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**(VENICE COMMISSION)**

**In co-operation with**

**OSCE/ODIHR**

**and**

**THE PRESIDENCY OF IRELAND OF THE COMMITTEE OF MINISTERS  
OF THE COUNCIL OF EUROPE**

**International round table**

**CIVIL SOCIETY:  
EMPOWERMENT AND ACCOUNTABILITY**

**Council of Europe, Strasbourg  
Tuesday, 13 September 2022**

**(Hybrid format)**

**PRESENTATION**

**by**

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**THE WORK OF ODIHR  
REGARDING REGULATIONS  
OF THE FOREIGN-FUNDED ASSOCIATIONS**

**The work of the ODIHR regarding regulations of the foreign funded associations.  
(accompanied by 2 PPP slides)**

Good Afternoon,

The Director of ODIHR and Anne-Lise Chatelain, the Acting Head of the Legislative Support Unit have already presented you with the work of ODIHR in general and in particular on the right to participation.

Today, I wanted to raise six major points with you, as displayed on the PPP. I will try to connect these points with the first part of the day and the work of ODIHR in the field of Foreign Funded Associations.

(1) The right to participation: I promise I do not wish to repeat what has already been a rich discussion this morning and in fact right up until lunch. I would content my task is harder – to present you with the nexus between the right to participation (Article 25 ICCPR and the accompanying Comment on your screen), and foreign funding. That is, the nexus is, that despite the plethora of laws seeking to restrict funding from abroad international law stands firm in two important aspects- the first, NGO's (I will use NGOs and CSOs interchangeably) can get funding from abroad. That is the law. The second is that as citizens they may **exert influence** through public debate and capacity to organize themselves. Indeed, the nexus is actually clear – no money, no influence is possible or exertion of influence. The former UN Rapporteur on Freedom of Assembly and Association extensively spoke and produced reports on the necessity of funding of NGOs, also from abroad. Principle 7 of the ODIHR- Venice Commission Guidelines which guide ODIHR opinions expressly underscore that resources, also from abroad are the bread and butter that allows NGOs to work.

(2) When preparing for this presentation I went through all the ODIHR Opinions on the freedom of associations and related issues, which in fact date back to 2005. Sometimes these opinions were done with the Venice Commission. However, many done by ODIHR alone, having a wider geographical scope than the Council of Europe due to the membership in the OSCE states. What **struck me is the common thread** that; in fact, governments have forever used all types of methods, creative, conspicuous or less so to interfere with the internal business of NGOs, whether that be by requiring the submission of the Charter of the NGO for approval, or de-registration and then re-registration based on new criteria. There has always been an attempt to curb this very important principle of non-interference. It is important to say here that the government not only has a negative duty not to interfere but also a positive duty to create an **enabling environment**. Instead today we see a new rendition of interference of certain activities, increased reporting requirements where foreign funding is involved, tax obligations that suffocate and not enable. Why is it that corporations can register in a one-stop-shop manner in many countries and NGOs must go through often far too burdensome requirements to register and conduct their activity. This flies in the face of one of the major principles illuminated by the joint ODIHR-Venice Commission Guidelines on freedom of association, that NGOs should be free to choose their activities and objectives and as a cardinal principles, **unless proven to the contrary**, their activities **should be presumed legal** and not ill-intended.

(3) In order to achieve their goals and objectives, as mentioned NGOs must be able to source both national and foreign funding without undue burdens placed upon them, stigmatization, and smear campaigns all of which we can witness today. Having worked for one year in a European but small NGO, I can tell you first hand that reporting, on every single euro cent, was a task that took the time of at least two people, in an NGO that was composed of 10.

(4) Dunja Mijatovic in her speech this morning gave one of many excellent recommendations – that is to look at the terms we use and define them properly; foreign funding, advocacy, lobbying, political activities (which even justice Pavli mentioned has a broad definition), activism, accountability and I would add further clarity on what is meant by “transparency”. Transparency,

is a laudable and important concept. However, it is often loosely used to justify restrictive measures on CSOs in the laws that have recently come under revision by ODIHR and the Venice Commission. While in fact, strictly speaking it is not one of the “legitimate aims” that may be used in international law to restrict the non-absolute freedom of association – but it has been connected through public order, foreign influence and anti-corruption measures. Questions and comments have come up today stating that “the citizens should know who is influencing public discussion and discourse in the name of protection of malign foreign actors.” The same can be said for corporations, formally registered lobbyists (here I note that there are not that many States who have a specific “law on lobbying”). Please do not understand this to mean that ‘transparency’ is not an essential component of a healthy democracy and governance environment. Instead I am raising a “red flag” that this requires further consideration and ensuring that not all associations are “thrown in the same bag”. In fact, I put it to you that the concept of transparency needs to be better contextualized regarding proportionality in particular and that **it should not only rest on the shoulders of NGOs but instead the burden should also rest on the shoulders of the public administration**, to explain how they have met this ‘standard’. They too should carry the obligation to report and remain transparent on who they’ve met and what agreements they have come to. One example of an interesting approach is the Slovenian law- where human rights CSOs are excluded from the lobbying law (although they may register if they wish) and the focus is many provisions which place the burden on the public administrator to report on his/her actions. What is more in its resolution on 1744/2010 on extra-judicial actors in the democratic system, the CoE Assembly considered that increased transparency (in public administration) is the path to a stronger democracy and decision-making by authorities.

(5) At this juncture, it need only re-iteration that the laws and legal tools introduced and commented widely here need to be in accordance with the legitimate aims set down by the ECHR and ICCPR and they need to be proportional and necessary.

(6) Finally, the sixth and last point, I invite you to look with me into the future through an ever bigger keyhole. I think it is obvious that we can see that foreign funding through new technologies is an evolving aspect of this issue – crowdfunding, bitcoins, cross-border support is already a fact because so many issues also cross borders. You can support global causes which may not even affect your country directly or only. Isn’t it better if I am not restricted and can live in a world where I can contribute to assisting frontline NGOs fighting for ie/ rule of law, peace, the climate emergency?

Thank you.