



## **FREEDOM OF ASSOCIATION AND LEGAL CONDITIONS FOR NON-COMMERCIAL ORGANIZATIONS IN BELARUS**

***Review Period: 2018***

***Legal Transformation Center (Lawtrend)***

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

The assessments, set forth in this review, are based on the materials of author organizations' practice in consulting of *pro bono* civil society entities on legal and organizational issues, including experience of participation in judicial proceedings and representation in governmental authorities. The assessments are also based on the results of advocacy work, including state bodies' responses to inquiries and proposals regarding improvement of legal regulation and practice, aimed at improving conditions for civil society organization, which have been sent to them. The authors are grateful to their colleagues from Belarusian human rights organizations and media for provision of materials on civil society development in Belarus, which have been used during preparation of this review.

### **General assessment of legal environment for civil society in the Republic of Belarus**

In 2018 external environment for Belarusian non-commercial sector was developing in line with the trends, which had taken shape in previous years. On the one hand, certain mitigation of state authorities' rhetoric in respect of civil society, partial abandoning of the toughest restrictive practices, together with the development of platforms for dialogue between civil society and the state at local and international levels were considered by many civil society organizations (CSOs)<sup>1</sup> as the evidence that the conditions for their activity were being improved. Actually, they were truly being improved to some extent. At the same time, strict practices in respect of CSOs remained in the authorities' bag of tricks (including the most repressive ones), the majority of legislative amendments cannot be considered positive and some of them even directly threaten CSOs with deterioration of their state in the nearest future.

Therefore, when it comes to assessments of legal environment for activity of CSOs, made by various civil society actors, the year 2018 was as ambiguous as never before. For some of them it

<sup>1</sup> For the purposes of this paper, when we say "**civil society organization**" (CSO), we mean any form of independent from the state public institution, where freedom of association can be realized (including religious organizations, public associations, other non-commercial organizations, informal groups and initiatives). The term "**non-commercial organizations**" (NCO) is used in the sense from the Civil Code of the Republic of Belarus to indicate legal entities, which do not set deriving of profit as their main aim (foundations, institutions, associations, unions of legal entities, etc.), but state organizations are not taken into account.

was the year, when the trend toward improvement of relations between civil society and the state continued, including adoption of the favourable to NCOs legislative norms and improvement of financial sustainability of the non-governmental sector through development of various new forms of raising funds from the sources inside the country. Other organizations faced criminal prosecution (relating to receipt of financial aid from abroad as well), had difficulties with organization of events, noted change of the legislation and law enforcement practice for the worse and usage of the whole range of previous sanctions and liabilities.

Against the background of such different subjective assessments, we can still notice clearly objective differences between two periods of time within one year. Positive assessments prevailed approximately in the first half of 2018 – there were more facts, concrete cases and practical examples to be named in support of such views, while negative assessments were mostly based on interpretations, assumptions, negative prognoses that the planned legislative amendments or changes in practices would not lead to true improvements for CSOs. In the second half of 2018, starting from the summer, the situation changed to the opposite – positive assessments started appealing to rather prognoses and interpretations, being based on consideration of negative examples as just isolated cases, which failed to change general positive trend, while negative assessments were mostly based on quantitative indices, concrete examples and jural cases from practice (regarding amendments to legal regulations as well).

Separation of these two periods is relative and approximate as for the marked time boundary (June-July), but it pretty definitely reflects the change of the situation at the end of 2018 in comparison with the situation at the beginning of the year. It is based on the mentioned in further sections of the review amendments to legal regulations, registration of CSOs, practical restrictions of CSO activity, experience of interaction between civil society and the state via various platforms, as well as continuing practice when CSO are in unequal conditions in comparison with both commercial organizations and state public entities.

Speaking about those processes and facts, which gave ground for optimistic assessments in the first half of 2018, we should mention the following:

- In May the authorities announced the legislative initiative on abolition of the odious Article 193<sup>1</sup> of the Criminal Code of the Republic of Belarus, which provides for the punishment for activity as a member of an unregistered organization;
- In June the Parliament adopted amendments to the Law of the Republic of Belarus “On mass events in the Republic of Belarus”, introducing certain elements of declarative principle for holding of mass events. Representatives of a wide range of human rights organizations were engaged into discussions of these amendments;
- A wide range of actors concerned and representatives of the public were engaged into discussions of amendments to the legislation on media (content of which caused concern about possible new restrictions on freedom of speech, especially in the Internet) and some other draft laws (including those induced by the public’s resonant demands that criminal responsibility for drug crimes should be reduced).

Due to the platforms of the EU-Belarus Human Rights Dialogue, the first in 20 years state report of the government of Belarus to the UN Human Rights Committee on implementation of the provisions of the International Covenant on Civil and Political Rights and engagement of CSOs into discussions on implementation of the [Interagency Plan on implementation of recommendations](#)

[accepted the Republic of Belarus following the second cycle of the United Nations Human Rights Council Universal Periodic Review and recommendations addressed to the Republic of Belarus by Human Rights Treaty Bodies for 2016 – 2019](#), the opinion has emerged in the human rights community that the policy of dialogue is an important processual achievement, which will sooner or later lead to true achievements in the field of how the state fulfils its obligations within international instruments regarding implementation of recommendations and harmonization towards international standards.

The brightest example of changes in the climate for CSO activity in Belarus in the period from January to March 2018 was celebration of the 100<sup>th</sup> Anniversary of the Belarusian Democratic Republic in Minsk and other cities and towns. The authorities not only refrained from impeding the holding of most events, but in some cases even directly assisted in organization. They also integrated certain events of their own into common national and local programs of festivities. In the first half of 2018, detentions of participants of mass actions (including unauthorized actions on March 25 within the framework of the 100<sup>th</sup> Anniversary of the BDR) were relatively rare and in most cases did not lead to further administrative arrests. The criminal case against certain leaders of the REP Trade Union (charged with tax evasion from foreign aid) was being dragged out, while the defendants were at large. Two prisoners, recognized by Belarusian human rights defenders as political ones, remained in prison, however, it was not an obstacle for Belarus rapprochement with the EU and the USA. Moreover, Belarusian human rights organizations almost did not report about serious pressure on these prisoners (including the toughest form of pressure, such as new criminal prosecution, threatening with additional term).

The dynamics of registration of new NCOs remained in the same regime, including the quantitative indicator for newly-registered by law-enforcement agencies public associations and foundations (66 public associations and 7 foundations respectively). In the spring 2018, observers noticed that the period without amendments to the Law of the Republic of Belarus “On public associations” was approaching the mark of 5 years, which was an unprecedented case of stability for this fundamental for public associations legislative act, which had earlier been amended almost annually (in total 11 times from its adoption in October 1994 to 2013).

Thus, the first half of the year was considered by many CSO representatives as the period of based on facts and true trends optimism regarding improvement of the environment for CSO activity. They were especially optimistic about prospects for further improvement of both legislation and practice.

In the second half of 2018, these optimistic moods were at best less pronounced and were replaced with more discreet assessments. Assessments regarding the majority of parameters became more realistic and sceptic. Deterioration of conditions for CSOs was observed in all the above-mentioned indicators, which in the first half of the year had served as the ground for positive assessments. Such deterioration did not happen at once (like it earlier happened in December 2010 and in February-March 2017, when the wave of protests and related to them repressions and criminal cases was abrupt and took just several days), it was done at different speeds in respect of different indicators. However, the fact of deterioration in the majority of the above-mentioned indicators is undoubted.

The toughest and most obvious example was criminal prosecution of civil society representatives. While the criminal case against Ales Lipai, the director of the BelaPAN news agency, charged with tax evasion from funds, received from abroad, was dismissed due to passing away of the

defendant, the so-called “Belta case”, which broke out in the summer, became unprecedented when it came to the number of suspected and involved in investigative procedures editorial staff and journalists, representing various media and web-sites (interrogations, searches in flats and offices, detentions, seizures of storage media). Against such a background, the results of the dialogue and discussions on the problematic provisions of the amended law on media took back seat. However, these discussions failed to lead to removal of the norms, threatening freedom of speech, from the signed in July law. By autumn, it had also become absolutely clear that the authorities were not ready to speak about abolition of the ban on activities of unregistered organizations. Moreover, replacement of criminal responsibility for violation of the ban with administrative fines can free the authorities’ hands for the use of sanctions against activist of organizations, operating without registration (because of introduction of out-of-court procedure for imposition of fines as well).

As expected, in August court found the REP Trade Union leaders guilty and, in accordance with the majority of observers’ prognoses, imposed non-custodial sentences. However, it was quite a tough form of repressions that the administered by court punishment was restriction of freedom for 4 years with the ban to hold official post, as well as a big fine to be paid. Such a sentence, passed upon the leaders of independent trade unions, especially due to the supposed violations regarding receipt of funds for activity of trade unions from abroad, has again put the issue of flagrant incongruence of Belarusian conditions for CSO access to foreign funding with international standards, including OSCE standards, on the political agenda. Maybe, numerous cases of administrative prosecution for dissemination of extremist materials and other violations in the Internet were not so noticeable at the background of the REP case, but the increase of the number of cases, when people are brought to liability, has been observed in general and in all indicators, relating to prosecution for violations of the imposed by the state restrictions of freedom of speech.

The database of administrative prosecution, maintained by the Human Rights Center “Viasna”<sup>2</sup>, shows growth of the number of administrative prosecution cases in the second half of 2018, especially cases when fines were used as administrative sanctions. There was growth of both total number of cases and total number of people, brought to liability, and especially of total volume of the imposed administrative fines. Administrative arrests have also continued to be used as sanctions against participants of protest actions. The mentioned growth was largely related to at least three campaigns of long-term protest in 2018 – protest against building of the restaurant complex near Minsk, close to the place of mass executions of victims of Bolshevism (Kurapaty), as well as protest campaigns against construction of hazardous industries in Svetlahorsk and Brest. Recurrence of the practice, when CSO events, held on rented premises, were forcibly interrupted, has become an alarming trend.

The signed in July new Law of the Republic of Belarus “On normative legal acts” has failed to fundamentally extend CSO opportunities for participation in political decision-making, including the stage of access to information about draft normative legal acts. It has rather regulated a range of contentious issues regarding organization of public discussions, leaving a lot to be regulated with future bylaws of the government. In autumn, it has become known that, for the first time after a five-year-long break, the government has been preparing draft amendments to the Law

<sup>2</sup> Human Rights Center “Viasna”. Monitoring of administrative prosecution: database of prosecution facts <https://spring96.org/persecution>

“On public associations” and the Law “On political parties”, which amongst others will affect reporting issues.

As of the time, when the current review was being prepared, the Ministry of Justice had not yet officially published the summarized information about the number of newly registered in 2018 public associations and foundations. However, overall indices of the number of registered in the country new organizations, announced by the Ministry of Justice at press briefings, show that the number of new registrations of public associations decreased by several times in the second half of the year and became the lowest in recent years.

De-facto ban for NCOs to have legal addresses in private residential houses (one-apartment or blocked) has become a serious deterioration of the law enforcement practice. Moreover, it was caused not by amendments to legal acts, but by changes in interpretation of these acts. In such a way the state has shut down one of the opportunities, which has allowed NCOs to legally and in congruence with the Housing Code of the Republic of Belarus circumvent the strict requirement for NCOs to obligatorily have permanent offices or office premises to locate the governing bodies of organizations.

The processes of the dialogue between the state and the public are taking their courses. However, certain disappointment in them can be observed even among participating CSOs. Thus, discussions on the well-known *Interagency Plan on Human Rights* were narrowed down to informing the state about the number of held events and not about substantial progress in the human rights field. Although the government published the report on implementation of the plan as a gesture of good will, its content said nothing about actual implementation of the most important and burning recommendations of the Universal Periodic Review (UPR) and treaty bodies. The launched in autumn 2018 preparation of a new state report within the framework of the third cycle of the UPR has so far been taking place without public interaction or consultations with civil society, which are recommended by the UN Human Rights Council.

There were trends, influence of which was characteristic of both phases in the both first and second halves of the year, but they shew themselves differently at the stage of toughening the conditions for CSOs in comparison with the stage of expending milder practices. The brightest example of these trends was changes in financial sustainability of CSOs, which have been observed in recent years. Thaw in relations between the West and Belarus was characteristic of the period from 2015 to 2017, which resulted in changes in donors’ approaches and policies regarding support of CSOs, such as focus on cooperation with mostly state and close to the state actors and overall decrease of external funding flows for Belarusian CSOs in general. Under the impact of this factor, many CSOs have continued diversifying their funding sources, paying more attention to internal sources, especially to electronic means of fundraising (including crowdfunding) and social entrepreneurship. However, many of the used by the state negative practices threaten financial sustainability of CSOs, including growing usage of financial sanctions – besides the widely used by the authorities fines for violations of the procedure for holding meetings, imposed on individuals, the possibility of imposing fines on legal entities (including NCOs) has also been added. Replacement of criminal responsibility for activity of unregistered organizations with out-of-court imposition of administrative fines makes us suppose that the effect will be similar to mass campaigns of fines for participation in protests (which have replaced previous arrests for the terms up to 15 days). The cases of politically motivated criminal prosecution of civil society leaders have lately become more often based on articles, related to financial violations, including interpretation

of the received foreign aid as hidden from taxation personal income of leaders of organizations. It's remarkable that in many cases financial sustainability of CSOs is harmed not by state regulatory or controlling bodies, but by private banks and used by them practices, including those based on international recommendations on measures to combat money-laundering and financing of terrorism.

In view of the above-mentioned, it is difficult to assess legal environment for realization of freedom of association in the Republic of Belarus in 2018 in such definite categories as "improvement" or "deterioration" of the situation for CSO activity.

It seems that the mentioned unstable dynamic situation is continuation of usual for Belarus political cycle, when electoral calendar defines the character and aims of state regulations in the civil society sector. The caused by geopolitical reasons thaw in relations between the West and official Minsk has brought a range of factors into public and political life of the country, which contribute to mitigation of state policies in respect of civil society. However, this mitigation remains situational and short-term, as well as not nailed down at the institutional level. It should rather be said that the state's restrictive practice in respect of freedom of association has demonstrated unexpected flexibility and ability to achieve aims with the usage of mild practices, keeping and from time to time using previous tough practices.

It seems that the upcoming period of 2019 – 2020, when two electoral campaigns will be held, has already switched the regime of cooperation between the state and CSOs to the phase of cooling in relations – this can already be observed in changes in both legal regulations and law enforcement practice. It is not a question if the environment for CSOs will deteriorate in 2019, the questions are how seriously it will deteriorate, how deeply it will affect legal regulations, how long this negative period will be and how long-term its negative consequences will be.

### **Registration of non-commercial organizations**

In contrast to previous years, the Ministry of Justice of the Republic of Belarus did not publish the detailed statistical data on the number of newly registered in 2018 public associations and foundations in accordance with its usual schedule, while in previous years such information was published right after the sitting of the collegium of the Ministry, devoted to summarizing the results of justice agencies' work in previous year<sup>3</sup>. The last case of such refusal to publish statistical data on the number of registered public associations and foundations was in 2009. Registering bodies traditionally do not publish the summarized data on the number of liquidated within the year public associations and foundations, as well as the data on newly registered institutions (which are now the most popular organizational and legal form, allowing CSOs to obtain the status of a legal entity in Belarus, due to simplicity of establishment and registration procedures).

At the press conference on February 5, 2019, Aleh Slizheuski, the Minister of Justice, orally said that as of January 1, 2019 there were 15 political parties, 28 trade unions and "about 3000 public

<sup>3</sup> Final collegium on summarizing justice agencies' work in 2018 was held on January 25, 2019, but as of now there is only information as of July 1, 2018 on the Ministry of Justice website section, devoted to activity of the Department of NCOs: [https://minjust.gov.by/directions/compare\\_coverage/](https://minjust.gov.by/directions/compare_coverage/) If the Ministry still publishes final data, we will add respective information to this section and the supplemented version of the review will be published.

associations” in Belarus and 92 new public associations were registered in 2018<sup>4</sup>. This index is lower than the average annual index for the last decade (110 registrations) and is the lowest one since 2015, when 86 new organizations were registered. For comparison, 150 new public associations were registered in 2017.

The Ministry of Justice published official statistics on the results of registration as of July 1, 2018 only<sup>5</sup>. Collation of data shows that justice agencies registered 66 new public associations in the first half of the year and only 26 organizations in the second half of the year; the number of new registrations decreased by 2,5 times. This could likely be interpreted as registering bodies’ switch to stricter control and examination of documents of newly established associations in the lead-up to major political campaigns – presidential and parliamentary elections. However, at the same time, we shall not deny general trend to refrain from submitting the documents for registration as a public association, which has become even less attractive organizational form for new initiatives.

In the first half of the year, the Ministry of Justice and Chief Administrations of Justice registered 66 new public associations (5 international, 6 republican and 55 local ones) and 7 new local foundations. As of July 1, 2018 there were 15 political parties and 1174 party organizational structures, established in accordance with territorial principle, 28 trade unions (23 republican trade unions, 1 territorial trade union and 4 trade unions in organizations) and 24523 trade union organizations, 2907 public associations (227 international, 770 republican and 1910 local ones) in Belarus. As of the same date, there were registered 42062 organizational structures of public associations, 207 foundations, including 16 international, 7 republican and 184 local ones, and 7 republican state public associations.

Extrapolation of data on areas of activity to the middle of the year shows that the longstanding trend to first of all register organizations with specialization in physical culture and sport continued in 2018, but the number of charitable and youth organizations, educational associations, organizations aimed at protection of nature, historic and cultural monuments increased as well. When it came to other areas of activity, almost no growth was observed or the number of organizations even decreased. Sharp increase of the number of children’s organizations in the first half of 2018 is worth attention: as of July 1, 2018, there were 36 children’s associations, while on January 1, 2018 there were only 27 of them – it was children’s organizations, which mainly contributed to the increase of the number of youth organizations.

<sup>4</sup> " It is planned to simplify the procedure for registration of political parties and public associations in Belarus" – tut.by portal with link to BelaPAN <https://news.tut.by/society/625143.html>

<sup>5</sup> The Ministry of Justice of the Republic of Belarus. Political parties, public associations and other non-commercial organizations - [https://minjust.gov.by/directions/compare\\_coverage/](https://minjust.gov.by/directions/compare_coverage/)

**According to the Ministry of Justice, as of July 1, 2018, there were the following registered public associations in Belarus<sup>6</sup>:**

| Areas of activity   | July 1, 2018 | January 1, 2017 |
|---|--------------|-----------------|
| Physical culture and sport  | 809          | 745             |
| Charity   | 403          | 389             |
| Youth   | 355          | 320             |
| <i>including children</i>   | 36           | 26              |
| Educational, cultural and leisure-time  | 250          | 232             |
| Public associations of citizens, representing national minorities                         | 110          | 113             |
| Public associations of war and labour invalids, veterans                                  | 94           | 93              |
| Science and technics  | 85           | 85              |
| Public associations of supporters of protection of nature, historic monuments and culture | 87           | 80              |
| Creative  | 50           | 53              |
| Women   | 32           | 32              |

It should be taken into account that this classification is based on the applied by registering bodies record standards and not always clearly reflects actual areas of activity of organizations. For example, there is no such area of activity as human rights protection in the classification, although human rights activity could be one of the areas of activity of organizations from various categories (for example, organizations of national minorities).

As registering bodies do not publish summarized information or statistics on refusals of registration of public associations and foundations, it is possible to define trends in this field on the basis of circumstantial data only. In particular, authors of this review have for long time observed the trend toward registration of new NCOs in the form of institutions, exactly because founders do not want to add to their risks the high probability that justice bodies would have claims while examining issues of registration of public associations and foundations. However, despite the fact that refusal practice is comparatively rare, the procedure for registration of public associations itself still leaves room for arbitrary decisions to refuse registration. The most widespread claims are flaws in the submitted for registration lists of founders (inaccuracies or misprints in addresses, phone numbers, providing of mobile phone numbers as home ones), claims regarding registration of legal addresses and regarding charters (including the part about goals and objectives, which supposedly contradict legislation or cannot be pursued by NCOs).

These and other claims regarding documents were the grounds to refuse registration to organizations in 2018. On August 2, the Minsk City Department of Justice refused registration to the local Public Association for Protection of Citizens' Ownership and Ecological Rights "Vakolitsa" due to flaws in the record of the establishing event (there supposedly were wrong wordings while making decisions about the name of the organization and while authorizing members of the

<sup>6</sup> Annual data of the Ministry of Justice on quantitative indices of registration, arranged by years starting from 2004, could be found in the review "Freedom of association and legal conditions for non-commercial organizations in Belarus – review of 2017" (supplemented version) <http://belngo.info/2018.review-of-freedom-of-associations-in-belarus-2017.html> For example, justice agencies registered 94 new public associations and 9 foundations in 2007, while at the end of that year there were 2255 public associations and only 64 foundations in the country (such small numbers in that period were caused by consequences of the campaigns of reregistration of legal entities in 1999 and reregistration of foundations in 2005, as well as campaign of compulsory liquidation of public associations in the courts in 2003-2006).

governing body to represent the organization during registration process, violations in specification of the decision-making scheme in the format “listened – spoke out – resolved”). On March 7, the Ministry of Justice refused registration to the International Public Association “Starting Point”, the reason was incongruence with the stipulated by law criteria for establishment of an international association regarding the required number of foreign founders and establishment of a branch abroad. On May 3, after correction of the detected violations and reapplication for registration, the organization was again refused to be registered due to other claims (absence of subsequent approval of the charter by new meeting of founders). The Public Association “Immortal Regiment” was also refused registration (the founders claimed their disagreement with the refusal, but did not mention the character of irregularities, which had become the reason for refusal of registration), as well as the Republican Social and Informational Public Association “Ravnovesie” and others. In 2018, initiators of the establishment of new political parties faced traditional refusals – in April the political party Belarusian Christian Democracy was refused registration for the seventh time in a row. Among other grounds for refusal, there was absence of home or office phone numbers of several founders, as well as mistakes in dates of birth of two founders and questions regarding premises, which were mentioned as the legal address. The Supreme Court traditionally dismissed the founders’ appeal, like all other appeals against refusals of registration to political parties and public associations<sup>7</sup>.

There is no official information about registration of institutions and unions (associations) of legal entities, as registration of them is conducted in accordance with the declarative principle. However, some founders of institutions faced arbitrary and unlawful refusals while having names of their newly-established organizations approved (Institution “Professionals – to Children in Difficulty”, Educational and Informational Institution “Center for Youth Studies” and others). If the name is not approved (while the sense of the procedure should be just simple collation of the planned name with the names of already registered organizations), registration is impossible, despite the declarative procedure for registration.

Institutions remain the most popular and mass form for registration of new NCOs. When it comes to this organizational and legal form, the introduced from February 26, 2018 procedure for registration via submission of documents through notaries is significant, in addition to already existing procedures for registration via personal visit to registering agencies or via electronic submission of documents (Chapter 1 Point 13 Paragraph 3 of the Regulations on State Registration of Economic Entities, approved by the Decree of the President of the Republic of Belarus of January 16, 2009 №1). In the first case, personal participation and time expenditure are required, in the second case, electronic signature key needs to be purchased, which costs more than notary tariff on notary action. Practically, notary services replace electronic signatures and should make the procedure for electronic submission of documents simpler for founders. However, not all notaries have managed to quickly learn the new procedure – there were cases when founders said that it was impossible to practically use the new mechanism. As reported, notaries submitted 259 electronic documents for state registration in total, which made up 31,5% of the total number of electronic documents for state registration<sup>8</sup>, but only 0,5% of the total number of legal entities,

<sup>7</sup> RFE/RL: Supreme Court dismissed BCD appeal against refusal of registration. <https://www.svaboda.org/a/29250682.html>

<sup>8</sup> Professionally about topical. Registration of economic entities with participation of notary: current situation and further prospects <http://pravo.by/novosti/novosti-pravo-by/2019/february/32611/>

which applied for registration (these indices relate to all legal entities, both commercial and non-commercial).

It was alarming and negative signal for CSOs that practical ban for CSOs to have legal addresses in private residential houses (one-apartment or blocked) was imposed. Such an opportunity was based on the norm of Article 14 Point 2 of the Housing Code of the Republic of Belarus, allowing usage of residential premises for other purposes than intended with the concurrence of local authorities (including location of organizations and their branches on residential premises). There were no amendments to the legislation on this issue. However, after clarification of the Ministry of Justice, such interpretation was introduced into practice that was opposite to the interpretation, which had been applied over the last decade. Earlier the Ministry of Justice allowed public associations to have legal addresses in such houses, but starting from the autumn 2018 all local authorities started claiming in their refusals that there was a ban on location of legal addresses in private houses in all cases, except those stipulated by acts of the president (unitary enterprises and family farms, which can be located even in founders' flats without necessity to obtain local authorities' approval). For example, in October 2018, the Institution "Informational and Cultural Center "InitiArt" from Navapolatsk was refused to have its legal address in a private house on this very ground.

It is an interesting fact that, simultaneously with changes in practice directed at nonapproval of NCO legal addresses in private houses, Elena Kirychenka, the head of the Department of Non-Commercial Organizations, claimed at the session of the UN Human Rights Committee, where Belarusian periodic report was reviewed, that NCOS were allowed to have their legal addresses in private houses. "The question about place of residence was asked, that public associations cannot have legal addresses at places of residence. There is the norm in the legislation, according to which public associations can use legal addresses at places of residence. They can, if it is a one-apartment residential house. First of all, it is so in order not to disturb neighbours. If it is a multi-apartment house, they don't have such a right, of course. But public associations can have their legal addresses in one-apartment residential houses with the concurrence of executive committees" – said Elena Kirychenka<sup>9</sup>. Due to flagrant contradiction of actual legal practice with words of the Ministry of Justice representatives in the UN treaty body, it should be noticed that neither the Housing Code of Belarus nor other legislative acts distinguish public associations out of the whole range of NCOs, which faced the problem of not being allowed to have legal addresses in one-apartment residential houses.

Belarusian legislation does not stipulate for the possibility to change owners of institutions' property. Belarusian legislation does not stipulate for variants to change founders for this organizational form, which are allowed for commercial organizations (although they are used in practice in certain cases). It is a topical objective to settle this gap in legislation, especially taking into account the increased popularity of institutions as organizational and legal form of NCOs and their turning into the main option for CSOs to obtain the status of a legal entity.

<sup>9</sup> Geneva (Switzerland), UN Human Rights Committee, cited from shorthand report of the Belarusian House of Human Rights named after Boris Zvozkov

<https://humanrightshouse.org/articles/%d1%80%d0%b0%d1%81%d1%88%d0%b8%d1%84%d1%80%d0%be%d0%b2%d0%ba%d0%b0-%d1%82%d1%80%d0%b0%d0%bd%d1%81%d0%bb%d1%8f%d1%86%d0%b8%d0%b8-%d1%80%d0%b0%d1%81%d1%81%d0%bc%d0%be%d1%82%d1%80%d0%b5%d0%bd%d0%b8%d1%8f/>

When it comes to legislative amendments, we should mention the Ordinance of the Council of Ministers of May 30, 2018 № 408, which approved the new version of the Regulations on the Procedure for Opening and Activity of Representative Offices of Foreign Organizations in the Republic of Belarus (came into force on September 1, 2018). This normative act has changed the procedure for registration of foreign representative offices (these issues have been passed from the MFA jurisdiction to the jurisdiction of regional executive committees). However, they have kept the authorization-based procedure for opening for a limited term with the possibility to prolong and main restrictions regarding possible objectives for this form of organizations, as well as the procedure for conduct of activity without establishing a legal entity<sup>10</sup>.

### **Changes of legislation affecting non-commercial organizations**

Despite the fact that there were no amendments to framework legislation on NCOs in 2018, the year was rather interesting, when it came to legislative novels, somehow affecting NCOs. But the year 2019 promises to be even more interesting, as two draft laws, directly affecting the issues of NCO status and registration, are planned to be worked out.

Thus, the government plans to work out in 2019 the Law of the Republic of Belarus “On amendments to the laws on the issues of activity of political parties and other public associations” (it is planned to be worked out by September and submitted to the parliament in December 2019). This act is planned to fix the intention that documents on activity of political parties (including financial reports) should be available to the public, it means to stipulate for the obligation to publish such information in the media and on websites of political parties; to provide for the possibility for public associations to electronically submit the documents for state registration to justice agencies, as well as the possibility to electronically exchange information between registering bodies and public associations; to simplify the procedure for provision of information about continuation of activity by political parties and public associations, as well as for changes of status of organizational structures of public associations (probably, it may also affect issues of submission of annual reports to registering bodies) and other.

NCOs interests will also be affected by the draft of the new Law of the Republic of Belarus “On state registration and liquidation (termination of activity) of economic entities” (it is planned to be worked out by December 2019 and submitted to the parliament in September 2020). It is supposed that this law will regulate the issues of establishment and registration of those legal entities, whose establishment and registration are now regulated by the Decree of the President of the Republic of Belarus of January 16, 2009 №1 “On state registration and liquidation (termination of activity) of economic entities”. These legal entities also include such NCOs as institutions and associations (excluding unions of public associations). As earlier, issues of establishment and registration of public associations and political parties will be regulated by special legislative acts. Such differentiation of approaches towards legal regulation of legal entities takes place despite the obvious necessity to work out a general draft law, which would regulate the uniform procedure for establishment and registration of all legal entities in the Republic of Belarus. Within the framework of the development of this draft law, possible abolition of the

<sup>10</sup> Verdict: Changes in the procedure for opening and activity of representative offices of foreign organizations <http://verdict.by/en/publication/zakonodatiel-stvo/izmienieniia-v-poriadkie-otkrytiia-i-dieiatiel-nosti-priedstavitiel-stv-inostrannykh-orghanizatsii>

obligation to issue and obtain certificates on state registration of legal entities is being considered, it is planned to ensure the possibility of registration under a model charter, to decrease the number of requirements regarding names of organizations and to simplify the procedure for their approval. The new law is planned to regulate the issues, relating to location of economic entities, which are legal entities, as well as relating to notifications about change of location; the list of registering organs, as well as their rights and duties; the procedure for application for state registration; the procedure for examination of documents, submitted for state registration; responsibility in the field of state registration; relations, connected with liquidation (termination of activity) and other. At the same time, when it comes to state registration of economic entities, the declarative principle for state registration, stipulated by the Decree №1, will remain. According to official substantiations of this draft law, when the new law comes into force, the Decree №1 will lose effect.

It is also planned to work out the draft law on self-regulatory organizations in 2019. According to the Ministry of Justice, this category includes the notary and the bar, institute of tax consultants and other similar formations. It is planned to work out general legislative approaches towards regulation of their activity<sup>11</sup> (however, organizations from some other fields may also be given the status of self-regulatory ones).

When it comes to the laws, adopted in 2019, the broadest range of NCOs is probably affected by the new version of the Tax Code of the Republic of Belarus, which has been discussed and approved over several years. In April 2018, the International Educational Public Association “ACT” submitted its proposals on addenda to the Tax Code regarding peculiarities of taxation of NCOs to the interagency working group on amendments to the Tax Code under the Ministry of Finance<sup>12</sup>. These proposals were aimed at establishment of the well-balanced, economically justified and compliant with universal approaches procedure for taxation of NCO earnings and introduction of respective tax benefits for donors and recipients. However, the Tax Code has undergone no significant changes in this part and maintained the existing approach towards granting of tax benefits to only donors of specific organizations, enumerated in the code.

At the same time, the new version of the Tax Code contains important for many NCOs changes. It stipulates that the decisions to suspend account transactions and to exact taxes, levies (duties) or penalties are not delivered in respect of donation accounts, opened for depositing (receipt) of foreign gratuitous aid in the form of monetary funds, in foreign currencies as well. Handover of goods to NCO members (performance of works, rendering of services), purchased (imported) at the expense of share contributions (membership fees); turnovers from disposal of goods (works, services), handed over (performed, rendered) by suppliers of goods (works, services) of international technical aid projects (programs) and (or) recipients of international technical aid for its implementation; turnovers from their further gratuitous handover in accordance with aims and objectives of international technical aid projects (programs) and under the terms, set up by the president, are not recognized to be subjects to value added tax. Turnovers from rendering of social services on the territory of Belarus in accordance with the list of such services, approved by the

<sup>11</sup> In 2019, the Ministry of Justice will work out draft laws on state registration of economic entities and self-regulatory organizations <http://pravo.by/novosti/novosti-pravo-by/2019/february/32404/>

<sup>12</sup> ACT experts proposed amendments to the Tax Code <http://actngo.info/old/article/eksperty-akta-predlozhilli-popravki-v-nalogovyy-kodeks>

Council of Ministers, which are rendered by non-governmental NCOs in the form of permanent social service, are also exempt from value added tax.<sup>13</sup>

The Law of the Republic of Belarus of July 17, 2018 introduced amendments and addenda to the Law of the Republic of Belarus “On mass events in the Republic of Belarus”. Article 9<sup>1</sup> has been added to the law, which establishes the notification-based procedure for holding of mass events in specially designated places for conduct of events. However, designation of such places was referred to the competence of local authorities and they designated seldom-visited places, located away from downtowns of settlements (often they are neglected stadiums and parks). There were designated only six such places in Minsk, where the population is about two million people. The law has specified the government’s obligation to determine uniform fees for militia services on public order maintenance during mass events – these fees have appeared to be unreasonably high and disproportionate.

Simultaneously, there have been amendments introduced to the Code of Administrative Offences, which now rest the responsibility under Article 23.34 “Violation of the procedure for organization and conduct of mass events” on not only organizers and participants of mass events, but also on other individual or legal persons that violate the legislation on mass events. It is important for NCOs that this article provides for responsibility of legal entities for such offences – Article 23.34 of the Code of Administrative Offences stipulates imposition of a fine of up to 100 basic units on legal entities, in case of a repeated violation – a fine of up to 200 basic units. Thus, earlier NCO activists could be punished with administrative fines or arrests, while NCO responsibility was limited by the measures of the Law “On public associations” (in practice, it was just warnings to public associations and political parties). Now, organizations themselves can be fined.

The new Law of the Republic of Belarus “On normative legal acts” of July 17, 2018 has failed to significantly improve NCO access to the process of political decision-making, including accessibility of draft decisions as well (including drafts of normative legal acts, which are being considered). At the same time, this law regulates the procedure for preparation of legislative activity plans and drafts of normative acts in more details and makes it obligatory to take into consideration public opinion and interests of various groups, political parties, religious organizations and other public associations while working out normative acts. It stipulates that, when plans for preparation of draft normative legal acts are being worked out, proposals of scientific, public associations and citizens are considered and results of legal and legal monitoring scientific studies are taken into account. At the same time, legal monitoring is interpreted as activity on systematic analysis and assessment of quality of legislation, law enforcement practice, efficiency of legal regulations of public relations. The law says that, for these purposes, public discussions are held; working groups are established, including interdepartmental ones; proposals of state organs and other organizations on improvement of legislation and law enforcement practice are studied, including proposals of scientific organizations and public associations; information from the media and reviews on implementation of the law are analyzed; exchange of information between state organs and other organizations concerned is taking place; other methods, not contradicting the legislation, are used. NCOs can submit their proposals on preparation of draft laws (concepts of draft laws) for the next calendar year to the National Centre for Legislation and Legal Research, as

<sup>13</sup> Legal Transformation Center – New Tax Code: Lawtrend comments on main provisions, affecting NCOs <https://www.lawtrend.org/freedom-of-association/novyj-nalogovyj-kodeks-kommentarij-lawtrend-osnovnyh-polozhenij-zatragivayushhih-deyatelnost-nko>

a rule, not later than by September 1 of the year, preceding the year, which preparation of draft laws (concepts of draft laws) are planned for. The law provides for the possibility for state organs (organizations), initiating or responsible for preparation of drafts of normative legal acts, to engage public associations (unions or associations of them), performing the functions of protection of interests of legal entities or individual entrepreneurs in respective fields, as well as experts and other specialists, into predicting consequences of adoption (publishing) of normative legal acts.

The new Law “On normative legal acts” contains a separate article on public discussions of draft normative legal acts. However, the law says only about the right to conduct public discussions of draft laws, including those affecting citizens' rights and freedoms, but not about the obligation. The stipulates that, in accordance with decisions of the president, other subjects of the legislative initiative right, rule-making bodies (officials) or state organs (organizations), preparing draft normative legal acts, draft normative legal acts can be presented for public or professional discussions in the global computer network Internet on the web-site “Legal Forum of Belarus”, as well as in the media, through parliamentary hearings or other means, not contradicting the legislation. Information about conduct of public discussions of draft normative legal acts is published on the National Legal Internet Portal of the Republic of Belarus or in the media and (or) on informational resources in the global computer network Internet, determined by organizers of public discussions, as well as on official web-sites of state organs (organizations) in the global computer network Internet.

Later in 2019, the government adopted two bylaws, aimed at development of provisions of the law: the Ordinance of January 28, 2019 №56 “On public discussions of draft normative legal acts” and the Ordinance of January 25, 2019 №54, which approved the Instruction on predicting consequences of adoption (publishing) of normative legal acts. Norms on obligatory public discussions have still been introduced in respect of only those draft normative legal acts, which regulate specific legal relationships in specific fields. Moreover, now, drafts in other fields, including those directly affecting public rights and interests, are not published at all or it is possible to find only their primary versions. In addition, after public discussions and submission of their proposals, NCOs do not receive any feedback if they have been considered or taken into account.

The adopted on July 17, 2018 amendments to the Law of the Republic of Belarus “On mass media” have caused serious public concern. Despite the fact that representatives of the media (including leading web-sites) and associations of journalists<sup>14</sup> were invited to the parliament to discuss the draft, all the changes, restricting freedom of speech and impeding the development of national mediamarket, have remained in the final version of the normative act. The brightest ones are requirements for obligatory authentication of users (including commentators) and a wide range of possible sanctions for violations in the Internet (blocking, restriction of access to resources and fines), which put Belarusian media as Internet resources in disadvantaged position in comparison with available foreign resources. According to the law, it is the out-of-court procedure for restricting access to Internet resources. At the same time, the simplified procedure for restricting access to Internet resources without any warning has remained and additional grounds for such restrictions have been introduced.

<sup>14</sup> Belarusian Association of Journalists – BAJ comments and proposals on amendments to the Law on Mass Media <https://baj.by/be/content/zamechaniya-i-predlozheniya-bazh-po-povodu-popravok-v-zakon-o-smi>

However, it was not the end to toughening of the legislation regarding restrictions on freedom of speech in Belarus. On December 6, 2018, the House of Representatives adopted in first reading the draft Law of the Republic of Belarus “On amendments to the laws of the Republic of Belarus on strengthening struggle against propaganda of Nazism and extremism”, which has introduced the broadened notion of extremism propaganda and equated Nazi’s symbols as the NSDAP symbols with a wide range of visual objects and musical content. We can suppose that, after adoption of this law, the misuse of extremism charges, which is already observed in Belarus (both in the Internet and in respect of printed content), will not only become a powerful instrument to prevent distribution of unwanted by authorities information, but will in general become one of the main grounds to persecute political opponents, human rights defenders and public associations, like it is already happening in the post-Soviet area (it is especially characteristic of Russia and other countries of the Shanghai Cooperation Organization).

### **Ban on activity of unregistered organizations**

Exclusion of Article 193<sup>1</sup> “Illegal organization or participation in the activity of a public association, religious organization or foundation” from the Criminal Code was one of the most noticeable events in the field of legal regulations of NCOs in 2018. The introduced in 2005 article of the Criminal Code was subject to criticism by international human rights community over almost 15 years, who interpreted it as the most flagrant violation of freedom of association<sup>15</sup>.

International standards on freedom of association exclude the obligation to obtain state registration as unacceptable restriction of freedom of association. In particular, according to the OSCE Guidelines on Freedom of Association, the state should recognize both formal and informal associations, allow the activity of the latter and not consider it as illegal. Legislation should not oblige associations to obtain the status of a legal entity, it should only provide associations with the possibility to do so. In particular, legislation should not require obligatory official registration of associations. Obtaining the status of a legal entity, an association obtains legal rights and duties, including the right to enter into contracts and to litigate and be litigated against. Informal associations depend upon the legal personality of their members for any such actions required for the pursuit of their objectives<sup>16</sup>. Criminal responsibility for activity of CSOs without registration also exists in Algeria, Bahrain, Myanmar, Egypt, Uganda and Syria – undoubtedly, this is one of the most alarming trends, seriously affecting work and security of CSOs<sup>17</sup>.

The recommendation to abolish Article 193<sup>1</sup> of the Criminal Code was addressed to Belarus during the first cycle (2010) and the second cycle (2015) of the Universal Periodic Review in the UN Human Rights Council<sup>18</sup>, as well as repeatedly addressed within the UN treaty bodies. In 2011, the European Commission for Democracy through Law of the Council of Europe (the Venice

<sup>15</sup> “Ban on the activities of unregistered associations in Belarus”/“Забарона дзейнасьці незарэгістраваных аб’яднаньняў у Беларусі” (Assembly of Pro-Democratic NGOs, 2010) <http://belngo.info/2010.zabarona-dzejnasci-nezarehistravanych-ab-jadnannjaw-u-belarusi-artykul-193-1-kryminalnaha-kodeksu.html>

<sup>16</sup> OSCE/ODIHR and Venice Commission Guidelines on Freedom of Association (para. 48-50, 151) <https://www.osce.org/odihr/132371>

<sup>17</sup> Violation of NGO right to funding: from persecution to criminal responsibility (Observatory for the Protection of Human Rights Defenders, 2013) [http://www.omct.org/files/2013/02/22162/obs\\_2013\\_human\\_rights\\_defenders\\_russian.pdf](http://www.omct.org/files/2013/02/22162/obs_2013_human_rights_defenders_russian.pdf)

<sup>18</sup> Universal Periodic Review – Belarus <https://www.ohchr.org/EN/HRBodies/UPR/Pages/BYIndex.aspx>

Commission) stated in its special opinion the incongruence of the ban on activity of NCOs without registration in general and Article 193<sup>1</sup> of the Criminal Code in particular with fundamental human rights standards<sup>19</sup>.

There were known at least 18 convicts under Article 193<sup>1</sup> of the Criminal Code for the period from 2005 to 2010<sup>20</sup>.

In May 2018, human rights organizations of Belarus made a joint statement, in which they assessed the announced by the government measures to abolish Article 193<sup>1</sup> of the Criminal Code as an important and necessary step towards improvement of the situation with freedom of association in Belarus. At the same time, human rights defenders noticed that the intention to replace criminal responsibility for activity within unregistered organizations with administrative responsibility was evidence of the lack of political will to ensure freedom of association in the country. According to human rights CSOs of Belarus, in order to truly solve the problem of unreasonable restrictions on conditions for CSO activity, it is necessary to not only abolish odious Article 193<sup>1</sup> of the Criminal Code, but also to:

- Exclude all norms regarding ban on activity of unregistered organizations from legislation (Part 2 Article 7 of the Law "On political parties" and Part 2 Article 7 of the Law "On public associations"), which will provide citizens with the possibility to freely realize their right to freedom of association.
- Make the procedure for registration of public associations, religious organizations and foundations congruent with international standards, providing everyone interested with the possibility to register NCOs in the context of absence of discrimination and unreasonable or politically motivated obstacles<sup>21</sup>.

Although the draft law on abolition of Article 193<sup>1</sup> of the Criminal Code was submitted to the parliament already in May 2018, there were new cases observed during the year, when this article was applied to restrict CSO activity. On November 8, Pavel Kot, senior lieutenant of the Kastychnitski Regional Department of Internal Affairs in Mahileu, called Ales Burakou, member of the Human Rights Center "Viasna", for conversation. The reason was the launched examination within the criminal proceedings under Article 193<sup>1</sup> of the Criminal Code, as, according to the militia officer, Ales Burakou administered the web-site "Human rights in Mahileu", related to the HRC "Viasna", conducting its activity without state registration. According to the militia officer, the examination was already launched on October 8<sup>22</sup>. In 2018, the second case was also fixed, when Article 193<sup>1</sup> of the Criminal Code was also used to intimidate civil society structures. In Brest, militia conducted examination and questioning in respect of an activist of an informal animal rights organization due to the reported activity within unregistered NCO.

<sup>19</sup> Opinion on the compatibility with universal human rights standards of article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus adopted by the Venice Commission at its 88th Plenary Session (Venice, 14-15 October 2011) [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2011\)036-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)036-e)

<sup>20</sup> Practice of usage of Art.193.1 <http://193.belngo.info/view.pl/praktyka193>

<sup>21</sup> Abolition of Article 193.1 is an insufficient step. Statement of human rights organizations <http://belngo.info/2018.annulment-of-article-193-1-is-not-enough-statement-by-belarusian-human-rights-organizations.html>

<sup>22</sup> Belarus: Judicial harassment of Ales Burakou from HRC Viasna <https://www.fidh.org/en/issues/human-rights-defenders/belarus-judicial-harassment-of-ales-burakou-from-hrc-viasna>

On December 19, the House of Representatives of the National Assembly adopted in second reading the draft Law of the Republic of Belarus “On amendments to certain codes of the Republic of Belarus”, which excluded Article 193<sup>1</sup> from the Criminal Code and introduced Article 23.88 with similar content to the Code of Administrative Offences, providing for fines of up to 50 basic units. Justice and law enforcement agencies will have the right to draw up protocols on administrative offences under Article 23.88 of the Code of Administrative Offences. They will also be authorized to examine such cases with the possibility to impose fines as a punishment. The mentioned norms will come into force in July 2019. It is possible that administrative punishments against leaders and activists of unregistered organizations will be used much more often in comparison with tougher Article 193<sup>1</sup> of the Criminal Code, which was applied to quite a limited extent.

### **State interaction with CSOs and elements of social dialogue**

In 2018, the parliament initiated discussions with specialized organizations on the most contradictory and headline-making draft laws, relating to protection of citizens’ rights – in certain cases they engaged representatives of unregistered organizations (mostly emphasizing their status with the wording “expert in a private capacity”). For example, in early March, representatives of the Belarusian Helsinki Committee, the Human Rights Center “Viasna”, the Belarusian Association of Journalists, the Legal Transformation Center and the “Legal Initiative” participated in the enlarged meeting of the working group on improvement of the draft law “On introduction of amendments and addenda to some laws on the issues of conduct of mass events”, which they had earlier strongly criticized. The parliament also invited all stakeholders concerned to the discussion on amendments to the legislation on media. However, we can observe very little actual results of such openness of the parliament, expressed in legal norms, and only few organizations can boast of success in the usage of this lately broadened communication channel.

Probably, the case with promotion of the concept of the law on countering domestic violence was the most noticeable and illustrative case, showing the character of relations between the state and CSOs. The initiative to work out such a concept came from the UN structures and certain NCOs and was also supported by the Ministry of Internal Affairs. After consultations with a group of specialized NCOs in July 2018, the MIA published the concept of the Law “On countering domestic violence” and declared its intention to submit it in autumn to the Administration of the President for approval, as well as to work out the draft law itself by next year (preliminarily, the concept was introduced for public discussion on the Legal Forum of Belarus<sup>23</sup>). However, certain CSOs (including confessional associations) opposed this draft law, criticism of the president followed as well. After that, the MIA decided to suspend the work on this draft law.

Despite the fact that in 2018 Belarus underwent the procedure of examination of its periodic report on implementation of the provisions of the International Covenant on Civil and Political Rights in the UN Human Rights Committee for the first time in 20 years, the process of preparation of the national report by the state was not public. Vice versa, national human rights coalition, which prepared the alternative report, shew good will and submitted its report to the government in advance. Absence of a true dialogue on preparation of the state report for the Committee, replacement of the dialogue with accompanying round tables is bad practice, not furthering the

<sup>23</sup> <http://forumpravo.by/forums/actual.aspx?forum=29&topic=10319>

usage of international reporting mechanisms for coordination of stances between state and public stakeholders.

At the same time, we should mention the role of the UN Mission to Belarus, which, together with the MFA, organized a range of round tables with participation of CSOs and numerous state agencies, including those on implementation of the *Interagency Plan on implementation of recommendations accepted the Republic of Belarus following the second cycle of the United Nations Human Rights Council Universal Periodic Review and recommendations addressed to the Republic of Belarus by Human Rights Treaty Bodies for 2016 – 2019*. For example, on April 20, representatives of CSOs and academic community participated in expert-level consultations “Practice of interaction with the human rights treaty bodies”, conducted within the framework of implementation of the Interagency Plan. In the course of similar event, which took place at the beginning of 2018, human rights CSOs claimed that the report on implementation of measures within the Interagency Plan, which was being prepared by the government, should be published – and later the MFA accommodated the request and published in July the Report on implementation of measures within the Interagency Plan in 2017<sup>24</sup>.

Nevertheless, the subject of the majority of discussions on implementation of this plan is just formal conduct of the planned by state organs measures, programs and researches and not true improvement of the human rights situation: they implement the language, but not the essence of the recommendations, addressed to Belarus by international mechanisms. Thus, the third cycle of the UPR is especially topical for Belarus, within the framework of which governmental consultations with civil society should have been launched starting from November 2018. However, the government did not announce the start of this procedure, so there are fears that recent negative experience with state and CSO reports to the UN Human Rights Committee will repeat.

Implementation of the Interagency Plan and to a great extent formal character of CSO interaction with the state in this process throw the efficiency of the plan as an instrument into question. The answer to the question, which the next plan for the new period until 2020 should be, can be given depending on how the state will further conduct preparation for final stage of the third cycle of the UPR, which should end up at the UN Human Rights Council in May 2020.

The character of CSO interaction with the state largely depends on the character of activity of civil society organizations. Social organizations or organizations, working with certain vulnerable groups, interact with the state to a greater extent. For example, the Office for the Rights of Persons with Disabilities, the International Consortium EuroBelarus and the Centre for European Transformation conduct the campaign “Agenda 50” with involvement of local authorities in 5 pilot towns in Belarus (Stolin, Stoubcy, Valozhyn, Babruisk and Shchuchyn), aiming to further implementation of the Convention on the Rights of Persons with Disabilities<sup>25</sup>.

The mechanisms of CSO access to information remain undeveloped in the country. In particular, it concerns absence of free online access to legislative acts, absence of a full database of court decisions, absence of a single and updated on a timely basis database of draft laws, which are being worked out or are already submitted to the parliament for consideration.

<sup>24</sup> [http://mfa.gov.by/upload/18.06.26\\_HR\\_report\\_2017.pdf](http://mfa.gov.by/upload/18.06.26_HR_report_2017.pdf)

<sup>25</sup> International Consortium EuroBelarus <https://eurobelarus.info/special-project/inklyuziv/>

## Restrictions on non-commercial organizations' access to funding

As noticed by Maina Kiai, the Special Rapporteur on the rights to freedom of peaceful assembly and association, "The ability for associations to access funding and resources is an integral and vital part of the right to freedom of association [...].Any associations, both registered or unregistered, should have the right to seek and secure funding and resources from domestic, foreign, and international entities, including individuals, businesses, civil society organizations, Governments and international organizations."<sup>26</sup>

The system of state support of NCOs is extremely undeveloped in Belarus. It is based on mostly direct funding of several loyal to the state organizations from national or local budgets. The legislation in a directory manner determines the list of sport NCOs, which are provided with the support from state enterprises; the Tax Code enumerates a dozen of organizations, business donations to which allow donors as economic entities to enjoy benefits. Entrepreneurial economical and business activity is forbidden for public associations.

According to the Decree of the President of August 31, 2015 №5, foreign aid, received from citizens, who permanently reside outside the Republic of Belarus, and from the majority of foreign organizations, is subject to obligatory preliminary registration in the Department for Humanitarian Activity of the Presidential Property Management Directorate before it can be used. The authorization-based procedure for receipt of foreign aid remains, as well as restrictions on purposes, which it can be attracted for - they exclude such important purposes as human rights defence, healthy lifestyle promotion, gender equality, animal protection and other fields of activity of civil society organizations. Foreign gratuitous aid for the purposes, not enumerated in the list, can be received only by the decision of the Presidential Property Management Directorate. The legislation does not provide for a minimum amount of foreign aid, which NCOs could receive without registration. Exemption of foreign gratuitous aid from taxes is conducted in accordance with the special procedure and requires a separate decision of state organs.

According to the Edict of the President of 2005 № 300, internal donations from corporate donors, legal entities or individual entrepreneurs, are limited to intended use. The legislation regulates the procedure for making such donations and determines the exhaustive list of purposes, which donations can be made for. These purposes exclude human rights activity, as well as many other fields of CSO activity, such as gender equality, environment protection, etc. Allocation of funds for the purposes, which are not included in the list, is possible only with the consent of the president. In practice, such restrictions lead to the situation when business structures cannot allocate their funds from net profit for the purposes and to organizations, which they truly want to support.

It should be mentioned that the discussed in 2016-2017 (with participation of the public and NCO experts) draft amendments to the legislation on foreign gratuitous aid and gratuitous (sponsor) aid were not developed in 2018. Draft amendments to the Decree of August 31, 2015 №5 "On foreign gratuitous aid" and the obsolescent Edict of July 1, 2005 № 300 "On provision and use of gratuitous (sponsor) aid", which were on agenda and could significantly improve the situation with funding of NCOs from foreign and internal sources and remove the most odious and problematic norms and legal gaps from the legislation, not only failed to be adopted, but also stopped to even

<sup>26</sup> UN Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and association, UN Document A/HRC/20/27, Paragraphs 67-68, May 21, 2012

[https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27\\_en.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf)

be discussed. This suspension of legislative reforms undoubtedly harms legal environment for CSOs, impedes their financial sustainability and possibilities to attract funds for their activity from both foreign and internal sources.

Unfortunately, the established in 2016 Coordination Council under the Commission for International Technical Cooperation under the Council of Ministers with participation of state organs, foreign aid donors and non-governmental sector (the Belarusian Helsinki Committee representative was also a member) has failed to realize its potential of a promising structure for the dialogue on attraction of foreign aid to Belarus. This consultative body, established on a trilateral basis from the representatives of donor community, the state and civil society, has failed to become the platform for coordination of key stakeholders' interests in the field of international technical aid and almost done nothing.

Numerous foreign partners of Belarusian NCOs, traditionally acting as ordering customers or providing donor support of their activity, have lately reoriented their strategies towards cooperation with the state to a greater extent. Changes in donor policies, together with the economic crisis and decrease of population income, have encouraged NCOs to seek new funding sources – one part of NCOs has adapted their actions to the changed approaches of external donors, which is a traditional and extensive approach, the other part of NCOs, mainly those conducting their activities in social and charitable fields, has started considering the possibilities to introduce social entrepreneurship practices and other methods to receive funds from direct target groups, through crowdfunding as well. On the one hand, absence of direct legal regulations of these mechanisms poses problems to NCOs, on the other hand, it is the lesser evil than introduction of special regulations of social phenomena with inevitable accompanying restrictions. At the same time, existence of provisions on necessity for NCOs to register the received from abroad funds, as well as certain tax and financial legislative restrictions, pose serious problems for their development. Starting from the second half of 2017, the National Bank of the Republic of Belarus has been carrying out the initiative on working out of the Edict “On activity of financial internet-platforms”, which will regulate activity of crowdfunding internet-platforms as well.<sup>27</sup>

The trend has clearly taken shape over the last years in Belarus, when banks have become a kind of a non-state regulator, significantly restricting CSO freedoms. For example, in the second half of 2018, the largest in Belarus crowdfunding platform Talaka was forced to switch to another payment system, because Priorbank stopped emission of *belqi* electronic money, and collection of donations was suspended for the period of this change over, which put collection of funds for the placed on the platform projects on hold for several weeks.<sup>28</sup> In certain cases, on their own initiative or after consultations with recipient NCOs, banks return funds, received from abroad, or in foreign currencies, or questionable regarding the intended purpose, to donors. Implementation of the *Financial Action Task Force (FATF)* norms to the Belarusian legislation has significantly influenced such practice. The FATF is an intergovernmental organization, which works out international standards on combating criminal money laundering and financing of terrorism (CML/FT) and assesses compliance of national CML/FT systems with these standards. As a result,

<sup>27</sup> For more details, see another research of the authors of current review: Legal Aspects of NPO Fundraising by Electronic Means in Belarus - prepared for International Center for Not-for-Profit Law (ICNL) by Smolyanko, Center for Legal Transformation, and Yury Chavusau, Assembly of Pro-Democratic NPOs of Belarus <http://www.icnl.org/programs/eurasia/Belarus%20FINAL%20eng%2011%2026.pdf>

<sup>28</sup> Talaka will suspend collection of donations. <https://finance.tut.by/news609278.html>

the law has authorized Belarusian banks to check NCO bank transactions for compliance with statutory purposes (which obviously goes beyond the limits of acceptable interference upon the FATF recommendations) and made them responsible for possible violations by client NCOs. The mentioned circumstances have even more complicated NCO relations with banks, which were difficult to be called friendly even earlier – only few banks have specialized products, customized to NCO needs; there have been frequent cases of inconsistency of bank practices within one bank chain due to willfulness of specialists and heads of bank branches.

There are concerns about the practice, which has been applied in certain territorial organs of the Social Security Fund and which is not based on legislative norms, when fund organs consider it necessary for heads of institutions, who are owners of institutions' property, to pay obligatory insurance fees to the fund, regardless of the fact if they perform the function of a leader on paid or gratuitous basis.

In 2018, criminal prosecution of Henadz Fiadynich, the chairman of the independent Belarusian Trade Union of Radioelectronic Industry Workers, and the deputy chairman Ihar Komlik continued. They were charged within the launched in 2017 criminal case under Article 243 Part 2 of the Criminal Code (tax/levy evasion on an especially large scale). According to investigation, in such a way the defendants “tried to conceal the facts that they received personal income from abroad and evaded paying taxes on it”. According to the Investigative Committee's information, Henadz Fiadynich and Ihar Komlik had a bank account abroad, which 140 000 Euros were transferred to in 2011. According to the Financial Investigation Department, the amount of unpaid taxes made up 22 867,1 roubles. Observers note the similarity of this criminal case with the criminal case of Ales Bialiatski, the head of the Human Rights Center “Viasna”, who was in 2011 convicted of tax evasion from funds, which were transferred to his personal account abroad and used for funding the projects of this deprived of registration human rights NCO. At the same time, this very trade union was an active participant and organizer of the protest actions against the Decree № 3 in spring 2017. At the trial in August 2018, the defendants denied all charges and certain witnesses claimed about accusatory character of investigation and misrepresentation of testimonies, which had been given by the course of questionings at the investigation stage. According to the testimony of one witness, given in the course of investigation, she had been earlier sent by the KGB to work as an agent in a position of a secretary in the central office of the Belarusian Trade Union of Radioelectronic Industry Workers. On August 24, Henadz Fiadynicz and Ihar Komlik were sentenced to four years of restriction of liberty without imprisonment and confiscation of property and five years of restriction on holding positions of senior management. The appeal instance left the sentence unchanged. Human rights organizations declared that they considered this criminal case as politically motivated.

In 2018, Ales Lipai, the director of the BelaPAN news agency, was brought to criminal responsibility under the same Article 243 Part 2 of the Criminal Code (tax/levy evasion on an especially large scale). The ground was information from tax organs that Ales Lipai did not pay the income tax from income of 1,3 million roubles, received from abroad (the amount of the imposed tax arrears was 173 thousand roubles). Ales Lipai admitted violation of the legislation and paid the income tax and respective penalty. Later, the criminal case was dismissed due to passing away of Ales Lipai.

## Legal restrictions on activity of non-commercial organizations

The environment for development of CSOs has remained steadily unfavourable in Belarus. Certain positive changes rarely assume stable character and are often disadvantageously counterbalanced by new repressive and discriminatory practices or by introduction of restrictive and unfavourable for NCOs legislative norms.

In February 2018, Elena Tonkacheva, the chairwoman of the Legal Transformation Center Board, came back to Belarus, after having been forced to spend three years outside the country, as she had been deported from Belarus as a foreign citizen under the pretext of committing administrative offences. In October 2018, the political prisoner Dzmitry Paliyenka went at large, but the political prisoner Mikhail Zhamchuzhny, the founder of the human rights organization "Platforma" still remains behind bars, whom the colony administration has continued to put pressure on during the year. In March 2018, the sentence was delivered to Sviataslau Baranovich, a participant of the spring protests in 2017, who was charged with hitting plain-clothed militiamen, while they were detaining participants of protests. The court found him guilty of violence against internal affairs officers and sentenced him to three years of imprisonment.

According to the estimates of the Human Rights Center "Viasna", in 2018, criminal prosecution as the toughest type of repressions was applied against 18 citizens, 15 out of which were defendants within the criminal case, launched under Article 349 Part 2 of the Criminal Code (unauthorized access to computer information, made out of personal interest that caused significant damage) against several journalists and editors of several independent media (the so-called "Belta case"<sup>29</sup>). During the year, criminal prosecution against 14 defendants within the "Belta case" was dismissed, they were brought to administrative responsibility instead, while the case of Maryna Zolatava, the TUT.by editor-in-chief, ended up with court examination in 2019 and subsequent guilty verdict and penalty in the form of a fine.

In 2018, criminal prosecution of members of the public association "Institute of Mathematics and Cybernetics" continued. Accusation of illegal entrepreneurial activity was the ground for new searches, questionings and confiscations of organization's hardware, although in 2017, after examination of work of this public association, opening of a criminal case was declined. This NCO assisted citizens with getting additional education through distance courses on the base of several foreign universities.<sup>30</sup>

In 2018, the partially forgotten practice has returned to public life of Belarus, when CSO events, which are held indoors, are banned. In November, several owners of premises refused to rent premises to the Union of Poles, which was planning to hold a solemn meeting to commemorate the 100<sup>th</sup> anniversary of Poland regaining its independence. Two halls were refused to be rented for a concert even at the weekend. Around 200 UPB members gathered near the third premises, but they faced refusal again. At the last moment, participants moved to the fourth place, but in half an hour an administrator demanded to end the event. In April 2018, similar mechanism of pressure on owners of the rented by a CSO premises became an obstacle for holding of a festival of queer culture "Dotyk". The festival should have been held in the cultural space "Canteen XYZ",

<sup>29</sup> Human Rights Center "Viasna", Human rights situation in Belarus in 2018 – Analytical review.

<http://spring96.org/ru/news/91726>

<sup>30</sup> 29.03.2018 Free courses or branch of foreign university? What was shut down by State Control Committee

<https://naviny.by/article/20180329/1522302897-besplatnye-kursy-ili-filial-inostrannogo-vuza-cto-prikryl-komitet>

but it was disrupted with inspections of the MES, the MIA, the Center for Hygiene and Epidemiology and representatives of the Ideology Department of the Moscovski District of Minsk. The premises was sealed up for failure to comply with the requirements to fire safety and upon the demand of sanitary bodies, although there was a long-term lease contract with the JSC “Kalibr” for the rent of this premises. Because of the sealing of the above-mentioned premises, organizers arranged to hold the festival in the space “SQUAT”. However, soon after that, inspectors came to this space too and warned about possible problems, if “Dotyk” was held there. Representatives of the initiative on mitigation of drug legislation in Belarus also reported about problems with the rent of premises for their activity. Having alluded to a local authorities order, organizers of the traditional festival Kamyianitsa refused to allow CSOs, involved in human rights, gender equality and HIV/AIDS issues, to participate in the event. As a result, the planned social activity ground<sup>31</sup>, similar to those present at other festive events earlier in 2018 (Holiday of Independence, festival “Our Day”), failed.

Despite the fact that certain mass events were held in the spring 2018 in the atmosphere of benevolence between organizers and local authorities (celebration of the 100<sup>th</sup> anniversary of the Belarusian Democratic Republic in March, unveiling of the monument to Tadeusz Kosciuszko in May), in general, the situation with realization of freedom of assembly has not improved in Belarus. The legislation on mass events contains excessive and disproportionate restrictions on freedom of assembly.<sup>32</sup> In 2018, the Human Rights Center “Viasna” fixed 184 cases of administrative prosecution for participation in unauthorized assemblies against 144 people: arrests were awarded 21 times, fines were awarded 163 times for the total amount of 4363 basic units – 106 thousand roubles.

International standards dictate the following principle – non-discrimination of CSOs and equal treatment of civil society structures by the state<sup>33</sup>. However, this principle is totally non-existent in Belarus – both legislation and practice provide those organizations, which support the government or organize campaigns in its favour, with benefits and preferences. For example, the Belarusian Republican Youth Union (BRYU) receives direct state funding from the state budget on non-competitive basis (in 2018 – 6,8 million roubles, 7,79 million roubles is planned for 2019). At the same time, the BRYU has almost exclusive right to not only state funding, but also to work with the youth in the education system, applying compulsory membership as well. In October 2018, the video from a school in Minsk got a lot of public attention, where it was shot how school administration threatened pupils and forced them to join the BRYU, because school needed the indices that 100% of its pupils were the BRYU members.

The state grants reduced coefficients to rates on rent of state-owned premises to not only pro-governmental public associations (BRYU, “Belaya Rus”), but even to political parties, which are loyal to the authorities (Communist Party, Belarusian Party of Labour and Justice), which violates the set forth in Article 4 of the Law of the Republic of Belarus “On political parties” principle of equality of all political parties.

<sup>31</sup> Human rights initiatives are not welcomed at Kamyianitsa festival <https://novychas.by/hramadstva/na-fesce-kamjanica-ne-pazadali-baczyc-pravaabaro>

<sup>32</sup> Monitoring the Right to Free Assembly in 9 Countries – 2017: Belarus <http://ecnl.org/wp-content/uploads/2017/12/ECNL-FoPA-Belarus-2017.pdf>

<sup>33</sup> OSCE/ODIHR and Venice Commission Guidelines on Freedom of Association (para. 28, 30, 64, 94, 127) <https://www.osce.org/odihr/132371>