CSO METER

Assessing the civil society environment in the Eastern Partnership countries

Belarus

MINSK, 2019

Authors:Olga Smolianko (Director, Legal Transformation Center Lawtrend) and Yury Chavusau (Legal advisor, Assembly of Pro-Democratic NGOs of Belarus)

Assembly of Pro-Democratic NGOs is the largest association of pro-democratic non-governmental organizations and civil initiatives in Belarus. The Assembly was founded in 1997 as an umbrella union and now unites more than 300 organizations. The Assembly advocates for democracy and the independence of Belarus, defends civil activists' rights and the common interests of NGOs, and contributes to the development of member organizations and the formation of civil society in Belarus. http://belngo.info/en
Legal Transformation Center Lawtrend is a not-for-profit organization working to improve the legal culture in Belarus. It conducts analytical and research activities on law-related subjects. Lawtrend is a group of professionals who work together using legal research and educational methods for the realization and effective protection of human rights and freedoms. Over its 20-plus year existence, the Legal Transformation Center has strengthened its experience in legal consulting, the development of Belarus's legal culture and research and education aimed at promoting democratization and human rights in Belarus. https://www.lawtrend.org/

The development of the country report has been supervised by an Advisory Board that consists of representatives of the Belarusian Human Rights House, Human Rights Center "Viasna" Belarusian Helsinki Committee, Belarusian National Platform of the EaP Civil Society Forum, International educational association ACT, ECO-HOME public association, Green Network and Belarusian Association of Journalists.

European Center for Not-for-Profit Law (ECNL) is a leading European resource and research center in the field of policies and laws affecting civil society. ECNL supports the creation of environments where people can organize freely, jointly shape and contribute to the development of societies. ECNL's activities help build conditions that enable civil society organizations to operate independently, be financially sustainable, have strong governance, engage in policy and mobilize public support. Beyond shaping policies and advocating for an enabling environment for civil society, ECNL empowers local stakeholders, monitors the implementation of tools and mechanisms, and creates a knowledge base through research and analysis.

September 2019.

Copyright © 2019 by ECNL, Legal Transformation Center and Assembly of Pro-Democratic NGOs of Belarus. All rights reserved.

This document has been produced within the framework of the Action "Monitoring Progress, Empowering Action", implemented with the financial assistance of the European Union. The contents of this document are the sole responsibility of the Assembly of Pro-Democratic NGOs of Belarus and the Legal Transformation Centre (Lawtrend) and can under no circumstances be regarded as reflecting the position of the European Union.

TABLE OF

CONTENTS

I. Executive summary 3

II. Introduction 5

III. Context & Background 7

IV. Main Findings on the Enabling Environment 10

4.1 Freedom of association 10
4.2 Equal treatment 20
4.3 Access to funding 23
4.4 Freedom of peaceful assembly 26
4.5 Right to participation in decision-making 31
4.6 Freedom of expression 35
4.7 Right to privacy 38
4.8 State duty to protect 41
4.9 State support 45
4.10 Government-CSO cooperation 50

V. Conclusions and Recommendations 52

VI. Annexes 55

6.1 Annex 1: Bibliography 55
6.2 Other annexes 63

ABBREVIATIONS

AML	Anti-money laundering
AML/CTF	Anti-money laundering and counter-terrorism funding
CSO	Civil society organization
DPI	Deep Packet Inspection
EAG	Eurasian group on combating money laundering and financing of terrorism
EaP	Eastern Partnership
ECNL	European Center for Not-for-Profit Law
FATF	Financial Action Task Force
GDPR	General Data Protection Regulation
GONGO	Government-Organized/Operated Non-Governmental Organization
LGBTIQ	Lesbian, gay, bisexual, transgender, intersex and queer community
MER	Mutual evaluation report
NCO	Non-commercial organization
NGO	Non-Governmental Organization
OHCHR	Office of the United Nations High Commissioner for Human Rights
OSCE	Organization for Security and Cooperation in Europe
SORM	System for Operative Investigative Activities
UN	United Nations
UNDP	United Nation Development Program

I. EXECUTIVE SUMMARY

The Assembly of Pro-Democratic NGOs of Belarus and Legal Transformation *Center Lawtrend* are happy to present the first pilot edition of the CSO Meter – a new instrument for monitoring of the environment and support of advocacy efforts of civil society in Belarus. The authors of this pilot edition of the CSO Meter for Belarus are the director of Legal Transformation *Center Lawtrend* **Olga Smolianko** and the NGOs Assembly's legal advisor **Yury Chavusau**. It covers the environment for CSOs and the trends in the period from 2017 to 2019.

The empirical basis of this assessment has been data from consultative activity of author organizations of the current review, as well as the results of their advocacy and monitoring work in the field of freedom of association and legal conditions for the activity of non-commercial organizations and initiatives (see monitoring reviews in annexes).

In the course of this research, an online survey of Belarusian CSOs, a cycle of focus groups and interviews with CSO leaders were organized and the authors analyzed the legislation and current law enforcement practices. The members of the country advisory body have made a special contribution to the improvement of the research methodology to adjust it to the Belarusian reality.

The CSO Meter aims to become not only the measuring tool for incremental changes in the environment for civil society in Belarus, but also a new and powerful means of consolidated advocacy efforts of Belarusian CSOs aimed at promoting common interests and legal reforms.

The general context of development of the situation in Belarus is favorable for joint actions to push legal reforms and improve conditions for CSOs. Despite the fact that many barriers, stipulated by the unfavorable legislation and practice, have remained unchanged, some conceptual legislative restrictions have been lifted, or relaxed, or true work on their changes is being conducted. There are enough grounds to consider this trend towards positive changes as sustainable in the medium term, which allows building advocacy strategies on its basis.

It can clearly be stated that the period since 2017 has been marked by positive dynamics in legal regulations and practical conditions for the activity of CSOs in Belarus. Even more promising are discussions about reforming the framework legislation on the activity of various forms of CSOs, funding of CSOs from both traditional domestic and foreign sources and with use of new mechanisms and means of electronic fundraising, as well as about CSOs' participation in the decision-making process. The objective of this review is to support and further develop these positive dynamics, giving them a new boost through forming a comprehensive roadmap for legal reforms supporting CSOs. The authors of the review are optimistic about the prospects for abolition of bad norms and old discriminatory practices, counting on implementation of positive international experience in relations between CSOs and the state with due account of international standards and progressive European approaches.

Recommendations on changes in legislative regulation and practice were formulated for each of the 10 areas covered and analyzed in the CSO Meter. While formulating the list of these

recommendations, the authors have taken into account not only the current level of compliance of the situation in Belarus with international standards, but also opinions of Belarusian CSOs about the topicality of the problems covered by these standards as well as the current legislative agenda for the coming years. There is an overview of the given recommendations at the end of the paper, which should become a vector for the implementation of the CSO Meter indicators to constantly improve the conditions and environment for CSOs in Belarus.

The Assembly of Pro-Democratic NGOs of Belarus and the Legal Transformation Center Lawtrend further plan to regularly carry out analysis under CSO Meter methodology and present respective editions of review, which will cover the successfulness of the joint actions of the state, CSOs and all other stakeholders. We hope that this will lead to the formation of a favorable legal environment for fruitful development of civil society for the benefit of Belarus and Belarusian people.

II. INTRODUCTION

What is the CSO Meter?

The CSO Meter is a tool developed to support the regular and consistent monitoring and assessment of the environment in which civil society organizations (CSOs) operate in the Eastern Partnership countries. It consists of a set of standards and indicators in 10 different areas to measure both law and practice. It is based on a review of international standards and best regulatory practices.

The CSO Meter was developed through a highly consultative and collaborative process, supported by the European Center for Not-for-Profit Law (ECNL). It was co-drafted by a core group of local experts and consulted in three rounds with more than 807 CSOs across the region. A local partner in each of the six Eastern Partnership countries supported the process - Transparency International Anti-Corruption Center (Armenia); MG Consulting LLC (Azerbaijan); Assembly of Pro-Democratic NGOs in collaboration with Legal Transformation Center (Belarus); Civil Society Institute (Georgia); Promo-Lex Association (Moldova); Ukrainian Center for Independent Political Research (Ukraine).

What are the key elements of an enabling environment for CSOs?

For the purposes of the tool, the term "CSO" is used to define voluntary self-governing bodies or organizations established to pursue the non-profit-making objectives of their founders or members. CSOs encompass bodies or organizations established both by individual persons (natural or legal) and by groups of such persons. They can be either membership or non-membership based. CSOs can be either informal bodies or organizations which have legal personality. They may include, for example, associations, foundations, nonprofit companies and other forms that meet the above criteria. The CSO Meter does not consider the environment for political parties, religious organizations or trade unions.

The CSO Meter is split into two main parts:

- **Fundamental rights and freedoms** are essential for the existence of civil society and include: (1) freedom of association, (2) equal treatment, (3) access to funding, (4) freedom of peaceful assembly, (5) right to participation in decision-making, (6), freedom of expression, (7) right to privacy and (8) state duty to protect.
- **Necessary conditions** ensure additional support for the development of civil society (though their existence without fundamental rights and freedoms is not sufficient to ensure an enabling environment) and include: (1) state support and (2) state-CSO cooperation.

How was the report developed?

The report is prepared by the local partners of the project– The Assembly of Pro-Democratic NGOs of Belarus and the Legal Transformation Center Lawtrend in Belarus, following a joint methodology for all six Eastern Partnership countries. The process has included data collection (through an online survey, focus groups, interviews, desktop research) and analysis of

the collected information. The development of the report has been monitored by an Advisory Board that consists of representatives of key local stakeholders to ensure that the findings and recommendations reflect the overall situation in the country. In the process of work on this paper we have taken into account kind comments by the Institution "Advisory Centre on contemporary international practices and their legal implementation "Human Constanta"". The authors would also like to thank all 118 CSOs that contributed to this research through filling in the online questionnaire, as well as all participants of topical focus groups and in-depth interviews, conducted in the spring 2019.

The report reviews the 30 standards that are part of the CSO Meter and provides recommendations for improvement in each of the 10 areas covered. It also outlines the most important findings and recommendations at the end. The recommendations could serve as a basis for future reforms that the government can undertake to improve the environment for civil society in Belarus.

III. CONTEXT & BACKGROUND

Basic data about the country

Capital: Minsk

Population: 9,485,386 (2018)[1]

GDP per capita (PPP): $6,289.939[2]

Freedom in the World: 21/100 (Not Free)[3]

World Press Freedom Index: 51.66[4]

Number of CSOs: 28 trade unions, 2,907 public associations (227 international, 770 republican and 1,910 local ones), 207 foundations and several hundred private institutions that meet the criteria of CSOs.

Overall situation and state of civil society

Against the background of the global trend towards worsening of the conditions for CSOs (*Shrinking space for civil society*[5]), Belarus has lately contrariwise seldom been the source of bad news about new legislative or practical restrictions on CSO activity. The majority of legislative initiatives are now assessed optimistically as a chance to change the situation for the better – and sometimes positive norms and practices are actually introduced and from time to time there are signals about the success and achievements of advocacy campaigns. The cases when advocacy campaigns do not succeed, often do not become the ground to call on the international community to punish the guilty of shifting away from human rights standards, but become the ground for new civil actions of CSOs within the country. The reason for reduction of pressure on CSOs are rather found in the improved relations with the West, which made the authorities stop demonstratively ignoring human rights standards.

Despite the fact that many repressive practices remain available to the authorities, the atmosphere in the society and the place of CSOs in it have changed – numerous legislative restrictions on CSO activity introduced in the 1990s and 2000s are overcome very slowly and step-by-step, but constantly. Changes in donor strategies have to a great extent become the incentive for new social actors, seeking support in internal resources, to develop such new methods to secure financial stability, which would become an alternative to support from foreign donors. These new approaches include crowdfunding internet platforms, collection of funds with the use of new electronic mechanisms, social entrepreneurship and even state

1 The World Bank, https://data.worldbank.org/country/belarus

2 The World Bank, https://data.worldbank.org/country/belarus

3 Freedom House, https://freedomhouse.org/report/freedom-world/freedom-world-2018

4 World Press Freedom Index, https://rsf.org/en/ranking

5 The Shrinking of Civic Spaces: What is Happening and What Can We Do? By Camila Bustos from "Dejusticia " (April 17, 2017) https://www.dejusticia.org/en/column/the-shrinking-of-civic-spaces-what-is-happening-and-what-can-we-do/

funding (so far in the form of social contracting only) are developing. Many innovative technologies (especially internet tools) allow if not to overcome, at least to circumvent legislative restrictions of the pre-digital era. For example, crowdfunding platforms allowed CSOs to increase the share of local funding from people in their budgets. Previously this required the collection of donations in cash or direct bank transfers, which required great efforts from people, and did not allow CSOs to use this source as an alternative to corporate and foreign donors, which are seriously limited.

At the same time, traditional methods for assessment of legal environment for CSOs do not always register these changes – the legal sustainability index remains consistently low in the USAID CSO Sustainability Index[6]. This stands in contrast with the news from neighboring European countries, when even old democracies introduce new restrictions for CSOs.

In 2017-2019, the environment for Belarusian civil society developed in line with trends which had taken shape in previous years. The Heritage Index of Economic Freedom 2019 ranked Belarus 42nd among 44 countries in Europe, with an overall score well below regional and world averages. According to a 2019 Pact poll, only 3.2% of Belarusians reported participating in CSO activities in the previous year (including volunteering and charitable donations)[7]. In *CAF World Giving Index - 2018*[8] Belarus dropped to 121st place, down from 117th place in 2017 and in 100th place in 2016.

In the area of legal regulation and the building of institutional mechanisms for cooperation between the state and CSOs, recent years have seen a continuation of the trend to move away from confrontation and to favor cooperation. However, when there were cases of increased protest activity, this has led to crackdowns targeting CSOs that were involved in the organization or participation in the protests[9].

At the same time, improved relations between Minsk and Western capitals has eased the intensity of some repressive practices towards civil society. For example, it has led to a mitigation of state authorities' negative rhetoric towards civil society, a partial abandonment of the most severe restrictions, and the development of platforms for dialogue between civil society and the state at the local and international levels. For example, mechanisms for public participation through public hearings and public discussion on draft laws have become more common and sometimes even effective. Participation of CSOs in EU-Belarus dialogue on Human Rights and other politically significant processes have become a practice. The abolition of the inglorious article 193-1 of the Criminal Code on the activities of unregistered organizations was in this sense a symbolic step[10]. These developments were considered by many CSOs as evidence that the environment for civil society was improving. In 2018 the Belarus government

6 https://csosi.org/?region=EUROPE

7 "Belarus National Poll 2019: Public Opinion Does Not Change" - PACT Belarus 2019 Polling Memo https://www.pactworld.org/sites/default/files/Pact%20Belarus%20Polling%20Memo%202019%20(ENG).pdf

8 Charities Aid Foundation (CAF) World Giving Index – 2018 https://www.cafonline.org/docs/default-source/about-us-publications/caf_wgi2018_report_webnopw_2379a_261018.pdf?sfvrsn=c28e9140_2

9 See in Annex 1: Freedom of association and legal conditions for non-commercial organizations in Belarus - Review Period: 2017 (updated version) by Legal Transformation Center and Assembly of Pro-Democratic NGOs http://belngo.info/wp-content/uploads/2018/01/SA-2017-ENG-updated.pdf, pages 2-5.

10 See in Annex 3: Semi-annual review "Changes in Legal Environment for Non-Commercial Organizations and Freedom of Associations in Belarus" covering the first half of 2019 by Legal Transformation Center and Assembly of Pro-Democratic NGOs http://belngo.info/wp-content/uploads/2019/07/SA-2019.1-ENG.pdf pages 3-4

submitted a state report[11] to the UN Human Rights Committee for the first time in 20 years. However, the formal engagement of CSOs in the official process of preparing the national state report was negligible, despite attempts by human rights CSOs to start a dialogue.

In 2018 and 2019 a reinterpretation of existing law led to a de-facto ban on CSOs using private houses as their legal address. In May 2018 the authorities announced the abolition of Article 193[1] of the Criminal Code, which punishes individuals who conduct activities on behalf of an unregistered CSO. This change come into force in July 2019. This is a positive move, but the ban on activities by unregistered CSOs themselves remains in place. The new Law on Normative Legal Acts, signed in July 2018, has not expanded opportunities for CSOs to participate in political decision-making. Nor has it increased their ability to access to information about draft normative legal acts. In autumn 2018 it was revealed that the government had resumed work, after a five- year break, preparing draft amendments to the Law on Public Associations and the Law on Political Parties[12]. In June 2018 the Parliament adopted amendments to the Law on Mass Events, introducing a notification procedure for assemblies held at areas designated as protest zones by local authorities[13]. However, these zones are typically located far from city centers, and are not within sight and sound of protesters' targets and potential audiences. Moreover, it is still necessary to request permission 15 days in advance to hold an assembly outside of these protest zones. The database of administrative prosecutions[14] shows a significant spike in the number of cases of politically motivated persecution in the second half of 2018, especially cases in which fines were used as administrative sanctions. There was growth in the total number of cases filed, the number of people sanctioned and the total number of administrative fines imposed.

11 http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhssL4aDidyTw2XoWDF-f3o3yvZC6von%2fbZGYGd9YCRbl92GNDqnuw3JXNojdt36k8ZD0zjfQnGj1x7l0zQrN8ZZUlTfld6mq%2bN6bFh3Fh5X87k

12 Changes in the laws on CSOs: what civil society has managed to undertake so far (2019) by Yury Chavusau http://belngo.info/2019.changes-in-the-laws-on-csos-what-civil-society-has-managed-to-undertake-so-far.html

13 Freedom of association and legal conditions for non-commercial organizations in Belarus - Review Period: 2018 by Legal Transformation Center and Assembly of Pro-Democratic NGOs http://belngo.info/wp-content/uploads/2019/03/SA-2018-Eng.pdf, page 13.

14 Human rights center "Viasna" https://spring96.org/persecution

IV. KEY FINDINGS

ON THE ENABLING ENVIRONMENT

4.1 Freedom of Association

STANDARD 1: EVERYONE CAN FREELY ESTABLISH, JOIN OR PARTICIPATE IN A CSO

Freedom of association is significantly restricted by the ban on the activity of CSOs without registration and by a monetary fine for violation of this ban. There are restrictions for foreigners to establish CSOs. In general, the system of organizational forms and types of CSOs is unfavorable for free association of people in CSOs.

The CSO sector in Belarus consists of three main legal forms: public associations, foundations, and nonprofit establishments (or institutions). Besides these three, there are some other forms of non-profit organizations, including state ones. **Public associations** are voluntary associations of citizens that can register either at the local, national, or international levels. A minimum of ten citizens are needed to establish a local public association, fifty citizens are required to found a national association, and ten Belarusian citizens and three foreign citizens are required to found an international association. One or more individuals and/or legal entities can establish a **foundation**. Local foundations must have at least $1,200 in capital, while national and international foundations require about $12,000. A nonprofit **institution** can be created by a single owner, either an individual or a legal entity.

Article 36 of the Constitution of Belarus provides for the right to freedom of association – "Everyone has the right to freedom of association". At the same time, it is stipulated that judges, public prosecution and law enforcement officers, employees of the State Control Committee, security officers, and military servants cannot be members of political parties or other associations pursuing political goals. However, they can be a member of public associations in general, and the law does not give a clear definition of what constitutes an association pursuing political goals.

The legislation regulating the possibilities to establish CSOs in the form of public associations provides for additional restrictions. According to the law "On public associations", foreigners can only participate in the establishment of international public associations[15]. Foreign citizens cannot be founders of national ("republican" according to the Belarusian legal language) or local public associations – they can only join them after registration.

The founders have to be physically present at the constitutive assembly meeting of a public association. It is a discriminatory requirement towards people with disabilities, if they have difficulties with movement and cannot attend a founding event or a conference in person. The possibility to participate in the establishment of public associations via video conferencing or Internet is still under discussion only.

The legislation on foreign aid also restricts possibilities for foreigners to participate in the establishment of CSOs, which are based on the contribution of founders. A foreign individual, wanting to be a founder of a foundation, must first apply for and get in advance a registration

15 The Law "On public associations" of October 4, 1994 with subsequent amendments http://law.by/document/?guid=3871&p0=V19403254e, art. 2.

of his/her contribution to a newly established foundation as foreign aid in a state agency.

Since 1999, the activity of public associations without state registration has been banned[16]. Since 2005, there has been criminal responsibility for activity of public associations, parties, foundations and religious organizations without state registration. At least 18 persons have been convicted for violation of this ban, including to prison sentences. In July 2019, criminal liability for the activity of CSOs without registration has been abolished, but responsibility for the activity of CSOs without registration under Article 23.88 of the Code of Administrative Offences has been introduced instead[17]. This article 23.88 stipulates that organization or participation in the activity of a party, other public association, religious organization or foundation, in respect of which there is a decision of the state agency on liquidation or suspension, which has come into force, as well as organization or participation in the activity of a party, other public association, religious organization or foundation, which has failed to undergo state registration in accordance with the established procedure, are punished with fines.

The Law "On public associations" stipulates division of public associations into 3 types according to the territory of their activity – international (acting in the territory of Belarus and other countries), national (acting within the territory of Belarus) and local (acting within the territory of one or several administrative and territorial entities of Belarus)[18]. The law requires that charters of local public associations must contain an indication of the territory of their activity and the activity of such organizations outside the indicated territory is considered to be a violation. There is no such restriction for institutions; they can act all around the country regardless of the place of their registration. The legislation also divides foundations into international, republican and local ones, but it does not restrict them in the territory of their activity. The possibility to lift restrictions as to the territory of activity for local public associations is now only discussed within development of amendments to the law "On public associations"[19], however, initiators of this draft from the Ministry of Justice propose introducing a groundless requirement for national associations to have regional branches[20].

Registering bodies often demand that criteria for membership in a public association must be strict and limit the possibilities for individuals who do not meet the criteria, even though they share the purposes of such an association, to join the organization. For example, if the name of the organization says "public association of individual entrepreneurs", the Ministry of Justice considers membership of individuals who are not individual entrepreneurs in the organization to be a violation.

---

16 The Decree of the president "On some measures on regulation of activities of political parties, trade unions, and other public associations" № 2 of January 26, 1999 with subsequent amendments http://law.by/document/?guid=3871&p0=Pd9900002e6, art. 3.

17 See in Annex 3: Semi-annual review "Changes in Legal Environment for Non-Commercial Organizations and Freedom of Associations in Belarus" covering the first half of 2019 by Legal Transformation Center and Assembly of Pro-Democratic NGOs http://belngo.info/wp-content/uploads/2019/07/SA-2019.1-ENG.pdf pages 3-4

18 The Law "On public associations" of October 4, 1994 with subsequent amendments http://law.by/document/?guid=3871&p0=V19403254e, art. 3.

19 Changes in the laws on CSOs: what civil society has managed to undertake so far (2019) by Yury Chavusau http://belngo.info/2019.changes-in-the-laws-on-csos-what-civil-society-has-managed-to-undertake-so-far.html

20 Changes in the laws on CSOs: what civil society has managed to undertake so far (2019) by Yury Chavusau http://belngo.info/2019.changes-in-the-laws-on-csos-what-civil-society-has-managed-to-undertake-so-far.html

Legal entities can be founders of only those forms of CSOs that are not membership-based (foundations and institutions); they cannot be members of public associations. At the same time, legal entities can join in unions, which are also non-commercial organizations, but individuals cannot join such unions (except individual entrepreneurs).

People who are on the "preventive watch list" in accordance with the legislation on prevention of offences, cannot be founders or directors of institutions. Adding people to the preventive watch list is a prejudiced procedure of law enforcement agencies, which is of a non-transparent character and is also used as means of pressure on critics of the regime.

The state in practice puts obstacles for the establishment and registration of those CSOs which it considers unacceptable (human rights, youth organizations, political groups, associations of LGBTIQ and other minorities). Officials sometimes mention the existence of other CSOs with the same goals as the reason for refusal of registration, at the same time, official decisions on registration contain other, legal arguments. There is a widespread practice of groundless refusals of registration to unwanted organizations on the basis of minor technical shortcomings in the documents submitted for registration (for example, incorrect font). At the same time, certain organizations have for decades been submitting applications for registration, constantly facing refusals.

There have been signals received about involuntary membership or compulsion of students and schoolchildren to join the public organization supported by the state, Belarusian Republican Youth Union, which is funded from the state budget as a separate item by special budget line and on a non-competitive basis.

The practice of searches, seizures of equipment, arrests, dismissals and expulsion of students from universities, criminal prosecution on tax evasion or organization of disturbances charges has become a routine against Belarusian CSOs. Such charges do not always lead to sentences or actual imprisonment, but persecution and intimidation force numerous CSOs to act surreptitiously, taking into account constant risks. For many potential members of CSOs such threats are the factors which restrain them from joining an organization. Oddly enough, the participation in informal unregistered groups without clear hierarchy or membership or anonymously via Internet is often perceived as a less risky activity than participation in a registered CSO with formal membership and control.

STANDARD 2: THE PROCEDURE TO REGISTER A CSO AS A LEGAL ENTITY IS CLEAR, SIMPLE, QUICK, AND INEXPENSIVE

The registration procedure for CSOs is unreasonably expensive and long; it does not provide the possibility for everyone to register a CSO, but allows state agencies to block establishment of unwanted CSOs.

The procedure for registration of legal entities is enshrined in the legislation and available to the general public. The procedure is significantly more expensive, longer and more burden-

some for foundations[21] and public associations[22], in respect of which there have been special acts adopted, regulating registration (compared to business entities); it also provides state bodies with the possibility to arbitrarily refuse registration on insignificant or farfetched grounds.

There is no special procedure for registration of other forms of CSOs, such as institutions, which are quite popular, so they enjoy the same benefits of general registration available for all other legal entities, including commercial ones[23]. In general, registration does not pose a problem to institutions – it can be conducted completely online without personal submission of documents, although when it comes to unwanted or suspicious organizations (human rights, religious, LGBTIQ and others), the state abuses the procedure and puts bureaucratic obstacles. For example, a simple technical procedure for online checking the name of the new legal entities (to ensure that there are no organizations with the same name) for some groups becomes an insurmountable obstacle due to malicious refusals by the state agency.

The requirement to have legal addresses as an office in non-residential premises is a serious problem for all forms of CSOs[24]. Both forms with special registration procedure (public associations and foundations) and those with simple registration procedure (institutions and unions of legal entities) must have legal addresses for registration. Local branches must also have legal addresses. At the same time, private residential premises cannot act as a legal address for a CSO. There is only an exception for public associations - they can be located in a one-apartment residential house with the consent of local authorities and all people living in the house. Earlier, location in a one-apartment residential house was available to institutions as well, but at the end of 2018 the Ministry of Justice initiated the termination of this practice (although legislation did not change).

CSOs mention the legal address requirement as one of the main obstacles in their activity[25], due to financial expenses for rent as well, even if an organization does not need an office. Some commercial organizations can be located at the place of their founders' residence.

The fee for registration of institutions and unions of legal entities is not high, but it is much higher for public associations and foundations – for example, the fee for registration of a national public association (close to 113 EUR) is 10 times higher than the fee for registration of a commercial organization (about 12 EUR) or an institution (about 6 EUR)[26].

---

21 Regulations on the creation, activities and liquidation of the foundations in the Republic of Belarus, approved by Edict of the president №302 of July 1, 2005 with subsequent amendments https://minjust.gov.by/upload/iblock/547/ukaz-prezidenta-respubliki-belarus-ot-1-iyulya-2005-goda-_-302-o-nekotorykh-merakh-po-uporyadocheniyu-deyatelnosti-fondov.docx

22 The Resolution of the Ministry of Justice №48 "On approving legal normative acts on issues of completing and considering documents relating to state registration of political parties, labor unions, other public associations, their unions (associations), as well as state registration and exclusion from the registry, inclusion and taking from records information about their structural units" of August 30, 2005 with subsequent amendments https://minjust.gov.by/upload/iblock/31a/postanovlenie-ministerstva-yustitsii-respubliki-belarus-ot-30-avgusta-2005-g.-_-48-.docx

23 The Decree of the president №1 "On state registration and liquidation (termination of activities) of subjects of economic activities" of January 16, 2009 with subsequent amendments http://law.by/document/?guid=3871&p0=Pd0900001e

24 NCO's legal address in individual residential house: already impossible? (2019) (in Belarusian) http://belngo.info/2019.uradras.html

25 According to the results of an online survey of CSOs in the framework of CSO Meter, 54% of respondents noted difficulties with the legal address as a problem that requires solving first.

26 Tax Code of the Republic of Belarus of December 19, 2002 with subsequent amendments (Amended as of December 30, 2019) http://law.by/document/?guid=3871&p0=Hk0200166e, annex 22.

A state body can examine an application for registration of a public association or a foundation for up to 1 month, which can result in refusal of registration or instruction to correct the mistakes in the documents (1 more month can be given for that)[27]. However, correction of mistakes does not guarantee that after that a state body will not decide to refuse registration – it can find other shortcomings, not mentioned earlier. For example, on March 7, 2018 the Ministry of Justice refused registration to the International Public Association Starting Point. The reason was non-conformity with the stipulated by law criteria for establishment of an international association as to the required number of foreign founders and establishment of a branch abroad. On May 3, 2018, after correction of the detected irregularities and second submission of documents for registration, the organization was again refused registration due to other defects and omissions in the documents.

Some CSOs have year after year unsuccessfully submitted documents for registration – every time officials have invented more and more new grounds for refusal. Often the grounds for refusal are insignificant technical shortcomings (incorrect font; not full name of the street is written; one of 50 founders provided mobile phone number instead of home phone number; inaccurate place of employment was indicated). In particular, the public association Dzeya is one of them (2 refusals in 2019 and 2017). In 2017, the Ministry of Justice refused registration to a range of CSOs: the Youth Public Association "Youth of Revival", the Historical and Educational Public Association "Khaisy", the Public Association Women's Network "Mara", the Public Association of People with Disabilities Leisure Organization "Sokoly", the Educational Public Association of City Development "Ecograd", the Public Association "Gender Partnership", the Association "Social and Christian Movement" etc.

Registration of an institution usually takes place on the day of application or the next day (as is customary for commercial legal entities). However, sometimes officials, not willing to register a CSO, use a technical stage of "approving the name" in order to impede the registration, mentioning far-fetched claims to the character of their activity, indicated in the name. It is a clear abuse of the procedure for infringing on the freedom to create CSOs.

The required number of founders for a public association is too high (there should be 50 founders for a republican association or 10 founders for a local association[28]), especially taking into account the requirement that each of them must sign the list of founders and participate in the founding assembly[29].

Public associations and foundations can appeal against refusals of registration to court, but courts never satisfy such claims against decisions of justice agencies. These are completely predestined trials in front of a non-independent court, and any arguments have no influence

27 The Law "On public associations" of October 4, 1994 with subsequent amendments http://law.by/document/?guid=3871&p0=V19403254e, art. 14.

28 The Law "On public associations" of October 4, 1994 with subsequent amendments http://law.by/document/?guid=3871&p0=V19403254e, art. 8.

29 The Resolution of the Ministry of Justice №48 "On approving legal normative acts on issues of completing and considering documents relating to state registration of political parties, labor unions, other public associations, their unions (associations), as well as state registration and exclusion from the registry, inclusion and taking from records information about their structural units" of August 30, 2005 with subsequent amendments https://minjust.gov.by/upload/iblock/31a/postanovlenie-ministerstva-yustitsii-respubliki-belarus-ot-30-avgusta-2005-g.-_-48-.docx, points 8 and 11.

on a predetermined decision[30]. Regarding the timeline for appealing such decision there is no significant deviation in practice between legally regulated and an actual timeline.

Belarus does not follow recommendations of the UN Human Rights Committee, adopted due to appeals against violation of the guarantees by the International Covenant on Civil and Political Rights freedom of association through refusals to register CSOs. These are decisions to refuse registration to the Public Association "For Fair Elections" (CCPR/C/112/D/2153/2012), the Human Rights Center "Viasna" (CCPR/C/90/D/1296/2004 and CCPR/C/112/D/2165/2012), the Public Association "Helsinki-XXI" (CCPR/C/88/D/1039/2001), the Public Association "Elderlies" (CCPR/C/115/D/2011/2010).

STANDARD 3. CSOS ARE FREE TO DETERMINE THEIR OBJECTIVES AND ACTIVITIES AND OPERATE BOTH WITHIN AND OUTSIDE THE COUNTRY IN WHICH THEY WERE ESTABLISHED

Many CSOs are not free in determining their objectives due to legislative and practical restrictions; other CSOs are dependent in their activity on the political course of the government.

When examining documents for registration of public associations, justice agencies often subjectively interfere into the organizations' objectives, guided by subjective interpretations of charter norms and assumptions. Sometimes personal traits of a founder (for example, known as a human rights defender) serve as the ground for assumptions that objectives of the newly established organizations are reprehensible. Many public associations make their objectives congruent with the recommendations of the Ministry of Justice, being afraid of refusals of registration. Despite the comparatively simple registration procedure, institutions very often have to correct their names in the registration process because of the wish of a registering body due to malicious nit-picking and abuse of formal requirements by the registration authorities. Sometimes argument for interference of a registering body into objectives is the following: "The objective is too general, it is not clear what will you do" or "You do not have resources or competence (education, qualification) for achievement of this aim".

The current law establishes a requirement for public associations to indicate the territory of the activity in the charter, and local associations must operate only in the territory of one or more administrative units[31]. Only the national and international public associations may operate all across the country. This rule is proposed for repeal in a bill developed by the Ministry of Justice in 2019 (but not submitted yet into the parliament)[32].

Public associations are deprived of the right to independently conduct entrepreneurial activity – they must establish a separate commercial legal entity for that[33]. The legislation on licensing restricts CSOs in certain types of activity – for example, in publishing activity, distribution of books, educational activity. Sometimes restrictions on certain types of activity,

30 There has been no significant positive changes since the last visit of the Special Rapporteur on the Independence of Judges and Lawyers in June 2000 – see -Report of the Special Rapporteur on the independence of judges and lawyers, Dato' Param Cumaraswamy-Addendum Report on the mission to Belarus (2001) https://documents-dds-ny.un.org/doc/UNDOC/GEN/G01/110/54/PDF/G0111054.pdf?OpenElement

31 The Law "On public associations" of October 4, 1994 with subsequent amendments http://law.by/document/?guid=3871&p0=V19403254e, art. 3, 8 and 9.

32 Changes in the laws on CSOs: what civil society has managed to undertake so far (2019) by Yury Chavusau http://belngo.info/2019.changes-in-the-laws-on-csos-what-civil-society-has-managed-to-undertake-so-far.html

33 The Law "On public associations" of October 4, 1994 with subsequent amendments http://law.by/document/?guid=3871&p0=V19403254e, art. 20.

conducted for commercial purposes, impede such an activity for non-profit entities.

The law does not compel CSOs to coordinate their activities with government policies and administration; authorities are prohibited from interfering in the internal activities of CSOs. But in practice, the broad powers of registration authorities to control CSOs and especially restrictive measures on receipt of foreign funding force CSOs, particularly those that want to attract foreign aid, to coordinate their plans and activity with governmental agencies[34]. The law directly requires that the objectives of the foreign funding received by a CSO should correspond to the government priorities if this CSO wants to be exempted from taxes on this foreign funding.

STANDARD 4. ANY SANCTIONS IMPOSED ARE CLEAR AND CONSISTENT WITH THE PRINCIPLE OF PROPORTIONALITY AND ARE THE LEAST INTRUSIVE MEANS TO ACHIEVE THE DESIRED OBJECTIVE

The system of sanctions against CSOs is mainly disproportionate, extremely severe and broad. It is often decided either to apply or not to apply a sanction depending on arbitrary political circumstances.

The legislation provides for a broad range of sanctions in respect of public associations – warning, termination of activity for a specified term, liquidation by court decision on a claim of the Ministry of Justice[35]. The legislation stipulates that CSOs are subjects to termination for violation of the law without clear enumeration of the exact types of violations. In the period under review, these measures were not actively used and, in general, their usage was proportionate, except warnings to organizations for participation of their members in the protests in spring 2017. However, the sanction system stipulated by law allows for disproportionate and extended use of sanctions, including liquidation of CSOs due to a single violation of the legislation.

More serious sanctions are aimed at heads and members of organizations – especially due to financial violations. Sanctions for violation of the legislation on foreign aid include the possibility of both liquidation of a CSO and criminal liability for managers under Article 369-2 of the Criminal Code[36]. Specifically, it provides for the punishment of up to 3 years of imprisonment for receipt, storage, transfer of foreign gratuitous aid for conduct of extremist activity or other actions banned by the legislation or funding of political parties, preparation or holding of elections, referenda, organization of assemblies, meetings, processions, demonstrations, picketing, strikes, distribution of agitation materials, holding of seminars and other forms of mass-agitation work, committed within one year after the administrative punishment for the same violations.

This article has not been applied in practice yet, but recipients of foreign gratuitous aid were subjects to tax claims and they were brought to criminal responsibility for tax evasion in 2017-2018. In 2018, court sentenced Henadz Fyadynich, the chairman of the Belarusian Trade Union of Radio and Electronics Industry Workers, and Ihar Komlik, the deputy chairman, to

34 The Decree of the president "On foreign gratuitous aid" of № 5 from August 31, 2015 dha.gov.by/wp-content/uploads/2014/03/%D0%94%D0%B5%D0%BA%D1%80%D0%B5%D1%82-%E2%84%965.docx, point 3 of the regulation, adopted by this decree.

35 The Law "On public associations" of October 4, 1994 with subsequent amendments http://law.by/document/?guid=3871&p0=V19403254e, chapter 6.

36 Criminal Code the Republic of Belarus of July 9, 1999 with subsequent amendments http://cis-legislation.com/document.fwx?rgn=1977

4 years of restraint of liberty with a ban on taking up manager positions for 5 years under Article 243 Part 2 of the Criminal Code[37] (large scale tax evasion) for receipt of foreign grants via their personal bank accounts abroad, which 140,000 Euros had been transferred to in 2011. The defendants denied the charges and claimed that prosecution of the trade union for receipt of foreign aid has a political motivation. This trade union was an active participant and organizer of the protests in spring 2017. According to the testimony of one of the witnesses in court, she had in advance been sent by the KGB to work as an agent in the central office of the trade union, working as a secretary there. In 2018, Ales Lipai, the director of the BelaPAN news agency, was brought to criminal responsibility under the same Article 243 Part 2 of the Criminal Code (large scale tax evasion). Ales Lipai admitted violation of the legislation and paid income tax and the respective penalty. Later, the criminal case was dismissed due to Ales Lipai passing away.

A positive change of 2017 was eradication of the practice wherein tax authorities sent appeals to institutions to liquidate them due to lack of entrepreneurial activity. This previous negative practice was caused by the imperfection of the legislation and failure of the tax authorities to understand the non-commercial nature of institutions, not having profitmaking objectives. After awareness-raising by CSOs, in 2017, the Tax and Duties Ministry took measures to put an end to this negative practice[38].

STANDARD 5. THE STATE DOES NOT INTERFERE IN THE INTERNAL AFFAIRS AND OPERATION OF CSOS

Some CSOs are strongly dependent in their activity on the government, while others do not feel interference by the state. The reporting system is simple and not burdensome, but there are alarming signals about legislative toughening on reporting. Searches and arrests of members of unwanted CSOs on political grounds are quite frequent.

The reporting system for CSOs seems reasonable and is assessed by organizations themselves as not burdensome. Public associations must submit an annual activity report to the justice authorities with a list of the governing body. Other than that, CSOs are subject to the general rules of statistics and tax reporting. If a public association does not submit reports to the registration authority within three years, it may be liquidated[39].

However, the planned introduction of two new reports for public associations in 2019 (one on AML/CTF, the other on mandatory publication of financial reports for all public associations) seems excessive and may lead to deterioration of the situation. CSOs are also concerned about the requirement of the draft law on amendments to the law "On Public Associations" requiring annual submission to the registration authority of a document confirming the possession or rental of premises for a legal address (bill developed by the Ministry of Justice in 2019, but

37 Criminal Code the Republic of Belarus of July 9, 1999 with subsequent amendments http://cis-legislation.com/document.fwx?rgn=1977

38 In 2017 the Tax and Duties Ministry instructed the subordinate tax inspectorates to stop sending appeal on liquidation of CSOs for lack of entrepreneurial activity - see in Annex 1: Freedom of association and legal conditions for non-commercial organizations in Belarus - Review Period: 2017 (updated version) by Legal Transformation Center and Assembly of Pro-Democratic NGOs http://belngo.info/wp-content/uploads/2018/01/SA-2017-ENG-updated.pdf, Pages 9-10.

39 The Law "On public associations" of October 4, 1994 with subsequent amendments http://law.by/document/?guid=3871&p0=V19403254e, art. 24 and 29.

not submitted yet to the parliament)[40]. Public associations also have difficulties due to the impossibility of submitting reports to the Ministry of Justice online[41].

Surveys show that the majority of CSOs take into account previous widespread and some modern cases of severe sanctions and repression that still remain a negative example, frightening civil society and deterring it from activity.

Certain organizations that enjoy special support of the state often face direct political control. Especially sport organizations are concerned. In spring 2017, changes in the leadership of the majority of sport federations took place on the initiative of executive authorities and the National Olympic Committee (headed by the president of Belarus), often with gross violations of charters and contrary to the will of members of these associations themselves. An example was the situation in the Fencing Federation - on May 17, 2017 the supreme body of this public association rejected the candidate proposed by the authorities and elected a respected (in such circles) person as the chairperson. After the authorities exerted pressure on the organization's members at their workplaces and demanded to convene a new congress, a person proposed by the authorities was elected as the chairperson of the federation[42].

Registered public associations are obliged to inform the registering body about convening the general assembly in advance, and the Ministry of Justice representative has the right to attend the meeting of the supreme body of a public association. Information about any changes in the composition of the elected bodies of an association and its local branches must also be submitted to the registering body with supporting documents within 10 days after such changes[43].

CSOs are obliged to provide any document that the authorities request[44].

Besides general norms on control and inspections, it is not uncommon when militia conducts searches and intrudes into premises where CSOs are located, especially unregistered ones and those criticizing the government and the president. Such negative interference practices are especially frequent during election campaigns or on the eve of protest actions. They were especially frequent during the spring protests in 2017[45].

---

40 Changes in the laws on CSOs: what civil society has managed to undertake so far (2019) by Yury Chavusau http://belngo.info/2019.changes-in-the-laws-on-csos-what-civil-society-has-managed-to-undertake-so-far.html

41 According to the results of an online series of interviews of CSOs leaders in the framework of the CSO Meter

42 See in Annex 1: Freedom of association and legal conditions for non-commercial organizations in Belarus - Review Period: 2017 (updated version) by Legal Transformation Center and Assembly of Pro-Democratic NGOs http://belngo.info/wp-content/uploads/2018/01/SA-2017-ENG-updated.pdf, page 19.

43 The Law "On public associations" of October 4, 1994 with subsequent amendments http://law.by/document/?guid=3871&p0=V19403254e, art. 24.

44 Same as previous footnote.

45 See in Annex 1: Freedom of association and legal conditions for non-commercial organizations in Belarus - Review Period: 2017 (updated version) by Legal Transformation Center and Assembly of Pro-Democratic NGOs http://belngo.info/wp-content/uploads/2018/01/SA-2017-ENG-updated.pdf, page 3.

SPECIFIC RECOMMENDATIONS UNDER AREA 1:

- Abolish the ban on activity of public associations without registration, set forth in the law "On public associations" and cancel administrative responsibility for organizing and participating in the activities of an unregistered organization (article 23.88 of Code on Administrative Offences).
- Allow foreign citizens and stateless persons, permanently residing in Belarus, to act as founders of public associations.
- Determine the minimum number of founders, required for establishment of a public association of any level with the status of a legal entity, as not more than 10 people.
- Introduce notification procedure for registration of public associations and foundations.
- Introduce clear and concrete list of grounds for denial of registration of any form of CSO (submission to a wrong agency, non-compliance with the criteria stipulated by law for the establishment of CSOs, objective of activity under the charter that is directly banned by the law). Failure to submit all the required documents should not be a ground for denial, rather a reason to request further information and extend the period for submission of all relevant documents.
- Determine such a term for consideration of registration of public associations and foundations by a state body, which will not exceed the term for consideration of registration of commercial organizations; the fees should also be made equal.
- Establish by law the mechanism and methods for decision-making by the founders on the creation of a new public association online, without a meeting in person.
- Simplify the definition of "legal address" to the notion of "contact address", providing the possibility to locate CSOs at the place of the head's residence or other private house.
- Make all public associations equal in their possibilities to work in the whole territory of the country (abolish division of public associations into local, republican and international ones through introduction of amendments to the Law "On public associations").
- Enshrine clear and distinct grounds for decisions on liquidation of non-commercial organizations by judicial means in the legislation – due to conduct of activity, directly banned by the Constitution or the law.
- Allow public associations to conduct entrepreneurial activity without creating a separate commercial entity.
- Reporting on AML/CTF should be introduced for only those CSOs which fall under risk criteria in accordance with the FATF standards; publishing of reports should be made voluntary for organizations with budgets of less than 1000 basic units per year (11,218 EUR).

4.2 Equal treatment

STANDARD 1. THE STATE TREATS ALL CSOS EQUITABLY WITH BUSINESS ENTITIES

The legal framework conditions for establishment and activity of CSOs are in the majority of indicators worse than those for commercial organizations.

The law does not provide equal conditions for CSOs in comparison with commercial organizations. Conditions for establishment and the activity of non-commercial organization are worse than for commercial organizations – this relates to the duration and cost of registration procedures, possibility to locate legal addresses on residential premises, possibilities for simplified accounting. When stipulating benefits for a broad range of legal entities, laws use the terms "commercial organizations" and "enterprises", which exclude CSOs from the recipients of such benefits (for example, when defining the notion of "microorganization" or creating regulations for changing owner for legal entities). Some norms cannot be applied to CSOs due to such an approach (for example, the procedure for changing the owner of an institution remains unregulated, and impossible because of this in practice).

Public associations can only be involved in those types of activities that are stipulated by the legislation or written in their charters, while commercial organizations can be involved in any type of activity. Public associations and foundations can only be registered by the Ministry of Justice or regional departments of justice and they are required to submit a large set of documents[46]. On the other hand, registration of commercial organizations is possible at the district level and there is a procedure for submission of documents for registration online with the minimum set of documents for them[47]. In the process of registration, state agencies check if charters of public associations and foundations are congruent with the legislation when considering registration, while charters of commercial organizations are not checked in the registration process.

Public associations are banned from independently conducting entrepreneurial activity and because of that they do not have access to public procurement[48].

Commercial organizations have easier access to foreign funding than CSOs (including investments). Foreign funding of CSOs must be approved and registered by the state, while foreign investments into businesses do not require such a procedure. Banks do not provide loans to CSOs due to their bad financial sustainability.

It is a serious problem for CSOs in the form of institutions that the law requires that they must have an accountant on their staff or conduct contracts for outsourced accounting services, even if they do not have serious financial activity (when small commercial organizations with the status of "microorganizations" enjoy the simplified accounting procedure).

---

46 The Resolution of the Ministry of Justice №48 "On approving legal normative acts on issues of completing and considering documents relating to state registration of political parties, labor unions, other public associations, their unions (associations), as well as state registration and exclusion from the registry, inclusion and taking from records information about their structural units" of August 30, 2005 with subsequent amendments https://minjust.gov.by/upload/iblock/31a/postanovlenie-ministerstva-yustitsii-respubliki-belarus-ot-30-avgusta-2005-g.-_-48-.docx

47 The Decree of the president №1 "On state registration and liquidation (termination of activities) of subjects of economic activities" of January 16, 2009 with subsequent amendments http://law.by/document/?guid=3871&p0=Pd0900001e

48 The Law "On public associations" of October 4, 1994 with subsequent amendments http://law.by/document/?guid=3871&p0=V19403254e, art. 20.

As a result, it is easier to establish and operate in the form of a commercial organization rather than CSO in order to conduct certain types of socially beneficial activity, even if its founders do not have profitmaking goals. This happens despite the fact that the Belarusian legislation does not provide for the notion of "social entrepreneurship".

Inspections and sanctions against CSOs are not more frequent than against businesses.

STANDARD 2. THE STATE TREATS ALL CSOS EQUALLY WITH REGARD TO THEIR ESTABLISHMENT, REGISTRATION AND ACTIVITIES

Equality of CSOs is not guaranteed and neither exists in law nor practice. It is a common practice to provide targeted benefits and preferences to certain CSOs selected based on arbitrary criteria. Unwanted or watchdog CSOs are persecuted and discriminated against.

The legislation applies the mechanism of targeted provision of benefits. For example, there is a list of CSOs which enjoy preferential treatment when renting state-owned premises – this list is approved by the government on the proposal of the ministries. The Tax Code directly enumerates around twenty CSOs, providing sponsorship aid to which Belarusian business entities may enjoy tax deduction[49]. Aid to any other organization can be provided by a business entity only from post-tax profit and does not entail any tax deduction. Moreover, the fact of sponsorship aid to any other organization itself, except for those enumerated in the Tax Code, is treated by regulatory agencies as a potentially risk and suspicious operation which requires special control. Every year direct funding of the Belarusian Republican Youth Union is written into the law on state budget as a separate article[50].

Usually only a limited circle of CSOs — instead of all affected ones — is invited to participate in face-to-face discussions of draft decisions.

CSOs which express views and stances criticizing state officials or policies face repressions and restrictions, biased treatment by the state and are purposefully criticized in the state press. State agencies organize searches and inspections in offices of CSOs expressing views and opinions different from those of state bodies. Events of such CSOs (including LGBTIQ ones) are foiled on unlawful grounds.

According to the criminal legislation, individuals who have committed crimes are equal before the law and are subjects to criminal responsibility regardless of their membership in public associations. At the same time, Article 193 of the Criminal Code[51] provides for increased responsibility for governing a public association, which violates citizens' rights, in case such activity is conducted within an unregistered association.

State public associations have a special legal regime[52]. They are created by the decision of state authorities and have great benefits (for example, they are allowed to independently carry out entrepreneurial activity).

---

49 Tax Code the Republic of Belarus of December 19, 2002 with subsequent amendments (Amended as of December 30, 2019) http://law.by/document/?guid=3871&p0=Hk0200166e art.181

50 For example, the law "On the state budget for 2019" of December 30, 2018 establishes a direct subsidy for the Belarusian Republican Youth Union in the amount of 7,595,757 rubles (3.15 mil. EUR)

51 Criminal Code the Republic of Belarus of July 9, 1999 with subsequent amendments http://cis-legislation.com/document.fwx?rgn=1977

52 The Law "On national state-public associations" of July 19, 2006 with subsequent amendments - "Zviazda" July 26, 2006 № 164-165

SPECIFIC RECOMMENDATIONS UNDER AREA 2:

- Improve the legislation, taking into account the specifics of CSOs, providing them with the necessary benefits and preferences due to their non-profit activities, at the same time avoiding the practice of discrimination of CSOs in comparison with commercial organizations; use a general term "legal entities" in normative acts when defining benefits and preferences for legal entities.
- Provide for the possibility for all non-commercial legal entities to locate their legal addresses in the places of founders' residence and
- Provide possibility of simplified accounting by heads of organizations without employing a professional accountant for all non-commercial legal entities.
- Extend the notification procedure for registration of commercial organizations to registration of CSOs, including the possibility to submit and update constituent documents online.
- Regulate the procedure for changing the owner of an institution.
- Allow public associations themselves to conduct entrepreneurial activity on their own behalf.
- Open access to bank loans for CSOs.
- Stop the practice that CSOs are provided with targeted benefits and direct funding by naming them in the budget and tax laws; extend rental benefits to all CSOs and introduce the mechanism of state funding on the basis of competition, which all CSOs, including unregistered ones, can participate in.

4.3 Access to funding

STANDARD 1. CSOS ARE FREE TO SEEK, RECEIVE AND USE FINANCIAL AND MATERIAL RESOURCES FOR THE PURSUIT OF THEIR OBJECTIVES

CSOs' access to funding is restricted with regard to all possible sources both in legislation and practice. Bank services and practices are often unfavorable for CSOs and serve as additional restriction.

CSOs are significantly restricted in their possibilities to seek, receive and use financial and material resources for the pursuit of their objectives. Restrictions are imposed on both foreign donations and donations from Belarusian corporate donors, both money and in-kind, while private donations from Belarusian resident individuals are restricted to a lesser extent. The freest procedure for use relates to funds received as membership fees of public associations. Public associations do not have the right to independently conduct entrepreneurial activity[53]. Public associations are banned from having bank accounts and keeping money abroad[54].

There are no stimuli or benefits which would encourage donations to CSOs. State funding of CSOs is not developed in Belarus, except for direct funding of supporting state policy CSOs from the budget on a non-competitive basis. There is also a mechanism of state social contracting, which is available for only few CSOs, mostly close to the state, and has burdensome restrictions.

Donations from foreign donors can be received only for objectives enumerated in the Decree № 5 of August 31, 2015[55] that do not contain legitimate objectives such as human rights, development of democracy, gender equality and others. Similarly, CSOs can receive donations from Belarusian business entities only for objectives stipulated by the Edict of the president № 300 "On provision and use of gratuitous (sponsor) aid"[56]. This list of possible objectives is also a closed one and in practice does not allow numerous CSOs to receive donations for their activity stipulated in their charters. CSOs can receive aid for objectives, other than stipulated by the Edict № 300, only with the approval of the president.

CSOs actively develop electronic fundraising methods, including crowdfunding, which is still almost not regulated by the legislation. However, because of the unfavorable legislation on the receipt of donations, the majority of fundraising projects on crowdfunding platforms are organized by individuals, not CSOs. In 2017-2018 there were cases detected when crowdfunding platforms blocked fundraising for separate human rights projects (for example, collection of aid for victims of political repressions). And in 2018 crowdfunding platforms faced pressure from banks themselves, when a bank pulled out from cooperation with the Talaka crowdfunding platform. Anonymous electronic money is forbidden.

53 The Law "On public associations" of October 4, 1994 with subsequent amendments http://law.by/document/?guid=3871&p0=V19403254e, art. 20

54 The Law "On public associations" of October 4, 1994 with subsequent amendments http://law.by/document/?guid=3871&p0=V19403254e, art. 21.

55 The Decree of the president "On foreign gratuitous aid" of № 5 from August 31, 2015 dha.gov.by/wp-content/uploads/2014/03/%D0%94%D0%B5%D0%BA%D1%80%D0%B5%D1%82-%E2%84%965.docx p.3

56 The Edict of the president №300 from July 1, 2005 "On provision and use of gratuitous (sponsor) aid" with subsequent amendments www.bcf.by/documents/ukaz_300.doc point 2.

In general, restrictions on cash or bank transactions do not impede the activity of CSOs, but CSOs often face the incompetence of banks and bank employees who do not understand the specifics of non-profit activity. Banks often refuse to open accounts or assist in the transfer of donations to CSOs. Legal entities are banned from making donations in cash. The law on AML/CTF obliges banks to control that the financial transactions of CSOs correspond with their statutory objectives[57].

Fundraising via payment terminals is restricted due to ill-conceived wordings, aimed at trade. Fundraising via the own websites of CSOs is restricted with the requirement to have hosting and domain of websites inside the country. CSOs are deprived of the right to collect funds through lotteries[58], but other forms of public fundraising are available to CSOs, including anonymous donations.

There is no endowment regulation in legislation[59].

STANDARD 2. THERE IS NO DISTINCTION IN THE TREATMENT OF FINANCIAL AND MATERIAL RESOURCES FROM FOREIGN AND INTERNATIONAL SOURCES COMPARED TO DOMESTIC ONES

Access to foreign resources is severely restricted – there is a special procedure with the requirement of obligatory preliminary registration, taxation and burdensome reporting. Violation of this procedure is risky for both CSOs and their members – violations in this field regularly lead to criminal prosecution.

Foreign funding, received by CSOs, may be classified as foreign gratuitous aid or international technical aid. Both of these types require preliminary approval by the state for the use of the received funds. In practice, it is often difficult to designate a foreign grant to one or the other regime because wordings in the legislation are not precise.

Regardless of the size, the foreign gratuitous aid received by CSOs is subject to obligatory preliminary registration at the Department for Humanitarian Activities. The legislation stipulates a difficult and burdensome procedure for receipt, registration and use of foreign gratuitous aid by CSOs, including detailed plans for allocation of aid and burdensome reporting. The Decree of the president[60] defines a list of objectives foreign gratuitous aid can be used for, however, even if a grant is received for the objectives stipulated by the Decree, the state body may refuse to register foreign aid. Donations from Belarusian citizens residing abroad are considered to be foreign and are subject to restrictions.

There are quite frequent cases when CSOs, which have received large foreign grants, have to return funds back to donors because a state body has refused to register it.

The donations received by CSOs are exempt from income tax, however, when it comes to for-

57 The Law "On actions to be taken to prevent legitimization of the proceeds of crime and the financing of terrorism and financing the weapons of mass destruction proliferation" of June 30, 2014, https://www.nbrb.by/engl/legislation/documents/z165_eng.pdf, art. 7.

58 The state has monopoly to organize a lottery according the Edict of the president of May 4, 2007 № 209 "On lottery activity on the territory of the Republic of Belarus" https://cis-legislation.com/document.fwx?rgn=18934

59 See analysis on the endowments prospects for Belarus in chapter 1.6. of the research "How to improve the legal conditions for non-profit organizations in Belarus". Analytical report on the development of reform proposals in the field of legal regulation of non-profit organizations in the framework of the project "REFORUM" (2017) by Olga Smolyanko and Yury Chavusau (in Russian). https://www.lawtrend.org/wp-content/uploads/2017/11/Kak-uluchshit-pravovye-usloviya-dlya-NKO-v-Belarusi.pdf#viewer.action=download

60 The Decree of the president "On foreign gratuitous aid" of № 5 from August 31, 2015 dha.gov.by/wp-content/uploads/2014/03/%D0%94%D0%B5%D0%BA%D1%80%D0%B5%D1%82-%E2%84%965.docx p.3

eign aid, exemption from taxes requires a separate approval by a state body and undergoing of a special procedure, which not always results in a positive decision (they also practice exemption from taxes for only part of a donation). Otherwise, foreign donations are considered to be an income and are subject to income tax.

Single violation of the legislation on foreign aid is punished with a fine (public associations can also be liquidated by a court decision)[61]. Repeated violation is subject to criminal punishment of up to 3 years of imprisonment. Foreign citizens who have violated the procedure for provision of aid can be deported from the country.

CSOs, which receive funding from abroad, are from time to time subject to stigmatization or attacks in the media supported by the state and their leaders are accused of tax evasion and brought to criminal responsibility.

SPECIFIC RECOMMENDATIONS UNDER AREA 3:

- Abolish restrictive list of objectives for which CSOs can receive foreign gratuitous aid or sponsor aid from internal resources – CSOs should have possibilities to fund any of their legitimate activities from these sources.
- Move from authorization-based system for registration of foreign aid to notification-based system; simplify conceptual construct and provide precise definitions, as well as set a reasonable threshold for the amount of donations from abroad, receiving of which does not require registration.
- Abolish the Edict of the president №300 "On provision and use of gratuitous (sponsor) aid".
- Allow public associations to conduct economical entrepreneurial activity on their own behalf, as well as have bank accounts abroad.
- Introduce the definition of "endowment" in legislation, taking into account the role of such instruments as a mechanism for CSO support.
- Define the notion of "charitable lottery" in the legislation on lotteries (Edict of the president of May 4, 2007 № 209 "On lottery activity on the territory of the Republic of Belarus").
- Introduce amendments to the legislation on state social contracting in order to ensure access to this mechanism for a broad range of CSOs, as well as introduce the mechanism for allocation of funds to CSOs from the budget on a competitive basis.

61 The Law "On public associations" of October 4, 1994 with subsequent amendments http://law.by/document/?guid=3871&p0=V19403254e, art. 29.

4.4 Freedom of Peaceful Assembly

STANDARD 1. EVERYONE CAN FREELY ENJOY THE RIGHT TO PEACEFUL ASSEMBLY BY ORGANISING AND PARTICIPATING IN ASSEMBLIES

Freedom of peaceful assemblies is restricted for all to the maximum extent. Unfavorable laws, authorization-based procedure, limited list of places allowed for assemblies, bans on spread of announcements about assemblies in the media, severe sanctions, arrests and fines – all these in aggregate do not allow anybody in Belarus to freely exercise the right to expression of opinion through peaceful assemblies.

Possibilities for peaceful assemblies are restricted at both legislative and practical levels. In accordance with the general rule, in order to hold an assembly, demonstration or procession, initiators should receive a special permit from the authorities and apply for it not later than 15 days prior to an event[62]. Legislative grounds are used to ban, interrupt or disperse peaceful assemblies both outdoors and indoors. Despite introduction of elements of notification-based procedure for organization of assemblies to the legislation in 2018 (with advance notification 10 days prior to an assembly, but in a limited number of places determined by the authorities), the possibilities for peaceful assemblies have not improved in general[63].

According to the law "On mass events in the Republic of Belarus", only legal entities (including CSOs), but not individuals can be organizers of assemblies with more than 1,000 participants[64]. Both a legal entity and a Belarusian citizen who permanently resides in Belarus, is 18 years old or older, has electoral rights and has signed a written obligation regarding liability for organizing an event, can act as organizers of an assembly with up to 1,000 participants. Foreign or underage citizens cannot be organizers of assemblies, but can participate in them.

Citizens who have been brought to responsibility for violation of the procedure for holding of assemblies within a year prior to an event, as well as those who have previous convictions for crimes against public safety, order or morality or against the state or authorities, are banned from being organizers of assemblies[65].

Assemblies during election campaigns are organized by candidates and their authorized representatives in accordance with a freer procedure – pickets for collection of signatures can be held in any place, which is not banned by special decisions of the local authorities, without any notification; agitation assemblies and meetings require notification 2 days prior to an event. However, these possibilities are available to initiative groups and candidates' team members only[66].

---

62 The Law "On Mass Events in the Republic of Belarus" from December 30, 1997 with subsequent amendments http://law.by/document/?guid=3871&p0=H19700114e, art. 5.

63 Freedom of association and legal conditions for non-commercial organizations in Belarus - Review Period: 2018 by Legal Transformation Center and Assembly of Pro-Democratic NGOs http://belngo.info/wp-content/uploads/2019/03/SA-2018-Eng.pdf, page 13.

64 The Law "On Mass Events in the Republic of Belarus" from December 30, 1997 with subsequent amendments http://law.by/document/?guid=3871&p0=H19700114e, part. 2 of the art. 4

65 The Law "On Mass Events in the Republic of Belarus" from December 30, 1997 with subsequent amendments http://law.by/document/?guid=3871&p0=H19700114e, art. 4, part 6.

66 Electoral Code of the Republic of Belarus of February 11, 2000 with subsequent amendments http://law.by/document/?guid=3871&p0=Hk0200166e, art. 45-1

According to the legislation, assemblies, held by CSOs indoors, can be conducted without any restrictions. However, in practice state agencies sometimes prevent assemblies from being held – this can be done through actions of militia, pressure on owners of premises or technical bans by sanitary or fire-fighting agencies.

The legal obligation to conclude contracts with state agencies on payment for militia services on safeguarding of an assembly, as well as ambulance and cleaning services, de facto acts as a serious obstacle for freedom of assembly. After the amendments introduced to the law in 2018 that obliged the government to work out fixed fees for these obligatory services, these fees[67] have become an obstacle for holding many peaceful assemblies, as organizers consider it impossible to pay such large money for exercise of their right[68].

The legislation does not provide for such notion as spontaneous assemblies, as well as the peculiarities of holding simultaneous or counter assemblies. However, if an organizer submits an application or notification for holding an assembly in a place for which another subject has already submitted an application or notification for holding another assembly, this may become the ground for state agencies to ban the assembly.

Arbitrary bans of assemblies are very frequent – the authorities very seldom authorize holding of assemblies, applying the ground of "unreasonableness" or proposing to hold an assembly in a specially designated place for notification-system assemblies (usually one place in town, far from the center). They practice dispersals or violent arrest of participants of peaceful assemblies which do not violate the public order or disrupt traffic.

Organizers and participants of unauthorized assemblies are brought to administrative responsibility in the form of fines or arrests – even if they only announce the intention to hold an assembly on Internet or social networks.

The law provides for the possibility of a monetary fine up to 12,750 rubles (about €5,500) to a legal entity (including CSOs) for violation of the procedure for holding of assemblies. In case such a violation has been committed by a public association or has caused serious damage, the court may decide to liquidate the public association even for a single violation of this kind. State agencies practice issue of warnings to public associations for violation of the procedure for holding peaceful assemblies by their leaders or members as individuals.

STANDARD 2: THE STATE FACILITATES AND PROTECTS PEACEFUL ASSEMBLIES

The state authorities have set an authorization-based procedure and disproportionate obligatory payments for holding assemblies, which serve as an extremely high barrier.

The state does not facilitate the holding of peaceful assemblies. The law stipulates serious restrictions on holding assemblies, requiring applying for a permit 15 days prior to an event. Holding of assemblies in accordance with the notification-based procedure requires notifica-

67 Resolution of the Council of Ministers of January 24, 2019 № 49 "On introduction of the Regulations on the procedure for payment for public order maintenance services, rendered by internal affairs agencies, expenses relating to medical services, cleaning of the territory after holding of a mass event on it" http://www.government.by/ru/solutions/3477

68 See in the annex 3: Semi-annual review entitled "Changes in Legal Environment for Non-Commercial Organizations and Freedom of Associations in Belarus" covering the first half of 2019 by Legal Transformation Center and Assembly of Pro-Democratic NGOs http://belngo.info/wp-content/uploads/2019/07/SA-2019.1-ENG.pdf, pages 2-3.

tion 10 days prior to an event and is only possible in the places, specially determined by local authorities – usually it is one or several places in town, which are far from the center. At the same time, mass meetings and assemblies, organized by decisions of state agencies, are free from such restrictions. Final ruling of an appeal on holding of an assembly must be delivered to an applicant not later than 5 days prior to an event. However, in practice state agencies often violate this legislative requirement – they may deliver the decision to refuse to authorize holding of an assembly on the day of event.

Courts never satisfy civil claims against decisions of executive authorities to refuse to authorize holding of an assembly or their decisions to change time or place of an assembly (route of a procession). The ordinary court timeline applies to such appeals and the court decisions are usually issued after the planned date of the assembly.

It is forbidden to announce the place and time of a future assembly in the media and Internet, until the authorization of the authorities is obtained[69]. Announcement of place and time of holding of an assembly prior to receipt of an official permit from the authorities in media, Internet or social networks can become the ground for the ban of an assembly, even if all other legislative requirements are met by the organizers.

In general, the introduced legislative restrictions on holding of assemblies are disproportionate and do not pursue legitimate purposes; they are aimed at actual prevention of unwanted assemblies by the authorities.

STANDARD 3: THE STATE DOES NOT IMPOSE UNNECESSARY BURDENS ON ORGANISERS OR PARTICIPANTS IN PEACEFUL ASSEMBLIES

The state authorities often interfere in holding of assemblies, even the authorized ones. Unlawful assemblies are often dispersed by force, participants are arrested and technical equipment is seized.

The law provides for serious obstacles for exercise of the right to peaceful assemblies. These obstacles allow the authorities to ban any assembly at their will; examination of claims against such bans in court never leads to restoration of the violated rights. The set by the governmental decision huge fees for militia, ambulance and cleaning services de facto make holding of assemblies impossible for the majority of potential organizers (CSOs, informal groups, spontaneous protesters) due to expensiveness. Dispersal of non-violent assemblies and arrests of participants (including preliminary arrests of potential participants) are broadly used. The press is forbidden to inform about assemblies, until organizers receive authorization by authorities.

Since January 2019 the ability to exercise the right to peaceful assembly have been significantly restricted due to the increase of fees for obligatory militia and medical services on guiding assemblies.

In amendments to the Law "On mass events", it was determined that the government should fix the cost of payments for militia services on public order maintenance during mass events. This Ordinance of the Council of Ministers № 49 was adopted on January 24[70].

69 The Law "On Mass Events in the Republic of Belarus" from December 30, 1997 with subsequent amendments http://law.by/document/?guid=3871&p0=H19700114e, art. 8.

70 Official publication: Resolution of the Council of Ministers of January 24, 2019 № 49 "On introduction of the Regulations on the procedure for payment for public order maintenance services, rendered by internal affairs agencies, expenses relating to medical services, cleaning of the territory after holding of a mass event on it" (in Russian) http://www.government.by/ru/solutions/3477

According to the ordinance, after receipt of a permit (or when there is no ban) to hold a mass event, organizers should conclude contracts on public order maintenance, medical services and cleaning of the territory and pay the following amounts for public order maintenance:

- 3 basic units (76,5 rubles or 33 EUR) — when the number of participants is up to 10 people;
- 25 basic units (637,5 rubles or 281 EUR) — from 11 to 100 people;
- 150 basic units (3825 rubles or 1,687 EUR) — from 101 to 1,000 people;
- 250 basic units (6375 rubles or 2,812 EUR) — more than 1,000 people.

When mass events are held in other places, the costs are 1.5 times higher.

In practice, this means that if you want to conduct, for example, a procession with more than a thousand participants in the city center, you must pay more than 5,000 euros to the law enforcement.

Assembly organizers are responsible for the maintenance of public order or for the acts of others during an assembly (it should be declared by organizers in a special written form submitted to the state authorities).

In 2017 human rights defenders recorded not only a return to the practice of arrests of participants of rallies and demonstrations, but return to mass arrests: in 2017 the Human Rights Center "Viasna" recorded 1270 cases of administrative prosecution, 311 out of which were administrative arrests, not fines. The peak of repressions was on March 25, when the traditional demonstration "Freedom Day" organized by opposition forces took place in Minsk. It was brutally broken up by multitudinous militia forces, around 700 people were detained, 149 out of which were later brought to administrative liability for participation in a peaceful rally. Many journalists were detained on "Freedom Day" and other rallies: according to the Belarusian Association of Journalists, there were 96 detentions of journalists recorded in spring 2017, 10 out of which ended up with administrative arrests[71].

STANDARD 4: LAW ENFORCEMENT SUPPORTS PEACEFUL ASSEMBLIES AND IS ACCOUNTABLE FOR THE ACTIONS OF ITS REPRESENTATIVES

Law enforcement agencies are the main threat to participants of peaceful assemblies. Law enforcement bodies often conduct beatings and arbitrary arrests pointedly and well ahead of the beginning of assemblies in order to frighten their participants. Law enforcement officers' actions never lead to responsibility.

The rules for use of force by law enforcement officers during assemblies are not available to the public: only the general laws on the use of force or weapons are published, but not the by-law regulations that take into account the circumstances of mass events. However, taking into account militia actions on dispersal of peaceful assemblies, arrests during peaceful and non-violent assemblies, use of riot-control weapons, it is obvious that these rules are not based on a human rights approach. Use of force by militia is never subject to investigation,

71 See in Annex 1: Freedom of association and legal conditions for non-commercial organizations in Belarus - Review Period: 2017 (updated version) by Legal Transformation Center and Assembly of Pro-Democratic NGOs http://belngo.info/wp-content/uploads/2018/01/SA-2017-ENG-updated.pdf, Pages 2.

unlawful use of force against protesters never leads to liability of individuals, responsible for disproportionate and ungrounded use of force.

The terms and conditions for the use of physical force and special means by police officers is described in the Law "On internal affairs agencies". In particular, according to Art. 26.2 of the mentioned law, physical force, special means, armaments, military and special equipment are used depending on the situation within the discretion of internal affairs officers in cases provided by this Act. "*The use of physical force, special means, weapons, military and special equipment should be preceded by clearly expressed and apparent for person warning about the intent to use them except for the cases when any delay in applying them will create direct threat to citizens' lives or can involve other serious consequences. Besides that, the legislation system provides for the duty of police officers to provide medical assistance to those affected by using of physical force and special means".* In terms of the Ministry of internal Affairs's structure there is the General Directorate of enforcement of law and order and violation prevention in which there is the Department of mass events. In Minsk and regional cities respective territorial units were created. Their functions include law enforcement during mass events including planning, organization, policing provision and termination of assemblies[72].

SPECIFIC RECOMMENDATIONS UNDER AREA 4:

- Make laws and practice of state regulation of assemblies congruent with human rights standards, including OSCE Guidelines on Freedom of Peaceful Assembly, so that restrictions do not make exercise of the right to freedom of peaceful assembly impossible for citizens (including foreign and underage ones) and CSOs.
- Extend the notification-based procedure for holding of assemblies to all unforbidden places and make the procedure for holding of any pickets the same as now applied to pickets on collection of signatures during election period.
- Abolish obligatory contracts with militia, ambulance and cleaning organizations for holding of assemblies.

72 Belarus – Monitoring the Right to Free Assembly 2017-2018 by Natallia Satsunkevich, Dmitry Chernyh and Nasta Loika http://ecnl.org/wp-content/uploads/2019/01/Belarus-Assembly-Report-2018.pdf , page 29

4.5 Right to Participation in Decision-Making

STANDARD 1: EVERYONE HAS THE RIGHT TO PARTICIPATION IN DECISION-MAKING

Despite some recent positive steps, access to participation in decision-making remains insufficient. Even though there are mechanisms for participation in decision-making in the legislation, many CSOs do not have access to them in practice due to formal restrictions. The authorities make the most important decisions without any consultations.

The Law of July 17, 2018 "On normative legal acts" stipulates that the following documents are subject to public consultations: draft legal acts and governmental orders, affecting rights, freedoms and duties of citizens and legal entities or introducing new approaches towards legal regulation of a specific area of social relations; draft legislative acts, which can significantly influence conditions for entrepreneurial activity; other draft legislative acts on the initiative of state agencies. At the same time, certain drafts cannot be brought up for public discussions (relating to taxes, state secrets and others).

The governmental order sets 2 forms of discussion of draft legal acts:

- General public discussion – discussion of drafts with participation of general public.
- Public professional discussion – discussion of drafts with participation of certain groups of persons, carrying out professional, educational, scientific or public activity in the field of regulation of social relations of the discussed legal act.

In practice, CSOs are not always invited into working groups on draft laws. When they are invited, these are certain CSOs and by a special decision of a state agency, organizing development of the discussed draft. It is very rare to invite an indefinite number of affected CSOs to working groups or consultations. Usually only participation in discussions of drafts online is available to an indefinite number of entities (submission of written comments and proposals, on the special state web-site "Legal Forum" as well).

Legal regulation of public participation in decision-making has been developing last years, and the circle of CSOs invited to consultations has been broadening (human rights CSOs and watchdog groups, including unregistered ones, are invited). However, the legislation in this field still remains segmental. In particular, norms on public consultations are developed separately from the norms relating to access to information, appeals of citizens and legal entities, public councils and other fields of interaction between CSOs and state agencies.

State agencies organize public consultations with the focus on the process and procedure to a greater extent, but rare on true influence on the content of the decision (they are more explanations of the decisions that are adopted rather than CSOs' influence on their essence).

There are no legal mechanisms to redress any non-compliance with the rules on civil participation and transparency of decision-making processes, including responsibility of state officials (except norms relating to leaving appeals unanswered or failure to meet the deadline for response).

State agencies tend to invite membership-based organizations (public associations) rather than foundations or institutions to consultations. The law specially prescribes a privileged status of public associations and unions of legal entities when predicting consequences of adoption of a draft normative legal act.

All draft laws are developed in one of the two state languages of Belarus (in the majority of cases it is Russian and only in few cases – Belarusian). There is no such a practice as to officially introduce draft laws in two state languages. As a result, language groups in Belarus are restricted in use of their language for participation in development of legislative proposals and submission of comments to draft laws.

STANDARD 2: THERE ARE CLEAR, SIMPLE AND TRANSPARENT MECHANISMS AND PROCEDURES IN PLACE THAT FACILITATE REGULAR, OPEN AND EFFECTIVE PARTICIPATION OF CSOS IN DEVELOPING, IMPLEMENTING AND MONITORING PUBLIC POLICIES

The majority of participation mechanisms work only formally, are not effective and do not have true influence on decisions. This also applies to consultative bodies that are broadly spread but are efficient only in certain fields.

On the basis of the law "On normative legal acts", in 2019 the government adopted two by-laws, aimed at developing provisions of the law – the Order № 56 of January 28, 2019 "On public discussion of normative legal acts" and the Order № 54 of January 25, 2019, which introduced the Instruction on predicting the consequences of adopting (executing) normative legal acts. It is prescribed that the term for public discussion should not be less than 10 calendar days[73]. It is a positive norm that the order stipulates to publish summary of public discussions that has been respected in practice since it came into effect.

Consultative and public councils under state agencies are established by the decisions of state agencies themselves, there is no general regulation of this mechanism. The practice wherein all interested CSOs are included to councils, is very rare – usually state agencies invite CSOs that they prefer as representatives of the public[74].

Many norms, relating to ensuring public participation in decision-making, are of quasi-obligatory character (using terms as "normally" and other recommendatory constructs).

Legal norms for CSO involvement in policy implementation, monitoring, and evaluation exist just in few areas (like environmental issues or business legislation) and do not exist in others or in general.

If a public discussion of the draft law has been announced, then its results should be publicly published (but the scope and details of such a report have not been established)

73 See in Annex 3: Semi-annual review "Changes in Legal Environment for Non-Commercial Organizations and Freedom of Associations in Belarus" covering the first half of 2019 by Legal Transformation Center and Assembly of Pro-Democratic NGOs http://belngo.info/wp-content/uploads/2019/07/SA-2019.1-ENG.pdf page 5

74 Public Councils in Belarus: Legal regulation and practice (2014) by Olga Smolyanko and Yury Chavusau (in Russian) https://www.lawtrend.org/pdf-viewer?file=https://www.lawtrend.org/wp-content/uploads/2014/03/Pravovoe-regulirovanie_OS1.pdf pages 13-15

STANDARD 3: CSOS HAVE ACCESS TO THE INFORMATION NECESSARY FOR THEIR EFFECTIVE PARTICIPATION

CSOs have only limited access to information about the activity of state agencies, which does not allow them to fully and efficiently use participation mechanisms.

Only certain draft concepts and policies are published and brought up for public discussions. The most controversial and disputable draft normative legal acts are not brought up for public discussions and are often published only when they are adopted or when drafts are submitted to the parliament. The plan for legislative activity is annually approved by the edict of the president, however, it contains the planned draft laws only and not the draft decrees and edicts of the president that have greater legal force than the law. The laws do not envisage the publication of the legislative agenda of the government. Draft laws are published in their original form as they were submitted to the parliament, however they are not updated after correction are made in the course of discussions.

The timing of answers to CSOs questions is usually not violated by state officials, but sometimes violated by local authorities. Announcements of public hearings are often formal, and de facto hardly noticeable to the public (especially hearings initiated by local authorities). In 2019, the government bodies at the ministry level expressed their unwillingness to implement a CSO project designed to consolidate all public hearing announcements in a single online system.

There is no special law and special norms on CSOs access to information.

STANDARD 4: PARTICIPATION IN DECISION-MAKING IS DISTINCT FROM POLITICAL ACTIVITIES AND LOBBYING

Mechanisms for political participation and lobbying are not clearly differentiated in legislation from mechanisms for public participation and advocacy.

Restrictions on participation of CSOs in political activities are not clearly defined, except for a ban (according to Electoral Code[75]) on nominating candidates at elections to the parliament and local councils. The notion of lobbying is neither set in the legislation nor in practice.

CSOs which, in opinion of the state, are connected with political opposition to the current authorities, are sometimes restricted in practice on their access to decision-making.

There are significantly fewer possibilities for public participation at the local level, as the existing legislative norms on public discussions of draft legal acts mostly relate to national level acts (laws, edicts, decrees, governmental orders) and not acts of local authorities.

75 Electoral Code of the Republic of Belarus of February 11, 2000 with subsequent amendments http://law.by/document/?guid=3871&p0=Hk0200166e, art. 60.

SPECIFIC RECOMMENDATIONS UNDER AREA 5:

- Extend approaches, regulations and practice, applied to participation of CSOs in decision-making on development of draft normative acts, to the level of local authorities.
- Make all organizational and legal forms of CSOs equal in their participation in decision-making, using the term "non-commercial organizations" instead of "public associations" in the respective legislation as well.
- Extend the practice wherein all affected CSOs are invited to consultations on draft legislative acts instead of the practice wherein state bodies decide to invite only certain CSOs.
- Publish annual plans (lists) for government and president legislative activity on development of not only draft laws, but also draft edicts and decrees.
- Extend the list of normative legal acts, which are subject to public discussions, making it obligatory to bring up drafts affecting civil rights and freedoms for public discussions as well.
- Publish actual draft laws online in their constantly updated form in accordance with the stages of legislative process that they are currently at.
- Publish drafts of decrees and edicts of president as well in time of preparation of such acts.
- Implement the measures for effective participation in public affairs according to the OHCHR Draft guidelines for States on the effective implementation of the right to participate in public affairs.
- Develop the Law "On public participation in decision-making" in consultation with CSOs, focused on expanding the opportunities for participation of the citizens and CSOs, and not on introducing restrictions.
- Enshrine in legislation the obligation to introduce draft laws to the parliament, adopt laws, governmental orders, decrees and edicts of the president in two state languages – Russian and Belarusian.

4.6 Freedom of Expression

STANDARD 1: EVERYONE HAS THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION

The state strives to restrict freedom of dissemination of opinions, including stances and assessments of human rights and other CSOs. This is especially conspicuous from the pressure on independent media and Internet resources, as well as journalists. Accusations of hate speech and extremism are sometimes used as a ground for such restrictions, while actual displays of hate speech remain unpunished, including those by state officials.

The Constitution guarantees freedom of opinion, but the legislation and practice seriously restrict freedom to impart opinions, through media and Internet as well. The legislation provides for a wide range of forms and grounds for restrictions on activity on imparting of opinions through criminal prosecution, restrictions on the media, control over the Internet (in respect of both Belarusian and foreign web-sites), as well as restrictions on imparting of materials, propagandizing extremist activity. The terminology used in the legislation is often vague and allows divergent interpretations. Together with ample powers of the Ministry of Information (on blocking of Internet resources in circumvention of courts and initiating bans of newspapers through courts), intelligence, border guard and law enforcement agencies, such a situation establishes conditions wherein the state has extremely broad and disproportionate opportunities to block imparting of information which the government considers unwanted.

"Propaganda of war", "propaganda of suicide", as well as "incitement to racial, national, religious or any other social hatred or discord" are subject to criminal prosecution[76].

There is constant misuse of these opportunities which take form of arrests of journalists, charges with criminal libel or incitement to hatred, sanctions against newspapers, blocking of web-sites and accounts in social networks[77].

Broadened and vague definitions of "extremism" and "extremist activities"[78] are especially

76 Criminal Code the Republic of Belarus of July 9, 1999 with subsequent amendments http://cis-legislation.com/document.fwx?rgn=1977, art. 123, 342-1 and 130.

77 Combating extremism and human rights. National anti-extremist legislation and law enforcement practice (2019) by Human Rights Center "Viasna", Belarusian Helsinki Committee, Belarusian Association of Journalists, institution "Human Constanta" (in Russian) https://spring96.org/files/book/ru/2019_extremism_ru.pdf

78 According to the Law "About counteraction to extremism" (current version, last edited April 20, 2016), extremism (extremist activities) is defined as: activities of citizens of the Republic of Belarus, foreign citizens or stateless persons (further, unless otherwise specified, - citizens) or political parties, other public associations, religious and other organizations (further - the organizations) on planning, the organization, preparation and making of the actions directed on: violent change of the constitutional system and (or) territorial integrity of the Republic of Belarus; capture or deduction of the government in the unconstitutional way; creation of the organization for implementation of extremist activities, the extremist organization, extremist group (further - extremist forming); creation of illegal armed group; implementation of terrorist activities; kindling of racial, race, religious or other social hatred or discord; the organization and implementation of mass riots, hooligan actions and acts of vandalism based on racial, race, religious or other social hatred or discord, political or ideological hostility; promotion of exclusiveness, superiority or inferiority of citizens on the basis of their social, racial, national, religious or language identity; promotion and public demonstration, production and distribution of Nazi symbolics or attributes; distribution of extremist materials, and is equal on production, the edition, storage or transportation for the purpose of distribution of such materials; the hindrance of legal activities of state bodies, including Central commission of the Republic of Belarus on elections and holding republican referenda, electoral commissions, commissions on referendum or the commissions on carrying out vote about response of the deputy, and also legal activities of officials of the specified bodies or the commissions made using violence, threat of its application, deception, bribery, and is equal on use of violence or threat of violence against the close called officials for the purpose of hindrance of their legal activities or coercion to change of nature of such activities or from revenge for accomplishment of service duties by them; financing of extremist activities, other assistance in its implementation, including by provision of real estate, means of telecommunication, educational, printing, other material means or information services; or public calls for activities and the actions specified above in paragraphs the second - the thirteenth this part.

dangerous, as they allow to apply them in accordance with both criminal and administrative procedures (for example, seizure of printed materials for expert examination for extremism propaganda, including situations when human rights materials are imported to Belarus from abroad or vice versa exported to other countries from Belarus).

Sanctions for violation of bans on imparting of information are excessive and disproportionate; they often de facto pursue the aim to persecute the media and journalists. For example, in 2018 violation of the conditions for access to the part of the state news web-site which is available under paid subscription (sharing of the password for subscription to news feed) was the ground for criminal case and searches in several editorial offices of newspapers and popular web-sites and houses of dozens of journalists[79]. The criminal legislation still stipulates criminal responsibility for defamation, libel or insult of the president or discreditation of Belarus. At the same time, true and serious incitements to crime and hate speech often remain unpunished for political reasons, while the right of certain individuals (including journalists and politicians) to freely express their opinions (in a radical form as well) entails persecution.

The cases are frequent when a journalist or a blogger who repeats incitements to hatred made by others (for example, drawing attention to the activity of a neo-Nazi group in the Internet) for the only purpose to inform the public, can be charged with assistance in imparting of "extremist materials".

Conduct of opinion polls on social and political topics (even if it is not related to elections) requires special accreditation by the agency under the Academy of Sciences. There is a ban on publishing results of such opinion polls conducted without accreditation, violation of which is punished with a fine[80]. Publications in the media on behalf of unregistered CSOs are forbidden[81].

Production of printed materials is subject to licensing, distribution of books is allowed only after accreditation by the Ministry of Information.

STANDARD 2: THE STATE FACILITATES AND PROTECTS FREEDOM OF OPINION AND EXPRESSION.

The state has monopolized the electronic media and dominates the published media market. Those media that support the government receive funding from the budget, are owned by the state and their editorial policy is directly controlled by the authorities. Other media, as well as bloggers, often face searches, criminal prosecutions, arrests of journalists and blocking of web-sites.

All TV channels are owned by the state, which also owns major public and political newspapers and subsidizes them directly from the budget. De facto the media market is monopolized by the state. The media must be registered in the Ministry of Information; work of foreign media and journalists is subject to accreditation - the authorities often refuse registration or accreditation to unwanted media. Access to the Internet, commenting on web-sites cannot be

79 BelTA Case: Facts, lists, related links by Press service of the Belarusian Association of Journalists (2019) https://baj.by/en/analytics/belta-case-facts-lists-related-links

80 Code on Administrative Offences of the Republic of Belarus of April 21, 2003 with subsequent amendments (in Russian) etalonline.by/?type=text&regnum=Hk0300194, art. 9-28.

81 The Law "On mass media" from July 17, 2008 with subsequent amendments http://law.by/document/?guid=3871&p0=H10800427e, art. 38.

anonymous; mobile phone communications require identification of subscribers as well. The state media often practice smear campaigns against human rights CSOs and minorities.

A non-party, but rigid "ideological vertical"[82] has been built in the country. There is a "deputy head on ideology" post in every state organization, enterprise, school and university, whose task is to propagandize ideas of unquestioning support of the current president's course, organization of elections and discrediting of opponents to the regime, as well as persecution of dissidents at their working places.

SPECIFIC RECOMMENDATIONS UNDER AREA 6:

- Liquidate "ideological vertical" as contradicting the Constitution.
- Carry out the demonopolization of electronic media, privatization of printed media.
- Funding of media from the state budget should be allocated through a transparent and open competition; state TV-channels should become public service television, in respect of which a special law should be adopted.
- Exclude liability for defamation (art. 188), insult (art. 189) defamation of the president (art. 367), insult of the president (art. 368), insult of a state official (art. 369), discreditation (art.369-1) from the Criminal Code.
- The system of web-site blocking and termination of newspaper publishing should be under the jurisdiction of courts; the system of printed media registration should be of notification-based character.
- Abolish obligatory accreditation of pollsters for conducting opinion polls.

82 https://ecpr.eu/Events/PaperDetails.aspx?PaperID=27584&EventID=101

4.7 Right to Privacy

STANDARD 1: EVERYONE ENJOYS THE RIGHT TO PRIVACY AND DATA PROTECTION.

The right to privacy is not protected from interference and unlawful restrictions by the state authorities. The legislation on personal data protection is only being shaped.

The Constitution guarantees the right to privacy, secrecy of correspondence and other messages and the legislation provides for protection of personal data (although the special law "On personal data" has so far been adopted in the first reading only).

In practice, this protection is effective only against interference by third parties, but not against interference by the state. For example, exercising the right to investigative activity, state agencies (including intelligence ones) freely intercept phone calls and internet correspondence of CSO members, as well as surveil them and control their movements. In some cases this state agencies use the received data for criminal prosecution and smear campaigns in the state media and stigmatization of human rights defenders, activists of other CSOs, trade unions, journalists and other individuals unsatisfied with the authorities' policies. No efficient investigations on such violations of hacked websites or emails of CSOs are conducted.

The Code on Administrative Offences provides for responsibility for disclosure of personal data (Article 22.13)[83]; and the Article 179 of the Criminal Code[84] - responsibility for unlawful collection or imparting of information about private life. But the wording of these norms and the practice of their application do not cover all the cases of misuse of access to personal data.

Belarus has not joined the Convention 108 of the Council of Europe, which is why it does not support this standard for protection of personal data (for example, there are no set terms for storage of personal data). The laws "On information, informatization and protection of information", "On population register", "On population census" and other contain definitions of the term "personal data", but all of them are different. For example, the definition from the law on population register is comprehensive, but the law on information relates to any data allowing identifying an individual based on this data. Due to the lack of unification of the key definitions it is impossible to make a general approach towards legal regulation of this sphere.

When it comes to the documents submitted for registration of public associations and foundations, the law requires providing personal information (including list of all the founders). In practice, this information go to other state agencies for additional approval or examination, which in some cases leads to pressure on CSO members. The Ministry of Justice has the right to request any information from public associations, including lists of members.

83 Code on Administrative Offences of the Republic of Belarus of April 21, 2003 with subsequent amendments etalonline.by/?type=text&regnum=Hk0300194

84 Criminal Code the Republic of Belarus of July 9, 1999 with subsequent amendments http://cis-legislation.com/document.fwx?rgn=1977

STANDARD 2: THE STATE PROTECTS THE RIGHT TO PRIVACY OF CSOS AND ASSOCIATED INDIVIDUALS.

CSOs are extremely exposed to interference and surveillance by the state, including surveillance in the Internet and misuse of access to activists' personal data.

Legislators and state bodies are key actors regulating protection of personal data in Belarus. There is no such an independent body, which would be authorized to control the quality of data protection and guarantees of rights to privacy. Article 30 of the Law "On information, informatization and protection of information" says that protection of information is organized in respect of information available to general public – by an individual, imparting and(or) providing such information; in respect of information, imparting or provision of which is restricted – by an owner or an operator of the information system, containing such information, or by a holder of information, if such information is not contained in information systems; by other individuals in cases, set forth by legislation[85]. Subjects of personal data protection are not directly named. The law differentiates only subjects of informational relations in general – owners of software and hardware tools, informational resources, systems or networks, information intermediary, holder of information, operator of information system, user of information, information system or network.

Internet communication, commenting on web-sites, use of mobile phones is possible only under condition of user identification. Internet providers are obliged to provide intelligence agencies with access to information, which is exchanged by users online. The authorities can demand provision of data about internet actions of any citizen. Despite the declared commitment by certain mobile operators to comply with European GDPR, control is exercised over mobile communication as well, including deep packet inspection (DPI). The authorities actively monitor protests through equipment from Russia and China, brought into use by mobile communication companies. Dual-purpose equipment from western suppliers (for example, Ericsson, TeliaSonera) is used by the authorities to surveil dissidents[86]. System for Operative Investigative Activities (SORM) provides a wide range of state agencies (up to 10) with 24/7 access to all networks, including networks of mobile operators and internet providers, in real time mode without public control[87] (court orders are not required).The decree of the president obliges providers to store databases with personal information about every user within a year, including history of their visits to web pages. The control system is backed by state monopoly on international internet connection.

Reporting requirements do not oblige CSOs to publish reports, although the norm on publication of reports by public associations has been proposed in draft laws, which are to be submitted to the parliament in 2019.

Despite the fact that the legislation provides for obligatory sanction of a prosecutor for searches, law enforcement officers arbitrarily intrude into CSO offices and flats of their leaders for arrests, searches and seizure of equipment.

---

85 Law "On Information, Informatization and Protection of information" of November 10, 2008 https://www.right2info.org/resources/publications/laws-1/laws_belarus-foi-law , article 30.

86 Belarus: Pulling the Plug - Policy paper on digital challenges to freedom of expression in Belarus http://www.indexoncensorship.org/wp-content/uploads/2013/01/IDX_Belarus_ENG_WebRes.pdf

87 "It's enough for people to feel it exists" - civil society, secrecy and surveillance in Belarus (2016) by Amnesty International https://www.amnesty.org/download/Documents/EUR4943062016ENGLISH.PDF

SPECIFIC RECOMMENDATIONS UNDER AREA 7:

- Adopt the Law "On personal data", taking into account international standards and principles of the Convention 108 of the Council of Europe and GDPR, as well as join this Convention.
- Establish an independent authority on protection of rights of personal data subjects.
- Introduce to the legislation appropriate sanctions for unlawful acts, relating to collection, processing, provision and imparting of personal data, introducing special norms of liability for state agencies' officials as well.
- Ensure sufficient guarantees that the legislation on protection of personal data will not be used to restrict activities of journalists and CSOs, aimed at protection of public interests.
- Put an end to the non-selective electronic surveillance over citizens, including interceptions of CSOs phone calls and monitoring of their internet communication without court orders.
- Guarantee the possibility of anonymous use of internet.

4.8 State duty to protect

STANDARD 1: THE STATE PROTECTS CSOS AND INDIVIDUALS ASSOCIATED WITH CSOS FROM INTERFERENCE AND ATTACKS.

Mechanisms for state protection of CSOs against interference do not work as an effective means. Courts do not protect CSOs from pressure, violation of rights or interference by state agencies. CSOs are often subjects to propaganda attacks and defamation campaigns.

According to the law "On public associations", the state guarantees protection of public associations' rights and legitimate interests and interference by the state into the activity of public associations is forbidden[88]. There are no similar guarantees for other forms of CSOs.

Article 190 of the Criminal Code[89] stipulates that direct or indirect violation or restriction of rights and freedoms or provision of direct or indirect benefits to citizens depending on their membership in public associations is punished with fines or up to two years of imprisonment. Article 192 of the Criminal Code stipulates that impediments to legitimate the activity of a public association or interference into its legitimate activity, which has inflicted significant violation of its rights and legitimate interests, is punished with fines, or deprivation of the right to hold certain positions or to engage in certain activity, or up to 2 years of correctional labor. However, there have been no practical cases under these articles. There are no similar guarantees for other forms of CSOs. In general, the practice wherein state mechanisms are used to protect CSOs from third parties is rare. In a range of cases state media remain unpunished for slanderously accusing CSOs of malicious and criminal activity (up to "preparation of a coup d'état") and misappropriation of grants from foreign donors - all attempts to challenge such accusations in court remain unsuccessful.

The legislation on appeals of citizens and legal entities provides CSOs with the right to submit petitions and other appeals to state bodies, defining obligations of state bodies regarding terms and procedure for responding. However, challenging state bodies' actions in court is possible only in the situations stipulated by law – for example, a public association can challenge refusal to register amendments to its charter, but cannot challenge a justice agency's decision not to recognize a congress or results of elections to the council of CSO. Some cases (court appeals against refusal of registration of the republican public association or in litigation to terminate the activity of such an organization or liquidate it) are decided by the Supreme Court without the possibility to further appeal the decision. The deadline for filing a complaint with a court against a decision of the justice authorities to refuse registration is one month after receiving the decision. The consideration of the case in court takes place within a reasonable time, without delay.

Public associations can act in civil litigations as procedurally neutral actors to voice public opinion on the cases, but they do not have such a right in criminal proceedings. Only certain CSOs with certain activity (for example, associations on protection of consumers' rights) can file lawsuits and pursue litigation in the public interest, as well as in general defend interests of third parties in court.

88 The Law "On public associations" of October 4, 1994 with subsequent amendments http://law.by/document/?guid=3871&p0=V19403254e, art. 6.

89 Criminal Code the Republic of Belarus of July 9, 1999 with subsequent amendments http://cis-legislation.com/document.fwx?rgn=1977

There is no mechanism for ensuring execution of decisions of international human rights bodies, in particular, adopted by the UN Human Rights Committee in respect of Belarus on the basis of facts of violation of the right to association through liquidation of public associations or refusals to register them.

CSO activists face persecution at their working or studying places – employees of schools are fired because of their membership in CSOs, university students are threatened to be expelled if they do not stop their membership in CSOs or oppositional party's youth wings. For example, since 2005, all five leaders of the youth wing of the Belarusian Popular Front party were expelled from school immediately after they were elected to the post of chairperson of a youth organization (and this traditional practice continued in 2017-2018)[90].

The state from time to time takes extremely restrictive measures against leaders and heads of CSOs, for example, banning entrance of representatives of foreign CSOs to Belarus, deporting CSO leaders who are foreign citizens from Belarus or banning activists from leaving the country. There are no efficient mechanisms for appeal against such decisions in court.

STANDARD 2: MEASURES USED TO FIGHT EXTREMISM, TERRORISM, MONEY LAUNDERING OR CORRUPTION ARE TARGETED AND PROPORTIONATE, IN LINE WITH THE RISK-BASED APPROACH, AND RESPECT HUMAN RIGHTS STANDARDS ON ASSOCIATION, ASSEMBLY, AND EXPRESSION.

Terrorism threat or groundless accusations of extremism has become the propaganda excuse for attacks on CSOs by the state. Accusations of extremist activity without serious grounds have become the mechanism for restrictions against CSOs and Internet activists. The measures proposed in 2019 on introduction of additional AML reporting for CSOs do not apply a risk-based approach.

The measures stipulated by law to AML/CTF are disproportionate and are based neither on risk assessment nor on respect for human rights standards. Laws on combating extremism and extremist propaganda contain vague wordings, allowing too broad interpretations, which creates possibilities for misuse of charges with extremism (especially when it comes to charges with imparting of extremist through publications in internet or through importing of printed materials to the country).

The law on AML/CTF stipulates that financial transactions of CSOs are subject to special control regardless of the fact if they were carried out or not, if they do not comply with the objectives of client's activity stipulated by CSOs founding documents or the character of CSOs' activity. It is enough for a transaction to have only this characteristic to be qualified as risky. Banks are held responsible for special control over such transactions – they are obliged to conduct special actions in respect of such transactions of their CSOs' clients, including their registration in a special form, requiring identification of an individual who conducts a transaction[91].

The national AML/CFT system includes the Office of the Prosecutor General, the National

90 Expulsion of students as a tool of control (2019) by Sasha Kuzmich, Belarusian Students' Association http://balticworlds.com/expulsion-of-students-as-a-tool-of-control/ or "All the five leaders of the "BPF Youth" were expelled from universities" (in Belarusian) https://euroradio.fm/use-pyac-lidarau-moladzi-bnf-adlichanyya-z-vuchoby

91 The Law "On actions to be taken to prevent legitimization of the proceeds of crime and the financing of terrorism and financing the weapons of mass destruction proliferation" of June 30, 2014, https://www.nbrb.by/engl/legislation/documents/z165_eng.pdf, art. 7.

Bank, the Financial Monitoring Department of the State Control Committee, law enforcement. The degree of cooperation of this system's elements with CSOs remains low (except for representatives of business associations). As reported, the EAG mutual evaluation mission has failed to meet a broad range of affected CSOs while preparing mutual evaluation report (MER).

Since 2018 Belarus has been undergoing the procedure of FATF evaluation within the EAG system. The mutual evaluation of the Belarusian AML/CFT system is being conducted in accordance with the EAG mutual evaluations schedule for 2018-2019. The main stage of the EAG evaluation campaign has taken place in March 2019 during EAG assessment team visit and during their final visit in September 2019. The final report is planned to be discussed at the EAG plenary meeting, which will be held in November 2019. The previous evaluation was conducted in Belarus 10 years ago.

In the course of the national risk evaluation, non-commercial organizations sector was included into evaluation subjects. "*Absence of facts when CSOs have been used to conduct activities relating to money laundering is evidence of low risk of their involvement into criminal activity. There have been no facts detected in Belarus when CSOs have been used for funding of terrorist activity*" – says resume of the national evaluation report[92]. However, in contrast to the risk-based approach, authors of the evaluation claim the high risks of CSO involvement into criminal activity on the basis of only one outdated interpretation of FATF recommendation, making references to studies on this topic by FATF, EAG and other international organizations. "*In view of this, it is required for bodies, controlling activities of such CSOs, to take additional measures to reduce potential risks of funding of terrorist activity*" – says the evaluation.

The draft law "On amendments to the Law of the Republic of Belarus "On actions to be taken to prevent legitimization of the proceeds of crime and the financing of terrorism and financing the weapons of mass destruction proliferation" has been prepared[93]. The draft law adopted on May 23, 2019 in first reading stipulates that the Ministry of Justice should determine the content, procedure for storage and publication of reports by foundations and public associations on their activity and other data, required for taking measures to prevent funding of terrorist activity and funding of proliferation of weapons of mass destruction.

Thus, despite low risk of involvement of Belarusian CSOs into funding of terrorism and money laundering, the state plans to introduce additional reporting on this issue for a broad range of CSOs without conducting open public consultations with them.

The Ministry of Justice on the issue of combating corruption proposes in 2019 the introduction of additional financial reporting for CSO without taking into account a risk-based approach. The draft law, which has not yet been submitted to parliament in November 2019, proposes to introduce the obligation to publish financial reports both for all public associations and all political parties. In doing so, the authors of the draft law cite recommendations of the Group of States against Corruption (GRECO), which, they say, contain a prescription to

92 Summary of the report on the national risk assessment of money laundering and terrorist financing (2019) by Committee of state control adopted by interagency commission (in Russian) www.kgk.gov.by/uploads/files/_2019/dfm/nok(rezume).doc and Interagency Commission resolution on it January 18, 2019. http://pravo.by/novosti/obshchestvenno-politicheskie-i-v-oblasti-prava/2019/january/32184/?fbclid=IwAR0wP4czzBwTY1-ZYbf-x1BurEqsp3O4LP1fWeNqFGfIr2SzFlVvPIUMCzU

93 Draft law - http://pravo.by/document/?guid=3941&p0=2019008001

increase the level of transparency of political financing in Belarus. In 2016, GRECO adopted the Third Round Evaluation Report on Belarus, which focused on the criminalization of corruption and transparency of the financing of political parties[94].

SPECIFIC RECOMMENDATIONS UNDER AREA 8:

- Introduce the possibility for CSOs to appeal against any action of state bodies in court, which, in their opinion, violates their rights or rights of their members.
- Introduce amendments to the Procedural Criminal Code, stipulating possibility for public associations to voice public opinion on cases within criminal proceedings.
- While defining measures of legal protection of CSOs, or its members, or employees from discrimination, use the term "non-commercial organizations" as covering a broader range of CSOs than the currently used term "public associations", relating to only one CSO legal form.
- Introduce the risk-based approach to the legislation on AML/CTF, which takes into account actual non-involvement of CSOs in the activity on money laundering and funding of terrorism, as well as refuse assessment of CSO transactions' compliance with their charters as a criterion for relating financial transactions to those requiring special control.
- While preparing amendments to the law on AML/CTF for the second reading, remove the proposals on the obligation for public associations to publish reports on CTF measures.

94 Such a reference to the recommendations of international experts does not look substantiated and sincere, since Belarus never agreed to the publication of the GRECO report and recommendations. This is the only case of such doubtful secrecy among all the members of this treaty institution of the Council of Europe. However, the public summary of the GRECO report makes it clear that GRECO experts are not see the source of corruption in Belarusian political parties: "[Parties] only play a marginal role in the country's political/electoral process," GRECO notes in its report – see in Third Evaluation Round Summary of the Evaluation Report on Belarus Incriminations (ETS 173 and 191, GPC 2) (Theme I), Transparency of party funding (Theme II) - by GRECO (2017) https://rm.coe.int/third-evaluation-round-summary-of-the-evaluation-report-on-belarus-inc/168076d562

4. 9 State support

STANDARD 1: THERE ARE A NUMBER OF DIFFERENT AND EFFECTIVE MECHANISMS FOR FINANCIAL AND IN-KIND STATE SUPPORT TO CSOS

Mechanisms for state support of CSOs are not developed and state support is available to only certain CSOs close to the authorities.

There is no single normative act in Belarus that regulates state financial support to CSOs. Normative acts, regulating provision of state support in the country, could conveniently be classified into three types:

- regulating support, provided to legal entities without distinction as to form of ownership;
- regulating provision of support to organizations depending on the character of their activity;
- regulating provision of support to certain organizations.

The legislation and practice provide for two main forms of state financial support of CSOs – direct funding of certain CSOs from the state or local budgets on non-competitive basis and social contracting. There is also a special procedure for attracting funding stipulated for sport organizations (including appointing of certain enterprises to fund certain clubs). In general, only a narrow and constant circle of CSOs receives state support. In-kind support in the form of reduced rental fees when renting state-owned premises is provided to CSOs that are included in the special list approved by the government. CSOs are included in this list at the request of ministries based on a procedure with non-transparent, subjective criteria. Besides social contracting, contracting CSOs is not spread and tender conditions for state procurement are usually formulated in such a way that they are unfavorable for CSO participation.

The amendments of the Law "On Social Services" (2000) which came into effect in 2013 introduced the mechanism of state social contracting that enables legal entities and individual entrepreneurs to perform social services and to implement social projects on a competitive basis. The aim of the state social contract is to provide social services to people in diffcult life situation – the beneficiary group of the Law – and to increase accessibility and quality of such social services. The Law provides that funding for the state social contracts shall be allocated from the budgets of the local authorities. In doing so, local authorities must follow state, sectoral and regional programs. Local authorities define the needs for state social contracts, conduct competitions, sign contracts with selected service providers, including CSOs, and provide funding. The competition should be conducted by the local authorities in a transparent and open manner. Local authorities also provide consultative and informational support to providers, including CSOs[95].

95 NGO Social Contracting: Fact Sheet Belarus by UNDP (2016) https://www.eurasia.undp.org/content/dam/rbec/docs/UNDP%20NGO%20Factsheet%20Belarus_web_V3.pdf page 5.

STANDARD 2: STATE SUPPORT FOR CSOS IS GOVERNED BY CLEAR AND OBJECTIVE CRITERIA AND ALLOCATED THROUGH A TRANSPARENT AND COMPETITIVE PROCEDURE

State support for CSOs is allocated on a non-competitive basis due to direct political decisions

There are no transparent and competitive procedures for provision of state funding to CSOs. The only exception is social contracting. However, social contracting is available to a narrow circle of social CSOs, requires a lot of additional financial contributions from other resources and its application is subject to serious restrictions. State funding of CSOs is not monitored, the results of the projects and programs funded by the state are not published.

CSOs, receiving funds from the state, participate in elections and agitation campaigns in support of the government and pro-governmental candidates, including in incumbent's presidential campaigning.

STANDARD 3: CSOS ENJOY A FAVORABLE TAX ENVIRONMENT

The tax regime is not favorable for CSOs. In general, tax legislation only to the insignificant extent considers the specifics of the activity of organizations that do not have profit-making goals.

CSOs do not assess tax environment as favorable. The only benefit is exemption of membership fees and donations from individuals and legal entities from income tax. However, foreign gratuitous aid (i.e. any donations and gifts from abroad, including grants) is not automatically tax exempt – besides registration of aid in the Department for Humanitarian Activity, a recipient should undergo a separate procedure for tax exemption and such exemption may be partially or fully refused. CSOs name lack of regulation of the tax status for charitable aid to individuals who receive it from CSOs as unfavorable measure – in some cases tax inspectorates demanded from citizens to pay tax on such aid.

The Tax Code provides tax exemption for donations received by CSOs from individuals who permanently reside in Belarus[96]. Such donations should be used for their intended purposes; if these purposes are not defined, donations should be used for the implementation of organizations' statutory goals. In practice, individual donations are the main source of domestic funds for CSOs, this includes crowdfunding. The liberalization of anonymous donations in 2016 is a significant and positive amendment to the legislation of the Decree № 5 "On Foreign Gratuitous Aid" of August 31, 2015[97]. Before the amendment, any anonymous donation was treated by law as foreign aid and required formal registration in state agency.

Many technical requirements on tax calculations are designed for commercial organizations and the specifics of CSOs are not taken into consideration. For example, when a CSO does not have any financial activity, it must submit empty tax declarations every month. There are no official legislative definitions of "charitable activity," "charitable (public benefit) organization," or "charity." The legislation uses different terms, such as donations, gratuitous (sponsor) aid, foreign gratuitous aid, and international technical aid – and sometimes the differences

96 Tax Code of the Republic of Belarus of December 19, 2002 with subsequent amendments (Amended as of December 30, 2019) http://law.by/document/?guid=3871&p0=Hk0200166e art. 174, para. 4, point 4.2.3

97 The Decree of the president "On foreign gratuitous aid" of № 5 from August 31, 2015 dha.gov.by/wp-content/uploads/2014/03/%D0%94%D0%B5%D0%BA%D1%80%D0%B5%D1%82-%E2%84%965.docx

between them are unclear. In practice, this creates significant difficulties in the execution of donations for correct calculation of taxes and bank transactions.

Any sum received by an individual as a gift, so long as it does not exceed 6,569 rubles (€2,870) in total from different sources within a year, is exempt from income tax[98]. When it comes to donations to orphaned children or persons with disabilities, each donation that does not exceed 13,128 rubles (€5,736) in total from different sources within a year is tax deductible.

Public associations are deprived of the right to conduct independent entrepreneurial activity[99]. In case of conduct of entrepreneurial business activity by foundations and institutions, their income is subject to taxation without any benefits like income of any commercial organization. The legislation does not specify such notions as CSOs with a special public benefit status, as well as "social entrepreneurship".

Leaders and employees of CSOs who violate rules for receipt of foreign aid and receive it on personal accounts or organizations' bank accounts abroad, are charged with tax evasion in accordance with the criminal procedure and are sentenced to imprisonment (despite the fact that donors confirm its use for the intended purposes or that defendants admit their guilt or pay the calculated taxes).

STANDARD 4: BUSINESSES AND INDIVIDUALS ENJOY TAX BENEFITS FOR THEIR DONATIONS TO CSOS

The system of targeted tax preferences to certain CSOs under the list is deficient and harms development of civil society and charity culture.

The tax legislation does not provide for general benefits to corporate donors of CSOs. Donations from corporate donors cannot be anonymous and should be formalized through a written contract. Crowdfunding platforms are dependent on the state and sometimes block fundraising for certain projects because of their negative attitude towards the authorities.

The Tax Code provides an insignificant number of tax deductions to the donors and recipients of gratuitous aid. According to the general rules, tax deductions are not provided to corporate donors. Income tax deductions for donors are set only for donations and given to a narrow range of CSOs, which are enumerated in the law by name. Today, the Tax Code only lists 16 organizations to which corporate donors can make tax-exempt donations; for example, public associations for disabled persons and some charitable CSOs[100]. This tax benefit is also applied to donations made to commercial enterprises established by any of these 16 CSOs. In 2018, when new amendments to the Tax Code were introduced, the list of the beneficiary CSOs was extended with a few new names. Lawmakers did not consider the suggestions of the civil society to instead define common attributes of CSOs, for which corporate donors can make tax-exempt donations, but listed specific beneficiary organizations including new organizations. The law also stipulates preferences for donations to organizations of a certain kind. For instance, certain amount of money given by donors to religious organizations, social service

98 Tax Code of the Republic of Belarus of December 19, 2002 with subsequent amendments (Amended as of December 30, 2019) http://law.by/document/?guid=3871&p0=Hk0200166e, art. 208.

99 The Law "On public associations" of October 4, 1994 with subsequent amendments http://law.by/document/?guid=3871&p0=V19403254e, art. 20.

100 Tax Code the Republic of Belarus of December 19, 2002 with subsequent amendments (Amended as of December 30, 2019) http://law.by/document/?guid=3871&p0=Hk0200166e art.181

institutions and some sport organizations are exempt from income tax. In both cases, the list of specific organizations, enumerated in the Tax Code, and religious and sport organizations, there is a ceiling of how much of corporate donations can deduct taxes. It cannot exceed 10% of a donor's profit and it has to be granted to health, education, social welfare, culture, and sports state institutions; religious organizations; social services institutions; and public associations, or spent for acquisition of goods, works, or services for the benefit of the named institutions.

There are no tax deductions for individual donors.

STANDARD 5: LEGISLATION AND POLICIES STIMULATE VOLUNTEERING

The authorities are just studying the possibility of introducing legal regulations on volunteering.

The legislation does not contain single definitions of the notions "volunteers" or "volunteer activity". Only certain normative acts contain the notion "volunteer". Certain norms of labor law establish potential threats to engage volunteers, as they do not take into account their peculiarities and extend such guarantees to them, which are characteristic of an employment agreement between an employer and an employee.

Some CSOs conclude civil volunteer agreements and introduce their own internal rules for volunteers.

The Council on Legal and Judicial Activity has recommended adopting a law, which would regulate volunteer activity. However, adoption of a special law may lead not to the development, but the worsening of the functioning of this institute because of excessive regulations.

SPECIFIC RECOMMENDATIONS UNDER AREA 9:

- Work out with participation of affected CSOs and adopt the law on cooperation between state agencies and non-state NCOs.
- Enshrine the provisions on non-discriminatory and open system for funding of non-state NCOs from the state budget on a competitive basis in the legislation, which would stipulate publication of the data on the volumes of the allocated state aid to CSOs, as well as publication of reports by recipient organizations on its use.
- Implement in practice such an approach towards funding of CSOs from the national and local budgets on the basis of open competitions, which would exclude corruption and uncontrolled usage of the allocated budget funds to CSOs (including monitoring of projects and publication of reports).
- Introduce the mechanism of income tax percentage designation to CSOs for individuals.
- Specify the definition of social entrepreneurship by law and set tax benefits for social enterprises.
- Change the existing practice of providing tax and other financial benefits to CSOs through legislative acts for a new practice of granting beneficial statuses in the form of tax deductions to CSO and donors based on criteria described by law.
- Introduce the practice of public (participatory, initiative) budgeting (civil participation budget) at the local level of administrative and territorial entities.
- Enshrine in the Law "On accounting and reporting" possibility for simplified accounting in NCOs by heads of organizations without employing a professional accountant.
- Simplify tax reporting for CSOs which do not conduct entrepreneurial business activity.
- Work out a precise conceptual framework on types of funds and other property gratuitously received by CSOs.
- Define the definition "sponsorship" in the legislation; specify the provisions on sponsorship activity in the Civil Code; use single terms in respect of gratuitously received funds and other property in the legislation, for example, donations or gratuitous aid.
- Enshrine the notion "endowment" in the legislation.
- Specify the provisions on volunteering (gratuitous rendering of services / execution of works) in the Civil Code.
- Introduce amendments to the legislation on social contracting in order to ensure access to this mechanism for a wide range of CSO, taking into account the proposals of the affected parties and other stakeholders in the course of developing the law.

4.10 State- CSO Cooperation

STANDARD 1: STATE POLICIES FACILITATE COOPERATION WITH CSOS AND PROMOTE THEIR DEVELOPMENT

There are no framework policy documents on cooperation between CSOs and the state. Certain plans and programs approved by the state provide for interaction between state agencies and CSOs during their implementation. However, the extent of CSO participation in the development of these plans, as well as the availability and sufficiency of financial support for their implementation remain so far unsatisfactory.

Framework state documents on development of CSOs or on cooperation between the state and CSOs do not exist in Belarus. General state programs and action plans sometimes contain CSOs as co-executors, however, the key roles are always given to state agencies or more seldom to major CSOs de facto having the majority of characteristics of GONGOs. Nevertheless, some CSOs perceive these action plans and programs as kind of agenda for cooperation with state bodies and they de facto replace cooperation policy papers. When these program documents are worked out, only a small part of CSOs' recommendations is taken into account, although preliminary collection of proposals is often open. Monitoring and publication of programs' implementation assessment is not always conducted.

In this indicator, good practice was shown by MFA report on the implementation of activities by state bodies and other state agencies from national human rights action plan"[101].

STANDARD 2: THE STATE HAS SPECIAL MECHANISMS IN PLACE FOR SUPPORTING COOPERATION WITH CSOS

Legislation does not contain framework regulations of mechanisms for cooperation and consultations between the state and CSOs. There are both positive and negative practices in this field.

Public councils with participation of CSOs are widespread. However, they do not have single standards and regulation principles, their composition is approved by the decision of a state body and they do not form a hierarchical system. Establishment of councils is usually initiated by state agencies and very rarely by CSOs[102]. Powers of councils are usually very scanty, except for councils on entrepreneurial activity. CSOs are rarely admitted to the councils at their own request, never delegated by members to councils through elections among various CSOs, it usually provides for individual invitations initiated by state agencies, under which councils are established. Selection criteria for participation of CSOs in consultative bodies are unclear and largely biased, the selection procedure is not transparent. Only in rare cases the legislation regulates powers and rules of procedure for councils, most often the only regulative act is regulations, approved by a state body itself under which a council is established.

101 2018 report http://mfa.gov.by/upload/12/REport2018FINAL.pdf with annexes on some points http://mfa.gov.by/upload/12/nekotorie%20punkti.pdf

102 Public Councils in Belarus: Legal regulation and practice (2014) by Olga Smolyanko and Yury Chavusau (in Russian) https://www.lawtrend.org/pdf-viewer?file=https://www.lawtrend.org/wp-content/uploads/2014/03/Pravovoe-regulirovanie_OS1.pdf pages 8-17

SPECIFIC RECOMMENDATIONS UNDER AREA 10:

- Work out a policy paper on cooperation between CSOs and the state with participation of a wide range of CSOs and state agencies and adopt it in the form of governmental order with action plan for up to 3 years, which would provide for funding of co-executor CSOs on competitive basis, as well as procedure for regular monitoring, execution assessment and assessment of influence on policies.
- Stipulate by law the definition of a public council, transparent procedure for establishment of councils on the initiative of CSOs and inclusion of CSOs into them, status, powers of councils at national and local levels, validity of the council's decisions, as well as model rules of procedure.

V. CONCLUSIONS & RECOMMENDATIONS

The assessments in the previous sections of the review, as well as suggested recommendations build up a comprehensive roadmap of reforms, promotion of which should facilitate improvements of environment for CSOs in Belarus.

However, successful implementation of the above-mentioned measures will only be effective if there is a political will to achieve such a result. Otherwise, achievements of the above-mentioned recommendations will be fragmentary, they risk being formal and their positive influence may be downplayed with worsening of other components of the legislation or practice.

That is why the authors of this research emphasize that truly successful improvement of the environment for CSOs requires comprehensive and integrated approach. Improvement of the conditions for the registration of CSOs and mitigation of the quantitative criteria for the number of CSO founders is incongruent with worsening of conditions and discrimination of human rights CSOs and associations of minorities in any issue of establishment or activity of such organizations. Introduction of elements of notification-based procedure for holding of peaceful assemblies is non-compliant with introduction at the same time of huge fees for militia services on safeguarding such events and keeping practical impossibility to conduct counter-demonstrations. Any reform of financial aspect of CSO activity is only possible with introduction of such conditions for economic and other CSO activity, which would at least not be worse than for commercial legal entities.

Within the framework of such an approach, in order to ensure successful functioning of CSOs in Belarus, it is necessary to make the legislation compliant with international standards in the field of freedom of association, as well as introduce amendments to both a range of special normative acts on CSOs and certain normative acts regulating activity of all legal entities.

At the same time, the legislation regulating CSO activity should be developed in consultations with all CSOs expressing their will to participate in such consultations after their timely announcement.

IT IS NECESSARY TO:

- Amend framework legislation on registration of all forms of CSOs in such a way that all CSOs could enjoy the notification-based registration procedure. At the same time, the criterion for the number of founders should be reduced and bureaucratic obstacles should by simplified to the level which would not exceed the one for commercial organizations; politically motivated and not lawful refusals of registration should be out of the question.
- When improving legislation, take into account the specifics of CSOs, providing them with the necessary benefits and preferences due to their non-profit activities, at the same time avoiding the practice of discrimination of CSOs in comparison with commercial organizations; use a general term “legal entities” in normative acts when defining benefits and preferences for legal entities.

- Extend CSOs' access to funding from both local and foreign sources, at least abolishing the restrictive list of objectives, which such funding can be received for, and the ban for public associations to independently conduct economic/entrepreneurial activity without the necessity to establish a separate commercial organization[103].
- Extend the notification-based procedure for holding of assemblies to all unforbidden places and make the procedure for holding of any pickets the same as now applied to pickets on collection of signatures during election period. Abolish obligatory contracts with militia, ambulance and cleaning organizations for holding of assemblies.
- Make all organizational and legal forms of CSOs equal in their participation in decision-making, using the term "non-commercial organizations" instead of "public associations" in the respective legislation as well. Extend the practice wherein all affected CSOs are invited to consultations on draft legislative acts instead of the practice wherein state bodies decide to invite only certain CSOs. Publish annual plans (lists) for government and president legislative activity on development of not only draft laws, but also draft edicts and decrees.
- Publish draft laws online in their current constantly updated form in accordance with the current stage of legislative activity, which they are now at, and publish drafts of decrees and edicts of president as well in time of preparation of such acts.
- Based on an analysis of international standards and OHCHR Draft guidelines for States on the effective implementation of the right to participate in public affairs, in consultation with CSOs, to develop the Law "On public participation in decision-making", focused on expanding the opportunities for participation of the citizens and CSOs, and not on introducing restrictions.
- Enshrine in legislation the obligation to introduce draft laws to the parliament, adopt laws, governmental orders, decrees and edicts of the president in two state languages – Russian and Belarusian.
- Funding of media from the state budget should be allocated through a transparent and open competition; state TV-channels should become public service television, in respect of which a special law should be adopted.
- Adopt the Law "On personal data", taking into account international standards in this field, which would be congruent with the principles of the Convention 108 of the Council of Europe and GDPR, as well as join this convention. Establish an independent authorized body on protection of rights of personal data subjects Establish independent.
- Introduce the risk-based approach to the legislation on AML/CTF, which takes into account true non-involvement of CSOs into activity on money laundering and funding of terrorism, as well as refuse assessment of CSO transactions' compli-

103 The Law "On public associations" of October 4, 1994 with subsequent amendments http://law.by/document/?guid=3871&p0=V19403254e, art. 20.

ance with their charters as a criterion for relating financial transactions to those requiring special control.

- Work out with participation of affected CSOs and adopt the law on cooperation between state agencies and non-state NCOs. Enshrine the provisions on non-discriminatory and open system for funding of non-state NCOs from the state budget on a competitive basis in the legislation. Introduce the mechanism of income tax percentage designation to CSOs for individuals. Introduce the practice of public (participatory, initiative) budgeting.
- Work out a policy paper on cooperation between CSOs and the state with participation of a wide range of CSOs and state agencies and adopt it in the form of governmental order with action plan for up to 3 years, which would provide for funding of co-executor CSOs on competitive basis.

VI. ANNEXES

6.1 Annex I - Bibliography

MAIN LAWS AND REGULATIONS:

The Constitution of the Republic of Belarus of 1994, with subsequent amendments http://www.house.gov.by/en/constitution-of-the-republic-of-belarus-en/

Civil Code of the Republic of Belarus of December 7, 1998 with subsequent amendments http://law.by/document/?guid=3871&p0=Hk9800218e

Tax Code of the Republic of Belarus of December 19, 2002 with subsequent amendments (Amended as of December 30, 2019) http://law.by/document/?guid=3871&p0=Hk0200166e

Criminal Code the Republic of Belarus of July 9, 1999 with subsequent amendments http://cis-legislation.com/document.fwx?rgn=1977

Electoral Code of the Republic of Belarus of February 11, 2000 with subsequent amendments http://law.by/document/?guid=3871&p0=Hk0200166e

The Law "On public associations" of October 4, 1994 with subsequent amendments http://law.by/document/?guid=3871&p0=V19403254e

Code on Administrative Offences of the Republic of Belarus of April 21, 2003 with subsequent amendments (in Russian) etalonline.by/?type=text&regnum=Hk0300194

The Decree of the president "On some measures on regulation of activities of political parties, trade unions, and other public associations" № 2 of January 26, 1999 with subsequent amendments http://law.by/document/?guid=3871&p0=Pd9900002e

The Resolution of the Ministry of Justice №48 "On approving legal normative acts on issues of completing and considering documents relating to state registration of political parties, labor unions, other public associations, their unions (associations), as well as state registration and exclusion from the registry, inclusion and taking from records information about their structural units" of August 30, 2005 with subsequent amendments https://minjust.gov.by/upload/iblock/31a/postanovlenie-ministerstva-yustitsii-respubliki-belarus-ot-30-avgusta-2005-g.-_-48-.docx

Regulations on the creation, activities and liquidation of the foundations in the Republic of Belarus, approved by Edict of the president №302 of July 1, 2005 with subsequent amendments https://minjust.gov.by/upload/iblock/547/ukaz-prezidenta-respubliki-belarus-ot-1-iyulya-2005-goda-_-302-o-nekotorykh-merakh-po-uporyadocheniyu-deyatelnosti-fondov.docx

The Decree of the president №1 "On state registration and liquidation (termination of activities) of subjects of economic activities" of January 16, 2009 with subsequent amendments http://law.by/document/?guid=3871&p0=Pd0900001e

The Decree of the president "On foreign gratuitous aid" of № 5 from August 31, 2015 dha.gov.by/wp-content/uploads/2014/03/%D0%94%D0%B5%D0%BA%D1%80%D0%B5%D1

%82-%E2%84%965.docx - draft amendment available http://dha.gov.by/wp-content/uploads/2019/07/%D0%94%D0%B5%D0%BA%D1%80%D0%B5%D1%82-%D0%B2-%D0%BF%D0%BE%D0%BB%D0%BD%D0%BE%D0%B9-%D0%B2%D0%B5%D1%80%D1%81%D0%B8%D0%B8.pdf

The Edict of the president №300 from July 1, 2005 "On provision and use of gratuitous (sponsor) aid" with subsequent amendments www.bcf.by/documents/ukaz_300.doc

The Law "On Mass Events in the Republic of Belarus" from December 30, 1997 with subsequent amendments http://law.by/document/?guid=3871&p0=H19700114e

Resolution of the Council of Ministers of January 24, 2019 № 49 "On introduction of the Regulations on the procedure for payment for public order maintenance services, rendered by internal affairs agencies, expenses relating to medical services, cleaning of the territory after holding of a mass event on it" http://www.government.by/ru/solutions/3477

The Law "On mass media" from July 17, 2008 with subsequent amendments http://law.by/document/?guid=3871&p0=H10800427e

The Law "On Accounting and Reporting" of July 12, 2013 with subsequent amendments http://law.by/document/?guid=3871&p0=V19403321e

The Law "On normative legal acts" of July 17, 2018 http://pravo.by/document/?guid=3871&p0=H11800130

The Law "About counteraction to extremism" of 4 January 2007 (current version, last edited April 20, 2016) - http://cis-legislation.com/document.fwx?rgn=14869. In 2019, amendments were made to it, on the fight against the rehabilitation of Nazism, which will enter into force on February 1, 2020.

The Law "On actions to be taken to prevent legitimization of the proceeds of crime and the financing of terrorism and financing the weapons of mass destruction proliferation" of June 30, 2014 with subsequent amendments https://www.nbrb.by/engl/legislation/documents/z165_eng.pdf (with draft law on amendments, adopted in first reading - http://pravo.by/document/?guid=3941&p0=2019008001)

Law "On Information, Informatization and Protection of information" of November 10, 2008 https://www.right2info.org/resources/publications/laws-1/laws_belarus-foi-law

Edict of the president of May 4, 2007 № 209 "On lottery activity on the territory of the Republic of Belarus" https://cis-legislation.com/document.fwx?rgn=18934

"Interagency Action Plan on implementation of recommendations accepted by the Republic of Belarus following the second cycle of the United Nations Universal Periodic Review 2016-2019 and from the human rights treaty bodies" (also known as "National Human Rights Action Plan) of 24 October 2016, adopted by resolution of the Council of Ministers №860 http://mfa.gov.by/upload/doc/plan_all_eng.pdf

RESEARCH STUDIES

Mapping Study "Belarus Civil Society Organisations In Cross-Sectoral Dialogue" - summary of legal environment research and expert survey (2014) https://belarusdigest.com/sites/default/files/mapping_belarus_0.pdf

Legal aspects of NPO fundraising by electronic means in Belarus - an analytical overview (2018) for International Center for Not-for-Profit Law (ICNL) by Olga Smolyanko and Yury Chavusau http://www.icnl.org/programs/eurasia/Belarus%20FINAL%20eng%2011%2026.pdf

Public Councils in Belarus: Legal regulation and practice (2014) by Olga Smolyanko and Yury Chavusau (in Russian) https://www.lawtrend.org/pdf-viewer?file=https://www.lawtrend.org/wp-content/uploads/2014/03/Pravovoe-regulirovanie_OS1.pdf

Right to associations. Belarus: 1994-2004 (2004) https://www.lawtrend.org/wp-content/uploads/2004/10/Pravo-na-obedinenie.pdf

Legal regulation of financial activities of non-profit organizations in Belarus (2012) by Olga Smolianko (in Russian) https://www.lawtrend.org/pdf-viewer?file=https://www.lawtrend.org/wp-content/uploads/2014/03/Fin_deyatelnost_NKO_Smolyanko1.pdf

NGO Social Contracting: Fact Sheet Belarus by UNDP (2016) https://www.eurasia.undp.org/content/dam/rbec/docs/UNDP%20NGO%20Factsheet%20Belarus_web_V3.pdf

Ban on the activities of unregistered associations in Belarus (2010) http://belngo.info/2010.zabarona-dzejnasci-nezarehistravanych-ab-jadnannjaw-u-belarusi-artykul-193-1-kryminalnaha-kodeksu.html

Access to information and privacy online – Belarus, (2014) by Marina Sakalova https://www.lawtrend.org/wp-content/uploads/2015/03/Internet-Freedom-2014.pdf

State policy for non-profit organizations in the Republic of Belarus in the context of European standards of freedom of association (2016) by Olga Smolianko and Yury Chavusau (in Russian) https://www.lawtrend.org/wp-content/uploads/2017/05/Gosudarstvennaya-politika_NKO-ES-3.pdf

How to improve the legal conditions for non-profit organizations in Belarus. Analytical report on the development of reform proposals in the field of legal regulation of non-profit organizations in the framework of the project "REFORUM" (2017) by Olga Smolyanko and Yury Chavusau (in Russian). https://www.lawtrend.org/wp-content/uploads/2017/11/Kak-uluchshit-pravovye-usloviya-dlya-NKO-v-Belarusi.pdf#viewer.action=download

Interaction between local authorities and non-profit organizations: Legal regulation and practice (2019) by Olga Smolyanko and Yury Chavusau (in Russian) https://budzma.by/wp-content/uploads/2019/03/book-rds-2019.pdf

Combating extremism and human rights. National anti-extremist legislation and law enforcement practice (2019) by Human Rights Center "Viasna", Belarusian Helsinki Committee, Belarusian Association of Journalists, institution "Human Constanta" (in Russian) https://spring96.org/files/book/ru/2019_extremism_ru.pdf

Compendium of Council of Europe practice on freedom of association and NGOs (2018) prepared by Jeremy McBride on behalf of the Expert Council on NGO Law of the Conference of INGOs of the Council of Europe https://rm.coe.int/expert-council-conf-exp-2018-2-compendium-coe-practice-freedom-of-asso/16808c2670

Independence of the personal data protection authority: recommendations for Belarus (2018) by institution "Human Constanta" (in Russian) https://humanconstanta.by/wp-content/uploads/2018/11/%D0%9D%D0%B5%D0%B7%D0%B0%D0%B2%D0%B8%D1%81%D0%B8%D0%BC%D0%BE%D1%81%D1%82%D1%8C-%D0%BE%D1%80%D0%B3%D0%B0%D0%BD%D0%B0-%D0%BF%D0%BE-%D0%B7%D0%B0%D1%89%D0%B8%D1%82%D0%B5-%D0%BF%D0%B5%D1%80%D1%81%D0%BE%D0%BD%D0%B0%D0%BB%D1%8C%D0%BD%D1%8B%D1%85-%D0%B4%D0%B0%D0%BD%D0%BD%D1%8B%D1%85.pdf

Protection of personal data in Belarus (2015) by Legal transformation Center - https://www.lawtrend.org/wp-content/uploads/2015/02/Zashhita-personalnyh-dannyh-v-Belarusi-1.pdf

Public Opinion Survey: Civic Literacy In Ukraine, Moldova And Belarus (2017) https://www.pactworld.org/sites/default/files/Civic_Literacy_BY-MD-UA_2017_en.pdf

Public Patterns of Transition: PACT Belarus 2018 Polling Memo https://www.pactworld.org/sites/default/files/Belarus%202018%20Polling%20Memo.pdf

"Belarus National Poll 2019: Public Opinion Does Not Change" - PACT Belarus 2019 Polling Memo https://www.pactworld.org/sites/default/files/Pact%20Belarus%20Polling%20Memo%202019%20(ENG).pdf

Human Rights Center "Viasna" database of administrative prosecutions (in Belarusian) https://spring96.org/persecution

Belarusian human rights defenders - on human rights activities and issues of cooperation of human rights organizations in Belarus - 2017 (in Russian) https://cet.eurobelarus.info/files/userfiles/5/CET/2017_HR-organizations-Belarus_RU.pdf

Human rights and human rights activities in the public opinion of the population of Belarus (2017) by Freedom House (in Russian) https://freedomhouse.org/sites/default/files/2016_FH_Belarus_HR_Sociology_Report_PRINT_Russian.pdf

Polling memo «Human rights in Belarus» (2014) by Belarusian Helsinki Committee http://belhelcom.org/sites/default/files/HR%20in%20Belarus_polling%20memo_eng.pdf

"It's enough for people to feel it exists" - civil society, secrecy and surveillance in Belarus (2016) by Amnesty International https://www.amnesty.org/download/Documents/EUR4943062016ENGLISH.PDF

Civil participation in decision-making process - brief analytical report (2018) by Belarusian Helsinki Committee (in Russian) https://belhelcom.org/sites/default/files/bhc_grazhdanskoe_uchastie.pdf

State Social Contracting: analysis of implementation practice and proposals for improvement (2016) by ACT (in Russian) http://actngo.info/old/sites/default/files/files/gsz_praktika_i_predlozheniya.pdf

How NGOs to raise funds locally (2017) by ACT http://actngo.info/wp-content/uploads/2018/10/kak_nko_privlech_sredstva_na_mestnom_urovne.pdf

Analytical review "NCOs' access to foreign gratuitous aid: international experience of legal regulations, legislation and practice in the Republic of Belarus (2019) by Legal Transformation Center https://www.lawtrend.org/wp-content/uploads/2019/03/Analiticheskij-obzor_Dostup-nekommercheskih-organizatsij-k-bezvozmezdnoj-pomoshhi_2019.pdf

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 adopted by the Venice Commission at its 88th Plenary Session (Venice, 14-15 October 2011) https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)036-e

An Overview of Global Initiatives on Countering Closing Space for Civil Society (2017) by Jana Baldus, Annika Elena Poppe, Jonas Wolff https://csis-prod.s3.amazonaws.com/s3fs-public/publication/170913_Baldus_OverviewGlobalInitiatives_Web.pdf

ARTICLES, STATEMENTS AND POSITION PAPERS

BelTA Case: Facts, lists, related links by Press service of the Belarusian Association of Journalists (2019) https://baj.by/en/analytics/belta-case-facts-lists-related-links

Civil Society: From crisis to development in a different environment (2017) by Yury Chavusau in Belarusian Yearbook 2017 https://nmnby.eu/yearbook/2017/en/page13.html

Civil Society: Spring shocks unable to reverse past trends (2018) by Yury Chavusau in Belarusian Yearbook 2018 https://nmnby.eu/yearbook/2018/en/page12.html

CIVIL Society: Between repression and collaboration with business (2019) Vadim Mozheyko in Belarusian Yearbook 2019 https://nmnby.eu/yearbook/2019/en/index.html

Joint Position of Belarusian Human Rights Organizations on Adoption of Interagency Plan of Implementation of Recommendations for Belarus from UN mechanisms (2016) http://belhelcom.org/en/news/joint-position-belarusian-human-rights-organizations-adoption-interagency-plan-implementation

Annulment of Article 193.1 is not enough. Statement by Belarusian Human Rights Organizations (2018) https://cet.eurobelarus.info/files/userfiles/5/DOC/1/2018_Civil-Society-Belarus_EN.pdf

On the basic human rights situation in Belarus (2018-19) http://belngo.info/2019.on-the-basic-human-rights-situation-in-belarus-2018-19.html

Roadmap for EU Engagement with Civil Society in Belarus 2018-2020 adopted September 11 2018 https://eeas.europa.eu/delegations/belarus/50904/eu-roadmap-civil-society-engagement-adopted_en

Draft decree on foreign gratuitous aid: Lawtrend comment (2017) http://belngo.info/2017.decree-on-foreign-aid.html

Plans for legislative activities in Belarus for 2019 include development of draft laws affecting CSOs (2019) http://belngo.info/2019.plans-for-legislative-activities.html

Main Issues of Legislation on Foreign Donations" - on the review of the provisions of Decree of the president "On foreign gratuitous aid" of № 5 from August 31, 2015 (2017) http://belngo.info/2017.main-issues-of-legislation-on-foreign-donations.html

Changes in the laws on CSOs: what civil society has managed to undertake so far (2019) by Yury Chavusau http://belngo.info/2019.changes-in-the-laws-on-csos-what-civil-society-has-managed-to-undertake-so-far.html

NCO's legal address in individual residential house: already impossible? (2019) (in Belarusian) http://belngo.info/2019.uradras.html

The Shrinking of Civic Spaces: What is Happening and What Can We Do? (2017) by Camila Bustos from Dejusticia https://www.dejusticia.org/en/column/the-shrinking-of-civic-spaces-what-is-happening-and-what-can-we-do/

Rethinking the Human Rights Business Model: New and Innovative Structures and Strategies for Local Impact (2017) by Edwin Rekosh https://csis-prod.s3.amazonaws.com/s3fs-public/publication/170630_Rekosh_HumanRightsBusinessModel_Web.pdf

Donors' Perspectives on Closing Civic Space (2018by Barbara Smith) https://csis-prod.s3.amazonaws.com/s3fs-public/publication/180605_Smith_DonorsPerspectives.pdf

Proposals for changes in tax legislation on the activities of NPOs (2019) by ACT (in Russian) http://actngo.info/wp-content/uploads/2019/08/%D0%9D%D0%B0%D0%BB%D0%BE%D0%B3%D0%BE%D0%BE%D0%B1%D0%BB%D0%BE%D0%B6%D0%B5%D0%BD%D0%B8%D0%B5-%D0%9D%D0%9A%D0%9E-2019-08-19.pdf

Registration of economic entities with participation of notary: current situation and further prospects (2019) (in Russian) http://pravo.by/novosti/novosti-pravo-by/2019/february/32611/

Comments on provisions of the new Tax Code, affecting NCOs (2019) by Legal Transformation Center (in Russian) https://www.lawtrend.org/freedom-of-association/novyj-nalogovyj-kodeks-kommentarij-lawtrend-osnovnyh-polozhenij-zatragivayushhih-deyatelnost-nko

Proposals regarding draft amendments to the Edict "On provision and use of gratuitous (sponsor) aid" (2017) by Legal Transformation Center (in Russian) http://www.lawtrend.org/freedom-of-association/lawtrend-napravil-predlozheniya-otnositelno-proekta-izmenenij-ukaza-o-predostavlenii-i-ispolzovanii-bezvozmezdnoj-sponsorskoj-pomoshhi

Proposals to the draft Law "On amendments to the Law of the Republic of Belarus "On accounting and reporting" (2019) by Legal Transformation Center (in Russian) https://www.lawtrend.org/wp-content/uploads/2019/06/Predlozheniya-TSentra-pravovoj-transformatsii-k-proektu-Zakona-ob-izmenenii-Zakona-Respubliki-Belaraus-O-buhgalterskoi-uchete-i-otchetnosti.pdf

Expulsion of students as a tool of control (2019) by Sasha Kuzmich, Belarusian Students' Association http://balticworlds.com/expulsion-of-students-as-a-tool-of-control/

REPORTS AND INDEXES

Assessment of the Legal Framework for Non-Governmental Organizations in the Republic of Belarus (2013) by International Center for Not-for-Profit Law (ICNL) under Belarus Reforms and Media Assistance Program (BRAMA) http://www.icnl.org/programs/eurasia/Belarus_Assessment%20of%20NGO%20Legislation.pdf

NGO Law Monitor Report: Belarus http://www.icnl.org/research/monitor/belarus.html

The 2018 Civil Society Organization (CSO) Sustainability Index for Central and Eastern Europe and Eurasia developed by United States Agency for International Development, Bureau for Democracy, Conflict and Humanitarian Assistance, Center of Excellence on Democracy, Human Rights and Governance in partnership with FHI 360 International Center for Not-for-Profit Law (ICNL) https://www.fhi360.org/sites/default/files/media/documents/resource-csosi-2018-report-europe-eurasia.pdf

Belarusian Civil Society: dynamics of change in an unfriendly environment (2018) by Olga Smolianko, Aksana Shelest, Andrei Yahorau https://cet.eurobelarus.info/files/userfiles/5/DOC/1/2018_Civil-Society-Belarus_EN.pdf

Violations of the Right of NGOs to Funding: From Harassment to Criminalization, by Observatory for the Protection of Human Rights Defenders Annual report (2013) https://www.omct.org/files/2013/02/22162/obs_annual_report_2013_uk_web.pdf

Nations in Transit 2018 – Freedom house country report on Belarus https://freedomhouse.org/report/nations-transit/2018/belarus

Report of the Special Rapporteur on the independence of judges and lawyers, Dato' Param Cumaraswamy- Addendum Report on the mission to Belarus (2001) https://documents-dds-ny.un.org/doc/UNDOC/GEN/G01/110/54/PDF/G0111054.pdf?OpenElement

Fifth periodic report on the implementation of the provisions of the International Covenant on Civil and Political Rights (submitted in March 2017, considered by the Human Rights Committee in October 2018) http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhssL4aDidyTw2X0WDFf303yvZC6von%2fbZGYGd9YCRbl92GNDqnuw3JXNojdt36k8ZDozjfQnGj1x7lozQrN8ZZUITfld6mq%2bN6bFh3Fh5X87k

Joint submission by National Human Rights Coalition on implementation of the International Covenant on Civil and Political Rights in the Republic of Belarus - Represented to the 124th session of the UN Human Rights Committee (2018) https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/BLR/INT_CCPR_CSS_BLR_31288_E.pdf

Belarus: Pulling the Plug (policy paper on digital challenges to freedom of expression in Belarus) http://www.indexoncensorship.org/wp-content/uploads/2013/01/IDX_Belarus_ENG_WebRes.pdf

Belarus – Monitoring the Right to Free Assembly 2017-2018 by Natallia Satsunkevich, Dmitry Chernyh and Nasta Loika http://ecnl.org/wp-content/uploads/2019/01/Belarus-Assembly-Report-2018.pdf

2018 Global Philanthropy Environment Index report – Belarus https://scholarworks.iupui.edu/handle/1805/15987

Situation in The Sphere of Mass Media in 2018 by Belarusian Association of Journalists https://baj.by/sites/default/files/analytics/files/2019/media_monitoring_2018_eng.pdf

Summary of the report on the national risk assessment of money laundering and terrorist financing (2019) by Committee of state control adopted by interagency commission (in Russian) www.kgk.gov.by/uploads/files/_2019/dfm/nok(rezume).doc

MFA review on the implementation "Interagency Action Plan on implementation of recommendations accepted by Belarus following the second cycle of the United Nations UPR 2016-2019 and from the human rights treaty bodies" (also known as "National Human Rights Action Plan) – 2018 report http://mfa.gov.by/upload/12/REport2018FINAL.pdf with annexes on some points http://mfa.gov.by/upload/12/nekotorie%20punkti.pdf

IREX's 2017 Media Sustainability Index (MSI) for Europe & Eurasia https://www.irex.org/sites/default/files/pdf/media-sustainability-index-europe-eurasia-2017-full.pdf

IREX's 2018 Media Sustainability Index (MSI) for Europe & Eurasia https://www.irex.org/sites/default/files/pdf/media-sustainability-index-europe-eurasia-2018-full.pdf

IREX's 2019 Media Sustainability Index (MSI) for Europe & Eurasia https://www.irex.org/sites/default/files/pdf/media-sustainability-index-europe-eurasia-2019-full.pdf

Charities Aid Foundation (CAF) World Giving Index – 2018 https://www.cafonline.org/docs/default-source/about-us-publications/caf_wgi2018_report_webnopw_2379a_261018.pdf?sfvrsn=c28e9140_2

The Heritage Foundation Index of Economic Freedom (2019) https://www.heritage.org/index/about

2019 World Press Freedom Index https://rsf.org/en/ranking

Third Evaluation Round Summary of the Evaluation Report on Belarus Incriminations (ETS 173 and 191, GPC 2) (Theme I), Transparency of party funding (Theme II) - by GRECO (2017) https://rm.coe.int/third-evaluation-round-summary-of-the-evaluation-report-on-belarus-inc/168076d562

6.2. Annex II - Other annexes

1. Freedom of association and legal conditions for non-commercial organizations in Belarus - Review Period: 2017 (updated version) by Legal Transformation Center and Assembly of Pro-Democratic NGOs http://belngo.info/wp-content/uploads/2018/01/SA-2017-ENG-updated.pdf
2. Freedom of association and legal conditions for non-commercial organizations in Belarus - Review Period: 2018 by Legal Transformation Center and Assembly of Pro-Democratic NGOs http://belngo.info/wp-content/uploads/2019/03/SA-2018-Eng.pdf
3. Semi-annual review "Changes in Legal Environment for Non-Commercial Organizations and Freedom of Associations in Belarus" covering the first half of 2019 by Legal Transformation Center and Assembly of Pro-Democratic NGOs http://belngo.info/wp-content/uploads/2019/07/SA-2019.1-ENG.pdf