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Legal problems of the registration and activity of the Human Rights NGO in Ukraine

Current legislation on associations, passed in the main at the beginning of the 1990s, has long failed to meet international standards and the needs of a civil society. The main problems remain as follows:

- Legislation does not allow for the possibility of registering certain types of organizations. This applies, for example, to socially beneficial organizations, such as human rights NGO, which are not essentially charitable, and whose work is not confined to only defending their own rights and interests, this preventing them from being classified as civic organizations.
- Obstacles when registering associations as well as with receiving non-profit-making status and the related tax concessions.
- Restrictions on types of associations' activities with regard to where they can be carried out (for example, a ban on activities in another city or region where the organization is not registered).
- Restrictions on kinds of activities (for example. limitations on publishing activities, access to information, defending other people's rights, etc).
- Lack of incentives in legislation and administrative practice for strengthening and developing associations and improving their cooperation with the authorities. While this issue does not directly concern the right to freedom of association, it is one of the important factors in evaluating the level of development of democracy in the country.¹

Numerous provisions in Ukrainian legislation, including the above-mentioned, fail to comply with Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 22 of the International Covenant on Civil and Political Rights and other international agreements to which Ukrainian is a signatory.

Ukrainian legislation allows for many types of organizations which can be categorized as non-governmental (NGO) and non-commercial (or non-profit making): citizens' associations (political parties and civic organizations), youth and children's civic organizations, employers' organizations, trade unions, charitable organizations, religious organizations, creative unions, associations of businesses, institutions and others. However there is effectively no general legislation on the activities of all NGO. The majority of the organizations listed above act

¹ For a more detailed discussion of these issues, see the Reports "Human Rights in Ukraine – 2004" and "Human Rights in Ukraine – 2005", which can be found at the UHHRU website <http://www.helsinki.org.ua/en/index.php?r=27>. Since the situation has not changed markedly, the conclusions in those reports entirely reflect the present situation.

according to legislation for them alone, which sets down the particular procedure for their creation and their special legal status.

Legislation basically divides these organizations into two main groups:

- 1) organizations which meet only the needs only of their members (all citizens' associations);
- 2) organization created only for other people (charities).

Following on logically from this division legislation sets down restrictions regarding the kinds of activities of these organizations. For example, activities based on defending civil rights from the point of view of the law may only be carried out by charitable organizations, while citizens' organizations formally have the right only to defend the rights of their members. Moreover charities do not have the right to defend the rights of their members.

Therefore to a full extent the activities of human rights organizations which defend the rights and fundamental freedoms of all individuals, including those of members of their organizations, do not correspond to any form of association stipulated in legislation.

This issue arose, for instance, when the Kyiv city civic organization "Centre for extending the content of relations" tried to register, with the process dragging on from October 2005 to January 2006. The founders had their application turned down on several occasions, each time with new reasons. One of the reasons given was that the Charter of the Centre envisaged the "promulgation of humanist values and the ideas of open civic society", to which the founders commented that in the same Charter it was stated that the Centre "promotes only its own ideas and principles". The state official from the department of the Ministry of Justice confirmed the legitimacy of the refusal, claiming that in accordance with Ukrainian legislation the Centre could only promote its own activity, and not generally accepted values.

Such an entirely formal division is effectively a restriction on freedom of association.

In 2006 checks on civic organizations by the authorities became more frequent.

The Ministry of Justice in 2006 carried out checks of more than 7 thousand civic organizations to ascertain whether they were complying with the provisions of their charters. These checks resulted in more than 800 written warnings (against 2005 when 4.9 thousand organizations were checked and 750 warnings issued).²

For example, the Ministry of Justice and its departments at local level made a mass scale check of the actual location of civic organizations based on the information contained in their charters.

As a result of this check the Minister of Justice Oleksandr Lavrynovych stated in November 2006 that the Ministry was unable to find at their registered addresses around one tenth of the all-Ukrainian civic organizations and associations. He added that soon the percentage of civic organizations not located, and thus, in his opinion, theoretically non-existent³, could rise even further since by that time they had only checked those organizations which had been registered from 1990-1994. However legislation does not provide for any penalties for the fact that an

² According to the Report of the Ministry of Justice on implementation of the 2006 plan of work. Available in Ukrainian at the Ministry website: <http://www.minjust.gov.ua/0/news/8989>

³ This assertion is clearly dubious from the point of view of the law (the time of suspension of a citizens' association), as well as of general standards of freedom of association which are in no way linked with the legal address of an organization.

organization is not present at its legal address. As a result, the Ministry of Justice has no way of reacting to these infringements.

The Ministry of Justice also checked whether the activities of the civic organizations corresponded to those given in their charters.

For example, the Ministry issued a warning to the All-Ukrainian civic organization “National Committee on Combating Corruption” which points to the unacceptability of violations of legislative norms. The corresponding Ministry of Justice Order states that the warning was issued for violating the demands of the Law “On citizens’ organizations” and of the Law “On cooperation”. This was for carrying out measures to defend and represent the interests of individuals who are not members of the “National Committee on Combating Corruption”, and the unlawful interference in the activities of consumers’ associations and their unions.

The Press Service of the Ministry of Justice and the Department for legalization within the Ministry asserted that the grounds for the warning were an appeal to the Ministry by a legal entity who asked them to determine the lawfulness of the interference by the “National Committee on Combating Corruption” in the activities of consumers’ associations and their unions. For example, letters were sent from the Head of the Committee to the newspaper “Komsomolskaya Pravda” and Ukropspilka [the Ukrainian Central Union of Consumers’ associations]. These gave a negative assessment of the state of affairs as regards consumer cooperation and enclosed an authorization form for shareholders in consumers’ associations to fill in, authorizing the “National Committee on Combating Corruption” to represent their interests with the authorities, the law enforcement and judicial bodies. On the basis of the facts presented in the application, the Ministry of Justice found that the “National Committee on Combating Corruption” had infringed a number of articles of the Law “On citizens’ associations” (for example, paragraph two of Article 8 and paragraph one of Article 20), and “On cooperation” (Article 8). The Ministry of Justice in their conclusions stressed that the task of establishing the veracity of the information which the Committee had published in the mass media was solely within the competence of the court, while investigations were the responsibility of the law enforcement agencies.

Although the above-mentioned actions are indeed based on the requirements of the Law on citizens’ associations, they illegitimately restrict freedom of association in the light of Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

In 2006, the activities of associations were not only checked by the Ministry of Justice, but by the law enforcement agencies also.

It is especially problematic that human rights NGOs are not given access to places of detention in order to carry out monitoring of the conditions in which detainees are held and the treatment they receive while being cut from the outside world.

According to Article 36 § 1 of the Ukrainian Constitution only citizens of Ukraine have the right to freedom of association. The Law on citizens’ associations and the Law on the legal status of aliens only allow foreign nationals and stateless individuals to be members of citizens’ associations and prohibit them from creating associations, which is hardly a warranted restriction. *Therefore foreigners could not create any human rights NGO, including for defending their own rights.*