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Fundamental principles of the freedom of association in the OSCE region

We, representatives of non-governmental organizations of the OSCE region,

recognizing freedom of association as one of fundamental human rights, without respect of which the effective implementation of other rights is not possible,

understanding an association as a free union of individuals who define on their own its legitimate purpose and organizational structure,

recognizing that in the states that do not provide favorable legal conditions for the establishment of associations, non-governmental organizations may be forcibly created in other forms which shall also enjoy international protection in the context of freedom of association,

stressing that the standards on freedom of association shall not only protect the individual right to association, but also the rights of associations themselves, which are necessary for their effective functioning (including the issues of ceasing activities, legal status, funding, internal autonomy of an association),

express our determination to promote the following fundamental principles of the freedom of association at national and international levels, and believe it is necessary to embody them in the documents of the OSCE and of other inter-governmental organisations working in the region:

1. Priority of the right to freedom of association

- 1.1. The legislation regulating the establishment and activities of NGOs shall be adopted with the aim to promote the implementation of the right to freedom of association, and not with the aim to introduce additional restrictions and control over their activities.
- 1.2. The acquisition by an NGO of the legal entity status constitutes its right, not a duty, thus providing the grounds for the acquisition of additional rights. The ban on activities of unregistered associations is unacceptable.
- 1.3. The objective of government activities in this area is to assist citizens in exercising their rights, not to control and supervise.
- 1.4. The function of registration authorities shall primarily consist in outreach and advisory work for NGOs and their founders.

2. Priority of public not state control

- 2.1. NGOs are accountable, above all, to the community represented by its members and other stakeholders (donors, beneficiaries), and not to the State.
- 2.2. State control over the activities of registered NGOs shall be limited to the inspection of their compliance with financial, tax and other legislation applicable to legal entities.
- 2.3. It is unacceptable to assign registration and control functions in relation to NGOs to the competence of the same state body.
- 2.4. One of the objectives of regulatory authorities' activities shall be to facilitate an open access for citizens to annual NGOs' reports and to reports on the results of NGOs' inspections.

3. Legality and legal certainty, consistency of law enforcement

- 3.1. Legislation shall not establish additional grounds for refusal of NGO registration than those outlined by international norms and by the Constitution of the State.
- 3.2. The introduction of stricter (compared with the law) requirements and restrictions via through subordinate acts and local acts of public authorities is unacceptable.
 - 3.3. Legislation on NGOs shall exclude ambiguity and non-uniform application.
- 3.4. The powers of state bodies in the sphere of registration and control of NGOs shall be clearly regulated by law, not leaving it to the discretion of a law enforcement official.

- 4. Openness, accessibility, predictability and accountability of public bodies
- 4.1. Transparency and informational openness of registration and regulatory bodies, including the freedom to obtain information on their activities (provision of information on demand; publication of lists of registered and liquidated organisations, plans of their inspections, etc.) shall be ensured.
 - 4.2. Public officials shall be held responsible for obstructing legitimate activities of NGOs.
- 4.3. A procedure of restoration of rights of organisations wrongfully deprived of registration shall be defined (in accordance with the decisions of national courts and conclusions of relevant international bodies).
- 4.4. During the process of drafting legislation regulating the establishment and activities of NGOs, publicity shall be guaranteed and opinions of NGOs shall be taken into account.

5. Non-discrimination

- 5.1. Discrimination in legal order in relation to NGOs in comparison with commercial organisations, in particular, more complex and burdensome registration and control procedures, is unacceptable.
- 5.2. Restriction of the rights of non-registered NGOs is unacceptable (except for the issues of financial and economic activities).
- 5.3. Exemption from the general legal order of specific types and forms of NGOs is only allowed with the aim to create more favorable conditions for organisations involved in activities recognized by the society as socially important (charities, trade unions, youth organisations, etc.).
- 5.4. Discrimination in relation to foreign nationals and stateless persons as participants (members) NGOs is unacceptable.
- 5.5. NGOs receiving foreign (international) funding shall not be imposed any special restrictions or any additional obligations that discriminate them as compared to NGOs receiving funding only from domestic sources.
 - 6. Non-interference in the internal governance of an organisation
- 6.1. Interference of registration authorities into the definition of objectives and activities of an NGO is unacceptable, except for the cases when they directly contradict the legislation.
- 6.2. Public authorities can control NGOs for the observance of legislation, but they cannot control their own regulations and other internal documents.
- 6.3. Requests of state bodies to provide them with information about participants of an NGO and information about aspects of organisation's activities, which relate solely to its internal affairs (enrolment and registration of members, payment of membership fees, regularity of governing bodies' meetings, etc.) are unacceptable.
- 6.4. Requests to provide access to government representatives to any NGO activities (except for public) are unacceptable.

7. Presumption of NGOs' good faith

7.1. NGOs shall not be treated a priori as potential violators of the legislation. An NGO is considered faithful and law-abiding until proven otherwise in the established order.

8. Proportionality of liability

- 8.1. NGO liability for violations shall be clearly stipulated by law and shall be proportionate to their gravity.
- 8.2. Liquidation of an NGO shall be seen as an exceptional penalty for gross and repeated violations of the law.
- 8.3. Officials and members of an NGO shall not be held liable for NGO activities, with the exception of financial activities, also an NGO shall not be held liable for the activities of its members and officials.

- 9. Removal of administrative barriers
- 9.1. The state duty prescribed by law for the registration of an NGO shall not be burdensome.
- 9.2. The registration of an NGO involved in activities recognized by the society as socially important shall be exempt from duty.
 - 9.3. State duty shall be charged only after the registration of an NGO.
 - 10. The right to access to funding
- 10.1. Legislation shall not introduce barriers for receiving funding by NGOs for legitimate work from sources inside the country and abroad.
- 10.2. Administrative costs for NGOs linked to obtaining funding for their activities (including tax, administrative, etc.) shall not be burdensome.
- 10.3. Donations received by NGOs for their activities from external sources shall be exempt from taxation.
 - 10.4. The law shall provide a possibility for NGOs to conduct commercial activities.
- 10.5. Possibilities of government support for NGOs' socially important activities in the framework of a transparent competitive process shall be provided.

This draft was prepared by the international Youth Human Rights Movement (YHRM) and the Center for Legal Transformation (Belarus).

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