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Joint submission:

**Freedom of associations and legal environment for  
civil society organizations (CSOs) in Belarus**

October 3<sup>rd</sup>, 2019

Prepared by coalition of national CSOs:



**Assembly of Pro-Democratic NGOs of Belarus** - The largest umbrella association of CSOs in Belarus that promotes development of democracy and rule of law. The Assembly was founded in 1997 and now it unites more than 300 CSOs. State three times refused to register the Assembly and now it is registered abroad in neighboring Lithuania.

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**Legal Transformation Center Lawtrend** – noncommercial organization, whose aim is improvement of law culture, organization of educational, analytical and research activity in the law field. The organization is registered and based in Minsk, Belarus.

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## Introduction

This report is based on the **Assembly of Pro-Democratic NGOs of Belarus and Legal Transformation Center *Lawtrend*** practice in *pro bono* consulting of CSOs on legal and organizational issues, including experience of litigations and advocacy (please see annual monitoring reviews in appendices 1-4). The authors are grateful for their colleagues at the **European Center for Not-for-Profit Law Stichting (ECNL)** for the methodology assessing civil society development, developed under the "*Monitoring Progress, Empowering Action*" project for ongoing regional monitoring of CSO environment in the Eastern Partnership region (this product is available here: <https://CSOmeter.info/>).

The [CSO Meter](#) supports monitoring of the environment in which CSOs operate and consists of a set of standards and indicators in 10 areas to measure both law and practice.

**In the area of legal regulation and the building of cooperation between the state and CSOs, recent years in Belarus have seen a continuation of the trend to move from confrontation to cooperation. However, when there were cases of increased protest activity, this has led to crackdowns targeting CSOs that were involved in the organization or participation in the protests.**

In the second cycle of the UPR for Belarus (2015) a range of recommendations on freedom of association and legal conditions for CSOs were addressed to Belarus (129.66, 129.70, 129.71, 129.72, 129.73, 129.74, 129.82, 129.83, 129.84, 129.86, 129.87, 129.88). Some of recommendations in this area recognized by Belarus as acceptable (recommendations of Holy See, Slovenia, Costa Rica, Germany, Australia, Czech Republic, Canada, Hungary, Luxembourg, Romania, Belgium, Denmark and United States). As outlined in the assessments and conclusions below, progress in implementing these recommendations over the past five years has been very small.

In each of the 10 sections below, an analysis is made of the conformity of the situation in Belarus with international standards in 10 areas, and specific recommendations are given.

However, on top of this, the authors propose a **framework recommendation** to strengthen cooperation with the UN human rights mechanisms, particularly by issuing a standing invitation to the special procedures and by facilitating a visit to Belarus of Special Rapporteur on the rights to freedom of peaceful assembly and of association.

## **1. Freedom of association**

Article 36 of the Constitution provides for the right to freedom of association – “Everyone has the right to freedom of association”. But according to the law “On public associations”, foreigners can participate in establishment of international public associations only and cannot establish national or local associations – they can only join them after registration.

Since 1999, activity of associations without state registration has been banned. Since 2005, there has been criminal responsibility according Article 193<sup>1</sup> for activity of public associations, parties, foundations and religious organizations without state registration. At least 18 persons have been convicted for violation of this ban, to imprisonment sentences as well. In July 2019, criminal article for activity of CSOs without registration has been abolished, but responsibility for activity of CSOs without registration under Article 23.88 of the Code of Administrative Offences has been introduced with punishment by fines (in the amount of about 500 euros, imposed without a trial, in an administrative order).

People, who are in the “preventive watch list” in accordance with the legislation on prevention of offences, cannot be founders or directors of institutions.

The state in practice puts obstacles in establishment and registration of those CSOs, which it considers unacceptable (human rights, youth organizations, political groups or LGBTIQ). There is a widespread practice of groundless refusals of registration to unwanted organizations on the basis of minor technical shortcomings in the submitted for registration documents (for example, incorrect font). Some associations (for example, the Belarusian Christian Democracy party) have for decades been submitting applications for registration, constantly facing refusals.

There have been signals about involuntary membership or compulsion of students and schoolchildren to join the supported by the state public organization Belarusian Republican Youth Union.

The practice of searches, seizures of equipment, arrests, dismissals and expulsion of students from universities, criminal prosecution on tax evasion or organization of disturbances charges is an everyday practice of Belarusian CSOs. For many potential members of CSOs such threats are the factors, which restrain them from joining an CSO.

The procedure for registration as legal entities is significantly more expensive, long and burdensome for *foundations* and *public associations*; it also provides state bodies with the possibility to arbitrarily refuse registration. There is no special procedure for registration of other forms of CSOs, such as institutions, so they enjoy the same benefits of general registration as commercial entities. In general, registration as *institutions* it's not a problem, but sometimes state abuses the procedure and put bureaucratic obstacles for specific groups (human rights, LGBTIQ etc.).

The requirement to have legal addresses on non-residential premises is a serious problem for all forms of CSOs, whereas some commercial organizations can be located at the place of their founders' residence. CSOs mention the legal address requirement as one of

the main obstacles in their activity, due to financial expenses for rent, even if an organization does not need an office.

The fee for registration of institutions and unions of legal entities is not high, but it is much higher for public associations and foundations – the fee for registration of a republican public association is 10 times higher than the fee for commercial entities registration.

A state body can examine an application for registration of a public association or a foundation for up to 1 month, which can result in refusal of registration or instruction to correct the mistakes in the documents. However, correction of mistakes does not guarantee that after that a state body will not decide to refuse registration – it can find other shortcomings, not mentioned earlier.

For example, on March 7, 2018 the Ministry of Justice refused registration to the International Public Association Starting Point. The reason was non-conformity with the stipulated by law criteria for establishment of an international association as to the required number of foreign founders and establishment of a branch abroad. On May 3, 2018, after correction of the detected irregularities and second submission of documents for registration, the organization was again refused registration due to other defects in the same documents.

Some CSOs have year after year unsuccessfully submitted documents for registration – every time officials have invented new more and more grounds for refusal - association Dzieja is one of them (2 refusals in 2019 and 2017). In 2017, the Ministry of Justice refused registration of Youth Association "Youth of Revival", Historical and Educational Association "Khaisy", Public Association Women's Network "Mara", Public Association of People with Disabilities Leisure Organization "Sokoly", Educational Association of City Development "Ecograd", Public Association "Gender Partnership", the Association "Social and Christian Movement" etc.

Registration of an institution usually takes place on the day of application or the next day (as is customary for commercial legal entities). However, sometimes officials, not willing to register a CSO, use a technical stage of “approving the name” in order to impede the registration, mentioning far-fetched claims to the character of activity, indicated in the name. It is a clear abuse of the procedure for infringing on the freedom to create CSOs.

The required number of founders for a public association is too big (there should be 50 founders for a republican association or 10 founders for a local association), taking into account the requirement that each of them must make signature in the list of founders.

Public associations and foundations can appeal against refusals of registration to court, but courts never satisfy such claims against decisions of justice agencies. According to our observations in these trials arguments have no influence on a predetermined decision.

When examining documents for registration of public associations, justice agencies often subjectively interfere into organizations' objectives, guided by subjective interpretations of charter norms and assumptions. Many public associations make their objectives

congruent with the recommendations of the Ministry of Justice, being afraid of refusals of registration.

The legislation provides for a broad range of sanctions for public associations – warning, termination of activity for a specified term, liquidation by court decision on a claim of the Ministry of Justice.

Serious sanctions are aimed at heads of organizations – especially due to financial violations. Sanctions for violation of the legislation on foreign aid include the possibility of both liquidation of a CSO and bringing the guilty managers to criminal responsibility under Article 369-2 of the Criminal Code – it provides for the punishment of up to 3 years of imprisonment for violations of the rules of receipt, storage, transfer of foreign aid. This article has not been applied in practice yet, but recipients of foreign aid were subjects to tax claims and they were brought to criminal responsibility for tax evasion in 2017-2018.

In 2018, court sentenced Henadz Fyadynich, the chairman of the Trade Union of Radio and Electronics Industry Workers, and Ihar Komlik, the deputy chairman, to 4 years of restraint of liberty with the ban to take up manager positions for 5 years under Article 243 Part 2 of the Criminal Code (large scale tax evasion) for receipt of foreign grants via bank accounts abroad. This trade union was an active participant and organizer of the protests in spring 2017. According to the testimony of one of the witnesses in court, she had in advance been sent by the KGB to work as an agent in the central office of the trade union, working as a secretary there.

Moreover, certain CSOs that enjoy special support of the state often face directive political control. Especially sport CSOs are concerned. In spring 2017, changes in the leadership of the majority of sport federations took place on the initiative of executive authorities and the National Olympic Committee (headed by the president of Belarus), often with gross violations of charters and contrary to the will of members of these associations. The example was the situation in the Fencing Federation - on May 2017<sup>1</sup>.

Besides general norms on control and inspections, it is not uncommon when militia conducts search and intrudes into premises, where CSOs are located, especially unregistered ones and those criticizing the government and the president. Such negative interference are especially frequent during elections or on the eve of protest actions<sup>2</sup>.

### **Recommendations:**

- Abolish the ban on activity of public associations without registration, set forth in the law “On public associations” and cancel administrative responsibility for activities of an unregistered CSO (abolish article 23.88 of Code on Administrative Offences).
- Foreign citizens and stateless persons, permanently residing in Belarus, should be allowed to act as founders of national public associations.

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<sup>1</sup> Riot on the ship <https://www.pressball.by/articles/summer/fencing/98552>

<sup>2</sup> They were especially frequent during the spring protests in 2017: Belarus: HRC “Viasna” office unlawfully raided, dozens arrested <https://www.omct.org/human-rights-defenders/urgent-interventions/belarus/2017/03/d24269/>

- Determine the minimum number of founders, required for establishment of a public association of any level not more than 10 people.
- Introduce clear list of grounds for non-registration of public associations and foundations.
- Determine such a term for consideration of registration of public associations and foundations by a state body, which will not exceed the term for consideration of registration of commercial organizations; the fees should also be made equal.
- To establish by law the mechanism and methods for decision-making by the founders on the creation of a new public association online, without a meeting in person.
- Simplify the definition of “legal address” to the notion of “contact address”, providing the possibility to locate CSOs at the place of the head’s residence or other private house.

## **2. Equal treatment**

Conditions for establishment and activity of NCO are worse than for commercial organizations – this relates to duration and cost of registration procedures, possibility to locate legal addresses on residential premises. Stipulating benefits for a broad range of legal entities, laws use the terms “commercial organizations” and “enterprises”, which excludes CSOs from recipients of such benefits.

Public associations can be involved only in types of activity, stipulated by the law or written in their charters, while business entities can implement any type of activity.

Public associations and foundations can only be registered by the Ministry of Justice or regional departments of justice and submission of a big set of documents is required, while powers to register business entities are transferred to the district level and there is a procedure for registration online with the minimum set of documents.

In process of registration, state agencies check if charters of public associations and foundations are congruent with the legislation when considering registration, while charters of business entities are not checked in the registration process.

Public associations are banned to independently conduct entrepreneurial activity.

As a result, there is a situation when in order to conduct certain types of socially beneficial activity it is easier to establish and operate in the form of a commercial organization rather than CSO, even if its founders do not have profitmaking goals. This happens despite the fact that the legislation does not provide for the notion “social entrepreneurship”.

The legislation applies the mechanism of targeted provision of benefits. For example, there is a list of CSOs, which enjoy preferential coefficient when renting state-owned premises – the government on the proposal of the ministries approves this list.

The Tax Code directly enumerates around a twenty of CSOs, providing sponsorship aid to which Belarusian business entities may enjoy tax deduction – aid to any other organization can be provided by a business entity only from post-tax profit and does not entail any tax deduction.

CSOs, which express views and stances, criticizing state officials or policies, face repressions and restrictions, biased treatment by the state and are purposefully criticized in the state press. State agencies organize searches and inspections in offices of CSOs, expressing views and opinions, different from those of state bodies. Events of such CSOs (including LGBTIQ ones<sup>3</sup>) are foiled on no lawful grounds.

Article 193 of the Criminal Code provides for increased punishment for governing a public association, which violates citizens' rights, in case such activity is conducted within an unregistered association.

### **Recommendations:**

- When improving legislation, take into account the specifics of CSOs, providing them with the necessary benefits and preferences due to their non-profit activities, avoiding the practice of discrimination of CSOs in comparison with commercial organizations.
- Provide for the possibility for NCOs to locate their legal addresses in the places of founders' residence and possibility of simplified accounting for all CSOs without employing a professional accountant.
- Extend the notification procedure for registration of commercial organizations to registration of CSOs, including the possibility to submit and update documents online.
- To establish the procedure for change of owner of an institution.
- Abolish the ban on independent conduct of entrepreneurial activity for public associations without creating a separate commercial entity, set forth in the law "On public associations".

### **3. Access to funding**

CSOs are significantly restricted in the possibilities to seek, receive and use financial and material resources for the pursuit of their objectives. Restrictions are also imposed on both foreign donations and donations from Belarusian corporate donors, while private donations from Belarusian resident individuals are not restricted.

There are no benefits to encourage donations to CSOs. State funding of CSOs is not developed in Belarus, except for direct funding of supporting state policy GONGOs from the budget on a non-competitive basis. There is also a state social contracting, which is available for only few CSOs, mostly close to the state, and has burdensome restrictions.

Donations from foreign donors can be received for only objectives, enumerated in the Decree № 5 of August 31, 2015, which do not contain such legitimate objectives as human rights, development of democracy, gender equality and others.

Similarly, CSOs can receive donations from Belarusian entities for only objectives, stipulated by the Edict of the president № 300 "On provision and use of gratuitous

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<sup>3</sup> DOTYK organizers told who and how tore off their event <https://citydog.by/post/zaden-dotyk-sorvali/>

(sponsor) aid", which is also a closed one and in practice does not allow CSOs to receive donations for their activity, written into their charters.

Belarusian CSOs actively develop electronic fundraising methods, including crowdfunding.

The law on AML/CTF obliges banks to control if financial transactions of CSOs correspond with their statutory objectives.

Regardless of the size, the received by CSOs foreign aid is subject to obligatory preliminary registration at the Department for Humanitarian Activities. The legislation stipulates a difficult and burdensome procedure for receipt, registration and use of foreign aid by CSOs, including detailed plans for allocation of aid. Donations from Belarusian citizens residing abroad are considered to be foreign and are subject to restrictions.

There are cases when CSOs, which have received large foreign grants, have to return funds back to donors, because a state body has refused to register it. In 2019, the institution "Center for Promotion of Women's Rights", whose mission is strengthening of women's and girls' potential, reported that it faced refusal of registration of the foreign aid from the USAID. As a result, because of the ban on use of foreign aid without a permit from the state, this CSO had to quit the already funded project and return the received money to the donor.

Single violation of the legislation on foreign aid is punished with a fine (public associations can also be liquidated by a court decision). Repeated violation is subject to criminal punishment of up to 3 years of imprisonment.

### **Recommendations:**

- Abolish restrictive list of objectives, for which CSOs can receive foreign gratuitous aid or sponsor aid from internal resources – CSOs should have possibilities to fund any their legitimate activities from these sources.
- Move from authorization-based system for registration of foreign aid to notification-based system, abolish Article 369-2 of the Criminal Code.
- Abolish the Edict of the president №300 "On provision and use of gratuitous (sponsor) aid".
- Introduce the "endowment" definition to the legislation.

## **4. Freedom of peaceful assembly**

To hold an assembly, initiators should receive a permit from the authorities and apply for it not later than 15 days prior to an event. Despite introduction of elements of notification procedure for assemblies in 2018 (with advance notification 10 days prior to an assembly, in a limited number of places determined by the authorities), the possibilities for peaceful assemblies haven't improved.

The stipulated by law obligation to conclude contracts with state agencies on payment for services on safeguarding of an assembly, as well as ambulance and cleaning services, de



facto acts as a serious obstacle for freedom of assembly. After the introduced in 2018 amendments to the law obliged the government to work out single fees for these obligatory services, the fixed price has become an obstacle for holding of many peaceful assemblies, as organizers consider it impossible to pay such big money.

The legislation does not provide for such notion as spontaneous assemblies, simultaneous or counter assemblies. Arbitrary bans of assemblies are very frequent. Courts never satisfy civil claims against decisions of executive authorities to refuse to authorize holding of an assembly.

It is forbidden to announce in the media and Internet place and time of a future assembly, until authorization of the authorities is obtained. Such announcement in media, Internet or social networks can become the ground for the ban of an assembly.

### **Recommendations:**

- Make laws and practice of state regulation of assemblies congruent with human rights standards, including OSCE Guidelines on Freedom of Peaceful Assembly, so that restrictions do not make exercise of the right to freedom of peaceful assembly impossible for citizens (including foreign and underage ones) and CSOs.
- Extend the notification-based procedure for holding of assemblies to all unforbidden places and make the procedure for holding of any pickets the same as now applied to pickets on collection of signatures during election period.
- Abolish obligatory contracts at a fixed price rate with militia, ambulance and cleaning organizations for holding of assemblies.

## **5. Right to participation in decision-making**

The Law of July 17, 2018 “On normative legal acts” stipulates that the official public consultations can be announced for draft acts and governmental orders, affecting rights, freedoms and duties of citizens and legal entities or introducing new approaches towards legal regulation of a specific area; draft legislative acts, which can significantly influence conditions for business; other draft acts on the initiative of state agencies.

Legal regulation of public participation in decision-making has been developing in 2018, a circle of CSOs invited to consultations has been broadening (human rights CSOs and watchdog groups, including unregistered ones, are invited), but the legislation in this filed still remains of a non-system character. Norms on public consultations are developed separately from the norms, relating to access to information, appeals of citizens and legal entities, public councils and other fields of interaction of CSOs and the state.

All draft laws are worked out in one of the two state languages of Belarus (in the majority of cases it is Russian and only in few cases – Belarusian). There is no such a practice as to officially introduce draft laws in two state languages.

Only certain draft concepts and policies are published and brought up for public discussions. The most controversial and disputable draft normative legal acts are not brought up for official public discussions and are often published only when they are

adopted or when drafts are submitted to the parliament. The plan for legislative activity is annually approved by the edict of the president, however it contains the planned draft laws only and no draft decrees and edicts of the president which under Belarusian have greater legal force than the law.

### **Recommendations:**

- Extend approaches, regulations and practice, applied to participation of CSOs in decision-making on development of draft normative acts, to the level of local authorities.
- Make all organizational and legal forms of CSOs equal in their participation in decision-making, using the term “non-commercial organizations” instead of “public associations”.
- Extend the practice when all affected CSOs are invited to consultations on draft legislative acts instead of the practice when state bodies decide to invite only certain CSOs.
- Publish annual plans (lists) for government and president legislative activity on development of not only draft laws, but also draft edicts and decrees.
- Publish draft laws online in their current constantly updated form in accordance with the current stage of legislative activity, and publish drafts of decrees and edicts of president.
- Based on an analysis of international standards of the right to participate in public affairs, to develop the Law “On public participation in decision-making” in consultation with CSOs focused on expanding the opportunities for participation, not on restrictions.
- Enshrine in legislation the obligation to introduce draft laws to the parliament, adopt laws, governmental orders, decrees and edicts of the president in two state languages – Russian and Belarusian.

## **6. Freedom of expression**

The Constitution guarantees freedom of opinion, but the legislation and practice seriously restrict freedom to impart opinions, through media and Internet as well. The legislation provides for a wide range of forms and grounds for restrictions on activity on imparting of opinions through criminal prosecution, restrictions on the media, control over the Internet (in respect of both Belarusian and foreign web-sites). Together with ample powers of the Ministry of Information (on blocking of Internet resources in circumvention of court and initiating bans of newspapers through courts), intelligence, border guard and law enforcement agencies, such a situation establishes conditions when the state has extremely broad and disproportionate opportunities to block imparting of information.

Broadened and vague definitions of “extremism propaganda” are especially dangerous, as they allow to apply them in accordance with both criminal and administrative procedures.

Conduct of opinion polls on social and political topics (even not relating to elections) requires special accreditation by the agency under the Academy of Sciences. There is a

ban to publish results of such opinion polls conducted without accreditation, violation of which is punished with a fine.

A non-party, but rigid “ideological vertical” has been built in the country. There is a “deputy head on ideology” post in every state organization.

### **Recommendations:**

- Liquidate “ideological vertical” as contradicting the Constitution and carry out demonopolization of electronic media.
- State TV-channels should become public service television, in respect of which a special law should be adopted.
- Exclude liability for defamation, libel or insult of the president, insult of a state official, discreditation from the Criminal Code.
- The system of web-site blocking and termination of newspaper publishing should be under the jurisdiction of courts; the system of printed media registration should be of notification-based character.
- Abolish obligatory accreditation of organizations for conduct of opinion polls.

## **7. Right to privacy**

The Constitution guarantees the right to privacy, secrecy of correspondence. In practice, this protection is effective only against interference by third parties, but not against interference by the state. For example, exercising the right to investigative activity, state agencies freely intercept phone calls and correspondence of CSO members.

Belarus has not joined the Convention 108 of the Council of Europe, that’s why it does not support this standard for protection of personal data (for example, there are no set terms for storage of personal data).

Internet communication, commenting on web-sites, use of mobile phones is possible only under condition of user identification. Internet providers are obliged to provide intelligence agencies with access to information, which is exchanged by users online. System for Operative Investigative Activities (SORM) provides a wide range of state agencies with access to all networks, including networks of mobile operators and internet providers, in real time mode without public control<sup>4</sup> (court orders are not required).

### **Recommendations:**

- Adopt the Law “On personal data”, taking into account international standards and principles of the Convention 108 of the Council of Europe and GDPR and join this convention.
- Introduce by law sanctions for unlawful acts, relating to collection, processing, provision and imparting of personal data, introducing special norms of liability of state agencies’.

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<sup>4</sup> “It’s enough for people to feel it exists” - civil society, secrecy and surveillance in Belarus (2016) by Amnesty International <https://www.amnesty.org/download/Documents/EUR4943062016ENGLISH.PDF>

- Ensure sufficient guarantees that the legislation on protection of personal data will not be used to restrict activities of journalists and CSOs, aimed at protection of public interests.

## **8. State duty to protect.**

According to the law “On public associations”, the state guarantees protection of public associations’ rights and legitimate interests and interference by the state into activity of public associations is forbidden. There are no similar guarantees for other forms of CSOs.

Article 190 of the Criminal Code stipulates that direct or indirect violation or restriction of rights and freedoms or provision of direct or indirect benefits to citizens depending on their membership in public associations is punished with fines or up to 2 years of imprisonment. Article 194 of the Criminal Code stipulates that impediments to legitimate activity of a public association or interference into its legitimate activity, which has inflicted significant violation of its rights and legitimate interests, is punished with fines, or deprivation of the right to hold certain positions or to engage in certain activity, or up to 2 years of correctional labor. However, there have been no practical cases under these articles.

Belarus does not follow recommendations of the UN Human Rights Committee, adopted due to appeals against violation of the guaranteed by the International Covenant on Civil and Political Rights freedom of association through refusals to register CSOs: the Public Association "For Fair Elections" (CCPR/C/112/D/2153/2012), Human Rights Center "Viasna" (CCPR/C/90/D/1296/2004 and CCPR/C/112/D/2165/2012), Public Association "Helsinki-XXI" (CCPR/C/88/D/1039/2001), Public Association "Elderlies" (CCPR/C/115/D/2011/2010). There is no mechanism for ensuring execution of decisions of international human rights bodies.

CSO activists face persecution at their working or studying places – employees of schools are fired because of their membership in CSOs, university students are threatened to be expelled if they do not stop their membership in CSOs. For example, since 2005, all five leaders of the youth wing of the BPF party were expelled from university immediately after they were elected to the position (and this practice continued in 2017-2018)<sup>5</sup>.

The state from time to time takes restrictive measures against leaders and heads of CSOs, for example, banning entrance of representatives of foreign CSOs to Belarus, deporting CSO leaders who are foreign citizens or banning activists to leave the country.

The stipulated by law measures to AML/CTF are disproportionate and are based neither on risk assessment nor on respect for human rights standards. Laws on combating extremism and extremist propaganda contain vague wordings, allowing too broad interpretations, which creates possibilities for misuse of charges with extremism (especially when it comes to charges with imparting of extremist through publications in

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<sup>5</sup> Expulsion of students as a tool of control (2019) by Sasha Kuzmich, Belarusian Students' Association <http://balticworlds.com/expulsion-of-students-as-a-tool-of-control/> or "All the five leaders of the "BPF Youth" were expelled from universities" (in Belarusian) <https://euroradio.fm/use-pyac-lidarau-moladzi-bnf-adlichanyya-z-vuchoby>

internet or through importing of printed materials to the country). The law on AML/CTF stipulates that financial transactions are subject to special control as risky regardless of the fact if they were carried out or not, if they do not comply with the objectives of client's activity stipulated by CSOs founding documents or character of CSOs activity.

Since 2018 Belarus has been undergoing the procedure of FATF evaluation within the EAG system. The adopted on May 23, 2019 in first reading draft law<sup>6</sup> stipulates that the Ministry of Justice should determine the content, procedure for publication by foundations and public associations of reports on their activity and other data, required for taking AML/CTF measures and to prevent funding of proliferation of weapons of mass destruction.

### **Recommendations:**

- Introduce the possibility for CSOs to appeal against any action of state bodies in court, which, in opinion of CSO, violates its rights or rights of its members.
- Introduce the risk-based approach to the legislation on AML/CTF, which takes into account non-involvement of CSOs into criminal activity.

## **9. State support**

The legislation and practice provide for two main forms of state financial support of CSOs – direct funding of certain CSOs from the budgets on non-competitive basis and social contracting. There is also a special procedure for funding of sport organizations. There are no transparent and competitive procedures for provision of state funding to CSOs. The only exception is social contracting, however it is available to a narrow circle of social CSOs, requires a lot of additional financial contributions from other resources and its application is subject to serious restrictions.

CSOs, receiving funds from the state, participate in elections campaigns in support of the pro-governmental candidates, including in presidential campaigning.

General benefit for all CSOs is exemption of membership fees and donations from individuals who permanently reside in Belarus and Belarussian legal entities from income tax.

The tax legislation does not provide for general benefits to corporate donors of CSOs. Donations from corporate donors cannot be anonymous and should be formalized through a written contract. Crowdfunding platforms sometimes block fundraising for some projects because of their negative attitude towards the authorities. Income tax deductions for donors are set only for donations to a narrow range of CSOs, which are enumerated in the Tax Code by name. There are no tax deductions for individual donors.

### **Recommendations:**

- Work out with participation of affected CSOs and adopt the law (conception) on cooperation between state agencies and non-state NCO.

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<sup>6</sup> Draft law - <http://pravo.by/document/?guid=3941&p0=2019008001>

- Enshrine the provisions on non-discriminatory and open system for funding of non-state NCOs from the state budget on a competitive basis.
- Introduce the mechanism of income tax percentage designation to CSOs for individuals.
- Specify the definition of social entrepreneurship by law and set tax benefits for social enterprises.
- Introduce the practice of public (participatory, initiative) budgeting (civil participation budget) at the local level.

## **10. Government-CSO Cooperation**

Framework state documents on development of CSOs or on cooperation between the state and CSOs don't exist in Belarus.

Public councils with participation of CSOs are widely spread. However, they do not have single standards and regulation principles. Establishment of councils is initiated by state agencies, not by CSOs.

### **Recommendations:**

- Adopt a framework legal act on cooperation between CSOs and the government.
- Establish by law the definition of a public council, transparent procedure for establishment of councils on the initiative of CSOs and inclusion of CSOs into them, as well as model rules of procedure.

## **Conclusions**

Successful implementation of these measures will only be effective if there is a political will to achieve such a result. Otherwise, achievements of this recommendations will be fragmentary, they risk being formal and their positive influence may be downplayed with worsening of other components of the legislation or practice.

### **Annexes:**

1. [Freedom of association and legal conditions for NCOs in Belarus - Review Period: 2016](#)
2. [Freedom of association and legal conditions for NCOs in Belarus - Review Period: 2017](#)
3. [Freedom of association and legal conditions for NCOs in Belarus - Review Period: 2018](#)
4. [Semi-annual review "Changes in Legal Environment for NCOs and Freedom of Associations in Belarus" covering the first half of 2019](#)