



OSCE Annual Human Dimension Implementation Meeting

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FREEDOM OF ASSOCIATION

RECOMMENDATIONS BY RUSSIAN NGOS

CENTER FOR THE DEVELOPMENT OF DEMOCRACY AND HUMAN RIGHTS, “PUBLIC VERDICT” FOUNDATION AND SOVA CENTER FOR INFORMATION AND ANALYSIS

Freedom of association is becoming increasingly restricted in many countries of the OSCE region. Attacks of public authorities on independent NGOs have intensified through legal and non-legal forms of pressure. Many refer to this phenomenon as “backlash against civil society.” Among numerous manifestations of growing government pressure on independent NGOs and civic activists there are the following:

- Hostile rhetoric by government officials and state controlled media against NGOs accusing them in working against national interests, undermining political stability, engaging in “impermissible political activity”, being linked to foreign intelligence services and being paid by hostile foreign governments;
- Adoption of new repressive NGO legislation and its punitive application;
- Increasing use of anti-extremist and counter-terrorist legislation against NGOs and activists;
- Putting pressure on NGOs and activists on arbitrary and politically motivated charges of irregularities in reporting, alleged tax evasion and criminal offences;
- Continued government inaction in response to death threats, violence against and murders of human rights defenders by radical nationalists and paramilitary groups, impunity for such crimes;
- Increasing monopolisation of government-NGO interaction by artificial creation by the state of GONGOs and top-down structures of “controlled civil society”.

RECOMMENDATIONS

1. NGOs should be permitted to carry out their peaceful work in an enabling and hospitable environment, free from fear of harassment, reprisal, intimidation and discrimination. Relevant laws and administrative measures should protect – not impede – the development of civil society and the peaceful operation of NGOs, and be enforced in an apolitical, fair, transparent and consistent manner.
2. Governments, public officials and state-controlled media should refrain from hostile rhetoric against NGOs, accusing them in anti-state activity and their alleged work for hostile foreign

interests. Authorities should express tolerance to dissent, make public statements about importance of freedom of association and freedom of expression, and the important role of NGOs for development of a democratic society and rule of law.

3. Governments should provide special protection to NGOs and civic activists from violent attacks and death threats from ultra-nationalist, paramilitary and similar radical groups – in the same way as the special protection is provided by the governments to public officials, judges, and members of the journalist profession. Such crimes should be promptly investigated and their perpetrators brought to justice. Authorities should publically state that such crimes will not be tolerated.

4. Public authorities should stop legal and non-legal harassment of NGOs and civic activists and stop using criminal, counter-extremist, anti-terrorist, tax and other laws for discretionary, selective and politically motivated punishment and pressure.

5. Governments should actively cooperate with specialised international bodies on protection of human rights defenders, including OSCE/ODIHR Unit on human rights defenders, United Nations Special Rapporteur on human rights defenders and other international agencies.

6. NGOs should be free to pursue their objectives, provided that both the objectives and the means employed are lawful. These can, for instance, include research and advocacy on issues of public policy and legislation, regardless of whether the position taken by an NGO is in accord with stated government policy.

7. Ambiguous and non-legal definitions should be excluded from the NGOP legislation and administrative acts. Excessive, duplicative powers of controlling agencies should be abolished while the agencies should be re-oriented to providing assistance to NGOs in implementation of their mission and ensuring freedom of association, rather than searching for violations and punishment.

8. Governments should refrain from using the notion of “impermissible political activity” of NGOs as grounds for impeding their work and restricting freedom of associations.

9. NGOs should be free to seek, receive and impart information and ideas, including advocating their opinions to governments and the public within and outside the countries in which they are based.

10. Governments should not interfere with NGOs’ access to domestic- and foreign-based media.

11. NGOs should be free to maintain contact and cooperate with their own members and other civil society organizations within and outside the countries in which they are based, as well as with governments and international bodies.

12. National law should not unjustifiably restrict the ability of any person, natural or legal, national or non-national, to establish an NGO or join membership-based NGOs. The ability of someone to join a particular NGO should be determined primarily by its statutes, and should not be influenced by any unjustified discrimination.

13. NGOs should be free to seek, receive, and administer material support – financial or in-kind donations – from domestic, foreign, international and multilateral donors, be it an institutional entity or an individual. The mere fact of receiving financial support from abroad should not be used to accuse NGOs in working against national interests.

14. NGOs with legal personality should have the same capacities as are enjoyed by other legal persons and be subject to the same administrative, civil and criminal law obligations and sanctions

applicable to them. No discrimination of NGOs as compared to the for-profit entities should be provided for in the law or exercised in practice.

15. National laws should provide associations with the right to freely and legitimately operate without official registration. Activity of non-registered associations and participation in such groups should not be criminalized and a subject to administrative sanctions.

16. The process of acquiring legal personality by NGOs should generally be based on notification of public authorities rather than seeking permission from them. This process should be easy to understand, inexpensive and expeditious. In particular, an NGO should only be required to file its charters and to identify its founders, directors, officers and legal representative and the location of its headquarters.

17. The closure of an NGO should only happen normally due to a voluntary decision of its members. Liquidation of an NGO by government authorities should be used only as an absolutely last resort after every other possible measure of correction of its misconduct has already been used and failed to bring about change.

18. Suspension of an activity of an NGO should be ordered only by a court decision rather than by an order of an administrative body.

19. Reporting by NGOs to regulating authorities should be not burdensome and duplicative of other reports, for example, to tax authorities, should not include ambiguous requirements easy to interpret with discretion, and should not require disclosure of personal data of NGO clients or participants of their events as well as names of those donors that wish to stay anonymous.

20. Inspections and audits of NGOs by regulating authorities should be non-burdensome, non-intrusive, and not lead to paralyzing of the work of an NGO. They should be limited in time, regularity and scope in clearly defined laws or implementing regulations.