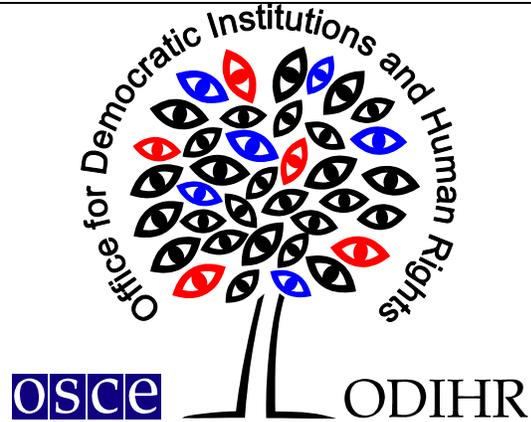


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COMMENTS
ON THE DRAFT LAWS
OF THE REPUBLIC OF UZBEKISTAN
ON CIVIL SOCIETY ORGANIZATIONS
AND ON THE GUARANTEES OF ACTIVITY
FOR NON-STATE NON-PROFIT ORGANIZATIONS

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1. INTRODUCTION

1. *On 1 November 2005, the OSCE ODIHR was requested by the OSCE Center in Tashkent to review a package of draft legislation of the Republic of Uzbekistan concerning Non-Governmental Organizations (hereafter “NGOs”), namely, the draft Laws of the Republic of Uzbekistan on Civil Society Organizations and on the Guarantees of Activity for Non-State Non-Profit Organizations. The request was a result of a prior agreement between the OSCE Center in Tashkent and Mr. Akmal Saidov, Chair of the Parliamentary Committee on NGOs, Democratic Institutions and Self-Government Bodies.*
2. *These Comments have been prepared on the basis of the Russian translation of the aforementioned draft Laws.*

2. SCOPE OF REVIEW

3. These Comments analyze the draft Law of the Republic of Uzbekistan on Civil Society Organizations (hereinafter referred to as the “draft NGO Law”) and the draft Law of the Republic of Uzbekistan on the Guarantees of Activity for Non-State Non-Profit Organizations (hereinafter referred to as the “draft Law on Guarantees of NGO Activity”) from the viewpoint of their compatibility with the relevant international human rights standards and the OSCE commitments. The Comments also examine the draft Laws in light of international best practices on freedom of association and NGO regulation. The international standards referred to by the Comments are those legally binding for the Republic of Uzbekistan, but may include those international instruments which are not binding upon Uzbekistan, as well as documents of declarative or recommendatory nature which have been developed for the purpose of interpretation of relevant provisions of international treaties.
4. These Comments do not purport to provide a comprehensive review.

5. The OSCE/ODIHR would like to mention that the comments provided herein are without prejudice to any further opinions or recommendations that the ODIHR may wish to make on the issue under consideration.

3. EXECUTIVE SUMMARY

6. The draft Laws in question have been drafted in the spirit of compliance with the international instruments and standards relevant to the freedom of association in general and the regulation of NGOs in particular. However, both draft Laws contain a certain degree of vagueness and ambiguity, which may result in the legislation not being applied in a coherent and uniform manner, which may further open the way for arbitrary administrative decisions to be issued on their basis. The draft Laws also fail to establish implementation mechanisms (the latter point is particularly true with regard to the draft Law on Guarantees of NGO Activity). It is important to note that, while the Draft laws as they stand would *de jure* improve the legal framework governing the non-profit sector, the true test of their compliance with international human rights standards will be the manner in which they are interpreted and implemented. As regards implementation, it should be noted that any restrictions imposed on the freedom of association, should be drafted and construed narrowly. Additionally, proportionality of the restrictions imposed should be established as the guiding principle in the regulation of NGOs.
7. The following constitutes a full list of specific recommendations:
 - 1) It is recommended that the draft NGO Law be revised to improve clarity and ensure consistency as far as aliens' participation in NGOs is concerned. It is also recommended that, in addition to the right to belong to NGOs, aliens be afforded the right to found NGOs as well. [see **para 11**]
 - 2) The draft NGO Law as it stands now may be interpreted to suggest that registration is a central prerequisite for a group to be active as an NGO.

Accordingly, informal groups, if not banned, would not be entitled to the rights and protection accorded to the registered NGOs. It is recommended that the draft NGO Law be revised to make it clear that the acquisition of legal personality is not a necessary condition of being active as an NGO. At the same time, the Law may legitimately distinguish between bodies with formal status and informal groups for the purpose of establishing financial and related benefits that may be applicable only to legal entities. [see para 13]

- 3) It is recommended that the draft NGO Law be reviewed in order to ensure that the classification of “civil society organizations” is based on clear, consistent and non-discriminatory criteria. While there is no universally accepted model for such typology, it seems reasonable for the law to draw a distinction between political parties and other “civil society organizations,” as is the case now, at the same time, retaining the current distinction between trade unions and other non-profit organizations. The groups that are not political parties or trade unions may form one wide category of non-governmental organizations proper (or private voluntary organizations) which may be further grouped into organizations based on membership and non-membership-based organizations (such as foundations). It is in fact advisable that foundations (with or without endowment) be distinguished from other non-profit organizations. The law may legitimately require a different procedure for setting up a foundation (e.g. provide for a minimum threshold value for the foundation equity, or require a more detailed charter), additional requirements once the foundation has been set up (e.g. a prohibition on financing political movements) as well as additional benefits (e.g. more significant tax benefits for foundations with endowment). [see para 15]
- 4) It is recommended that the limitation of territorial activity of “civil society organizations” be removed from the draft NGO Law. [see para 17]

- 5) It is recommended that the catalog of permissible grounds for denial of registration be revised to ensure better clarity and predictability. It is also recommended that the obligation stated in Article 17 to “*respect the culture, traditions and lifestyle of the peoples living in the Republic of Uzbekistan*” be removed from the text of the draft for reason of being vague and redundant. [see para 23]
- 6) Lowering the minimum number of NGO founders may be considered. [see para 24]
- 7) It is recommended that the obligation to “*provide free access for the registration body representatives to the organization’s events*” be removed from the draft NGO Law. Alternatively, this obligation is proposed to be replaced with a provision which would exhaustively enumerate and clearly define the specific types of meetings to which registration body representatives may have unimpeded access. [see para 32]
- 8) It is recommended that close consideration be given to promoting NGO self-regulation in addition to State monitoring. [see para 34]
- 9) It is recommended that the draft Law on Guarantees of NGO Activity be supplemented by a set of detailed provisions concerning state financing and social contracting of NGOs. An alternative solution may be to draft a set of regulations supporting the implementation of the law, which should ideally be adopted immediately following the passage of the law. It is recommended that the provisions of the Law (or the supporting regulations, if this option is used) provide for transparency throughout the competition and selection process, as well as ensure equality of the parties in negotiating the contract terms. Furthermore, fair rights and obligations of the parties throughout the contract implementation (including a fair system of sanctions for breach of contract by either of the parties) should also be ensured. [see para 44]

4. ANALYSIS AND RECOMMENDATIONS

4.1 Definition of an NGO - Right to found and belong to, as the central element of freedom of association

8. The draft NGO Law defines a “civil society organization” as a “*non-state non-profit organization established at the initiative of citizens voluntarily associated in order to meet their spiritual or other immaterial needs and based on its members’ common interests, self-government, not having the primary aim of making a profit and not distributing the profits arising from its activities to their members.*”¹
9. This definition is essentially compliant with international standards such as the Fundamental Principles on the Status of Non-Governmental Organizations in Europe² (hereinafter referred to as the “Fundamental Principles”) and similar to definitions found in other countries’ legislation in this area.
10. At the same time, the use of the word “*citizens*” in the definition of a “civil society organization” raises concerns as it may be interpreted to mean foreigners or stateless persons are not entitled to found NGOs. That is, while Article 11 of the draft NGO Law includes a welcomed provision stating that “*[f]oreign nationals and stateless persons on a par with the Uzbek nationals may be members or participants of civil society organizations, with the exception of cases enumerated by the legislation and international treaties of the Republic of Uzbekistan,*” it is not entirely clear whether aliens are only entitled to NGO membership or can also found NGOs. The use of the word “citizens” in Article 10 concerning founding of “civil society organizations”³ confirms the potential interpretation that, despite the absence of an express prohibition for aliens to found NGOs, foreign nationals as well as stateless persons

¹ Draft Law on Civil Society Organizations, Article 3.

² Although not legally binding in general and on Uzbekistan as a non-member State of the Council of Europe in particular, the Fundamental Principles nevertheless are internationally recognized as an authoritative body of standards widely used for the interpretation of international treaty norms concerning freedom of association. The Fundamental Principles in English or Russian are available at http://www.coe.int/T/E/NGO/public/Fundamental_Principles/Fundamental_principles_intro.asp (last visited on 6 December 2005).

³ Draft Law on Civil Society Organizations, Article 10 (“*A civil society organization may be founded at the initiative of minimum 10 citizens.*”)

are not afforded the right to establish “civil society organizations.” If this interpretation indeed reflects the drafters’ intention, it is in contradiction with the Fundamental Principles, according to which “[a]ny person, be it .. national or foreign national ... should be free to establish an NGO.”⁴

11. Therefore, it is recommended that the draft NGO Law be revised to improve clarity and ensure consistency as far as aliens’ participation in NGOs is concerned. It is also recommended that, in addition to the right to belong to NGOs, aliens be afforded the right to found NGOs as well.

4.2 NGO status and typology. Justifications for differential regulatory regime

12. The second part of Article 3, immediately following the definition of “civil society organizations” which offers an approximate typology of NGOs in Uzbekistan, may also give reason for concern. The provision in question stipulates that “*recognized as civil society organizations shall be trade unions, political parties, scientific societies, women’s organizations, organizations of veterans and youth, creative societies, mass movements and other groups of citizens, registered in accordance with the procedure established by law.*” Again, while there is no express prohibition on the activities of unregistered groups, the draft NGO Law may permit the interpretation that registration is a central prerequisite for a group to be active as an NGO. Therefore, informal groups, if not banned, would not be entitled to the rights and protection accorded the NGOs. If this is a correct reflection of the drafters’ intention, it is not in line with the Fundamental Principles, which unequivocally state that “*NGOs can be either informal bodies, or organizations with have legal personality,*”⁵ although these “*may enjoy different statuses under national law in order to reflect differences in the financial or other benefits which they are accorded in addition to legal personality.*”⁶

⁴ Fundamental Principles on the Status of Non-Governmental Organizations in Europe, Principle 15.

⁵ *Id.*, Principle 5.

⁶ *Id.*

It is essential that the exercise of freedom of association should not be preconditioned on forming a legal entity.

13. The availability of protection to informal groups is, of course, particularly significant where there have been improperly denied legal entity status; however, it will also be important where formal registration is not deemed necessary by the group founders.
14. It is therefore recommended that the draft NGO Law be revised to make it clear that the acquisition of legal personality is not a necessary condition of being active as an NGO. At the same time, the Law may legitimately distinguish between bodies with formal status and informal groups for the purpose of establishing financial and related benefits that may be applicable only to legal entities.
15. Note that the typology of “civil society organizations”, contained in the second part of Article 3, seems random. The proposed classification of civil society groups lists, on the one hand, distinct types of organizations such as trade unions, political parties or mass movements – which may legitimately require separate regulatory treatment due to perceivable differences in their respective reasons for existing; while on the other hand, this typology includes a random assortment of groups such as “scientific societies,” “women’s organizations” or “creative societies”. The selection of this assortment of groups seems difficult to justify by any objective criteria (such as a difference in goals of the groups) which would warrant a differential regulatory regime. It should also be noted, that a broad interpretation of this selectivity in the draft Law, may indeed come close to being discriminatory as it is, for instance, the case with “women’s groups” (why should those be regulated in a different way from any other non-profit organization?).
16. It is recommended that the draft NGO Law be reviewed in order to ensure that the classification of “civil society organizations” is based on clear, consistent and non-discriminatory criteria. While there is no universally accepted model for such typology, it seems reasonable if the law draws a distinction between political parties and other “civil society organizations,” as it is the case now, as well as retaining the current distinction between trade unions and other non-profits. Those groups which

may not be classified as political parties or trade unions may form one wide category of non-governmental (or private voluntary) organizations which may be further grouped into organizations based on membership and those not based on membership (such as foundations). It is indeed advisable that foundations (with or without endowment) be distinguished from other non-profit organisations. The law may legitimately require a different procedure for setting up a foundation (e.g. provide for a minimum threshold value for the foundation equity, or require a more detailed charter⁷), additional requirements once the foundation has been set up (e.g. a prohibition on financing political movements⁸) as well as additional benefits (e.g. more significant tax benefits for foundations with endowment).

17. Another concern with regard to the NGO typology is the proposed grouping of NGOs based on the geographic scope of their activity.⁹ The draft NGO Law draws a clear separation line between nationwide and local non-profit organisations by introducing a requirement that any group seeking registration is obliged to mention in its charter the geographic area of its intended activity. Further, there is a requirement that “nationwide” and “local” groups file their registration applications with different agencies (at the national and local level, respectively). The obligation to keep NGO activities confined to a certain area can effectively prevent local, community-based

⁷ For example, Section 22 of the Czech Foundations and Endowment Funds Act, which may well be regarded as a source of best practice in this respect, requires that “[t]he foundation charter or the statute of the foundation/endowment fund must announce one of the following rules intended to curb administrative costs of the foundation/endowment fund: a) total annual cost of the foundation/endowment fund pertaining to administration of the foundation/endowment fund may not exceed a certain percentage of total annual revenues from foundation equity or assets of the endowment fund, b) total annual costs of the foundation/endowment fund pertaining to administration of the foundation/endowment fund may not exceed a certain percentage of the value of the foundation disbursements of that year, or c) total annual costs of the foundation/endowment fund pertaining to administration of the foundation/endowment fund may not exceed a certain percentage of foundation equity or assets of the endowment fund depending on their disclosure for the year ended December 31.”

⁸ For example, this is the case in the Czech Republic. Section 21(6) of the Czech Foundations and Endowment Funds Act stipulates that “[t]he foundation/endowment fund is prohibited from financing political parties or political movements.”

⁹ Draft Law on Civil Society Organizations, Article 6 (“In the Republic of Uzbekistan there shall be nationwide and local civil society organizations. As nationwide shall be recognized those civil society organizations whose activities, in accordance with their charters, cover the entire area of the Republic of Uzbekistan or eight or more regions (Republic of Karakalpakstan, the City of Tashkent. As local shall be recognized civil society organizations whose activities, in accordance with their charters, are limited to the area of a district, city, region or the Republic of Karakalpakstan.”)

groups from forging nationwide partnerships with organizations established for a similar purpose, and therefore precluding the possibility for these partnerships to pursue common goals (unless they choose to establish an officially registered federation of NGOs, which is possible under the draft NGO Law but unreasonably burdensome, especially for NGOs that do not seek long-term collaboration).

18. It is recommended that the limitation of territorial activity of “civil society organizations” be removed from the draft NGO Law.

4.3 Acquisition of legal entity status. NGO registration

19. The provisions of the draft NGO Law concerning the procedure of NGO registration are essentially in compliance with international standards. It is welcomed that legal entity status may only be denied based on a justified decision, which cannot mention “lack of expediency” as a ground for denial.¹⁰ It is also welcomed that a decision to deny legal entity status may be appealed in court.
20. However, while the draft NGO Law provides for an exhaustive list of possible grounds for denial of registration, which are largely compatible with international standards, the wording contains a certain degree of vagueness which may lead to arbitrary application. The provision which allows denial of registration if, based on supplied documentation, it becomes evident that the group seeks to “*promote violent overturn of the constitutional order, undermining of sovereignty, integrity and security of the Republic of Uzbekistan, encroachment on constitutional rights and freedoms of citizens, advocacy of war or social, ethnic, racial or religious hatred, is detrimental for public health and morals, or provides for the formation of paramilitary groups*” is generally consistent with the catalogue of the permissible grounds for restriction of freedom of association under international law. However,

¹⁰ *Id.*, Article 19 (“Denial of registration based on lack of expediency for the establishment of a civil society organization, its representation or branch shall not be allowed.”)

certain issues still remain to be addressed.¹¹ Firstly, the draft Law is silent on who will have the power to establish the existence of elements proving that the group seeking registration intends to pursue a prohibited aim. Secondly, the draft Law does not stipulate the procedure based on which the existence of elements proving that the group seeking registration intends to pursue a prohibited aim shall be established. Thirdly, the draft is not clear on what exactly constitutes the prohibited elements (e.g. it is not entirely impossible that a group engaged in reproductive health issues may be refused registration under the draft NGO Law as “*detrimental to public health and morals*”).

21. The provisions of the draft NGO Law concerning the registration of “*representations and branches of international and foreign civil society organizations*” in Uzbekistan raise a similar concern by including a vague requirement that the organization “*respect the culture, traditions and lifestyle of the peoples living in the Republic of Uzbekistan.*” In addition to being vague, this provision is redundant as it essentially duplicates the provisions prohibiting formation of organizations that advocate ethnic, racial or religious intolerance.
22. It is of vital importance to bear in mind that any restrictions on the exercise of freedom of association must pass a three-pronged test: in addition to (a) meeting at least one of the permissible conditions for restriction, they must be (b) “prescribed by law” (*nullum crimen sine lege*) and (c) “necessary in a democratic society” (i.e. proportionate to the threat). The above noted concern about the vagueness of the draft provisions is based precisely on the fact that an ambiguous law lends itself to

¹¹ See International Covenant on Civil and Political Rights, Article 22(2) (“*No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.*”) The Covenant was acceded to by the Republic of Uzbekistan on 28 September 1995. Full text of the Covenant is available at <http://www.ohchr.org/english/law/ccpr.htm> (last visited on 7 December 2005).

arbitrary interpretation and as such does not comply with the requirement that any restrictions “be prescribed by law.”

23. It is therefore recommended that the catalog of permissible grounds for denial of registration be revised to ensure better clarity and predictability. It is also recommended that the obligation to “*respect the culture, traditions and lifestyle of the peoples living in the Republic of Uzbekistan*” stated in Article 17, be removed from the text of the draft for reason of being vague and redundant.

24. One additional issue that the Uzbekistani legislator may wish to consider is lowering the minimum number of NGO founders (which is currently set at 10).¹² Although there are no internationally accepted standards or precise guidelines on the number of individuals who may initiate an NGO with legal entity status,¹³ and it cannot be unequivocally stated that the requirement of 10 founders is “*at a level that discourages the establishment of an NGO,*”¹⁴ an increasing number of states agree that non-profit organizations with formal status may be established by as few as two founders. Indeed, a wide range of OSCE participating States (including Albania, Armenia, Bulgaria, the Czech Republic, Estonia, Latvia, Lithuania, Slovakia, the Russian Federation, and Ukraine) have set the minimum number of founders at two to five persons.

4.4 State monitoring of NGO activities

25. The draft NGO Law provides for a rather reasonable catalogue of NGO obligations¹⁵ – such as, providing for public access to information on the use of assets or regular

¹² Draft Law on Civil Society Organizations, Article 10 (“*A civil society organization may be initiated by a minimum of ten citizens.*”)

¹³ Fundamental Principles on the Status of Non-Governmental Organizations in Europe, Principle 16 (“*Two or more persons should be able to establish a membership-based NGO. A higher number may be required where legal personality is to be acquired, but this number should not be set at a level that discourages the establishment of an NGO.*”)

¹⁴ *Id.*

¹⁵ Draft Law on Civil Society Organizations, Article 28 (“*Civil society organizations shall: conduct their activities in compliance with the present Law, other legislative acts, as well as the charter of the organization; provide free access to information on the use of the organization’s financial and other assets;*”)

reporting to the registration, taxation and statistics bodies – which are intended to ensure better transparency and visibility of the non-profit sector.

26. However, one of the obligations listed – namely, the obligation to “*provide unimpeded access for the registration body representatives to the organization’s events*” – raises a number of concerns.
27. On the one hand, the abovementioned requirement would in a vast majority of cases prove redundant in the cases where the event is of public nature, meaning that everyone, including State officials, are free to attend – in fact, it may be assumed that most NGOs would usually be interested to invite State officials if the issues on the event agenda affect public interest.
28. On the other hand, with particular respect to events which are not public, the proposed requirement may potentially impede legitimate NGO activities which – for lawful reasons – require restricted access or even be conducted in a confidential manner. This is, for instance, the case for NGOs working with crime victims, such as organizations operating shelters or counseling centers for domestic violence, child abuse or human trafficking victims. It is entirely legitimate and in fact necessary for normal operation of a victim assistance NGO that some of its activities and meetings (e.g. counseling sessions) be restricted to access by the victim and the professional worker to prevent further trauma to the victim, while others (e.g. shelter operations) be conducted in complete secrecy, for instance to prevent perpetrators from knowing the location of the shelter and thus enabling potential retaliation against the victim. Another case may be various peer support groups, where the participants gather to share very personal experiences and to help themselves overcome their common problems. For instance, a group of parents of children with attention deficit hyperactivity disorder (ADHD) may find strangers’ presence at their meetings intimidating and inhibiting, since children with ADHD tend to be inattentive, score low at school and are often unpopular with their peers, and parents may view it as a

provide free access for the representatives of the registration body to the organization’s events; provide reports on the organization’s activities to the registration, taxation and statistics bodies. Civil society organizations may have other obligations in accordance with the legislation.”)

“shame” to talk about their children’s problems in the presence of someone who they do not know well.

29. In this connection, it is essential to bear in mind that in many cases the issue of access to certain type of meetings (e.g. meetings on private property) may have direct implications for the right to privacy, and the organizing party should retain the right to deny access. This should not, of course, be interpreted as to preclude duly authorized access by law enforcement officials where there is evidence of illegal activity; however, this issue does not concern non-profit organizations only and is presumably already addressed by the Code of Criminal Procedure of the Republic of Uzbekistan.
30. In addition, regular reporting and unimpeded access to documentation provides a sufficient guarantee of visibility for non-profit organizations, and heightened scrutiny in the absence of evidence of any illegal activity may well constitute an interference with the presumption of the lawfulness of the activity conducted (as a particular case of the presumption of innocence).
31. At the same time, the draft Law may include a provision which would exhaustively enumerate and clearly define the specific types of meetings to which registration body representatives may have unimpeded access , e.g. to general or board meetings of the NGO.¹⁶
32. In view of the above considerations, it is recommended that the obligation to “*provide unimpeded access for the registration body representatives to the organization’s events*” be removed from the draft NGO Law or replaced a provision which would exhaustively enumerate and clearly define the specific types of meetings to which registration body representatives may have unimpeded access.

¹⁶ For instance, Article 16 of the Armenian Law on Public Organizations makes it obligatory for NGOs “[u]pon well-grounded demand of the state authorized body in the field of justice of the Republic of Armenia (hereafter referred to as state authorized body) within reasonable time frames to provide the latter with other documents concerning the activities of the organization, and to allow the representatives of that body to be present at the general meeting of the organization.)” (Emphasis added.)

33. Another recommendation directly related to the issue of State supervision is NGO self-regulation. Self-regulation has proven to be a powerful tool to counter and prevent various abuses in the non-profit sector, and, most importantly, it fosters a cooperative rather than confrontational attitude of NGOs towards the public sector. It is pivotal to note that the role of self-regulation is understood as complementing rather than substituting State monitoring, and is also beneficial for the State as it boosts efficiency with less human resource or financial investment.
34. It is recommended that close consideration be given to promoting NGO self-regulation in addition to State monitoring.

4.5 State-NGO cooperation. State financing and social contracting. Public-private partnerships

35. The primary intent of the draft Law on Guarantees of NGO Activity as stated by Article 1 of the Law is “*to provide for guarantees of activity of non-state non-profit organizations, to ensure protection of their rights, to promote social partnerships and to improve the mechanisms for the State support for non-state non-profit organizations.*”¹⁷
36. Further, the draft Law on Guarantees of NGO Activity creates a positive obligation for the State “*to provide for guarantees of equality in ensuring the protection of the rights of non-state non-profit organizations, to create equitable conditions for the participation by non-state non-profit organizations in social partnership and state support schemes.*”¹⁸ The draft as it stands now, however, provides for little in terms of ensuring that this provision is implemented. Draft provisions mainly concern safeguards against nationalization and seizure of assets, as well as, to a limited extent, promote better access to justice (e.g. through providing for a state duty waiver for non-profits petitioning the court regarding allegedly illegal actions by the State bodies¹⁹).

¹⁷ Draft Law on the Guarantees of Activity for Non-State Non-Profit Organizations, Article 1.

¹⁸ *Id.*, Article 4.

¹⁹ *Id.*, Article 13.

37. While these safeguards are very welcome, they would need to be supplemented by further provisions. Issues such as ensuring objectivity and impartiality and creating equitable conditions for non-profits in bidding for government funding or contracts remain largely unregulated. In view of this, the comments to follow will primarily focus on state financing and social contracting as the major components of public-non-profit sector cooperation. These are areas where other countries' experience and practices may serve as a source of inspiration for the legislator.
38. There exist numerous regulatory solutions with respect to State financing and social contracting, which can be introduced either at the level of primary or secondary legislation. However, if the latter option is selected, it is desirable that the package of regulations to support the implementation of the law be drafted simultaneously with the law itself and be adopted immediately following the passage of the law to ensure that the law works.
39. State financing and social contracting of NGOs require a set of clear-cut rules governing the competition and selection procedure, contract terms, as well as the rights and obligations of the beneficiary NGO and the relevant state body alike. While a comprehensive discussion of these issues certainly goes beyond the scope of these Comments, it may still be appropriate to point out the core elements that should be taken into consideration in the law and/or supporting regulations.
40. First, transparency should be ensured throughout the competition and the selection of the winning non-profit organization(s). The requirements for participation should be set out in a very clear and accessible manner. It is essential that the results of the competition be made readily available to all those interested. A possible solution is to introduce a requirement that the competition commission must publish its decision in the local media.
41. Second, the contract terms should be fair with respect to each of the parties. To achieve this aim, it is best to ensure that the parties can negotiate the terms (the balance of bargaining power). It is desirable for the law to avoid overregulation and

for the parties to have sufficient flexibility regarding the contract, including the implementation mode.

42. While it is of major importance that the right of the State body partner to monitor the implementation of the contract does not grow into interference with the NGO activities, it is undoubtedly completely legitimate to require the beneficiary NGO to ensure maximum transparency in its contract-related activities and regularly report to the State body. It is advisable that a controlling commission composed of representatives of different bodies and institutions be specially created to oversee the implementation of the contract.
43. Finally, sanctions for breach of the contract should be carefully designed. These should be envisaged in cases of breach both by the beneficiary and the State body. Certainly, this issue would be to a greater or lesser extent already regulated by the Civil Code. If so, providing references to the relevant provisions of the Civil Code may be an option.
44. As a summary, it is recommended that the draft Law on Guarantees of NGO Activity be supplemented by a set of detailed provisions concerning state financing and social contracting of NGOs. An alternative solution may be to draft a set of regulations supporting the implementation of the law, which should ideally be adopted immediately following the passage of the law. It is recommended that the provisions of the Law (or the supporting regulations, if this option is used) provide for transparency throughout the competition and selection process, as well as ensure equality of the parties in negotiating the contract terms. Further, rights and obligations of the parties throughout the contract implementation (including a fair system of sanctions for breach of contract by either of the parties) should be established and ensured.

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