

CHANGES IN LEGAL ENVIRONMENT FOR NON-COMMERCIAL ORGANIZATIONS AND FREEDOM OF ASSOCIATIONS IN BELARUS

Review for January – June 2019

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This review presents an analysis of the main trends in legal regulation of non-commercial organizations (NCOs), as well as law enforcement practice affecting environment for NCO activity and exercise of the right to freedom of associations in the first half of 2019 in Belarus. The period of January – June 2019 has been marked by active law making activity in the above-mentioned field – one range of normative legal acts affecting NCOs have been adopted and come into force, another range of even more significant legislative initiatives have either been announced or are at the stage of draft development or public discussion. Against the background of intense law making process, law enforcement practice has been showing stagnation – no cases of applying the toughest forms of repressions or sanctions against NCOs have been recorded, but some unfavourable for NCOs restrictive novelties have been being introduced into practice.

Changes in legislation and practice on freedom of peaceful assembly and holding of events by non-commercial organizations

The Law of the Republic of Belarus of July 17, 2018 “On mass events”, introducing the notification-based procedure for holding of certain types of mass events in specially designated by local executive authorities places, came into force on January 26, 2019, which has become the most significant legislative novelty for civil society organizations. The above-mentioned novelty is of very limited character, as local authorities have designated only single places for holding of assemblies and rallies, quite often in remote areas of towns and settlements (for example, there are only 6 such places in Minsk, where almost 2 million people live, which means that not in every district of the city). This novelty has failed to lead to significant improvement of the opportunities for exercise of freedom of assembly.

Vice versa, the stipulated by the new legislation uniform fees for public order maintenance, medical services during mass events, cleaning of territory after have de facto become a new and significant financial restriction of freedom of assembly. In elaboration of the law, the Decree of the Council of Ministers of January 24, 2019 № 49¹ has adopted in fact blocking fees for the above-mentioned services, without payment of which holding of a mass event becomes impossible. According to the Decree, after receipt of a permit for holding of an action (or when there is no ban

¹ Decree of the Council of Ministers of January 24, 2019 № 49 “On introduction of the Regulations on the procedure for payment for public order maintenance services, rendered by internal affairs agencies, expenses relating to medical services, cleaning of the territory after holding of a mass event on it” <http://www.government.by/ru/solutions/3477>

on holding of an event in accordance with the notification-based procedure), organizers must conclude contracts on public order maintenance, medical services and cleaning of the territory not later than 2 days prior the planned date of the event.

For example, in order to pay for the MIA expenses for public order maintenance, an applicant must preliminarily undertake the commitment to pay the following amounts for public order maintenance to the MIA:

- 3 basic units (76,5 roubles or 33 Euros) – when up to 10 people participate in an action;
- 25 basic units (637,5 roubles or 279 Euros) - from 11 to 100 people;
- 150 basic units (3825 roubles or 1 674 Euros) - from 101 to 1000 people;
- 250 basic units (6375 roubles or 2790 Euros) – more than 1000 people.

These rates are applied in respect of mass events in the places, designated as permanent ones. The rates for holding of mass events in all other places are 1,5 times higher.

Taking into account the high fees (in essence – prohibitive ones), in the first half of 2019, some organizers of sport, religious, public and political events had to refuse holding of their actions. For example, for the first time in many years, organizers of the traditional Chernobyl Way march decided not to submit the application for the action and the action had to take an unsanctioned form, so that certain participants were later fined.

Besides, introduction of the opportunity for holding of mass events in accordance with the notification-based procedure has led in some cases to the situation when authorities used this pretense to refuse holding of events in other places. In particular, in 2019, Minsk authorities refused to authorize any of mass events to celebrate the anniversary of the declaration of independence of the Belarusian Democratic Republic, which are traditionally held in the capital. On March 5, 2019 the Minsk City Executive Committee prohibited the public association BPF “Revival” and the informational and educational institution Amaroka from holding a demonstration and a meeting at the Dinamo Stadium because of “unreasonableness” and due to the fact that the applicants had announced the place of the event before getting the permit from the authorities. Similar ban followed the submission by the applicants of the second application for holding of this mass event in another place in downtown Minsk. The Belarusian Social Democratic Party (Hramada), the United Civil Party and the For Freedom movement were also refused the permit to hold meetings on March 24 and 25 near the Opera and Ballet Theater in the Paris Commune square. The grounds for refusal were similar – information in the media about the place of the meeting before receiving the permit from the authorities, as well as nonconformity of the place for holding of the planned mass event with legislative requirements. The authorities mentioned the opportunity to hold the event in accordance with the notification-based procedure in all these refusals.

Thus, none of the three applications for holding of mass events to celebrate March 25 in Minsk was satisfied and all the planned for Freedom Day events were forbidden. A part of the organizers had to settle for holding of this event in accordance with the notification-based procedure, however militia groundlessly detained two participants during the event. Being unsatisfied with the quality of “public order maintenance services”, the applicants of the event refused to pay the amounts invoiced by militia under the agreement, which also led to the organizers being brought to administrative liability in the form of fines.

Besides, phrasing of the notion “mass event” has remained excessively broad. Moreover, in the amended version of the law, cultural and entertainment events were also referred to the notion

“mass events”, which in fact makes it necessary for NCOs to receive permits for holding of various statutory events – tourist gatherings, summer camps, etc.

There were no cases of applying in practice the stipulated by the amended law administrative responsibility of legal entities for violation of the legislation on mass events against NCOs recorded in the first half of 2019.

In general, new regulations of freedom of peaceful assemblies under the amended Law “On mass events” have failed to favour improvement of the opportunities for exercise of freedom of peaceful assemblies in Belarus. Moreover, despite introduction of elements of holding static meetings under the notification-based principle, there have de facto become significantly less opportunities for holding meetings because of introduction of groundlessly overstated obligatory payments, without payment of which legal holding of meetings is impossible.

Changes in legislation affecting non-commercial organizations

Exclusion of Article 193¹ “Illegal organization or participation in the activity of a public association, religious organization or foundation” from the Criminal Code has become a long-awaited event. The Law “On introduction of amendments and addenda to some codes of the Republic of Belarus” was officially published on January 18, 2019 and this norm lost its force on July 19, 2019. Introduced to the Criminal Code in 2005, the article has for almost 15 years been criticized by international human rights community, which interpreted it as the most flagrant violation of freedom of association². There are 18 people known to have been convicted under Article 193¹ for the period of the article being in force. However, there have also been facts known when the KGB and public prosecution offices issued dozens of warnings, threatening to bring citizens to criminal responsibility if they don’t stop their activity within unregistered organizations.

Abolition of Article 193¹ is victory and success of the Belarusian civil society. However, the situation is overshadowed with the fact that the ban on activity of unregistered organizations itself has not been excluded from the legislation – starting from July 19, 2019 violation of this ban is subject to administrative responsibility under Article 23.88 of the Code of Administrative Offences “Illegal organization or participation in the activity of a public association, religious organization or foundation”, whose content is similar to the one of previous Article 193¹ of the Criminal Code. It provides for the fine of up to 50 basic units (1275 roubles or about 560 Euros) for the same activities within unregistered public associations, religious organizations, political parties. These changes are especially alarming due to the fact that powers to draw up protocols and examine administrative cases under Article 23.88 of the Code of Administrative Offences are given to the MIA and the Ministry of Justice agencies, which means it will be done out of court.

International standards on freedom of associations consider the obligation to get state registration as unacceptable restriction of freedom of associations. In particular, according to the Guidelines on Freedom of Association, the state should recognize both formal and informal associations, allow activity of the latter and shouldn’t consider it as unlawful. Legislation should not compel associations to gain the status of a legal personality, it should only provide associations with the possibility of doing so. In particular, legislation should not require obligatory official registration of

² “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>

associations. Obtaining the status of a legal entity, an association gets legal rights and duties, including the capacity to enter into contracts and to litigate and be litigated against. Informal associations depend upon legal personality of their members for any such actions required for the pursuit of their objectives³.

Belarusian human rights organizations assess abolition of Article 193¹ 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 state that replacement of criminal responsibility with administrative one for the activity, relating to exercise of citizens' rights, is evidence of lack of political will to ensure freedom of association in the country. Belarusian human rights CSOs think that in order to truly solve the problems of unreasonable restrictions on conditions for CSO work, it is necessary not only to abolish the odious Article 193¹ of the Criminal Code, but also to take the following steps:

- Removal of all norms regarding the ban on activity of unregistered organizations from the legislation (Article 7 Part 2 of the Law "On political parties" and Article 7 Part 2 of the Law "On public associations"), which will provide citizens with the opportunity for free exercise of their right to freedom of association.
- Bringing the procedure for registration of public associations, religious organizations and foundations in accordance with international standards, which would provide everyone with the opportunity to register NCOs in the absence of discrimination and unreasonable or politically motivated obstacles⁴.

Coming into force of Article 23.88 of the Code of Administrative Offences and possible practice of its application will be an important freedom of association index in the country and can become one of fundamental indicators of legal conditions for civil society organizations in Belarus.

Coming into force of the new Law of the Republic of Belarus "On normative legal acts" on February 1, 2019 should be assessed as a positive amendment to the legislation. The law itself has failed to significantly broaden opportunities for public participation in political decision-making, however it has regulated a range of disputable issues of organization of public discussions and left much to be regulated by future governmental by-laws, which have to be adopted to develop this law.

The law stipulates that by the decision of the President of the Republic of Belarus, another subject with the right to legislative initiative, rule-making body (official) or state body (organization), preparing a draft normative legal act, a draft normative legal act can be brought up for public discussion (by the public or professionals) in the global computer network Internet on the website "Legal Forum of Belarus", as well as through parliamentary hearings, in the media or by other means, not contradicting the legislation. Generally, the following drafts are subjects to public discussions: draft legislative acts and decrees of the Council of Ministers of the Republic of Belarus, affecting citizens' and legal personalities' rights, freedoms and duties and introducing new or fundamentally changing existing approaches towards legal regulation of a certain sphere of social relations; draft legislative acts, which could significantly influence the conditions for entrepreneurial activity; other draft legislative acts by order of the President of the Republic of

³ OSCE/ODIHR and Venice Commission Guidelines on Freedom of Association (para. 48-50, 151)

<https://www.osce.org/odihr/132371>

⁴ Repeal of Article 193¹ is half measure. Statement of human rights organizations. <http://belngo.info/2018.zajava-193-1.html>

Belarus, the Council of Ministers of the Republic of Belarus, the Administration of the President of the Republic of Belarus or at the initiative of an organizer of public discussions. Legislative acts could provide for public discussions of other draft normative legal acts and contain the specifics of the procedure for conduct of such discussions.

Later in 2019, the government adopted two by-laws to develop the 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 introduced the Instruction on predicting consequences of adoption (publishing) of normative legal acts. It is stipulated that the term for public discussions of a normative legal act is decided by an organizer of public discussions depending on the specifics of social relations regulated and makes up not less than 10 calendar days. The fact that the ordinance stipulates for the obligation to publish results of public discussions is a positive norm, imposition of which representatives of civil society organizations have also struggled for. At the same time, completeness of such information will in practice depend on state bodies, which will be organizers of public discussions. The ordinance stipulates that after the term for public discussions of a normative legal act is over, an organizer of public discussions must within seven working days submit a brief summary of the results of public discussions for publication on resources, which the information about holding of public discussions of a normative legal act was published on. It must contain information about terms, type and means of public discussions, the number of participants, remarks and (or) proposals on a draft normative legal act received and when necessary cover the most burning issues, which caused citizens’ reaction in the process of public discussions, as well as other data.

On June 13, 2019 the House of Representatives of the National Assembly of the Republic of Belarus adopted in second reading the draft Law of the Republic of Belarus “On amendments to the Law of the Republic of Belarus “On combating extremism””. As noticed by the government while presenting this law, it aims at “further improvement of the legislation on protection of public order and morality from the spread of ideology of Nazism and other extremism”. At the same time, in the course of discussing this draft law within the parliamentary working group with participation of representatives of human rights community and political parties, the concern has been raised that this draft law introduces broadened interpretations of the notion “extremism”, which allow to use measures aimed at combating propaganda of anti-social actions to restrict freedom of opinion and expression. The reason for this concern is the fact that the practice of recognizing informational materials as extremist and bringing citizens to administrative responsibility for actions with these materials has been broadened in Belarus lately.

As noticed by human rights defenders, the introduced amendments not fully comply with the requirements of rule-making techniques, as they contain wordings, allowing broadened and multiple interpretations of their legal instructions; the required balance between the necessity to combat extremism and exercise of constitutional rights and freedoms is not ensured. Human rights defenders are especially concerned about broadening of the purview of Article 17.10 of the Code of Administrative Offences – if earlier it banned propaganda or public demonstration, through the global computer network Internet or other informational networks as well, production and distribution of Nazi symbols and attributes only, now there is also the ban on the same actions regarding symbols and attributes of extremist and terrorist organizations⁵.

⁵ See report “Combating extremism and human rights. National anti-extremist legislation and law enforcement practice”. (Human Rights Center “Viasna”, Belarusian Helsinki Committee, Belarusian Association of Journalists, institution “Human Constanta”): <http://spring96.org/ru/news/93107>

Legislative initiatives in the framework legislation on non-commercial organizations

According to the plan of legislative activity, it has been planned to work out the Law of the Republic of Belarus “On amendments to the laws on activity of political parties and other public associations” in 2019 (it is to be submitted to the parliament in December 2019). The Ministry of Justice has acted as a developer of substantiation and initial draft of this normative act. In May 2019, a working group on development of this draft law was established in the ministry, which representatives of civil society, in particular the Belarusian Helsinki Committee, the public association “Tell the Truth” and certain political parties were also included to. Opposition political parties presented their view of possible amendments to the above-mentioned laws to the working group – a joint stance was presented at a meeting of the working group by a representative of the BSDP (Hramada) as a joint view of the BPF Party, the United Civil Party, the Party of the Left “Fair World”, the Green Party, the organizing committees for establishment of such political parties as the BCD, “Nadzeya”, the Belarusian Party of Workers, the Party of Freedom and Progress, as well as the movement “For Freedom” and the campaign “Our House”⁶. However, a representative of the Legal Transformation Center was not included in the working group, although it had submitted a written request for her to be included in the working group to the Ministry of Justice and despite the fact that she had been delegated to the working group by the decision of the VIII Congress of the Assembly of Pro-Democratic NGOs of Belarus⁷.

The worked out by the Ministry of Justice draft amendments to the laws “On public associations” and “On political parties” have been submitted for public discussions from July 12 to August 2, 2019⁸.

The draft law stipulates introduction of significant amendments regarding conditions for establishment and activity of public associations. Both the announced earlier by the ministry amendments (online submission of documents for registration of public associations, introduction of the obligation to publish financial reports by March 1) and some other novelties are presented for public discussions. They include:

- Obligation for newly-established republican public associations to establish their organizational structures in the majority of regions (not less than 4) and in Minsk within 6 months after registration. This requirement will not be applied to already existing republican public associations, registered by January 1, 2020. According to the explanation of the Ministry of Justice, the case is not about regional organizational structures – it will be enough to have an organizational structure of any level on the territory of a region. In our opinion, this is one of the most harmful provisions of the proposed draft law – introduction of the obligation to establish not less than 5 organizational structures means availability of not less than 5 additional legal addresses. As of now, even not all 15 political parties meet the requirement of having organizational structures in the majority of regions and in Minsk.

⁶ Law on political parties will be amended. <https://news.tut.by/economics/639759.html>

⁷ Statement of the VIII Congress of the Assembly of Pro-Democratic NGOs of June 1, 2019 "On development of amendments to the Law “On public associations”" <http://belngo.info/wp-content/uploads/2019/06/Zayava.pdf>

⁸ Legal Forum of Belarus. Draft Law of the Republic of Belarus “On amendments to the laws on activity of political parties and other public associations” – Public Discussion <http://forumpravo.by/forums/npa.aspx?forum=15&topic=13545>

Anyway, practical introduction of this norm will negatively affect the statistics and the number of newly-established republican public associations will drop in the country.

- Simultaneously, differentiation of local and republican public associations on the basis of the territory of their activity is lifted – it is supposed to abolish the requirement to obligatorily state the territory of activity of public associations in their charters, but to keep the notion of “status” of public associations (local, republican, international). Thus, both categories of organizations will have the possibility to act on the whole territory of Belarus. This step is an overdue and positive one, but at the same time it is a half measure, taking into account the above-mentioned requirement for republican organizations to register organizational structures.
- The procedure for establishment of international public associations is amended. When now their organizational structures abroad are established prior to registration, it is supposed to allow establishment of organizational structures within 6 months after registration – both on the territory of one or several foreign states and on the territory of Belarus.
- The minimum number of founders for a republican public association is decreased – from 50 to 40 people, for a political party as well – from 1000 to 800 people.
- The possibility to establish supervisory councils within public associations is introduced, allowing people, who are not members of public associations, to be members of their supervisory councils.
- Instead of the current requirement to write down home and work phone numbers of founders or members of bodies of public associations in the lists of newly-established organizations and in their annual reports, the possibility to write down contact phone number is introduced, which will allow to provide citizens’ mobile phone numbers for this purpose.
- Expenses for salaries of employees of a public association must not exceed 40% of total income of an organization (moreover, the initial variant, discussed at the working group, had even stricter restriction of 30%). This is one of the most significant new restrictions proposed by the draft law, which can negatively hit the majority of public associations. The proposed norm puts public associations in unequal conditions with other parties to civil-law relations – other organizational and legal forms of NCOs, for example, foundations, as well as commercial organizations (which do not have such restrictions). Such norms are sometimes introduced in some countries for charitable organizations, collecting special-purpose funds – but this is caused by the fact that these countries provide such organizations with respective tax benefits. Moreover, the proposed norm contradicts general civil legislation, as according to Article 553 Part 3 of the Civil Code, a donor, who makes a donation to an organization, can himself/herself decide on its purpose – the code does not stipulate for obligatory entering into donation agreements, so an organization may at all not control the amount of funds, which can be donated by a donor for salaries of its employees. In general, introduction of such a norm for all public associations is unreasonable and harmful and violates rights of those organizations, which due to their activity are completely dependent on employment of staff and due to subject of their activity have almost no need in other expenses. The proposal contradicts general employment policy of the state, including the Decree № 1 “On promotion of employment of the population”, does not favour the increase

of employees' salaries in all fields and can lead to payment of salaries under the table, decrease of the taxable base and volumes of deductions to the Social Security Fund.

- New principles for activity of public associations are introduced – together with the previous principles of lawfulness, independence, voluntariness and publicity, the principles of democratism, freedom of association and self-governance are now enshrined, the principle of equality of all public associations is also defined more precisely.
- The provision about state support of public associations being based on the principle of lawfulness, partnership, transparency, equality, consistency and responsibility is introduced.
- It is proposed to enshrine that the state can provide public associations and unions with informational, methodological and other support, in the form of state social order as well.
- The rights of public associations to perform works, render services for state needs on a contractual basis without formation of commercial organizations and (or) participation in them are stipulated.
- The directly stipulated possibility to locate public associations in one-apartment residential houses (however, still not only consent of the owner is required, but also approval by the local authorities in accordance with the procedure, stipulated by Article 14 of the Housing Code and the legislation on administrative procedures) or at working places of the heads of associations or political parties, as well as their organizational structures (with the consent of employers). In our opinion, the wordings of the proposed provisions need to be more precise and location of political parties at working places of their leaders could create conditions for abuse and de facto lead to establishment of party structures on the basis of working place principle instead of territorial one.
- The possibility to conduct online meetings of supreme and governing bodies of public associations is stipulated, which is a positive measure.
- The documents, which are to be submitted by public associations and political parties by March 1 for annual reports, will now also include copies of documents, confirming that organizations have legal addresses.
- Public associations, political parties and unions are obliged to annually publish information about their activity (including financial reports) by March 1, providing free access to it, including publications in the media and (or) on their web-sites. Content of the data to be included in the information about activity of public associations and unions is determined by the Council of Ministers of the Republic of Belarus. Justification of the introduction of obligatory publication of financial reports with the recommendations of the Group of States against Corruption (the GRECO is a structure within the Council of Europe system) seems questionable, because it does not arise from the essence of the GRECO evaluation, which relates to funding of political parties only and not public associations⁹. Taking into account the already adopted in first reading in May 2019 amendments to the Law “On measures to prevent legalization of criminally obtained income, financing of terrorist activity and financing of proliferation of weapons of mass destruction”, which stipulate providing the

⁹ Third Evaluation Round Summary of the Evaluation Report on Belarus Incriminations (ETS 173 and 191, GPC 2) (Theme I), Transparency of party funding (Theme II) - Adopted by GRECO at its 77th Plenary Meeting (Strasbourg, 16-18 October 2017) <https://rm.coe.int/third-evaluation-round-summary-of-the-evaluation-report-on-belarus-inc/168076d562>

Ministry of Justice with the function to determine content of the data to be provided by public associations under this law, it follows that public associations, regardless of scale of their activity and volumes of received funds, will have to prepare several types of reports (not taking into account “special-purpose” reports to the Social Security Fund, the Belarusian State Insurance, reports when receiving sponsor aid or foreign gratuitous aid) - 1) report to the registering body under the law on public associations, 2) report, including financial one, for promulgation through publishing, 3) report under the law “On measures to prevent legalization of criminally obtained income, financing of terrorist activity and financing of proliferation of weapons of mass destruction”. Such a big number of duplicating one another reports will make work of public associations inefficient, disturbing them from their work on achievement of statutory goals. Vice versa, the amendment to the Tax Code, according to which public associations, not conducting entrepreneurial activity, are released from the obligation to submit annual reports, is a good example of the decrease of volumes of unnecessary reporting for NCOs.

Besides that, numerous amendments, resulting from the registering bodies’ practice, are introduced to the law – refusal of registration of certain types of symbols, conditions for work with personal data of founders of public associations, the procedure for issue of duplicates of registration certificates and others. Inherently, what is meant here is a new version of the law “On public associations”. Public associations will be given a year after the law comes into force to bring their charters in compliance with new requirements.

In general, despite the fact that some amendments are significant and greatly change the legal regime for establishment and activity of public associations, the draft law does not introduce any fundamental or framework amendments, which would affect the existing authorization-based procedure for registration of political parties and other public associations. Registration of associations is still obligatory, registering bodies can still arbitrarily refuse registration to unwanted by the authorities organizations, legal addresses on non-residential premises still remain a burdensome requirement for all public associations and their organizational structures (even those not having the status of a separate legal personality), access to funding sources is still limited for public associations, because of the ban on independent conduct of entrepreneurial activity as well, registering bodies still remain controlling bodies in respect of public associations.

NCOs 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” (planned to be worked out by December 2019 and submitted to the parliament in September 2020). It is supposed that this law will be directed at regulating establishment and registration of those legal personalities, 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”. Such legal personalities also include such NCOs as institutions and associations (excluding unions of public associations). At the same time, the stipulated by the Decree № 1 declarative principle for state registration of economic entities will be retained. According to the official substantiation of this draft law, when it comes into force, the Decree № 1 will expire. In the first half of 2019, state bodies have not published any official information about the above-mentioned draft law.

Legislative initiatives affecting financial conditions for non-commercial organizations

The updated draft amendments to the Decree of the President of the Republic of Belarus of August 31, 2015 № 5 “On foreign gratuitous aid”, which touches upon issues of the receipt of funds by NCOs from external donors, were published on the web-site of the Department for Humanitarian Activity¹⁰. It is supposed that this or a little amended version of the decree will be signed. At the same time, draft amendments to the above-mentioned decree was already discussed in the department in 2017¹¹, representatives of the department said in the spring 2018 that the draft was already ready to be signed¹² and in the spring 2019 the information about preparation of a new decree on foreign gratuitous aid was heard.

This time it is supposed to introduce the following main amendments to the procedure for receipt of foreign gratuitous aid (FGA) in cash:

- It is supposed to establish the Interagency Commission on FGA, which will make decisions on full or partial exemption of aid from taxes and levies, as well as approve purposes of its use. Besides representatives of the Administration of the President and the Department for Humanitarian Aid, representatives of the State Customs Committee, the State Control Committee and the Ministry for Taxes and Levies will be included into the commission.
- The Presidential Property Management Directorate will be given the right to explain the issues of application of this decree.
- It is proposed to introduce administrative responsibility in the FGA field – a warning or imposition of a fine of up to 10 basic units for untimely applying of a legal personality for registration of FGA; a warning or a fine of up to 5 basic units for untimely issue of a conclusion on expediency of exemption of FGA from taxes by an official or unlawful refusal to issue such a conclusion; a warning or a fine of up to 5 basic units for untimely issue of a certificate of registration of FGA by the Department’s official. At the same time, the Department’s officials are given the right to draw up protocols for the first two above-mentioned violations, bodies of the State Control Committee – for the last above-mentioned violation.
- The list of purposes, which legal personalities can receive FGA for, is broadened. It is supposed to include in these purposes quite a broad list of activities on environmental protection and efficient (sustainable) use of natural resources, promotion of employment, improvement of working conditions and occupational safety, social security, development of physical culture, sports and cultural field. Such purposes as medical and psychological

¹⁰ The draft decree is available at: <http://dha.gov.by/wp-content/uploads/2019/07/%D0%94%D0%B5%D0%BA%D1%80%D0%B5%D1%82-%D0%B2-%D0%BF%D0%BE%D0%BB%D0%BD%D0%BE%D0%B9-%D0%B2%D0%B5%D1%80%D1%81%D0%B8%D0%B8.pdf>

¹¹ After several months of the new legislation on foreign gratuitous aid being in force, the Legal Transformation Center analyzed which main problems existed in this field and prepared the review “Main problems of the legislation on foreign gratuitous aid” <https://www.lawtrend.org/freedom-of-association/osnovnye-problemy-zakonodatelstva-ob-inostranoj-bezvozmezdnnoj-pomoshhi>, It submitted its proposals on the introduced in 2017 for public discussion draft law in the form of an appeal to the department: <http://www.lawtrend.org/wp-content/uploads/2017/11/Predlozheniya-TSentra-pravovoj-transformatsii-po-proektu-dekreta-5.pdf>

¹² The updated draft Decree № 5 “On foreign gratuitous aid” will be presented to the president in the nearest future <https://naviny.by/new/20180530/1527680544-obnovlennyy-proekt-dekreta-no-5-ob-inostranoj-bezvozmezdnnoj-pomoshchi-v>

treatment, ensuring sanitary and epidemiological wellbeing of population, scientific researches and scientific activity, acquisition and upgrade of scientific qualifications, support and development of education, correctional and pedagogical aid are also added to the list of such purposes. As earlier, there are no activities on defence of rights and freedoms (of children too), gender equality, prevention of discrimination, development of civil society, etc. in the list of purposes. It is proposed to give the powers to approve other aims to the Interagency Commission on FGA.

- Requirements for the plan of FGA use are amended. The draft stipulates that the plan must contain the amount of aid, purposes of its use, amount and types of expenses, the list of secondary recipients; when applying for registration of FGA with exemption from taxes – types of taxes and levies, which a recipient applies to be exempt from, separately for every purpose of FGA use and every type of expenses.
- The draft introduces differentiation in the procedures for registration of aid, aiming or not aiming at exemption from taxes (for example, it is stipulated in the list of the documents to be submitted that state bodies' conclusion on expediency of tax exemption is submitted by a recipient only in case of applying for such exemption).
- The amount of FGA, receiving which it is required to apply to government agencies of the republican level for a conclusion, is decreased from 10000 to more than 5000 basic units. Accordingly, it is stipulated that district executive committees can issue conclusions on aid of less than 1000 basic units.
- A concrete list of taxes and levies, which FGA could be exempt from, is provided for.
- It is stipulated that it is not allowed to apply tax benefits when FGA is used to pay for general corporate expenses, relating to maintenance of management apparatus of an organization and support of its activity; a list of such expenses is also provided for.
- The procedure for use of aid by secondary recipients is provided for.
- The procedure for approval of amendments to the plan of FGA use is simplified a little. It is stipulated that recipients have the right to apply to the Department with a request to introduce amendments to the plan in case of non-use or impossibility of further use of the registered aid in accordance with the plan, approved by the Department, also after the end of use period of aid, mentioned in the plan. Unexpended funds of up to 10 basic units, formed as a result of economy, could be used by recipients for general corporate expenses after approval of amendments to the plan by the Department. At the same time, the unexpended funds, which are exempt from taxes, are included into extraordinary income.
- It is stipulated that recipients of aid must start using aid within 3 months after its registration.
- The terms of submission of reporting on FGA are changed – recipients must quarterly submit reports to the Department not later than on the 10th day of the month, following the reported quarter.
- The notion of “humanitarian project” is introduced. It is an agreement, reached by a recipient and a provider, stipulating for a set of actions, aimed at achievement of one of the purposes of receipt of FGA, stipulated by the Decree, whose duration is not less than 1 year.

At the same time, exemption of aid, received within a humanitarian project, from taxes and levies is conducted within a project as a whole.

Despite certain quite positive innovations, general assessment of the proposed draft will depend on its law enforcement practice after adoption; at the same time, no fundamental changes are introduced. Besides, together with maintaining of general authorization-based procedure for receipt of foreign aid, the draft decree keeps other negative norms – as now, it does not stipulate at least minimum amount of FGA, which would not require registration; citizens of the Republic of Belarus, permanently residing abroad, as well as foreign citizens and stateless persons, not having permits for permanent residence in Belarus, are referred to providers of FGA; funds, granted by foreign founders for funding of the established by them institutions in Belarus, and inpayments by foreign founders (members) to Belarusian NCOs are also referred to FGA.

In the spring 2019, the Legal Transformation Center prepared the analytical review “NCOs’ access to gratuitous aid: international experience of legal regulations, legislation and practice in the Republic of Belarus”. The analytical review was discussed at the round table “NCOs’ access to gratuitous aid: international experience, legislation and practice in the Republic of Belarus”, which took place on March 20, 2019 in Minsk and was organized by the Legal Transformation Center together with the Assembly of Pro-Democratic NGOs¹³. This review covers problematic issues of the legislation and its enforcement in respect of NCOs’ access to foreign gratuitous aid.

In June 2019, the Ministry of Finance presented the draft Law of the Republic of Belarus “On amendments to the Law of the Republic of Belarus “On accounting and reporting”” for public discussions. The Legal Transformation Center prepared its proposals¹⁴ in support of amendments to unfavourable for NCOs norms of the law in force and sent them to the Ministry of Finance of the Republic of Belarus. Proposals with similar content were also sent by a range of Belarusian NCOs. The Ministry of Finance reacted to the proposals of the Legal Transformation Center and other NCOs – despite the fact that the proposals of non-commercial organizations were not taken into consideration, the problem of the requirement for NCOs to have chief accountants was publicly raised. A positive moment of the response to the proposals was explanation of the Ministry of Finance that when non-commercial organizations keep accounting records in income and expenditure ledgers (when operating under the simplified taxation system), provisions of the law on requirements for chief accountants are not applied to these organizations¹⁵.

The draft law “On amendments to the Law of the Republic of Belarus “On measures to prevent legalization of criminally obtained income, financing of terrorist activity and financing of proliferation of weapons of mass destruction” is at the stage of being prepared for second reading

¹³ Analytical review “NCOs’ access to foreign gratuitous aid: international experience of legal regulations, legislation and practice in the Republic of Belarus” <https://www.lawtrend.org/wp-content/uploads/2019/03/Analiticheskij-obzor-Dostup-nekommercheskih-organizatsij-k-bezvozmezdnnoj-pomoshhi-2019.pdf>

¹⁴ Legal Transformation Center’s proposals to the draft Law of the Republic of Belarus “On amendments to the Law of the Republic of Belarus “On accounting and reporting”” <https://www.lawtrend.org/wp-content/uploads/2019/06/Predlozheniya-TSentra-pravovoj-transformatsii-k-proektu-Zakona-ob-izmenenii-Zakona-Respubliki-Belarus-O-buhgalterskoi-uchete-i-otchetnosti.pdf>

¹⁵ Public discussion of the draft Law of the Republic of Belarus “On amendments to the Law of the Republic of Belarus “on accounting and reporting” has been summed up. <http://pravo.by/novosti/novosti-pravo-by/2019/july/36971/>

in the House of Representatives¹⁶. The adopted on May 23, 2019 in first reading law stipulates that the Ministry of Justice will determine the content, procedure for storage and bringing to public notice by public associations and foundations of reporting on their activity and other data, required for taking measures to prevent funding of terrorist activity and funding of proliferation of weapons of mass destruction.

Thus, the law may introduce additional type of reporting for NCOs, despite the fact that the risk of getting NCOs involved in the above-mentioned activity is low. In particular, according to the final report on national assessment of money laundering and financing of terrorism risks, absence of facts when NCOs are used to commit acts relating to money laundering is evidence of low risk of their involvement into criminal activity. Activity of international terrorist organizations, their branches or members has not been recorded in the Republic of Belarus. There have been no facts of presence on the territory of the Republic of Belarus of individuals or organizations, included in the UN sanction list, as well as presence of their property or other owned by them assets detected. Organizations have not been recognized as terrorist by decisions of courts of the Republic of Belarus. There have been no facts of use of NCOs for funding of terrorist activity in the Republic of Belarus¹⁷.

The Legal Transformation Center together with the public association Ecohome prepared the enquiry to the Ministry of Justice, asking to explain the ministry's stance - if public associations' non-gratuitous activity on holding of lectures, exhibitions, sport and other events for statutory purposes will be considered entrepreneurial activity, when income from such activity is fully used to cover expenses for these events, and if lease of a part of premises, which are property of a public association, will be considered entrepreneurial activity. The Ministry of Justice considers it possible for public associations to conduct activity on holding of lectures, exhibitions, sport and other events, if the received funds are fully used to cover expenses for these events. It is also possible to conduct activity on leasing of premises at a charge. At the same time, the Ministry of Justice separately noticed in its response that in certain cases activity of a legal personality on leasing of isolated premises or other property would have attributes of entrepreneurial activity¹⁸.

¹⁶ On amendments to the Law of the Republic of Belarus "On measures to prevent legalization of criminally obtained income, financing of terrorist activity and financing of proliferation of weapons of mass destruction" <http://www.pravo.by/document/?guid=3941&p0=2019008001>

¹⁷ Interagency Commission has approved the final report on national assessment of risks of money laundering and financing of terrorism – January 18, 2019. <http://pravo.by/novosti/obshchestvenno-politicheskie-i-v-oblasti-prava/2019/january/32184/?fbclid=IwAR0wP4czBwTY1-ZYbf-x1BurEqsp3O4LP1fWeNqFGflr2SzFIVvPIUMCzU>

¹⁸ On possibility for public associations to conduct non-gratuitous activity: stance of the Ministry of Justice <https://www.lawtrend.org/freedom-of-association/o-vozmozhnosti-osushhestvleniya-obshhestvennymi-obedineniyami-vozmezdnoj-deyatelnosti-pozitsiya-ministerstva-yustitsii?fbclid=IwAR1VCxnIhrU0naxxv3kXOXdCtL8rnKvTkJEyBzt-Qx- h7zvhnys9OtUuLU>

Law enforcement practice and state policy in respect of civil society organizations

As already mentioned, against the background of such significant amendments to the legislation affecting NCOs (and even more large-scale amendments planned for the nearest future), practice has shown stagnation. Besides the above-mentioned drastic changes in the situation with freedom of assembly, NCOs faced in the first half of the year those problems, which could be called traditional.

Thus, the Ministry of Justice still refuses registration to public associations on insignificant grounds, reasoning from the principle of undesirability of certain organizations being legalized. On January 8, 2019 the public association “Dzeyya” was refused registration by the decision of the Ministry of Justice. It was already second refusal to register this organization. The Ministry of Justice claimed that it did not recognize the organization’s application for registration as valid, because it had been signed by the authorized by the founding assembly member of the Dzeyya council instead of the chancellor, elected by the council after the founding assembly. In the organization’s opinion, this claim contradicts the provisions of the law “On public associations”, according to which the application can be signed by both head of the organization and other authorized by the charter individuals. The Ministry of Justice’s second claim was non-provision of the list of individuals present at the founding event by the applicants. The founders of the public association appealed against refusal of registration to the Supreme Court, however, it was not a success – on April 10 the court refused to satisfy the claim against refusal of registration to the organization, although certain claims of the Ministry of Justice against the submitted for registration documents were recognized by the court as unjustified.

In January 2019 the Justice Department of the Minsk City Executive Committee for the second time refused to register the public association “Immortal Regiment”; in March this refusal was recognized as justified after examination of the appeal in the Minsk City Court. The ground for the refusal was failure to mention the decision on approval of the name of the newly-established association in the minutes of the founding event, as well as non-observance of the prescribed form of the application for registration (it lacked postal address for sending of the registering body’s decision after examination of the documents, submitted for registration).

In the first half of 2019 there have still been refusals to approve names of newly-established institutions, which remain the most popular form for obtaining the status of a registered NCO. The formal procedure for approval of names, aimed at not allowing establishment of organizations with confusingly similar names, in fact turns into the means of political censorship for creation of obstacles in registration of those initiatives, which are considered by the authorities as suspicious and unwanted.

The requirement for legal addresses to be in nonresidential premises remains one of the most prominent obstacles for establishment of new NCOs.

Hearing of the case upon claim of Nikolai Sharakh, an activist from Polatsk, took place on April 29 in the Economic Court of Vitebsk Region. He appealed to the court for recognition of actions of the Polatsk District Executive Committee officials, who had refused to register the private institution “Center for informational and legal support of socially vulnerable groups “Advocacy””, as unlawful. According to the written explanation of the district executive committee representative, registration was refused as a result of an oral appeal of the limited liability company “UTEK-Bel” representative about refusal to provide Nikolai Sharakh with a legal address for the institution, which was being registered. The court took the side of the founder of the NCO – after examination

of all case materials, the court recognized refusal of the Polatsk District Executive Committee to register the “Advocacy” Center as unlawful¹⁹.

In 2019, the practice to refuse approval of location of institutions in one-apartment private residential houses, which was one of the few possibilities to bypass the ban, continued. On April 8, the Vitebsk Regional Court examined the appeal against refusal to locate a NCO in an individual residential house. The case related to the Navapolatsk institution “Informational and cultural center “InitiArt””, whose founder and director is Volha Damaskina, a local activist. The “InitiArt” was found in 2016; it implements in Polatsk programs for development of the Belarusian language and revival of the Belarusian culture. The “InitiArt” has to have its legal address in a nonresidential building, which requires now additional expenses, although it does not need a permanent office for its practical activity at all. That’s why the organization decided to use the opportunity, stipulated by Article 14 of the Housing Code, allowing usage of individual (blocked) residential houses for other purposes than intended, without converting them into nonresidential ones, with the concurrence of local authorities. However, the Navapolatsk City Executive Committee refused carrying out of this administrative procedure, having claimed that a legal address of an institution cannot be located in a residential house. Such a stance was supported by the regional executive committee, by the Navapolatsk City Court while examining the appeal against such a decision, and by the Vitebsk Regional Court²⁰.

In many cases, rental of state-owned premises is an example of inequality of various NCOs in Belarus. Thus, having problems with payment for the complex of premises of communal ownership in Minsk, the BPF Party and the public association BPF “Revival” appealed to the Council of Ministers with the request on provision of equal rent rate with the application of a reduced coefficient 0,1. Such a reduced coefficient is granted by the decision of the government to the Communist Party, the public association “Belaya Rus”, the Republican Party of Labour and Justice and others. However, the organizations were refused to be included in the list of organizations having reduced coefficients, which was a violation of the principle of equality of all political parties, stipulated by Article 4 of the Law of the Republic of Belarus “On political parties”. As a result, the BPF had to stop renting a part of its premises in Minsk – the owner (a communal enterprise) filed suits on eviction of the organizations from 5 premises, two of which were satisfied due to the formed rental fee debt. In the first half of 2019, a range of other NCOs had to change their location because of inability to pay the increased fees for rental of state-owned premises.

Unequal conditions for activity of independent from the authorities organizations and loyal to them public structures are especially evident in cases of pressure on the most active organizations. Thus, in the first half of 2019, the administration forced 600 members out of 4000 to leave the Independent Trade Union of Miners of the JSC “Belaruskali” with threats and pressure; members of the independent trade union are under pressure²¹. In Homel, after the death of a road safety officer in Mahileu, local organizations of Roma faced discriminatory pressure due to ethnical profiling by militia – Volha Niachayeva, the head of the institution on adaptation of Romas “Romano Drom”, was detained, her house was searched²².

¹⁹ Court recognized that the Polatsk District Executive Committee had violated the citizen’s right to establishment of organization <http://spring96.org/ru/news/92828>

²⁰ NCO’s legal address in individual residential house: already impossible? <http://belngo.info/2019.uradras.html>

²¹ The Independent Trade Union of Miners is being destroyed in Salihorsk <http://praca-by.info/all-news/item/6988-v-soligorske-unichtozhayut-nezavisimyj-profsoyuz-gornyakov>

²² Militia broke into the house of the head of Roma organization in Homel <https://www.svaboda.org/a/29956963.html>

In June, the institution “Center for Promotion of Women’s Rights – Her Rights”, whose mission is strengthening of women’s and girls’ potential through eradication of gender discrimination and promotion of their rights and interests, reported that it faced groundless refusal of registration of the receipt of foreign gratuitous aid from the USAID. As a result, because of the ban on use of foreign aid without a permit from the state, the organization had to quit the already funded project and return the already received money to the donor.

In March, the crowdfunding platform Ulej launched a new crowdfunding service MolaMola – a platform for quick collection of funds on the basis of gratuitous transfers from individuals²³. This platform is more adapted to unfavourable legislation on internal sponsor aid and its taxation, but it still remains under pressing of politically motivated self-censorship – collection of funds to pay off the enormous fine, which the Leninski District Court of Brest imposed on the blogger Siarhei Piatrukhin, was blocked on the platform MolaMola. The platform motivated such a step with a far-fetched and discriminatory argument that collection of funds for payment of a fine can be considered to be evasion of the guilty from punishment²⁴, which is legally ungrounded. On April 18, the court recognized Siarhei Piatrukhin guilty of public slander and insult of militia officers and sentenced him to a fine of 360 basic units (9 180 roubles) to the state, as well as obliged him to pay total of 7 500 roubles in moral damages to complainant militia officers and compensate for attorney’s fees.

In the latest months, institutions, whose founders (owners of property) simultaneously perform functions of heads and do not obtain salary for it, have faced a new practice of the Social Security Fund. The SSF departments demand payment of obligatory insurance fees by individuals, who are simultaneously founders and heads of institutions, despite the fact that they are not paid for performing functions of heads. Prevalence of this practice, as well as explanation of the SSF leadership regarding this matter are evidence of the introduction in Belarus of a new unfavourable for NCOs approach, which could negatively affect institutions, which are now the most popular organizational and legal form of NCOs. As forecasted, in the nearest future the above-mentioned new practice could affect a wide range of institutions, where founders of organizations themselves perform functions of heads on gratuitous basis. The Legal Transformation Center prepared a legal analysis of this problem and a draft of NCOs’ joint stance, which contain legal reasoning that collection of deductions when there are no objects, which insurance deductions can be posted on (salary of other payments), is wrong. In July, on the initiative of the Legal Transformation Center and the Assembly of Pro-Democratic NGOs, a collective appeal of NCOs with the proposals on solution of this problem was sent to the government²⁵.

In practice, banks also act as a peculiar regulator, often restricting activity of NCOs. For example, there were cases when bank employees, while opening accounts for NCOs, demanded from them to introduce amendments to charters of organizations or to provide documents, confirming entering into labour relations with heads of organizations; or when banks returned donations, made by foreign donors to Belarusian NCOs, back to them.

²³ Ulej launched new platform of quick collection of funds for any idea <http://marketing.by/novosti-rynka/ulej-zapustil-novuyu-platformu-bystrogo-sbora-sredstv-dlya-lyubykh-idey/>

²⁴ Campaign on collection of funds for fines of the blogger Siarhei Piatrukhin has been blocked <https://www.b-g.by/news/kampaniya-po-sboru-sredstv-na-shtrafyi-blogera-sergeya-petruhina-zablokirovana/>

²⁵ We call on you to sign a collective appeal against groundless deductions to the Social Security Fund <https://www.lawtrend.org/freedom-of-association/prizyvaem-k-podpisaniyu-kollektivnogo-obrashheniya-protiv-neobosnovannyh-otchislenij-v-fond-sotsialnoj-zashhity-naseleniya>