

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

Monitoring for the II quarter of 2014. *Review Period: April 1 – June 30, 2015*

Legal Transformation Center

Assembly of Pro-Democratic NGOs of Belarus

Law of the Republic of Belarus of June 4, 2015, No.268-Z amended certain legislative acts, including the Law of the Republic of Belarus of October 5, 1994 “On Political Parties”. In particular, the amendments stipulate that political parties, unions and legal entities established by them may not receive funds and other property, either directly or indirectly, including from the organizations with the founders (members, property owners) being foreign countries, foreign organizations, international organizations, foreign citizens and stateless persons.

Decree No.4 of June 2, 2015 amended the Decree No.2 of January 26, 1999 “On Certain Measures to Regulate the Activities of Political Parties, Trade Unions, and Other Public Associations”. The amendments exclude the provision of the need to have as members at least 10% of the total number employees (students) at the enterprise, institution or organization to create a trade union. At the same time the Decree brought certain provisions of the Regulations on State Registration (Re-registration) of Trade Unions and their unions (associations) in compliance with the effective legislation.

The Ministry of Justice published the data on the operation of judicial authorities in terms of the state registration of public associations and foundations in the 1st quarter of 2015. The Ministry of Justice, Departments of Justice of Regional Executive Committees and Department of Justice of Minsk City Executive Committee registered 21 new public associations (1 international, 2 national and 18 local), 1 union (association) of local NGOs and 4 new foundations (1 international and 3 local) in January – March 2015. As of April 1, 2015, 15 political parties and 1,078 party local organizations, 37 trade unions and 22,881 trade union organizations, 2,607 public associations, including 228 international, 707 national and 1,672 local have been registered in the country. 40,314 local organizational structures of public associations have been registered as well as 34 unions (associations) of public associations and 159 foundations, including 15 international, 5 national and 139 local.

The Ministry of Justice also provides information on the sphere of activity of registered public associations. 688 fitness and sports associations, 398 charitable public associations, 272 youth associations (including 27 children associations), 232 educational, cultural, recreational, and educative associations, 113 associations of ethnic minorities, 87 public associations for disabled war and labor veterans and veterans, 84 scientific and technical public associations, 74 public associations of conservationist, and people engaged in protection of monuments of history and culture, 51 artistic public associations, 30 women's associations, etc. have been registered in the Republic of Belarus.

During the monitoring period, the Ministry of Justice provides information on the registration of several public associations: Belarusian Public Association for Assistance to Former Minor Prisoners of Fascism “Pamyat Serdca” (Memory of the Heart), Republican Public Association “Belarusian

Federation of Cold Training and Winter Competitive Swimming”, Public Association “Belarusian Federation of Motorcycle Sports”, and Public Association “Belarusian Paintball Federation”.

At the same time, same as before, there are common cases of arbitrary denials in registration of public associations. On June 10-11, the Supreme Court of Belarus considered the complaint submitted by the initiators of creation of the Human Rights Association “Za Svobodnye Vybory” (For Fair Elections) with regard to the refusal to register the organization. It was already the third time when the Ministry of Justice refused to register this association established to assist fair elections in Belarus and to monitor election campaigns: the first refusal was back in 2011, the second – in 2013.

The founders of the organization believe that the unwillingness of the Ministry of Justice to register the organization is politically motivated. The founders reject the formal reasons for the third refusal of registration as minor, technical and easily correctable: a word “republican” was added to the name of the association in a single place of a document, indicating the status of the organization. Also, not all founders were sure about the full name of the organization during the inspection organized by the Ministry of Justice, although all of them confirmed their participation in its creation.

UN Human Rights Committee prepared the reasons of October 10, 2014 No.2153 / 2012 in connection with the second refusal to register the association “Za Svobodnye Vybory” (For Fair Elections) in 2013. According to the reasons, Belarus violated citizens' right to association when refused to register the organization in 2011, when it first attempted to get the status of a legal entity. However, the Supreme Court once again recognized the decision of the Ministry of Justice to refuse registration of the association lawful and justified on June 11, 2015.

The above case of refusal to register the association “Za Svobodnye Vybory” (For Fair Elections) illustrates numerous problems related to the freedom of creating associations in Belarus, i.e. organizations repeatedly and for a long time apply for registration, and refusal to register are based on minor technical violations or on the examination of the founders not stipulated by the law. Nevertheless, the courts do not cancel the decisions of registration authorities to refuse registration and the decisions of the UN Human Rights Committee related to the violations of freedom of association are not performed.

The Ministry of Justice refused to register the youth public association “Sovremenny Vzglyad” (Modern Viewpoint) during the monitoring. The decision to refuse was also made based on technical flaws: the list of founders does not include home phone numbers of two of them, and there is a mistake in the name of the street where one of the founders lives (80 let Oktyabrya street instead of 70 let Oktyabrya street).

The organizing committee for the creation of a new political party “Belarusian Christian Democracy” reported difficulties in finding the premises for another founding congress of the organization in May - June. Nevertheless, the congress was held on June 13 and the party is now preparing the documents for registration for the fifth time. This initiative had already tried to register a political party for four times before but was constantly refused. No new political parties have been registered in Belarus since 2000y, even though various groups have tried to establish them for over 15 times.

State Control Committee published coordinating inspection plans for the second half of 2015 on its website. The plans contained few non-profit organizations, mostly sports oriented.¹

The police made searches in the houses of the pastor of “Preobrazhenie” (Transfiguration) Church, Mr. Sergey Nikolaenko, and the deacon of the same Church, Mr. Alexandr Chuev, in Gomel in early July. They confiscated a seal and a number of documents. According to the above named persons, they are being examined under Article 193¹ of the Criminal Code for the activities as members of an unregistered organization.

The order on the inspection of property signed by the Prosecutor of Gomel, Mr. Zaytsev, stated that Messrs. Sergey Nikolaenko and Alexander Chueva “illegally keep religious literature or literature containing the information that infringe the rights, freedoms and legitimate interests of citizens or can impede the citizens’ performance of their state, public, and family duties, as well as the constituent documents of the above-mentioned unregistered organization, registers of its members, schedule of events, reports of events and meetings, financial reports, seals, etc.” On June 19, the judge of Gomel Central District, Mr. Victor Kazachok, fined the pastor of “Preobrazhenie” (Transfiguration) Church, Mr. Sergey Nikolaenko, for 3.6 million rubles for holding a church service in a rented premise. The court found the service held by the officially registered religious community to be an unauthorized mass event as it was not approved by the District Administration. “Preobrazhenie” (Transfiguration) Church has been duly registered in Gomel since 2004. It was re-registered in 2012. The community signed a lease agreement for the premises for church services in March 2015.

On the threshold of the presidential elections to be held on October 11, the pressure on human rights organizations has increased. The Chairman of Gomel Branch of the regional public association “Pravovaya Iniciativa” (Legal Initiative), Mr. Leonid Sudalenko, was summoned for questioning as a witness in a criminal case by Gomel Regional Office of the Investigation Committee on May 3. The Investigative Committee opened a criminal case under Art.343 (Part 2) of the Criminal Code (Distribution of Pornography via the Internet) for the alleged distribution of pornographic movies from the electronic mailbox belonging to the human rights activist, from the IP address registered at the social and political center located at: 52 Poleskaya Str, in Gomel. The premises of the social and political center in Gomel, where the offices of several public associations are located, were searched on April 8. Four systems units were seized. The apartment of the human rights activist, Mr. Leonid Sudalenko, was also searched; computer system unit and a laptop were also seized. Both public center and Leonid Sudalenko’s apartment were searched with the seizure of computer equipment within the framework of the case. Mr. Leonid Sudalenko had a three-hour stay at the Lithuanian-Belarusian border, “Kamenny Log” border entry point, on May 24. The human rights activist was returning by car from Vilnius, where he took part in the Not-For-Profit Law Forum. Both the human rights activist and his car were fully examined. His laptop was withdrawn for examination. Human rights organizations in Belarus associate all cases of pressure on Mr. Leonid Sudalenka with his active work in the sphere of human rights.

Within the framework of the Universal Periodic Review (UPR), Belarus reported to the UN Human Rights Council on May 4. This is the second round of the UPR for Belarus. The country reported on the implementation of recommendations received in the first round of the UPR in 2010.

¹ Coordinating plans do not include the inspections of non-profit organizations by registering authorities. You can find sample information from the inspection plan for Belarusian non-profit organization at: http://www.lawtrend.org/wp-content/uploads/1999/03/Plan-proverok-NKO_vtoroe-polugodie-2015.pdf

The interactive dialogue of the Belarusian delegation with other countries devoted great attention to the issues of freedom of association and assembly, the status of NGOs and other civil society organizations, religious organizations, political parties and trade unions. Among others, the recommendation on the decriminalization for the activities of unregistered organizations (Article 193¹ of the Criminal Code) were made by the United States, Switzerland, the Czech Republic, Denmark, Lithuania, and Poland. Canada, Estonia, Germany, India, Ireland, Italy, Japan, Croatia, Luxembourg, the Netherlands and others also proposed to improve the legal environment for non-profit organizations. For instance, Ghana recommended the Government of Belarus to simplify the procedure of registration of political parties and other associations and foundations. Denmark recommended to repeal Article 193¹ of the Criminal Code, which criminalizes the activity of unregistered organizations, and in general to put an end to the system of constraints, intimidation and harassment of civil society organizations, including trade unions, as well as environmental, LGBT and human rights organizations. Canada proposed to remove restrictions from civil society, including the ban on receiving foreign financial support by NGOs, restrictions on the voluntary out-of-hours work and obstacles in state registration of NGOs in accordance with the rights to freedom of association and expression. Ireland recommended Belarus to create, in law and in practice, the free atmosphere where civil society organizations could operate freely, be secure, and participate fully in the democratic processes.

A number of countries urged the Belarusian authorities to immediately release political prisoners (Luxembourg, Lithuania, the Czech Republic, Denmark, Norway, Poland, Canada, Australia) and to discontinue the practice of persecution and pressure on independent journalists and human rights defenders.

Immediately after the question and answer session the Human Rights Council held a side event where the representatives of Human Rights Centre “Viasna”, Legal Transformation Center and Assembly of Pro-Democratic NGOs of Belarus assessed the responses provide by the official Minsk. Belarusian non-governmental organizations stressed the importance of preserving the institution of the UN Special Rapporteur on Human Rights and expressed a wish for the recommendations for Belarus made in the second round of the UPR to be as specific as possible, which would demand from the Belarusian government real steps in the form of the change in law and practice. Proposals on the content of recommendations, which may be made in the second round of the UPR, were announced. Over 20 state delegations (including the delegation of the European Union, Finland, Great Britain, Poland, Slovakia, the Czech Republic, Belgium, Romania, Hungary, Lithuania, etc.) visited the side event organized by CIVICUS: World Alliance for Citizen Participation with the participation of the International Federation for Human Rights, Human Rights Houses Network and Human Rights Watch.

The first Belarusian Not-For-Profit Law Forum organized by the Assembly of Pro-Democratic NGOs of Belarus, Legal Transformation Center, European Centre for Not-For-Profit Law (Hungary) and the Institute for Not-For-Profit Law (Lithuania) was held in Vilnius on May 23-24. Forum participants, including the heads of the largest non-governmental organizations in Belarus, as well as experts from Lithuania, Ukraine, Russia, Poland, Hungary and Slovakia, discussed the most pressing challenges in the field of legal regulation of freedom of association in Belarus. The participants also declared the preparation and promotion of thenot-for-profit law reforms chart aimed at improving the status of the freedom of association in the country.