

# ASSOCIATIONLINE

An interactive guide for government authorities and civil society  
on Freedom of Association/NGOs



## Introduction to Freedom of Association/NGOs

### Background

For many years there has been an immense number of non-governmental organisations operating in the OSCE region. These organisations are diverse in character: some are small and limited in scope while others are very substantial undertakings, with a wide-ranging focus; most are probably membership-based organisations but many operate without a membership even though they may have considerable support.

Whatever their character, non-governmental organisations are generally recognised as making not only an essential contribution to the development and realisation of democracy and human rights, particularly through the promotion of public awareness, participation in public life and securing the transparency and accountability of public authorities, but also to the cultural life and social well-being of democratic societies.

The contribution made by non-governmental organisations comes through an extremely wide range of activities. These include but are not limited to: acting as a vehicle for communication between different segments of society and public authorities; advocating changes in law and public policy; providing assistance to those in need; elaborating technical and professional standards; monitoring compliance with existing obligations under national and international law; providing a means of personal fulfilment and of pursuing, promoting and defending interests shared with others.

### Key standards

The key standards established by universal and regional standards for non-governmental organisations are that they:

- are voluntary and self-governing
- are established to pursue the essentially non-profit-making objectives of their founders or members;
- are established by individual persons (natural or legal) and by groups of such persons;
- are membership or non-membership based;
- are informal or ones which have legal personality;
- are national or international in their composition and sphere of operation;
- are assured universally and regionally guaranteed rights and freedoms;
- are not subject to direction by public authorities;
- have the same capacities as are generally enjoyed by other legal persons where they have legal personality;
- are subject to the administrative, civil and criminal law obligations and sanctions generally applicable to legal persons where they have legal personality;
- benefit from a legal and fiscal framework that encourages their establishment and continued operation; and
- are able to challenge acts or omissions by public authorities affecting them in an independent and impartial court.

## **Terminology**

The term 'non-governmental organisations' is not one used in most legal systems in the OSCE region and its use in universal and regional standards is intended to cover a very wide range of institutional forms within them. These forms will include, but are not limited to: associations, charities, foundations, non-profit corporations, societies and trusts. However, it is their actual nature rather than their formal designation that brings them within the scope of universal and regional standards. Thus the designation of a particular entity as “public” or “para-administrative” should not prevent it from being treated as a non-governmental organisation that is an accurate reflection of its essential characteristics.

Although political parties, professional and trade regulatory bodies and trade unions can be embraced by the term 'non-governmental organisation', the standards specifically applicable to those entities are not covered by the Guidebook. Where material relating to them is included this is because it has for relevance to all non-governmental organisations.

## **Introduction to Freedom of Association/NGOs: an overview**

This document is an overview of the key principles applicable to Freedom of Association and NGO legislation across the OSCE Region. It is an extract of **AssociatiOnline**, an interactive guide on Freedom of Association/NGOs realized by ODIHR.

## **About AssociatiOnline**

**AssociatiOnline** is an interactive guide to Freedom of Association for government authorities and civil society. It provides direct access to key principles and international standards relating to Freedom of Association, with a special focus on NGOs. It also gathers relevant jurisprudence and offers examples of good practices of NGO legislation across the OSCE Region.

Overall, **AssociatiOnline** offers policy-makers, legislators as well as civil society representatives all necessary resources and references to advocate for, initiate and/or bring legislation and practices in compliance with OSCE commitments and international standards on Freedom of Association.

**AssociatiOnline** is a living instrument, constantly developing through contributions of its users. To learn more about and contribute to **AssociatiOnline**, visit our website at:

<http://dev.jmc.pl/guidebook/guidebook>

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# INTRODUCTION

## *Background*

1. For many years there has been an immense number of non-governmental organisations operating in the OSCE region. These organisations are diverse in character: some are small and limited in scope while others are very substantial undertakings, with a wide-ranging focus; most are probably membership-based organisations but many operate without a membership even though they may have considerable support.
2. Whatever their character, non-governmental organisations are generally recognised as making not only an essential contribution to the development and realisation of democracy and human rights, particularly through the promotion of public awareness, participation in public life and securing the transparency and accountability of public authorities, but also to the cultural life and social well-being of democratic societies.
3. The contribution made by non-governmental organisations comes through an extremely wide range of activities. These include but are not limited to: acting as a vehicle for communication between different segments of society and public authorities; advocating changes in law and public policy; providing assistance to those in need; elaborating technical and professional standards; monitoring compliance with existing obligations under national and international law; providing a means of personal fulfilment and of pursuing, promoting and defending interests shared with others.

## *Key standards*

4. The key standards established by universal and regional standards for non-governmental organisations are that they:
  - are voluntary and self-governing
  - are established to pursue the essentially non-profit-making objectives of their founders or members;
  - are established by individual persons (natural or legal) and by groups of such persons;
  - are membership or non-membership based;
  - are informal or ones which have legal personality;
  - are national or international in their composition and sphere of operation;
  - are assured universally and regionally guaranteed rights and freedoms;
  - are not subject to direction by public authorities;

- have the same capacities as are generally enjoyed by other legal persons where they have legal personality;
- are subject to the administrative, civil and criminal law obligations and sanctions generally applicable to legal persons where they have legal personality;
  
- benefit from a legal and fiscal framework that encourages their establishment and continued operation; and
  
- are able to challenge acts or omissions by public authorities affecting them in an independent and impartial court.

### *Terminology*

5. The term 'non-governmental organisations' is not one used in most legal systems in the OSCE region and its use in universal and regional standards is intended to cover a very wide range of institutional forms within them. These forms will include, but are not limited to: associations, charities, foundations, non-profit corporations, societies and trusts. However, it is their actual nature rather than their formal designation that brings them within the scope of universal and regional standards. Thus the designation of a particular entity as “public” or “para-administrative” should not prevent it from being treated as a non-governmental organisation that is an accurate reflection of its essential characteristics.
  
6. Although political parties, professional and trade regulatory bodies and trade unions can be embraced by the term 'non-governmental organisation', the standards specifically applicable to those entities are not covered by the Guidebook. Where material relating to them is included this is because it has for relevance to all non-governmental organisation.

## **1. INTERNATIONAL GUARANTEES: GENERAL AND SPECIFIC**

### *Introduction*

1. The principal underpinning for the operation of non-governmental organisations is to be found in guarantees established in universal and regional human rights treaties for the right to freedom of association. These guarantees are reinforced by various soft law instruments and political undertakings by states.
  
2. However, the treaty guarantees of the right to freedom of association provide protection only for non-governmental organisations that are membership-based and for those who belong to them. The position of non-membership-based non-governmental organisations is assured more by soft law instruments and political undertakings than by treaty.

*Treaty guarantees of freedom of association*

3. Some of the treaty guarantees for the right to freedom of association are general in character, in the sense that they apply to everyone:
  - Article 11 of the European Convention on Human Rights (1950);
  - Article 5(d) of the International Convention on the Elimination of All Forms of Racial Discrimination (1965);
  - Article 22 of the International Covenant on Civil and Political Rights (1966); and
  - Article 12 of the Charter of Fundamental Rights of the European Union (2000).
  
4. These general guarantees of the right to freedom of association are reinforced and even extended by other treaty provisions that focus on particular interests such as culture and science and economic and social or on particular sectors in a society, namely, children, disappeared persons; environmental campaigners, human rights defenders, indigenous and tribal peoples, migrant workers, national minorities, non-citizens, persons with disabilities, refugees and displaced persons, stateless persons and women;
  - Article 15 of the International Covenant on Economic, Social and Cultural Rights (1966);
  - Article 6 of the Indigenous and Tribal Peoples Convention (ILO Convention No. 169) (1989);
  - Article 5 of the European Social Charter (1961) and of the European Social Charter (Revised) (1996);
  - Article 15 of the Convention on the Rights of the Child (1989);
  - Article 24(7) of the International Convention for the Protection of All Persons from Enforced Disappearance (2006)\*;
  - Articles 2, 3, 4, 6, 7, 8 and 9 of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) and the Amendment to the Convention (adopted at the second meeting of the Parties held in Almaty, Kazakhstan, on 25-27 May 2005)\*;
  - Articles 26, 36 and 40 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990);
  - Articles 3, 7, 8, 15, 17 and 18 of the Framework Convention for the Protection of National Minorities (1995);
  - Articles 3 and 4 of the Convention on the Participation of Foreigners in Public Life at Local Level (1992);
  - Article 29 of the Convention on the Rights of Persons with Disabilities (2006);
  - Article 15 of the Convention relating to the Status of Refugees (1950);
  - Article 15 of the Convention relating to the Status of Stateless Persons (1960);
  - Articles 7 and 14(2) of the Convention on the Elimination of All Forms of Discrimination against Women.(1979).

\* these treaties also cover non-governmental organisations that are not membership-based.

### *Other treaty obligations*

5. One regional treaty embodies a commitment for the states parties to recognise the legal personality of certain foreign non-governmental organisations, which applies regardless of whether the organisations are membership-based:
  - the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations.
6. There are also treaties specifically concerned with trade unions that are not included in the Guidebook:
  - the Freedom of Association and Protection of the Right to Organise Convention (ILO Convention No. 87) (1948);
  - the Right to Organise and Collective Bargaining Convention (ILO Convention No. 98) (1949);
  - Article 6 of the European Social Charter (1961) and of the European Social Charter (Revised) (1996); and
  - Article 20 of the Indigenous and Tribal Peoples Convention (ILO Convention No. 169) (1989).

### *Soft law instruments and political undertakings*

7. In addition to the treaty guarantees there are a number of soft law instruments and political undertakings by states which explicitly recognise not only the right of non-governmental organisations to exist and operate but also the valuable contribution made by such organisations. Some are concerned only with organisations that are membership-based and in certain instances are focused only on certain sectors of society:
  - Article 20 of the Universal Declaration of Human Rights (1948);
  - Articles 5 and 15 of the United Nations General Assembly's Declaration on Social Progress and Development (1969);
  - Article 6 (b) and (f) of the the United Nations General Assembly's Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981);
  - the UN Basic Principles on the Independence of the Judiciary (1985);
  - Paragraphs 12, 13 and 26 of the Concluding Document of Vienna — The Third Follow-up Meeting, Vienna, 15 January 1989;
  - Paragraphs 9 and 10 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990;
  - Articles 23, 24 and 25 of the Basic Principles on the Role of Lawyers (1991);
  - Part IV of the Report of the CSCE Meeting of Experts on National Minorities, Geneva, 19 July 1991;
  - Article 2 of the United Nations General Assembly's Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (1992);
  - the Concluding Document of Helsinki — The Fourth Follow-up Meeting, Helsinki, 10 July 1992;
  - Recommendation No. R (94 ) 12 of the Committee of Ministers to Member States On Independence, Efficiency and Role of Judges (1994);

- ICCPR General comment No. 23: The rights of minorities (Art. 27) (Fiftieth session, 1994);
- CEDAW General Recommendation No. 23: Women in Public Life (Chapter I) (Sixteenth session, 1997);
- the European Charter on the Statute for Judges (1998);

but many apply to all non-governmental organisations:

- Final Act of the Conference on Security and Co-operation in Europe, Helsinki, 1 August 1975;
- Paragraphs 30, 32 and 33 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990;
- the Charter of Paris for a New Europe/Supplementary Document to give effect to certain provisions contained in the Charter of Paris for a New Europe, Paris, 21 November 1990;
- Paragraph 43 of the Document of the OSCE Moscow Meeting, 1991;
- the United Nations General Assembly's Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (1998);
- Paragraph 27 of the Istanbul Document, Istanbul, 19 November 1999;
- the Fundamental Principles on the Status of Non-Governmental Organisations in Europe (2002);
- Paragraph 36 of the Document of the Eleventh Meeting of the Ministerial Council, Maastricht, 1-2 December 2003;
- the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe (2007); and
- the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities (2008).

#### *Admissible restrictions*

8. None of these treaty guarantees, soft law instruments and undertakings is absolute but all restrictions on the existence and operation of non-governmental organisations must have a legal basis, serve a legitimate aim and be necessary in a democratic society. See Articles 5, 20 and 22 of the International Covenant on Civil and Political Rights, Articles 11 and 17 of the European Convention on Human Rights and Article 17 of the United Nations General Assembly's Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

#### *Significance of human rights in general*

9. Furthermore it is important to keep in mind that the pursuit of the activities of non-governmental organisations, their members (if they have any), their staff and their funders (if they are not public bodies) may also derive protection from other human rights guarantees, notably the rights to an effective remedy, a fair trial, freedom of assembly, freedom of expression, freedom of thought, conscience and religion, peaceful enjoyment of possessions and respect for private life and correspondence.

### *Evolving case law*

10. The most helpful source of guidance in determining the scope of the general right to freedom of association is to be derived from the case law generated under procedures to determine complaints about alleged violations of the right.
11. However, this case law only addresses those issues which have been brought before the tribunals concerned and thus does not reflect the full extent of the protection which States are legally obliged to afford to non-governmental organisations, their members, their staff and their funders.

## **2. ENTITIES TO WHICH INTERNATIONAL GUARANTEES APPLY**

### *Autonomous concepts*

1. 'Association' and 'non-governmental organisation' - as with all terms found in universal and regional human rights treaty guarantees, soft law instruments and politically undertakings (hereafter 'universal and regional human rights standards') - have an autonomous meaning. National provisions cannot, therefore, be conclusive in determining whether or not an entity - whatever its institutional form - is a non-governmental organisation for the purpose of the universal and regional standards that apply to them.

### *Membership not essential*

2. Although many non-governmental organisations will have a membership, this is not an essential characteristic of them. However, as already noted (see Chapter 2: Universal and Regional Standards), those non-governmental organisations that are not membership-based cannot rely on universal and regional human rights standards concerning freedom of association. See Paragraph 2 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.

### *Need for an institutional structure*

3. A particular body will only be regarded as a non-governmental organisation for the purpose of universal and regional human rights standards where it not only has a defined objective but also has a degree of stability as regards its existence. Thus it should be more than a mere gathering of people desirous of sharing each other's company; it must have some kind of institutional (but not necessarily formal) structure. See *S B v. United Kingdom* (dec.), no. 11617/85, 13 May 1988, *McFeeley v. United Kingdom* (dec.), no. 8317/78, 15 May 1980 and *Djavit An v. Turkey*, no. 20652/92, 20 February 2003.
4. The holding of various forms of protest action, such as demonstrations and public meetings, will not be sufficient to constitute those involved as a non-governmental organisation since such action is, despite its organised character, still essentially

transient in nature. However, protest action – which is protected by the right to freedom of assembly – is an important activity often undertaken by non-governmental organisations. See *Friend and Countryside Alliance and Others v. United Kingdom* (dec.), nos. 16072/06 and 27809/08, 24 November 2009.

#### *No need to have legal personality*

5. In many instances non-governmental organisations will be bodies with a formal status – namely, ones with legal personality - and the option of acquiring legal personality should always be available to those who wish to establish a non-governmental organisation unless it can clearly be demonstrated that the lack of such personality will not impede the pursuit of its activities. However, universal and regional human rights standards also require that it be possible to establish entities of an informal character so long as they have, or are meant to have, more than a fleeting existence. See Paragraph 3 of the Council of Europe’s Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe, *Sidiropoulos and Others v. Greece*, no. 26695/95, 10 July 1998, *Gorzelik and Others v. Poland* [GC], no. 44158/98, 17 February 2004, *Stankov and United Macedonian Organisation ‘Ilinden’ v. Bulgaria*, (dec.), nos. 29221/95 and 29225/95, 29 June 1998 and *Zvozkov et al. v. Belarus*, no. 1039/2001, 17 October 2006.

#### *Freedom to choose form*

6. Whether an entity has legal personality or is something more informal should be the choice of those establishing it. It is thus not open to a state to provide that non-governmental organisations can only be established as entities with legal personality. However, this does not mean that certain institutional forms - including the acquisition of legal personality – cannot be required for non-governmental organisations in order to enjoy particular benefits, such as exemption from certain forms of taxation. See Paragraph 3 of the Council of Europe’s Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.

#### *No distribution of profits*

7. Non-governmental organisations must either be entirely non-profit-making or use any profits derived from trading or other commercial activities solely for the pursuit of their objectives. Such profits must not, therefore, be distributed to their membership, if they have one. An essentially commercial organisation cannot be regarded as a non-governmental organisation. See Paragraph 1 of the Council of Europe’s Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe and *Cēsnieks v Latvia* (dec.), no 56400/00, 12 December 2002.
8. However, non-governmental organisations may still be established to advance the interests of their membership (if they have one) in other ways, whether these are economic, moral, physical, social or spiritual.

#### *General exclusion of political parties and professional and trade regulatory bodies*

9. Universal and regional human rights standards do not treat political parties as non-governmental organisations, although political parties are protected by the right to freedom of association. See Paragraph 1 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.
10. Similarly bodies which are established by law and to which members of professions (such as architects, doctors and lawyers) are required rather than choose to belong, will not normally be regarded as non-governmental organisations protected by universal and regional human rights standards. See Le Compte, Van Leuven and De Meyere v. Belgium, nos. 6878/75 and 7238/75, 23 June 1981 and O V R v. Russia (dec.), no. 44319/98, 3 April 2001.
11. . A similar view will be taken of other entities of which membership is required for regulatory or institutional reasons, such as chambers of commerce, hunting associations, student unions, tenants' unions and works councils. See Weiss v. Austria (dec.), no. 14596/89, 10 July 1991, Johansson v. Sweden (dec.), no. 25490/94, 17 January 1996, M A v. Sweden (dec.), no. 32721/96, 14 January 1998, Langborger v. Sweden, no. 11179/84, 22 June 1989 and Karakurt v. Austria (dec.), no. 32441/96, 14 September 1999.

*Legislative basis not an automatic disqualification*

12. However, a body is established pursuant to a legislative requirement which operates autonomously and does not in substance have the characteristics of a public body will be treated as a non-governmental organisation for the purpose of universal and regional human rights standards. See Sigurdur A Sigurjónsson v. Iceland, no. 16130/90, 30 June 1993 and Chassagnou and Others v. France [GC], nos. 25088/94, 28331/95 and 28443/95, 29 April 1999.

### **3. FORMATION**

*General capacity*

1. Everyone, whether a natural or a legal person and whether a national or non-national (including anyone who is stateless), should normally be entitled - alone or in association with others - to establish non-governmental organisations.
2. In the case of membership-based non-governmental organisations this capacity derives from the right of everyone to freedom of association (see, e.g., Gorzelik v. Poland [GC], no. 44158/98, 17 February 2004, at para. 88) whereas for those non-governmental organisations that are non-membership based this capacity is underpinned by undertakings such as Article 5 of the United Nations General Assembly's Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (General Assembly resolution 53/144) and Paragraph 2 of the Council of Europe's Recommendation CM/Rec(2007) 14 on the legal status of NGOs in Europe) to allow them to be established.

### *Scope of restrictions on capacity*

3. The evolving capacities of children must always be taken into account whenever any restrictions on them forming non-governmental organisations – such as the need for explicit parental approval and limits on any financial undertakings - are adopted. Such restrictions should thus generally decrease as children grow older and they should never be disproportionate. See Articles 5 and 15 of the Convention on the Rights of the Child.
4. Public officials should be free to form non-governmental organisations except where this would conflict with their responsibilities and the need for political neutrality. Any restrictions imposed on them should be clearly linked to the specific character of their posts. Such restrictions are most likely to be justifiable where a post involves either direct engagement with members of the public (or sections thereof) or a significant role in the formation of public policy. However, the case for any restrictions must always be demonstrated and even then their scope should never be disproportionate. See, e.g., *Ahmed and Others v. United Kingdom*, no. 22954/93, 2 September 1998, at para. 70.
5. Restrictions on the ability of non-nationals to form non-governmental organisations are only likely to be acceptable where the objectives of the organisation to be established are directly political without amounting to a political party (such as a body campaigning on major issues of national policy or aspects of the international relations of the state concerned). Such restrictions might be less justified where the non-national is from a country with which the state is closely linked (such as through them both being members of the European Union). In any event the scope of any restrictions should never be disproportionate. See, e.g., Paragraph 16 of the Council of Europe's Recommendation CM/Rec(2007) 14 on the legal status of NGOs in Europe.
6. Any restrictions on forming non-governmental organisations imposed on a person convicted of an offence must be clearly linked to the nature of the offence concerned. Thus offences involving fraud might preclude involvement in forming an organisation which would handle significant funds as part of its activities and offences that are anti-democratic in nature could justify some bar on forming one with objectives of an essentially political character. Nonetheless the scope and duration of any such restrictions should not be disproportionate. See, e.g., *Ždanoka v. Latvia* [GC], no. 58278/00, 16 March 2004, at paras. 132-136 and 141.

### *Numbers required*

7. The agreement of two persons should generally be sufficient to establish a non-governmental organisation that is membership-based and does not have legal personality or is not registered. A greater number might be justifiable as a condition of a non-governmental organisation acquiring legal personality or being registered (although this is often not the case) or having a particular status (such as a charitable or public benefit organisation). However, in no circumstances should the number of founders required be such as to discourage attempts to establish non-governmental

organisations. See Paragraph 17 of the Council of Europe's Recommendation CM/Rec(2007) 14 on the legal status of NGOs in Europe.

8. One person should be able to establish a non-membership-based non-governmental organisation. It should also be generally possible to establish such an organisation through a gift or a bequest (such as where the donor is seeking to create an organisation to pursue charitable or public benefit objectives). See, e.g., Paragraph 16 of the Council of Europe's Recommendation CM/Rec(2007) 14 on the legal status of NGOs in Europe.

#### *Preliminary requirements*

9. The establishment of a non-governmental organisation which is intended to have legal personality or to be registered - see further Chapter 6: Acquisition of Legal Personality and Registration - can be made subject to the adoption of a charter or statute which will generally prescribe its name, objectives, powers and highest governing body (together with the frequency of this body's meetings, the procedure for convening it and the procedure whereby it approves financial and other reports, as well as the procedure for changing the charter or statute and dissolving the organisation or merging it with another one). See, e.g., Movement for Democratic Kingdom v. Bulgaria (dec.), no. 27608/95, 29 November 1995 and Paragraph 18 of the Council of Europe's Recommendation CM/Rec(2007) 14 on the legal status of NGOs in Europe.
10. However, any additional matters prescribed by national law for the charter or statute of a non-governmental organisation with legal personality or registration should not unduly limit either the ability to establish such an organisation or its flexibility to manage itself and to pursue admissible objectives. See, e.g., Koretsky and Others v. Ukraine, no. 40269/02, 3 April 2008, at paras. 45-55.

#### *No territorial restrictions*

11. It should generally be possible to take part in establishing non-governmental organisations outside one's country of residence (see, e.g., Cyprus v. Turkey [GC], no. 25781/94, 10 May 2001, at paras. 364-371), although a requirement by the state in which it is established that some of its founders be nationals and/or residents would probably be admissible. See also Chapter 18: Foreign Non-Governmental Organisations.
12. The founders of a non-governmental organisation should be free to determine the territorial scope of its proposed activities, i.e., whether these are to be local, regional, national or international. See, e.g., Paragraph 4 of the Council of Europe's Recommendation CM/Rec(2007) 14 on the legal status of NGOs in Europe

## 4. MEMBERSHIP

### *The right to join*

1. Freedom of association entails the freedom both to form membership-based non-governmental organisations with others and to seek to join existing ones. The latter freedom does not, however, confer any general right to join such a non-governmental organisation against the wishes of its existing members. Nonetheless a refusal of those members to allow some to join the organisation can be constrained in order to fulfil obligations to prevent discrimination prohibited by universal and regional human rights standards. See Article 22 and 26 of the International Covenant on Civil and Political Rights, Articles 11 and 14 of the European Convention on Human Rights, Protocol No. 12, Article 5(d) of the International Convention on the Elimination of All Forms of Racial Discrimination and Paragraphs 2 and 22 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe. See also *İzmir Savaş Karşıtları Derneği and Others v. Turkey*, no. 46257/99, 2 March 2000 and *Rutkowski v. Poland (dec.)*, no. 30867/96, 16 April 2002.

### *Prohibition on compulsion to belong*

2. Compulsion - whether by law or other means - to belong to a non-governmental organisation is generally impermissible (see Paragraph 21 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe and *Chassagnou and Others v France [GC]*, nos 25088/94, 28331/95 and 28443/95, 29 April 1999). However, a membership obligation can be admissible where required for economic or social objectives in the public interest and where the individual concerned suffers no adverse consequences. Furthermore compulsion that is an indirect consequence of advantages derived by membership or legitimate trade union activity is also allowed (see *X v. Netherlands (dec.)*, no. 2290/64, 6 February 1967, *Sigurður A Sigurjónsson v. Iceland*, no. 16130/90, 30 June 1993 and *Gustafsson v. Sweden [GC]*, no. 15773/89, 25 April 1996).
3. A legal requirement to belong to professional and trade regulatory bodies will not be objectionable where those affected remain free to establish their own organisations. See Paragraph 21 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe and Chapter 4: Formation.

### *Capacity*

4. Everyone - whether a national or non-national and whether a natural or a legal person - should generally be able to seek to join non-governmental organisations. See Article 22 of the International Covenant on Civil and Political Rights, Article 11 of the European Convention on Human Rights, Protocol No. 12, and Paragraphs 2 and 22 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.

### *Scope of restrictions on capacity*

5. Any restrictions on children joining non-governmental organisations must be entirely compatible with their evolving capacities and thus should generally decrease as they become older. See Article 15 of the Convention on the Rights of the Child.
6. Similarly restrictions on the ability of persons who are mentally ill or incapacitated to join non-governmental organisations should always take due account of the particular capacities of the individuals affected. See Article 29 of the Convention on the Rights of Persons with Disabilities.
7. Restrictions on the ability of non-nationals to join non-governmental organisations are only likely to be acceptable where the objects of the body to be established are directly political and in any event they should not be disproportionate. See Article 16 of the European Convention on Human Rights and Piermont v. France, nos. 15773/89 and 15774/89, 27 April 1995.
8. Any restrictions on belonging to non-governmental organisations imposed on a person convicted of an offence must be linked to the nature of the offence concerned and be proportionate as to their scope and duration See Ždanoka v. Latvia [GC], no. 58278/00, 16 March 2004.
9. Public officials should not be disqualified from joining non-governmental organisations except where this would be incompatible with the level and nature of their responsibilities, and in particular where this would conflict with the need for political neutrality. The impact of any such disqualification should respect the principle of proportionality. See Vogt v. Germany [GC], no. 17851/91, 26 September 1995 and Rekvényi v. Hungary [GC], no. 25390/94, 20 May 1999.
10. It should generally be possible to belong to non-governmental organisations outside one's country of residence. See İzmir Savaş Karşıtları Derneği and Others v. Turkey, no 46257/99, 2 March 2000.

*No general obligation to disclose membership*

11. Non-governmental organisations should not be under a general obligation to disclose the names and addresses of its members since this would be incompatible with their right to freedom of association and the right to respect for private life (see National Association of Teachers in Further and Higher Education v. United Kingdom (dec.), no. 28910/95, 16 April 1998). However, individual members of a non-governmental organisation could be required to disclose their membership where this could conflict with their responsibilities as employees or office-holders (see Grande Oriente d'Italia di Palazzo Giustiniani v. Italy (No. 2), no. 26740/02, 31 May 2007 and Siveri and Chiellini v. Italy (dec.), no. 13148/04, 3 June 2008).

*Prohibition on sanctions for membership*

12. Persons should not be subjected to measures such as deportation, harassment and prosecution and conviction, as well as discrimination, disciplinary action, dismissal and other unfavourable treatment merely on account of their membership of a non-

governmental organisation. This would not preclude action being taken against a member of a non-governmental organisation where membership of it was clearly incompatible with performance of his or her responsibilities or with other obligations as an employee or office-holder. Moreover criminal sanctions can be imposed on persons belonging to a non-governmental organisation which has been prohibited on grounds and in a manner consistent with universal and regional human rights standards. See Paragraph 24 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe, Saldias de Lopez v. Uruguay, no. 52/1979, 29 July 1981, Jeong-Eun Lee v. Republic of Korea, no. 1119/2002, 20 July 2005 and Danilenkov and Others v. Russia, no. 67336/01, 30 July 2009. See also Chapter 16: Liability and Sanctions.

### *Rights of members*

13. The highest governing body of a membership-based non-governmental organisation should be comprised of its members. See Paragraph 20 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.
14. Members of non-governmental organisations should be able to seek remedies in the courts in order to protect their rights as members, in particular against their unjustified expulsion and against the imposition of improper sanctions for their membership. See Articles 2(3) and 22 of the International Covenant on Civil and Political Rights, Articles 11 and 13 of the European Convention on Human Rights, Paragraphs 23 and 24 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe, Article 9 of the United Nations General Assembly's Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms and Cheall v. United Kingdom (dec.), no. 10550/83, 13 May 1985.

## **5. ACQUISITION OF LEGAL PERSONALITY AND REGISTRATION**

### *Importance of legal personality*

1. The essence of freedom of association is the pursuit of the common objectives of a group of persons (natural or legal). The ability to pursue defined objectives will also be the rationale for establishing a non-membership-based non-governmental organisation. In some instances it may be possible to rely solely on the individual legal capacities of those who wish to found an organisation in order to pursue its objectives. However, in practice the pursuit of those objectives is usually something more readily undertaken through endowing the organisation concerned with a legal personality that is distinct from that of both their founders and - in the case of membership-based organisations - those persons who later belong to them. See Gorzelik and Others v. Poland [GC], no. 44158/98, 17 February 2004, at para. 88.
2. It is essential, therefore, that the option of acquiring legal personality always be available to those who wish to establish a non-governmental organisation unless it can clearly be demonstrated by the state concerned that the lack of such personality will not impede the pursuit of its objectives (see Zvozskov et al. v. Belarus, no. 1039/2001,

17 October 2006, at para. 7.4 for a finding that this had not been demonstrated). The absence of any such impediment is of significance not only for non-governmental organisations for which legal personality is never sought but also for those whose application for recognition is waiting to be processed (see, e.g., Ramazanova and Others v. Azerbaijan, no. 44363/02, 1 February 2007, at para. 59). See also Chapter 3: Entities to which Universal and Regional Standards Apply.

3. Acquiring legal personality or being registered is, however, something that a state may also require of non-governmental organisations where their founders - or their highest governing bodies after their establishment as more informal organisations - wish them to enjoy various forms of public support or be accorded a particular status (such as being recognised as a charity or public benefit organisation). See Paragraph 60 of the Council of Europe's Recommendation CM/Rec(2007) 14 on the legal status of NGOs in Europe.

#### *Admissibility of an approval process for acquiring legal personality*

4. In some countries the acquisition of legal personality can be the automatic consequence of adopting the charter or statute of the non-governmental organisation concerned and thus not be subject to any further formality. See Article 60 of the Swiss Civil Code.
5. However, it is in principle also compatible with universal and regional human rights standards for a state to insist that an entity go through some form of approval process before it is registered or such legal personality can be acquired. See, e.g., Cârmuirea Spirituală a Musulmanilor din Republica Moldova v. Moldova (dec.), no. 12282/02, 14 June 2005 and Paragraph 28 of the Council of Europe's Recommendation CM/Rec(2007) 14 on the legal status of NGOs in Europe.

#### *Nature of the approval process*

6. The formulation of any law governing the requirements to be fulfilled in order to acquire legal personality or to be registered must be sufficiently “foreseeable” for the persons seeking this status for their non-governmental organisation to appreciate what it involves (see, e.g., Ramazanova and Others v. Azerbaijan, no. 44363/02, 1 February 2007, at para. 60). In particular, where positive approval for registration or the acquisition of legal personality is required, the relevant law should not grant an excessively wide margin of discretion to the authorities in deciding whether a particular non-governmental organisation may be registered or granted legal personality, such as through the use of imprecise terms and the lack of specific criteria on which decision-making is to be based. See, e.g., Koretsky and Others v. Ukraine, no. 40269/02, 3 April 2008, at paras. 48-49.
7. The process and requirements involved in registration or acquiring legal personality - such as the nature of the documentation to be submitted and the deadlines to be observed - should also be easy for intending founders to understand and fulfil. See Paragraph 29 of the Council of Europe's Recommendation CM/Rec(2007) 14 on the legal status of NGOs in Europe.

## *Fees*

8. The level of any fees charged should reflect both the desirability of encouraging the formation of such organisations and the fact that their character is essentially non-profit-making. However, while it is not contrary to universal and regional human rights standards for a fee to be charged in order that non-governmental organisations become registered or acquire legal personality, any attempt to make the process of registration or acquiring legal personality self-financing or income-generating is likely to be incompatible with universal and regional human rights standards since this would undoubtedly have the effect of discouraging applications for registration or the grant of legal personality from being made. See Paragraph 33 of the Council of Europe's Recommendation CM/Rec(2007) 14 on the legal status of NGOs in Europe.

## *Basis for imposing conditions on or refusing approval*

9. Any process of approval for registration or the grant of legal personality should not generally be used to impose constraints on the ability of non-governmental organisations to draw up their own rules, to administer their own affairs or to make links with other bodies as these are essential elements of universal and regional human rights standards. See, e.g., *Koretsky and Others v. Ukraine*, no. 40269/02, 3 April 2008, at paras. 45-55. Any interference with the freedom of non-governmental organisations in these fields would be admissible only if it was capable of being justified as necessary in a democratic society for a legitimate aim, such as the imposition of requirements that are necessary to preclude unjustified discrimination or to protect the legitimate interests of the members of a non-governmental organisation. See Paragraphs 1, 6, 22, 23 and 47 of the Council of Europe's Recommendation CM/Rec(2007) 14 on the legal status of NGOs in Europe.
10. However, legal personality or registration can be refused where those applying for it fail to comply with a legal requirement that is compatible with universal and regional human rights standards. Nonetheless the circumstances in which a refusal of legal personality or registration will be recognised by those norms as amounting to reasons that are relevant and sufficient are very limited (see, e.g., *Malakhovsky and Pikul v. Belarus*, no. 1207/2003, 26 July 2005, at para. 7.6) and will always be subject to the foreseeability requirement noted in paragraph 6 above. Thus, other than in those situations in which the objectives and activities of a non-governmental organisation are properly found to be contrary to the constitution or the law (see Chapter 8: Objectives and Activities), they are only likely to include such a refusal in cases where the proposed name of the non-governmental organisation belonged to that of another organisation, could be confused with it or was in some other way damaging to it (see, e.g., *Apeh Uldozotteinek Szovetsege, Ivanyi, Roth and Szerdahelyi v. Hungary* (dec.), no. 32367/96 31 August 1999) or could in some way be genuinely regarded as misleading to the public (see, e.g., *Gorzelik and Others v. Poland* [GC], no. 44158/98, 17 February 2004), at paras. 97-105) or where there has been a failure submit all the clearly prescribed documents that are required (see, e.g., *Cârmuirea Spirituală a Musulmanilor din Republica Moldova v. Moldova* (dec.), no. 12282/02, 14 June 2005).

*Need for opportunity to correct application*

11. An application for registration or legal personality in which alleged irregularities appear should not be rejected without first informing the applicant(s) of them or giving them an opportunity to correct them (if this is appropriate). This opportunity should not, however, be used as a device to subject registration or a grant of legal personality to undue delay and there may, therefore, have to be a limit on the number of times documents can be returned for rectification (see, e.g., Ramazanova and Others v. Azerbaijan, no. 44363/02, 1 February 2007, at paras. 56-68).

*Need for prompt decisions*

12. No specific deadline for dealing with an application for legal personality is prescribed by universal and regional human rights standards but any significant delay in determining such an application will be contrary to these guarantees. See Paragraph 37 of the Council of Europe's Recommendation CM/Rec(2007) 14 on the legal status of NGOs in Europe and Ramazanova and Others v. Azerbaijan, no. 44363/02, 1 February 2007, at para. 56-68. In some cases it may be appropriate for the grant of legal personality to be presumed where a deadline for determination has not been met (see, e.g., Article 31 of the Serbian Law on Associations 2009).

*Nature of decision-maker*

13. The body responsible for determining applications for registration or the grant of legal personality should act independently and impartially in its decision making (see, e.g., Személy és Vagyonörök Független Szakszervezeti Szövetsége and Csánics v. Hungary (dec.), no. 31777/04, 13 February 2007). Moreover such a body should have sufficient, appropriately qualified staff for the performance of its functions (see Paragraph 36 of the Council of Europe's Recommendation CM/Rec(2007) 14 on the legal status of NGOs in Europe).

*Need for reasoned decisions*

14. All decisions should be communicated to the applicant(s) and any refusal should include written reasons. See Paragraph 38 of the Council of Europe's Recommendation CM/Rec(2007) 14 on the legal status of NGOs in Europe. All reasons for a refusal must be lawful and must be substantiated, which precludes mere reference to a particular legal provision (see, e.g., Moscow Branch of the Salvation Army v. Russia, no. 72881/01, 5 October 2006, at paras. 81-95).

*Need for possibility of challenging refusal*

15. In addition, given the potential significance of refusals of registration or the grant of legal personality for the non-governmental organisations concerned and those forming them, the possibility of appealing to an independent and impartial court against such refusals must be something that can be speedily pursued. See Paragraph 38 of the Council of Europe's Recommendation CM/Rec(2007) 14 on the legal status of NGOs

in Europe and *Apeh Uldozotteinek Szovetsege, Ivanyi, Roth and Szerdahelyi v. Hungary* (dec.), no. 32367/96 31 August 1999.

#### *Limits on requiring renewal of legal personality*

16. A requirement that existing non-governmental organisations must seek a renewal of their status as a legal entity following a very significant change in the law governing them would not in itself be contrary to universal and regional human rights standards. Nevertheless in such a case the relevant authorities must always act in good faith when dealing with any application for renewal (see, e.g., *Moscow Branch of the Salvation Army v. Russia*, no. 72881/01, 5 October 2006). However, a change to the charter of statutes of a non-governmental organisation should not give rise to any requirement that it establish itself as a new entity and thus obtain fresh registration or grant of legal personality. See Paragraph 43 of the Council of Europe's Recommendation CM/Rec(2007) 14 on the legal status of NGOs in Europe.
17. Moreover non-governmental organisations should not be required to renew their legal personality merely on a periodic basis. See Paragraph 41 of the Council of Europe's Recommendation CM/Rec(2007) 14 on the legal status of NGOs in Europe.

#### *No need for approval to establish branches*

18. The ability of non-governmental organisations to establish branches - whether within the country in which they are established or abroad - where these do not have a distinct legal capacity from the organisations concerned should be seen as an inherent aspect of the internal organisational capacity secured by universal and regional human rights standards and thus not requiring any official authorisation. See Paragraph 42 of the Council of Europe's Recommendation CM/Rec(2007) 14 on the legal status of NGOs in Europe. For the ability of the branch of a non-governmental organisation to operate in a country in which the organisation concerned has been registered or granted legal personality, see Chapter 18: Foreign Non-Governmental Organisations.

## **6. CAPACITIES TO BE ENJOYED BY NON-GOVERNMENTAL ORGANISATIONS**

#### *Basic requirements*

1. The following capacities will be essential for the basic operation of most non-governmental organisation, namely, the ability to conclude contracts related to the pursuit of their objectives, to make payments for the goods and services thereby obtained, to own property and to take legal proceedings in order to protect its rights and interests.
2. Those who choose to found a non-governmental organisation without legal personality will rely upon their own legal capacities for the pursuit of its objective. However, those non-governmental organisations for which legal personality has been

obtained should themselves have the same capacities as are generally enjoyed by other legal persons. See Paragraphs 7, 10, 51, 52 and 55 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe. See also The Holy Monasteries v. Greece, nos. 13092/87 and 13984/88, 9 December 1994 and Sidiropoulos v. Greece, no. 26695/95, 10 July 1998.

*No need to have a particular legal form*

3. It is not particularly significant what form the legal personality acquired by a non-governmental organisation should take – e.g., whether it is an association, a company, a foundation or a trust - but those available should not undermine the ability of a non-governmental organisation to pursue its objectives.

*Need for legal personality to be distinct from that of founders, members and officers*

4. The legal personality of a non-governmental organisation should be clearly distinct from that of any or all of its founders, members and officers and thus they should not be personally liable for its debts and other obligations merely on account of this connection with it. See Paragraph 26 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.

*Need for freedom to determine sphere of operation*

5. All non-governmental organisations should be free to decide the sphere of their operations within or beyond the country in which they are established. They should also be able to pursue their objectives through membership of associations, federations and confederations of non-governmental organisations, whether national or international in character. See Paragraphs 4 and 15 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe and Koretskyy and Others v. Ukraine, no. 40269/02, 3 April 2008.

*Entitlement to benefit of human rights in general*

6. All non-governmental organisations should also have the benefit of those human rights and freedoms that are not exclusively applicable to natural persons, including the right to freedom of assembly and of expression. See Paragraph 5 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe, Articles 9 and 12 of the United Nations General Assembly's Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms and Stankov and United Macedonian Organisation 'Ilinden' v. Bulgaria, (dec.), nos. 29221/95 and 29225/95, 29 June 1998.
7. They should also be able to assist in the defence of the human rights and freedoms of others, including through communication with universal and regional human rights bodies. See Articles 1, 5 9 of the United Nations General Assembly's Declaration on

the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms and Paragraph 11 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990. See also *Koretskyy and Others v. Ukraine*, no. 40269/02, 3 April 2008 and *Aguilera Jiménez v. Spain*, nos. 28389/06, 28955/06, 28957/06, 28959/06, 28961/06 and 28964/06, 8 December 2009.

8. Non-governmental organisations can complain to the European Convention on Human Rights about violations of their rights (see *Stankov and United Macedonian Organisation 'Ilinden' v. Bulgaria*, (dec.), nos. 29221/95 and 29225/95, 29 June 1998). Although they cannot complain to the United Nations Human Rights Committee (see *S M v. Barbados* (dec.), no. 502/1992, 31 March 1994), any members who are natural persons can do so.

*Need to be able to seek and disseminate information*

9. Furthermore all non-governmental organisations should be free to seek and disseminate information related to their objectives. See Articles 4 and 9 of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), Paragraph 43 of the Document of the OSCE Moscow Meeting, 1991, Paragraph 9 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990 and Articles 5 and 6 of the United Nations General Assembly's Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

*Need to be able to promote change in law and policy.*

10. Non-governmental organisations should also be able to undertake research, education and advocacy on issues of public debate, including with a view to promoting changes in law and policy. See Paragraph 12 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe, Articles 6, 7 and 8 of the United Nations General Assembly's Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms and *Koretskyy and Others v. Ukraine*, no. 40269/02, 3 April 2008. In addition non-governmental organisations should be entitled to support a particular candidate or party in an election or a referendum provided that they are transparent in declaring their motivation. See Paragraph 13 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.

*Need to be able to seek funding*

11. In addition non-governmental organisations should be able to solicit and receive funding not only within the country where they are established but also from other countries. Non-governmental organisations should also be able to engage in trading

and other economic activities to support the pursuit of their objectives. See Paragraphs 14 and 50 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe and Article 13 of the United Nations General Assembly's Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

*Need to have means to pursue objectives*

12. Although non-governmental organisations are not entitled to particular means of pursuing their objectives, all non-governmental organisations must have at least some means of actively doing so apart from the capacities derived from legal personality. They should not, therefore, be subject to restrictions which mean that they can do no more than exist. See *The Holy Monasteries v. Greece*, nos. 13092/87 and 13984/88, 9 December 1994, *Wilson, National Union of Journalists and Others v. United Kingdom*, nos. 30668/96, 30671/96 and 30678/96, 2 July 2002, *Demir and Baykara v. Turkey* [GC], no. 34503/97, 12 November 2008 and *Kimlya, Sultanov and Church of Scientology of Nizhnekamsk v. Russia*, nos. 76836/01 and 32782/03, 1 October 2009.

*Need for protection against functioning being undermined*

13. The state should not, directly or indirectly, support efforts by private individuals and bodies to undermine the ability of non-governmental organisations to pursue their objectives through means that are consistent with universal and regional human rights standards. See *Wilson, National Union of Journalists and Others v. United Kingdom*, nos. 30668/96, 30671/96 and 30678/96, 2 July 2002.

*Prohibition on discrimination as regards capacities*

14. Any differences in the capacities conferred on different categories of non-governmental organisation should have a rational and objective justification. See *Canea Catholic Church v. Greece*, no. 25528/94, 16 December 1997 and *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, no. 40825/98, 31 July 2008.

*Capacities not guaranteed*

15. Non-governmental organisations are not, however, entitled under universal and regional human rights standards either to the successful attainment of their objectives (see *Association X v. Sweden* (dec.), no. 6094/73, 6 July 1977) or to be treated as a political party (see *X, Y and Z v. Federal Republic of Germany* (dec.), no. 6850/74, 18 May 1976). Furthermore non-governmental organisations need not automatically be given the right to challenge administrative decisions that are connected to their objectives but do not directly concern their existence or operation (see *Federation Nationale des Familles de France v. France* (dec.), no. 63026/00, 14 February 2006).

## 7. OBJECTIVES AND ACTIVITIES

### *Basic principles*

1. Subject to the restriction on profit-making already considered, non-governmental organisation should be able to pursue all the objectives and undertake all the activities open to individual persons acting alone. See Chapter 3: Entities to which Universal and Regional Standards Apply, Article 8 of the United Nations General Assembly's Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms and Paragraphs, 1, 4, 5, 7, 9, 11, 12, 13, 14 and 15 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.
2. Although a non-governmental organisation cannot be formed to pursue specifically unlawful objectives and activities, the determination of what is unlawful for this purpose must always be compatible with universal and regional human rights standards. See, e.g., Articles 5 and 20 of the International Covenant on Civil and Political Rights, Article 17 of the European Convention on Human Rights, Articles 17, 18 and 19 of the United Nations General Assembly's Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and Paragraph 11 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe. See also *Lavisse v. France* (dec.), no. 14223/88, 5 June 1991, *Sidiropoulos and Others v. Greece*, no. 26695/95, 10 July 1998, *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, 13 February 2003, *Artyomov v. Russia* (dec.), no. 17582/05, 7 December 2006 and *Zhechev v. Bulgaria*, no. 57045/00, 21 June 2007.

### *Entitlement to seek changes in the law and constitution*

3. A non-governmental organisation can be established to pursue a change in the law or the constitution so long as the means to be used and the outcome to be achieved are compatible with fundamental democratic principles, including in particular non-discrimination, pluralism and respect for human rights. A commitment to use force to achieve objectives, as well as the actual use of such force, would thus be unacceptable. See *United Communist Party of Turkey and Others v. Turkey* [GC], no. 19392/92, 30 January 1998 and *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, 13 February 2003.

### *Approach to assessing admissibility of objectives and activities*

4. The authorities should always start with a presumption of lawfulness and not resort to speculation or make over-simplistic conclusions when they are assessing the admissibility of a non-governmental organisation's proposed objectives and activities of a non-governmental organisation and determining the meaning of its name and of terms used in its charter or statute. A justifiable finding that the proposed objectives

and activities of a non-governmental organisation are inadmissible before it has even begun to pursue them will thus be extremely unusual. See United Communist Party of Turkey and Others v. Turkey [GC], no. 19392/92, 30 January 1998 and Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania, no. 46626/99, 3 February 2005.

## **8. MANAGEMENT AND INTERNAL ORGANISATION**

### *Basic principles*

1. Non-governmental organisations should generally be self-governing. Any restrictions on their capacity to govern themselves will only be admissible if they have a legal basis, serve a legitimate purpose and are not disproportionate in their effect. See Paragraphs 1 and 6 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.

### *Content of statute*

2. The only matters concerning internal governance that the charter or statute of a non-governmental organisation should generally be required to be specify are its highest governing body, the frequency of meetings of that body, the procedure by which such meetings are to be convened, the way in which the highest governing body is to approve financial and other reports and the procedure for changing the charter or statute and dissolving the organisation or merging it with another non-governmental organisation. See Paragraph 19 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.

### *The highest governing body*

3. The highest governing body of a membership-based non-governmental organisation should be comprised of all of its members. See Paragraph 20 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.
4. Except as a consequence of auditing and reporting requirements and any funding conditions, the frequency of meetings of any body of a non-governmental organisation other than its highest governing body should be determined just by those establishing and running the organisation concerned. See Paragraph 47 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.

### *Restrictions on capacity to be involved in management*

5. Certain persons may be disqualified from appointment to the highest governing body of a non-governmental organisation that is not membership-based, as well from appointment as an officer of any non-governmental organisations, either following their conviction for an offence that has demonstrated that they are unfit for the

responsibilities involved or on account of their being incapacitated to perform those responsibilities. Any such disqualification must be proportionate in scope and duration. See Paragraph 48 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.

6. Non-nationals should not be prevented on account of that status from becoming involved in the management of non-governmental organisations (see Paragraph 49 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe). Furthermore any restrictions on persons in the public sector serving on the highest governing body of a non-government organisation that is not membership-based or becoming a member of any executive body of any non-government organisation should be consistent with the admissible restrictions on them being a member of membership-based non-governmental organisation (see Chapter 5: Membership).

#### *Freedom to choose management*

7. Public authorities should not interfere with a non-governmental organisation's choice of its management or representatives except where the persons concerned are disqualified from so acting. Those responsible for decision-making in a non-governmental organisation can, however, be required by public authorities to be clearly identified. See Hasan and Chaush v. Bulgaria [GC], no. 30985/96, 26 October 2000, Supreme Holy Council of the Muslim Community v. Bulgaria, no. 39023/97, 16 December 2004 and Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria, nos. 412/03 and 35677/04, 22 January 2009.

#### *Application of general employment law*

8. Non-governmental organisations should observe the generally applicable employment laws but should not otherwise be precluded from employing someone who is not a national of the country in which it is established. See Paragraph 49 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.

#### *Freedom to choose internal management structure*

9. Non-governmental organisations should be free to determine their internal management structure and, in particular, the highest governing body of a membership-based non-governmental organisation should be free to delegate the task of management to a subsidiary body. See Paragraphs 46 and 47 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.
10. Non-governmental organisations should not need any authorisation from a public authority in order to change their internal management structure or rules or to establish branches which do not have distinct legal personality. See Paragraphs 42, 47 and 48 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe and Koretskyy and Others v. Ukraine, no. 40269/02, 3 April 2008.

*Freedom to determine voting requirements*

11. The question of whether certain decisions relating to a non-governmental organisation - including ones to amend the statute or to dissolve the organisation - need to be taken by a special majority should be a matter left to be determined by the charter or statute of the organisation concerned. See Paragraph 19 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.

*Duty to protect management*

12. Those managing a non-governmental organisation should be protected by public authorities against interference with their freedom to run the organisation and take necessary decisions in this regard, and in particular they should be protected against harassment, intimidation and the use of violence. See Paragraph 6 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe and *Freedom and Democracy Party (ÖZDEP) v. Turkey* [GC], no. 23885/94, 8 December 1999.

*Primacy of the statute*

13. However, the primacy of the statute of non-governmental organisations - as well as of the law governing their formation - necessarily precludes the taking of decisions to act for purposes outside either their objectives or their powers. See Paragraph 47 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.

*Need to consider interests of stakeholders*

14. Furthermore the exercise of the freedom that non-governmental organisations ought to have with respect to decision-making should not result in their management ignoring the wide range of persons with a legitimate interest in the way in which such organisations conduct themselves.

*Need to protect rights of members*

15. Moreover the freedom of membership-based non-governmental organisations to decide on the admission and exclusion of members is subject the prohibition in universal and regional human rights standards on unjustified discrimination and arbitrary exclusion. See Paragraphs 22 and 23 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.
16. The members of a non-governmental organisation should be able to insist on its decision-making process being properly observed and should also be protected from any abuse of the dominant position of a particular group of members, such as by the adoption of rules that are wholly unreasonable or arbitrary. See Paragraphs 23 and 47

of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.

*Need for record-keeping*

17. Non-governmental organisations can be required by law to keep a proper record of the proceedings of all the meetings of their decision-making bodies in order to protect the interests of members and donors. See Paragraphs 62 and 68 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.

*Right to challenge interference with decision-making*

18. Any challenge by public authorities to the decision-making of non-governmental organisation for regulatory purposes should itself be subject to challenge by the organisation concerned in an independent and impartial court. See Paragraphs 10 and 71 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.

*Right to control attendance at meetings*

19. Non-governmental organisations should generally be free to determine who attends their meetings and in particular to exclude representatives of public authorities - whose presence could be an indirect form of pressure - from meetings that are not open to the public. See Paragraph 6 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe

*Limits on external assumption of management control*

20. External intervention in the running of non-governmental organisations should be extremely rare. Such an intervention would only be justified in order to bring an end to a serious breach of legal requirements where either the organisation concerned has failed to take advantage of an opportunity to bring itself into line with those requirements or there is a need to prevent an imminent breach of them because of the serious consequences that would follow. See Paragraphs 2, 6 and 70 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe and *Freedom and Democracy Party (ÖZDEP) v. Turkey* [GC], no. 23885/94, 8 December 1999.

## **9. LIABILITY AND SANCTIONS**

*Basic principles*

1. Non-governmental organisations, like everyone else, are subject to the law and civil liability and/or administrative and criminal sanctions may be incurred where they fail

to respect its requirements. See Paragraph 7 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.

2. In the case of non-governmental organisations that do not have legal personality any liability and sanctions for acts and omissions on their behalf will, according to the particular circumstances and national law, be incurred not by the organisations but by either those who belong to them or those who acted or failed to act on their behalf. See Fraktion Sozialistischer Gewerkschafter im ÖGB Vorarlberg and 128 of its individual members (Köpruner, Falschlunger and Others) v. Austria (dec.), no. 12387/86, 13 April 1989 and Steel and Morris v. United Kingdom (dec.), no. 68416/01, 22 October 2002.
3. On the other hand any liability and sanctions for acts and omissions on behalf of non-governmental organisations with legal personality should be incurred by the organisations themselves and not by those who belong to them where they are membership-based. See Paragraph 26 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.

#### *Liability of officers, directors and staff*

4. Nevertheless the officers, directors and staff of non-governmental organisations with legal personality can incur liability and sanctions for their own professional misconduct or neglect of duties and breaches of the law. See Paragraph 75 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe, Çetinkaya v Turkey, no 75569/01, 27 June 2006 and Piroğlu and Karakaya v. Turkey, nos. 36370/02 and 37581/02, 18 March 2008.

#### *Liability of members*

5. Administrative and criminal sanctions can, however, be imposed on persons belonging to, or assisting, a non-governmental organisation that has, in full compliance with universal and regional human rights standards, been proscribed as unlawful. See Özcan and Others v. Turkey (dec.), no. 56006/00, 13 June 2002 and Karademirci and Others v. Turkey, nos. 37096/97 and 37101/97, 25 January 2005.

#### *Basis of liability*

6. The liability and sanctions for acts and omissions on behalf of non-governmental organisations will in most instances be ones provided under laws that are generally applicable but some will arise from legally requirements specifically applicable to non-governmental organisations. See Paragraph 7 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.

#### *Need to observe principle of proportionality*

7. In the case of a breach of a legal requirement specifically applicable to non-governmental organisations, the most appropriate response should normally be a

requirement for them to rectify their affairs. In some instances the imposition of a penalty on them and/or any individuals directly responsible for the breach concerned may be justified but the suspension of a non-governmental organisation's activities will not be warranted unless the breach of the legal requirement gives rise to a serious threat to political pluralism or fundamental democratic principles. Furthermore all penalties that are imposed should respect the principle of proportionality. See Paragraph 72 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe, *Christian Democratic People's Party v. Moldova*, no. 28793/02, 14 February 2006 and *Tür Köy Sen v. Turkey* (dec.), no. 45504/04, 13 October 2009.

8. The termination of a non-governmental organisation through its enforced dissolution should - apart from bankruptcy and prolonged inactivity - always be a proportionate response to an exceptional breach of the law specifically applicable to non-governmental organisations which is supported by compelling evidence. See Paragraph 74 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.

## **10. TERMINATION AND DISSOLUTION**

### *Voluntary termination*

1. In most instances the termination of a non-governmental organisation - whether with or without legal personality - should be the voluntary act of its highest governing body.
2. Such a decision will be taken where the non-governmental organisation concerned has achieved its objectives, there is no wish to pursue them further or it is considered that they can be more effectively pursued through merger with another non-governmental organisation. See Paragraph 44 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.

### *Grounds for enforced termination*

3. The termination of a non-governmental organisation through its enforced dissolution should only occur in the event of bankruptcy, prolonged inactivity or serious misconduct. See Paragraph 44 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.
4. Prolonged inactivity entails at least several years having elapsed between meetings of the non-governmental organisation's highest governing body and there have been at least two failures to file annual reports on its accounts. See Paragraphs 44 and 74 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.
5. Serious misconduct is wilfully engaging in activities that are inconsistent with the objectives for which a non-governmental organisation can be founded. The acts or omissions relied upon where this is alleged must be supported by compelling evidence and they must have been those of the non-governmental organisation concerned or be

justifiably attributed to it. Furthermore termination must be a proportionate response to the serious misconduct concerned. See Paragraphs 44 and 74 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe. See also United Communist Party of Turkey and Others v. Turkey [GC], no. 19392/92, 30 January 1998, Refah Partisi (the Welfare Party) and Others v. Turkey [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, 13 February 2003, Korneenko et al. v. Belarus, no. 1274/2004, 31 October 2006, Belyatsky et al. v. Belarus, no. 1296/2004, 24 July 2007, Association of Citizens Radko & Paunkovski v. the former Yugoslav Republic of Macedonia, no. 74651/01, 15 January 2009 and Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan, no. 37083/03, 8 October 2009.

#### *Requirement of judicial authorisation*

6. The enforced termination of a non-governmental organisation should only be ordered by a court after giving the non-governmental organisation a fair hearing. An order for termination should always be subject to prompt appeal. See Paragraph 74 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.

#### *Suspension pending an appeal*

7. The effect of a court order for the enforced termination of a non-governmental organisation should be suspended pending the outcome of any appeal. See Paragraph 71 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.

#### *Distribution of assets*

8. Any funds or assets left after a non-governmental organisation's liabilities have been cleared following its enforced termination on account of serious misconduct may be passed to the state. See Paragraph 56 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe and Chapter 16: Property and Income.

## **11. PROPERTY AND INCOME**

#### *Ability to generate and seek income*

1. Non-governmental organisations can both generate income from their activities and seek it from public and private sources within and beyond the state in which they are established. This income can be in form of cash, other forms of financial instruments, bequests of property and goods or equipment. See Article 13 of the United Nations General Assembly's Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, Article 6 (f) of the United Nations General

Assembly's Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief and Paragraphs 14 and 50 of the Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe. However, see also *Pastificio Attilio Mastromauro S r l v. Italy* (dec.), no. 47479/99, 30 November 2000 and *Union des Athées v. France* (Report), no. 14635/89, 6 July 1994.

#### *Conditions governing acquisition and use of income*

2. The income of non-governmental organisations must always be generated or obtained in accordance with the regulatory requirements generally applicable to the means involved, including those governing customs, foreign exchange, money-laundering and the funding of elections and political parties. However, these regulatory requirements must always be compatible with universal and regional human rights standards. See *Parti nationaliste basque – Organisation régionale d'Ipparralde v. France*, no. 71251/01, 7 June 2007, at paras. 47-52 and *Korneenko et al. v. Belarus*, no. 1274/2004, 31 October 2006, at para. 7.5.
3. All income generated or received by non-governmental organisations, as well as any assets into which it is converted, must be used exclusively for the pursuit of its objectives and must not be distributed to their members if they are membership-based. See Paragraph 9 of the Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe
4. Any income received by non-governmental organisations on a tax-exempt basis, as well as any assets into which it is converted, must not be applied for any purpose that is not tax-exempt. See Paragraph 54 of the Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.

#### *Ability to pay staff and reimburse expenses*

5. Non-governmental organisations can use their income and assets to pay their staff and to reimburse any expenses incurred on their behalf. See Paragraph 55 of the Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.

#### *Access to banking facilities*

6. Non-governmental organisations should be able to manage and use their income and assets with the assistance of their own banking facilities where they have legal personality. See Paragraph 51 of the Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.

#### *Protection for property interests*

7. Non-governmental organisations should be able to protect all their property interests through legal proceedings. See Paragraph 52 of the Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.

8. Non-governmental organisations may be required to act on independent advice when selling or acquiring land or other major assets. See Paragraph 53 of the Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.
9. The income and assets of non-governmental organisations should not be seized or confiscated as a means of preventing them from pursuing admissible objectives. See The Holy Monasteries v. Greece, nos. 13092/87, 9 December 1984, at paras. 86-88.

#### *Distribution of assets after termination*

10. Any funds or assets left after a non-governmental organisation's liabilities have been cleared following its termination should be passed to a designated successor or, if none has been designated, applied to similar objectives. However, the funds or assets concerned should be passed to the state where the termination was based on the inadmissibility of the organisation's objectives or activities. See Paragraph 56 of the Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.

## **12. STATE SUPPORT AND FINANCING**

#### *Case for state support*

1. The establishment and continued operation of non-governmental organisations will be greatly assisted through state support. See Paragraph 8 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.
2. State support for non-governmental organisations is warranted on account of the significant contribution that they make to securing human rights and to sustaining and developing public, social and cultural life.

#### *Forms of state support*

3. The forms that state support for non-governmental organisations can take are numerous and will include direct funding, exemptions from taxes and other duties and contracts to provide services, as well as incentives for donations from the private individuals and bodies in the form of tax relief. See Paragraph 57 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.

#### *Criteria for granting state support*

4. The giving of any form of state support should be governed by clear, objective and published criteria, which can include the nature of the activities undertaken by a non-governmental organisation and of those who benefit from them. See Paragraphs 58 and 61 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.

5. State support can be restricted to those non-governmental organisations that fall into a particular category or regime defined by law or which have a particular legal form. See Paragraphs 59 and 60 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.

#### *Protection of independence*

6. The provision of public support for non-governmental organisations should not be used as a means to undermine their independence or to require them to undertake particular activities considered to be of public importance. See Paragraph 6 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe and *Sigurdur A Sigurjónsson v. Iceland*, no. 16130/90, 30 June 1993.

### **13. ACCOUNTABILITY AND SUPERVISION**

#### *Basic principles*

1. Non-governmental organisations can be subjected to various obligations to secure the transparency of their activities, which may also be supervised by one or more relevant public authorities.
2. However, the obligations should only apply to non-governmental organisations receiving some form of state support and supervision should be based on the presumption that the activities of such organisations are lawful and that self-regulation is to be preferred. See Paragraphs 62-72 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.
3. All reporting obligations and every exercise of supervisory power should be governed by the principle of proportionality.

#### *Auditing and reporting requirements*

4. Non-governmental organisations receiving state support can be required to (a) have their accounts audited by a person or institution independent of their management, (b) make an annual report on their accounts and activities to a supervising body and (c) to identify the proportion of their funds used for fundraising and administration. See Paragraphs 62, 63 and 65 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.

#### *Need to respect privacy and business confidentiality*

5. All reporting obligations for non-governmental organisations should not compromise the rights of their donors, beneficiaries and staff and their right to legitimate business confidentiality. See Paragraph 64 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.

*Scope for additional requirements being voluntarily undertaken*

6. The reporting obligations set out above are quite distinct from any undertakings that may have been voluntarily given by a non-governmental organisation to any of its donors or pursuant to a contract for services or that arise from its statute.

*Basis for inspection to be undertaken*

7. The inspection of a non-governmental organisation's books, records and activities by a supervising body should only occur where there has been a failure to comply with a reporting obligation arising from state support or there are reasonable grounds to suspect that serious breaches of legal requirements that are compatible with universal and regional human rights standards have occurred or are clearly imminent. See Paragraph 68 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.
8. No search and seizure measure shall be applied without objective grounds and appropriate judicial authorisation. See Paragraph 69 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.

*Need for administrative measures to be suspended pending judicial scrutiny*

9. Any administrative measure taken in respect of a non-governmental organisation by a supervising body requiring the organisation to desist from certain activity or to take specific action should normally be suspended at the organisation's request pending judicial scrutiny and, if not, be subject to prompt judicial challenge. See Paragraph 71 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.

*Limits on external assumption of management control*

10. Any external intervention in the running of a non-governmental organisation should be extremely rare. Such an intervention could only be justified in order to bring an end to a serious breach of legal requirements by the non-governmental organisation where those requirements are compatible with universal and regional human rights standards and where either (a) the organisation has failed to take advantage of an opportunity to bring itself into line with those requirements or (b) there is a clear need to prevent an imminent breach of them because of the serious consequences that would otherwise follow. See Paragraph 70 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.

## 14. PARTICIPATION IN DECISION-MAKING AND LAW-MAKING

### *Basic principle*

1. Non-governmental organisations should be able to contribute to matters of public debate and, in particular, to the development of the law and policy at all levels, whether local, national, regional or international. See Paragraph 43 of the Document of the OSCE Moscow Meeting, 1991, Paragraphs 12, 76 and 77 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe, Article 8 of the United Nation General Assembly's Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Articles 6, 7 and 8 of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), Article 5 of the Convention on the Participation of Foreigners in Public Life at Local Level and Article 15 of the Framework Convention for the Protection of National Minorities.

### *Means of fulfilment*

2. This contribution should be facilitated by the establishment of mechanisms that enable non-governmental organisations to have dialogue with, and to be consulted by, public authorities at all levels of government, as well as by ensuring that those organisations have timely access to all relevant official information. See Article 6 of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) and the Code of Good Practice for Civil Participation in the Decision-making Process.
3. These mechanisms may, on account of the numbers of non-governmental organisations involved, work through genuinely representative organisations and/or employ special fora for communication by and with interested non-governmental organisations. See, e.g., Article 5 of the Convention on the Participation of Foreigners in Public Life at Local Level and the Code of Good Practice for Civil Participation in the Decision-making Process.

### *Ability to propose changes to law and policy*

4. All dialogue should be a two-way process and, in particular, proposals by non-governmental organisations for changes in policy and law should not be seen as inadmissible or unlawful. See Paragraph 12 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe and the Code of Good Practice for Civil Participation in the Decision-making Process and Article 7 of the United Nation General Assembly's Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

### *Need for consultation and an opportunity to comment*

5. Non-governmental organisations should always be consulted about proposals to amend laws and other rules which are concerned with their status, financing and operation. See Paragraph 77 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe.
6. Non-governmental organisations should also be able to comment publicly on reports submitted to international supervisory bodies as to the implementation of obligations under international law prior to their submission. See Articles 5 and 9 of the United Nation General Assembly's Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms and Paragraph 11 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990.
7. All consultation of non-governmental organisations should be such as allows sufficient time for a response, taking account of the need for those organisations first to seek the views of their members and partners. See Articles 6 and 8 of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) and the Code of Good Practice for Civil Participation in the Decision-making Process.
8. Furthermore any consultation should occur at a stage in the development of law and policy that allows for the possibility of taking account of the views expressed by non-governmental organisations. See Articles 6 and 8 of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) and the Code of Good Practice for Civil Participation in the Decision-making Process.

*Ability to undertake research*

9. Non-governmental organisations should be free to undertake research on the impact of legislation and governmental policy and to disseminate the results of this research. They should also be able to seek support for their proposals from the general public. See Paragraph 12 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe and Article 6 of the United Nation General Assembly's Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

*Ability to contribute to implementing public policy objectives*

10. Public authorities at all levels of government should be prepared to use non-governmental organisations in the implementation of public policy objectives. However, in doing so, public authorities should treat non-governmental organisations as partners, without seeking to change their priorities or to undermine their freedom to manage themselves. See Chapter 12: Management and Internal Organisation, Article 35 of the Council of Europe Convention on Action against Trafficking in Human

Beings and the Code of Good Practice for Civil Participation in the Decision-making Process.

## 15. SECURITY AND DUTY OF PROTECTION

### *Right to protection*

1. Persons belonging to or working with non-governmental organisations should not be subject to discrimination or penalised, persecuted or harassed in any way on account of this. See Article 3 of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), Article 12 of the United Nations General Assembly's Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Paragraph 24 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe and Paragraph 13 of the Concluding Document of Vienna — The Third Follow-up Meeting, Vienna, 15 January 1989.
2. Such treatment should be prohibited by law and positive measures should be taken to secure the observance of this prohibition. See Article 12 of the United Nations General Assembly's Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms and the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities.

### *Duty to investigate and sanction improper treatment*

3. Allegations of persons belonging to or working with non-governmental organisations being subject to discrimination or penalised, persecuted or harassed in any way on account of this should be subject to independent and effective investigation leading, where appropriate, to administrative measures and/or criminal proceedings against those responsible. See the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities and *Süheyla Aydın v. Turkey*, no. 25660/94, 24 May 2005.

### *Restrictions governing surveillance*

4. The activities of non-governmental organisations and of those belonging to or working with them should not be subject to any form of surveillance and data gathering in the absence of sufficient grounds to justify an interference with the right to respect for private life of those concerned. See *McGinley and Egan v. United Kingdom* (dec.), nos. 21825/93 and 23414/94, 28 November 1995, *Tsavachidis v. Greece*, no. 28802/95, 21 January 1999 and *Segerstedt-Wiberg and Others v. Sweden*, no 62332/00, 6 June 2006.

### *Duty of protection against efforts being undermined*

5. The state should not provide support for efforts by private individuals and bodies to undermine the ability of non-governmental organisations to pursue their objectives through means that are consistent with universal and regional human rights standards.

See Article 12 of the United Nations General Assembly's Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities and Ensuring protection – European Union Guidelines on Human Rights Defenders. See also Ouranio Toxo and Others v. Greece, no. 74989/01, 20 October 2005, 97 members of the Gldani Congregation of Jehovah's Witnesses and 4 Others v. Georgia, no. 71156/01, 3 May 2007, Wilson, National Union of Journalists and Others v. United Kingdom, nos. 30668/96, 30671/96 and 30678/96, 2 July 2002 and Danilenkov and Others v. Russia, no. 67336/01, 30 July 2009.

### *Duty to promote value of non-governmental organisations*

6. Positive measures should be taken to ensure that both public authorities and the general public appreciate the valuable role that non-governmental organisations play in society. See Articles 3 and 18 of the United Nations General Assembly's Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities, Paragraph 10 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990 and the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities.

## **16. FOREIGN ASSOCIATIONS AND NGOS**

### *Establishing or joining non-governmental organisations abroad*

1. Apart from the restrictions on capacity already considered (see Chapter 4: Formation and Chapter 5: Membership), persons resident in one country should not be required to obtain permission from a public authority there before they can form or join a non-governmental organisation in another country (see İzmir Savaş Karşıtları Derneği and Others v. Turkey, no. 46257/99, 2 March 2000).

### *Need for authorisation for foreign non-governmental organisations to operate*

2. Foreign non-governmental organisations may be required to obtain authorisation to operate in a country other than the one in which they have been established. However,

they should not be required to establish a new and separate entity for this purpose (see Paragraph 45 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe).

3. However, decisions with respect to the grant or refusal of authorisation need to take account of commitments both to facilitate the work of human rights defenders (see the United Nations General Assembly's Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities and Paragraph 43 of the Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow, 3 October 1991) and to recognise the legal personality of NGOs established in other countries (see the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations).

#### *Scope of accountability and supervision obligations*

4. Foreign non-governmental organisations can be subjected to the same accountability requirements as non-governmental organisations with legal personality in their host country but these requirements should only be applicable to their activities in that country (see Paragraph 66 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe).

#### *Withdrawal of authorisation to operate*

5. Any approval for a foreign non-governmental organisation to operate can only be withdrawn by the host country in the event of its bankruptcy, prolonged inactivity or serious misconduct (see Paragraph 74 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe). Such approval would also automatically lapse in the event of the foreign non-governmental organisation concerned dissolving itself.
6. Where serious misconduct is invoked to withdraw approval to operate, the acts or omissions relied upon must - as in the case of terminating or dissolving a non-governmental organisation (see Chapter 17: Termination and Dissolution) - be supported by compelling evidence and be those of the organisation concerned or be justifiably attributed to it. Furthermore withdrawal of approval must be a proportionate response to the serious misconduct concerned.
7. Any withdrawal of approval for foreign non-governmental organisations to operate should be subject to prompt appeal to an independent and impartial court with full jurisdiction (see Paragraph 74 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe).

## 17. HUMAN RIGHTS DEFENDERS

### *Need for recognition of role played*

1. Non-governmental organisations that are human rights defenders should be recognised as contributing to the effective implementation of universal and regional human rights standards. See the United Nations General Assembly's Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, the Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow, 3 October 1991 and the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities.

### *Right to disseminate information and promote acceptance*

2. Human rights defenders have the right to disseminate information about universal and regional human rights standards, as well as to promote both their acceptance by states and their further development. See Articles 6 and 7 of the United Nations General Assembly's Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

### *Right to monitor*

3. Human rights defenders also have the right to monitor the implementation of universal and regional human rights standards through techniques such as trial observation, attendance at other public proceedings and research. They can inform the general public and international supervisory bodies as to their findings both in general and with respect to the treatment of individuals and of groups of individuals. See Articles 5, 6, 8 and 9 of the United Nations General Assembly's Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Paragraph 11 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990 and Paragraph 43 of the Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow, 3 October 1991.

### *Right to provide advice and representation*

4. In addition human rights defenders can, either through their own appropriately qualified employees or other such persons, provide legal advice, assistance and representation for victims of violations of universal and regional human rights standards at the national, regional or universal level. See Article 9 of the United Nations General Assembly's Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms and Paragraph 11 of the

Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990.

*Right to protest*

5. Furthermore human rights defenders can organise protests against the breach or non-implementation of universal and regional human rights standards, as well as about the failure to accept them. See Articles 5 and 12 of the United Nations General Assembly's Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

*Need for opportunity to comment on reports to international bodies*

6. Human rights defenders should be given effective opportunities to comment on reports by governments on the implementation of universal and regional human rights standards before their submission to international supervisory bodies. See Articles 5 and 9 of the United Nations General Assembly's Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

*Need for consultation*

7. Human rights defenders should be consulted on measures to be taken to implement universal and regional human rights standards. See Article 8 of the United Nations General Assembly's Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

*Duty of protection*

8. Human rights defenders should be protected against attacks and intimidation. Allegations of any such action should be subject to independent and effective investigation leading, where appropriate, to administrative measures and/or criminal proceedings against those responsible. See Article 12 of the United Nations General Assembly's Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities and Ensuring protection – European Union Guidelines on Human Rights Defenders.