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UKRAINE: FREEDOM OF ASSOCIATION¹

2005 saw no significant changes in the situation with regard to freedom of association. Current legislation on associations, passed in the main at the beginning of the 1990s, has long failed to meet modern conditions and the needs of a civil society. The main problems remain as follows:

- obstacles when registering associations, as well as when trying to obtain non-profit-making status and the related tax concessions;
- restrictions on types of activities of associations with regard to where they can be carried out, or what such activities involve;
- the 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.

In 2004 – 2005 after the passing of a law on registering legal entities in Ukraine, a system was effectively introduced of double registration of associations, first by the Ministry of Justice of Ukraine, its regional or city departments, or executive committees of local authorities (taking at least a month according to the law, while in practice from 2 to 6 months), then later by the State Registrar. This procedure was totally uncoordinated and too drawn-out.

One such problem was eliminated when parliament on 22 September 2005 passed the Law “On introducing amendments to Article 17 of the Law of Ukraine “On state registration of legal entities and individuals – entrepreneurs” which set down that citizens’ associations did not provide the Registrar with information regarding their organizational and legal form. Previously the computer system would not register an association unless all necessary information was filled in, whereas some information could not be provided about associations. This shortcoming could only be eliminated by introducing amendments to the law. Others however have remained.

Resolution No. 769 of the Cabinet of Ministers from 18 August 2005 through its amendments to the Provisions on procedure for legalizing civic associations made the registration procedure stricter. When submitting documents to have an association registered, it is now necessary to also provide “a document which confirms the physical location of the civic association”. It is interesting that the law on state registration of legal entities no longer envisages such practice, and business organization have long not had to state their physical address in their charter, let alone provide the relevant documents. However the Ministry of Justice has its own position which is sometimes not directed at liberalizing the registration procedure

On 8 September 2005 the Verkhovna Rada adopted the Law “On introducing amendments to Article 15 of the Law of Ukraine «On citizens’ associations» which changes the time periods for registration of associations by the Ministry of Justice (first registration):

“An application for registration of a local civic organization shall be considered within a 3-day period from the day that the documents were received. Notification of a decision to register or

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refuse registration of an organization shall be given in writing no later than the next working day after the decision is taken.

An application for registration of a nationwide or international civic organization shall be considered within one month. Notification of a decision to register or refuse registration of an organization shall be given in writing within 10 days”.

Ukrainian legislation allows for many types of organizations which can be categorized as non-governmental 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 non-profit making organizations. The majority of the organizations listed above act according to legislation for them alone, which sets down the particular procedure for their creation and their special legal status.

Ukrainian legislation basically divides these organizations into two main groups:

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

Following on logically from this division, legislation imposes restrictions on 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.

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 upheld the refusal, claiming that in accordance with Ukrainian legislation the Centre could only promote its own activity, and not generally accepted values.

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.

Such an entirely formal division is effectively a restriction on freedom of association. Moreover such a restriction would be difficult to justify from the point of view of the aims of the given limitation, as defined in Articles 36 and 37 of the Constitution and Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

It should also be noted that Ukrainian legislation does not allow for the creation of mixed organizations, for example, associations of citizens' organizations and charities, or organizations which would have the right to conduct mixed activities, both for their own members, and for third parties. Ukrainian legislation also lacks provision for the creation of organizations which unite both legal entities and individuals, as members of the organization (founders). This division has existed since Soviet days and reflects an undemocratic approach to the fundamental institutions of a civic society, the development of which it seriously hampers.

Another limitation pertains to territorial restrictions on the activities of associations. Each association is registered according to a territorial principle as one of the following: international, nationwide organizations, regional, local (within the confines of a city, village or district in a city). Moreover, in order to receive a larger territorial status, one needs the appropriate groups within the organization. This demand partially explains the large number of associations in Ukraine with a significant percentage of them being in fact fictitious, invented in order to receive broader status. Associations have the right to extend their activities only over the area they are registered in. For example, an association which is registered in the Darnytsa district of Kyiv does not have the right to carry out its activities in other districts of Kyiv.