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NON-PROFIT ORGANISATIONS IN THE REPUBLIC OF BELARUS. LEGISLATIVE REGULATION AND ISSUES OF LAW APPLICATION

The present material is an analysis of the statement of the legislation of the Republic of Belarus for August 1, 2001 in comparison with the law application practice. Base for analysis of law application practice is the consultation activity of the Social Association "Independent Society for Law Research" within the period from 1995 till present.

We kindly ask you to refer to authors when using this material, as well as to source and date of receiving of the material.

1. ANALYSES OF LEGISLATION

Constitution.

Some provisions concerning civic associations are contained in the Constitution of the Republic of Belarus of 1994 with amendments adopted at the Republican Referendum on November 24, 1996. Till present time the result of this referendum are subject of conflict between official authority and united political opposition. By the opinion of opposition (it is also supported by world community) amendments adopted to the Constitution of 1994 by the referendum are not lawful. Our task is not the analysis of this situation because these amendments of Constitution did not touch upon issues interesting for us.

We should note that provisions of the Constitution are declarative and are adjusted by special legislation. The practice of law application (including court practice) is characterised by refusal of application of its articles as standards of direct action.

The Article 33 of the current Constitution guarantees freedom of opinion, conviction and free expression of them to everybody. No one may be forced to express his opinion or to cancel it. Censorship is prohibited, as well as monopolisation of mass media by the state, civic associations or individuals.

The Article 36 of the Constitution fixes everybody's right to freedom of association. There are limitations for judges, prosecutor's office employees, interior officers, the Committee for State Control, Security Services, military servants. These citizens may not be members of political parties and other civic associations that have political goals.

However, according to the Decree of the President of the Republic of Belarus #2 the activity of unregistered civic associations is prohibited. Thus, the right of everybody to freedom of association is under the question mark due to obligatory and permissive order of registration which limits civic activity by the only activity through creation of the juridical person.

The Article 35 of the Constitution contains an important provision for non-profit organisations which stipulates freedom of assembly, meetings, street marches, demonstrations and picketing that do not brake the law and order as well as rights of other citizens.

But according to the current legislation it is necessary to pass quite a long procedure to get an agreement for a planned event. Quite often the importance of a meeting, a demonstration or a march is lost after such a procedure. Moreover, during last ten years a tradition of such events appeared: dates, events, place of holding. Actually official authorities provoke breaking of the order of such events changing their places etc.

The Article 69 of the Constitution grants the right to nominate candidates for positions of members of a legislature to civic associations among other.

According to the Law of the Republic of Belarus "On elections of deputies of Local Deputies' Soviets of the Republic of Belarus" the right to nominate candidates to deputies of Local Deputies' Soviets is granted to political parties registered by the Ministry of Justice of Belarus, to working collectives as well as citizens by mean of collection of signatures. Thus, according to this law civic associations are deprived from the right to nominate candidates to deputies.

According to the Article 36 of the Constitution of the Republic of Belarus everyone has the right to freedom of associations. In addition, the Law of the Republic of Belarus "On Legal Status of Foreign Citizens and Stateless Persons in the Republic of Belarus" dated June 3, 1993 says that foreign citizens and stateless persons in the Republic of Belarus shall enjoy the same rights and freedoms as citizens of the Republic of Belarus. Limitations of rights and freedoms of foreign citizens and stateless persons may take place only in cases when it is necessary for protection of rights and basic freedoms of citizens of the Republic of Belarus, state security, protection of public order and health of the population. However, the Law of the Republic of Belarus "On Civic Associations" grants the right to charter civic associations only to citizens of the Republic of Belarus thus limiting exercise of this right by foreign citizens and stateless persons. Moreover, the Article 14 of the Law of the Republic of Belarus "On Legal Status of Foreign Citizens and Stateless Persons in the Republic of Belarus" dated June 3, 1993 states that the right of foreigners to join Belarusian civic associations shall depend on their permanent residency in the territory of the Republic of Belarus. At the same time, the Law of the Republic of Belarus "On Civic Associations" (Article 2) does not limit the right of foreign citizens to join a civic association.

Types of organisations. Objectives.

From July 1, 1999 a new Civil Code of the Republic of Belarus is put in force. This Code contains a new clause on non-profit organisations what is of course a positive moment in the development of national legislation (there wasn't articles relating non-profit organisations in the previous Civil Code).

According to the new Civil Code legal persons that are non-profit organisations may be established in the form of consumer co-operatives, civic or religious organisations (associations), owner-financed institutions, charitable and other foundations as well as other forms provided for by the legislation. The Civil Code of the Republic of Belarus itself envisages the following types of non-profit organisations:

- 1) consumer co-operatives — are voluntary associations of citizens and legal persons on the basis of membership in order to satisfy economic (property) and other needs of participants to be fulfilled through accumulation of property share inputs of its participants;
- 2) civic and religious organisations (associations) — are voluntary associations of citizens that have united according to the procedure established by law on the basis of their common interests and for satisfaction of their spiritual or other non-economic needs;
- 3) foundations — are non-profit organisations without membership chartered by citizens and/or legal persons on the basis of voluntary property share inputs that pursue social, charitable, cultural, educational or other public benefit objectives;
- 4) institutions — are organisations chartered by an owner to perform managerial, social and cultural or other non-profit functions and financed by him fully or partially;
- 5) unions of legal persons (associations and unions) — are non-profit organisations established by an agreement between commercial organisations with the aim to co-ordinate their entrepreneurial activity as well as for representation and protection of their common economic interests, or associations of non-profit organisations.

Such types of associations as foundations, institutions are new for Belarusian legislation. Despite their being stipulated in the Civil Code of the Republic of Belarus their establishing faces difficulties because of lack of explicitly expressed in the legislation approaches to the registration.

Separate legal acts regulate establishment and activity of such types of non-profit organisations in the territory of the republic of Belarus as:

- political parties;
- civic associations;
- religious organisations;
- professional unions.

The sources of direct regulation of the above listed associations of citizens are: the Law "On Civic Associations" dated October 4, 1994, the Law "On Freedom of Religious Beliefs and on Religious Organisations" dated December 17, 1992, the Law "On Political Parties" dated October 5, 1994, the Law "On Professional Unions" dated April 22, 1992.

According to the Law "On Civic Associations" a civic association is a voluntary formation of citizens created by them on the basis of their common interests for joint implementation of civil, economic, social and cultural

rights. Associations of citizens that pursue different objectives (protection of labour and social and economic rights and interests, satisfaction of religious needs for practising and dissemination of beliefs) are to be established and functioning according to procedures ruled by other legislative acts. The Law also does not envisage a possibility to create civic associations with the purpose to protect political rights (we mean the right to vote, the right to elect and be elected, etc.).



*Participants in an action of communist movement organised for the 83rd anniversary of the October Revolution, Minsk, Nov. 7th, 2000.
Photo: IREX/ProMedia*

It is also disallowed to create civic associations which activity is aimed at overthrow or violent changes of the constitutional regime, a violation of integrity and security of the state, propaganda of war, violence, fomentation of national, social, religious and

race hatred. According to the amendments to the Law "On Civic Associations" it is not allowed to create civic associations which activity may harm physical or mental health of people.

As application of law practice shows, the registering bodies freely overstep limits of objectives for creation of civic association determined by law. According to the data base of "Independent Society for Law Research" registering bodies prejudice legality



Day of Independence, Minsk, July 27th, 1999.
Photo: IREX/ProMedia

of such objectives as "assistance for protection of lawful rights and interests of juridical and natural persons," "promotion of the legal culture," "assistance for intellectual development," "spiritual improvement of personality," "control for legality of elections," "introduction of proposals for improvement of legislation" etc. Registration bodies perceive "intervention in the activity of state bodies," "religious activity" etc.

The legislator does not provide distinction between civic associations that pursue public benefit objectives and those that serve private and mutual benefit of their members.

Also the problem consists in the fact that the legislation doesn't allow legal and natural persons at the same time to unite into a non-for-profit organisation: this undoubted gap in the legislation must be made up by mean of introducing amendments to the Civil Code.

Requirements to the procedure of state registration and membership in a civic association.

According to the Decree of the President of the Republic of Belarus No. 2 dated January 26, 1999, an activity of non-registered civic associations in the territory of the Republic of Belarus shall be prohibited.

According to the amendments to the Code of the Republic of Belarus of 1999 on Administrative Infringements, an administrative responsibility up to administrative detention is envisaged for the activity on behalf of unregistered civic associations.

According to the Law of the republic of Belarus, depending on a territory of activity of civic associations they may have:

- 1) the status of an international civic association;
- 2) the status of a republican civic association;
- 3) the status of a local civic association.

An international civic association is the one which activity covers the territory of the Republic of Belarus (one or several administrative and territorial units) and the territory of one or several foreign countries and has its organisational structures in such a country.

A republican civic association is the one which activity covers all the territory of the Republic of Belarus. A local civic association is the one which activity covers the territory of one or several administrative and territorial units.

As application of law shows, since 1999 registering bodies treat the organisation of events (participation in events of other organisations) by a civic association out of administrative territory where they are created as the infringement of the territory of activity that provoke the warning for infringement of the current legislation and possible forced liquidation of the civic association.

According to the amendments to the Law on "Civic associations" of 1999 for creation and activity if civic associations it is necessary:

- for international civic associations at least 10 founders (members) from Belarus as well as founders (members) from one or several foreign states;
- for republican civic associations at least 10 founders (members) from the majority of 'oblasts' of Belarus and the City of Minsk, it means at least 50 citizens of Belarus;
- for local ones — at least 10 founders (members) in the majority of administrative and territorial units of the area to be covered by activity of an association.

The registration of international and republican civic associations is fulfilled by the Ministry of Justice of the Republic of Belarus.

Local ones are registered by justice departments of the executive committees of the 'oblast' and Minsk city Deputies' Soviets on the place of location of the leading body of the association.

Subsidiary, branches, representative offices and other organisational structures of civic associations of foreign states are registered by the Ministry of Justice.

According to the current law, foreign and citizens and stateless persons may join civic associations if it is provided by their statutes.

As application of law practice shows, the right of foreign citizens to take part in a civic association is re-

stricted. Under the requirement of registering body the member of a civic association may be only foreign citizen — resident of the Republic of Belarus.

According to the new Civil Code of the Republic of Belarus the name of a legal person should contain pointing to its organisational and legal form, and the name of a non-profit organisation should also contain pointing to the nature of its activity. According to the Law of the Republic of Belarus "On Civic Associations" it is not possible to use the words "The Republic of Belarus," "Belarus" or an official name of another country in the name of an association. According to the amendments to the Law of the Republic of Belarus "On Civic Associations" the list of words not to be used in the name of a civic association has expanded. In addition to the above it is not allowed to use the words "people's," "national" in any of their cases.

After considering materials submitted for state registration a registration body should submit them to the Republican Commission for registration (re-registration) of civic associations which in 5 days since receiving materials gives a verdict about the possibility to register a civic association and returns them to the registration body. A decision on state registration of an association should be taken by a registration body on the basis of a verdict of the Republican Commission. A chairperson of the Republican Commission should submit reports to the President of the Republic of Belarus about the work done upon the need and at least once a quarter.

This provision is a newly introduced one, and before the Decree of the President of the Republic of Belarus dated 26 January 1999 was adopted a decision on registration was taken only by a registration body. In practice if the Republican Commission takes a decision on prohibition of registration of an association, the same decision is taken by a registration body.

An application about state registration of an association should be considered by a registration body within a month since the day it is received.

As application of law shows, the average term of the registration of a civic association is 2 months. During last six months this period takes 2 to 4 months.

If registration of a civic association did not take place within the due term or if it was refused according to motifs that are not believed to be reasonable by founder of a civic association, they may challenge the decision taken in court within one month after they receive such a decision. A decision of the Ministry of Justice may be appealed against to the Supreme Court of the Republic of Belarus and decisions of departments of justice of executive committees of 'oblast' council executive committees and of the Minsk City Council Executive Committee — to 'oblast' courts and the Minsk City Court accordingly.

In practice cases about registration in courts are resolved in favour of a registration body. Though decisions to refuse registration are taken on the basis of verdicts of the Republican Commission for registration (re-registration) of civic associations, a registration body becomes a defendant in court. The Republican Commission may not be a defendant in court as it is not a legal person (there is not even a Regulation on Commission).

Commercial activity of civic associations.

According to the Law of the Republic of Belarus "On Civic Associations" a civic association may undertake production and economic activity aimed at achievement of chartered goals and objectives. At the same time the Resolution of the Cabinet of Ministers of the Republic of Belarus "On Approval of the Procedure of Undertaking Economic Activity by Persons that are not Economic Entities" dated 6 August 1996 #513 refers to economic activity only. Both of these legal acts strongly limit the possibilities to undertake economic activity. The Civil Code of the Republic of Belarus includes the right for a civic association to undertake entrepreneurial activity. The notion of entrepreneurial activity implies an independent activity focused on regular profit from using the property, selling things produced, worked out or purchased for sale as well from fulfilment of work or rendering services if these works or services are meant for other persons and are not used for personal consuming.

Civic associations shall use revenues earned by them from economic (entrepreneur) activity for their chartered goals and objectives within the limits established by their statutes if otherwise not provided for by law.



Unknown people are stopping Valery Shchukin,
a participant in "The Chain of Not Indifferent People",
Minsk, May 18th, 2001.
Photo: IREX/ProMedia

Civic associations may perform some types of economic (entrepreneur) activity that require a special permission (license). In this case they are obliged to obtain a necessary permission (license) according to the established procedure. An economic activity performed without such a permission (license) is illegal. Revenues received by a taxpayer from undertaking of prohibited types of activity as well as from licensed types of activity without a proper permission (license) should be withdrawn in favour of the budget as well as the fine in the amount of revenues obtained from such an activity.

As it is shown by practice the following types of activity are the most important ones for civic associations: publication, printing, social services to families and some categories of citizens, provision of household services, hiring foreign workforce to the Republic of Belarus, receiving and distribution of humanitarian aid, dissemination of legal information, providing lawyer's services, organisation of treatment of children abroad, arrangement of concerts. When receiving licenses by civic associations for a certain type of activity a legal collision



may emerge as such licenses may be issued to economic entities only. Civic associations are not such entities according to the Resolution # 513. Accordingly, a licensing body might use this circumstance as a reason for refusal to issue a license.

The issue about the limits of economic activity is very difficult. The Law as well as the other legal acts to not provide a definition neither for production and economic nor for commercial activity.

2. THE RE-REGISTRATION OF PUBLIC ASSOCIATIONS IN THE REPUBLIC OF BELARUS IN 1999. PREPARATION OF GOVERNING AUTHORITIES TO PARLIAMENT AND PRESIDENTIAL ELECTIONS IS A MASS REDUCTION OF THE NUMBER OF PUBLIC ASSOCIATIONS AND CREATION OF "DATABASE OF NAMES" OF CIVIC ACTIVE POPULATION.¹

Legislation.

According to the official version of the authorities the re-registration of the public associations was aimed at putting the public associations' documents in accordance with the Civil Code of the Republic of Belarus entered into force on July 1, 1999 (the part "Legal entities" — on March 1, 1999). In addition, the re-registration had to find and remove destructive sects and institutions existing only in the documents and dealing with capital movement. However, the analysis of the normative acts being in force at the moment when the state re-registration of the public associations was declared shows that both the Civil Code of the Republic of Belarus and the Presidential Decree No.2 of January 26, 1999 did not introduce essential changes of legal frameworks for the public associations (with the exception of membership of legal entities in the associations). From the juridical point of view, the Decree was mainly oriented towards creating of a new law field for the political parties and trade unions. And already in the course of the re-registration (law application practice) new requirements directly for the public associations began to appear. This fact confirms that political motive namely an attempt to limit participation of the active part of the population in political events initiated at that period by the opposition is the true goal of the declared re-registration.

The re-registration was held from February 1, 1999 to October 1, 1999. From 2502 Belarusian public associations only 1537 applied to the registration bodies for the re-registration. 211 of public associations were denied in registration. The re-registration of political parties, trade unions and other public associations was held based on the Presidential Decree No. 2 of January 26, 1999 "On some measures of regulation of the activities of political parties, trade unions and other public associations." Realisation of this normative act led to essential changes both in legal system concerning public associations and in law practice. The fact that the situation of the "third sector" became worse in the result of the imposition of harsher regulations is out of question.

A number of points of the Presidential Decree No. 2 of January 26, 1999 doesn't correspond with the Belarusian Constitution namely article 8 (in the part of recognition by the Republic of Belarus of the priority of the universally recognised international law principles and bringing national legislation into conformity with

¹ This chapter is a thesis prepared for the brochure "Re-registration of the Belarusian NGOs 1999" (*The Assembly of Belarusian pro-democratic non governmental organisations, Minsk, 2000*).

them) and article 36 (in the part of providing everybody's right of free unification) as they added to the system of national legislation:

- the principle of getting an authorisation for the establishment of a public association instead of previous principle of registration;
- the prohibition of the activities of non-registered and received the denial of registration associations on the territory of the Republic of Belarus.

To our mind these violate firstly, international principles fixed by the International Civil and Political Rights Pact (December 16, 1996) and by the Convention of CIS on rights and main human freedoms (May 26, 1995); secondly, the constitutional right to the freedom of assembly. These violations are legal hindrances on the third sector development.

Till today the Republican NGOs' Registration (Re-registration) Commission is working in Belarus. Jurisdiction of this Commission is not defined by any normative act, the Commission is not a legal entity. Courts refused to arraign the Commission as a defendant. Handing down a decision about registration (denial of registration) the registration bodies are guided by Commission's conclusions whereas the conclusions themselves haven't a justification part and could not be appealed in the court.

During the re-registration some requirements, which were not regulated by any normative act, were introduced and realised in practice by the Republican NGOs' Registration (Re-registration) Commission. The following claims for the re-registration were illegally introduced in the course of the re-registration:

- for international public associations — no less than 10 founders from the Republic of Belarus and also no less than 1 founder from one or several foreign states;
- for republican public associations — no less than 10 founders from the majority of the Belarusian regions and also from the city of Minsk;
- for local public associations — no less than 10 founders from the majority of the administrative-territorial units of the territory where an association will operate;
- public association can have only fixed membership;
- public association can not use in its name words as "national," "people's" in any case.

These innovations were legitimised only on November 29, 1999 by including changes and additions into "The Public Associations Law" of the Republic of Belarus. (The Law "On Including of Changes and Additions into some Belarusian Laws"), that is when the re-registration under such conditions was finished.

Till this moment the public associations had to submit to the Republican Commission's illegal demands under threat to be refused in registration.

Law application.

The results of the analysis of the denials in the re-registration and the courts conclusions on the NGOs appeals showed that neither the registration organs, nor NGOs were ready for the re-registration. Both the juridical qualities of documents prepared by NGOs and of denials made by the registration bodies testify this.

The registration bodies paid particular attention to the text of the statute, aims, tasks and working methods

of a public association. During the re-registration the registration bodies actively propagandised a "precept" that a statute should contain one aim, three methods and five tasks. Such an approach was not fixed in normative acts, however it became widespread. It has become a normal practice when on the re-registration stage the registration bodies made editing (stylistic) corrections of statutes' texts what is, to our mind, unfounded interference



*Members of the Young Front are flying a balloon near the President Administration building; the happening was organised on the occasion of the International Day of Meteorologists, Minsk, Mart 23rd, 2001.
Photo: IREX/ProMedia*

into internal activity of NGOs, especially, connecting with questions of aims formulation, working methods, management, membership, etc.

The re-registration process showed that both NGOs and the registration bodies were not ready for it. Neither registration bodies, nor legal requirement were prepared properly. The clarification campaign of the re-registration process among NGOs was very weak, too. A small number of NGOs got an independent professional juridical help that affected the quality of presented to the registration bodies documents as well as the courts' decisions.

During the re-registration the registration bodies often violate legislation. The terms of the documents' examination weren't observed. In the number of cases denials in registration didn't correspond with legislation especially concerning enumeration of all motives of a refusal. As a result, in several courts pre-

cedents during hearings the grounds of some denials were completely changed by the registration bodies.

In order to check if the documents correspond with the legal requirements they are systematically being sent for an examination to different state institutions depending on the character of declaring by public association aims. Being formally only recommendations, experts' decisions in practice have a great influence on the registration bodies' po-



sition. To our mind, the formed practice of so-called documents' examination is pernicious as it unfoundedly drags out terms of the registration. The extent of such examination expediency is not quite clear as well. If this is a real analysis of documents' correspondence with legislation it's exactly the registration bodies' jurisdiction but not of the Religious and Nationalities Committee, the Central Election Commission, the Academy of Sciences, etc.

It is necessary to note, that sometimes preparing documents for the re-registration NGOs didn't meet the legal requirement. So, very often NGOs didn't include into the statute obligatory parts, presented incomplete set of documents (the certificate of giving up of the stamp or the document confirming that the announce of the state registration was paid., for instance, were absent).

One of the main reasons of low juridical level of NGOs documents is an absence of high-quality, sufficient and accessible assistance for NGOs. This thesis can be proved by the fact that only few NGOs whom rights were violated during the re-registration appealed to the court.

According to official data, only 7 republican and international NGOs appealed to the Supreme Court of Belarus against the denial of the re-registration made by the Ministry of Justice. We have no full statistical information at the republican level but accounting to our

estimate the total quantity of court precedents is about 20. The majority of decisions admitted by courts are in favour of the registration bodies. Owing to the few appeals, the courts have now sufficient experience of working with such a category of cases. They do not fully understand the importance of the freedom of assembly and do not use the Constitution as a norm of direct action. However, after some hearings judges gave private comments to the Ministry of Justice pointed out the violations of current legislation made by the Ministry during the state re-registration.

First of all attention should be paid to the most repeated motives of the denial to NGOs have been used by the registration bodies and become a matter of the courts hearings.

A. Statute's provisions consider the interference into activity of state bodies and authorities what violates the article 5 of "The Public Entities Law" (the case the Belarusian Republican Voters' Club against the Ministry of Justice; the case of the Analytical Laboratory of Law Problems against the Department of Justice of Minsk City Executive Committee; the case of the Belarusian Association of Young Politicians against the Ministry of Justice).

According to the registration bodies such tasks and kinds of activity as observation of the elections, assistance in the dissemination of law knowledge and law culture in the society, study of international experience in the sphere of law regulation of relations, co-operation with authorities and administration do not correspond with the current legislation. The legislation doesn't prohibit and underlines the necessity of co-operation between the state and NGOs. Several normative acts fixed the possibility of such cooperation. So, "The Elections of Deputies in Local Soviets of the Republic of Belarus Law" directly states the right of NGOs to participate in elections. "The normative Legal Acts of the Republic of Belarus Law" allows to NGOs to send their proposals about normative legal acts' acceptance (promulgation) or present a normative legal act projects in the given order. "The Education Law" stipulates that NGOs promote cultural and aesthetic education and upbringing of high moral qualities in the society. Legislation includes also a number of other examples of possibility to co-operate with the state institutions. What is more, adhering to the fundamental principle "what is not banned is allowed," it's clear that these motives would be legal being directly prohibited by the law.

B. The Statute of a public association considers economic activity (the case of the Belarusian Union of Consultants against the Ministry of Justice).

In accordance with the registration bodies conclusions such activities as advertising service including advising one are not included in the list of rights of public associations fixed in article 22 "The Public Associations Law." Correspondingly the registration bodies characterise NGOs as legal economic entities but not as subjects of enterprise activity. To our mind, such a situation contradicts the norms of the Belarusian Civil Code.

The Civil Code enables NGOs to undertake enterprise activity and contains the definition of enterprise

activity. Emanating from the norms of the Civil Code it is possible to say that there are no restrictions concerning this right of NGOs with the exception of one stipulation, that such an activity is possible if it is included in the Statute's goals and corresponds with them. Besides, legislation has no definition of economic activity. Therefore it's not clear based on which criteria the registration bodies distinguish "enterprise activity" and "economic activity". Unfortunately the court didn't give a proper clarification of this problem.

C. Goals, tasks and methods of public associations activities do not correspond with the requirements of Belarusian legislation (the case of the Republican Centre "Dianetica" against the Ministry of Justice; the case of the Belarusian Association of Young Politicians against the Ministry of Justice).

Very often the registration bodies unfoundedly limit NGOs' choice of desirable aims, tasks and methods. Legislation outlaws establishment and activity of NGOs oriented to overthrow or violent change of the constitutional system, violation of the state security and integrity, propaganda of war, violation, igniting of national, religious and racial hostility. And since November 29, 1999 it also bans NGOs the activity of which could negatively influence on the physical and moral people's health.

Freely interpreting legislation, the registration bodies worked out a position essence of which is the following: the activity of a public association can affect only members of this organisation. A public association can not set as its statutory goals giving assistance to non-members of this organisation. The courts considered this position as unfounded. However, in practice the registration bodies continue to resort it.

D. The activity of local NGOs envisaging international contacts violates article 6 "The Public Associations Law" (the case of the Analytical Laboratory of Law Problems against the Department of Justice of Minsk City Executive Committee).

In accordance with the registration bodies conclusions maintaining international contacts by local NGOs is a violation of the territory of their activity.

In contrast to this thesis it's necessary to note that "The Public Associations Law" (article 30) enables NGO's, irrespective of its status, to enter any international public association, participate in the establishment of the international unions of NGOs, maintain direct international contacts and relations, sign corresponding agreements and make any other steps non-contradicting with Belarusian legislation and its international obligations. The Minsk City Court supported the Juridical Department of Minsk City Executive Committee. The Supreme Court didn't give a due clarification to this question.

E. Activity of an organisation is beyond bounds of public associations and contradicts to "The Public Associations Law" and to the Constitution of the Republic of

Belarus (the case of the Republican Centre "Dianetica" against the Ministry of Justice; the case of the Children-Youth Centre "Magic Flower" against the Department of Justice of Minsk City Executive Committee).

All the denials of the registration bodies were based on the results of the State Religious and Nationalities Committee. The words "spiritual," "self-improvement," "improvement of individual activity to solve life problems," etc. used in statutes were interpreted by the State Committee as religious activity. Admitting their own decisions, the courts based on the State Religious and Nationalities Committee conclusions.

3. DECREE NO. 8 OF THE PRESIDENT OF THE REPUBLIC OF BELARUS (MARCH 26, 2001). PREPARATION OF GOVERNING AUTHORITIES TO THE PRESIDENTIAL ELECTIONS IS A TOTAL CONTROL OVER FINANCIAL FLOW IN THE NGO SECTOR.²



*Oppositional action against the election to Parliament,
Minsk, Oct. 14th, 2001.
Photo: IREX/ProMedia*

On March 15, 2001, Decree No. 8 of the President of the Republic of Belarus of March 12, 2001 "On Certain Measures to Improve the Order of Receiving and Using Foreign Aid" was published in official publications. Implementation of the Decree will materially worsen the standing of the Belarusian "third sector" and be a significant hindrance to its normal development and operation.

² This chapter was published in the Spring 2001 Issue of SEAL (European Foundation Centre).

The strategic intent of this document is to attempt to impose an unprecedented level of government control over the activities of NGOs and their financial support from foreign and international organisations which finance programs and projects of independent public associations. Based on provisions in the Decree, this objective will be accomplished by the introduction of a system for Belarusian organisations requiring state permission for the use of funds received from foreign governments, international organisations and individuals, the imposition of total state control over all programs and projects being undertaken through support from foreign organisations, and the introduction of repressive measures against organisations (leading to their very dissolution) and their managers.

Public associations of citizens (which, for purposes of this article, do not include political parties, trade unions, and religious organisations) are the primary recipients of foreign aid. This situation is a result first of all of the lack of internal resources within the Republic of Belarus which could be allocated to charitable activities. In the current political situation, access to government resources (what little there are) allocated to charitable projects is given only to pro-government organisations, which by their essence are not voluntary associations of citizens but merely echo the political will of those in power. As a result, the only sources for obtaining a realistic source of financing medium and large-scale programs and projects of public associations have been and continue to be international and foreign organisations and individuals.

It should be noted that even before issuance of the Decree, the terms regarding the receipt and use of foreign aid were quite clearly set forth in the Belarusian legislation. The Decree sets forth provisions which strengthen state control and limit opportunities of public associations. Article 23, for example, of the Law on Associations states that monetary aid and property are the result of "voluntary contributions." These monies and property may be only used towards achieving the objectives of the association's charter. Paragraph 4 subpoint 3 of the Decree forbids those public associations which have as their purpose of operations work regarding electoral law from receiving financial support from any foreign governments, international organisations and individuals. In accordance with the Law on Income and Profit Taxes, the tax authorities are authorised to oversee the appropriate use of an association's funds in accordance with its charter. From now on, however, oversight over an association's use of its funding can be conducted by the Committee of State Control, the Ministry of Foreign Affairs, the State Tax Committee, the State Customs Committee, the State Financial Investigative Committee and its local offices, the Department of Humanitarian Activities of the President of the Republic of Belarus, and other state entities. In other words, everyone will be able to control these associations as well as have the power to impose sanctions. For example, all of the following actions will henceforth be legal violations subject to administrative (civil) penalties: i) use of foreign aid by recipients prior to receiving authorisation from the government, ii)

use of foreign aid for activities prohibited in the Decree, and iii) failure to deposit foreign aid donated in monetary form in a bank of the Republic of Belarus within 5 days after its receipt or import into the territory of the Republic of Belarus. Any of the above listed government agencies will be able to write up reports regarding the violation of these directives.

Unions, foundations, public associations, and other non-governmental organisations are subject to liquidation, even in the event of a one-time violation, for the use of foreign aid for purposes prohibited or not provided for in the Decree. This contradicts Article 29 of the Law on Public Associations, since a public association can be liquidated only by order of a court for only the following: activities aimed at overthrowing or forcibly changing the constitutional regime; violating the integrity or security of the government; spreading war propaganda or violence; igniting national, religious or racial hostility; undertaking actions which might negatively affect the physical and psychological well-being of citizens; allowing repeat occurrences of violations in the course of one year, for which a written warning had been issued; and legal violations committed by the association's founders at the time of registration. There are no other legal grounds allowing dissolution of a public association.

The procedure for registering foreign aid is to be established by the Department of Humanitarian Activities. Considering that prior regulations regarding registration, storage and distribution of humanitarian aid left much to be desired, one can only hope that the procedure for registration of foreign aid will not worsen an already difficult situation for public associations. Moreover, the Decree entrenches the selective approach used thus far by the authorities in granting tax and customs benefits and allows the president to decide who will receive tax benefits and who won't. This case-by-case system of granting privileges serves as an effective means of influence over objectionable organisations.

The legislation of other countries contains examples of additional statutory regulation regarding the receipt by NGOs of foreign assistance. However, in every instance of such supplementary regulation, the primary objective of the law is to provide the recipient of the assistance with substantive tax benefits after successfully meeting the criteria of the statute. These laws do not allow or call for benefits to be provided to particular beneficiaries (i.e. at the discretion of the president), interference in the activities of associations, required "authorisations" to begin using the assistance, or oversight by police bodies to verify proper use of the assistance (assuming no criminal activities). Moreover, improper use of the tax benefits generally results in their revocation (as opposed to the variety of fines and administrative sanctions set forth in the Decree).

The Decree is rife with contradictions and illegalities under Belarusian law. It is senseless even to analyse this document from the perspective of its legal coherence, its adherence to the constitution, or its value in compensating for gaps in current legislation. From a constitutional point of view, it allows blatant interference into the activities of public associations. From a civil law

point of view, it is an outright violation of the freedom of contract. Once again the authorities are attempting to demoralise the third sector and divert the active segments of society from participating in political activities by creating additional barriers to prevent them from organising and functioning effectively. This is a standard tactic which was already tested in the spring of 1999 when Presidential Decree No. 2 was issued. It succeeded in keeping the senior-level individuals and leaders of NGOs, under threat of serious legal sanctions, occupied with restructuring their organisations to bring them into compliance with the new legislative changes. Based on the prior experience of Decree No. 2 and the timing of Decree No. 8 earlier this month, it is clear that the true objective of the Decree is to create additional instruments of influence over the socially and politically active segments of society during the period leading up to and following the presidential elections.

4. OUR RECOMMENDATIONS (ABOUT DIFFICULT PROBLEMS IN LIGHT FORM).

The present section is an attempt to formulate ideas which do not allow me personally and to "Independent Society for Law Research" to continue working in the direction we choose in 1995.

Extremely briefly our recommendations are as follows: "Optimism and using all real mechanisms." We should note at once that the supposition about soon changing of political situation as result of the present political fight is considered by us as unwarranted and unjustified optimism.

Probably, on examination of the present material there is not a lot of space for optimism. However, our point of view that in every situation the movement is necessary. By our opinion the subsequent movement in our country and in the actual period is a reliable strategy and mobile tactics.

Under our concept the tactics should be as follows:

1. Civic associations should learn to exist fairly in the framework of the existing legal situation. Thereby they will move the state away from the idea of discredit of all sector.
2. It is necessary to act for providing the access to the professional legal assistance for civic associations. Existing specialised legal groups are not able to cover existing and potential amount of work. We think that the creation of the network of co-ordinated legal groups (centres) is appropriate.
3. The legal groups should popularised the necessity of regular appeal to courts for protection of lawful rights and interests of non-profit organisations. The analysis of the court practice, a broad distribution of positive precedents is also an important component part.
4. Be mean of co-ordination of their efforts, organisations should use all existing opportunities for participation in the preparation and adoption of normative acts relating their activity. The present work should be enough professional unlike the existing actually examples.
5. Non-profit organisations should learn to understand how their imagine the non-profit legislation in future. This is the time for explanatory work, semi-

nars, training with the participation of well-prepared experts and for the distribution of the corresponding literature.

6. As for the "fans of jurisprudence," to whom first of all we refer ourselves, it is necessary to work on creation of an "ideal concept of legislation" for non-profit organisations and on the filling of this concept with texts of drafts of law. This should be available for the moment when appears a real possibility to trust to a new political power as liberal and devoted to democratic principles.



A fragment of the happening "The Final Diagnosis,"

Minsk, April 21st, 2001.

Photo: IREX/ProMedia

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