



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

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Main Trends in Development of Non-Commercial Organizations Sector

In 2016 development of civil society took place under conditions of external for non-governmental sector trends, which had been observed earlier - reorientation of donors' policies on primary cooperation with state actors; continuing, although mostly formal, thaw in relations between the state and civil society; changes of economic basis for existence of civil society organizations with the increased role of internal sources of funding.

In 2016 main legal changes, affecting non-commercial organizations' interests, concerned legal regulation of the receipt of foreign funding. All existed earlier legal restrictions and law enforcement practices on all aspects of establishment and activity of NCOs remained without significant changes.

The Decree of the President №5 of August 31, 2015 "On foreign gratuitous aid", which came into force on March 4, 2016, maintained in general the previous order for the receipt of foreign donations, requiring their obligatory registration. Criminal responsibility for violation of this order remained as well. However, a range of ambiguities and contradictory interpretations, concerning implementation of the new decree, caused significant difficulties for the activity of NCOs, receiving foreign funding. Only few of these problems were solved within a year.

The order for state registration of public associations, their organizational structures and foundations remains complicated and burdensome (in comparison with the order for registration of commercial organizations as well). It allows state bodies to arbitrarily refuse registration to any organization, which is being established, on insignificant grounds. According to the existing in Belarus practice, law enforcement bodies refused registration to a large number of public associations, which submitted documents for registration in 2016.

The ban on NCO's activity without state registration remains. The breach of the ban is subject to criminal liability under Article 193¹ of the Criminal Code, which provides for the punishment of up to two years' imprisonment. Despite the absence of new criminal cases under this Article, the very existence of the ban and the threat of punishment significantly restrict freedom of association and opportunities for NCO activities. At the same time, at least one case was noted in 2016, when part 2 of the Article 193 of the Criminal Code "Organization or management of public association, religious organization, infringing on personality, rights and duties of citizens" was applied. According to the

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article, conduct of such an activity within the framework of an unregistered public association is an aggravating circumstance, increasing the liability (See the last section of the monitoring).

Ahead of the parliamentary elections 2016 and in the course of the election campaign, facts of pressure on representatives of local NCOs, whose representatives participated in the election campaign, were recorded.

A symbolic sign, which marked change of the state's attitude towards civil society organizations, was inclusion of Alena Anisim, deputy chairperson of the public association "Francysk Skaryna Belarusian Language Society", into the lower House of the Parliament. When earlier only loyal to the state or directly controlled by the state public associations were represented in the House of Representatives (Federation of Trade Unions of Belarus, Belarusian Union of Women, unions of veterans, Belarusian Republican Youth Union, "Belaya Rus"), now, for the first time after a long break, the person from traditionally democratic, independent from authorities part of public sector is a deputy.

However, the mentioned changes in the state's attitude towards civil society organizations can't be considered structurally sustainable: they are in the field of situational change of state policies, caused by external influence, and don't have institutional dimension. In particular, it must have been a political decision of authorities to let the FSBLS representative (as well as Hanna Kanapatskaya, a representative of political opposition) in the Parliament without changing the character of election procedures, which don't provide for fair and open counting of votes. There were no positive changes noted either at the legislative level or at the level of law enforcement practice, which would allow to consider the above-mentioned trend of improvement of NCO self-sensation in Belarus as institutionally substantiated.

Many foreign partners of Belarusian NCOs, which traditionally act as customers or provide donor support for their activities, more and more reorientate their strategies on cooperation with the state. Donor organizations have started considering connected with the state entities (or direct state organizations) as direct recipients of foreign funding. A negative trend is certain foreign donors' readiness to pay profit tax on foreign gratuitous aid, received by Belarusian NCOs in the form of monetary funds, which hasn't been exempted from taxes.

Changes in donors' policies furthered the growth of NCOs, established in the Republic of Belarus with direct or indirect participation of state bodies (so-called GONGOs).

Changes in donors' policies, together with economic crisis and decline in population's income, urged NCOs to search for new sources of funding: one part of NCOs adjusted their actions to the changed approaches of external donors, which is a traditional and extensive approach; another part of NCOs, which mainly work in social sphere, started considering the possibility to introduce practices of social entrepreneurship and other means, allowing to receive funds from direct target groups, including crowdfunding. It's remarkable that the mentioned innovations are used now only in those fields, where the state hasn't attempted to introduce special regulations. As often happens in Belarus, although absence of legal regulations (for example, in charity, crowdfunding and social entrepreneurship) creates problems for NCOs, but it's still the lesser evil than introduction of special regulations on social phenomena, which leads to inevitable concomitant restrictions.

The mentioned necessity to build the activity on the basis of revenues from internal sources hasn't lead to the growth of membership-based NCOs: public associations still remain a less popular form for establishment of new organizations in comparison with institutions. This can be explained by the easier procedure for registration of institutions, as well as their greater opportunities for receipt of material resources through rendering of services to various groups. Some public initiatives legalize their activity in the form of commercial organizations, engaged in social entrepreneurship - conditions for their activity remain better than for public associations.

These trends, together with development of Internet-communication and social networks, has led to NCOs' increased attention to the issues of their public image, which has both advantages and disadvantages. On the one hand, it makes them closer to their target groups. On the other hand, we can notice the increased number of events, aiming at attraction of media and public attention to organizers and problems instead of achievement of actual results and changes in the society¹.

Directions of numerous NCOs' activity change as well: social component is brought into the foreground (including protection of social rights or infringed interests of local groups).

Practice of Refusals to Register Non-Commercial Organizations

Legal conditions for establishment of new public associations and foundations still remain unfavorable in Belarus, both at the level of legislation and at the level of law enforcement practice. The legislation still contains the ban on activity of associations without state registration and, in accordance with Article 193¹ of the Criminal Code, stipulates criminal responsibility for the violation of this norm and punishment of up to two years of imprisonment. The procedure for registration of public associations and foundations remains complicated and burdensome (financially as well) both in comparison with other European countries and compared to the procedure for registration of commercial organizations in Belarus. The main legal problems in this area are the following: 1) wordings of the norms on the grounds to refuse registration are indistinct and diffuse, which provides the opportunity to refuse registration due to insignificant technical drawbacks in the layout of the submitted documents; 2) requirement that there must be at least 50 founders to establish a national public association; 3) obligation to have legal address in office premises (nonresidential); 4) state fee for registration of national public associations is twice higher than the fee for registration of commercial organizations.

Carrying out of the stipulated by law complicated procedure for establishment of NCOs doesn't guarantee registration of a public association or foundation. Registering organs (the Ministry of Justice or regional administrations of justice) examine the issue of state registration for these organizations not from juridical standpoint, but from political one: only those organizations, whose existence is recognized to be beneficial and reasonable for the state or which are directly or indirectly initiated by the state, are registered; other initiatives receive refusals of registration on farfetched and insignificant grounds.

¹ The mentioned trend was especially emphasized by the participants of expert meeting, held by the International Educational NGO "Act" in September 2016, see "Civil society organizations of Belarus: 8 trends of 2016" <http://www.actngo.info/article/organizacii-grazhdanskogo-obshchestva-belarusi-8-tendenciy-2016-goda>

In particular, in 2016 the following public associations were refused registration: historical and educational public association “Heritage”, public association “Center for Gender Studies “Rose””, public association of youth “Youth of Revival”, social and educational public association “Peaceful Initiatives and Solutions”, republican public association “Committee on Support of Entrepreneurship “Solidarity””, public association “Christian-Democratic Movement”, republican research and educational public association “Tell the Truth”, social and educational public association “Gender Partnership”, republican public association “For Statehood and Independence!”, social and educational public association “Solidarity Movement “Together””, public association of youth “Intermarium” and others. Some of the mentioned organizations have for many years unsuccessfully tried to get registered and repeatedly submitted their documents for registration.

For example, in March 2016 the Ministry of Justice refused to register the republican public association “For Statehood and Independence!”, one of whose founders was Sviatlana Aleksievich, the Nobel Laureate in Literature. According to the founders, they were refused registration for formal reasons: according to the Statute, the organization is called the RDEPA “For Statehood and Independence!”, while in the list of founders the name is written as PA “For Statehood and Independence!”.

On March 10, 2016 the Supreme Court dismissed the appeal from the human rights public association “For Fair Elections” against the decision of the Ministry of Justice to refuse state registration of the organization. This was the organization’s fourth attempt to get registered. This time the following violations were pointed out: abbreviations in the bank receipt, received after payment of a state fee for registration of organization, and improper layout of the letter of guarantee on the lease of office premises for a legal address. In 2014 the UN Human Rights Committee recognized the decision of the Ministry of Justice to refuse registration of the human rights public association “For Fair Elections”, made in 2011, to be violating the norms of the International Covenant on Civil and Political Rights. Other UN Human Rights Committee’s conclusions, that certain decisions to refuse registration or liquidate public associations are violations of international norms on freedom of association, remain disregarded, in respect of the issue of registration of the public association “Human Rights Center “Viasna”” as well.

The Mahileu Regional Administration of Justice’s decision of June 16, 2016 on refusal to register the public association “Center for Gender Studies “Rose”” was a typical example of the discriminatory practice, violating citizens’ right to establishment and participation in associations. The refusal of registration was based on the fact that allegedly not all provisions of the organization’s charter were in line with the legislation. In particular, the organization’s intention to eradicate gender discrimination was named as one of such provisions. “Recognition of gender discrimination in the Republic of Belarus contradicts the norms on equality of men and women, which are set forth at the legislative level,” – was stated in the decision of the administration of justice. The registering organ also considered that the Gender Center “Rose” members’ intention to conduct gender monitoring, collection and analysis of the data on social, economic and other fields of activity in the city contradicted the legislation, as “implementation of gender policies is carried out by respective authorized state organs”. This decision was appealed in the Mahileu Regional Court, but the court upheld the decision to refuse registration, court of the last resort affirmed the decision as well.

On May 27, 2016 the Supreme Court also recognized the refusal to register the public association “Gender Partnership” as justified. The decision was based on similar arguments that the organization can’t set forth struggle against discrimination as one of its purposes in the charter.

In January 2016 the republican public association “Christian-Democratic Movement” was refused registration. With this refusal the Ministry of Justice declared that it’s impossible to establish human rights organizations in the Republic of Belarus. It was stated in the decision on refusal that one of the purposes of the organization’s activity was protection of citizens’ rights and legitimate interests. In the Ministry of Justice’s opinion, “this provision doesn’t correspond to Article 20 of the law, according to which public associations have the right to protect rights and legitimate interests, as well as represent its members’ legitimate interests in state organs and other organizations”. The founders of the organization appealed the refusal of registration in the Supreme Court. However, on March 14, 2016 the Supreme Court recognized the decision as justified.

On January 21, 2016 the Minsk City Court upheld the decision of the Chief Administration of Justice of the Minsk City Executive Committee on refusal to register the cultural and educational public association “New Alternative”. Officials considered that the association’s name contradicted the stipulated purposes and objectives, and that was the reason for refusal. The organization stipulated in its charter the possibility to conduct charitable activity, together with the activity in the fields of culture and education. The registering body considered that as going beyond cultural and educational character of the organization’s activity, set forth in its charter.

Together with claims regarding statutory purposes and objectives of organizations, claims in respect of lists of founders and documents, confirming that organizations have legal addresses, are also common grounds for refusals to register public associations. For example, on October 4, 2016 the Ministry of Justice refused to register the republican public association “Committee on Support of Entrepreneurship “Solidarity””, as it had allegedly submitted for registration the invalid list of founders of the public association of youth “Modern View”. The Ministry explained its conclusion, that the list of founders was invalid, with the fact that it didn’t contain some founders’ home phone numbers and there was a misprint in the address of one of the founders. On December 13, 2016 the Supreme Court recognized the refusal of registration as justified and upheld it. Even before judicial examination of the appeal against refusal of registration, the founders of this public association had repeatedly submitted documents for registration. However, on December 9, 2016 the Ministry of Justice again refused to register the organization.

On March 16, 2016 it was found out that the Ministry of Justice refused to register the social and educational public association “Solidarity Movement “Together””. It was stated in the letter of the Ministry of Justice that the list of association’s founders didn’t contain the complete data about the founders, in particular, it lacked the founders’ business phone numbers. Besides, they considered the information about one founder’s place of employment to be inadequate (individual entrepreneur didn’t state that he was in the process of liquidation).

On January 5, 2016 the Chief Administration of Justice of Minsk Region refused to register the public association of youth “Intermarium”. Lack of the association’s legal address was named as the reason for refusal, despite the fact that the founders had submitted the stipulated by law letter of guarantee on lease of office premises, required for registration. According to the founders, the entrepreneur, who leased the premises for the NCO, which was being established, withdrew his

letter of guarantee under the pressure from state organs. On March 2, 2016 the Minsk Regional Court recognized this refusal of registration as justified, despite the fact that applicants had submitted the confirmation that the organization was located at the new legal address.

Increase of the number of registering organs' groundless claims in respect of names of public associations, which are being established, has become a new practice.

On July 25, 2016 the Ministry of Justice refused to register the social and educational public association "Peaceful Initiatives and Solutions" (whose acronym is the SEPA "PIS", which in Russian language stands for "peace") for the reason that, allegedly, its acronym unlawfully contained abbreviation.

The decision of June 3, 2016 on refusal to register the cultural and educational public association "Heritage" was also based on unlawful claims in respect of the name of the organization. The appeal against the decision was lodged, but on July 29, 2016 the Hrodna Regional Court recognized the refusal of registration as justified. On September 20, 2016 the Supreme Court dismissed the appeal as well.

As earlier, institutions remain the most attractive organizational and legal form for legalization of non-commercial organizations in Belarus. This is because of the simple procedure for establishment of institutions and applicational principle for registration of such a legal entity, when institutions are registered on the same day, when the documents are submitted. Moreover, registration can be refused only on clearly established grounds, which are easy to eliminate.

The procedure for approval of names, which, according to legislation, founders of institutions are required to pass in organs of justice prior to submission of documents for registration, still remain the only obstacle in the process of establishment of institutions. Lack of criteria for classification of the character of activity, subjectivity of the definition "similarity up to mix" provide the opportunity for refusals to approve the names of institutions. At the same time, the practice of refusals to approve the names of separate institutions is now not so widespread as it was observed earlier. In 2016 constant refusals to approve various names of the human rights center "Identity" didn't allow it to get registered in the form of institution. The same happened to several other institutions.

Besides the procedure for registration, institutions also have other legal advantages in comparison with public associations: they are not restricted in the territory of their activity, they are allowed to conduct entrepreneurial economic activity, and they are not subjects to the requirement on annual reporting to registering state bodies.

All these factors lead to annual increase of the number of registered private institutions. However, the procedures of internal democracy in decision-making are not mandatory for institutions, their activity could completely depend on one person – the founder. Only few institutions introduce norms on collective governance, transparency and accountability into their statutes. Consequently, the mentioned trend of institution domination poses a long-term threat to sustainability and healthy condition of the Belarusian civil society, which arouses many concerns.

It is a widespread practice in respect of institutions, when registering organs offer founders to make decisions on voluntary liquidation of their institutions. Emergence of this problem is caused by the drawbacks in record of institutions in classification of tax authorities, as they can be potentially

referred to commercial organizations, which, in accordance with the legislation, could be liquidated for the lack of entrepreneurial activity within a year. As a result of these drawbacks in classification, tax authorities automatically send letters with proposals of voluntary liquidation to institutions, which, due to their non-commercial character, are not obliged to conduct entrepreneurial activity. Dozens of such cases are recorded annually. In separate cases, the processes on compulsory liquidation are launched.

Statistics on Registration of Non-Commercial Organizations

According to the data of the Ministry of Justice², as of January 1, 2017 there are 2731 public associations registered in Belarus. This number includes 221 international, 730 republican and 1780 local public associations, 36 unions (associations) of public associations, 172 foundations (16 international, 6 republican и 150 local ones), 7 republican state and community associations. The statistics on registration of private institutions is not available to the public.

There were 2 new republican trade unions (established as a result of reorganization in the form of merger), 116 new public associations (2 international, 17 republican and 97 local ones), 4 unions (associations) of public associations and 16 new foundations (1 international and 1 republican ones) registered in Belarus in 2016. In comparison with 2015, the total number of registered public associations increased by 2,5% (from 2665 as of January 1, 2016 to 2731 as of January 1, 2017). The number of registered foundations increased by 4,9% (from 164 as of January 1, 2016 to 172 as of January 1, 2017).

When it comes to areas of their activity, the sustainable trend of the domination of physical culture and sports public associations among other registered organizations remains – there are 745 such public associations acting in the country. As concerns other areas: there are 389 charitable public associations; 320 public associations of youth, including 26 children’s ones; 232 educational, cultural and leisure-time ones; 113 public associations of citizens, representing national minorities; 93 public associations of war and labour invalids, veterans; 85 scientific and technical ones; 80 public associations of supporters of protection of nature, historic monuments and culture; 53 creative ones; 32 public associations of women and others.

It’s remarkable that growth of the sector of charitable public associations almost stopped in Belarus. When in 2012 there were more than 400 charitable public associations, in the next few years only a few were registered, some of them were liquidated for various reasons and, in general, their total number steadily decreased.

In general, despite unfavorable conditions for registration of foundations and public associations, this segment of NCOs has shown the sustainable trend towards increase of their number starting from late 2000’s, when the rate started to grow from the frozen level of “2200 and a few public associations”. However, such growth hasn’t abolished the fact that only loyal to the state organizations are registered, as well as political censorship and arbitrary refusals of registration.

² About the results of the work of organs of justice on state registration of public associations, foundations and other non-commercial organizations in 2016. <http://minjust.gov.by/ru/news/909/>

Numerous Belarusian organizations have been unsuccessfully submitting documents for registration and acting in the regime of almost permanent organizing committees for decades.

The activity of state bodies and organs of local governance on initiation of establishment of close to authorities non-commercial organizations (GONGOs) has brisked up lately. The aim is to make them formal participants in the projects of international technical aid in order to show public participation in implementation of these projects, which is often a fraud.

Increase of Public Associations in Belarus

	October 13, 2003	January 1, 2004	January 1, 2005	January 1, 2006	March 1, 2007	January 1, 2008	January 1, 2009	January 1, 2010	January 1, 2011	January 1, 2012	January 1, 2013	January 1, 2014	January 1, 2015	January 1, 2016	January 1, 2017
<i>Number of newly registered public associations (based on results of preceding year)</i>	94	155	61	85	100	94	-	94	134	118	111	70	86	106	116
<i>Totally registered public associations in the country as of the date specified</i>	2248	2214	2259	2247	2248	2255	2221	2225	2325	2402	2477	2521	2596	2665	2731

Increase of Foundations in Belarus

	January 1, 2008	January 1, 2009	January 1, 2010	January 1, 2011	January 1, 2012	January 1, 2013	January 1, 2014	January 1, 2015	January 1, 2016	January 1, 2017
<i>Number of newly registered foundations (based on results of preceding year)</i>	9	9	8	14	21	22	11	11	11	16
<i>Totally registered foundations in the country as of the date specified</i>	64	75	84	99	119	139	145	155	164	172

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Changes of Legislation Affecting NCOs

In 2016 there were no significant changes in the framework legislation, regulating activity of various forms of NCOs. A range of innovations and discussed draft normative legal acts affect separate areas of NCO activity: creative unions and cultural and educational organizations (the Code on Culture, which came into force on February 3, 2017); organizations of informal education (new version of the Code on Education, which is now being discussed); organizations, protecting animals' rights (the Law of the Republic of Belarus "On treatment of animals", prepared for adoption by the Parliament in 2017; the state initiated public discussions of the draft law in the spring 2016).

The main legislative change, affecting the whole sector, was coming into force of the Decree №5 "On foreign gratuitous aid" on March 4, 2016. It approved the Regulations on the procedure for receipt, record, registration and use of foreign gratuitous aid, control over its receipt and intended use, as well as procedure for registration of humanitarian aid. As a result of adoption of the Decree №5, significant changes in the procedures for receipt and registration of foreign gratuitous aid took place. In practice, the Decree improved the conditions for state organizations as recipients of foreign aid. However, it created additional difficulties for NCOs due to gaps in regulations and inconsistency of practices of the Department on Humanitarian Activity, when it comes to interpretation of the norms, set forth in the decree, in the process of registration of foreign aid.

Coming into force of the Decree №5 caused the following main problems³. Authorization-based order for the receipt of foreign aid remains, as well as restrictions on purposes, it is attracted for. Despite certain broadening of the list of permitted purposes, it still lacks such important objectives as human rights, promotion of healthy lifestyle, gender equality, protection of animals and other aspects of NCOs' activities. Foreign gratuitous aid for the purposes, which are not specified in the list, can be received only by the decision of the Property Management Directorate of the President of the Republic of Belarus (when it comes to the receipt of aid, which exceeds 500 basic units, the Directorate can make such a decision only with the approval of the President).

The current system of registration of foreign gratuitous aid provides the opportunities to refuse registration of any aid from abroad on the basis of a subjective approach. It doesn't favor attraction of foreign funds into the country, which would allow to reduce the burden on budget financing and solve certain problems in social security, health care, environmental protection, education and other important spheres of life of the Belarusian society. Moreover, in accordance with the current legislation, the documents, required for registration of foreign gratuitous aid, are submitted to the registering organ only after money have been transferred to the legal entity's account. This provision causes a range of problems for NCOs, in case registering organs refuse to register foreign gratuitous aid or register it, but don't exempt it from taxes, in particular, due to the necessity to return such aid and conflict legislative norms on discharge of income tax.

The legislation doesn't set the minimum amount of foreign aid, which can be received by NCOs without registration (at the same time, individuals can receive aid without any restrictions, in case they pay income tax). There is a ban on the receipt of foreign gratuitous aid for the conduct of seminars and other forms of agitation and propaganda activity. Moreover, interpretation of the

³ Main Issues of Legislation on Foreign Donations http://www.lawtrend.org/wp-content/uploads/2016/07/Main-Issues-of-Legislation-on-Foreign-Donations_eng.pdf

terms “seminar” and “agitation and propaganda activity” are ambiguous and often equivocal. Regulation of the issues of income tax exemption and declaration of funds, received as foreign gratuitous aid, are unclear. Necessity to get opinion letters from respective state bodies for registration of aid; requirement to submit the purposes of the use of property, received as aid, after the end of the project for approval by the Department on Humanitarian Activity; lack of criteria for distinction of foreign gratuitous and foreign technical aid; constantly changing requirements of the Department on Humanitarian Activity in respect of documents, submitted for registration of foreign gratuitous aid – all this caused significant difficulties for the activity of NCOs, which receive foreign gratuitous aid, in 2016. Only few problems, gaps and differences in interpretations were solved by the Department on Humanitarian Activity in the course of its practical work and elucidation.

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

Importance of foreign financial aid for the Belarusian state is emphasized by the fact that the Coordination Council with participation of representatives of state bodies, international technical assistance donors and non-governmental sector was established at the Council of Ministers in 2016. A representative of the Belarusian Helsinki Committee was also included in the Coordination Council. This consultative body, established on the trilateral basis with participation of representatives of the donor community, state and civil society, can become the arena for conciliation of the interests of key stakeholders, aiming at ensuring efficiency of the programs of international technical aid for the Republic of Belarus.

At the meeting in December 2016, the working group of the Coordination Council made the decision on necessity to get the public and international technical aid donors involved in consideration of the draft passport of the National Program for International Technical Aid until 2020, which was worked out by the Ministry of Economy in accordance with the Resolution of the Council of Ministers of November 21, 2003 №1522 “On some measures to implement the Presidential Decree of October 22, 2003 № 460”. The strategic aims of the National Program are creation of favorable conditions for attraction of gratuitous resources, ensuring of the implementation of the Agenda for Sustainable Development of the Republic of Belarus until 2030, as well as strengthening of the role and authority of the Republic of Belarus in the international community. In practice, the mentioned four-year program is the list of projects with budgets, which Belarus would like to finance at the expense of foreign donors and international organizations. At the same time, together with the positive trend, set by establishment of the Coordination Council, it’s better to make its activity public, as now it is not.

The Law of October 18, 2016 № 432-3 introduced amendments and additions to the Tax Code of the Republic of Belarus - the international public association “SOS Children’s Villages” was included in the list of organizations, the transferred legal entities’ profit to which (in the amount of no more than 10 percent of gross profits) is exempt from the profit tax.”.

Changes of Material Basis for NCO Activity

Besides legal aspects of attraction of foreign funding, there are other issues of financial basis for NCO activity. Political thaw in relations between the official Minsk and the West led to changes in donor strategies of main sources of foreign aid for Belarus: despite the fact that the amount of aid, allocated for Belarus, was increased (it was also stated by the European Union, which is the main source of aid⁴), flows of funds were restructured for the benefit of state organs and bodies, connected with them (universities, loyal and controlled by the state NCOs, including those specially established for simulation of public participation in implementation of projects, especially at the local level).

The opened up opportunities for cooperation between Belarus and the West have in many respects become a more attractive area for attraction of donor funds – integration into the Bologna Process, preparation for joining the WTO, economic reforms and even aspects of human rights activity – many areas, in which the state expressed its consent to implement or at least study international practices, have become the priority for allocation of donor funds.

Some NCOs started adapting to such a situation in a traditional way, changing their tactics of fundraising in the foreign market or reorienting the focus of their activity on the projects of cooperation with the state, trying to safeguard access to foreign funding.

Other NCOs (especially small organizations, new startups and public projects, which don't have the status of a registered legal entity) reorientated their tactics for attracting funding on internal market. Development of crowdfunding projects continued in Belarus in 2016. It's remarkable that the scales of projects, financed by Belarusians, are growing: that includes activity of traditional organizations, publishing projects (books, movies, cartoons), educational seminars, public startups and even collection of funds for sportsmen to be able to participate in international competitions. In contrast to previous years, charity has stopped being the absolutely dominant area for collection of citizens' donations. New initiatives, not related to helping certain people, have entered the crowdfunding market. Collection of funds for victims of state repressions, due to numerous fines to participants of rallies, became a significant phenomenon for the human rights sector. Talaka.by and Ulej.by remain the main platforms for collection of donations for public projects. Besides collection of financial resources, they started working as platforms for search of other resources for implementation of projects (search for partners, crowdsourcing).

The online magazine "Imena" ("Names"), launched in April 2016, has become the first Belarusian media, which is fully financed by its readers. Published in the magazine stories about people, who need help, draw a wide public response and find support of the society. Collecting money on the platform Talaka.by, "Imena" has broken at least two crowdfunding records – they collected more than 20 000 USD for the activity of the magazine and 34 600 USD for the purchase of enteral feeding supplies for a children's nursing home. Money for publishing of the book about Piotr Marcau, a Belarusian public figure and journalist, was raised through crowdfunding. The "Nasha Niva" newspaper raised money for its activity in the field of journalistic investigations through crowdfunding as well.

⁴ Head of the EU Delegation to Belarus: the European Union will increase aid to Belarus for modernization of economy. <https://news.tut.by/economics/487849.html>

Raised through crowdfunding funds can't be compared to the amounts of foreign funding in Belarus: foreign funding, received either directly or via intermediary umbrella organizations and major sectoral NCOs, remain the main source of funding for the majority of NCOs. However, crowdfunding has become a new and promising alternative for specific projects on creation of specific products, which there is a clearly specified public demand for.

Success of crowdfunding platforms is partially caused by the lack of comprehensive legal regulations of this phenomenon. At the same time, existence of the provisions on the necessity to register funds, received by NCOs from abroad, creates significant difficulties for their development.

Development of social entrepreneurship topic has become a less evident for the society, but significant for the sector area of reorientation on internal sources of funding. It should be noticed that Belarusian public initiatives have long ago started commercializing their activity, striving for a certain level of self-repayment of their products and services. Distribution of national symbols and products with national ornament (or simply with national colouring), including clothes, has long ago become the field of activity for not only craftsmen, but also for special-purpose organizations, which can exist in the forms of both NCOs and commercial enterprises. In 2016 this process was developing ascendingly, social entrepreneurship started formulating in the first place its theoretical basis. Moreover, it has appeared that, under the conditions of economic crisis, some organizations are interested in positioning themselves as subjects of social entrepreneurship. Social entrepreneurship has stopped limiting itself to the image of enterprises, established by NCOs, and started gaining its own significance and value.

The majority of the projects, which are supposed to be implemented within the framework of the 8th Republican Social Projects Contest "Social Weekend", which was held in 2016, act at the junction of crowdfunding, traditional NCO tactics and social entrepreneurship.

Enthusiasm towards crowdfunding practice and prospects of social entrepreneurship approaches contrasts with certain disappointment in respect of slow development and indistinct effects of state social order, which has started being implemented in Belarus from the introduction of respective amendments to the legislation in 2012. Hopes, that emergence of the first mechanism for distribution of state funding among NCOs on the basis of competitive bidding in the Belarusian legislation would drastically change the structure of financing of social NCOs, didn't come true. In practice, this mechanism is available to only few organizations, which are able to meet complicated requirements for the receivers of state social order and are politically impeccable for the authorities (de facto dependent on the authorities). The number of agreements on state social order is increasing, but in 2016, like in 2015, the majority of such agreements are concluded with one organization, which is the Belarusian Red Cross Society, as well as with its regional branches. For example, in the first quarter of 2016, 23 out of 30 agreements on state social order were concluded with this very organization (and 4 agreements with the Belarusian Society of Visually Handicapped People).

Nevertheless, some NCOs expect that state social order practice will be expanded to new areas, in particular, to struggle against socially significant diseases⁵. This is stipulated by the planned

⁵ State social order: analysis of practice and proposals on improvement.

http://www.actngo.info/sites/default/files/files/gsz_praktika_i_predlozheniya.pdf

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amendments to the Law "On prevention of spreading of diseases, posing a threat to public health, human immunodeficiency virus", which will allow Belarus to receive another grant from the Global Fund to Fight AIDS, Tuberculosis and Malaria.

Orientation of institutions, including newly-established ones, on service contract work as subjects of rendering of services is a special area of diversification of NCO flow of funds. In addition, not only Belarusian residents, but also foreign contractors act as customers of NCOs' services. Unfortunately, this area of fundraising is unavailable to public associations, which, in accordance with the legislation, are banned to conduct direct entrepreneurial activity without establishment of a separate legal entity.

Elements of Public Dialogue

In 2016 the state diverged from its policy of total rejection of public initiatives. Vice versa, it showed its openness for cooperation in some areas, including such a sensitive area as protection of human rights. However, often NCOs had an impression that such cooperation is only formal. They managed to achieve true, beneficial for the society results only in few cases. Nevertheless, the new format of NCOs' cooperation with the state, though almost not institutionalized, has become one of the most important factors, which predetermined changes in NCO activity.

According to experts⁶, a lot of large-scale forums and conferences, organized by NCOs, were held in 2016: those, which were earlier held abroad, are now held in Belarus without negative consequences; high ranking state officials participate in prominent NCO events more often; intersectoral dialogue has reached a higher level. Public associations were involved in discussions on amendments to the legislation and the dialogue between Belarus and the European Union at various levels. At the same time, competent Independent Institute of Socio-Economic and Political Studies (IISEPS) announced that it terminated its activity. Experts have noticed that, under the conditions of economic crisis, the state sometimes shows formalized performance of the agreements with NCOs and doesn't undertake repressive actions against civil society representatives. However, this thaw is formal and superficial, as the state's attitude towards civil society hasn't conceptually changed. New mechanisms of cooperation haven't emerged, and existing mechanisms (for example, public councils) have already shown their low efficiency. Moreover, the undertaken earlier repressive actions against certain activists remained in force: in October 2016 Elena Tonkacheva, the Chairperson of the Board of Legal Transformation Center (Lawtrend), was denied reduction of the term of her entry ban to Belarus⁷; Mikhail Zhamchuzhny, the founder of the institution "Platforma Innovation", which was involved in protection of prisoners' rights, and Andrei Bandarenka, the head of this organization, remained imprisoned.

Intensification of initiative groups' and nonassociated activists' activity has been noticed. In 2016 the number of events and campaigns, organized and supported by ordinary citizens, not belonging

⁶ Educational NGO "Act" in September 2016, see "Civil society organizations of Belarus: 8 trends of 2016" <http://www.actngo.info/article/organizacii-grazhdanskogo-obshchestva-belarusi-8-tendenciy-2016-goda>

⁷ Background information about the expulsion of Elena Tonkacheva from the Republic of Belarus: <http://www.lawtrend.org/expulsion/expulsion-of-elena-tonkacheva-facts-and-legal-analysis>

to any organization, dramatically increased – both in the capital and regional cities and in small towns, where NCOs are weak or even absent at all.

The positively perceived by the state trend of soft Belarusization has continued. It has emerged in the civil society and become the key characteristic of the state’s cultural policy in 2016, spreading over various areas, including sport.

Another important for human rights organizations event of 2016 was adoption of the 2016-2019 Interdepartmental Plan on the Implementation of Recommendations, Adopted by the Republic of Belarus following the Second Cycle of the Universal Periodic Review within the United Nations Human Rights Council, and Recommendations, Addressed to the Republic of Belarus by the Human Rights Treaty Bodies (approved by the Decree of the Council of Ministers of the Republic of Belarus № 860 of October 24, 2016). Adoption of this plan was positively perceived by the human rights community, however, Belarusian human rights NCOs noticed in their joint statement⁸ that they had submitted their proposals on 22 topics, but proposals on only 17 topics were partially considered in the Interdepartmental Plan. Although a range of measures, stipulated by the Interdepartmental Plan, consider proposals of human rights organizations, they are of unspecific character, they don’t specify any tangible results and they can’t lead to quality improvement of the human rights situation in Belarus. Human rights defenders also note another significant drawback – the Interdepartmental Plan contains no measures on implementation of recommendations in such important human rights areas as freedoms of speech and association, religious freedoms and social and economic rights.

At the same time, many human rights NCOs search for new areas and new approaches in their activity, though still using monitoring methods and watchdog tactics, struggling against violations of freedoms of speech, assembly and association and emphasizing the fact that there are still political prisoners⁹ in the country. The campaign “Human Rights Defenders Against the Death Penalty in Belarus” not only monitors the situation in this sphere (quickly reacting to new sentences and executions), but also actively popularizes the idea of abolishment of the capital punishment in the society. The Human Rights Center “Viasna” doesn’t lose its focus on violations of civil and political rights, but at the same time works with the topics of struggle against discrimination and social rights (which has become especially topical due to the negative and painful for the society Decree №3 “On prevention of social dependency”, which introduced the fee for being unemployed or not having official income). In 2016 the Belarusian Helsinki Committee not only worked on the problems of the Decree №3 and struggle against all forms of discrimination, but also started working out the topic of “human rights and business”¹⁰. A horizontal approach is a common feature for all these new or

⁸ Joint Position of Belarusian Human Rights Organizations on Adoption of Interagency Plan of Implementation of Recommendations for Belarus from UN mechanisms <http://belhelcom.org/en/news/joint-position-belarusian-human-rights-organizations-adoption-interagency-plan-implementation>

⁹ Despite the fact that the European Union called the release of political prisoners as the ground for lifting of the majority of sanctions against Belarusian officials, Belarusian human rights organizations claim that there are still 2 people imprisoned, condemned for their public activity, who are recognized to be political prisoners, in accordance with the worked out by human rights defenders criteria. They are Mikhail Zhamchuzhny and Aliaksandr Lapicki. <http://spring96.org/en/news/49539>

¹⁰ Business and human rights in Belarus: guideline for business. <http://belhelcom.org/sites/default/files/biz-belhelcom.pdf>

relatively new areas: improvement of the situation with observance or rights is explained not by the change of the state's policy, but by the change of public consciousness or activity of non-state actors.

Despite the fact that many of the above-mentioned trends are of positive character, the actual situation, in which Belarusian civil society operates, includes many factors and events, negatively influencing development of the sector. External conditions don't favor development of NCOs. Problems of previous years, creating unreasonable difficulties for civil society, remain unsolved. In response to any positive phenomena and processes, events, having negative influence, take place.

As earlier, Belarusian authorities reject almost all contacts with the human rights community, represented by organizations, which have for many years failed to get the status of registered in Belarus. In a range of cases, even international bodies support such a nonconstructive selective policy. For example, in March 2016 the Ministry of Foreign Affairs of the Republic of Belarus and the UN Office in Belarus held the conference "Death penalty: overcoming the differences" in Minsk. Representatives of the Human Rights Center "Viasna", one of the key human rights organizations in Belarus, conducting an extensive public campaign on abolition of death penalty, were not allowed to participate. The UN Office in Belarus explained that the Human Rights Center "Viasna" hadn't been invited to the conference, because it didn't have state registration, which contradicted previous decisions of the UN bodies and fundamental principles of this organization. The UN Human Rights Committee qualified the facts, that the HRC "Viasna" had been deprived of state registration in 2003 and further constantly refused to get registered, as violations of the International Covenant on Civil and Political Rights.

The Decree of the Council of Ministers of the Republic of Belarus of October 5, 2016 №802 introduced amendments to the Decree of the Council of Ministers of the Republic of Belarus of March 20, 2012 №247. The new version of the Standard Regulations on the Public Consultative (Expert) Council on Development of Entrepreneurship was also published.

Public discussion of the draft law "On treatment of animals", initiated by NCOs, involved in protection of animals' rights, took place in Belarus from March 29 to April 20, 2016. Despite loudly announced public discussion of the draft law, general conclusions on the results of public discussion were not made and further work on the draft law continued in respective commissions of the Parliament without participation of NCOs. Only representatives of state organs and organizations were allowed to the meetings, devoted to the draft law.

The Regulations on Procedure for Organization and Holding of Public Discussions on Drafts of Environmentally Significant Decisions, Reports on Assessment of Environmental Impact, Record of Adopted Environmentally Significant Decisions was introduced by the Decree of the Council of Ministers of the Republic of Belarus of June 14, 2016 №458 and came into force on July 1, 2016. The Regulations determine organizers of public discussions, their functions, terms and order of access to information about organization and holding of public discussions. The Regulations also contain a separate description of the procedure for holding of public discussions: draft concepts, plans, schemes and normative legal acts; draft decisions on issue of permits; reports on assessment of environmental impact.

Ban on Activity of Unregistered Organizations and Criminal Prosecution

The threat of criminal liability for the activities of an unregistered organization remains one of the most significant restrictions of freedom in Belarus. According to Article 193¹ of the Criminal Code, organization of activities or participation in activities of a political party, another public association, religious organization or foundation, for which there is a valid decision of the authorized state body on its liquidation or suspension of activities, as well as organization of activities or participation in the activities of a political party, another public association, religious organization or foundation that have not passed the established state registration procedure is punished by a fine, or arrest, or imprisonment for up to two years.

As reported by the Belarusian authorities, there have been no convictions under this article since 2011. At the same time, it was recorded that there were at least 18 people, condemned under Article 193¹ of the Criminal Code in 2006 – 2011 (in a number of later cases, criminal proceedings were at first launched, but then suspended until trial). Since 2011 human rights defenders have noted numerous cases, when public prosecutor's offices and other state bodies send official letters of caution to citizens, who are members of unregistered initiatives, warning them that they may be brought to criminal responsibility, if they don't stop their participation in unregistered associations. In 2016 such official warnings haven't been noted, but stigmatization and defamation of unregistered informal initiatives are commonly practiced in Belarus.

On February 17, 2016 the message was distributed among students and other people in V Kontakte social network, in which organizations "Brotherhood of Organizers of Student Self-Governance", "Center for Development of Students' Initiatives" and "Students' Council" were called "unauthorized" and "illegal" youth organizations in accordance with the "reliable information". This message was sent from the account of Viktor Seryi, who represented the Coordination Council of Belarusian State Medical University Student Self-Governance. As a result, monitors of students groups were asked to conduct "preventive talks" and "informational hours", advising students not to participate in activity of these organizations, as their activity is "purposeful deception with elements of anti-national character, conducted by harmful forces". Because of these obviously unlawful actions of the university administration, activists of these registered organizations made an open collective protest appeal.

Besides Article 193¹ of the Criminal Code, there is also Article 193² "Organization or management of public association, religious organization, infringing on personality, rights and duties of citizens" in the Criminal Code. According to Part 1 of this Article, organization or management of political party, other public association or religious organization, whose activity entails violence against citizens, or infliction of bodily harm, or other infringements of citizens' rights, freedoms and legitimate interests, or obstruction of citizens' performance of their state, social or family duties is punished by arrest or imprisonment for up to 2 years. Part 2 of this Article provides for a harsher punishment, which is imprisonment for up to 3 years. Moreover, conduct of the above-mentioned activity on behalf of an unregistered public association is an aggravating circumstance, increasing penalty.

Article 193 is applied quite rarely. It's known for certain that there was one case in 2012, when guilty verdict under this article was delivered and the punishment of three years of imprisonment was imposed (the convict was later released under an amnesty).

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In 2016 the practice of criminal prosecution under Article 193 resumed. In the autumn 2016 fans of the football club “Partisan” Illia Volovik, Vadzim Boika, Dzmitry Tsechanovich, Filip Ivanou, Artsiom Krauchanka and Andrei Chartovich (supporters of left-wing views) were charged of hooliganism, conducted in June 2014 against fans of the football club “Tarpeda” (supporters of the right-wing views). Besides that, Illia Volovik, who, according to the prosecutor, was the leader of associations “Pershakrou”, “Heura”, “New School Band”, “Red White Hunters” and “MRFC” (all these are names of informal movements of ultra-leftist groups), was also tried under Article 193 for management of unregistered groups of football fans. In essence, all of them are Internet groups in social networks, but investigation insisted that Illia Volovik organized the activity of unregistered public associations, using communication in the Internet. Mr. Volovik refused to admit his guilt. On March 10, 2016 the Pershamaiski District Court of Minsk found Illia Volovik guilty under all incriminated articles, including Article 193 of the Criminal Code, and imposed the punishment of 10 years of imprisonment. Moreover, he was awarded the maximum punishment (3 years of imprisonment) for management of unregistered organization.