



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

**Monitoring for the I quarter of 2016. Review Period: January 1 – March 31, 2016**

***Legal Transformation Center***

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

Presidential Decree No. 5 dated August 31, 2015 *On Foreign Donations*, with effect from March 4, 2016, in general, left the previous procedure of foreign donations receipt unchanged (requiring mandatory pre-registration of foreign donations and providing for criminal liability for violation of this procedure).

The system for registration of foreign donations stipulated by the Decree does not meet the international obligations of the Republic of Belarus and international standards for freedom of association, such as the OSCE Guidelines on Freedom of Association, according to which the unimpeded obtaining of resources, including foreign and international ones, is an integral part of freedom of associations.

The Decree still contains the requirement for pre-registration of foreign aid at the Department of Department for Humanitarian Activities under the Property Management Directorate of the President of the Republic of Belarus, which allows the state to arbitrarily refuse permission for the use of foreign aid. The system of a limited list of purposes that are permitted to obtain foreign donations according to the standard procedure has also been preserved. Some new objectives have appeared in the regulation, such as: to promote the development of arts, cultural activities, environmental protection, enforcement of sentences, crime prevention and the promotion of a law-abiding lifestyle, strengthening the material-technical base of government agencies, repair (reconstruction) of social facilities. At the same time, as before, the list of objectives contains no educational activities, human rights, promotion of healthy lifestyles, gender equality, protection of animals, and other aspects of NGOs' activities. Foreign donations for the purposes not specified in the list can be obtained only by a decision of the Property Management Directorate of the President of the Republic of Belarus (when obtaining the aid in the amount exceeding 500 basic units, such decision shall be taken only by the Directorate upon agreement with the President).

Foreign donors also include Belarusian citizens permanently residing abroad. The new Decree excludes the norm of its application to foreign nationals who, under international treaties valid for the Republic of Belarus, given the similar rights with the citizens of the Republic of Belarus in the field of civil relations. Thus, the aid granted by the citizens and legal entities of the Russian Federation in accordance with the new legislation is referred to foreign donations (previously such

approach was selectively applied in practice). The recipients of foreign donations also include foreign citizens and stateless persons permanently residing in Belarus.

Positive changes introduced by the new Decree should include an exclusion of anonymous donations received in Belarus from the concept of foreign donations i. e. a new definition of foreign aid includes only anonymous donations received from abroad. Thus, the Decree eliminated bad legislation that has not worked in practice but transformed the activity of charitable and other organizations on the use of funds collected in the donation boxes into punishable activities. At the same time, the regulations on how the regulatory authorities will determine whether an anonymous donor is a foreign one remains unclear.

The exclusion of the real estate located abroad as well as property rights (for example, in respect of intellectual property) from the category of foreign donations was also an innovation.

Previous legislation has not set a minimum amount of foreign donation that a legal person can receive without registration. The new Decree contains a provision that foreign donations obtained in the form of goods (property) in the amount not exceeding 500 basic units as at the date of its receipt to be used in production and business operations of a legal entity is not subject to registration. Thus, the new Decree, in spite of the offers of civil society organizations, sets the minimum amount of foreign donations not subject to registration only in respect of goods (property), rather than cash. In addition, Belarusian legislation does not contain a definition of “production and business activities”. Based on the oral explanations of the Department for Humanitarian Activities, this rule will apply only to industrial enterprises.

In addition to the above core rules, the new Decree contains a number of changes important for NGOs attracting foreign donations for their activities.

With respect to individuals, the new Decree abolished the need for registration of foreign donations received, except in cases of applying for exemption of such donations from the individual income tax.

In general, the Decree toughen the reporting requirements, increases state control over the use of donations received, complicates the process of release of such donation from taxes, as well as creates a preference for humanitarian projects and programs approved by the state compared with the NGOs’ activities carried out by them independently. It contains the requirements for numerous approvals and bureaucratic procedures that make it difficult for NGO to obtain foreign donations, while making it easier to obtain foreign donations for humanitarian programs of state bodies.

Administrative and criminal liability for violation of the procedure for the use of humanitarian donations, criticized by civil society, also remains in force. Even a single violation of the procedure for receiving foreign donation can serve as the grounds for the liquidation of public associations. According to Article 369<sup>2</sup> of the Criminal Code, obtaining, storage, and/or transfer of foreign donations for the implementation of activities prohibited by the legislation of the Republic of Belarus or for the funding of political parties, alliances of political parties, preparation or conduct of elections, referenda, recall of a deputy or members of the Council of Republic, organization or holding of mass events, strikes, manufacture or distribution of propaganda materials, holding of seminars or other forms of political and mass agitation work among the population, committed within one year after the imposition of an administrative penalty for the same violation, are punishable by a fine, arrest, or restraint for up to three years, or imprisonment for up to two years.

A number of regulations aimed at bringing the receipt of foreign donations in compliance with the procedure established by Decree No. 5 have been adopted during monitoring.

The Property Management Directorate of the President of the Republic of Belarus adopted Regulations No. 2 on February 8. The Regulations established the form of registration documents and the use of foreign donations, as well as recognized Resolution No. 9 of the Property Management Directorate of the President of the Republic of Belarus dated September 17, 2010 *On the Procedure for Registration, Recording, Obtaining, and Use of Foreign Gratuitous Aid*.

Resolution No. 140 of the Council of Ministers of the Republic of Belarus dated February 19, 2016 amended the unified list of administrative procedures carried out by public authorities and other organizations toward legal entities and individual entrepreneurs with regard to the registration of foreign gratuitous aid received in the form of cash and goods (property). The regulation with effect from March 4 updated the list of the documents subject to be submitted by interested parties to the authorized body as well as reduced the timing for their consideration. The list has also been amended by the new administrative procedure, i. e. the registration of foreign gratuitous aid received for the implementation of humanitarian programs.

Resolution No. 46 of the Board of the National Bank of Belarus dated January 29, 2016 established reporting form 1044 *On the Targeted Use of Foreign Donations in Cash* and approved the Guidelines for the banks' drawing up and submission of statements 1044 *On the Targeted Use of Foreign Donations in Cash* and the information on the individuals' receipt of funds from abroad. The regulations of the National Bank have been adopted to ensure the banks' monitoring of the incoming foreign donations. It has been stipulated that banks shall submit to the National Bank of the Republic of Belarus the electronic statements containing the information on the arrival of foreign donations in cash at charity accounts of legal entities and individual entrepreneurs and of every debiting of aid (issuance of cash) from the accounts of legal entities as well as of obtaining of foreign funds by the individuals. Such statements should be submitted on a monthly basis, not later than 12.00 of the 15<sup>th</sup> day of the month following the reporting period. The Resolution also came into effect on March 4.

The public discussion of the draft Law *On the Treatment of Animals* took pace from March 29 to April 20 in Belarus. The draft Law was posted on the Internet where the people could leave their comments and suggestions thereof in electronic form. Among other, the draft Law provides for the regulation of the volunteers work. The concept of a volunteer has been introduced: an individual providing voluntary and free volunteer aid. The Law establishes the rights and obligations of volunteers in terms of the treatment of animals as well as the duties of the animal management stations and animal shelters in terms of volunteer aid use. Such regulation of the volunteers' voluntary work has been introduced into the legislation of Belarus for the first time. It is planned that the draft Law would be finalized before July 1, 2016.

On January 16, 2016 entered into force Presidential Decree number 6 of January 13, 2016 which amended Presidential Decree dated December 17, 2012 № 559 "On some issues of state support of the public association" Belarusian Republican Union youth". In accordance with the above-mentioned document, extended financing costs of the public association "Belarusian Republican Youth Union" for 2017

In accordance with the Presidential Decree No. 530 dated December 31, 2015 *On Approval of the Schedule of Bills Drafting for 2016* and Resolution No. 144 of the Council of Ministers dated

February 19, 2016 *On Republican Authorities Drafting of Bills in 2016* planned to amend the Law On Social Services. The expected changes shall include, *inter alia*, the changes in terms of the commissioning of social services. Currently, the practical application of this mechanism is complicated.

In February 2016, the Ministry of Justice published the statistics on the number of public associations and foundations registered in Belarus.

Totally, as of January 1, 2016, 15 political parties, 37 trade unions (33 republican trade union, 2,665 public associations (including 225 international, 716 national and 1,724 local), 34 unions (associations) of public associations, and 7 republican state and public associations have been registered in Belarus. 1,127 party organizations, 23,131 trade unions and 41,011 organizational structures of public associations have been registered.

164 foundations (15 international, 5 national and 144 local) have been registered in Belarus. It should be noted that the increase in the number of foundations has been provided during recent years almost exclusively by registering namely local foundations: registration of international and national foundations is recorded 1-2 times per year and the total number thereof has remained almost unchanged.

A number of cases of refusal to register newly established public associations related to the unlawful restriction of freedom of association have been recorded during the monitoring.

On January 21, Minsk City Court upheld the resolution of the Main Department of Justice of Minsk City Executive Committee to refuse the registration of Cultural and Educational Public Association "Novaya Alternativa" (New Alternative). The officials grounded their refusal by the discrepancy between the name of the association and its goals and objectives: the company specified in its Articles of Association the possibility of charitable activities in addition to cultural and educational ones, which the registration authority regarded as going beyond the scope of the association's cultural and educational activities stipulated by its Articles of Association. At the moment, the activists of the organization known as holding pickets and other unauthorized events, act as a "Alternativa" NGO registered in Latvia.

On January 5, the Main Directorate of Justice of Minsk City Executive Committee refused to register the Youth Public Association "Intermarium". The reason for refusal was the lack of the association's legal address, despite the fact that the founders provided the guarantee letter on premises for the organization at the registration. According to the founders, the entrepreneur who provided the premises for the newly established organization withdrew his guarantee letter under pressure from the public authorities. On March 2, Minsk Regional Court confirmed the validity of the refusal despite the fact that the applicants provided the confirmation of the association's location at the new legal address.

Moreover, in January 2016, the Ministry of Justice refused to register the Republican Public Association "Christian and Democratic Movement". According to the Ministry, the refusal to register have been due to the non-compliance of the Articles of Association of the organization with the legal requirements: the Articles of Association of the Movement determined that the organization "unites on a voluntary basis the citizens of Belarus for joint exercising of civil, social, cultural, and other rights", and the Law *On Public Associations* states that "citizens are united into a public association on the basis of common interests to satisfy their non-material needs and achieve the statutory objectives". The response of the Ministry also stated that one of the association's

objectives is to protect the rights and legitimate interests of citizens. The letter specified that: “This provision does not comply with Article 20 of the Law, according to which public associations have the right to protect the rights and legitimate interests and to represent the legitimate interests of their members in state bodies and other organizations. The founders of the association appealed against the refusal at the Supreme Court. However, on March 14, the Court acknowledged the validity of the refusal.

In early March, the Ministry of Justice has refused the registration of party “Belarusian Christian Democracy” for the sixth time. No new political parties have been registered in Belarus since 2000, even though various groups have tried to establish political parties for over 20 times (starting from communist and social-democratic to liberal and right-conservative ones) with no success.

On March 5, 2016 the Main Directorate of Justice of Minsk City Executive Committee denied the registration of the Social and Educational Public Associations “Solidarity Movement “Razam” (Together). The decision stated that the list of the association’s founders lacks the complete information about the founders in terms of their office phone numbers. In addition, the information on the place of work of one of the founders was incorrect. The registering authority considered these circumstances sufficient to reject the state registration of the organization as a legal entity. The organization currently is registered in Lithuania, Poland, and the Czech Republic.

In March, the Ministry of Justice refused to register the Public Association “Gendernoe Partnyorstvo” (Gender Partnership). The grounds for refusal were the incorrectness in the founders’ data (the Ministry did not specify the exact name) and the stated objective of the association (“the extirpation of gender-based discrimination”). In its letter of refusal of register the association, the Ministry stated (with reference to the Constitution) that the equality between men and women is established in Belarus at the legislative level and thus made conclusion on the illegality of the objective “combating gender-discrimination”.

In addition, in March, the Ministry of Justice refused to register the Republican Public Association “Za Gosudarstvennost I Nezavisimost” (For Statehood and Independence!), one of the founders of which is the Nobel Prize winner, Svetlana Aleksievich. According to the founders, registration has been refused for formal reasons: the organization is called RDAGA “Za dzyarzhavnasts i nezalezhnasts!” but the list of founders contains no RDAGA abbreviation (the name of the organization there looks like “Hramadskae ab`yadnanne “Za dzyarzhavnasts i nezalezhnasts!” (Public Association “For Statehood and Independence!”).

On March 10, the Supreme Court rejected the complaint of the Human Rights Public Association "For Fair Elections" on the refusal of the Ministry of Justice to register the association. It was the fourth attempt to register the organization.

One example of failure in the registration of public associations without adequate grounds, which is an illustration of the practice of restrictions on freedom of association in Belarus, is a case of refuse to register the Social and Educational Public Association "Movement of Mothers 328”.

On December 31, 2015, the Main Directorate of Justice of Grodno Oblast Executive Committee refused to register SEPA “Movement of Mothers 328”.

The grounds for refusal were as follows:

1) Non-compliance of the association’s name with its objectives and the scope of activity. The non-compliance to the scope of activity was due to the fact that the association stipulated in its Articles

of Association charity activities in addition to the social and educational activities referred to in the association's name. Moreover, the registering authority considered the numbers 328, mentioned in the name (which means Article of the Criminal Code providing for the criminal liability for drug trafficking), inconsistent with the association's purpose: prevention of drug distribution and use.

2) Documents submitted for registration were accompanied by a sheet with the image of the future emblem of the public association. The founders did not apply for the registration of the emblem and that document had not been mentioned anywhere. Moreover the emblem had been registered by another registering authority. However, the application of that sheet was the second ground for refusal of registration.

According to independent lawyers, i. e. in the field of freedom of association of the Legal Transformation Center (Lawtrend) and Assembly of Pro-Democratic NGOs of Belarus, the above-mentioned decision to refuse the registration is illegal and unreasonable. Moreover, it starts the dangerous practice of decision-making on refusal of registration: the registration of almost any public association may be denied due to the inconsistency of its name, goals, objectives, and scope of activity, based on subjective findings.

The founders of the public association appealed to Grodno Regional Court with a complaint against the resolution of the Main Directorate of Justice of Grodno Oblast Executive Committee. However, on January 29, 2016, Grodno Regional Court had produced the judgment not to institute civil proceedings. The application has been accepted only after the appeal to the Supreme Court with a complaint about the refusal to institute criminal proceedings and the ruling of the Supreme Court ruling of March 10, 2016 on the need to initiate such proceedings.

The above examples of registration rejection show that the procedure for registration of public associations in Belarus is extremely difficult. The main problems include: 1) the wordings of the rules on possible refusal of registration are fuzzy and blurry thus allowing refusing the registration due to insignificant technical flaws in the form of the submitted documents; 2) the requirement of the availability of 50 founders for national public associations; 3) mandatory availability of a legal address in an office (non-residential) premises; 4) state duty for registration of national public associations is twice higher than the duty for registration of commercial entities.

In January, the human rights activist, Ms. Elena Tonkacheva, the Chair of the Board of the Legal Transformation Center (Lawtrend), who was ordered from Belarus in February 2015, submitted a petition to the Main Internal Affairs Department of Minsk City Executive Committee asking for the reduction of the period of prohibition on entry to Belarus and her exclusion from the list of persons banned from entering the country. However, on February 15, 2016, Ms. Elena Tonkacheva received the refusal to reduce the period of prohibition on entry to Belarus. By the same document, the Ministry of Internal Affairs of the Republic of Belarus warned Ms. Elena Tonkacheva of criminal liability in case of attempts to enter Belarus or stay in the territory of the Republic of Belarus in case of entry.

On February 17, a message was distributed in the social network VKontakte from the account of Viktor Sery, who is a representative of the Coordinating Council of the Student Government of the Belarusian State Medical University. The message was distributed among the students and third parties and called such organizations as "Student Self-Government Organizers' Fraternity", "Center of Student Initiatives", and "Student Council" "unauthorized" and "illegal" youth organizations according to "reliable information". In this regard, it was suggested to the monitors of the groups to

hold “preventive conversations” and “information hours” on the undesirable participation of students in the activities of these organizations as their activity is “targeted third-party misleading with anti-state elements”. In response to such obviously illegal actions of the University administration, the activists of these student organizations issued an open collective appeal.