



## **FREEDOM OF ASSOCIATIONS AND LEGAL CONDITIONS FOR NON-PROFIT ORGANIZATIONS IN BELARUS**

**Monitoring for the 1st quarter of 2015. Review Period: January 1 – March 31, 2015**

### ***Legal Transformation Center***

#### ***Assembly of Pro-Democratic NGOs of Belarus***

On March 2, Department for Humanitarian Activities under the Property Management Directorate of the President of the Republic of Belarus announced the development of a regulation of the Head of State aimed at improving the procedures for obtaining and using foreign donations, their exemption from taxes and customs duties, stipulated by Presidential Decree of November 28, 2003 No.24 *On Receipt and Use of Foreign Donations*. At the initiative of the Assembly of Pro-Democratic NGOs of Belarus and Legal Transformation Center, the collective proposals on improvement of legislation in this area have been developed. They were further signed by 29 non-profit organizations and sent to the aforesaid Department. At the same time, the Department received suggestions and comments from other Belarusian organizations and international expert centers, i.e. the International Centre for Non-Commercial Law (ICNL) and the European Centre for Non-Commercial Law (ECNL)<sup>1</sup>.

While drafting collective proposals, we became aware of the prepared draft decree regulating the procedure for obtaining and using foreign donations. The current draft decree does not solve the basic problems that currently prevent foreign funding of civil society organizations. In particular, there remains a registration procedure for foreign aid, which allows the state to refuse at its discretion a permission to use foreign donations (at the same time, the use of foreign aid without registration, or other violations of the legislation on foreign donations, are subject to criminal liability under Article 369<sup>2</sup> of the Criminal Code, which provides for penalties of up to two years' imprisonment). The project provides for preserving the limited list of purposes for which foreign donations may be obtained, tightens reporting requirements, strengthens state control over the use of aid received, does not provide for simplified release of such aid from taxes, and creates preferences for humanitarian projects and programs approved by the State compared with the independent activities of non-governmental organizations. The draft decree also saves the inclusion anonymous donations, regardless of their source, in the definition of foreign donations.

Significant negative features of the new procedure offered by the State include the introduction of the concept of "charity organizations", which will include only those non-profit organizations

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<sup>1</sup> <http://www.lawtrend.org/freedom-of-association/nekommercheskie-organizatsii-napravili-svoi-predlozheniya-k-zakonodatelstvu-ob-inostranoj-pomoshhi>

specified by the Department for Humanitarian Activities in a special list on the proposal of the regional executive committees and other state bodies.

In general, the regulation scheduled for adoption preserves its restrictive order creating unnecessary obstacles to civil society organizations' access to foreign funding.

In January, the Ministry of Foreign Affairs of the Republic of Belarus prepared a national report within the second cycle of the Universal Periodic Review of Human Rights on the implementation of recommendations provided at the end of the first cycle of the UPR<sup>2</sup>. NGOs were provided draft report for preview and had the opportunity to submit their comments. However, according to experts of the Legal Transformation Center, the final version of the national report does not take into account the recommendations made, and the consultations of NGOs with the Government in the course of report preparation were of formal and ineffective character<sup>3</sup>. In contrast to the first cycle of the UPR in 2010, in drafting of the national report in the second cycle of the UPR, the experts representing only registered human rights organizations were admitted for negotiations and consultations, while the representatives of the non-registered organizations did not have such an opportunity. Belarusian NGOs produced a series of alternative reports to the UPR, including a general report of a broad coalition of human rights organizations<sup>4</sup> as well as the special report on the legal status of civil society organizations and respect of freedom of association<sup>5</sup>.

The Resolution of the Council of Ministers of February 18, 2015 No.110 approved Activity Program of the Government of the Republic of Belarus for 2015. The objectives of the government and the implementation mechanisms include: promotion of Public Advisory Councils, strengthening the role of such structures in determining the problematic issues of entrepreneurship, in the development of appropriate solutions, preparation of draft regulations; optimization of provided state support, formation of government programs aimed at achieving the priorities of social and economic development; development of recommendations for the formation of the state social order; development of youth and children's organizations, partnership of such associations with the state, their active involvement in the development and implementation of state youth policy.

On February 10, 2015 the Government approved the National Strategy for Social and Economic Development of Belarus until 2030. NGOs and other interested public got the opportunity to provide comments and suggestions to the previously published draft of this document. The approved Strategy pays special attention to the institutions of civil society, in particular, it addresses the need to create a favorable legal framework for the development of civil society organizations, to improve the mechanisms of the system interaction between the state and non-governmental organizations, to create a full-fledged infrastructure and mechanisms to support volunteer activities and civic initiatives. However, despite the fact that the National Strategy for Sustainable Social and Economic Development before 2020 contains similar provisions, the current legislative practice does not show the implementation of such provisions in practice, which brings into question their reality and the possibility of their implementation.

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<sup>2</sup> [http://mfa.gov.by/upload/UPR\\_Belarus\\_National\\_Report.pdf](http://mfa.gov.by/upload/UPR_Belarus_National_Report.pdf)

<sup>3</sup> <http://www.lawtrend.org/freedom-of-association/olga-smolyanko-v-natsdoklade-mid-net-obektivnoj-otsenki-situatsii-so-svobodoj-assotsiatsij-v-belarusi>

<sup>4</sup> [http://www.lawtrend.org/wp-content/uploads/2014/09/UPR\\_Belarus\\_Alternative-report\\_en.pdf](http://www.lawtrend.org/wp-content/uploads/2014/09/UPR_Belarus_Alternative-report_en.pdf)

<sup>5</sup> <https://docs.google.com/file/d/0Bwh6rJZ1JOWsWEhHWG80NVFvazQ/edit>

In accordance with the Resolution of the Council of Ministers of March 26, 2015 No. 231, the base rent has increased since April 1 to 120,000 rubles, resulting in 20% increase of the rent for organizations renting offices in the state- or municipality-owned premises.

The Ministry of Justice published the statistics of registration of public associations and foundations for 2014.<sup>6</sup> In the last year, the judicial authorities registered 86 new public associations (1 international, 13 national and 72 local), 3 unions (associations) of public associations and 11 new local foundations.

In total, according to the Ministry of Justice, as of January 1, 2015, 15 political parties and 1,071 party organizations, 37 trade unions (33 republican trade union, 1 territorial trade union and 3 trade union organizations) and 23,032 labor organizations, 2,596 public associations (including 228 international, 709 national and local 1,659) have been registered in Belarus. 40,259 organizational structures of public associations has been registered and reported. 33 unions (associations) of public associations, 155 foundations (14 international, 136 national and 5 local), 7 republican state and public associations have been registered. The following public associations have been registered in Belarus by activity: physical training and sports – 684; charity – 396; youth – 270, including children – 27; educating, cultural, recreational, educational – 232; citizens affiliating themselves to national minorities – 113; war and labour veterans – 87; scientific and technical – 84; conservationist, protection of monuments of history and culture – 73; creative – 49; women – 30, etc. 23 public associations, 3 foundations and 15 non-government (not including private educational institutions) have been registered from January to March 2015:

***Public Associations:***

1. Republican Public Association “Belarusian Karate Shotokan Federation”
2. Public Association “Federation of Professional Makeup Artists”
3. Public Association “International Federation of Kettlebell Sport”
4. Youth Public Association “Minsk Kokushinkay Federation”
5. Youth Public Association “Child Development Studio “Krylya” (Wings)
6. Minsk Association of Martial Arts
7. Public Association for the Protection of Consumer Rights “Gramotnost” (Literacy)
8. Public Association “Sobriety Center “Nash Kovcheg” (Our Ark)
9. Local Public Association “Minsk Juggler Club”
10. Public Association “Military History Club “Brest Fortress”
11. Brest City Creative Charitable Public Association “bely Abazhur” (White Shade)”
12. Youth Public Association “Ultimate Frisbee Club “Phoenix”
13. Gomel Charity Organization “Luchshiy Put” (Best Way)
14. Rogachev Public Association for Sustainable Development “Materik” (Mainland)
15. Public Association for Progressive Development “Polotsk Center for Local Initiatives”
16. Novopolotsk Youth Public Association “Karate-do Club “Edinorog” (Unicon)
17. Public Association of Ice Hockey Fans “Volat”
18. Public Association of Mogilev Craftsmen “Shchyraya Maysternya”
19. Local Public Charity Association “Detskie Serdtsa” (Children's Hearts)
20. Youth Public Association “School of Karate “Cayman”
21. Urban Public Association “MOST” (BRIDGE)
22. Gomel Regional Charity Organization “Luchshiy Put” (Best Way)

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<sup>6</sup> [http://www.minjust.by/ru/site\\_menu/news?id=1761](http://www.minjust.by/ru/site_menu/news?id=1761)

### 23. Grodno Public Association “Actors Studio for Children and Teenagers”

#### **Foundations:**

1. International Foundation for Wildlife “Krasny Bor” International
2. Local Foundation to Support Business Initiatives of Citizens “ProfEkonomFinans”
3. Local Charitable Foundation for Children “Neravnodushnye Lyudi” (caring people)

#### **Institutions:**

1. Social and Educational Institution “Dialysis Transplantation Donation International Center”
2. Private Institution “Search and Rescue Team “Angel”
3. Institution “Sport and Hunting Union Establishment “Lavniki”
4. Financial and Educational Local Foundation “Artkapital Finance”
5. Cultural and Educational Institution “Brest Forum of Polish Local Initiatives”
6. Cultural and Educational Institution ABSURD”
7. Private Search and Rescue Agency “TsentrSpas”
8. Information and Advisory Institution “Center for Partnership and Expert Diplomacy”
9. Private Institution “Territoriya Razvitiya-21 vek” (Territory for Development-21<sup>st</sup> Century)
10. Private Cultural Institution “Nasledie I Vremya” (Heritage and Time)
11. Cultural and Educational Institutions “Urbaniizatsionnye Proekty” (Urban Projects)
12. Cultural and Educational Institutions “Cinema Club “Prikosnovenie” (Touch)
13. Cultural Institution “Cinema Studio “Vazhny Kadr” (Key Shot)
14. Cultural and Educational Institution “Brestski Aazis”
15. Private Institution for Intersectoral Cooperation “Social Partnership”

However, within the period in question, the information about registered legal entities has been removed from the website of the Ministry of Justice. The website of the Ministry of Justice has a section containing the information on the registered public associations and their unions. However, it is updated occasionally and the information on certain registered organizations is not provided thereon. The removal of such data prevents the quantitative and qualitative review of registered non-profit organizations.

The practice of unjustified refusals to register, including on the basis of minor deficiencies in the execution of the documents, preserves. In particular, in January 2015, the registration of Public Associations “Family Crisis Center “Shag” (Step) was refused on the basis of claims to the documents evidencing the legal address.

In March, Mogilev Regional Court considered the claim of the Chief Department of Justice of Mogilev Regional Executive Committee to one of the few registered regional human rights organization, i.e. Public Association “Mogilev Human Rights Center”, which was founded in 1998. The association problems relating to its legal address served as the basis for the claim for liquidation. According to the organization, the entrepreneurs who lease the premises to them, constantly face the pressure from the security service, and therefore refuse the organization in renting the premises thus violating early agreements. It should be noted that in 2014 the registration authority filed a lawsuit to suspend the activities of Mogilev Human Rights Center due to its problems with the legal address. This time, as in 2014, human rights defenders managed to find suitable premises at the last moment and to submit the documents for registration of a new legal address to the judicial authorities during the trial. In this regard, the consideration of the liquidation case has been suspended.

In January, Ms. Elena Tonkacheva, the Chair of the Board of the Legal Transformation Center, tried to judicially challenge the decision of the Internal Affairs Department of Piershamaiski District of

Minsk of November 5, 2014 on her expulsion from Belarus and the ban to entry into the country for three years. The trial lasted three days. As a result, on January 13, Ms. Natalia Petukh, the Judge of Pershamaiski District Court dismissed the human rights activists' complaint. The grounds for the human rights activist's expulsion were the facts of minor speeding of the car owned by Ms. Tonkacheva recorded by video cameras<sup>7</sup>. On February 19, Minsk City Court dismissed the appeal of Elena Tonkacheva against the decision of Pershamaiski District Court. It was the final court to appeal the decisions of the Citizenship and Migration Body of the Ministry of Internal Affairs on the expulsion of the human rights activist from the country. Ms. Elena Tonkacheva left the territory of Belarus on February 21, 2015.

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<sup>7</sup> <http://www.lawtrend.org/expulsion/spravochnaya-informatsiya-o-vysylke-eleny-tonkachevoj-iz-respubliki-belarus-ot-17-11-2014>