may, within 30 days from the adoption of its annual report for the year when this circumstance occurs, inform the Registering Court and apply for a deregistration which shall be carried out without delay.

The period of three years is relatively long and there seems to be a certain imbalance between the registration, which is to take place immediately after the financial threshold is reached, and the deregistration, which may not occur earlier than three years after the registration. The Hungarian authorities explained that the three-year period should reflect the fact that financial support from abroad received in one year can be used in several subsequent years. While this might be true, the period appears excessive and also rather arbitrary. Since the deregistration takes place on the basis of an annual report, a one-year period should be sufficient to cover situations, in which funding is in the second part of the year and then necessarily spent in the next year only.”

CDL-AD(2017)015 , Opinion on the Draft Law on the Transparency of Organisations receiving support from abroad of Hungary, §§ 47, 48 and 49.

“The Venice Commission considers that it is legitimate for States to monitor, in the general interest, who the main sponsors of civil society organisations are. It could also be legitimate, in order to secure transparency, to publicly disclose the identity of the main sponsors.

Disclosing the identity of all sponsors, including minor ones, is, however excessive and also unnecessary, in particular with regard to the requirements of the right to privacy as enshrined under Article 8 ECHR. These sponsors can hardly have any major influence on the relevant organisation and there is thus no legitimate reason and necessity for their inclusion in the list available to the public. The Venice Commission therefore calls upon the Hungarian authorities to limit the data included in the public register to that relating only to major sponsors (who could be defined, for instance, as those having provided a sum not lower than that specified in Article 6(1) of Act CXXXVI of 2007).”

CDL-AD(2017)01 – Opinion on the Draft Law on the Transparency of Organisations receiving support from abroad of Hungary, §§ 52, 53.

“The use of the label “organisation receiving support from abroad” on all press products and publications produced by the relevant civil society organisation does not seem to be proportionate to, and necessary with respect to, the declared legitimate aim pursued by the draft law, that of ensuing transparency for the purposes of preventing undue foreign political influence and combatting money-laundering and terrorism financing. The labelling obligation on press products and all other communications is extremely broad in scope and appears to cover every communication the civil society organisation publishes to any person in any circumstances. The information that an organisation has received foreign funding above the threshold of 7.2 million forints is already included in the register, which is publicly available. The same register contains the list of the sponsors of the organisation. This mechanism seems to guarantee transparency in a sufficient way and it is not clear why the information about the financial support from abroad should be constantly repeated and why it should be indicated even on publications fully sponsored from domestic sources. Such a requirement might further strengthen the impression that receiving foreign funding is considered as an *a priori* suspicious activity that has to be closely monitored all the time.”

CDL-AD(2017)01 – Opinion on the Draft Law on the Transparency of Organisations receiving support from abroad of Hungary, §55.

“83. The Venice Commission deems it necessary to distinguish between “*reporting obligations*” and “*public disclosure obligations*” imposed on associations concerning their financial resources.¹⁰⁰ A “*reporting obligation*” consists in reporting the amount and the origin of the funding to the relevant authorities. In contrast, a “*public disclosure obligation*” consists in making public, for instance on the website of the association concerned or in the press or the official journal, the source of funding (either domestic or foreign) and potentially, the identity of donors. The goal of a public disclosure obligation is not to inform the authorities but to inform the public. Disclosure duties normally add up to already existing reporting obligations.”

93. Under these circumstances, a “reporting obligation” which consists of reporting the amount and the origin of the funding (either foreign or domestic origin) to the authorities or to a regulatory state body to allow state authorities to fight against crime in an efficient manner appears in principle to be relevant/appropriate to the legitimate aim of fight against terrorism financing/money laundering.

94. Nevertheless, for the Venice Commission, the same conclusion cannot be drawn concerning a “public disclosure obligation”. Combatting terrorism is a duty incumbent upon the State, not upon the general public. The mere fact of letting the general public know what are the sources of financing of a given association does not seem to add to the effectiveness of the action of the authorities.

95. In conclusion, the Venice Commission considers that the reporting obligations imposed on associations concerning the origin of their financing can be considered as pursuing the legitimate aim of ensuring national security and prevention of disorder and crime under Article 11(2) ECHR and Article 22(2) ICCPR, since their aim is to provide the state with the necessary information to fight against crime, including terrorism financing and money laundering. To the contrary, the obligation to make public the information about the source of the funding (public disclosure obligation) does not appear to be capable of pursuing the same objective.”

CDL-AD(2019)002 Report on Funding of Associations, §§ 83, 93, 94, 95.

“104. For these reasons, information on lobbying activities in the context of public decision-making process should be disclosed and that the rules on disclosure should be proportionate to the importance of the subject matter of the public decision-making process.

105. For the Venice Commission, lobbying activities fall therefore in between the political party activities and ordinary NGO activities. As indicated in the above-mentioned standards, the public has a clear interest in knowing the lobbying actors who have access to government decision making process for the purpose of influence, including their financial sources whether domestic or foreign.

106. Therefore, the Venice Commission is of the opinion that such a drastic measure, as “public disclosure obligation” (i.e. making public the source of funding and the identity of the donors) may only be justified in cases of political parties and entities formally engaging in remunerated lobbying activities. In the latter case, the public disclosure obligation may be seen as pursuing the aim of ensuring transparency of the – political – influence exerted by lobbying groups on the process of formation of political institutions and on the political decision-making process (therefore, protection of the representative democracy) which may be considered as falling within the scope of the legitimate aim of “prevention of disorder” under the second paragraph of Article 11 ECHR which encompasses according to the ECtHR case-law, “the institutional order”¹³⁶. In the case of *Vona v. Hungary*, the ECtHR considered that “*Social movements may play an important role in the shaping of politics and policies, but compared with political parties such organisations usually have fewer legally privileged opportunities to influence the political system. However, given the actual political impact which social organisations and movements have, when any danger to democracy is being assessed, regard must be had to their influence.*” On the other hand, in case the association concerned does not perform any remunerated lobbying activities, the imposition of a blanket “disclosure obligation” concerning the financial sources and the identity of the donors cannot be justified with the broadly defined political nature of the activities conducted by the association. Admittedly, it might not always be easy to determine what constitutes “formal lobbying” in the absence of a clear legal definition. In such cases, this notion should be interpreted restrictively.”

CDL-AD(2019)002 Report on Funding of Associations, §§ 104, 105, 106.

“107. Recommendation CM/Rec(2007)14 on the legal status of non-governmental organisations in Europe states that NGOs should be assisted in the pursuit of their objectives through public funding and adds that NGOs which have been granted any form of public support can be required to have their accounts audited by an institution or person independent of their management.

108. Like the Committee of Ministers, the Venice Commission is of the view that some “public disclosure obligations” can be imposed on associations with public utility status, but those obligations should be limited to information on how the public funds obtained by the association concerned are spent. The disclosure obligations should not be extended to all financing, including from private donors. In addition, all reporting should be subject to a duty to respect the rights of donors, beneficiaries and staff, as well as the right to protect business confidentiality.”

CDL-AD(2019)002 Report on Funding of Associations, §§ 107, 108.

“110. First, the principle of proportionality requires that, at the legislative stage, an assessment be made on whether the interference in the exercise of the right to freedom of association is the least intrusive of all possible means that could have been adopted. The authorities therefore bear the burden of proving that any restriction pursues a legitimate aim and that this aim cannot be fulfilled by any less intrusive actions. The required level of detail and the existence of unrealistically short and strict deadlines for submitting the information are other examples of onerous reporting obligations. Moreover, a concrete risk analysis should be made

concerning the involvement of associations in the commission of crimes such as corruption and money laundering in order to justify the measures imposed.

111. Secondly, the cumulative effect of all legal rules on the freedom needs to be assessed, since the overlap of additional reporting obligations with other already existing reporting obligations (whether they are of a fiscal nature or otherwise) is likely to create an environment of excessive State monitoring over the activities of NGOs, which could hardly be conducive to the effective enjoyment of freedom of association.

112. In the same vein, States have at their disposal alternative instruments such as banking laws or financial surveillance mechanisms to fight against money laundering and criminal laws, including specific anti-terror legislation, to address terrorism and terrorism financing threat. Therefore, the priority, in the fight against crime, should be given to the already existing relevant legislation and mechanisms, before resorting to additional cumbersome regulations concerning financing, including foreign financing, of associations. (...)

113. Lastly, the necessary measures should not be used to restrain dissenting views and to justify repressive practices against the political opposition.(...)"

CDL-AD(2019)002 Report on Funding of Associations, §§ 110, 111, 112, 113.

- f. Sanctions imposed in case of violation of obligations imposed on foreign funded organisations

"The Venice Commission welcomes the gradual process of sanctioning that the provision introduces and the fact that all the important decisions (on the fine, dissolution and cancellation) are taken by a judicial organ."

CDL-AD(2017)015 , Opinion on the Draft Law on the Transparency of Organisations receiving support from abroad of Hungary, §59.

"First, the Draft Law seems to suggest that the sanction procedure should apply to all instances of non-fulfilment of an obligation foreseen under the Draft Law, regardless of the nature of this obligation (Article 3(1) speaks of the failure to comply with "obligations", thus in plural). During the discussion in Budapest, some interlocutors embraced this view, whereas others opined that the provision of Article 3 should only apply to instances of non-fulfilment of the most important obligation (typically the obligation to register as an organisation receiving support from abroad) and/or to instances of serious non-fulfilment of obligations such as refusal to disclose the identity of any donors. The Venice Commission calls upon the Hungarian authorities to clarify this point, ideally along the lines of the latter interpretation in line with the proportionality principle.

Secondly, the text also seems to suggest that the sanction procedure is rather rigid, with no discretion granted either to the prosecutor or to the judge to decide whether to initiate the procedure (prosecutor) and which sanctions to impose (judge). Again, the Venice Commission was confronted with contradictory interpretations of the provisions, with some interlocutors claiming that the procedure had to be strictly followed as prescribed in the text, whereas others suggesting that the prosecutor/judge had discretion. This point needs to be made clear in the draft. In principle, the judge involved in the procedure in particular has to have sufficient discretion in order to be able to make an appropriate proportionality assessment of the sanction to be imposed on the association or foundation to the seriousness of the breach of obligation stemming from the Draft Law.

CDL-AD(2017)01 – Opinion on the Draft Law on the Transparency of Organisations receiving support from abroad of Hungary, §60, 61

“The sanctions proposed by draft law No. 6675 are highly problematic in light of these standards. First of all, the draft amendments to Article 133.4.4 of the Tax Code lack the necessary clarity regarding the enforcement of sanctions; a strict reading seems to imply that the different sanctions would be imposed cumulatively. Representatives of the State Fiscal Service confirmed this understanding, while at the same time underscoring the need for more precise provisions.⁶⁹ In any case, the sanctions appear severe and disproportionate because loss of the non-profit status (coupled with tax penalties and fines) is the only and automatic penalty, depriving the authorities of having any discretion to impose a penalty which was appropriate to the particular circumstances under consideration. Loss of the non-profit status would, according to the statements made by several CSOs, put at risk their very existence. Less severe sanctions such as warnings or small fines would be more adequate, at least for certain minor violations of the rules, and such sanctions should be available, if appropriate. Loss of the non-profit status should either be removed from the list of sanctions or should only be available as a sanction of last resort. On previous occasions, the Venice Commission has expressed its clear preference for penalties to be imposed along a gradual scale of punishment.⁷⁰ In any case, even before the issuance of a warning, the public association should be offered the possibility to seek clarifications about the alleged violation. There should thus be a range of sanctions which are proportional to the gravity of the wrongdoing⁷¹ (i.e. short delay or complete failure to report, minor unintentional mistakes or intentional misinformation, etc. should lead to lighter sanctions), and the possibility to correct errors should be provided for.”

CDL-AD(2018)006-e Ukraine – Joint Opinion on Draft Law No. 6674 “On Introducing Changes to Some Legislative Acts to Ensure Public Transparency of Information on Finance Activity of Public Associations and of the Use of International Technical Assistance” and on Draft Law No. 6675 “On Introducing Changes to the Tax Code of Ukraine to Ensure Public Transparency of the Financing of Public Associations and of the Use of International Technical Assistance”, §52.

“116. The Venice Commission has, in recent years, dealt with laws directed at NGOs receiving foreign funding,¹⁴⁷ in which it assessed *inter alia* the proportionality of sanctions imposed on NGOs in case of breach of the rules concerning the reporting and disclosure obligations in relation to their funding laid down in laws. The principle of proportionality gains increased significance when assessing whether an association may be prohibited or dissolved, as such measures should always be a means of last resort, i.e. in cases where an association has engaged in conduct causing an imminent danger of violence or other serious breach of the law. The ECtHR has stated that involuntary dissolution is the most drastic sanction possible in respect of an association and, as such, should be applied only in exceptional circumstances of very serious misconduct. Therefore, the authorities may never resort to such measures as prohibiting or dissolving an association on the basis of minor law-breaking. A mere failure to respect certain legal requirements or irregularities in internal management of non-governmental organisations cannot be considered such serious misconduct as to warrant outright dissolution. Domestic law should thus delimit precisely the circumstances in which such drastic sanctions could be applied.”

“118. Similarly, the automatic imposition of sanctions excludes any discretion by the judge which would allow him/her to make an appropriate proportionality assessment of the sanction imposed on the association based on the seriousness of the breach of the reporting obligations. Such an automatic sanction seems contrary to the requirement that it needs to be assessed whether a particular sanction is proportionate in the given circumstances.

119. The authorities must take care to apply the measure that is the least disruptive and destructive of the right to freedom of association. There should thus be a range of sanctions which are proportionate to the gravity of the wrongdoing. Irregularities as regards reporting obligations or minor unintentional mistakes, for example, should lead to lighter sanctions.

121. The principle of proportionality also requires that the judge involved in the sanction procedure should have sufficient discretion in order to be able to make an appropriate proportionality assessment of the sanction to be imposed on the association based on the seriousness of the breach of obligation stemming from the legislation. This is the reason why any rigid and automatic sanction procedure, such as blanket restrictions, with no discretion granted to the prosecutor or to the judge to decide whether to initiate the procedure and which sanctions to impose, or any automatic dissolution for breaching the reporting/disclosure obligations without recourse to a court, are deemed to lead to disproportionate sanctions on associations.”

CDL-AD(2019)002 Report on Funding of Associations, §§ 116, 118, 119, 212.

c. Public support

“The not-for-profit nature of associations and their importance to society means that state support may be necessary for their establishment and operations. State support in this context is also understood as access to public resources, including public funding.

The recognition of associations or foundations as being of public utility is thus related to the concept of granting public support to NGOs as provided for in Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the Legal Status of Non-Governmental Organisations in Europe (NGOs should be assisted in the pursuit of their objectives through public funding and other forms of support; para. 57) and in the Joint Guidelines (para. 203). This kind of support (irrespective of its form) must be governed by clear and objective criteria ; grant of this support can depend on the nature and beneficiaries of the activities undertaken by an NGO, on its legal form, etc¹³. Any system of state support must be transparent.

The very nature of the public support presumably provides a State with wider discretion (as compared to other matters related to the establishment and activities of NGOs) to legally regulate the conditions for providing it. The provision of public support, therefore, can be conditional upon certain objectives being pursued or certain activities being undertaken.¹⁵ It may be made conditional, among others, on the requirement that NGOs that are about to receive such support address those needs of society considered to be a particular priority; in addition, what is seen as a priority and thus what forms of activity are regarded as worthy of public support can change over time. In case the objectives or activities pursued by the NGO which is granted public support change, the provision of public support may be reviewed.

The criteria for determining the distribution of public funds must be objective and non-discriminatory, and need to be clearly stated in laws and/or regulations that are publicly available and accessible. When distributing public funds among different non-governmental organisations, it is thus essential that the state follow clear, pre-determined and objective criteria which allow for a neutral and objective selection of possible recipients.

Generally, NGOs that have been granted any form of public support can be required to submit reports on their accounts and an overview of their activities each year to a designated supervising body. However, such a reporting obligation should not be unduly burdensome and should not require the associations to submit excessive details on either their activities or their accounts.”

CDL-AD(2018)004-e Romania – Joint Opinion on Draft Law No. 140/2017 on amending Governmental Ordinance No. 26/2000 on Associations and Foundations, §§ 35-36-37-38-39.

“The nature, category or regime of an association may, among others, be a relevant consideration when deciding to grant it public support and states have considerable discretion to decide which societal objectives are of a general interest and, therefore, more encouraged to be pursued within the means of NGOs (for instance, by providing state financial support). According to Recommendation CM/Rec(2007)014 of the Committee of Ministers, “*the nature and beneficiaries*

*of the activities undertaken by an NGO can be relevant considerations in deciding whether or not to grant it any form of public support". It follows that linking the recognition of public utility status to the requirement that an NGO pursues activities in certain specific areas, i.e. activities considered to be related to general or community interest according to law, should not be *per se* considered as having harmful effects on the freedom of association."*

CDL-AD(2018)004-e Romania – Joint Opinion on Draft Law No. 140/2017 on amending Governmental Ordinance No. 26/2000 on Associations and Foundations, §45.

"NGOs should be free to support a particular candidate or party in an election or a referendum provided that they are transparent in declaring their motivation (this support should be subject to legislation on the funding of elections and political parties). In general, the requirement of non-involvement in political activities in order to receive state support may be justified by the very nature of public support and the resulting discretion of the State to determine the conditions for obtaining it. Providing financial support to an NGO with an outspoken political profile could be at odds with "the State's role as the neutral and impartial organiser" of public affairs and open to abuse. Nonetheless, even when exercising this discretion, the State should (taking into account the freedom of NGOs to participate in political activities) respect the requirements of the permissible limitations on the right to freedom of association foreseen by Article 11(2) of the ECHR."

CDL-AD(2018)004-e Romania – Joint Opinion on Draft Law No. 140/2017 on amending Governmental Ordinance No. 26/2000 on Associations and Foundations, §53.

"While this aim to increase transparency of the process of supporting certain entities with public funds is no doubt legitimate, it is questionable whether the publication of such reports (as opposed to an internal evaluation of continued eligibility) would truly be necessary to assess whether or not an association or foundation remains eligible for public utility status. Moreover, public reports declaring that certain associations no longer fulfill the criteria for maintaining public utility status could have negative, and not always justified repercussions for the reputation of the respective association or foundation, and could possibly lead to a loss of support from members and donors. It should also be borne in mind that the adoption of this provision would constitute a considerable and again potentially unnecessary increase in the workload of both the competent administrative authority, and the Ministry of Justice.

Rather than impose this additional oversight mechanism, it would be advisable to retain the current system, whereby the competent administrative authority and Ministry of Justice review compliance with the requirements of the Government Ordinance internally, and then recommend withdrawal of public utility status if needed. In these cases, associations and foundations should be involved in this process, and should have the opportunity to refute any impressions that they do not fulfill the criteria for maintaining public utility status. Moreover, not all cases of non-fulfillment should automatically lead to withdrawal of recognition of public utility status. Rather, a proportionate approach should be adopted, that would allow the relevant association or foundation to remedy themselves cases where they do not fulfill the relevant requirements prior to being struck off the list of public utility organisations. Minor violations of the respective provisions could also lead to fines, or suspension of benefits, rather than to outright withdrawal of public utility status."

CDL-AD(2018)004-e Romania – Joint Opinion on Draft Law No. 140/2017 on amending Governmental Ordinance No. 26/2000 on Associations and Foundations, §§ 59-60.

D. Liability and dissolution of NGOs

“The Venice Commission recalls that the dissolution of an NGO is an extreme measure, which needs to be based on a well-founded rationale and it is well established under the international case-law that it can only be resorted to in exceptional situations.”

CDL-AD(2011)03 – Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §107

“The European Court of Human Rights has dealt with several cases relating to problems with NGO registration and dissolution. In a recent case against Azerbaijan the European Court of Human Rights stated that: *‘A mere failure to respect certain legal requirements or internal management of non-governmental organisations cannot be considered such serious misconduct as to warrant outright dissolution. [...] The immediate and permanent dissolution of the Association constituted a drastic measure to the legitimate aim pursued. Greater flexibility in choosing a more proportionate sanction could be achieved by introducing in the domestic law less radical alternative sanctions, such as a fine or withdrawal of tax benefits.’*”

CDL-AD(2011)03 – Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §85

“The dissolution of a NCO and the prolonged suspension, amounting to its de facto dissolution should be limited to the three grounds recognised by the international standards: bankruptcy; long-term inactivity and serious misconduct. They should only be applied as a last resort, when all less restrictive options have been unsuccessful. Enforced dissolution of a NCO may only be pronounced by an impartial and independent tribunal in a procedure offering all guarantees of due process, openness and a fair trial. The effects of the decision on dissolution should be suspended pending the outcome of judicial review. Severe criminal sanctions should only be applied in case of serious wrongdoing and should always be proportional to this wrongdoing.”

CDL-AD(2014)02 – Opinion on Federal Law No. 121-FZ on non-commercial organisations (“Law on foreign agents”) and on federal laws No. 18-FZ and No. 147-FZ on Federal Law No. 190-FZ on making amendments to the Criminal Code (“Law on treason”) of the Russian Federation, §106

“Moreover, the Venice Commission wishes to stress that ‘liquidation’ should occur, in principle, as a last resort or in particularly serious cases and following a public hearing providing the possibility for the organisation or individual concerned to be aware of and challenge the evidence brought against it or him/her.”

CDL-AD(2012)01 – Opinion on the federal law on combating extremist activity on the Russian Federation, §61

“The Venice Commission and OSCE/ODIHR recall that the principles and protection laid down in the ICCPR apply also to non-registered NGOs. While it is legitimate for states to sanction violations of their legal order, the sanction always needs to comply with the principle of proportionality. As the Committee of Ministers stated in the Recommendation CM/Rec(2007)14, ‘the appropriate sanction against NGOs for breach of the legal requirements applicable to them (including those concerning the acquisition of legal personality) should merely be the requirement to rectify their affairs and/or the imposition of an administrative, civil or criminal penalty on them and/or any individuals directly responsible. Penalties should be based on the law in force and observe the principle of proportionality’ (para 72). The European Court of Human Rights has indicated that a mere failure to respect certain legal requirements or internal management of non-governmental organisations might justify sanctions such as a fine or withdrawal of tax benefits. The dissolution of an NGO is an extreme measure, which needs to be based on a well-founded

rationale and it is well established under the international case-law that it can only be resorted to in exceptional situations.”

“Interfering with financial transactions of a structural unit of a foreign non-commercial organization is a serious interference with the work of such organizations, and should be limited only to the most serious offences affecting national security, the public order, health and morals, or the rights and freedoms of others. References to ‘the constitutional order’ should be removed from the new wording of Article 17, as proposed by the Draft Law.”

CDL-AD(2013)03 – Joint Interim Opinion on the Draft Law amending the Law on non-commercial Organisations and other legislative Acts of the Kyrgyz Republic, §§81 and 88

“Article 70 provides for sanctions ‘without prejudice to any greater penalty stipulated in the Criminal Code or any other law’. The Venice Commission has been informed that there exist very restrictive provisions in the Egyptian criminal code which severely punish NGOs which carry out activities without having been specifically authorised to do so. The Venice Commission urges the Egyptian authorities to proceed with the abrogation of the existing restrictive criminal provisions by way of urgency, either through this Draft Law or otherwise.

The Venice Commission finds that it is very positive that the principle of proportionality is explicitly provided in the application of penalties by courts (article 72).”

CDL-AD(2013)02 – Interim Opinion on the Draft Law on Civic Work Organisations of Egypt, §§67-68

“[...] The Venice Commission endorses the assessment of the Constitutional Court of Russia that ‘the amounts of administrative fines should correspond to the nature and degree of social danger of offenses and have a reasonable deterrent effect to ensure the enforcement of prohibitions under administrative and tort law. [...] Courts should take into account the nature of digressions from the rules of exercise of political activity by a non-commercial organization performing the functions of a foreign agent, the scale and consequences of political actions organized and/or carried out, and other circumstances characterising the degree of social danger of the committed administrative offense, and impose a maximum fine only if a smaller fine would not properly ensure the prevention of new offenses by the same or other offenders’. The Court moreover assessed that: ‘it becomes extremely difficult and sometimes impossible to ensure, as the Constitution requires, an individual approach to imposing an administrative fine with the minimum of one hundred thousand Rubles for officers and three hundred thousand Rubles for legal persons, especially because no alternative is provided for. [...]. Thus, the provision of part 1 of Article 19.34 of the Code of the Russian Federation on Administrative Offenses that establishes minimum sizes of the administrative penalty in the amount of one hundred thousand Rubles for officers and three hundred thousand Rubles for legal persons does not conform to the Constitution of the Russian Federation [...].”

CDL-AD(2014)02 – Opinion on Federal Law No. 121-FZ on non-commercial organisations (“Law on foreign agents”) and on federal laws No. 18-FZ and No. 147-FZ on Federal Law No. 190-FZ on making amendments to the Criminal Code (“Law on treason”) of the Russian Federation, §63

“There must be convincing and compelling reasons justifying the dissolution and/or temporary forfeiture of the right to freedom of association. Such interference must meet a pressing social need and be “proportionate to the aims pursued.”

CDL-AD(2011)03 – Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §88
See also

CDL-AD(2011)03 – Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §120

“[...] A dissolution that does not pursue a pressing social need cannot be deemed necessary in a democratic society.”

CDL-AD(2011)03 – Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §87

“The Venice Commission cannot but recall that a decision that serves as the basis for a court’s decision to dissolve an association must meet the requirements of being prescribed by law and pursue a legitimate aim and be necessary in a democratic society. A warning preceding dissolution based on a broad interpretation of vague legal provisions does in itself constitute a violation. [...]”

CDL-AD(2011)03 – Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §87

See also

CDL-AD(2012)01 – Opinion on the federal law on combating extremist activity on the Russian Federation, §52

“The Venice Commission acknowledges that the final decision with regard to the liquidation of an association or organisation having engaged in extremist activities belongs to a court. [...]. A generally accepted method to prevent freedom of association from being abused for criminal purposes, including the violation of human rights, is to react to its real activities and to conduct proceedings which would determine whether these are prohibited by law.”

CDL-AD(2012)01 – Opinion on the federal law on combating extremist activity on the Russian Federation, §59

“[A]rticle 40(2) does not seem to take into account the distinction made by the Venice Commission between the objectives and activities of political parties when it comes to the criteria for the prohibition or dissolution of parties. A comparative overview shows that ‘only a few states prohibit party objectives and opinions as such. It is more common that the national criteria refer to illegal means, such as the use of violence. But the most common model in those countries that have rules on party prohibition is that prohibition requires both unlawful means (activities) and illegitimate ends (objectives)’.”

CDL-AD(2014)01 – Opinion on the draft law on the review of the Constitution of Romania, §83

“The Commission is not convinced that any failure to fulfil the reporting or disclosure obligations stemming from the Draft Law could be qualified as serious misconduct which justifies the imposition of such a drastic measure as dissolution. For the Commission, two different situations should be distinguished from each other: either a given civil society organisation is engaged in criminal activity, for instance money laundering or terrorism financing, in which case its dissolution can be proportionally pronounced by courts on the basis of general provisions of the Act on the Freedom of Association or other applicable legislation, or the only misconduct which can be reproached to this organisation is its failure to fulfil the obligations under the Draft Law on Transparency. For the Commission, in this last case, the dissolution appears to be a disproportionate measure. For these reasons, the Venice Commission is of the view that reference to the dissolution of the association should be removed from the Draft Law.”

CDL-AD(2017)01 – Opinion on the Draft Law on the Transparency of Organisations receiving support from abroad of Hungary, §62.

“(…) any automatic dissolution without recourse to a court which would be in breach *inter alia* of the right of access to court, should be excluded. The judge involved in the procedure needs to have sufficient discretion in order to be able to make an appropriate proportionality assessment of the sanction to be imposed on the association or foundation based on the seriousness of the breach of obligation stemming from the draft law. In light of these considerations, there exists no conceivable scenario where the dissolution of an association merely for failing to submit a financial report would be proportionate under international law. Also for this reason, the draft provision should be repealed. On previous occasions, the Venice Commission has expressed its clear preference for penalties to be imposed along a gradual scale of sanctions,⁵⁴ including the issuance of warnings and imposition of fines before deciding the dissolution of the association, proportional to the gravity of the wrongdoing and offering the possibility to rectify the breach.⁵⁵ In any case, even before the issuance of a warning, the public association should be offered the possibility to seek clarifications about the alleged violation. It is therefore recommended that a gradual sanctions scheme be introduced in the draft law, on the basis of an assessment made by the judge, which shall be proportional to the nature of the obligation stemming from the law and to the seriousness of the breach of such obligation. Moreover, the relevant associations/foundations should have the right to appeal, with suspensive effect⁵⁶ (which is currently not mentioned in the Government Ordinance).”

CDL-AD(2017)01 – Opinion on the Draft Law on the Transparency of Organisations receiving support from abroad of Hungary, §81.

E. Supervision and reporting obligations

“The Venice Commission and the OSCE/ODIHR recall that, under current human rights standards, ‘states have a right to satisfy themselves that an association’s aim and activities are in conformity with the rules laid down in legislation’, provided they do so ‘in a manner compatible with their obligations under the [European] Convention’ and other international instruments. While it is understood that state bodies should be able to exercise some sort of [limited] control over non-commercial organizations’ activities with a view to ensuring transparency and accountability within the civil society sector, such control should not be unreasonable, overly intrusive or disruptive of lawful activities. Excessively burdensome or costly reporting obligations could create an environment of excessive State monitoring over the activities of non-commercial organizations. Such an environment would hardly be conducive to the effective enjoyment of freedom of association. Reporting requirements must not place an excessive burden on the organization. […]”

“Overall, the State has the duty not to interfere with the crucial activities of any established association. Once the association is set up, the essential relationships are between this body and its members and between this body and non-members. State supervision and intervention should only be limited to cases in which this is necessary to protect the members, the public, or the rights of others. Non-commercial organizations should, therefore, not be subject to direction by public authorities. The corollary to the principle of the independence of associations from the government is that they should be entitled to decide their own internal structure, to choose and manage their own staff and to have their own assets. The State may not issue instructions on the management and activities of the associations.

State supervision should be limited to cases where there are reasonable grounds to suspect that serious breaches of the law have occurred or are imminent. In the absence of evidence to the contrary, the activities of associations should be presumed to be lawful.”

CDL-AD(2013)03 – Joint Interim Opinion on the Draft Law amending the Law on non-commercial Organisations and other legislative Acts of the Kyrgyz Republic, §§69, 75, 76

“While it is legitimate for States to regulate the minimal content of NGOs’ Statutes, the Venice Commission considers that States should refrain from excessive control over the internal matters of associations such as the regularity of their meetings, compliance of the activities of associations with these associations’ own statutes or requirement for membership. State control on these matters is only justified in exceptional circumstances in order to ensure compliance with international obligations for non-discrimination and the protection of the fundamental rights of association’s members. Requirements relating to the content of the documents in the appointment of NGOs’ representatives, e.g. the requirement that the period of service be indicated in the appointment document, are examples of such excessively interferences.”

CDL-AD(2014)043, Opinion on the Law on Non-Governmental Organisations(Public Associations and Funds) as amended, of the Republic of Azerbaijan, §50.

“In principle, it should be left to internal regulations of NGOs (e.g. the statutes of the association, internal complaint procedures and disciplinary sanctions) to determine the ways in which conflicts and disputes arising within such NGOs will be solved, as long as no criminal acts are involved. While submitting the conflict or dispute to a court should be an option, most probably reserved for extreme cases involving violations of laws and/or rights of members, it shall not be the only option; the wording of this provision suggests that this might be the case at hand.”

CDL-AD(2014)043, Opinion on the Law on Non-Governmental Organisations(Public Associations and Funds) as amended, of the Republic of Azerbaijan, §76.

“Examining the compatibility of the activity of NGOs with their own Statutes is clearly not the task of state authorities, unless very serious misgivings are at stake. It is up to each NGO to monitor the compliance with its Statute and determine sanctions for their violations. The internal functions of associations should be free from state interference. Autonomy is a cornerstone of the right to freedom of association. Consequently, under no circumstances should associations suffer sanctions on the sole ground that their activities breach their own internal regulations. On the other hand, state authorities may, and should, monitor the compliance with national laws, yet in this respect NGOs should not be in any different position than other entities (natural or legal persons) operating at the territory of the state. The word “with their statutes” should therefore be deleted.”

CDL-AD(2014)04 – Opinion on the Law on Non-Governmental Organisations(Public Associations and Funds) as amended, of the Republic of Azerbaijan, §77.

“All reporting requirements, regardless of whether NGOs have been granted a form of public support or not, should be appropriate to the size of the association and the scope of its operations and should be facilitated to the extent possible through information technology tools. Associations should not be required to submit more reports and information than other legal entities, such as businesses. In addition, all reporting should at the same time ensure respect for the rights of members, founders, donors, beneficiaries and staff, as well as the right of the association to protect legitimate business confidentiality. Obligations to report should be tempered by other obligations relating to the right to security of beneficiaries and to respect for their private lives and confidentiality; any interference with respect for private life and confidentiality should observe the principles of necessity and proportionality. States shall refrain from imposing burdensome administrative requirements on NGOs and must always limit interference with the right to freedom of association based on necessity and proportionality requirements.”

CDL-AD(2018)004-e Romania – Joint Opinion on Draft Law No. 140/2017 on amending Governmental Ordinance No. 26/2000 on Associations and Foundations, §40.

“All reporting requirements, regardless of whether NGOs have been granted a form of public support or not, should be appropriate to the size of the association and the scope of its operations and should be facilitated to the extent possible through information technology tools. Associations should not be required to submit more reports and information than other legal entities, such as businesses. In addition, all reporting should at the same time ensure respect for the rights of members, founders, donors, beneficiaries and staff, as well as the right of the association to protect legitimate business confidentiality. Obligations to report should be tempered by other obligations relating to the right to security of beneficiaries and to respect for their private lives and confidentiality; any interference with respect for private life and confidentiality should observe the principles of necessity and proportionality. States shall refrain from imposing burdensome administrative requirements on NGOs and must always limit interference with the right to freedom of association based on necessity and proportionality requirements.”

CDL-AD(2018)004-e Romania – Joint Opinion on Draft Law No. 140/2017 on amending Governmental Ordinance No. 26/2000 on Associations and Foundations, §40.

“(…) the publication of donors’ personal information would make them publicly identifiable and information about their affiliation, political opinion or belief, may be deduced from the fact that they are donating to or dealing with certain NGOs and not others, which is likewise protected by the right to respect for private life. The fact that such information will be publicly available may have a chilling effect on them and other potential donors, thus running the risk of limiting public associations’ access to resources. Moreover, draft Article 48¹, as it stands now, does not contain a particular monetary threshold. Thus associations and foundations would be obliged to report all funding received, regardless of the amount. Non-governmental organisations would be required to include in the respective financial reports also minor sums received via crowd-funding, including SMS donations, or funds received via the existing regulation that individuals may decide to donate 2% of their tax payments to the civil society sector.

While it is understandable that the public has an interest in knowing how public funds are spent, there is no apparent ‘pressing need’ for the public to obtain detailed information with respect to private funding sources of associations’ or foundations’ activities (reports concerning the activities and financial statements of associations with public utility status should be published in Section IV of the Official Gazette according to Article 41 f) of the Government Ordinance). Under the EU’s Anti-Money Laundering Directive 2015/849, additional obligations would only involve reports to the Anti-Money Laundering Office, not the public. The Venice Commission and the OSCE/ODIHR also consider that in the current context in Romania, transparency as a means to combat fraud, corruption, money-laundering and other crimes may be ensured by imposing some reporting obligations concerning the financial sources to a regulatory body. However, it is doubtful whether the respective provisions are a proportionate means to achieve the intended aim, given the dangers that they pose for the privacy rights of the respective donors under Article 8 ECHR, and the considerable additional burden that such extensive and frequent reporting will pose for individual organisations. If all donors, regardless of whether public or private, or of the sum donated,⁴⁴ need to be mentioned by name in published reports, this may seriously affect the willingness of individuals to donate funds. Particularly in the case of smaller organisations, the above obligations will seriously impact their ability to function, and to implement their activities, especially as the required publication in the Official Gazette is quite costly, at 122 Lei (around 20 EUR) per page. The larger the number of donors, the more such publication will cost.

CDL-AD(2018)004-e Romania – Joint Opinion on Draft Law No. 140/2017 on amending Governmental Ordinance No. 26/2000 on Associations and Foundations, §§68-69.

VIII. Religious or belief organisations²

A. Right to associate with others on the basis of religion or other belief

“Article 9 ECHR and Article 18 ICCPR both guarantee the freedom to manifest religion or belief ‘in public or private’. [...]”

CDL-AD(2010)05 – Interim Joint Opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §35

“[...] [T]he autonomous existence of religious or belief communities is indispensable for pluralism in a democratic society and is an issue that lies at the very heart of the protection which the freedom of religion or belief affords. [...]”

CDL-AD(2014)02 – Joint Guidelines on the legal personality of religious or belief communities by the Venice Commission and the OSCE/ODIHR, §18

“[...] The freedom to manifest a religion or belief consists of the freedom of worship and the freedom to teach, practice and observe one’s religion or belief.[...]”

The *freedom to worship* includes, but is not limited to, the freedom to assemble in connection with a religion or belief and the freedom of communities to perform ritual and ceremonial acts giving direct expression to religion or belief as well as various practices integral to these, including the building and maintenance of freely accessible places of worship [...].

The *freedom to observe and practice* includes [...] the freedom to establish and maintain appropriate charitable or humanitarian institutions [...].

The *freedom of practicing and teaching religion or belief* includes, but is not limited to, acts integral to the conduct by religious groups of their basic affairs, such as the right to organize themselves according to their own hierarchical and institutional structure, select, appoint and replace their personnel [...].”

CDL-AD(2014)02 – Joint Guidelines on the legal personality of religious or belief communities by the Venice Commission and the OSCE/ODIHR, §§12, 13, 14 and 15

B. Access to legal personality

“Any denial of legal personality to a religious or belief community would therefore need to be justified under the strict conditions set out in Part I of the Guidelines. At the same time, under international human rights law, religious or belief communities should not be obliged to seek legal personality if they do not wish to do so. The choice of whether or not to register with the state may itself be a religious one, and the enjoyment of the right to freedom of religion or belief must not depend on whether a group has sought and acquired legal personality status. [...]”

CDL-AD(2014)02 – Joint Guidelines on the legal personality of religious or belief communities by the Venice Commission and the OSCE/ODIHR, §21

² It is recommended to read this section together with section XI of the compilation of the Venice Commission on the freedom of religion and belief, CDL(2013)042 (check for latest revisions of that document)

“There are a variety of ways of ensuring that religious or belief communities who wish to seek legal personality are able to do so. Some national legal systems do so through procedures involving the courts, others through an application procedure with a government agency. Depending on the individual state, a variety of different forms of legal personality may be available to religious or belief communities, such as trusts, corporations, associations, foundations, as well as various sui generis types of legal personality specific to religious or belief communities.”

CDL-AD(2014)02 – Joint Guidelines on the legal personality of religious or belief communities by the Venice Commission and the OSCE/ODIHR, §22

“[...] [G]aining access to legal personality should not be made more difficult for religious or belief communities than it is for other types of groups or communities. [...]”

CDL-AD(2014)02 – Joint Guidelines on the legal personality of religious or belief communities by the Venice Commission and the OSCE/ODIHR, §17

“[...] [A]ccess to legal personality for religious or belief communities should be quick, transparent, fair, inclusive and non-discriminatory.”

CDL-AD(2014)02 – Joint Guidelines on the legal personality of religious or belief communities by the Venice Commission and the OSCE/ODIHR, §24

C. Registration of religious or belief organisations

a. General principles governing the process of registration

“Matters concerning registration and rights and obligations [of religious organization] are connected with the freedom to manifest religion as guaranteed by Article 9(1) ECHR and can only be limited strictly according to the terms of Article 9(2) ECHR.”

CDL-AD(2010)05 – Interim Joint Opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR, §39

“Therefore, as the OSCE ODIHR/Venice Commission Guidelines for Review of Legislation Pertaining to Religion or Belief have submitted, legislation that protects only worship or narrow manifestation in the sense of ritual practice is inadequate.”

CDL-AD(2010)05 – Interim Joint Opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR, §42

See also

CDL-AD(2004)02 – the OSCE/ODIHR and the Venice Commission Guidelines for Review of Legislation Pertaining to Religion or Belief, §6.2

“As emphasized in the Guidelines religious association laws that govern acquisition of legal personality through registration, incorporation, and the like are particularly significant for religious organizations. [...] It is however appropriate to require registration for the purposes of obtaining legal personality and similar benefits, provided that the process is not unduly restrictive or discriminatory. While informal or unregistered associations are not unknown to the law, working through such organizations is unduly cumbersome and subjects the group to the vicissitudes of individual liabilities. As a result, denial of legal entity status may result in substantial interference with religious freedom. Legal status is for example necessary for receiving and administering voluntary contributions from members, [...] renting or acquiring places of worship, hiring employees, opening bank accounts, etc.”

CDL-AD(2010)05 – Interim Joint Opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR, §64

See also

CDL-AD(2004)02 – the OSCE/ODIHR and the Venice Commission Guidelines for review of legislation affecting religion or belief, II.F.1

“The Venice Commission understands that, in the light the historical and political context prevailing in Kosovo*,³ this margin of appreciation might be needed in trying to reach a compromise on issues relating to the sensitive area of religious freedom. Such a margin of appreciation is all the more warranted because there are no common European standards on all aspects of the legal recognition of religious communities. The Commission furthermore notes that, in this particular case, the differential treatment does not seem to be related to the possibility of obtaining legal personality, but only to its procedural dimension. [...]”

CDL-AD(2014)01 – Opinion on the draft law on amendments and supplementation of law no. 02/L-31 on freedom of religion of Kosovo*, §57

“Registering an association should be optional and not a legal requirement. There may, of course, be certain benefits to legal registration and hence it may be appropriate to impose certain necessary formalities upon religious communities for the purpose of registration. Nevertheless, making registration mandatory goes against the fundamental principle of freedom of religion and the applicable international human rights standards, also as regards freedom of association, protected under Article 11 of the ECHR and Article 22 of the ICCPR.”

CDL-AD(2012)02 – Joint Opinion on the law on freedom of religious belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR, §79

See also

CDL-AD(2004)02 – the OSCE/ODIHR and the Venice Commission Guidelines for review of legislation affecting religion or belief, II.F.1

“As the Venice Commission has emphasized, ‘official discretion in limiting religious freedom, whether as a result of vague provisions or otherwise, should be carefully limited’. If a religious community does not wish, for whatever reason, to submit its registration application through the higher religious and/or organizational authority as provided for in this Article, forcing it to do so, as the said provision does, would appear to raise serious issues under the ECHR. Also, it is unclear what happens when a religious center/department does not forward to the authorities an application by the religious community, thereby effectively preventing its registration.”

CDL-AD(2012)02 – Joint Opinion on the law on freedom of religious belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR, §82

b. Non-discrimination in matters of registration

“The process of obtaining legal personality status should be open to as many communities as possible, not excluding any community on the ground that it is not a ‘traditional’ or ‘recognized’ religion, or through excessively narrow interpretations or definitions of ‘religion’ or ‘belief’.”

CDL-AD(2014)02 – Joint Guidelines on the legal personality of religious or belief communities by the Venice Commission and the OSCE/ODIHR, §26

³ As stipulated in this opinion, all references to Kosovo, whether to the territory, institutions or population shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

“States may choose to grant certain *privileges* to religious or belief communities or organizations. Examples include financial subsidies, settling financial contributions to religious or belief communities through the tax system, membership in public broadcasting agencies. It is only when granting such benefits that additional requirements may be placed on religious or belief communities, as long as those requirements remain proportionate and non-discriminatory.”

CDL-AD(2014)02 – Joint Guidelines on the legal personality of religious or belief communities by the Venice Commission and the OSCE/ODIHR, §38

“The existence or conclusion of agreements between the state and a particular religious community or legislation establishing a special regime in favor of the latter does not, in principle, contravene the right to non-discrimination on the grounds of religion or belief, provided that there is an objective and reasonable justification for the difference in treatment and that similar agreements may be entered into by other religious communities wishing to do so. Agreements and legislation may acknowledge historical differences in the role that different religions have played and play in a particular country’s history and society. A difference in treatment between religious or belief communities which results in granting a specific status in law – to which substantial privileges are attached, while refusing this preferential treatment to other religious or belief communities which have not acceded to this status – is compatible with the requirement of non-discrimination on the grounds of religion or belief as long as the state sets up a framework for conferring legal personality on religious groups to which a specific status is linked. All religious or belief communities that wish to do so should have a fair opportunity to apply for this status and the criteria established are applied in a non-discriminatory manner.

Even the fact that a religion is recognized as a state religion or that it is established as an official or traditional religion or that its followers comprise the majority of the population, may be acceptable, provided however that this shall not result in any impairment of the enjoyment of any human rights and fundamental freedoms, and also not in any discrimination against adherents to other religions or non-believers. [...]”

CDL-AD(2014)02 – Joint Guidelines on the legal personality of religious or belief communities by the Venice Commission and the OSCE/ODIHR, §§40-41

“[...] [T]he basis set out in the draft law for the difference in treatment – i.e. that the five communities ‘constitute the historical, cultural and social heritage of the country’ – is questionable, as it suggests that religious communities which are not expressly named are not part of that ‘historical, cultural and social heritage’. This is all the more so given that the requirement to apply for registration does not only relate exclusively to religious communities in Kosovo* established after the Draft Law comes into force.

To avoid a discriminatory approach, it is essential that the authorities of Kosovo* ensure that all other established religious groups which form part of the historical, cultural and social heritage of Kosovo* are included in the list.

In deciding whether there are other religious communities that can be compared with the five listed communities, the authorities have a certain margin of appreciation according to the European standards. Nonetheless, as it appears from the case law of the European Court of Human Rights, state authorities must apply the criteria in a neutral way and on an equal basis in assessing whether or not to include a given religious community in the list of those communities in Article 4.A.1 of the Draft Law. The decision to grant or not to grant this special treatment is a delicate question and the authorities must be careful to treat all religious communities fairly in deciding whether they meet the criteria set in the Draft Law, i.e. whether they also constitute the ‘historical, cultural and social heritage of the country’. Including one religious community with particular relevant characteristics whilst at the same time excluding another which also has those characteristics is unlikely to be justified.”

CDL-AD(2014)01 – Opinion on the draft law on amendments and supplementation of law no. 02/L-31 on freedom of religion of Kosovo*, §§60, 61, and 62

“1. Registration of religious/belief organisations. Religious association laws that govern acquisition of legal personality through registration, incorporation, and the like are particularly significant for religious organisations. The following are some of the major problem areas that should be addressed:

- Registration of religious organisations should not be mandatory, although it is appropriate to require registration for the purposes of obtaining legal personality and similar benefits.
- Individuals and groups should be free to practice their religion without registration if they so desire.
- High minimum membership requirements should not be allowed with respect to obtaining legal personality.
- It is not appropriate to require lengthy existence in the State before registration is permitted.
- Other excessively burdensome constraints or time delays prior to obtaining legal personality should be questioned.
- Provisions that grant excessive governmental discretion in giving approvals should not be allowed; official discretion in limiting religious freedom, whether as a result of vague provisions or otherwise, should be carefully limited.
- Intervention in internal religious affairs by engaging in substantive review of ecclesiastical structures, imposing bureaucratic review or restraints with respect to religious appointments, and the like, should not be allowed. (See section III.D above)
- Provisions that operate retroactively or that fail to protect vested interests (for example, by requiring re-registration of religious entities under new criteria) should be questioned.
- Adequate transition rules should be provided when new rules are introduced.
- Consistent with principles of autonomy, the State should not decide that any particular religious group should be subordinate to another religious group or that religions should be structured on a hierarchical pattern. (A registered religious entity should not have ‘veto’ power over the registration of any other religious entity.)”

CDL-AD(2004)02 – Guidelines for legislative reviews of laws affecting religion or belief adopted by Venice Commission, II.F.1

See also

CDL-AD(2014)02 – Joint Guidelines on the legal personality of religious or belief communities by the Venice Commission and the OSCE/ODIHR, §28

“[...] Examples of burdensome requirements which are not justified under international law include, but are not limited to the requirement that the registration application be signed by all members of the religious organization and should contain their full names, dates of birth and places of residence, to provide excessively detailed information in the statute of the religious organization, to pay excessively high or unreasonable fees for registration, to have an approved legal address or the requirement that a religious association can operate only at the place identified in its registration documents. [...] Also, religious or belief communities interested in obtaining legal personality status should not be confronted with unnecessary bureaucratic burdens or with lengthy or unpredictable waiting periods. Should the legal system for the acquisition of legal personality require certain registration-related documents, these documents should be issued by the authorities.”

CDL-AD(2014)02 – Joint Guidelines on the legal personality of religious or belief communities by the Venice Commission and the OSCE/ODIHR, §25

“With regard to membership requirements for registration purposes as such, the Venice Commission, on several occasion, has encouraged limited membership requirements. It has

also, along with the Parliamentary Assembly of the Council of Europe's recommendations, called for considering equalising the minimum number of founders of religious organizations to those of any public organizations."

CDL-AD(2012)00 – Opinion on act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities, §54.

CDL-AD(2008)03 – Joint Opinion on freedom of conscience and religious organisations in the Republic of Kyrgyzstan by the Venice Commission and the OSCE/ODIHR Advisory Council on Freedom of Religion or Belief, §32 (related to a membership requirement of 200)

See also

CDL-AD(2009)03 – Joint Opinion on the law on making amendments and addenda to the law on the freedom of conscience and on religious organisations and on religious organisations and on the law on amending the Criminal Code of the Republic of Armenia, by the Venice Commission, the Directorate General of Human Rights and Legal Affairs to the Council of Europe, the OSCE/ODIHR Advisory Council on Freedom of Religion Belief, §36 (related to a membership requirement of 500).

"However, this condition (requirement of submitting a document signed by a minimum of individuals) may become an obstacle for small religious groups to be recognized. The difficulty arises primarily for religious groups that are organized as a matter of theology not as an extended church, but in individual congregations."

CDL-AD(2012)00 – Opinion on act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities, §52

"Article 7.B.1.1., requiring the religious community a minimum of fifty members, adult citizens of the Republic of Kosovo*, does not give rise to criticism, although no specific explanation was given to the Rapporteurs for setting the minimum number at fifty (other than an attempt to find a compromise between various views within the religious communities). The Guidelines state that high minimum membership requirements should not be allowed with respect to obtaining legal personality (see Guidelines, II.F.1)."

CDL-AD(2014)01 – Opinion on the draft law on amendments and supplementation of law no. 02/L-31 on freedom of religion of Kosovo*, §68

"Care must be taken that cumbersome legal requirements (such as high minimum membership) to those seeking registration do not deter registration. The right to voluntarily establish an association to pursue any legitimate goal without undue interference from the State is an inherent aspect of the right to freedom of association. Broad grounds for denial of registration would violate this fundamental right. Furthermore, the requirement that a religious association can operate only at the place identified in its registration documents seems overly restrictive and not required in a democratic society."

CDL-AD(2012)02 – Joint Opinion on the law on freedom of religious belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR, §81

"[...] [R]egistration may be refused if a community's name 'is identical or similar with the names of another community recognized under Article 4A' (new Art. 7B. 3). To avoid a too restrictive approach, this formulation would benefit from being more specific, for example by stating that registration may be refused only *if there is a very high risk that the name of an applicant community will be confused* with the name of another community recognized under Article 4A."

CDL-AD(2014)01 – Opinion on the draft law on amendments and supplementation of law no. 02/L-31 on freedom of religion of Kosovo*, §38

"The religious organization appears to be obliged to furnish for the purposes of the expert opinion 'documents on the grounds for faith and religious practice' as well as 'information on the basics

of the doctrine and the practice based thereon, including the characteristics of the given belief and history of origin of the given organization, characteristics of the forms and methods of its activities, characteristics of attitude towards the family, marriage and education, characteristics of the attitude towards health of the followers of the given religion, on limitations of the civil rights and obligations envisaged for the members of the organization’.”

CDL-AD(2010)05 – Interim Joint Opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR, §91

“[...] [L]egislation should not deny access to legal personality status to religious or belief communities on the grounds that some of the founding members of the community in question are foreign, non-citizen persons or that its headquarters are located abroad.”

CDL-AD(2014)02 – Joint Guidelines on the legal personality of religious or belief communities by the Venice Commission and the OSCE/ODIHR, §29

“[...] The Venice Commission recalls that in the Moscow Branch of the Salvation Army v. Russia Case, the European Court for Human Rights was reluctant to accept the foreign origin of an NCO as a legitimate reason for a differentiated treatment; the same reluctance would a fortiori be in place in case of mere foreign funding.”

CDL-AD(2014)02 – Opinion on Federal Law No. 121-FZ on non-commercial organisations (“Law on foreign agents”) and on federal laws No. 18-FZ and No. 147-FZ on Federal Law No. 190-FZ on making amendments to the Criminal Code (“Law on treason”) of the Russian Federation, §92

“Hurdles to registration threaten the existence and rights of religious organizations. Precisely because legal entities have become so vital and pervasive as vehicles for carrying out group activities in modern societies, the denial of entity status has come to be seen as clear interference with freedom of religion and association. Accordingly, the right to acquisition of legal personality is firmly entrenched in OSCE commitments, and has been the subject of a burgeoning body of judgments of the European Court of Human Rights.”

CDL-AD(2010)05 – Interim Joint Opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §66

“Article 7.B.1.2 requires the religious community to have ‘their statute/regulation and a clear hierarchy of organization’. This condition seems to exclude from registration the religious communities without ‘a clear hierarchy of organization’. However, not all religions have a ‘clear hierarchy of organization’; there are also communities which are more loosely organized or have a democratic-horizontal structure.

It is not clear to the Venice Commission for what purpose only religious communities organized on a clear, hierarchical basis, can be registered, and no comprehensive explanation was given to the rapporteurs during the visit to Kosovo*.[...]”

“Instead of requiring a ‘clear hierarchy of organization’, the Draft Law should only require that the religious community be able to present a representative body for the purpose of its contacts with the public authorities and its capacity to operate as a legal entity. Moreover, in order to guarantee legal certainty to the natural and legal persons dealing with other religious communities, it should be made clear which organs of the legal entity can make decisions that are binding on itself and its members.”

CDL-AD(2014)01 – Opinion on the draft law on amendments and supplementation of law no. 02/L-31 on freedom of religion of Kosovo*, §§69, 70 and 71

“[...] [T]he legal personality status of any religious or belief community should not be made dependent on the approval or positive advice of other religious or belief communities [...].”

CDL-AD(2014)02 – Joint Guidelines on the legal personality of religious or belief communities by the Venice Commission and the OSCE/ODIHR, §30

“Registration will be refused if the ‘state administration body [...] has rendered a negative opinion’. This expert opinion clearly involves the State in forming a value-judgment about the merits of the religion or belief and assessing their legitimacy. This is impermissible. The requirement for the State to remain neutral means that registration requirements that call for substantive as opposed to formal review of the religion or belief and its practices and doctrines are an infringement of freedom which does not come within the scope of legitimate restrictions contained in Article 9(2) ECHR, which are limited to those that ‘are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others’.”

CDL-AD(2010)05 – Interim Joint Opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §90

“New Article 7.B.1.2 requires the purpose or practices of the religious community ‘*not to be in contradiction with the inter-religious tolerance and the Constitution of the Republic of Kosovo** [...]’. This condition is very vague and may open the door to arbitrary denial of registration. The legislature should indicate more precisely at least in the *travaux préparatoires*, what kind of purposes and activities are deemed to be ‘in contradiction with the inter-religious tolerance and the Constitution’. The Venice Commission recalls its stance in a previous opinion: ‘*States are entitled to verify whether a movement or association carries on, ostensibly in pursuit of religious aims, activities which are harmful to the population or to public safety. The state may interfere if the religion concerned is an extremely fundamentalist one, if it has certain goals which threaten State security or public safety, in particular if it does not respect the principles of a democratic state, or infringe upon the rights and freedoms of its adherents.*’ In this connection, new Article 7.B.2 should not be interpreted as prohibiting legitimate proselytism. It is only when the activities of the religious community have the potential to seriously harm societal interests, mentioned in the restriction clause of Article 9(2) ECHR, that registration should be refused.”

CDL-AD(2014)01 – Opinion on the draft law on amendments and supplementation of law no. 02/L-31 on freedom of religion of Kosovo*, §75

“[...] Religious or belief communities therefore have a right to prompt decisions on registration applications (where applicable) and a right to appeal. [...] [A]ccess to court and a proper and effective review of relevant decisions should always be possible. This principle applies regardless of whether an independent tribunal decides on legal personality directly, or whether such decision is taken by an administrative body, in which case subsequent control of the decision should be exercised by an independent and impartial court, including the right to appeal to a higher instance.”

CDL-AD(2014)02 – Joint Guidelines on the legal personality of religious or belief communities by the Venice Commission and the OSCE/ODIHR, §35

“The obligation for the Office to take its decision within 30 days after the reception of a request for registration and the possibility to appeal against a negative decision before the competent

court within 30 days, in compliance with the Guideline according to which 'Parties asserting religious claims should have rights to effective remedies', is welcome. [...]"

CDL-AD(2014)01 – Opinion on the draft law on amendments and supplementation of law no. 02/L-31 on freedom of religion of Kosovo*, §78

"In cases where new provisions to the system governing access to legal personality of religious or belief communities are introduced, adequate transition rules should guarantee the rights of existing communities. Where laws operate retroactively or fail to protect vested interests of religious or belief organizations (for example, requiring re-application for legal personality status under newly introduced criteria), the state is under a duty to show that such restrictions are compliant with the criteria set out in section I. In particular, the state must demonstrate what objective reasons would justify a change in existing legislation, and show that the proposed legislation does not interfere with the freedom of religion or belief more than is strictly necessary in light of those objective reasons. Religious or belief organizations should not be subject to excessively burdensome or discriminatory transfer taxes or other fees if transfers of title to property owned by the prior legal entities are required by new regulations."

CDL-AD(2014)02 – Joint Guidelines on the legal personality of religious or belief communities by the Venice Commission and the OSCE/ODIHR, §36

D. Liability and dissolution of religious or belief organisations

"The state must respect the autonomy of religious or belief communities [...]. [S]tates should observe their obligations by ensuring that national law leaves it to the religious or belief community itself to decide on its leadership, its internal rules, the substantive content of its beliefs, the structure of the community and methods of appointment of the clergy and its name and other symbols. In particular, the state should refrain from a substantive as opposed to a formal review of the statute and character of a religious organization. Considering the wide range of different types of organizational forms that religious or belief communities may adopt in practice, a high degree of flexibility in national law is required in this area."

CDL-AD(2014)02 – Joint Guidelines on the legal personality of religious or belief communities by the Venice Commission and the OSCE/ODIHR, §31

"It should be borne in mind that the liquidation or termination of a religious organization may have grave consequences for the religious life of all members of a religious community, and for that reason, care should be taken not to terminate the activities of a religious community merely because of the wrongdoing of some of its individual members. Doing so would impose a collective sanction on the organization as a whole for actions which in fairness should be attributed to specific individuals. Any such wrongdoings of individual members of religious organizations should be addressed in personal, through criminal, administrative or civil proceedings, rather than by invoking general provisions on the liquidation of religious organizations and thus holding the entire organization accountable. Among other things, consideration should be given to prescribing a range of sanctions of varying severity (such as official warnings, fines, temporary suspension) that would enable organizations to take corrective action (or pursue appropriate appeals), before taking the harsh step of liquidating a religious organization, which should be a measure of last resort."

CDL-AD(2010)05 – Interim Joint Opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §99

CDL-AD(2012)02 – Joint Opinion on the law on freedom of religious belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR, §92

“It is appropriate that a religious organization may only be liquidated or abolished by a court decision and only for ‘multiple or gross violations’ of laws. This must be interpreted and applied in a proportionate manner and it should be recalled that the European Court of Human rights has preferred Article 9 rights over other freedoms.”

CDL-AD(2010)05 – Interim Joint Opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR, §98

“On a more general note, it is recommended that the Law provide for a range of sanctions of varying severity (such as official warnings, (proportionate) fines, temporary suspension), rather than prescribing just one drastic sanction in the form of liquidation. This would help ensure that the sanctions applied to religious organizations are proportionate to the contravention committed. Moreover, it would also enable religious organizations to take corrective action (or pursue appropriate appeals) before facing liquidation. In general, the harsh sanction of liquidating a religious organization should be a measure of last resort. It is recommended to include such a procedure in Article 12 §1.”

CDL-AD(2012)02 – Joint Opinion on the law on freedom of religious belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR, §93

See also

CDL-AD(2014)02 – Joint Guidelines on the legal personality of religious or belief communities by the Venice Commission and the OSCE/ODIHR, §33

“The Law should furthermore provide for a detailed appeals procedure so that a religious organization which is facing liquidation (or other sanctions) could contest the respective underlying decision, preferably before a judicial body. To prevent arbitrary sanctioning, the Law should require a written and reasoned decision by the decision-making body, which decision should be appealable before a court of law within a reasonable period of time and following a transparent procedure lay down in the Law.”

CDL-AD(2012)02 – Joint Opinion on the law on freedom of religious belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR, §94

“The withdrawal of legal personality from a religious or belief *organization* should not in any way imply that the religious or belief *community* in question, or its individual members, no longer enjoy the protection of their freedom of religion or belief or other human rights and fundamental freedoms. [...]”

CDL-AD(2014)02 – Joint Guidelines on the legal personality of religious or belief communities by the Venice Commission and the OSCE/ODIHR, §34

IX. Reference documents

CDL-AD(2004)028 – Guidelines for legislative reviews of laws affecting religion or belief

CDL-AD(2008)032 – Joint Opinion on freedom of conscience and religious organisations in the Republic of Kyrgyzstan by the Venice Commission and the OSCE/ODIHR Advisory Council on Freedom of Religion or Belief

CDL-AD(2009)036 – Joint Opinion on the law on making amendments and addenda to the law on the freedom of conscience and on religious organisations and on religious organisations and on the law on amending the Criminal Code of the Republic of Armenia, by the Venice Commission, the Directorate General of Human Rights and Legal Affairs to the Council of Europe, the OSCE/ODIHR Advisory Council on Freedom of Religion Belief

CDL-AD(2010)054 – Interim Joint Opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR

CDL-AD(2011)035 – Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan

CDL-AD(2011)036 – Opinion on the compatibility with universal human rights standards of article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus

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CDL-AD(2012)016 – Opinion on the federal law on combating extremist activity of the Russian Federation

CDL-AD(2012)022 – Joint Opinion on the law on freedom of religious belief of the Republic of Azerbaijan by the OSCE/ODIHR and the Venice Commission

CDL-AD(2013)023 – Interim Opinion on the Draft Law on Civic Work Organisations of Egypt

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CDL-AD(2014)010 – Opinion on the draft law on the review of the Constitution of Romania

CDL-AD(2014)012 – Opinion on the draft law on amendments and supplementation of law no. 02/L-31 on freedom of religion of Kosovo*

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CDL-AD(2014)025 – Opinion on Federal Law No. 121-FZ on non-commercial organisations (“Law on foreign agents”) and on federal laws No. 18-FZ and No. 147-FZ on Federal Law No. 190-FZ on making amendments to the Criminal Code (“Law on treason”) of the Russian Federation

CDL-AD(2014)04 – Opinion on the Law on Non-Governmental Organisations (Public Associations and Funds) as amended, of the Republic of Azerbaijan.

CDL-AD(2016)020 – Russian Federation, Opinion on federal law no. 129-fz on amending certain legislative acts (Federal law on undesirable activities of foreign and international non-governmental organisations).

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CDL-AD(2018)004-e Romania – Joint Opinion on Draft Law No. 140/2017 on amending Governmental Ordinance No. 26/2000 on Associations and Foundations.

CDL-AD(2018)035-e Hungary – Joint Opinion on Section 253 on the special immigration tax of Act XLI of 20 July 2018 amending certain tax laws and other related laws and on the immigration tax.

CDL-AD(2018)006-e Ukraine – Joint Opinion on Draft Law No. 6674 “On Introducing Changes to Some Legislative Acts to Ensure Public Transparency of Information on Finance Activity of Public Associations and of the Use of International Technical Assistance” and on Draft Law No. 6675 “On Introducing Changes to the Tax Code of Ukraine to Ensure Public Transparency of the Financing of Public Associations and of the Use of International Technical Assistance”.

CDL-AD(2018)013-e Hungary – Joint Opinion on the Provisions of the so-called “Stop Soros” draft Legislative Package which directly affect NGOs (in particular Draft Article 353A of the Criminal Code on Facilitating Illegal Migration).

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