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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS
(OSCE/ODIHR)

JOINT GUIDELINES

ON

FREEDOM OF ASSOCIATION

Adopted by the Venice Commission
at its 101st Plenary Session
(Venice, 12-13 December 2014)

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INTRODUCTION

These *Guidelines on Freedom of Association* have been developed to further the goal of implementing the right to freedom of association. The added value of this document is that it incorporates the long-standing and in-depth expertise of the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the Council of Europe's Commission for Democracy through Law (Venice Commission) in providing legislative assistance in matters pertaining to the right to freedom of association. The Guidelines are primarily, but not exclusively, intended for use by legislators tasked with drafting laws that regulate or affect associations. These Guidelines are also intended to serve public authorities, the judiciary, legal practitioners and others concerned with the exercise of the right to freedom of association, including associations and their members. In addition, the OSCE/ODIHR and Venice Commission hope that these Guidelines will be a useful source of information for the general public.

The present Guidelines serve as an "umbrella" document in relation to already existing OSCE/ODIHR-Venice Commission guidelines addressing political parties and religious organizations. These include the *Guidelines on Political Party Regulation*,¹ the *Guidelines for Review of Legislation Pertaining to Religion or Belief*² and the *Joint Guidelines on the Legal Personality of Religious or Belief Communities*.³ In addition, the OSCE/ODIHR *Guidelines on the Protection of Human Rights Defenders*⁴ are also relevant to these Guidelines.

The Guidelines consist of an introduction and three sections. Section A introduces the definition of associations, the importance of associations, the fundamental rights of associations and the need for well drafted legislation in this regard. Section B outlines the guiding principles of the right to freedom of association, while Section C contains interpretative notes that elaborate on the guiding principles. These interpretative notes are made up of two parts: the first part, Subsection 1, provides a more detailed interpretation of the Guiding Principles set out under Section A, while the second part, Subsection 2, focuses on some of the more problematic aspects of giving effect to the Guiding Principles when developing a legal framework to regulate associations. All sections should be read together. In particular, Sections B and C should be read in concert, as the interpretative notes constitute an integral part of the guiding principles.

The Guidelines are based on existing international standards and practice. They have been further informed by a review of international and domestic practice conducted by experts during the drafting process.

The Guidelines were developed by the Working Group of OSCE/ODIHR-Venice Commission Experts over the course of a year and were supplemented by extensive consultations, including two roundtables, as well as a consultation seminar.⁵

The Guidelines were adopted by the Commission, at its 101st Plenary Session (Venice, 13-14 December 2014)

¹ OSCE/ODIHR and Council of Europe's Commission for Democracy through Law (hereafter: Venice Commission), *Guidelines on Political Party Regulation* (Warsaw: ODIHR, 2011), <<http://www.osce.org/odihr/77812>>.

² OSCE/ODIHR and Venice Commission, *Guidelines for Review of Legislation Pertaining to Religion or Belief* (Warsaw: ODIHR, 2004), <<http://www.osce.org/odihr/13993>>.

³ OSCE/ODIHR and Venice Commission, *Joint Guidelines on the Legal Personality of Religious or Belief Communities* (Warsaw: ODIHR, 2014), <[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)023-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)023-e)>.

⁴ OSCE/ODIHR, *Guidelines on the Protection of Human Rights Defenders* (Warsaw: ODIHR, 2014), <<http://www.osce.org/odihr/119633?download=true>>.

⁵ A Consultation Seminar on "Freedom of Association and New Technologies" was held on 11 March, 2014, at the European University Institute in Florence, Italy; a Roundtable on "Funding, Independence, and Accountability of Associations" was held on 6-7 May, 2014, in Warsaw, Poland; and a Roundtable on "Enabling Legal Framework for Freedom of Association: Focus on Formation of Associations, Objectives and Activities, Liability and Sanctions" was held on 8-9 September, 2014, in Warsaw, Poland.

SECTION A: THE RIGHT TO FREEDOM OF ASSOCIATION

1. It is generally recognized that “a vigorous democracy depends on the existence of an extensive range of democratic institutions”.⁶ These include associations, such as political parties, non-governmental organizations, religious organizations, trade unions and others. The key role played by associations in a democracy has long been acknowledged by international instruments that establish and seek to ensure the right to freedom of association.⁷

2. The Council of Europe and the Organization for Security and Co-operation in Europe (OSCE) have developed a comprehensive body of standards and political commitments in the field of freedom of association. The European Convention on Human Rights (ECHR) of the Council of Europe⁸ and the OSCE Copenhagen document of 1990⁹ both include this specific right.

3. The right to freedom of association is reaffirmed by other international treaties, such as the International Covenant on Civil and Political Rights (ICCPR),¹⁰ the International Covenant on Economic, Social and Cultural Rights (ICESCR),¹¹ the American Convention on Human Rights (ACHR),¹² the Charter of Fundamental Rights of the European Union (CFREU)¹³ and the African

⁶ See Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 1990 (hereafter: Copenhagen 1990), para. 26: “The participating States recognize that vigorous democracy depends on the existence as an integral part of national life of democratic values and practices as well as an extensive range of democratic institutions. They will therefore encourage, facilitate and, where appropriate, support practical co-operative endeavours and the sharing of information, ideas and expertise among themselves and by direct contacts and co-operation between individuals, groups and organizations in areas including the following:

- constitutional law, reform and development,
- electoral legislation, administration and observation,
- establishment and management of courts and legal systems,
- the development of an impartial and effective public service where recruitment and advancement are based on a merit system,
- law enforcement,
- local government and decentralization,
- access to information and protection of privacy,
- developing political parties and their role in pluralistic societies,
- free and independent trade unions,
- co-operative movements,
- developing other forms of free associations and public interest groups,
- journalism, independent media, and intellectual and cultural life,
- the teaching of democratic values, institutions and practices in educational institutions and the fostering of an atmosphere of free enquiry.

Such endeavours may cover the range of co-operation encompassed in the human dimension of the CSCE, including training, exchange of information, books and instructional materials, co-operative programmes and projects, academic and professional exchanges and conferences, scholarships, research grants, provision of expertise and advice, business and scientific contacts and programmes.

⁷ See, for example, Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950 (hereafter: ECHR), Article 11, <<http://conventions.coe.int/treaty/Commun/QueVoulezVous.asp?NT=005&CL=ENG>>; UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171 (hereafter: ICCPR), Article 22, <<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>>; UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III) (hereafter: UDHR), Article 20, <<http://www.un.org/en/documents/udhr/index.shtml>>; and Copenhagen 1990, paras. 9, 10 and 26, <<http://legislationline.org/topics/organisation/3/topic/1>>.

⁸ ECHR, Article 11.

⁹ Copenhagen 1990, paras. 9.3, 10.3, 26 and 32.6.

¹⁰ ICCPR, Article 22.

¹¹ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, Article 8, <<http://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf>>.

¹² Organization of American States (OAS), *American Convention on Human Rights, "Pact of San Jose", Costa Rica*, 22 November 1969 (hereafter: American Convention on Human Rights), <http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm>. See also Organization of American States (OAS), *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights*, OAS Treaty, Series No. 69, 1988; and Inter-American Commission on Human Rights (IACHR), *American Declaration of Rights and Duties of Man*, Res. XXX, Final Act, Ninth International Conference of OAS, 1948, OR OAS/Ser.L/VII.23/Doc 21 rev. 6, 1979.

Charter on Human and Peoples' Rights (AfCHPR).¹⁴ The Arab Charter on Human Rights¹⁵ also provides for the right to freedom of association, but makes it applicable only to citizens. Similarly, other international documents protect this right with respect to trade unions and employers' organizations, including several conventions of the International Labour Organization (ILO)¹⁶ and the European Social Charter (ESC).¹⁷

4. Various other international and regional human rights instruments also specifically recognize the right to freedom of association of particular persons or groups, such as refugees (the *Convention and Protocol Relating to the Status of Refugees*),¹⁸ women (the *Convention on the Elimination of All Forms of Discrimination against Women*),¹⁹ children (the *Convention on the Rights of the Child*),²⁰ migrant workers and members of their families (the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*),²¹ persons belonging to national minorities (the *Council of Europe Framework Convention for the Protection of National Minorities*)²² and persons with disabilities (the *Convention on the Rights of Persons with Disabilities*).²³

5. In addition, the right to freedom of association is supported by a plethora of both international and domestic case law. As such, there is a robust body of law governing this right, providing a strong case for the recognition that the right of persons to associate is intrinsic to the democratic societies that OSCE participating States and Council of Europe member states have committed to build.

6. Further, many documents have been drafted and adopted by international governmental and non-governmental organizations that serve to underscore the importance of the right to freedom of association and to bring it to life.²⁴ These documents take the form of, in particular, recommendations, resolutions, interpretative decisions of treaty bodies and United Nations Special Rapporteur reports, and constitute important sources of soft law relevant to these Guidelines (for more information, see Annex D).

¹³ European Union, *Charter of Fundamental Rights of the European Union*, 26 October 2012, 2012/C 326/02, Article 12, <<http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=OJ:C:2012:326:TOC>>.

¹⁴ Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights ("Banjul Charter")*, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), Article 10, <http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf>.

¹⁵ Article 24 of the Arab Charter on Human Rights adopted by the Council of the League of Arab States on 22 May 2004, states that "Every citizen has the right: [...] 6. To freedom of association and peaceful assembly". See League of Arab States, *Arab Charter on Human Rights*, 15 September 1994, available at: <<http://www.refworld.org/cgi-bin/telex/vtx/rwmain?docid=3ae6b38540>>.

¹⁶ See Annex A for the relevant excerpts of International Labour Organization conventions.

¹⁷ Council of Europe, *European Social Charter*, 18 October 1961, ETS 35 (hereafter: ESC). The European Committee of Social Rights rules on the conformity of the situation in states with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter. Part 1, paragraph 5 of the Charter states that "All workers and employers have the right to freedom of association in national or international organisations for the protection of their economic and social interests."

¹⁸ UN General Assembly, *Convention and Protocol Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, Article 15, <<http://www.unhcr.org/3b66c2aa10.html>>.

¹⁹ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13 (hereafter: UN CEDAW), Article 7, <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>>, which states that "States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right [...] (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country."

²⁰ UN General Assembly, *Convention on the Rights of the Child* (hereafter: UN CRC), 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, Article 15, <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>>.

²¹ UN General Assembly, *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, 18 December 1990, United Nations, Treaty Series, vol. 2220, p. 3, Article 29, <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx>>.

²² *Ibid.*, Article 26.

²³ Council of Europe, *Framework Convention for the Protection of National Minorities*, 1 February 1995, ETS 157, Articles 7 and 8, <<http://conventions.coe.int/Treaty/en/Treaties/html/157.htm>>.

²⁴ UN General Assembly, *Convention on the Rights of Persons with Disabilities*, 13 December 2006, United Nations, Treaty Series, vol. 2515, p. 3, Article 29, <<http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx>>.

²⁵ See Annex C: Selected Reference Documents.

Definition of associations

7. For the purposes of the present Guidelines, an association is an organized, independent, not-for-profit body based on the voluntary grouping of persons with a common interest, activity or purpose. An association does not have to have legal personality, but does need some institutional form or structure.

Importance of associations

8. Freedom of association is a human right, crucial to the functioning of a democracy, as well as an essential prerequisite for other fundamental freedoms.²⁵

9. Furthermore, associations often play an important and positive role in achieving goals that are in the public interest, as has been recognized in international jurisprudence and in general comments and recommendations made by the UN treaty bodies, as well as in resolutions of the Human Rights Council and other international and regional documents. Associations work on a wide range of issues, including human rights (such as combating discrimination²⁶ and racist hate speech,²⁷ monitoring,²⁸ assisting the work of national human rights institutions,²⁹ promoting, recognizing and monitoring the implementation of the rights of children,³⁰ preventing and combating domestic violence and violence against women,³¹ including eradicating female genital mutilation,³² and other gender based violence, as well as preventing, suppressing and punishing trafficking in persons, especially women and children³³); democratic reforms (such as promoting good governance³⁴ and equal participation in political and public life,³⁵ as well as securing

²⁵ See Venice Commission, "Compilation of Venice Commission Opinions on Freedom of Association" (3 July 2014) CDL-PI(2014)004, para. 2.2, which refers to: Venice Commission, "Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan" (14-15 October 2011) CDL-AD(2011)035, para. 45; and Venice Commission, "Opinion on the Federal law on combating extremist activity of the Russian Federation" (15-16 June 2012) CDL-AD(2012)016, para. 64.

²⁶ See UN Committee on the Elimination of Racial Discrimination (hereafter: UN CERD Committee), *General Recommendation No. 31: Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System*, (Sixty-seventh session, 2005), A/60/18 (SUPP), paras. 9 and 17; and UN Committee on the Elimination of Discrimination against Women (hereafter: UN CEDAW Committee), *General recommendation No. 25, on article 4, paragraph 1, of the CEDAW, on temporary special measures*, 2004, para. 2.

²⁷ See UN CERD Committee, *General recommendation No. 35: Combating racist hate speech*, 26 September 2013, CERD/C/GC/35, paras. 36 and 43.

²⁸ See, for example, Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Guidelines on national preventive mechanisms*, 9 December 2010, CAT/OP/12/5, para. 16; UN Committee against Torture, *Concluding observation of the fourth periodic report of Belarus*, 7 December 2011, CAT/C/BLR/CO/4, para. 14.

²⁹ See UN Committee on the Rights of the Child (hereafter: UN CRC Committee), *General Comment No. 2: The Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child*, 15 November 2002, CRC/GC/2002/2; and UN CRC Committee, *Report of the UN Committee on the Rights of the Child*, 23 July 2004, A/59/41, para. 82.

³⁰ See UN CRC Committee, *General Comment No. 5 (2003): General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)*, 27 November 2003, CRC/GC/2002/5, paras. 46 and 59; UN CRC Committee, *General Comment No. 5 (2003): General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)*, 27 November 2003, CRC/GC/2002/5, paras. 56 and 58; UN CRC Committee, *General Comment No. 8 (2006): The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia)*, 2 March 2007, CRC/C/GC/8, para. 52; UN CRC Committee, *General Comment No. 9 (2006): The rights of children with disabilities*, 27 February 2007, CRC/C/GC/9, para. 25; UN CRC Committee, *General Comment No. 13 (2011): The right of the child to freedom from all forms of violence*, 18 April 2011, CRC/C/GC/13, para. 75 and UN CRC Committee, *General Comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights*, 17 April 2013, CRC/C/GC/16, paras. 77 and 84.

³¹ Council of Europe, *Convention on preventing and combating violence against women and domestic violence*, 12 April 2011, ETS 210, Article 9, <<http://www.coe.int/t/dghl/standardsetting/convention-violence/convention/Convention%20210%20English.pdf>>.

³² UN CEDAW Committee, *General recommendation No. 14 (1990): Female circumcision*, A/45/38 (SUPP).

³³ UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000, United Nations, Articles 6, 9 and 10, <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>>.

³⁴ See UN Human Rights Council, *The rights to freedom of peaceful assembly and of association*, 8 October 2013, A/HRC/RES/24/5 (hereafter: UN Human Rights Council Resolution 24/5), which states that "Recognizing the

remedies³⁶); security and international co-operation (such as facilitating conflict prevention,³⁷ promoting reconciliation and peace,³⁸ achieving the purposes and principles of the United Nations³⁹ and contributing to the work of international organizations⁴⁰); and social, economic and development issues (such as achieving inclusion in education,⁴¹ bringing about improvements in living conditions,⁴² providing disaster relief and humanitarian assistance,⁴³ promoting employment⁴⁴ and contributing to health and development⁴⁵).

10. In addition, associations are often active in “addressing and resolving challenges and issues that are important to society, such as the environment, sustainable development, crime prevention, empowering women, social justice, consumer protection and the realization of all human rights”.⁴⁶ The role that associations can play with respect to the implementation of human rights commitments is also underscored by the emphasis placed by UN treaty bodies on the

importance of the freedoms of peaceful assembly and of association, as well as the importance of civil society, to good governance, including through transparency and accountability, which is indispensable for building peaceful, prosperous and democratic societies, *Aware of the crucial importance of the active involvement of civil society in processes of governance that affect the life of people*, as well as the recital to the UN Human Rights Council, *Civil society space: creating and maintaining, in law and in practice, a safe and enabling environment*, 9 October 2013, A/HRC/RES/24/21 (hereafter: UN Human Rights Council Resolution on civil society space), which states that “Recognizing the crucial importance of the active involvement of civil society, at all levels, in processes of governance and in promoting good governance, including through transparency and accountability, at all levels, which is indispensable for building peaceful, prosperous and democratic societies”.

³⁵ UN CERD Committee, *General recommendation No. 27 on discrimination against Roma* (2000), 16 August 2000, U.N. Doc. A/55/18 (hereafter: UN CERD General Recommendation on Discrimination Against Roma), paras. 42 and 43. See also UN Human Rights Council, *Report of the Working Group on the issue of discrimination against women in law and in practice*, 19 April 2013, UN Doc., A/HRC/23/50, paras. 34 and 46, <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.50_EN.pdf>, which states that “For women to have the capacity to participate in political and public life on equal footing with men, including to build autonomous movements for their own empowerment, they must be able to exercise their rights to freedom of thought, conscience, religion, expression, movement and association. It is imperative to recognize and secure these rights as individual rights for women’s effective participation in political and public life.” See also UN High Commissioner for Human Rights, *Report on factors that impede equal political participation and steps to overcome those challenges*, 30 June 2014, A/HRC/27/29, paras. 22-25, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A_HRC_27_29_FRE.doc>.

³⁶ See UN Committee on Economic Social and Cultural Rights, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Convention)*, 11 August 2000, E/C.12/2000/4, para. 59; UN CRC Committee, *General Comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (Art. 24 of the Convention)*, 17 April 2013, CRC/C/GC/15, para. 120; and UN CRC Committee, *General Comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (Art. 31 of the Convention)*, 17 April 2013, CRC/C/GC/17, para. 58.

³⁷ See UN CERD General Recommendation on Discrimination Against Roma, para. 14.

³⁸ See UN CEDAW Committee, *Concluding observation of the combined sixth and seventh periodic reports of Cyprus adopted by the Committee at its fifty fourth session (11 February – 1 March 2013)*, 1 March 2013, CEDAW/C/CYP/CO/6-7, para. 24.

³⁹ See UN Human Rights Council, *The rights to freedom of peaceful assembly and of association*, 11 October 2012, A/HRC/RES/21/16, Article 3; UN Human Rights Council Resolution 24/5, Article 4; and recital to UN Human Rights Council Resolution on civil society space.

⁴⁰ See UN Human Rights Council Resolution on civil society space, para. 5.

⁴¹ See UN CERD General Recommendation on Discrimination Against Roma, para. 17.

⁴² *Ibid.*, paras. 30 and 34.

⁴³ See UN Committee on Economic, Social and Cultural Rights (hereafter: UN CESCR Committee), *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)*, 11 August 2000, E/C.12/2000/4, para. 65; UN CESCR Committee, *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, 20 January 2003, E/C.12/2002/11, para. 60; and UN CESCR Committee, *General Comment No. 17: The Right of Everyone to Benefit from the Protection of the Moral and Material Interests Resulting from any Scientific, Literary or Artistic Production of Which He or She is the Author (Art. 15, Para. 1 (c) of the Covenant)*, 12 January 2006, E/C.12/GC/17, para. 54.

⁴⁴ See UN CESCR Committee, *General Comment No. 18: The Right to Work (art. 6 of the Covenant)*, 6 February 2006, E/C.12/GC/18, para. 42.

⁴⁵ See UN CRC Committee, *General Comment No. 4: Adolescent Health and Development in the Context of the Convention on the Rights of the Child*, 1 July 2003, CRC/GC/2003/4, paras. 38-39.

⁴⁶ See UN Human Rights Council Resolution 21/16, para. 4; and UN Human Rights Council Resolution 24/5, Article 5. See also UN Human Rights Council, *Protecting human rights defenders*, 12 April 2013, A/HRC/RES/22/6, in particular paras. 5 and 13 to 20. See also African Commission on Human and Peoples’ Rights, *Concluding observation of the African Commission on Human and Peoples’ rights in respect of Egypt*, 3rd Period Report, 27 April – 11 May 2005, para. 29.

participation of associations in the preparation, consideration and follow-up of reports submitted by States Parties.⁴⁷

11. A number of OSCE documents – most significantly the 1990 Copenhagen Document of the OSCE – specify that all forms of associations, interest groups, trade unions and political parties are crucial to a vibrant democracy.⁴⁸ The Copenhagen Document, for example, underscores the importance of respecting “the rights of everyone, individually or in association with others, to study and discuss the observance of human rights and fundamental freedoms and to develop and discuss ideas for improved protection of human rights and better means for ensuring compliance with international human rights standards.”⁴⁹

12. Within the Council of Europe, the obligations contained in the ECHR concerning the right to freedom of association have been interpreted by the European Court of Human Rights (ECtHR) on a number of occasions. The ECtHR has often referred to the importance of respect for freedom of association in a democracy, asserting that “the state of democracy in the country concerned can be gauged by the way in which this freedom is secured under national legislation and in which the authorities apply it in practice”.⁵⁰ Meanwhile, the Venice Commission has stated that “[t]he way in which national legislation enshrines this freedom and its practical application by the authorities reveal the state of democracy in the country concerned”.⁵¹

13. In relation to non-governmental organizations, the member states of the Council of Europe have acknowledged “the essential contribution made by non-governmental organizations (NGOs) to the development and realisation of democracy and human rights, in particular through the promotion of public awareness, participation in public life and securing the transparency and accountability of public authorities, and of the equally important contribution of NGOs to the cultural life and social well-being of democratic societies”.⁵²

14. Regarding trade unions, the Preamble to the Constitution of the ILO declares that recognition of the principle of freedom of association is a means to improving conditions of labour and to establishing peace.⁵³ Indeed, the right to associate in “trade unions has, historically, been a catalyst for democratic reform and the development of states more generally. Trade unions have also played a critical role in promoting gender equality.”⁵⁴

15. Political parties are also associations,⁵⁵ and have been recognized as integral players in the democratic process and as “foundational to a pluralist political society”.⁵⁶ In particular, legislation

⁴⁷ See, for example, the UN CEDAW Committee, *Concluding observations of the Committee on the Elimination of Discrimination against Women in respect of Comoros*, 8 November 2012, CEDAW/C/COM/CO/1-4, paras. 17-18); and UN CEDAW Committee, *Concluding observations of the Committee on the Elimination of Discrimination against Women in respect of Panama*, 5 February 2010, CEDAW/C/PAN/CO/7, paras. 20-21.

⁴⁸ Copenhagen 1990, para. 26.

⁴⁹ *Ibid.*, para. 10.2.

⁵⁰ European Court of Human Rights (hereafter: ECtHR), *Gozelik and Others v. Poland* [GC] (Application no. 44158/98, judgement of 17 February 2004), para. 88, <<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-61637>>.

⁵¹ Venice Commission, “Opinion on the compatibility with universal human rights standards of article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus” (14-15 October 2011) CDL-AD(2011)036, para. 72. See also the Inter-American Court of Human Rights, *Baena Ricardo et al. v. Panama*, 28 November 2003, Series C no. 104, para. 166 and subsequent paragraphs.

⁵² Council of Europe, *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*, 10 October 2007, preamble, para. 2.

⁵³ See, for example, International Labour Organization (ILO), *Constitution of the International Labour Organization*, 1 April 1919, <http://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO>. See also the Preamble to International Labour Organization, *Freedom of Association and Protection of the Right to Organise Convention, C87*, 1948.

⁵⁴ See ILO, *Gender Equality and Social Dialogue: An Annotated Bibliography*, 2012, <<http://www.ilo.org/public/english/dialogue/download/bibliogender.pdf>>.

⁵⁵ See ECtHR, *United Communist Party of Turkey v. Turkey* [GC] (Application no. 19392/92, judgement of 30 January 1998), <<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58128>>.

⁵⁶ See OSCE/ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (Warsaw: ODIHR, 2011), para. 10, <<http://www.osce.org/odihr/77812>>.

on political parties can promote and support the full participation and representation of women and minorities in political processes and in public life.⁵⁷

Fundamental rights of associations

16. The right to freedom of association is a right that has been recognized as capable of being enjoyed individually or by the association itself in the performance of activities and in pursuit of the common interests of its founders and members.⁵⁸

17. The right to freedom of association is interrelated with other human rights and freedoms, such as the rights to freedom of expression and opinion, freedom of assembly and freedom of thought, conscience and religion.⁵⁹

18. Indeed, the OSCE/ODIHR and Venice Commission have highlighted that “freedom of association must also be guaranteed as a tool to ensure that all citizens are able to fully enjoy their rights to freedom of expression and opinion, whether practiced collectively or individually.”⁶⁰

19. Furthermore, the OSCE/ODIHR and Venice Commission have stated that “although applicable international, European and other regional treaties conceptualize such rights as relevant to the individual, it is the free exercise of association itself that allows these protections to be extended to parties as a representative body of protected individuals”.⁶¹ This means that associations shall themselves enjoy other human rights, including the right to freedom of peaceful assembly, the right to an effective remedy, the right to a fair trial, the right to the protection of their property, private life and correspondence and the right to be protected from discrimination.⁶²

Importance of well drafted legislation and an enabling environment

20. Legislation that affects the exercise of the right to freedom of association should be drafted with the purpose of facilitating the establishment of associations and enabling them to pursue their objectives. It should also be drafted with sufficient clarity and precision so as to enable the legislation’s correct application by the relevant implementing authorities.

21. The ECtHR has recognized that the state has a positive obligation to secure the enjoyment of the right to freedom of association. In particular, it has found that a “genuine and effective respect for freedom of association cannot be reduced to a mere duty on the part of the State not to interfere; [...] Accordingly, it is incumbent upon public authorities to guarantee the proper functioning of an association or political party, even when they annoy or give offence to persons

⁵⁷ *Ibid.*, para. 84. See also OSCE/ODIHR, *Handbook on Promoting Women’s Participation in Political Parties* (Warsaw: ODIHR, 2014), pages 15-17, <<http://www.osce.org/odihr/120877>>.

⁵⁸ See, for example, ECtHR, *Refah Partisi (the Welfare Party) and others v. Turkey [GC]* (Application nos. 41340/98, 41342/98, 41343/98 and 41344/98, judgement of 13 February 2003), paras. 87-88. See also ECtHR, *National Union of Belgian Police v. Belgium*, Application no. 4464/70, 27 October 1975, paras. 39-40; and Council of Europe, *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*, 10 October 2007, para. 5 which states that “NGOs should enjoy the right to freedom of expression and all other universally and regionally guaranteed rights and freedoms applicable to them.” See also Inter-American Court of Human Rights, *Huilca-Tesce v. Peru*, 3 March 2005, Series C no. 121, paras. 69-71, <http://www.corteidh.or.cr/docs/casos/articulos/seriec_121_ing.pdf>.

⁵⁹ “The right to freedom of association is intertwined with the right to freedom of thought, conscience, religion, opinion and expression. It is impossible to defend individual rights if citizens are unable to organize around common needs and interests and speak up for them publicly.” See European Commission for Democracy through Law (the Venice Commission), “Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan” (14-15 October 2011) CDL-AD(2011)035, para. 84.

⁶⁰ See OSCE/ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (Warsaw: ODIHR, 2011), para. 37. This approach has also been endorsed by the Inter-American Court of Human Rights; see, for example, *García y Familiares v. Guatemala*, 29 November 2012, Series C no. 258, para. 122.

⁶¹ See OSCE/ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (Warsaw: ODIHR, 2011), para. 11.

⁶² Council of Europe, *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*, 10 October 2007, paras. 2 and 22; and ECtHR, *Staatkundig Gereformeerde Partij v. Netherlands* (Application no. 58369/10, decision of 10 July 2012), <<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-112340>>.

opposed to the lawful ideas they are seeking to promote”.⁶³ In addition, the ILO Committee on Freedom of Association has emphasized the value of consulting organizations of employers and workers during the preparation and application of legislation that affects their interests.⁶⁴

22. For this reason, legal provisions concerning associations need to be well crafted. They need to be clear, precise and certain. They should also be adopted through a broad, inclusive and participatory process, to ensure that all parties concerned are committed to their content. In addition, they should be subject to regular review to ensure that they continue to meet the needs of associations, and should be adapted in a timely manner to reflect the ever-changing environment in which associations operate, including as a result of the advancement and use of new technologies.

23. Legal provisions concerning associations should be interpreted and applied in a manner consistent with the effective exercise of the right to freedom of association to ensure that the enjoyment of this right is practical and effective rather than theoretical or illusory.⁶⁵

24. Furthermore, international standards recognize that restrictions of this right are only permissible in strictly limited circumstances. Article 22 of the ICCPR states that restrictions are permissible only when “prescribed by law and [...] 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.” Similarly, Article 11 of the ECHR states that the only restrictions permissible are those that are “prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.” These standards also embody a proportionality test, meaning that the least intrusive means should govern the framing of restrictions. Furthermore, restrictions must never entirely extinguish the right nor deprive it of its essence.⁶⁶ These Guidelines will serve to further understanding of the limited cases in which restrictions may be applied

25. Finally, the interpretation and application of provisions concerning associations, including those that serve to restrict their operations, should be open to review by a court or other independent and impartial body.

SECTION B: GUIDELINES ON LEGISLATION PERTAINING TO THE RIGHT TO FREEDOM OF ASSOCIATION

Guiding principles

Principle 1: Presumption in favour of the lawful formation, objectives and activities of associations

26. There shall be a presumption in favour of the lawfulness of the establishment of associations and of their objectives and activities, regardless of any formalities applicable for establishment.

⁶³ ECtHR, *Ouranio Toxo and Others v. Greece* (Application no. 74989/01, judgement of 20 October 2005), para. 37, <<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-70720>>. See also Inter-American Court of Human Rights, *Huilca-Tesce v. Peru*, 3 March 2005, Series C no. 121, para. 77; and Inter-American Court of Human Rights, *García y Familiares v. Guatemala*, 29 November 2012, Series C no. 258, paras. 117-118

⁶⁴ International Labour Organization, *Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, fifth (revised) edition, 2006, Geneva, para. 1072.

⁶⁵ See ECtHR, *Airey v. Ireland* (Application no. 6289/73, judgment of 9 October 1979), <<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57420>>, in which the Court stated that “[t]he Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective.”

⁶⁶ This approach is also followed by the Inter-American Court of Human Rights; see, for example, the case of *Castaneda Gutman v. Mexico*, 6 August 2008, Series C no. 184, paras. 175-205, <http://www.corteidh.or.cr/docs/casos/articulos/seriec_184_ing.pdf>.

Principle 2: The state's duty to respect, protect and facilitate the exercise of the right to freedom of association

27. The state shall not interfere with the rights and freedoms of associations and of persons exercising their right to freedom of association. It shall protect them from interference by non-state actors. The state shall also facilitate the exercise of freedom of association by creating an enabling environment in which associations can operate. This may include simplifying regulatory requirements, ensuring that those requirements are not unduly burdensome, facilitating access to resources and taking positive measures to overcome specific challenges confronting disadvantaged or vulnerable persons or groups.

Principle 3: Freedom of establishment and membership

28. All persons, natural and legal, national and non-national and groups of such persons, shall be free to establish an association, with or without legal personality. Everyone shall be free to decide whether or not to join or remain a member of an association. No one shall be compelled to belong to an association or be sanctioned for belonging or not belonging to an association. Associations shall be free to determine their rules for membership, subject only to the principle of non-discrimination.

Principle 4: Freedom to determine objectives and activities, including the scope of operations

29. Founders and members of associations shall be free in the determination of the objectives and activities of their associations, within the limits provided for by laws that comply with international standards. In pursuing their objectives and in conducting their activities, associations shall be free from interference with their internal management, organization and affairs. Associations have the freedom to determine the scope of their operations, meaning that they can determine whether or not they wish to operate locally, regionally, nationally or internationally. Associations shall also be free to be members of other associations, federations and confederations, whether national or international.

Principle 5: Equal treatment and non-discrimination

30. Legislation and policy concerning associations shall be uniformly applied and must not discriminate against any person or group of persons on any grounds, such as age, birth, colour, gender, gender identity, health condition, immigration or residency status, language, national, ethnic or social origin, physical or mental disability, political or other opinion, property, race, religion or belief, sexual orientation or other status. No person or group of persons wishing to form an association shall be unduly advantaged or disadvantaged over another person or group of persons. Membership or non-membership in an association shall not constitute grounds for the discriminatory treatment of persons.

Principle 6: Freedom of expression and opinion

31. Associations shall have the right to freedom of expression and opinion through their objectives and activities.⁶⁷ This is in addition to the individual right of the members of associations to freedom of expression and opinion. Associations shall have the right to participate in matters of political and public debate, regardless of whether the position taken is in accord with government policy or advocates a change in the law.

Principle 7: Freedom to seek, receive and use resources

⁶⁷ ECtHR, *Refah Partisi (the Welfare Party) and others v. Turkey* [GC] (Application nos. 41340/98, 41342/98, 41343/98 and 41344/98, judgement of 13 February 2003), para. 88, <<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-60936>>; and ECtHR, *Gorzelik and other v. Poland* [GC] (Application no. 44158/98, judgement 17 February 2004), para. 91.

32. Associations shall have the freedom to seek, receive and use financial, material and human resources, whether domestic, foreign or international, for the pursuit of their activities. In particular, states shall not restrict or block the access of associations to resources on the grounds of the nationality or the country of origin of their source, nor stigmatize those who receive such resources. This freedom shall be subject only to the requirements in laws that are generally applicable to customs, foreign exchange, the prevention of money laundering and terrorism, as well as those concerning transparency and the funding of elections and political parties, to the extent that these requirements are themselves consistent with international human rights standards.

Principle 8: Good administration of legislation, policies and practices concerning associations

33. The implementation of legislation, policies and practices relevant to associations shall be undertaken by regulatory authorities, including administrative bodies, that act in an impartial and timely manner and that are free from political and other influence. Regulatory authorities shall also ensure that the public has relevant information as to their procedures and functioning, which shall be easy to understand and comply with. The scope of the powers of regulatory authorities shall be clearly defined in law, and all staff employed by them shall be appropriately qualified and properly supervised. The decisions and acts of regulatory authorities shall be open to independent review. The staff of regulatory authorities shall perform their tasks diligently, and any failings shall be rectified and abuses sanctioned. Associations shall be consulted in a meaningful way about the introduction and implementation of any legislation, policies and practices that concern their operations. Legislation, policies and practices shall be kept under review in order to facilitate the exercise of freedom of association in the ever changing environment in which associations operate.

Principle 9: Legality and legitimacy of restrictions

34. Any restriction on the right to freedom of association and on the rights of associations, including sanctions, shall be in strict compliance with international standards.⁶⁸ In particular, any restriction shall be prescribed by law and must have a legitimate aim. Furthermore, the law concerned must be precise, certain and foreseeable, in particular in the case of provisions that grant discretion to state authorities.⁶⁹ It shall also be adopted through a democratic process that ensures public participation and review, and shall be made widely accessible. The only legitimate aims recognized by international standards for restrictions are national security or public safety, public order (*ordre public*), the protection of public health or morals and the protection of the rights and freedoms of others. The scope of these legitimate aims shall be narrowly interpreted.

Principle 10: Proportionality of restrictions

35. Any restriction on the right to freedom of association and on the rights of associations, including sanctions, must be necessary in a democratic society and, thus, proportional to their legitimate aim. The principle of necessity in a democratic society requires that there be a fair balance between the interests of persons exercising the right to freedom of association, associations themselves and the interests of society as a whole. The need for restrictions shall be carefully weighed, therefore, and shall be based on compelling evidence. The least intrusive option shall always be chosen. A restriction shall always be narrowly construed and applied⁷⁰ and shall never completely extinguish the right nor encroach on its essence. In particular, any prohibition or dissolution of an association shall always be a measure of last resort, such as when an association has engaged in conduct that creates an imminent threat

⁶⁸ See Annex A.

⁶⁹ See ECtHR, *Hasan and Chausch v. Bulgaria* [GC] (Application no. 30985/96, judgement of 26 October 2000), para. 84, <<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58921>>; and ECtHR, *Aliyev and others v. Azerbaijan* (Application no. 28736/05, judgement of 18 December 2008), para. 35, <<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-90340>>.

⁷⁰ See OSCE/ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (Warsaw: ODIHR, 2011), Principle 4: Proportionality.

of violence or other grave violation of the law, and shall never be used to address minor infractions. All restrictions must be based on the particular circumstances of the case, and no blanket restrictions shall be applied.

Principle 11: Right to an effective remedy for the violation of rights

36. Associations, their founders and members and all persons seeking to exercise their right to freedom of association shall have access to effective remedies in order to challenge or seek review of decisions affecting the exercise of their rights. This means providing associations and all relevant persons with the right to bring suit or to appeal against and obtain judicial review of any actions or inactions of the authorities that affect their rights, including those actions concerning the establishment of associations and their compliance with charter or other legal requirements. To ensure effective remedy, it is imperative for the judicial procedures, including appeal and review, to be in accordance with fair trial standards. Furthermore, the procedures shall be clear and affordable. Remedies shall be timely and shall include adequate reparation, including compensation for moral and pecuniary loss.

SECTION C: INTERPRETATIVE NOTES

Introduction

37. These interpretative notes are intended to provide a better understanding of the Guidelines and should be read in concert with them. They not only expand on and provide tools for the interpretation of the Guidelines, but also present examples of good practices aimed at ensuring the proper functioning of legislation and regulations concerning associations. The interpretative notes are made up of two parts: Subsection 1 which provides a more detailed interpretation of the Guiding Principles set out under Section A and Subsection 2 focusing on some of the more problematic aspects of giving effect to the Guiding Principles when developing a legal framework to regulate associations.

Definition of “association”

38. For the purposes of these Guidelines, an association is **“an organized, independent, not-for-profit body based on the voluntary grouping of persons with a common interest, activity or purpose. An association does not have to have legal personality, but does need some institutional form or structure.”**

39. It should be emphasized that, regardless of how legislation classifies a given entity, it is the substance of an entity that determines whether it falls within the protection of the right to freedom of association. Legislation aimed at denying an entity the status of association, or at removing an entity from the scope of freedom of association and the rights associated with it, is not permissible.

Self-governing and organized nature

40. An association should be self-governing in order to benefit from the protection of the right to freedom of association. While this implies that associations should have some form of institutional structure, the self-governing and organized nature of associations should not be interpreted as a requirement to obtain legal personality in order to exist.

Independence

41. An association must be independent and free from undue interference of the state or of other external actors.⁷¹ An association is not independent if decisions concerning its activities

⁷¹ For the special role of political parties during elections and in parliament, see OSCE/ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (Warsaw: ODIHR, 2011), “Parties in Elections”, p. 55-64.

and operations are taken by anyone other than the members of the association or a body designated by its members to do so. The fact of having a single or a primary funder does not automatically result in the loss of an association's independence. An association that is openly comprised of businesses and that promotes their interests is a legitimate association and should enjoy protection of the right to freedom of association.

42. Certain types of associations do not fall within the scope of international guarantees of the right to freedom of association, owing to their lack of independence, as described above. However, it is the *de facto* status of the organization that should be assessed in order to ascertain whether or not it is independent rather than any label that may be attached to it by a legislative provision. Legislation and regulations may classify certain entities differently, where those entities do not demonstrate such independence. The ECtHR uses certain criteria to assess whether an entity is independent from the state. These are: (1) whether it owes its existence to the will of parliament; (2) whether it is set up in accordance with the legislation on private associations; (3) whether it remains integrated within the structures of the state; (4) whether it enjoys prerogatives outside the orbit of ordinary law, such as administrative, rule-making or disciplinary prerogatives; and (5) whether it acts like a public authority, such as in the case of certain professional associations and bodies.⁷²

Not-for-profit

43. An association should be not-for-profit, meaning that the generation of income must not be its primary purpose. Further, an association must not distribute any profits that might arise from its activities among its members or founders, but should invest them in the association and use them for the pursuit of the association's objectives.⁷³

Establishment and Voluntary Nature of Associations

44. The right to form an association is enjoyed by natural and legal persons and groups of persons.

45. Membership of an association is voluntary; a person should be free to choose whether or not to belong to an association.⁷⁴ In some cases, the compulsion to belong to an association is not compatible with the right to freedom of association (for more detailed information on these cases, see Section C, Subsection 2 [C] of these Guidelines, paragraphs 80 and 81).

46. The voluntary nature of membership⁷⁵ also means that a person not wishing to join a particular association cannot be sanctioned or disadvantaged by, for example, suffering negative consequences as a result of her or his refusal to join.⁷⁶ In addition, voluntary membership means that a person must have the freedom to establish, with others, an

⁷² See ECtHR, *Chassagnou and Others v. France* [GC] (Application nos. 25088/94, 28331/95 and 28443/95, judgement of 29 April 1999).

⁷³ See Council of Europe, *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*, 10 October 2007, para. 9.

⁷⁴ See *Chassagnou and Others v. France* [GC] (Application nos. 25088/94, 28331/95 and 28443/95, judgement of 29 April 1999). See UDHR, Article 20(2), and Inter-American Court of Human Rights, "Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism" (Arts. 13 and 29 American Convention on Human Rights), Advisory Opinion OC-5/85, 13 November 1985, Series A no. 5.

⁷⁵ See, however ECtHR, *Chassagnou and Others v. France* [GC] (Application nos. 25088/94, 28331/95 and 28443/95, judgement of 29 April 1999); and ECtHR, *A.S.P.A.S. and Lasgrezas v. France* (Application no. 29953/08, judgment of 22 September 2011), paras. 52-57.

⁷⁶ See UN Human Rights Committee, *Gauthier v. Canada* (Communication no. 633/95, 5 May 1999). See also ECtHR, *Wilson v. United Kingdom*, (Applications nos. 30668/96, 30671/96 and 30678/96, judgment of 2 July 2002). The ECtHR held that the effect of a United Kingdom law introduced in relation to union membership, was to allow employers to treat employees that were unprepared to renounce the right to consult a union, less favourably. The Court found that such use of financial incentives to induce employees to surrender union rights violated Article 11 of the ECHR, since it effectively frustrated the union's ability to strive for protection of its members. See also Inter-American Court of Human Rights, *Baena Ricardo et al. v. Panama*, 28 November 2003, Series C no. 104, paras. 160 and 171-173.

association of her or his own liking,⁷⁷ or to join an existing association, without facing negative consequences as a result. Voluntariness also means that a person must be free to leave an association and to cancel her or his membership thereof. Depending on the nature of the association, membership does not need to take a structured form.

Goals and Objectives

47. The most important aspect of the definition of “association” – and, indeed, the most important aspect of the right to freedom of association – is that persons are able to act collectively in pursuit of common interests, which may be those of the members themselves, of the public at large or of certain sectors of the public. The founders and members of an association should be free to determine the scope of its goals and objectives. Associations should be free to pursue these goals and objectives without undue interference of the state or third parties. These goals and objectives must, however, comply with the requirements of a democratic society.⁷⁸

Legal Personality

48. Legislation must recognize both informal and formal associations⁷⁹ or, at a minimum, permit the former to operate without this being considered unlawful.⁸⁰ This principle is particularly important, since those persons or groups who may face legal, practical, social, religious or cultural barriers to formally establishing an association should still be free to form or join informal associations and to carry out activities.⁸¹ Legislation should not compel

⁷⁷ See European Commission for Democracy through Law (Venice Commission), Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan (14-15 October 2011) CDL-AD(2011)035, para. 42, which states that “[t]he freedom of association encompasses the right to found an association, to join an existing association and to have the association perform its function without any unlawful interference by the state or by other individuals. Freedom of association entails both the positive right to enter and form an association and the negative right not to be compelled to join an association that has been established pursuant to civil law”.

⁷⁸ ECtHR, *United Communist Party of Turkey v. Turkey* [GC] (Application no. 19392/92, judgement of 30 January 1998), *Refah Partisi (the Welfare Party) and others v. Turkey* [GC] (Application nos. 41340/98, 41342/98, 41343/98 and 41344/98, judgement of 13 February 2003) and *Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania* (Application no. 46626/99, judgement of 3 February 2005). See also “Objectives and Activities: Basic Principles”, associationline.org, <<http://associationline.org/guidebook/action/read/chapter/7>>; and Council of Europe, *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*, 10 October 2007, para. 11.

⁷⁹ In the case of non-governmental organizations, the principle of freedom of informal association is crystallized in the Fundamental Principles on the Status of Non-Governmental Organizations in Europe which provide that “NGOs can be either informal bodies, or organizations which have legal personality.” See Council of Europe, *Fundamental Principles on the Status of Non-Governmental Organizations in Europe*, 13 November 2002, Principle 5. See also Council of Europe, *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*, 10 October 2007, para. 3, which states that “NGOs can be either informal bodies or organisations or ones which have legal personality”.

⁸⁰ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Funding of associations and holding of peaceful assemblies)*, UN Doc. A/HRC/23/39, 24 April 2013, para. 82, http://www.ohchr.org/documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39_EN.pdf. UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Threats to the rights to freedom of peaceful assembly and of association for groups most at risk)*, UN Doc. A/HRC/26/29, 14 April 2014, para. 55, http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A_HRC_26_29_ENG.DOC.

⁸¹ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Best practices that promote and protect the rights to freedom of peaceful assembly and of association)*, UN Doc. A/HRC/20/27, 21 May 2012, para. 56, http://www.ohchr.org/documents/hrbodies/hrcouncil/regularsession/session20/a-hrc-20-27_en.pdf. In the case of non-governmental organizations, the principle of freedom of informal association is crystallized in the Fundamental Principles on the Status of Non-Governmental Organizations in Europe, which provide that “NGOs can be either informal bodies, or organizations which have legal personality” (see Council of Europe, “Fundamental Principles on the Status of Non-Governmental Organizations in Europe”, Strasbourg, 13 November 2002, Principle 5). See also Council of Europe, *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*, 10 October 2007, para. 3, which states that: “NGOs can be either informal bodies or organisations or ones which have legal personality”.

associations to gain formal legal personality, but it should provide associations with the possibility of doing so.⁸²

49. In particular, legislation should not require associations to go through formal registration processes. Rather, associations should be able to make use of a protective legal framework to assert their rights regardless of whether or not they are registered. Associations should not be banned merely because they do not have legal personality. Where an association wishes to register to acquire legal personality, procedures for doing so should not be burdensome, but should be simple and swift to facilitate the process.

50. An association that obtains legal personality thereby acquires legal rights and duties, including the capacity to enter into contracts and to litigate and be litigated against. Informal associations depend upon the legal personality of their members for any such actions required for the pursuit of their objectives.

Legal Framework

51. Legal regulations pertaining to associations vary substantially among OSCE participating States and among Council of Europe member states. It is vital that the role and functioning of associations and the right to freedom of association be effectively facilitated and protected by member states' constitutions and other laws. Practice shows that a specific law on associations is not essential for the proper exercise and protection of the right to freedom of association. Instead, it is sufficient to have a number of legal regulations in place that serve the purpose of facilitating the establishment and existence of associations.

52. Where specific laws and/or provisions of laws pertaining to associations are enacted, they must be in conformity with the treaty and non-treaty standards upon which these Guidelines are based.

53. The legal framework should be designed to ensure the enjoyment of the right to freedom of association and its implementation, and not to stifle the exercise of this right.⁸³

Specific Types of Associations

54. Certain types of associations warrant separate mention. Owing to the specific nature of these associations, they may be subject to some additional constitutional provisions, laws and regulations. These include, in particular, religious organizations, political parties, trade unions, human rights defenders and many non-governmental organizations.

Religious organizations

55. Religious organizations serve as a conduit for exercising the fundamental right to freedom of religion or belief. The 2004 OSCE/ODIHR and Venice Commission *Guidelines for Review of Legislation Pertaining to Religion or Belief* state that special legislation relating to religious organizations may not be necessary,⁸⁴ and that laws applicable to other associations can also be applied to religious organizations. These 2004 Guidelines and the complementary Joint OSCE/ODIHR-Venice Commission *Guidelines on the Legal Personality of Religious or Belief Communities* (2014) provide relevant guidance for legislators on how issues concerning religion or belief should be dealt with by legislation, whether ordinary or special, and should be referred to for more specific guidance in this field.

⁸² See ECtHR, *Sidiropoulos and Others v. Greece* (Application no. 26695/95, judgement of 10 July 1998); and ECtHR, *Gorzelik and Others v. Poland* [GC] (Application no. 44158/98, judgment 17 February 2004), in which the ECtHR stated that the right to act collectively would have no practical meaning without the possibility of creating a legal entity in order to pursue the objectives of an organization.

⁸³ For further discussion, see Part 2 of Section C of the Guidelines on Regulatory Framework, which provides detailed information on how the law should facilitate the exercise of this right.

⁸⁴ OSCE/ODIHR and Venice Commission, *Guidelines on Legislation Pertaining to Religion or Belief* (Warsaw: ODIHR, 2004), para. 1.

Political parties

56. A political party is “a free association of persons, one of the aims of which is to participate in the management of public affairs, including through the presentation of candidates to free and democratic elections”.⁸⁵ Moreover, “political parties are collective platforms for the expression of individuals’ fundamental rights to association and expression and have been recognized by the European Court of Human Rights as integral players in the democratic process. Further, they are the most widely utilized means for political participation and the exercise of related rights. Parties are foundational to a pluralist political society and play an active role in ensuring an informed and participative electorate”.⁸⁶

57. Owing to the special role that political parties play in democracies and their specific objectives, their regulation is the subject of separate guidelines drafted by OSCE/ODIHR and the Venice Commission for the primary purpose of assisting the work of legislators. As such, the *Guidelines on Political Party Regulation (2010)*⁸⁷ should be referred to for more specific guidance in the field of political party regulation.

Trade unions

58. Trade unions are organizations through which workers seek to promote and defend their common interests.⁸⁸ As associations, they warrant particular mention due to their special role in a democratic society. Specific reference to trade unions is made in Article 11 of the ECHR and Article 22 of the ICCPR.

59. The right to form trade unions includes the right of trade unions to draw up their own rules, freely elect their representatives, administer their affairs and to join trade union federations and confederations. In addition, the right to freedom of association guarantees the right of a worker to join an organization of her or his own choosing and to found new trade unions without previous authorization. While these rights may not differ from those of other associations, the ECtHR has recognized that Article 11 of the ECHR includes the freedom of trade unions to take up collective bargaining with employers, which state authorities are obliged to facilitate.⁸⁹ The right to collective bargaining is guaranteed by Article 4 of ILO Convention No. 98,⁹⁰ which imposes an obligation to adopt measures to encourage and promote the full development and utilization of collective bargaining. Notably, according to Article 1 of this Convention, workers shall enjoy adequate protection against acts of anti-union discrimination with respect to their employment, including protection from any prejudice suffered by reason of union membership or because of participation in union activities.

60. Furthermore, Article 11 of the ECHR implies that the “protection of interests” of trade unions includes the requirement that they be heard by the competent authorities.

61. Finally, the right to strike is important to the operations and functioning of trade unions.⁹¹ The ECtHR has held that this right is essential for trade unions and that, without this right, all

⁸⁵ OSCE/ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (Warsaw: ODIHR, 2011), para. 9.

⁸⁶ *Ibid.*, para. 10.

⁸⁷ *Ibid.*

⁸⁸ See also the ILO Convention concerning Freedom of Association and Protection of the Right to Organise (Entry into force: 04 Jul 1950), No. 87, Article 10 which states that, “In this Convention, the term organisation means any organisation of workers or of employers for furthering and defending the interests of workers or of employers.”

⁸⁹ ECtHR, *Wilson, National Union of Journalists and Others v. the United Kingdom*, (Applications nos. 30668/96, 30671/96 and 30678/96, judgment of 2 July 2002) and ECtHR, *Demir and Baykara v. Turkey* [GC] (Application no. 34503/97, 12 November 2008).

⁹⁰ ILO, *C089 - Right to Organise and Collective Bargaining Convention, 1949 (No. 89)*, Article 4 which establishes that: “Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers’ organisations and workers’ organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements”.

⁹¹ Explicitly recognized in the ICESCR, Article 8, para. 1, which states that “1. The States Parties to the present Covenant undertake to ensure: (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social

other rights and freedoms of trade unions would be illusory.⁹² While the right to strike has not been formulated in absolute terms and may be subject to restrictions, numerous recommendations of the ILO's Committee of Experts on the Application of Conventions and Recommendations and the Committee on Freedom of Association, as well as judgments of the ECtHR have clearly stated that a prohibition on the right to strike would not be compatible with the guarantees laid down for trade unions in ILO Convention No. 87 and Article 11 of the ECHR, respectively.⁹³

Human rights defenders

62. Human rights defenders are persons who act "individually or in associations with others to promote and strive for the protection and realization of human rights and fundamental freedoms" at the local, national and international levels.⁹⁴ Owing to the nature of their work, human rights defenders require special protection at the local, national and international levels, as their human rights work often exposes them to specific risks and makes them a target of abuse. The general rights of human rights defenders have been set out in the OSCE/ODIHR *Guidelines on the Protection of Human Rights Defenders*.

Non-governmental organizations

63. A non-governmental organization can be an association. There is no universal definition of what constitutes a non-governmental organization,⁹⁵ although many relevant international and regional documents have attempted to outline the form that such organizations take. This includes the Council of Europe's recommendation on the legal status of non-governmental organizations in Europe, which states that non-governmental organizations are "voluntary self-governing bodies or organisations established to pursue the essentially non-profit-making objectives of their founders or members", and do not include political parties.⁹⁶ The recommendation goes on to state that non-governmental organizations "encompass bodies or

interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others; [...] (d) **The right to strike**, provided that it is exercised in conformity with the laws of the particular country"; and in the European Social Charter, "Article 6 – The right to bargain collectively", which states that, "With a view to ensuring the effective exercise of the right to bargain collectively, the Contracting Parties undertake:

1. to promote joint consultation between workers and employers;
2. to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;
3. to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes; and recognise:
4. the right of workers and employers to collective action in cases of conflicts of interest, including the **right to strike**, subject to obligations that might arise out of collective agreements previously entered into."

⁹² ECtHR, *Wilson, Enerji Yapi-Yol Sen v. Turkey* (Application no. 68959/01, judgement of 21 April 2009) and *National Union of Rail, Maritime and Transport Workers v. United Kingdom*, (Application no. 31045/10, judgement of 8 April 2014).

⁹³ See ILO, *Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, 5th revised edition (2006), particularly paras 525, 532, 534, 541, 544 and 568, available at <http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_090632.pdf>. See also ECtHR, *Schmidt and Dahlström v. Sweden* (Application no. 5589/72, judgement of 06 February 1976), para. 36 which states that "Article 11 [of the ECHR] [...] leaves each State a free choice of the means to be used [to make collective action possible]. The grant of a right to strike represents without any doubt one of the most important of these means, but there are others".

⁹⁴ OSCE/ODIHR, *Guidelines on the Protection of Human Rights Defenders* (Warsaw: ODIHR, 2014) para. 2, p. 1.

⁹⁵ See also Council of Europe, "Fundamental Principles on the Status of Non-Governmental Organisations in Europe", Strasbourg, 13 November 2002, which state that "[t]here is no general definition of an NGO in international law and the term covers an extremely varied range of bodies within the member states. Reference should be to the different practices followed in each state, notably concerning the form that an NGO should adopt in order to be granted legal personality or receive various kinds of advantageous treatments. Some types of NGOs, trusts, for example, exist only in certain states. NGOs' sphere of action also varies considerably, since they include both small local bodies with only a few members, for example a village chess club, and international associations known worldwide, for example certain organisations engaged in the defense and promotion of human rights".

⁹⁶ Council of Europe, *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*, 10 October 2007, "Basic principles", para. 1.

organisations established both by individual persons (natural or legal) and by groups of such persons”.⁹⁷ For the purposes of these Guidelines, non-governmental organizations that are not membership-based or do not have several founders do not fall under the definition of an association.

Other associations

64. Certain types of associations, such as foundations,⁹⁸ organizations focused on women’s empowerment, organizations promoting the rights of minorities and/or vulnerable groups, youth and children’s organizations, ecological organizations and housing associations, may also be subject to special provisions in law. Such special provisions may recognize the differing needs of these associations and, thus, should be aimed at facilitating their operations and not at hampering them. Provisions that favour certain types of associations have to be in keeping with the principles of equal treatment and non-discrimination.

65. Military associations are also often subject to special provisions, which, contrary to the above, serve to restrict their operations, usually for reasons of national security. However, the right to freedom of association of military personnel should nonetheless be respected, notwithstanding certain permissible restrictions.⁹⁹

Other Relevant Rights

66. Although the right to freedom of association is the basic right that is the focus of these Guidelines, securing other interrelated rights is also relevant to the process of drafting, adopting and implementing legislation concerning freedom of association.

67. In particular, related rights include, but are not limited to, the right to freedom of expression and opinion, the right to freedom of peaceful assembly, the right to freedom of religion or belief, the right to be free from discrimination, the right to property, the right to an effective remedy, the right to a fair trial, the right to freedom of movement and the right to privacy and data protection, as well as the right for members of trade unions to strike. These rights belong to both individuals and to associations as entities. The need to guarantee and protect these rights should also be borne in mind when drafting legislation touching on the freedom of association.

SUBSECTION 1 - GUIDING PRINCIPLES

Principle 1: Presumption in favour of the lawful formation, objectives and activities of associations

68. There should be a presumption in favour of the formation of associations, as well as in favour of the lawfulness of their establishment, objectives, charter, aims, goals and activities.¹⁰⁰ This means that, until proven otherwise, the state should presume that a given association has been established in a lawful and adequate manner, and that its activities are lawful. Any action against an association and/or its members may only be taken where the articles of its founding instrument (including charters, statutes and by-laws) are unambiguously unlawful, or where specific illegal activities have been undertaken.

⁹⁷ *Ibid.*, para. 2.

⁹⁸ ECtHR, *Özbek and Others v. Turkey* (Application no. 35570/02, 06 October 2009), paras. 34-35 and 38.

⁹⁹ See OSCE/ODIHR and the Geneva Centre for the Democratic Control of Armed Forces (DCAF), *Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel* (Warsaw: ODIHR, 2008), pp. 65 -73.

¹⁰⁰ Venice Commission, “Opinion on the compatibility with universal human rights standards of article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus”, CDL-AD(2011)036, 18 October 2011, para. 89, where it is stated that “The Venice Commission recalls that the mere fact that an association does not fulfil all the elements of the legal regulation concerned does not mean that it is not protected by the internationally guaranteed freedom of association. In ECtHR, *Chassagnou and Others v. France* [GC] (Applications nos. 25088/94, 28331/95 and 28443/95, judgment of 29 April 1999), para. 100, the ECtHR emphasized the autonomous meaning of “association”: “The term ‘association’ [...] possesses an autonomous meaning; the classification in national law has only relative value and constitutes no more than a starting-point”.

69. This presumption should exist even where legislation stipulates that certain requirements, such as registration formalities, be fulfilled in order to establish an association. It is important to recall, however, that an unregistered association can also benefit from the protection conferred by Article 22 of the ICCPR and Article 11 of the ECHR, as well as by other international and regional instruments that reaffirm this freedom.¹⁰¹

70. Furthermore, legislation should be drafted and implemented in such a way as to ensure that the actions of an individual member of an association are not automatically attributed to the association as a whole, and that such actions do not negatively impact on the association's existence or on the legality of its founding instrument, objectives or activities.¹⁰²

Principle 2: The state's duty to respect, protect and facilitate the exercise of the right to freedom of association

71. It is the responsibility of the state to respect, protect and facilitate the exercise of the right to freedom of association.

72. The state should not interfere with the rights and freedoms of associations and their members. This means that the state has the obligation to respect these fundamental rights and freedoms. While the primary objective of the right to freedom of association is to protect associations and their members from interference by the state, the latter is responsible for violations of this right when the infringement occurs as a result of its failure to secure the right in domestic law and practice.

73. Further, the state has a positive obligation to enact legislation and/or implement practices to protect the right to freedom of association from the interference of non-state actors, in addition to refraining from interference itself. This principle extends to cases of infringements committed by private individuals that the state could or should have prevented.

74. The positive obligation of the state to facilitate the exercise of the right to freedom of association includes creating an enabling environment in which formal and informal associations can be established and operate. This may include an obligation to take positive measures to overcome specific challenges that confront certain persons or groups, such as indigenous peoples, minorities, persons with disabilities, women and youth, in their efforts to form associations,¹⁰³ as well as to integrate a gender perspective into their efforts to create a safe and enabling environment.¹⁰⁴

75. This also means that legislation should strive to simplify all conditions and procedures relating to the various activities of associations. Importantly, the creation of an enabling environment also requires that the state provides access to resources and permits associations to seek, receive and use resources.

¹⁰¹ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Best practices that promote and protect the rights to freedom of peaceful assembly and of association)*, UN Doc. A/HRC/20/27, 21 May 2012, para. 96, http://www.ohchr.org/documents/hrbodies/hrcouncil/regularsession/session20/a-hrc-20-27_en.pdf.

¹⁰² See, for example, the finding of dissolution to be disproportionate where this was based on remarks of a political party's former leader in ECtHR, *Dicle on behalf of the DEP (Democratic Party) v. Turkey* (Application no. 25141/94, judgment of 10 December 2002), para. 64. On the other hand, the acts and speeches of a political party's members and leaders were considered as capable of being imputed to the whole party in the particular circumstances examined in ECtHR, *Refah Partisi (the Welfare Party) and Others v. Turkey [GC]* (Application nos. 41340/98, 41342/98, 41343/98 and 41344/98, judgment of 13 February 2003), paras. 101-103.

¹⁰³ UN Human Rights Committee, General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote), 12 July 1996, CCPR/C/21/Rev.1/Add.7, para. 12. See also UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Threats to the rights to freedom of peaceful assembly and of association for groups most at risk)*, UN Doc. A/HRC/26/29, 14 April 2014, para. 56, http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A_HRC_26_29_ENG.DOC.

¹⁰⁴ Regarding specifically systemic and structural discrimination and violence faced by women human rights defenders of all ages, see UN General Assembly, Resolution 68/181, December 2013, para. 5.

Principle 3: Freedom of establishment and membership

76. All persons, natural and legal, national and non-national, and groups of such persons, shall be free to establish an association, with or without legal personality. Persons may establish or join an association as members. An association may serve the common interests of its founders and members or serve those of the public at large, or a particular section of it. Legislative measures concerning the membership of associations, where these exist, should clearly express that all persons are free to establish associations, as well as to join and leave them.

77. Admissible restrictions on the capacity to establish associations are limited in scope and may be established for children, public officials – including members of the police and military personnel – and non-nationals (this is discussed in further detail below, in Section C, Subsection 2 [B] of these Guidelines).

78. Legal personality is not a prerequisite for the establishment of an association, and the decision whether or not to seek legal personality should be at the discretion of the association. However, legislation may require that there be an agreement between at least two persons to found an association and, where that association seeks to obtain, by choice, legal personality, there may be a requirement for the association to have some founding documents.

79. Associations should be free to determine their membership, subject to the principle of non-discrimination (described below) and their own rules.

80. A person should be free to choose whether or not to belong to an association.¹⁰⁵ This principle also means that a person is free to choose to which organization he or she wishes to belong, and that a person has the freedom to establish an association of his or her own.¹⁰⁶

81. Consequently, individuals should also generally not be compelled to belong to an association.¹⁰⁷ The UN Human Rights Council has also reaffirmed that “no one may be compelled to belong to an association”.¹⁰⁸ In some cases, the compulsion to belong to certain associations – for example, bar and other professional associations, chambers of commerce, housing associations and student unions – as is the case in some countries, is not incompatible with the right to freedom of association. This is due to the aim being served by the compulsion to belong, and the absence of any prohibition on the members to form their own entity.¹⁰⁹ Such entities are, however, not covered by these Guidelines, as they do not comply with the requirement of voluntariness and of independence from the state. In some jurisdictions, for example, the problem of compulsion is avoided by permitting individuals who refuse to become members of a trade union, while enjoying union benefits, to pay the portion of dues allocated for activities addressing wages and conditions of employment in the workplace.¹¹⁰ This payment does not cover the portion of dues allocated for ideological activities such as lobbying, supporting the election of public officials or addressing public issues outside of the immediate workplace.

¹⁰⁵ See also UDHR, Article 20(2) and Inter-American Court of Human Rights, *Baena Ricardo et al. v Panama*, 28 November 2003, Series C no. 104, para. 159.

¹⁰⁶ Venice Commission, “Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan”, CDL-AD (2011)035, 19 October 2011, para. 42, which states that “The freedom of association encompasses the right to found an association, to join an existing association and to have the association perform its function without any unlawful interference by the state or by other individuals. Freedom of association entails both the positive right to enter and form an association and the negative right not to be compelled to join an association that has been established pursuant to civil law”.

¹⁰⁷ See also UDHR, Article 20(2).

¹⁰⁸ UN Human Rights Council, *Resolution 15/21 on the rights to freedom of peaceful assembly and of association*, 17 June 2011, adopted by a recorded vote of 21 to 5, with 19 abstentions. See also UDHR, Article 20(2).

¹⁰⁹ See, for example, ECtHR, *Le Compte, Van Leuven and De Meyere v. Belgium* (Application nos. 6878/75 7238/75, judgment of 23 June 1981) and *Langborger v. Sweden* (Application no. 11179/84, 22 June 1989) and UN Human Rights Committee, *Wallman et al. v. Austria*, (Communication no. 1002/2001, 1 April 2004).

¹¹⁰ See, for example, in the United States of America, *Aboud v. Detroit Board of Education*, 433 U.S. 915, 97 S.Ct. 2989 (23 May 1977).

82. Apart from the limited cases noted above, compulsion to belong to an association may be admissible in cases where there is a pressing social need. This also applies even where the association's objectives are fundamentally contrary to the convictions of those compelled to belong, provided that a reasonable possibility of being able to cancel membership exists and there is no less restrictive alternative to achieving the intended aim.¹¹¹ However, compulsion to belong to a trade union is unlikely to be regarded as necessary for the effective enjoyment of trade union freedoms, even where there is no philosophical objection to membership in the union concerned.¹¹² Overall, any compulsion to belong to an association that arises as an indirect consequence of advantages derived from membership or legitimate trade union activities has not been considered as constituting a violation of the ECHR.¹¹³

CONSTITUTION OF THE REPUBLIC OF ICELAND (17 JUNE 1944)

Article 74

(...)

No one may be obliged to be a member of any association. Membership of an association may however be made obligatory by law if this is necessary in order to enable an association to discharge its functions in the public interest or on account of the rights of others.

(...)

83. Legislation should not contain provisions that might directly or indirectly sanction persons for belonging or not belonging to an association. The voluntary nature of membership¹¹⁴ means that a person not wishing to join a particular association must not suffer negative consequences as a result of this decision.¹¹⁵ Similarly, membership in an association should not trigger negative consequences. Thus, the ECtHR found in the case of *Vogt v. Germany*¹¹⁶ that the right to freedom of association is violated when an individual is punished, harassed or sanctioned, or otherwise treated unfavourably because of her or his membership in an association.

84. Financial incentives provided by the state or third parties to support the existence and flourishing of an association can be useful and justified. At the same time, their use as a disincentive to membership may impinge on the voluntary nature of the right to freedom of association,¹¹⁷ as well as breach the principle of equal treatment. Therefore, their practical effect should be borne in mind when crafting or implementing any such financial incentives.

¹¹¹ See ECtHR, *Chassagnou and Others v. France* [GC] (Applications nos. 25088/94, 28331/95 and 28443/95, judgment of 29 April 1999) and ECtHR, *A.S.P.A.S. and Lasgrezas v. France* (Application no. 29953/08, judgment of 22 September 2011), paras. 52-57.

¹¹² See ECtHR, *Sørensen and Rasmussen v. Denmark* [GC] (Applications nos. 52562/99 and 52620/99, judgement of 11 January 2006). Please note that in the view of the ILO supervisory bodies, the ILO Conventions leave it to each State to decide whether it is appropriate to guarantee the right of workers not to join an occupational organization, or on the other hand, to authorize and, where necessary, to regulate the use of union security clauses in practice. The only conditions imposed by the ILO supervisory bodies is that such clauses are the result of free negotiation between workers' organizations and employers including public employers and that they refrain from imposing "unreasonable conditions" upon persons seeking such membership, in which case they could be found to be discriminatory.

¹¹³ See European Commission of Human Rights, *X v. Netherlands* (Application no. 2290/64, decision 6 February 1967); ECtHR, *Sigurður A. Sigurjónsson v. Iceland* (Application no. 16130/90, judgment of 30 June 1993); and ECtHR, *Gustafsson v. Sweden* (Application no. 15773/89, judgment of 25 April 1996). In the US the law can compel non-members to comply with certain obligations such as payment of dues and compliance with the union shop contract so as to prevent free riders, instead of compelling membership as such.

¹¹⁴ See ECtHR, *Chassagnou and Others v. France* [GC] (Applications nos. 25088/94, 28331/95 and 28443/95, judgment of 29 April 1999).

¹¹⁵ See UN Human Rights Committee, *Gauthier v. Canada* (Communication no. 633/95, 5 May 1999).

¹¹⁶ ECtHR, *Vogt v. Germany* [GC] (Application no. 17851/91, judgment of 26 September 1995), paras. 57-61 and 66-68.

¹¹⁷ ECtHR, *Wilson, National Union of Journalists and others v. the United Kingdom* (Applications nos. 30668/96, 30671/96 and 30678/96, judgment of 2 July 2002) where the legislation permitting employers to use financial

85. The right of an association to determine its own membership should also be protected.¹¹⁸ An association may determine special requirements for its members, as long as those who do not satisfy those requirements and, as such, cannot be members of the association, have the right to establish an association of their liking.

Principle 4: Freedom to determine objectives and activities, including scope of operations

86. Founders and members shall be free in the determination of the objectives and activities of their associations. This includes adopting their own constitutions and rules, determining their internal management structure and electing their boards and representatives.

87. Subject to the restriction on profit-making considered above, associations should be able to pursue all the objectives and undertake all the activities open to individual persons acting alone. Furthermore, legislation pertaining to associations should not dictate or restrict the objectives and activities that associations wish to pursue and undertake, including by providing a restrictive list of permissible objectives or activities or through a narrow interpretation of the legislation relating to the objectives and activities of associations.

88. However, bearing in mind that the right to freedom of association is not an absolute right, some limitations to this general principle may be permissible, so long as they are compatible with international human rights standards. Therefore, any such limitation must always be prescribed by law, have a legitimate aim and be necessary in a democratic society (see Principle 9). What is deemed an 'unlawful' objective or activity must be considered and assessed based on international human rights standards. For instance, organizations promoting propaganda for war or inciting national, racial or religious hatred can be prohibited if this constitutes incitement to discrimination, hostility or violence.¹¹⁹ On the other hand, the promotion of minority consciousness should not be treated as an unlawful threat to a state's territorial integrity.¹²⁰ Thus, the mere labelling by national legislation or administrative authorities of a certain aim, objective or activity as 'unlawful' does not automatically amount to a justifiable limitation on it being pursued or undertaken by an association.

89. Associations are entitled to promote changes to the law or to the constitutional order so long as they do so by employing peaceful means in exercise of their freedom of expression. The ECtHR has stated that "notwithstanding its autonomous role and particular sphere of application, Article 11 (ECHR) must also be considered in the light of Article 10 (ECHR). The

incentives to induce employees to surrender union rights was considered to violate Article 11 of the ECHR, since it effectively frustrated the union's ability to strive for protection of its members.

¹¹⁸ In the case of trade unions, see ECtHR, *Associated Society of Locomotive Engineers and Firemen (ASLEF) v. the United Kingdom* (Application no. 11002/05, judgement of 27 February 2007), para. 39.

¹¹⁹ See also ECtHR, *Vona v. Hungary* (Application no. 35943/10, judgement of 9 July 2013), para. 55. And; UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 993, p. 3 (hereafter: UN ICERD), Article 4, <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>>, which states that "States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia: [...] (b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law". See also ECHR, Article 17, and ICCPR, Article 5, which states that "1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant" and Article 20 which states that "1. Any propaganda for war shall be prohibited by law. 2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law." See also ECHR, Article 17 which states that "Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."

¹²⁰ ECtHR, *Sidiropoulos and Others v. Greece* (Application no. 26695/95, judgment of 10 July 1998), para. 44.

protection of opinions and the freedom to express them is one of the objectives of the freedoms of assembly and association as enshrined in Article 11 (ECHR).¹²¹ Such freedom of expression as enshrined in Article 10 of the ECHR is applicable, subject to paragraph 2, not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that “offend, shock or disturb”.¹²²

90. Therefore, an association should not be prohibited, dissolved or otherwise penalized simply because it peacefully promotes a change in the law or constitutional order.¹²³ It is imperative, however, that both the means used to achieve such change and the actual outcomes of such change are themselves compatible with fundamental democratic principles.¹²⁴

91. The authorities should always start out with a presumption of lawfulness and not resort to speculation or draw rash conclusions when assessing the admissibility of an association's proposed objectives and activities, as well as when determining the meaning of its name and the terms used in its charter or statute.¹²⁵ In general, associations should be allowed to determine whether the activities that they undertake fall within the scope of the objectives prescribed in their charter or statutes.

92. Finally, freedom to determine the scope of its operations means that an association should enjoy the possibility to decide whether it would like to act locally, regionally, nationally or internationally. It also means that an association as an entity should be able to belong to another association, a federation or confederation, whether national or international.¹²⁶

Principle 5: Equal treatment and non-discrimination

93. Freedom of association should be enjoyed equally by everyone. When introducing regulations concerning freedom of association, the authorities must not discriminate against any group or individual on any grounds, such as age, birth, colour, gender, gender identity, health condition, immigration or residency status, language, national, ethnic or social origin, political or other opinion, physical or mental disability, property, race, religion or belief, sexual orientation or other status.

94. The principle of non-discrimination prohibits both direct and indirect discrimination, requiring that all persons receive equal protection of the law and should not be discriminated against as a result of the practical application of any measure or act. All persons and groups wishing to form an association should be able to do so on the basis of equal treatment before the law and by state authorities. Moreover, the principle of non-discrimination also means that legislation and state authorities should treat associations equally as regards regulations concerning their establishment, registration (where applicable) and activities. The differential treatment of different associations is discriminatory if it has no objective and reasonable justification, that is, if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the intended aim.¹²⁷

¹²¹ ECtHR, *Vona v. Hungary* (Application no. 35943/10, judgment of 9 July 2013), para. 53; *Young, James and Webster v. United Kingdom* (Application no. 7601/76, judgement of 13 August 1981), para. 57; and *Vogt v. Germany* [GC] (Application no. 17851/91, judgement of 26 September 1995), para. 64.

¹²² ECtHR, *Vona v. Hungary* (Application no. 35943/10, judgment of 9 July 2013), para. 53.

¹²³ ECtHR, *Women on Waves v. Portugal* (Application no. 31276/05, judgment of 3 February 2009), paras. 41-42.

¹²⁴ ECtHR, *Refah Partisi (the Welfare Party) and others v. Turkey* [GC] (Application nos. 41340/98, 41342/98, 41343/98 and 41344/98, judgement of 13 February 2003). See also OSCE/ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (Warsaw: ODIHR, 2011), para. 93.

¹²⁵ ECtHR, *United Communist Party of Turkey v. Turkey* [GC] (Application no. 19392/92, judgement of 30 January 1998)

¹²⁶ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Exercise of the rights to freedom of peaceful assembly and of association in the context of multilateral institutions)*, UN Doc. A/69/365, 1 September 2014, para. 96, <http://freeassembly.net/wp-content/uploads/2014/10/Multilaterals-report-ENG.pdf>.

¹²⁷ ECtHR, *Genderdoc-M v. Moldova* (Application no. 9106/06, judgement of 12 June 2012), para. 50.

95. The right to freedom of association generally entitles those forming an association and those belonging to one to choose with whom they form it or whom to admit as members. However, this aspect of the right to association is subject to the prohibition on discrimination. As such, there must be a reasonable justification for any differential treatment of persons with respect to the formation or membership of an association based on the above-mentioned personal characteristics or statuses.¹²⁸ In case of race, colour, gender and sexual orientation, only “weighty reasons” may justify differential treatment.¹²⁹

96. The principle of equal treatment does not preclude differential treatment based on objective criteria unrelated to viewpoints and beliefs. Where there is a justifiable need to support some associations, certain types of differential treatment may be provided for them. These include special incentives for charitable organizations or state support to associations that introduce policies that further the equality between women and men or between ethnic minority and majority groups.

Principle 6: Freedom of expression and opinion

97. Freedom of association is intertwined with, and serves as a conduit for, the exercise of freedom of expression and opinion.¹³⁰ Associations should have the right to exercise their freedom of expression and opinion with respect to their objectives and activities. In this regard, the Venice Commission has stated that:

“(…), freedom of association without freedom of expression amounts to little if anything. The exercise of freedom of association by workers, students, and human rights defenders in society has always been at the heart of the struggle for democracy and human rights around the world, and it remains at the heart of society once democracy has been achieved.”¹³¹

98. Associations may sometimes wish to pursue objectives or conduct activities that are not congruent with the thoughts and ideas of the majority of society or, indeed, that run counter to them. However, as already emphasized, according to standing case law, freedom of expression in a vibrant democracy also entails the expression of views that may “offend, shock or disturb” the state or any sector of the population.¹³²

99. Restrictions on freedom of expression and opinion may be applicable where the expression or speech in question amounts to advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.¹³³ Specific instances of hate speech “may be so insulting to individuals or groups as not to enjoy the level of protection afforded by Article 10 of the [ECHR] to other forms of expression. This is the case where hate speech is aimed at the destruction of the rights and freedoms laid down in the Convention or at their limitation to a greater extent than provided therein”.¹³⁴

100. In accordance with Article 19(2) of the ICCPR, the right to freedom of expression includes the “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other

¹²⁸ See, for example, ECtHR, *Willis v. United Kingdom* (Application no. 36042/97, judgment of 11 June 2002), para. 48.

¹²⁹ ECtHR, *Staatkundig Gereformeerde Partij v. the Netherlands* (Application no. 58369/10, decision of 10 July 2012), para. 73, <[http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-112340#{"itemid":\["001-112340"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-112340#{)>.

¹³⁰ Article 10 of the ECHR and Article 19 of the ICCPR; see also Venice Commission, “Opinion on the compatibility of human rights standards of the legislation on non-governmental organisations of Azerbaijan”, CDL-AD(2011)035, 19 October 2011, para. 102.

¹³¹ Venice Commission, “Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan”, CDL-AD (2011)035, 19 October 2011, para. 101.

¹³² ECtHR, *Handyside v. the United Kingdom* (Application no. 5493/72, judgment of 7 December 1976).

¹³³ Article 20(2) of the ICCPR; see also OSCE/ODIHR and Venice Commission, *Guidelines on Freedom of Peaceful Assembly* (Warsaw: ODIHR, 2010), 2nd edition, para. 96. See also ECtHR, *Vona v. Hungary* (Application no. 35943/10, judgement of 9 July 2013), para. 55.

¹³⁴ Council of Europe, *Recommendation No. R(97)20 of the Committee of Ministers to member States on “hate speech”*, 30 October 1997, Principle 4, as also cited in OSCE/ODIHR and Venice Commission, *Guidelines on Freedom of Peaceful Assembly* (Warsaw: ODIHR, 2010), 2nd edition, para. 96.

media of his choice". Legislation should not restrict the dissemination of and access to information with the justification of protecting public health or morals, since this can prevent associations from carrying out advocacy and awareness raising work or from providing services, such as education concerning maternal and reproductive health,¹³⁵ or measures to combat gender-based discrimination or discrimination against minority or marginalized groups. National security is frequently used to justify the over-classification of information, thus limiting access to information that is of public interest. Any laws that limit the freedom to seek and impart information beyond what is permissible under international human rights standards and that do not comply with the principles of legality, necessity and proportionality should be promptly repealed or amended.

101. In practical terms, the exercise of freedom of expression and opinion also means that associations should be free to undertake research, education and advocacy on issues of public debate, regardless of whether the position taken is in accordance with government policy or advocates a change to the law.¹³⁶

Principle 7: Freedom to seek, receive and use resources

102. The protection afforded by Article 22 of the ICCPR and by Article 11 of the ECHR extends to all activities of an association.¹³⁷ It has also been stressed that associations must have the means to pursue their objectives.¹³⁸ Accordingly, fundraising activities are protected under Article 22 of the ICCPR and Article 11 of the ECHR. The right to freedom of association would be deprived of meaning if groups wanting to associate did not have the ability to access resources of different types, including financial, in-kind, material and human resources, and from different sources, including public or private, domestic, foreign or international (for more detailed information on resources, see Section C, Subsection 2 [E] of these Guidelines). Therefore, the ability to seek, secure and use resources is essential to the existence and operation of any association.¹³⁹ Furthermore, associations should be free to engage in any lawful economic, business or commercial activities in order to support their not-for-profit activities.

103. Restrictions on the freedom to have access to and to seek, secure and use resources may in certain cases be justified. However, any restriction must be prescribed by law, necessary in a democratic society and in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. Restrictions on access to resources that reduce the ability of associations to pursue their goals and activities may constitute an interference with the right to freedom of association.

104. The resources received by associations may legitimately be subjected to reporting and transparency requirements. However, such requirements shall not be unnecessarily burdensome, and shall be proportionate to the size of the association and the scope of its activities, taking into consideration the value of its assets and income.

¹³⁵ ECtHR, *Open Door and Dublin Well Woman v. Ireland* (Application nos. 14234/88 and 14235/88, judgment of 29 October 1992).

¹³⁶ See Council of Europe, *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*, 10 October 2007, paras. 12-13.

¹³⁷ See UN Human Rights Committee, *Korneenko et al. v. Belarus* (Communication No. 1274/2004, 31 October 2006), para. 7.2.

¹³⁸ ECtHR, *The Holy Monasteries v. Greece* (Application nos. 13092/87 and 13984/88, judgment of 9 December 1994), paras. 86-87; *Wilson, National Union of Journalists and Others v. United Kingdom* (Application no. 30668/96, judgment of 2 July 2002), para. 45; *Demir and Baykara v. Turkey* [GC] (Application no. 34503/97, judgement of 12 November 2008), para. 157.

¹³⁹ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Funding of associations and holding of peaceful assemblies)*, UN Doc. A/HRC/23/39, 24 April 2013, Part III (Ability of associations to access financial resources: a vital part of the right to freedom of association),

<http://www.ohchr.org/documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39_EN.pdf>. See also UN General Assembly, Declaration on Human Rights Defenders, Resolution A/RES/53/144, 9 December 1998, Article 13, <<http://www.ohchr.org/documents/issues/defenders/declaration/declaration.pdf>>.

Principle 8: Good administration of legislation, policies and practices concerning associations

105. The implementation of legislation and practices relevant to associations must be undertaken by regulatory authorities in an impartial and timely manner and with a view to securing the right to freedom of association. The scope of the powers of regulatory authorities should be clearly defined in law. These authorities should also ensure that the public has relevant information concerning their procedures and functioning, in order to promote their accountability.

106. Associations and their members should be consulted in the process of introducing and implementing any regulations or practices that concern their operations. They should have access to information¹⁴⁰ and should receive adequate and timely notice about consultation processes. Furthermore, such consultations should be meaningful and inclusive, and should involve stakeholders representing a variety of different and opposing views, including those that are critical of the proposals made. The authorities responsible for organizing consultations should also be required to respond to proposals made by stakeholders, in particular where the views of the latter are rejected.¹⁴¹

107. Further, regulations and practices concerning the operations of associations should be constantly reviewed in order to facilitate the exercise of the right to freedom of association in the ever-changing environment in which associations operate. This may, for example, mean that associations should be able to submit required documentation electronically and conduct their activities in the form and forum of their choice, including through online and electronic conferences. A regular review of regulations and practices should not, however, result in the need for re-registration of already registered associations.

Principle 9: Legality and legitimacy of restrictions

108. As stated above, the right to freedom of association is not an absolute right and, therefore, limitations of this right are possible. However, any limitations imposed should be subject to strict conditions, and any such restriction should never completely extinguish the right to freedom of association nor encroach on its essence.

109. First, any legal and other restrictions placed on associations should be based on the constitution of the state or on another law. Restrictions must be “prescribed by law” and in such a manner as to avoid their arbitrary application; the legislation in question must be accessible and sufficiently clear to allow individuals and associations to ensure that their activities comply with the restrictions.¹⁴²

110. Second, any legal provision restricting the right to freedom of association must serve a legitimate purpose, in that such a provision must be based only on the legitimate aims recognized by international standards, namely: national security or public safety, public order (*ordre public*), the protection of public health or morals and the protection of the rights and freedoms of others.

111. Third, restrictions must be necessary in a democratic society. This means that any restriction must be proportional to the intended legitimate purpose and that there must be a

¹⁴⁰ UN Human Rights Committee, *General Comment No. 34 on the Freedom of Expression and Opinion*, 12 September 2011, CCPR/C/GC/34; para. 18 which states that “Article 19, paragraph 2 [of the ICCPR, on freedom of expression and opinion] embraces a right of access to information held by public bodies. Such information includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production”.

¹⁴¹ Recommendation from “Session II: Access to Funding from Natural and Legal Persons, whether Domestic, Foreign or International” of the OSCE/ODIHR and Venice Commission, “Consultation Roundtable on Funding, Independence, and Accountability of Associations”, Warsaw 6-7 May, 2014.

¹⁴² ECtHR, *Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan* (Application no. 37083/03, judgment of 8 October 2009), paras. 56-57.

strong, objective justification for the law and its application. In general, the law must be compatible with international human rights instruments. In addition, it is important that any resulting limitations be construed strictly; only convincing and compelling reasons for introducing such limitations are acceptable. In other words, only indisputable imperatives can interfere with the enjoyment of the right to freedom of association.¹⁴³ Finally, the law must be clear, in particular in those provisions granting discretion to state authorities.¹⁴⁴ It must also be precise and certain, and must have been adopted through a democratic process that ensures public participation and review.¹⁴⁵

Principle 10: Proportionality of restrictions

112. Proportionality is a principle that permeates both the ICCPR and the ECHR, and is of special significance in connection with the limitation of rights. The United Nations Human Rights Committee has also assessed the legitimacy of restrictions on rights that may be derogated from, based on the proportionality principle.¹⁴⁶ Ensuring that an interference by the state in the exercise of a fundamental freedom does not exceed the boundaries of necessity in a democratic society requires striking a reasonable balance between all countervailing interests and ensuring that the means chosen be the least restrictive means for serving those interests.

113. At the legislative stage, this should be done by assessing whether a planned interference in the exercise of the right to freedom of association is justified in a democratic society, and whether it is the least intrusive of all possible means that could have been adopted.¹⁴⁷ The state must, therefore, bear the burden of proving that any restrictions pursue a legitimate aim that cannot be fulfilled by any less intrusive actions.¹⁴⁸

114. In particular, the principle of proportionality becomes essential in the assessment of whether an association may be prohibited or dissolved. The ECtHR has repeatedly stated that any prohibition or dissolution shall always be a measure of last resort,¹⁴⁹ such as when the association has engaged in conduct that creates an imminent threat of violence or other grave violation of the law. Furthermore, the principle of proportionality dictates that prohibition or dissolution should never be used to address minor infractions.

115. In practice, all restrictions must be based on the particular circumstances of the case, and no blanket restrictions should be applied. This means, in particular, that legislation should not include provisions that would outright prohibit or dissolve associations for certain acts or inaction, regardless of the circumstances of the case.

Principle 11: Right to an effective remedy for the violation of rights

¹⁴³ Venice Commission, "Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan", CDL-AD(2011)035, 19 October 2011, para. 85.

¹⁴⁴ ECtHR, *Hasan and Chausch v Bulgaria* [GC] (Application no. 30985/96, judgment of 26 October 2000), para. 84; and ECtHR, *Aliyev and other v. Azerbaijan* (Application no. 28736/05, Judgment of 18 December 2008), para. 35.

¹⁴⁵ OSCE Document of the Moscow Meeting of 1991, para. 18.1 which states that "Legislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives."

¹⁴⁶ UN Human Rights Committee, *General Comment No. 34 on the Freedom of Expression and Opinion*, 12 September 2011, CCPR/C/GC/34, para. 22, citing UN Human Rights Committee, *Velichkin v. Belarus* (Communication no. 1022/2001, 20 October 2005).

¹⁴⁷ ECtHR, *Sürek v. Turkey* (No.1) (Application no.26682/95, judgment of 8 July 1999), para. 58; and ECtHR, *Refah Partisi (the Welfare Party) and others v. Turkey* [GC] (Application nos. 41340/98, 41342/98, 41343/98 and 41344/98, judgement of 13 February 2003).

¹⁴⁸ See OSCE/ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (Warsaw: ODIHR, 2011), para. 52, which states that "Proportionality should be considered on the basis of a number of factors including; The nature of the right in question; the purpose of the proposed restriction; the nature and extent of the proposed restriction; the relationship (relevancy) between the nature of the restriction and its purpose and whether there are any less restrictive measures available for the fulfillment of the stated purpose in light of the facts."

¹⁴⁹ ECtHR, *Refah Partisi (the Welfare Party) and others v. Turkey* [GC] (Application nos. 41340/98, 41342/98, 41343/98 and 41344/98, judgement of 13 February 2003); and *Vona v. Hungary* (Application no. 35943/10, judgement of 9 July 2013).

116. Associations, their founders and members should have the right to an effective remedy concerning all decisions affecting their fundamental rights, in particular those concerning their rights to freedom of association, expression of opinion and assembly. This means providing them with the right to appeal or to have reviewed by an independent and impartial court the decisions or inaction by the authorities, as well as any other requirements laid down in legislation, with respect to their registration, charter requirements, activities, prohibition and dissolution or penalties. If a violation is found to have occurred, proper and effective redress should be made available in a timely manner.¹⁵⁰ The procedure for appeal and review should be clear and affordable, and remedies should include compensation for moral or pecuniary loss.¹⁵¹

117. All associations should have equal standing before impartial tribunals and, in case of an alleged violation of any of their rights, have full protection of the right to a fair and public hearing. This is a fundamental aspect of protecting associations from undue control by the executive or administrative authorities.

118. The founders, members and representatives of associations should likewise enjoy the right to a fair trial in any proceedings commenced by or against them. Therefore, in matters concerning restrictions placed on an association, the right to receive a fair hearing by an independent and impartial tribunal established by law is an essential requirement to be secured by legislation.

119. Those associations that do not have legal personality must be allowed to be represented by designated individuals competent to represent their interests.

120. Any appeal against or challenge to a decision to prohibit or dissolve an association or to suspend its activities should normally temporarily suspend the effect of the decision, meaning that the decision should not be enforced until the appeal or challenge is decided. This avoids the creation of a *fait accompli*, since the freezing of accounts and suspension of activities would extinguish the association in practice before the appeal had been heard. This should not apply to cases where there exists exceptionally strong evidence of a crime having been committed by an association.

121. Associations should also benefit from the protection of non-judicial institutions, such as the offices of ombudspersons and human rights commissioners, through complaints procedures in order to assert their rights.¹⁵²

SUBSECTION 2 - THE REGULATORY FRAMEWORK ON ASSOCIATIONS

A. Equal treatment and non-discrimination

122. The principle that fundamental human rights are applicable to all persons within a state's jurisdiction, free from discrimination, is essential to ensure the full enjoyment and protection of such rights. Non-discrimination is defined in Articles 2 and 26 of the ICCPR and in Article 14 of and Protocol 12 to the ECHR, as well as in a number of other universal and regional instruments, including the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)¹⁵³ and Article 1 of the American Convention on

¹⁵⁰ See OSCE/ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (Warsaw: ODIHR, 2011), Principle 9: Right to an Effective Remedy for Violation of Rights.

¹⁵¹ *Ibid.* In the case of political parties and given their special role, effectiveness means that some decisions and remedies should be provided in an expedited manner (for instance, before and not after an election); see OSCE/ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (Warsaw: ODIHR, 2011), Principle 9: Right to an Effective Remedy for Violation of Rights.

¹⁵² See Paris Principles "Additional principles concerning the status of commissions with quasi-judicial competence" and General Observation 2.10 as adopted by the International Coordinating Committee Bureau at its meeting in Geneva on 6-7 May 2013, available at <http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/Report%20May%202013-Consolidated-English.pdf>

¹⁵³ UN CEDAW, Article 7, <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>>, which states that "States Parties shall take all appropriate measures to eliminate discrimination against women in the political and

Human Rights (ACHR).¹⁵⁴ Although Article 14 of the ECHR defines discrimination as unlawful only in conjunction with the enjoyment of a right protected under the Convention, Protocol 12 to the ECHR stipulates more broadly that discrimination be prohibited with respect to the enjoyment of any right set forth by law.

123. Differential treatment is discriminatory if it is based on a personal characteristic or status, such as age, birth, colour, gender, gender identity, health condition, immigration or residency status, language, national, ethnic or social origin, physical or mental disability, political or other opinion, property, race, religion or belief, sexual orientation or other status, and has no objective and reasonable justification. Differential treatment is also discriminatory if it does not pursue a legitimate aim that is recognized by international standards, or if there is no reasonable relationship of proportionality between the means employed and the aim sought to be realized.¹⁵⁵ The principle of non-discrimination prohibits both direct and indirect discrimination. Direct discrimination refers to acts or regulations that generate inequality, whereas indirect discrimination includes acts or regulations that, although *prima facie* not discriminatory, result in unequal treatment when put into practice.

124. The right to freedom of association should be enjoyed by everyone equally. In particular, all persons and groups wishing to form an association should be able to do so on the basis of equal treatment before the law.

LAW NO. 8788 ON NON-PROFIT ORGANIZATIONS OF THE REPUBLIC OF ALBANIA (2001)

Article 4

Every natural or juridical, local or foreign person has the right to establish a non-profit organization, to be a member of it or to take part in its management organs or in the administrative personnel of the non-profit organization.

125. Consequently, when introducing regulations that concern this right, the authorities must not treat any individual, group or type of association differently, without providing a well-founded justification. Any restrictions on the formation of associations imposed on certain persons or groups should, thus, be narrowly tailored.¹⁵⁶

126. Furthermore, state authorities should treat associations equally as regards the regulations that concern their establishment, registration (where applicable) and activities. However, certain differences in the treatment of associations – for example, the granting of tax exemptions and other forms of support – can be justified with respect to associations that meet particular social needs, such as furthering equality between women and men, providing education or tackling homelessness. This could also apply with regard to associations that play a special role in securing other fundamental rights, such as the right to freedom of religion or belief (in the case of religious organizations), or the right to stand for office and compete in elections (in the case of political parties). This may also involve taking positive measures to address the needs and overcome specific challenges confronting disadvantaged or vulnerable persons or groups,¹⁵⁷ particularly those subjected to intersectional discrimination.¹⁵⁸

public life of the country and, in particular, shall ensure to women, on equal terms with men, the right [...] (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.”

¹⁵⁴ American Convention on Human Rights, Article 1, “Obligation to Respect Rights”, which reads: “1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition. 2. For the purposes of this Convention, “person” means every human being.”

¹⁵⁵ ECtHR, *Genderdoc-M v. Moldova* (Application no. 9106/06, judgement of 12 June 2012), para. 50.

¹⁵⁶ ECtHR, *Ždanoka v. Latvia* [GC] (Application no. 58278/00, judgment of 16 March 2004).

¹⁵⁷ UN Human Rights Committee, General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote), 12 July 1996, CCPR/C/21/Rev.1/Add.7, para. 12. See also UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Threats to the rights to freedom of peaceful assembly and of association for groups most at risk)*, UN Doc. A/HRC/26/29, 14 April 2014,

OSCE REPORT ON HUMAN RIGHTS DEFENDERS IN THE OSCE REGION: CHALLENGES AND GOOD PRACTICES (2008)¹⁵⁹

[...]

Migrant associations [in Portugal] are entitled to state support pursuant to co-operation protocols established with the Office of the High Commissioner for Immigration and Intercultural Dialogue. These protocols are concluded upon request and involve the funding of activities developed by the requesting association (up to 70 per cent of the total amount). Support is also granted through activities aimed at improving the skills of members of such associations, including decision-makers, workers, and volunteers (namely training courses and follow-up to project implementation). Furthermore, associations can be given technical support, namely legal or other advice and the provision of documentation and other materials.

Similar support is given to women's associations (by the Commission for Citizenship and Gender Equality), youth associations (by the Portuguese Youth Institute), and associations of disabled people (by the National Institute for Rehabilitation).

[...]

127. At the same time, equal treatment of associations means that associations should not be treated differently as regards the exercise of their rights to freedom of opinion and expression, assembly and association on account of their objectives. Notably, associations should not be treated differently for reasons such as imparting information or ideas that contest the established order or advocate for a change of the constitution or legislation,¹⁶⁰ for defending human rights or for promoting and defending the rights of persons belonging to national or ethnic, religious, linguistic and other minorities or groups.¹⁶¹

128. The right to freedom of association generally entitles those forming an association or belonging to one to choose with whom they form an association or whom to admit as

para.

56,

<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A_HRC_26_29_ENG.DOC>.

For example, as regards migrant workers, see Committee on Migrant Workers, *General comment No. 1 on migrant domestic workers*, CMW/C/GC/1, 23 February 2011: "37. The rights of migrant domestic workers should be dealt with within the larger framework of decent work for domestic workers. In this regard, the Committee considers that domestic work should be properly regulated by national legislation to ensure that domestic workers enjoy the same level of protection as other workers. 38. Accordingly, labour protections in national law should be extended to domestic workers to ensure equal protection under the law, including provisions related to minimum wages, hours of work, days of rest, freedom of association ... In this regard, migrant domestic workers should enjoy treatment not less favourable than that which applies to nationals of the State of employment (article 25) [...] 47. States parties are encouraged to provide migrant domestic workers with information about relevant associations that can provide assistance in the country/city of origin and employment". See also Committee on Migrant Workers, *General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families*, CMW/C/GC/2, 28 August 2013: "65. [...] States parties shall ensure these rights, including the right to collective bargaining, encourage self-organization among migrant workers, irrespective of their migration status, and provide them with information about relevant associations that can provide assistance".

¹⁵⁸ The Explanatory Memorandum to Recommendation CM/Rec(2010)5 explains the terms as follows: "Multiple discrimination can be said to occur when a person suffers discrimination based on his or her connection to at least two different protected discrimination grounds, or because of the specific combination of at least two such grounds. The latter situation is often also referred to as intersectional discrimination". See, for example, CEDAW Committee, *General recommendation No. 27 on older women and protection of their human rights*, CEDAW/C/GC/27, 16 December 2010, para. 17, which states that "[o]lder women are often discriminated against through restrictions that hamper their participation in political and decision-making processes. For example, [...] In some countries, older women are not allowed to form or participate in associations or other nongovernmental groups to campaign for their rights"; CRC Committee, *General comment No. 9: The rights of children with disabilities*, CRC/C/GC/9, para. 34;

¹⁵⁹ OSCE, *Report on Human Rights Defenders in the OSCE Region: Challenges and Good Practices (April 2007-April 2008)*, p. 39 <<http://www.osce.org/odihr/35652?download=true>>.

¹⁶⁰ ECtHR, *Women on Waves v. Portugal* (Application no. 31276/05, judgment of 3 February 2009).

¹⁶¹ ECtHR, *Sidiropoulos and others v. Greece* (Application no. 26695/95, judgment of 10 July 1998), paras. 44-45. ECtHR, *Genderdoc-M v. Moldova* (Application no. 9106/06, judgement of 12 June 2012), paras. 53-55. UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Threats to the rights to freedom of peaceful assembly and of association for groups most at risk)*, UN Doc. A/HRC/26/29, 14 April 2014, para. 64,

<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A_HRC_26_29_ENG.DOC>.

members. However, this aspect of the right to association is also subject to the prohibition on discrimination, so that any differential treatment of persons with respect to the formation or membership of an association that is based on a personal characteristic or status must have a reasonable and objective justification.¹⁶² Legislation must, therefore, ensure that no one is unjustifiably prevented from becoming or remaining a member of an association.

129. Nonetheless, the right of an association to determine its own membership should also be protected.¹⁶³ As stated by the ECtHR, “[w]here associations are formed by people, who, espousing particular values or ideals, intend to pursue common goals, it would run counter to the very effectiveness of the freedom at stake if they had no control over their membership”.¹⁶⁴ As such, an association may adopt particular requirements for its members, provided that these requirements have an objective and rational basis and that those persons who do not satisfy these requirements – and therefore, cannot be members of the association – have the right to establish or join another association of their liking. The common purpose for which an association is established may justify membership criteria that in other cases would be discriminatory, provided that these have a reasonable and objective justification.

130. In assessing whether such a justification exists, an association's right to choose its members should be adequately balanced with a person's right to join or remain a member of the association in question.¹⁶⁵ The European Court of Human Rights has used certain criteria to strike such a balance on the issue of membership, in particular in the case of trade unions, such as: (1) the objective and common purpose for which an association is established; (2) the grounds for a refusal to join or a decision to expel a member; (3) whether non-membership in an association triggers any identifiable hardship for the person concerned; (4) whether the decision of the association is in accordance with its rules and whether there has been any abusive or unreasonable conduct on the part of the association; and (5) whether the association has any public duty or role conferred on it and/or benefits from public funding, which could require it to take on or keep members to fulfil some wider purposes.¹⁶⁶

131. Therefore, requiring members of a religious association to belong to the religion concerned would certainly be admissible.¹⁶⁷ At the same time, an association limiting membership of employees in a particular enterprise or industry to only men or only women would be hard to justify. When the distinction in question operates on grounds such as colour or ethnic origin, or in the intimate sphere of an individual's private life – for example, where a difference of treatment is based on sex or sexual orientation – particularly “weighty reasons” need to be advanced to justify the measure.¹⁶⁸ Associations may justify the use of restrictive membership criteria in certain cases where the objective of the association is to tackle discrimination faced by its members or to seek to redress specific instances of historical exclusion and oppression by the majority, for example, for endangered indigenous groups or marginalized groups. However, any discrimination for reasons unrelated to the purposes of the association should be prohibited in all cases.

FINNISH ASSOCIATIONS ACT (26 MAY 1989)

¹⁶² See, for example, ECtHR, *Willis v. United Kingdom* (Application no. 36042/97, judgment of 11 June 2002), para. 48.

¹⁶³ In the case of trade unions, see ECtHR, *Associated Society of Locomotive Engineers and Firemen (ASLEF) v. the United Kingdom*, Application no. 11002/05, 27 February 2007, para. 39.

¹⁶⁴ ECtHR, *Associated Society of Locomotive Engineers and Firemen (ASLEF) v. the United Kingdom*, Application no. 11002/05, 27 February 2007, para. 39.

¹⁶⁵ See, for example, in the case of trade union membership, ECtHR, *Associated Society of Locomotive Engineers and Firemen (ASLEF) v. the United Kingdom* (Application no. 11002/05, judgment of 27 February 2007), para. 50.

¹⁶⁶ ECtHR, *Associated Society of Locomotive Engineers and Firemen (ASLEF) v. the United Kingdom* (Application no. 11002/05, judgment of 27 February 2007), paras. 50-52.

¹⁶⁷ See ECtHR, *Associated Society of Locomotive Engineers and Firemen (ASLEF) v. the United Kingdom* (Application no. 11002/05, judgment of 27 February 2007), para. 39, which states that “it is uncontroversial that religious bodies and political parties can generally regulate their membership to include only those who share their beliefs and ideals.”

¹⁶⁸ See for example (gender discrimination), ECtHR, *Staatkundig Gereformeerde Partij v. the Netherlands* (Application no. 58369/10, decision of 10 July 2012), para. 73. See also ECtHR, *Genderdoc-M v. Moldova* (Application no. 9106/06, judgement of 12 June 2012), para. 50.

Section 12

A person wishing to join an association must inform the association of his or her intention. Decisions concerning admission of members shall be taken by the executive committee, unless the rules lay down otherwise.

Section 13

A member is entitled to resign from an association at any time by informing the executive committee or its chairperson thereof in writing. A member may also resign by giving a notice thereof at a meeting of the association for entry in the minutes. A provision may be taken in the rules that the resignation will not enter into force until after a specified period of time has passed from the submitting of the notice of resignation. Such period of time may not exceed one year.

Section 14

An association may expel a member on a ground stated in the rules. Nevertheless, the association invariably has the right to expel a member who:

1. has failed to fulfil the obligations to which he or she has committed himself or herself by joining the association;
2. by his or her action within or outside the association has substantially damaged the association; or
3. no longer meets the conditions for membership laid down by law or the rules of the association.

Gender equality and non-discrimination on the basis of gender, sexual orientation and gender identity

132. In addition to general guarantees concerning equality and non-discrimination, a number of international instruments require positive measures to be taken to secure the equal enjoyment/exercise of all rights, including the right to freedom of association, regardless of gender or sexual orientation.¹⁶⁹ Therefore, states should not only guarantee that any person can be a founder and/or member of associations irrespective of gender and sexual orientation, but should also facilitate the exercise of the right to freedom of association of different groups of persons by creating an enabling environment for them.

133. Furthermore, Article 4 of CEDAW makes it clear that special measures taken by states to ensure the *de facto* equality of women “shall not be considered discrimination... but shall in no way entail as a consequence the maintenance of unequal or separate standards”. Therefore, it is recommended that incentives, such as financial incentives, are introduced in legislation applicable to those associations that introduce policies that further equality between men and women.¹⁷⁰

134. In addition, it should be recalled that, in its case law, the ECtHR has held that “the advancement of the equality of the sexes is today a major goal in the member States of the

¹⁶⁹ Article 3 of the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) requires that states take “all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.” Article 7 of CEDAW states that “States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: [...]

c. to participate in non-governmental organizations and associations concerned with the public and political life of the country.” Through the Beijing Platform for Action, governments have also specifically committed to protect and promote the equal rights of women and men to freedom of association, including membership in political parties, trade unions, and other professional and social organizations, as well as to “[a]dopt policies that create an enabling environment for women’s self-help groups, workers’ organizations and cooperatives through non-conventional forms of support and by recognizing the right to freedom of association and the right to organize” (Beijing Platform for Action, Chapter I of the Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995, A/CONF.177/20 and Add.1, <<http://www.un.org/esa/gopher-data/conf/fwcw/off/a--20.en>>, Strategic Objectives I.2 and G.1.. See also UN CEDAW Committee, *General Recommendation No. 23: Political and Public Life*, adopted at the Sixteenth Session of the Committee on the Elimination of Discrimination against Women, in 1997 (Contained in Document A/52/38).

¹⁷⁰ In the case of political parties see OSCE/ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (Warsaw: ODIHR, 2011), paras. 99-105.

Council of Europe. This means that very weighty reasons would have to be advanced before a difference of treatment on the ground of sex could be regarded as compatible with the Convention. [...] Moreover, the Court has held that nowadays the advancement of the equality of the sexes in the member States of the Council of Europe prevents the State from lending its support to views of the man's role as primordial and the woman's as secondary".¹⁷¹

135. As regards trade unions, the UN Committee on Economic, Social and Cultural Rights has underlined the importance of securing the right to form and to join trade unions for domestic workers, rural women, women working in female-dominated industries and women working at home.¹⁷² A similar view has been expressed by the Committee on the Elimination of Discrimination against Women with respect to workers who are women¹⁷³ and to migrant workers who are women.¹⁷⁴

¹⁷¹ ECtHR, *Staatkundig Gereformeerde Partij v. the Netherlands* (Application no. 58369/10, decision of 10 July 2012), para. 73.

¹⁷² UN Committee on Economic, Social and Cultural Rights, *General Comment No. 16 (Thirty-fourth session, 2005): Article 3: The Equal Right of Men and Women to the Enjoyment of all Economic, Social and Cultural Rights*, E/C.12/2005/4: "25. Article 8, paragraph 1 (a), of the Covenant requires States parties to ensure the right of everyone to form and join trade unions of his or her choice. Article 3, in relation to article 8, requires allowing men and women to organize and join workers' associations that address their specific concerns. In this regard, particular attention should be given to domestic workers, rural women, women working in female-dominated industries and women working at home, who are often deprived of this right".

¹⁷³ CEDAW Committee, Concluding Observations on the initial report of the United Arab Emirates, CEDAW/C/ARE/CO/1, 5 February 2010, paras. 36-37, stating: "36. While noting with satisfaction the ratification by the State party of several International Labour Organization (ILO) conventions concerning equality, the increase in women's participation in the labour force and the State party's support to enlarge the number of women employed in the public sector, the Committee regrets the State party's prohibition on forming employee welfare associations [...] 37. [...] The Committee urges the State party to guarantee all workers, including especially female workers, the fundamental principle of freedom of association and to provide equal remuneration for work of equal value, and recommends that it become a party to ILO Conventions No. 87 and No. 98".

¹⁷⁴ CEDAW Committee, *General recommendation No. 26 on women migrant workers*, CEDAW/C/2009/WP.1/R, 5 December 2008, para. 26: "States parties in countries where migrant women work should take all appropriate measures to ensure non-discrimination and the equal rights of women migrant workers, including in their own communities. Measures that may be required include, but are not limited to, the following: ... (b) Legal protection for the rights of women migrant workers: States parties should ensure that constitutional and civil law and labour codes provide to women migrant workers the same rights and protection that are extended to all workers in the country, including the right to organize and freely associate".

136. Discrimination on the basis of sexual orientation has also been found to be contrary to the ICCPR,¹⁷⁵ the ACHR¹⁷⁶ and the ECHR.¹⁷⁷ In addition, discrimination on the basis of sexual orientation is prohibited by Article 21(2) of the European Union Charter of Fundamental Rights.¹⁷⁸

137. A number of relevant international documents have stated that states should also ensure that rights, including the right to freedom of association, can be effectively enjoyed without discrimination on the ground of gender identity.¹⁷⁹

138. Given that the advancement of equality has become a major goal at the national and international levels, as underlined by these provisions, legislation that prohibits associations from discriminating against potential members on the basis of their gender, sexual orientation or gender identity would be a legitimate restriction to the right to freedom of association.

Non-nationals

139. Non-nationals, including stateless persons,¹⁸⁰ refugees¹⁸¹ and migrants, have the right to freedom of association and must not suffer discrimination with respect to its exercise based on their status.

¹⁷⁵ See UN Human Rights Committee, *Toonen v. Australia*, (Communication no. 488/1992, 31 March 1994), para. 8.7, <<http://www.ohchr.org/documents/publications/sdecisionsvol5en.pdf>>, where the Committee stated that "The State party has sought the Committee's guidance as to whether sexual orientation may be considered an "other status" for the purposes of article 26. The same issue could arise under article 2, paragraph 1, of the Covenant. The Committee confines itself to noting, however, that in its view, the reference to "sex" in articles 2, paragraph 1, and 26 is to be taken as including sexual orientation."

¹⁷⁶ Inter-American Court of Human Rights, *Atala Riffo and daughters v. Chile* (Series C no. 242, Judgment of 24 February 2012), in which a denial of the mother's custody of her child on account of her sexual orientation was held to breach the guarantee of equal protection in Article 24.

¹⁷⁷ ECtHR, *X and others v. Austria* (Application no. 19010/07, judgment of 19 February 2013), para. 99. See also ECtHR, *Alekseyev v. Russia* (Applications no. 4916/07, 25924/08 and 14599/09, judgment of 21 October 2010), para. 108, which states that "[w]here a difference of treatment is based on sex or sexual orientation the margin of appreciation afforded to the State is narrow, and in such situations the principle of proportionality does not merely require the measure chosen to be suitable in general for realising the aim sought; it must also be shown that it was necessary in the circumstances. Indeed, if the reasons advanced for a difference in treatment were based solely on the applicant's sexual orientation, this would amount to discrimination under the Convention".

¹⁷⁸ European Union, *Charter of Fundamental Rights of the European Union*, 26 October 2012, 2012/C 326/02.

¹⁷⁹ Council of Europe, *Appendix to the Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity*, 31 March 2010, para. 9. UN Human Rights Council, *Resolution 17/19 on human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011. United Nations High Commissioner on Human Rights, *Report to the Human Rights Council on violence and discrimination based on sexual orientation and gender identity*, A/HRC/19/41, 17 November 2011. See also the Yogyakarta Principles, "Principles on the application of international human rights law in relation to sexual orientation and gender identity", 26 March 2007, Principle 20, <http://www.yogyakartaprinciples.org/principles_en.htm>. Principle 20 states: "Everyone has the right to freedom of peaceful assembly and association, including for the purposes of peaceful demonstrations, regardless of sexual orientation or gender identity. Persons may form and have recognised, without discrimination, associations based on sexual orientation or gender identity, and associations that distribute information to or about, facilitate communication among, or advocate for the rights of, persons of diverse sexual orientations and gender identities. States shall: a) Take all necessary legislative, administrative and other measures to ensure the rights to peacefully organise, associate, assemble and advocate around issues of sexual orientation and gender identity, and to obtain legal recognition for such associations and groups, without discrimination on the basis of sexual orientation or gender identity; b) Ensure in particular that notions of public order, public morality, public health and public security are not employed to restrict any exercise of the rights to peaceful assembly and association solely on the basis that it affirms diverse sexual orientations or gender identities; c) Under no circumstances impede the exercise of the rights to peaceful assembly and association on grounds relating to sexual orientation or gender identity, and ensure that adequate police and other physical protection against violence or harassment is afforded to persons exercising these rights; d) Provide training and awareness-raising programmes to law enforcement authorities and other relevant officials to enable them to provide such protection; e) Ensure that information disclosure rules for voluntary associations and groups do not, in practice, have discriminatory effects for such associations and groups addressing issues of sexual orientation or gender identity, or for their members."

¹⁸⁰ UN General Assembly, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117. Article 15 of the Convention states that, "As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible, and in any event, not less favourable than that accorded to aliens generally in the same circumstances."

140. Article 16 of the ECHR implies that this right does not prevent the imposition of restrictions on the political activity of aliens.¹⁸² However, the ECtHR has already recognized that this provision must be narrowly applied in European Union states where nationals of other European Union states are concerned.¹⁸³ While the applicability of Article 16 of the ECHR is most likely to be considered justifiable in respect of the formation and activities of a political party, it needs to be noted that, nevertheless, restrictions based on persons' nationality are not always admissible. Notably, "in the particular context of elections, the European Convention on the Participation of Foreigners in Public Life at the Local Level entered into force in 1997, and there is a growing trend within many European countries to allow foreign residents to vote and stand in local election".¹⁸⁴ In any event, non-party political activities are unlikely to be justifiably restricted based on this provision.

Minorities

141. In addition to the guarantees of the right to freedom of association applicable to everyone, this right is also guaranteed for all members of minority groups within the jurisdiction of a state by a number of international instruments specifically addressed to this group of persons.¹⁸⁵ They should, thus, be able to join associations and/or establish their own associations, without discrimination. However, it may also be appropriate to adopt legislative incentives aimed at supporting associations that promote the role of minorities in a democratic society.¹⁸⁶

CONSTITUTION OF THE REPUBLIC OF SERBIA (2006)

Article 80

Members of national minorities may found educational and cultural associations, which are funded voluntarily.

The Republic of Serbia shall acknowledge a specific role of educational and cultural associations of national minorities in their exercise of rights of members of national minorities.

Members of national minorities shall have a right to undisturbed relations and cooperation with their compatriots outside the territory of the Republic of Serbia. (...)

¹⁸¹ UN General Assembly, *Convention and Protocol Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, Article 15 on the right of association states that "As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances".

¹⁸² Article 16 of the ECHR on Restrictions on political activity of aliens states that "[n]othing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens".

¹⁸³ ECtHR, *Piermont v. United Kingdom* (Application nos. 15773/89, 15774/89, judgment of 27 April 1995), para. 64.

¹⁸⁴ See OSCE/ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (Warsaw: ODIHR, 2011), para. 120.

¹⁸⁵ Thus, Articles 7 and 8 of the Council of Europe Framework Convention for the Protection of National Minorities respectively provide that "The Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion" and that "The Parties undertake to recognise that every person belonging to a national minority has the right to manifest his or her religion or belief and to establish religious institutions, organisations and associations" (Council of Europe, *Framework Convention for the Protection of National Minorities* (ETS No. 157), 1 February 1995). Further, Article 3(1) of the UN Declaration of the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities states that "[p]ersons belonging to minorities may exercise their rights... individually as well as in community with other members of their group, without any discrimination" and Decision VI of the Helsinki Document of 1992 of the OSCE specifically highlights the importance of participation of persons belonging to national minorities in associations and states that "The participating States (...) (24) Will intensify in this context their efforts to ensure the free exercise by persons belonging to national minorities, individually or in community with others, of their human rights and fundamental freedoms, including the right to participate fully, in accordance with the democratic decision-making procedures of each State, in the political, economic, social and cultural life of their countries including through democratic participation in decision-making and consultative bodies at the national, regional and local level, inter alia, through political parties and associations (...)".

¹⁸⁶ See OSCE/ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (Warsaw: ODIHR, 2011), para. 107.

Children

142. Article 15 of the Convention of the Rights of the Child (CRC) expressly vests children with the fundamental rights to freedom of association and assembly.¹⁸⁷ Moreover, children come within the purview of the term “everyone” in the more general guarantees of this right. Furthermore, the prohibition of discrimination “on any ground” in both Article 26 of the ICCPR and Article 14 of the ECHR extends to age and, thus, is a further guarantee of the enjoyment by children of all rights contained in those instruments.

143. While certain restrictions in terms of the legal capacity of children to form and join associations may be justified, any such restrictions must be based in law, serve a legitimate aim recognized by international standards and be proportionate to that aim, as required for other restrictions on the right to freedom of association.¹⁸⁸ In particular, full account needs to be taken of the principle of the evolving capacity of the child when adopting any limits relating to the formation or membership of an association by children.¹⁸⁹ Furthermore, any legislation that would restrict children’s rights in this manner should be adopted and implemented on the basis that children are the holders of rights that the state has a duty to facilitate, respect and protect.¹⁹⁰ There is unlikely to be any justification for preventing children from forming or joining informal associations in which only other children are involved.

Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association to the UN Human Rights Council (Threats to the rights to freedom of peaceful assembly and of association for groups most at risk), UN Doc. A/HRC/26/29, 14 April 2014, paragraphs 49-50

(...)

49. Some laws limit the type of associations that individuals or groups can join or form. The Committee on the Rights of the Child has noted with concern that in Costa Rica, the Children and Adolescents Code denied adolescents the right to form or join political associations, yet they may form community development associations in which they may actively participate (CRC/C/CRI/CO/4, para. 37). In Turkey, children over the age of 15 may form associations and from the age of 12 may join those associations, but they must be 19 in order to form an organizational committee for outdoor meetings (CRC/C/TUR/CO/2-3, para. 38). The justification for explicitly excluding those groups from forming associations that engage in certain activities is unclear.

50. In an example of good practice, the Supreme Court of Estonia found the provisions

¹⁸⁷ UN CRC, Article 15, <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>>, which states:

“1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the 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.” The right of children to freedom of association is also specifically recognized in the African Charter on the Rights and Welfare of the Child, adopted in July 1990 by the Assembly of Heads of State and Government in Addis Ababa, Ethiopia, Organisation of African Unity (CAB/LEG/153/Rev 2), states in Article VIII that “Every child shall have the right to free association and freedom of peaceful assembly in conformity with the law”.

¹⁸⁸ The CRC Committee has, for instance, expressed concern about legislation that precludes children and adolescents from the right to join political associations (Costa Rica (CRC/C/CRI/CO/4, 3 August 2011, paras. 37 and 38), as well as the requirement that children under 18 obtain parental consent before joining an association (Japan - CRC/C/15/Add.231, 26 February 2004, paras. 29 and 30). See also UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Threats to the rights to freedom of peaceful assembly and of association for groups most at risk)*, UN Doc. A/HRC/26/29, 14 April 2014, paras. 49-50, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A_HRC_26_29_ENG_DOC>.

¹⁸⁹ UN CRC, Article 5, <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>>, which states that “States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention”.

¹⁹⁰ See Venice Commission, *Report on the Protection of Children’s Rights: International standards and national constitutions*, CDL-AD(2014)005-e, 3 April 2014.

of the Non-Profit Associations Act that restricted the right to form and lead associations to persons over the age of 18 years old to be in contravention of article 15 of the Convention on the Rights of the Child.
(...)

Law-enforcement personnel and state officials

144. The ICCPR, the ECHR and the ACHR expressly recognize the possibility of imposing certain restrictions on the exercise of the right to freedom of association by some public officials, including members of the police and armed forces.¹⁹¹ Such restrictions may be justified in cases where forming or joining an association would conflict with the public duties and/or jeopardize the political neutrality of the public officials concerned.¹⁹²

145. Nonetheless, according to the ECtHR, the category of persons liable to be subjected to these restrictions must be limited, and public employment or public funding for a position are unlikely to be sufficient bases for such restrictions.¹⁹³

146. Moreover, every restriction must still respect the principle of proportionality. For example, membership in a political party would not justify the dismissal of a teacher who does not promote party ideology in school,¹⁹⁴ while a complete ban on trade unions within the armed forces would be unjustified.¹⁹⁵ A complete prohibition on members of the police to belong to a political party has been upheld by the ECtHR, but this was done on the basis that they could still engage in some forms of political activity through other means.¹⁹⁶ Furthermore, it should be borne in mind that the association of civil servants,¹⁹⁷ police or military personnel¹⁹⁸ in trade unions should be viewed positively, as this permits them to protect their own labour rights.¹⁹⁹

¹⁹¹ Article 22(2) of the ICCPR, which states that “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”; Article 11(2) of the ECHR, which states that “This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State”; and Article 16(3) of the ACHR, which states that “The provisions of this article do not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police”.

¹⁹² See ECtHR, *Rekvényi v. Hungary* [GC] (Application no. 25390/94, judgment of 20 May 1999), para. 53.

¹⁹³ ECtHR, *Vogt v. Germany* [GC] (Application no. 17851/91, judgment of 26 September 1995), para. 67; and ECtHR, *Grande Oriente d'Italia di Palazzo Giustiniani v. Italy* (Application no. 35972/97, judgment of 2 August 2001), para. 31.

¹⁹⁴ ECtHR, *Vogt v. Germany* [GC] (Application no. 17851/91, judgment of 26 September 1995).

¹⁹⁵ ECtHR, *Matelly v. France* (Application no. 10609/10, judgment of 2 October 2014), para. 75.

¹⁹⁶ See ECtHR, *Rekvényi v. Hungary* [GC] (Application no. 25390/94, judgment of 20 May 1999), paras. 49 and 61.

¹⁹⁷ ECtHR, *Tüm Haber Sen and Çınar v. Turkey* (Application no. 28602/95, judgment of 21 February 2006), where the Court found a violation of Article 11 of the ECHR by the state which dissolved a trade union solely on the basis of the fact that it was founded by civil servants.

¹⁹⁸ Council of Europe, *Recommendation CM/Rec (2010) 4 of the Committee of Ministers and explanatory memorandum on “Human Rights and Members of the Armed Forces”*, paras. 53-57.

¹⁹⁹ See, for instance, ILO, *Guidelines for the Police and Military to apply Freedom of Association and Right to Collective Bargaining*, 2013, <http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-manila/documents/publication/wcms_231646.pdf>. See also Council of Europe, *Recommendation CM/Rec (2010) 4 of the Committee of Ministers of the Council of Europe and explanatory memorandum on human rights of members of the armed forces*, 24 February 2010, paras. 53-57, <http://www.coe.int/t/dghl/standardsetting/hrpolicy/publications/cmrec_2010_4en.pdf>, which states that “Members of the armed forces should have the right to join independent organisations representing their interests and have the right to organise and to bargain collectively. Where these rights are not granted, the continued justification for such restrictions should be reviewed and unnecessary and disproportionate restrictions on the right to assembly and association should be lifted”. See also OSCE/ODIHR and Geneva Centre for the Democratic Control of Armed Forces (DCAF), *Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel* (Warsaw: ODIHR, 2008), Chapter 9, <<http://www.osce.org/odihr/31393>>.

B. Formation, legal personality and registration

Formation

147. Everyone should be entitled to establish an association subject only to restrictions consistent with the guarantees of equality and non-discrimination discussed in Section A.

148. An agreement between two or more persons or groups of persons should ordinarily be a sufficient basis for the establishment of an association. In case legislation requires that a greater number of persons are required in order to establish an association, the number concerned should be neither excessive nor incompatible with the nature of the association.²⁰⁰ Such a requirement should, in any event, not apply to informal associations.

REVISED UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT OF THE UNITED STATES OF AMERICA (2008)

“Unincorporated nonprofit association” means an unincorporated organization consisting of [two] or more members joined under an agreement that is oral, in a record, or implied from conduct, for one or more common, nonprofit purposes. The term does not include: (A) a trust; (B) a marriage, domestic partnership, common law domestic relationship, civil union, or other domestic living arrangement; (C) an organization formed under any other statute that governs the organization and operation of unincorporated associations; (D) a joint tenancy, tenancy in common, or tenancy by the entirety even if the co-owners share use of the property for a nonprofit purpose; or (E) a relationship under an agreement in a record that expressly provides that the relationship between the parties does not create an unincorporated nonprofit association.”

LAW OF THE REPUBLIC OF FRANCE RELATING TO THE CONTRACT OF ASSOCIATION (1901, AS LAST AMENDED IN 2005)

Article 1

An association is an agreement by which two or more people, in a permanent manner, join their knowledge or their activities for an objective other than sharing profits. Regarding its validity, it is governed by the general principles of law applicable to contracts and obligations.

²⁰⁰ See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Best practices that promote and protect the rights to freedom of peaceful assembly and of association)*, UN Doc. A/HRC/20/27, 21 May 2012, para. 54, <http://www.ohchr.org/documents/hrbodies/hrcouncil/regularsession/session20/a-hrc-20-27_en.pdf>, which states that “The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association considers it best practice for legislation to require no more than two persons to establish an association. While he notes that a higher number may be required to establish a union or a political party, this number should not be set at a level that would discourage people from engaging in associations”; and Council of Europe, *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*, 10 October 2007, para. 17, which states that “Two or more persons should be able to establish a membership-based NGO but a higher number can be required where legal personality is to be acquired, so long as this number is not set at a level that discourages establishment”. See also ECtHR, *Zhechev v. Bulgaria* (Application no. 57045/00, 21 June 2007), para. 56, which states that “There is therefore no “pressing social need” to require every association deemed by the courts to pursue ‘political’ goals to register as a political party, especially in view of the fact that, as noted above, the exact meaning of that term under Bulgarian law appears to be quite vague. That would mean forcing the association to take a legal shape which its founders did not seek. It would also mean subjecting it to a number of additional requirements and restrictions, such as for instance the rule that a political party cannot be formed by less than fifty enfranchised citizens (see paragraph 19 above), which may in some cases prove an insurmountable obstacle for its founders. Moreover, such an approach runs counter to freedom of association, because, in case it is adopted, the liberty of action which will remain available to the founders of an association may become either non-existent or so reduced as to be of no practical value”.

NON-PROFIT ASSOCIATIONS ACT OF ESTONIA (1996, AS LAST AMENDED IN 2012)

Article 5. Founders

A non-profit association may be founded by at least two persons. The founders may be natural persons or legal persons.

149. Whereas the formation of an association with legal personality may be subject to certain formalities, the law should not prohibit or unjustifiably restrict the formation of an informal association.

150. Furthermore, owing to modern technology, an increasing number of associations are formed online. While such associations might seem to challenge established notions of the formation and membership of associations, their key distinguishing characteristic compared to “regular” associations is, essentially, only the absence of physical gatherings; they still have common objectives and a framework governing their operation. Therefore, the ability to establish and then operate associations in this manner should be supported by legislation, and access to the Internet as a forum for freedom of expression should be ensured.²⁰¹

Acquisition of Legal Personality

151. The acquisition of legal personality is a prerequisite for an association to gain the legal capacity to, in its own name, enter into contracts, make payments for goods and services procured, and own assets and property, as well as to take legal action to protect the rights and interests of associations, among other legal processes that can be essential for the pursuit of the objectives of associations. It is reasonable to put in place registration or notification requirements for those associations that wish to have such legal capacities, so long as the process involves requirements that are sufficiently relevant, are not unnecessarily burdensome and do not frustrate the exercise of the right to freedom of association.²⁰² The particular legal capacities thereby acquired may vary according to the type of association concerned.

LAW OF THE REPUBLIC OF FRANCE RELATING TO THE CONTRACT OF ASSOCIATION (1901, AS LAST AMENDED IN 2005)

Article 2

Associations of persons will be freely formed without prior authorization or declaration, but will enjoy legal capacity only if they comply with the provisions of Article 5.

(...)

Informal Associations in the Netherlands

In the Netherlands, an association obtains legal personality *ex lege*, by the operation of law. No further formalities are required nor conditions set. The law distinguishes between associations formed through registering by act of a public notary (“formal associations”) and associations formed by oral or written agreement (“informal associations”). The former category has full legal capacity (Article 2:26, paragraph 2 of the Dutch Civil Code). The latter category has limited legal personality (Article 30, paragraph 1 of the Dutch Civil Code); they may at any time have their by-laws registered by act of a public notary in order to obtain full legal capacity (Article 2:28 of the Dutch Civil Code).

The main limitations of the legal capacity of informal associations are: (1) they may not obtain goods registered in a public register, such as real estate, ships and

²⁰¹ See the section on “Associations and New Technologies” in the present Guidelines.

²⁰² ECtHR, *Gorzelik and Others v. Poland* [GC] (Application no. 44158/98, judgment of 17 February 2004), para. 88; European Commission of Human Rights, *Cârmuirea Spirituală a Musulmanilor din Republica Moldova v. Moldova* (Application no. 12282/02, decision of 14 June 2005); and UN Human Rights Committee, *Malakhovsky and Pikul v. Belarus* (Communication no. 1207/2003, 26 July 2005), para. 7.6.

airplanes; (2) they cannot inherit; (3) they cannot participate in legal mergers or separations; (4) they cannot lodge collective actions with courts to protect interests of third parties equal to their own interests; and (5) their board members are severally responsible for any debt incurred by the association (Articles 2: 30 and 3:305 of the Dutch Civil Code). In order to avoid or reduce the consequence mentioned under (5), the board may decide to register the informal association, its by-laws (if these are in writing), its board structure and rules concerning representation and division of powers in the “Commercial Registry” (*Handelsregister*), a public registry that can be accessed by anyone. In that case, the board members are severally responsible only if and to the extent that the creditor can make it plausible that the association as such cannot meet its obligation.

152. The acquisition of legal personality should generally be viewed as a right, and not as an obligation or as mandatory. States may, however, require that associations that are seeking to enjoy various forms of public support, or that wish to be accorded a particular status (such as being recognized as a charity or public benefit organization), first obtain legal personality.

Notification and Registration

153. The acquisition of legal personality may require that the association informs the authorities (sometimes referred to as “notification”) of its formation, or that the association goes through a more formal process (often referred to as “registration”).

LAW ON ASSOCIATIONS OF THE REPUBLIC OF CROATIA (2001)

Article 14

(1) Registration in the registry book is voluntary and shall be conducted upon the request of the founders of the association.

(...)

154. Submitting a notification of establishment to the authorities should be sufficient for the purpose of obtaining legal personality. Where legislation requires certain formalities to be undertaken to establish an association with legal personality, it is good practice for a state to provide for a “notification procedure”. In such a procedure, associations are automatically granted legal personality as soon as the authorities are notified by the founders that an association has been created. A “prior authorization procedure”, on the other hand, requires the approval (official confirmation) of the authorities to establish an association as a legal entity.²⁰³ On account of its simplicity, the availability of a notification procedure clearly serves to promote the establishment of associations with legal personality and should be favoured. If a registration procedure is nevertheless chosen, the legislation should at least provide for an implicit approval mechanism, so that approval is considered to be granted within a certain and adequate number of days following the application to the authorities. If the registration authorities are authorized to reject the application, then a clear legal basis should be provided in the legislation, with an explicit and limited number of justifiable grounds compatible with international human rights standards.

CONSTITUTION OF THE REPUBLIC OF ICELAND (1944)

Article 74

Associations may be formed without prior permission for any lawful purpose, including political associations and trade unions. An association may not be dissolved by administrative decision. The activities of an association found to be in furtherance of unlawful objectives may however be enjoined, in which case legal action shall be brought without undue delay for a judgment dissolving the

²⁰³See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Best practices that promote and protect the rights to freedom of peaceful assembly and of association)*, UN Doc. A/HRC/20/27, 21 May 2012, para. 58, <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf>.

association. (...)

LAW OF THE REPUBLIC OF FRANCE RELATING TO THE CONTRACT OF ASSOCIATION (1901, AS LAST AMENDED IN 2005)

Article 5

Any association wishing to obtain legal capacity under Article 6 shall be made public by its founders.

A prior declaration will be made to the prefecture of the department or sub-prefecture of the district where the association has its headquarters. It shall mention the title and objectives of the association, the seat of its establishment and the names, occupations and addresses and nationalities of those who, in any capacity, are responsible for its administration. A copy of the bylaws is attached to the declaration. A receipt of the declaration thereof is given within five days.

155. In the OSCE and Council of Europe regions, many states require associations to undergo formal notification, registration or other similar procedures in order to acquire legal personality.²⁰⁴ However, in some states, this procedure is so cumbersome that it effectively prevents associations from being registered. Such barriers include: a lack of clarity regarding registration procedures; detailed and complex documentation requirements; prohibitively high registration fees; overly broad discretion of the registration authority in registering associations or in conducting investigations or assessments of the intentions of the association as part of the registration process; and excessive delays in the registration process. Seemingly neutral registration requirements, such as nationality or residency requirements, may have a disproportionate effect on certain persons or groups, making it harder for them to form associations.²⁰⁵ These practices stifle and unduly restrict the right to freedom of association.

156. Legislation should make the process of notification or registration as simple as possible and, in any case, not more cumbersome than the process created for other entities, such as businesses. For example, “one stop shop” or “one window” approaches, or providing for online registration, allow business and other entities, including associations, to achieve registration very quickly, efficiently and effectively. Any fees charged in the process should take into account the desirability of encouraging the formation of associations and their not-for-profit character. They should not, therefore, be set at a level that discourages or makes applications for registration impractical.

157. The list of documents required for registration should be clearly defined in legislation, and should be minimal and exhaustive. In general, evidence of a founding meeting, a charter or statute and the payment of registration fees (as applicable), as well as relevant details relating to the association’s founders, should be sufficient. The state should generally not require the submission of unnecessary documents, such as lists of members, lease agreements, fiscal records of founders and other irrelevant documentation. However, special documentation requirements may exist for certain associations, such as political parties,²⁰⁶ which may be eligible to obtain public funding once established. Similarly, regulations may also reasonably require that public benefit organizations or charities fulfil additional requirements for the purpose of obtaining the special status enjoyed by such entities. However, actions undertaken to meet these requirements should be separate from the process of acquiring legal personality.

158. Further, apart from the objectives and name of the association, in very limited circumstances, the substance of the documentation submitted to the authorities for registration should not be subject to review (for additional information on objectives, see Section C,

²⁰⁴ A process of legalization is not tantamount to registration.

²⁰⁵ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Threats to the rights to freedom of peaceful assembly and of association for groups most at risk)*, UN Doc. A/HRC/26/29, 14 April 2014, para. 53, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A_HRC_26_29_ENG.DOC>.

²⁰⁶ See OSCE/ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (Warsaw: ODIHR, 2011), paras. 76-79 and 77.

Subsection 2 [C] of these Guidelines). Only the association's ability to meet formal requirements should be relevant for the question of registration.

159. The law should refrain from restricting the use of names of associations, unless they impinge on the rights of others²⁰⁷ or are clearly misleading, such as when the name gives the impression of being an official body or of enjoying a special status under the law, or leads to the association being confused with another association.²⁰⁸ Legislation should also refrain from placing territorial restrictions on the operations of associations,²⁰⁹ and should maintain the same procedures for registration throughout the whole country.

160. Furthermore, the law should not deny registration based solely on technical omissions, such as a missing document or signature, but should give applicants a specified and reasonable time period in which to rectify any omissions, while at the same time notifying the association of all requested changes and the rectification required.²¹⁰ The time period provided for rectification should be reasonable, and the association should be able to continue to function as an informal body.

161. Applications for registration should be determined without undue delay and should be dealt with within a matter of weeks.²¹¹

162. The responsible state agency should be required to provide a detailed written statement of reasons for a decision to refuse the registration of an association. Such reasons should not go beyond what is specified in the applicable law. The reasons set out in law should be compatible with international human rights standards; the rejection of a registration should be exclusively based on non-compliance with the prescribed formalities, or the existence of inadmissible names or objectives, in cases where these do not comply with international standards or with legislation that is consistent with such standards.

163. Associations should have the opportunity to appeal decisions denying their application for registration or any failure to deal with their applications within a reasonable time, and should be able to do so before an independent and impartial tribunal. Persons whose applications to register were unsuccessful owing to a failure to comply with the respective formalities should have the right to reapply to for the registration of their associations.²¹²

164. The state should maintain a database of registered associations that is accessible to the public, with due consideration for data protection principles and the right to associational privacy. In order to ensure public accountability, statistical information on the number of accepted and rejected applications should also be made available.

165. Finally, re-registration should not automatically be required following changes to legislation on associations. Renewals of registration may be required in exceptional cases where significant and fundamental changes are to take effect. In such cases, the competent authorities should first notify the respective association of the need to re-register, and should provide them with a sufficient transitional period to enable the associations to comply with the

²⁰⁷ See European Commission of Human Rights, *X v. Switzerland* (Application no. 18874/91, decision of 12 January 1994), concerning the proposed use of 'Chamber of Commerce' when such an entity already existed.

²⁰⁸ See European Commission of Human Rights, *Apeh Uldozotteinek Szovetsege, Ivanyi, Roth and Szerdahelyi v. Hungary* (Application no. 32367/96, decision of 31 August 1999), which concerned the use of the tax authority's name by a proposed association, and ECtHR, *Gozelik and Others v. Poland* [GC] (Application no. 44158/98, judgment of 17 February 2004), which concerned the use of a name wrongly suggesting that the proposed association had a special status under election law.

²⁰⁹ ECtHR, *Koretsky and Others v. Ukraine* (Application no. 40269/02, judgment of 3 April 2008), paras. 53-55.

²¹⁰ ECtHR, *Tsonev v. Bulgaria* (Application no. 45963/99, judgment of 13 April 2006), paras. 55-57 and *Ramazanov and Others v. Azerbaijan* (Application no. 44363/02, judgment of 1 February 2007), paras. 64-67 and UN Human Rights Committee, *Katsora, Sudalenko and Nemkovich v. Belarus* (Communication no. 1383/2005, 25 October 2010), para. 8.3.

²¹¹ ECtHR, *Ismayilov v. Azerbaijan*, no. 4439/04, 17 January 2008), paras. 50-52.

²¹² European Commission of Human Rights, *Movement for Democratic Kingdom v. Bulgaria* (Application no. 27608/95, decision of 29 November 1995) and ECtHR, *Özbek and Others v Turkey* (Application no 35570/02, 6 October 2009).

new requirements.²¹³ In any case, even if they do not re-register, the associations should be able to continue to operate without being considered unlawful.

166. The foregoing standards should equally be observed with respect to the formation of branches of associations, foreign associations or unions and networks of associations, including those operating at the international level.²¹⁴

C. Membership, internal management, objectives and activities

167. Associations should not be under a general obligation to disclose the names and addresses of its members, since this would be incompatible with both their right to freedom of association and the right to respect for private life.²¹⁵ However, individual members of an association could be required to disclose their membership where this could conflict with their responsibilities as employees or office-holders.²¹⁶ Moreover, the need to disclose membership lists of political parties seeking public funding based on the number of members may also reasonably be imposed where minimum membership requirements exist.²¹⁷ Furthermore, the membership lists of certain professional associations may need to be disclosed where these perform some regulatory functions. However, any such disclosure must still comply with the principles of data protection, which may restrict who has access to the list concerned and the details that have to be disclosed (see also Section C, Subsection 2 [F] of these Guidelines on the right to privacy in the context of supervision by public authorities).

168. An association should be able to have fluctuating numbers of members throughout the course of its existence. If the number of members of an association falls below the required minimum, this should not be an automatic basis for its termination. Moreover, legal requirements to count or keep record of the existing number of members should not be used by authorities to access membership lists or subject associations to inspection.

169. Associations 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 recognized by international standards and are not disproportionate in their effect.

170. The self-governing nature of associations is specifically recognized in respect of trade unions by Article 3 of Convention No. 87 of the International Labour Organization, which provides that they should be able to draft their own internal rules and regulations and administer their own affairs.²¹⁸

²¹³ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Best practices that promote and protect the rights to freedom of peaceful assembly and of association)*, UN Doc. A/HRC/20/27, 21 May 2012, para. 62 which states that “Newly adopted laws should not request all previously registered associations to re-register so that existing associations are protected against arbitrary rejection or time gaps in the conduct of their activities. For instance, the Committee on the Rights of the Child, in its concluding observations on Nepal, expressed concerns over the wide-ranging restrictions, such as re-registration requirements, placed by the authorities on civil society organizations (CRC/C/15/Add.260, paras. 33 and 34).”

²¹⁴ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Best practices that promote and protect the rights to freedom of peaceful assembly and of association)*, UN Doc. A/HRC/20/27, 21 May 2012, para. 59 which states that “The Special Rapporteur believes the formation of branches of associations, foreign associations or unions or networks of associations, including at the international level, should be subject to the same notification procedure”.

²¹⁵ European Commission of Human Rights, *National Association of Teachers in Further and Higher Education v. United Kingdom* (Application no. 28910/95, decision of 16 April 1998). Also see generally: <<http://associationline.org/guidebook/action/read/chapter/4>>.

²¹⁶ ECtHR, *Grande Oriente d'Italia di Palazzo Giustiniani v Italy (No 2)*, (Application no. 26740/02, judgment of 31 May 2007).

²¹⁷ See OSCE/ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (Warsaw: ODIHR, 2011), paras. 76-79.

²¹⁸ See ILO, C087 - *Freedom of Association and Protection of the Right to Organise Convention*, 1948 (No. 87), <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312232:NO>. Its Article 3 reads as follows: “1. Workers’ and employers’ organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes. 2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.”

171. The internal functions of associations should, thus, generally be free from state interference. This fundamental premise is subject only to the requirement that associations be not-for-profit, respect the principle of non-discrimination and do not engage in activities characterized as unlawful in accordance with international human rights standards.

172. However, this should not preclude states from encouraging associations to pursue the balanced representation and participation of men and women in the management of associations and in their work.²¹⁹

173. Non-nationals should not be prevented from becoming involved in the management of associations simply on account of their nationality.²²⁰ Furthermore, any restrictions prohibiting public officials from serving on the highest governing body of an association should be consistent with the admissible restrictions on their ability to be members of such an association in general.

174. Public authorities should not interfere with an association's choice of its management or representatives, except where the persons concerned are disqualified from holding such positions by law, and this law is compliant with international standards. Those responsible for decision-making in a non-governmental organization can, however, be required by public authorities to be clearly identified.²²¹

175. Associations should be free to determine their internal management structure, and their highest governing bodies. They should also be free to establish branches (including representative offices, affiliates and subsidiaries), and to delegate certain management tasks to such branches and their leadership. Furthermore, associations should not be required to obtain any authorization from a public authority in order to change their internal management structure, the frequency of meetings, their daily operations or rules, or to establish branches that do not have distinct legal personality.²²²

176. Under no circumstances should legislation mandate or permit the attendance of state agents at non-public meetings of associations,²²³ unless they are invited by the association itself.

177. Cases of external intervention in the running or management of associations should only be undertaken in extremely exceptional circumstances. Intervention should only be permissible in order to bring an end to a serious breach of legal requirements, such as in cases where either the association concerned has failed to address this breach, or where there is a need to prevent an imminent breach of said requirements because of the serious consequences that would otherwise follow.²²⁴ Compliance with the rights of individual members should normally be achieved through legal proceedings that they themselves may initiate.

²¹⁹ CEDAW Committee, *General recommendation No. 23: Political and public life (1997)*, A/52/38/Rev.1, para. 47, which states that the obligation to eliminate all forms of discrimination in all areas of public and political life include such measures designed to: "(a) Ensure that effective legislation is enacted prohibiting discrimination against women; (b) Encourage non-governmental organizations and public and political associations to adopt strategies that encourage women's representation and participation in their work."

²²⁰ See Council of Europe, *Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe*, para. 49.

²²¹ ECtHR, *Hasan and Chaush v. Bulgaria* [GC] (Application no. 30985/96, judgment of 26 October 2000).

²²² See ECtHR, *Koretskyy and Others v. Ukraine* (Application no. 40269/02, judgment of 3 April 2008), paras. 52-53; and Council of Europe, *Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe*, paras. 42 and 46-48.

²²³ See OSCE/ODIHR, *Comments on the Law on Associations of Turkmenistan*, Opinion-Nr.: NGO – TUR/154/2010 (LH), 22 June 2010, available at: <<http://www.legislationline.org/documents/id/16059>>, para. 41.

²²⁴ See ECtHR, *Freedom and Democracy Party (ÖZDEP) v. Turkey* [GC] (Application no. 23885/94, judgment of 8 December 1999), paras. 46-47; and Council of Europe, *Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe*, paras. 2, 6 and 70.

178. Inspections conducted with the primary purpose of verifying compliance with internal procedures of an association should not be permissible (for additional information on inspections and supervision, see Section C, Subsection 2 [F] of these Guidelines). Moreover, under no circumstances should associations suffer sanctions on the sole ground that their activities breach their own internal regulations and procedures, so long as these activities are not otherwise unlawful.

179. Legislation pertaining to associations should not restrict or dictate the objectives and spheres of activities that associations must or cannot undertake, beyond those that are incompatible with international human rights standards. Such restrictions or attempts to influence the operations of associations may, in some exceptional cases, be permissible. This includes cases where an association's objectives and activities promote propaganda for war, the incitement of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, as well as the achievement of goals that are inconsistent with democracy²²⁵ or that are prohibited by laws that are not themselves contrary to those standards.

180. This means that legislation that restricts, for example, the territory on which certain associations may operate, and punishes them for undertaking activities outside this area, may be in violation of the right to freedom of association.

181. In addition, legislation that seeks to determine which objectives and activities can or cannot be included in the founding instrument of associations should be repealed. This does not apply to objectives and activities that would conflict with international human rights standards or legislation that is consistent with such standards. In practice, this means that associations cannot and should not be prevented from registering and/or being otherwise recognized, unless their aims and objectives clearly conflict with international human rights standards.

182. The legislator must bear in mind that the rights to freedom of expression and to freedom of association entitle associations to pursue objectives or conduct activities that are not always congruent with the opinions and beliefs of the majority or run precisely counter to them. Long-standing ECtHR jurisprudence holds that a vibrant democracy also implies the expression of views that may "offend, shock or disturb" the state or any sector of the population.²²⁶ This includes imparting information or ideas contesting the established order or advocating for a peaceful change of the Constitution²²⁷ or legislation by, for example, advocating for the decriminalization of abortion,²²⁸ asserting a minority consciousness,²²⁹ protecting the human rights of LGBTI people,²³⁰ calling for regional autonomy, or even requesting secession of part of the country's territory.²³¹ In any event, authorities need to avoid drawing hasty and negative conclusions about the proposed objectives of an association.²³²

²²⁵ ECtHR, *Refah Partisi (the Welfare Party) and others v. Turkey* [GC] (Application nos. 41340/98, 41342/98, 41343/98 and 41344/98, judgement of 13 February 2003) and *Koretskyy and Others v. Ukraine* (Application no. 40269/02, judgment of 3 April 2008).

²²⁶ ECtHR, *Handyside v. the United Kingdom* (Application no. 5493/72, judgment of 7 December 1976).

²²⁷ ECtHR, *Refah Partisi (the Welfare Party) and Others v Turkey* [GC] (Application nos. 41340/98, 41342/98, 41343/98 and 41344/98, judgment of 13 February 2003).

²²⁸ ECtHR, *Women on Waves v. Portugal* (Application no. 31276/05, judgement of 3 February 2009).

²²⁹ ECtHR, *Sidiropoulos and others v. Greece* (Application no. 26695/95, judgement of 10 July 1998), paras 44-45.

²³⁰ ECtHR, *Genderdoc-M v. Moldova* (Application no. 9106/06, judgement of 12 June 2012), paras 44-45. UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Threats to the rights to freedom of peaceful assembly and of association for groups most at risk)*, UN Doc. A/HRC/26/29, 14 April 2014, para. 64, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A_HRC_26_29_ENG.DOC>.

²³¹ ECtHR, *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (Applications nos. 29221/95 and 29225/95, judgment of 2 October 2001), para. 97, which states that "the fact that a group of persons calls for autonomy or even requests secession of part of the country's territory – thus demanding fundamental constitutional and territorial changes – cannot automatically justify a prohibition of its assemblies. Demanding territorial changes in speeches and demonstrations does not automatically amount to a threat to the country's territorial integrity and national security. [...] In a democratic society based on the rule of law, political ideas which challenge the existing

LAW OF THE REPUBLIC OF ARMENIA ON PUBLIC ORGANIZATIONS (2001)

Article 4

(...)

2. An Organization determines independently its organizational structure, goals, objectives and methods of activity.

(...)

D. Participation in decision-making processes and property, income and assets

183. In a participatory democracy with an open and transparent lawmaking process, associations should be able to participate in the development of law and policy at all levels, whether local, national, regional or international.²³³

184. This participation should be facilitated by the establishment of mechanisms that enable associations to engage in dialogue with, and to be consulted by, public authorities at various levels of government.

185. The participation of associations should involve a genuine two-way process and, in particular, proposals by associations for changes in policy and law should not be seen as inadmissible or unlawful.²³⁴

186. In addition, associations should be able to comment publicly on reports submitted by states to international supervisory bodies regarding the implementation of obligations under international law, and should be able to do so prior to the submission of such reports.²³⁵ Furthermore, associations should always be consulted about proposals to amend laws and other rules that concern their status, financing and operation.²³⁶

order and whose realisation is advocated by peaceful means must be afforded a proper opportunity of expression through the exercise of the right of assembly as well as by other lawful means.”

²³² ECtHR, *United Communist Party of Turkey and Others v. Turkey* [GC], (Application no. 19392/92, judgment of 30 January 1998). See also OSCE/ODIHR, *Guidebook on Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism* (Warsaw: ODIHR, 2014), p. 42, which states that “Simply holding views or beliefs that are considered radical or extreme, as well as their peaceful expression, should not be considered crimes”.

²³³ See OSCE, Copenhagen 1990, para. 5.8, which states that “legislation, adopted at the end of a public procedure, and regulations will be published, that being the condition for their applicability. Those texts will be accessible to everyone”; and OSCE, Moscow 1991, para. 18.1, which states that “[l]egislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives”. See also Council of Europe, *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*, 10 October 2007, paras. 12, 76 and 77; UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, Article 8, <<http://www.ohchr.org/en/ProfessionalInterest/Pages/RightAndResponsibility.aspx>>; United Nations Economic Commission for Europe (UNECE), *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (“Aarhus Convention”)*, 25 June 1998, Articles 6 and 8 <<http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>>; Council of Europe, *Convention on the Participation of Foreigners in Public Life at Local Level (CETS No. 144)*, entry into force on 1 May 1997, Article 5, <<http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?CL=ENG&NT=144>>; and Council of Europe, *Framework Convention for the Protection of National Minorities* (ETS No. 157), 1 February 1995, Article 15.

²³⁴ ECtHR, *Koretskyy and Others v. Ukraine* (Application no. 40269/02, judgment of 3 April 2008), para. 52. See also Council of Europe, *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*, 10 October 2007, para. 12; Conference of INGOs of the Council of Europe, *Code of Good Practice for Civil Participation in the Decision-making Process* (October 2009), <http://www.coe.int/t/ngo/Source/Code_English_final.pdf>; and UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, Article 7, <<http://www.ohchr.org/en/ProfessionalInterest/Pages/RightAndResponsibility.aspx>>.

²³⁵ See UN General Assembly, *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 5 and 9, <<http://www.ohchr.org/en/ProfessionalInterest/Pages/RightAndResponsibility.aspx>>; and OSCE, Copenhagen 1990, para. 11.

²³⁶ See Council of Europe, *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*, 10 October 2007, para. 77.

187. In order to be meaningful, consultations with associations should be inclusive, should reflect the variety of associations that exist and should also involve those associations that may be critical of the government proposals being made.

188. All consultations with associations should allow access to all relevant official information and sufficient time for a response, taking account of the need for the associations to first seek the views of their members and partners.²³⁷

189. Feedback from associations (and the public in general) should be sought in the form most appropriate to the field in which they operate, and circumstances in a given country, for example, the fact that certain persons, groups and associations may have limited or burdensome access to online resources. Moreover, authorities should acknowledge and respond to such feedback. In order to facilitate this, national human rights institutions may play an important role.²³⁸

190. In order to pursue their objectives, associations should be able to both generate income from their activities and to seek it from public and private sources within and beyond the state in which they are established. It is important for this purpose that associations are able to approach the widest range of possible donors. The income can be in the form of cash, other forms of financial instruments, proceeds from the sale of property and goods or equipment belonging to the association, as well as in the form of other benefits attributed to an association (for example, income from investments, rent, royalties, economic activities and property transactions).

191. Associations should, thus, be free to engage in any lawful economic, business or commercial activities in order to support their not-for-profit activities, without any special authorization being required, while at the same time being subject to any licensing or regulatory requirements generally applicable to the activities concerned. In addition, due to the not-for-profit nature of associations, any profits obtained through such activities should not be distributed among their members or founders, but should instead be used for the pursuit of their objectives.

192. In addition, the ability of associations to generate or seek income should be subject to the same requirements in laws that are generally applicable to customs, foreign exchange, prevention of money laundering and terrorism, as well as those concerning transparency and the funding of elections and political parties, to the extent that these requirements are themselves consistent with international human rights standards.

193. All income generated or received by associations, as well as any assets into which it is converted, must be used exclusively for the pursuit of the associations' objectives, and must not be distributed among their members.

194. Associations should, however, be able to use their income and assets to pay their staff and to reimburse any expenses incurred on their behalf.²³⁹ Many associations are unlikely to be able to pursue their objectives without employing some staff and/or having volunteers carrying out some activities on their behalf. It is, therefore, legitimate for associations to use their property and assets to pay their employees and to reimburse the expenses of those who

²³⁷ See United Nations Economic Commission for Europe (UNECE), *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* ("Aarhus Convention"), 25 June 1998, Articles 6 and 8 <<http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>>; see also Conference of INGOs of the Council of Europe, *Code of Good Practice for Civil Participation in the Decision-making Process* (October 2009), <http://www.coe.int/t/ngo/Source/Code_English_final.pdf>.

²³⁸ See International Coordinating Committee, Observation 1.5. as adopted by the Bureau at its meeting in Geneva on 6-7 May 2013, available at: <<http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/Report%20May%202013-Consolidated-English.pdf>>: "NHRIs should develop, formalize and maintain working relationships, as appropriate, with other domestic institutions established for the promotion and protection of human rights, including sub-national statutory human rights institutions, thematic institutions, as well as civil society and non-governmental organizations".

²³⁹ See Council of Europe, *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*, 10 October 2007, para. 55.

act on their behalf. While market conditions and/or legislation should influence the level of payments made to staff, the need to ensure that property is used for the pursuit of an association's objectives could justify imposing a criterion of reasonableness for the reimbursement of expenses.

195. In the case of associations that have legal personality, they should be able to manage and use their income and assets with the assistance of their own banking accounts. Access to banking facilities will be an essential factor for associations' ability to receive donations and to manage and protect their assets. This does not mean that banks should be placed under an obligation to grant such facilities to every association requesting them, but the banks' freedom to select clients should be subject to the principle of non-discrimination. The acquisition of legal personality may be a prerequisite for the association to operate bank accounts in its own name.

196. Associations should be able to protect all their property interests through legal proceedings. This is essential, since any seizure of, loss of control over or damage to their property could frustrate the pursuit of their objectives.²⁴⁰

197. However, associations that receive public support may be required to act on independent advice when selling or acquiring land or other major assets.²⁴¹ The fact that the assets of some associations have come from public bodies and that their acquisition has been assisted by a favourable fiscal framework are reasons to ensure that these assets are carefully managed, and that the best value is obtained when buying and selling them. It would, therefore, be appropriate to adopt a requirement in these cases that associations be guided by independent advice when engaging in some or all such transactions.

198. The income and assets of associations should not be seized or confiscated as a means of preventing them from pursuing admissible objectives.²⁴²

199. Once an association has been terminated, any funds, property or assets of the association should be liquidated. This means that all liabilities of the association should first be cleared, and then remaining funds, property and assets transferred. The transfer of funds, property and assets is subject to the prohibition on distributing profits among not-for-profit associations' founders and members. While an association has, in principle, the freedom to decide the conditions and modalities of such transfers, the rules regulating this will also depend on whether the termination was voluntary or involuntary (for additional information on the transfer of funds, property and assets of associations in case of termination, see Section C, Subsection 2 [H] of these Guidelines).

E. State support and access to other resources

Freedom to seek, secure and utilize resources

200. As clearly outlined by Principle 7 of these Guidelines, associations have the freedom to seek, secure and utilize resources. Fundraising activities are protected under Article 22 of the ICCPR, while the ECtHR has likewise considered it important that associations have the means to pursue their objectives. The ability to seek, secure and use resources is essential to the existence and operation of any association.

201. The term "resources" is a broad concept that includes: financial transfers (for example, donations, grants, contracts, sponsorships and social investments); loan guarantees and other

²⁴⁰ See ECtHR, *The Holy Monasteries v. Greece* (Application nos. 13092/87 and 13984/88, judgment of 9 December 1994), which concerned a religious entity that had lost the right to bring legal proceedings in respect of its property and so became a victim of a violation of the right to peaceful enjoyment of possessions under Article 1 of Protocol No. 1 to the European Convention.

²⁴¹ See Council of Europe, *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*, 10 October 2007, para. 53.

²⁴² See ECtHR, *The Holy Monasteries v. Greece* (Application nos. 13092/87 and 13984/88, judgment of 9 December 1994), paras. 86-88.

forms of financial assistance from natural and legal persons; in-kind donations (for example, the contribution of goods, services, software and other forms of intellectual and real property); material resources (for example, office supplies and information technology equipment); human resources (for example, paid staff and volunteers); access to international assistance and solidarity; the ability to travel and communicate without undue interference; and the right to benefit from the protection of the state.²⁴³ Resources also include both public and private funding, tax incentives (for example, incentives for donations through income tax deductions or credits), in-kind benefits and proceeds from the sale of goods belonging to the association, as well as other benefits attributed to an association (for example, income from investments, rent, royalties, economic activities and property transactions).

202. Furthermore, associations should be free to engage in any lawful economic, business or commercial activities in order to support their not-for-profit activities, without any special authorization being required. Nevertheless, they remain subject to any licensing or regulatory requirements generally applicable to the activities concerned. This is under the condition that associations do not distribute any profits, as such, that might arise from their activities to their members or founders, but that they use them for the pursuit of their objectives.

State support

203. The not-for-profit nature of associations and their importance to society means that state support may be necessary for their establishment and operations.²⁴⁴ State support, which should also be understood as access to public resources, including public funding, is justified in this case, as certain associations such as non-governmental organizations²⁴⁵ and political parties²⁴⁶ play an important role in democracy and promote political pluralism.

THE LAW ON NON-GOVERNMENTAL ORGANIZATIONS OF MONTENEGRO (2007)

Article 26

The Government of Montenegro shall provide financial aid to non-governmental organizations.

(...)

Article 27

The State shall be obliged to provide tax and other benefits for the operation and development of non-governmental organizations in the Republic.

²⁴³ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Funding of associations and holding of peaceful assemblies)*, UN Doc. A/HRC/23/39, 24 April 2013, para. 8.

²⁴⁴ UN Special Rapporteur on the situation of human rights defenders, Report to the UN General Assembly, A/66/203, 28 July 2011, para. 68, which states, in relation to human rights defenders, that “The right to access funding is an inherent element of the right to freedom of association, which is contained in major human rights instruments. The Declaration on Human Rights Defenders explicitly recognizes the right to access funding as a self-standing substantive right under Article 13. The wording of Article 13 covers the different phases of the funding cycle. States are under an obligation to permit individuals and organizations to seek, receive and utilize funding. The Declaration requires States to adopt legislative, administrative or other measures to facilitate or, at a minimum, not to hinder the effective exercise of the right to access funding.”

²⁴⁵ See, for instance: Council of Europe, *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*, 10 October 2007, paras. 9, 14, 50, 51, 52, 53, 54, 55 and 56.

²⁴⁶ See OSCE/ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (Warsaw: ODIHR, 2011), para. 190, which states that “[p]ublic funding, by providing increased resources to political parties, can increase political pluralism.”

LAW NO. 8788 ON NON-PROFIT ORGANIZATIONS OF THE REPUBLIC OF ALBANIA (2001)

Article 39

Non-profit organizations have the right to take part, like all other juridical persons, in the field of undertaking projects, tendering and procuring grants, contracting and purchases and sales by state organs of public services, public properties and goods, as well as the transferring of public services and the respective properties from the public sector to the non-profit organizations.

Article 40

Relief and exemptions of non-profit organizations from tax and customs obligations are set by law.

Regardless of the form of organization, the purpose they follow and the activity they exercise, non-profit organizations are exempt from tax on revenues realized from donations and membership dues.

Natural and legal persons who give assistance by donations to non-profit organizations are entitled to obtain relief from income tax according to law.

204. State funding and access to public resources is also capable of promoting the role of women and minority groups in public and political life by, for example, providing financial support to those associations that take positive measures to ensure equality of representation, promote the position of women in society for the purpose of gender equality or enhance the public and political participation of minorities. International and regional standards provide that states should ensure that financial support is provided to associations working on certain issues. This includes associations that: provide education to women about their rights and assistance in seeking remedies;²⁴⁷ work to prevent and combat violence against women and domestic violence (including by providing shelters and rehabilitation support);²⁴⁸ work with women victims of trafficking to facilitate their rehabilitation and reintegration;²⁴⁹ and facilitate women's access to justice, including through the provision of legal aid.²⁵⁰ In additions, the state may consider introducing legislative incentives aimed at supporting associations that work on these issues.²⁵¹ Equally, state support for organizations working with marginalized or minority groups should also be considered.

OSCE REPORT ON HUMAN RIGHTS DEFENDERS IN THE OSCE REGION: CHALLENGES AND GOOD PRACTICES (2008)²⁵²

Granting direct government assistance to human rights defenders

[...]

A variety of organizations [in Portugal] can be granted the status of social partners and thus receive state support, tax exemptions, and other benefits. This recognition implies a second registration with concerned public departments (which often automatically gives the association the status of "public utility legal person"), although registration is never a pre-requisite for operation of non-governmental groups.

²⁴⁷ CEDAW Committee, *General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, CEDAW/C/GC/28, 16 December 2010, para. 34: "States parties should financially support independent associations and centres providing legal resources for women in their work to educate women about their rights to equality and assist them in pursuing remedies for discrimination".

²⁴⁸ Council of Europe, *Convention on preventing and combating violence against women and domestic violence*, 12 April 2011, ETS 210, Article 8, <<http://www.coe.int/t/dghl/standardsetting/convention-violence/convention/Convention%20210%20English.pdf>>.

²⁴⁹ UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000, United Nations, Articles 6, 9 and 10, <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>>.

²⁵⁰ See, for instance, CEDAW Committee, *Concluding Observations on Kazakhstan*, CEDAW/C/KAZ/CO/3-4, 10 March 2014, para. 13.

²⁵¹ See OSCE/ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (Warsaw: ODIHR, 2011), para. 107.

²⁵² OSCE, *Report on Human Rights Defenders in the OSCE Region: Challenges and Good Practices (April 2007-April 2008)*, p. 39, <<http://www.osce.org/odihr/35652?download=true>>.

Migrant associations are entitled to state support pursuant to co-operation protocols established with the Office of the High Commissioner for Immigration and Intercultural Dialogue. These protocols are concluded upon request and involve the funding of activities developed by the requesting association (up to 70 per cent of the total amount). Support is also granted through activities aimed at improving the skills of members of such associations, including decision-makers, workers, and volunteers (namely training courses and follow-up to project implementation). Furthermore, associations can be given technical support, namely legal or other advice and the provision of documentation and other materials.

Similar support is given to women's associations (by the Commission for Citizenship and Gender Equality), youth associations (by the Portuguese Youth Institute), and associations of disabled people (by the National Institute for Rehabilitation).

205. Any form of state support for associations should be governed by clear and objective criteria. The nature and beneficiaries of the activities undertaken by an association can be relevant considerations when deciding whether or not to grant it any form of public support. The granting of public support can also be contingent on whether an association falls into a particular category or regime defined by law, or whether an association has a particular legal form. Therefore, a material change in the statutes or activities of an association can lead to the alteration or termination of any state support.²⁵³

206. The forms of state support for associations vary greatly. Associations, such as non-governmental organizations, may receive direct funding from the state, or they may receive benefits in the form of tax relief, including incentives for private individuals to donate in lieu of tax relief, or an exemption from payment for certain services provided by the state, such as postal or communications services. Above all, any system of state support must be transparent.

LAW ON LOCAL TAXES AND PAYMENTS OF POLAND (1991)

Article 7.

1. The following are exempt from the real estate tax:

(...)

8) Real estate or parts thereof used by societies and associations to engage in statutory work with children and youth as regards education, upbringing, science and technology, physical culture, and sports, with the exception of the real estate or parts thereof serving for business activities, and the land permanently serving as camping grounds and recreational facilities for children and youth. (...)

207. The level of public funding available should be clearly articulated in the relevant laws and regulations. The rights and duties of the state body invested with the ability to set and revise the level of public funding available should also be clearly defined in law. State support may be provided at the national, regional or local level. Associations should be involved in the drafting of legislation and policies on state funding and support.

208. The criteria for determining the level of public funds available for each association must be objective and non-discriminatory, and clearly stated in laws and/or regulations that are publicly available and accessible. State financing and support may be limited to assistance provided to associations that fall into certain categories, such as women and minority groups; in such cases, the basis for preferential treatment of certain groups must be determined in a transparent manner.

209. State authorities should inform the public about the allocation of funds by providing data on the beneficiaries and the quantities of funding allocated to each, as well as on the purpose for which the funding has been used. Reporting should disaggregate by immutable characteristics, to render transparent information on the types of groups to which funding has been allocated, as well as information on the amounts of funding and in-kind resources allocated to each group.

²⁵³ Council of Europe, *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*, 10 October 2007, Sections 58-61.

210. States may provide funding to associations through a variety of different mechanisms. Such mechanisms should include the procurement of services, usually applied in cases where the government knows the exact quality and quantity of what it wishes to purchase, and grants, generally applied in cases where the government only identifies an issue for which it is willing to fund the best creative solution, without identifying in advance the nature and modalities of services expected from an association. States may also establish mechanisms that allow for long-term funding, the covering of real costs of produced services or implemented projects, or the covering of institutional support provided to associations. States should be especially encouraged to provide support to associations specializing in providing social services, and also to associations involved in human rights protection, policy-making, monitoring and advocacy. There should be no discrimination against associations owing to their fields of operation, including associations specializing in monitoring or human rights, and any practices excluding certain associations from all public financial schemes should be abandoned.

211. As a rule, public funding should be allocated through a transparent procedure and be accompanied by a broad informational campaign delivered to all potentially interested associations. When the allocation of funding is made through a competitive process, the evaluation of applications for public funding should be objective and based on clear and transparent criteria, developed for the competition and publicized in advance. The results of evaluation processes should be made available to the public, as should information concerning the applications of associations that did not receive funding, specifying the reasons for awarding funding to some projects and not to others. Associations' right to privacy in this respect should be maintained, however.

212. The requirements for the submission of applications for public support should be proportional to the value of funding or other benefits received from the state. Nominal assistance should not require overly burdensome application processes, while more substantial forms of support may justifiably carry with them more demanding requirements.

213. In general, states should make every effort to simplify procedures for applying for public funding. One way to approach this is to create a depository of all documents required from organizations when they apply for state funding, such as their by-laws, registration certificate and licenses, where applicable, so that at the time of submission of an application, an association will only be required to submit a minimal number of documents.

214. All associations receiving public support should face the same reporting requirements. In exceptional cases, associations that receive direct public support without going through a competitive and transparent procedure may be required to meet particularly detailed reporting requirements in order to ensure transparency and public awareness. These reporting requirements might be greater compared to those for other associations that receive funding through a competitive and transparent procedure. However, in both cases, reporting requirements relating to public support should not be too burdensome and, at the very least, should be proportionate to the level of public support received.

215. Further, state bodies providing funding to an association should not deprive it of its independence. The state should ensure that associations receiving state funding remain free from the interference of the state or other actors with its activities. In any system that establishes state support for associations, 'state capture' must be avoided and the independence of associations must be maintained. An association is not independent if decisions over its activities and operations are taken by anyone other than the members of the association or an internal governing body, as designated by the members. The fact of having a single or a primary funder does not automatically result in a loss of independence by an association. However, an association is not considered independent in cases where the government has a wide discretion to, directly or indirectly, influence the decision-making processes of its managers and members, thereby rendering decisions on the establishment of the association, its activities and operations, the appointment of its management or on changes to its by-laws.

216. The authorities responsible for allocating state funding should be accountable for their decisions to grant or deny funding, while associations should be able to contest a denial of funding and have access to review by an independent and impartial tribunal.

217. To enhance transparency, it is also advisable to assign the responsibility of distributing funds or resources to various bodies that are, to the extent possible, free from government influence, rather than to just one ministry or other government body.

Private and other forms of non-state funding

218. Associations may also receive funding for their activities from private and other non-state sources, including foreign and international funding. States should recognize that allowing for a diversity of sources will better secure the independence of associations. As stated above, sources may include individuals, private legal entities and public bodies, whether domestic, foreign or international, including international and intergovernmental organizations, as well as foreign governments and their agencies.

219. While the foreign funding of non-governmental organizations may give rise to some legitimate concerns, regulations should seek to address these concerns²⁵⁴ through means other than a blanket ban²⁵⁵ or other overly restrictive measures.

220. As mentioned above, any restrictions on access to resources from abroad (or from foreign or international sources) must be prescribed by law, pursue a legitimate aim in conformity with the specific permissible grounds of limitations set out in the relevant international standards, as well as be necessary in a democratic society and proportionate to the aim pursued. Combating corruption, terrorist financing, money-laundering or other types of trafficking are generally considered legitimate aims and may qualify as being in the interests of national security, public safety or public order.²⁵⁶ However, any limitations on access to these resources must be proportionate to the state's objective of protecting such interests, and must be the least intrusive means to achieve the desired objective.²⁵⁷

221. Any control imposed by the state on an association receiving foreign resources should not be unreasonable, overly intrusive or disruptive of lawful activities.²⁵⁸ Similarly, any reporting requirements must not place an excessive or costly burden on the organization.²⁵⁹ The UN Special Rapporteur has considered that, if subject to reporting requirements, associations should, at most, be expected only to carry out a notification procedure on the receipt of funds and to

²⁵⁴ A more nuanced approach, in legislation and policy, is applicable to the receipt of foreign funding by political parties.

²⁵⁵ Venice Commission, "Interim Opinion on the Draft Law on Civic Work Organisations of Egypt", CDL(2013)023, 16 October 2013, para. 35, <[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2013\)023-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2013)023-e)>. In this Opinion, the Venice Commission states that "[f]oreign funding of NGOs is at times viewed as problematic by States. The Venice Commission acknowledges that there may be various reasons for a State to restrict foreign funding, including the prevention of money-laundering and terrorist financing. However, these legitimate aims should not be used as a pretext to control NGOs or to restrict their ability to carry out their legitimate work, notably in defence of human rights. The prevention of money-laundering or terrorist financing does not require nor justify the prohibition or a system of prior authorisation by the government of foreign funding of NGOs."

²⁵⁶ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Funding of associations and holding of peaceful assemblies)*, UN Doc. A/HRC/23/39, 24 April 2013, para. 35.

²⁵⁷ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Funding of associations and holding of peaceful assemblies)*, UN Doc. A/HRC/23/39, 24 April 2013, para. 35.

²⁵⁸ OSCE/ODIHR and Venice Commission, "Joint Interim Opinion on the Draft Law Amending the Law on Non-Commercial Organisations and Other Legislative Acts of the Kyrgyz Republic", CDL-AD(2013)030, 16 October 2013, para. 66, <http://www.legislationline.org/download/action/download/id/4857/file/239_FOASS_KYR_16%20Oct%202013_en.pdf>.

²⁵⁹ *Ibid.*, para. 69.

submit reports on their accounts and activities,²⁶⁰ and should not be expected to obtain prior authorization from the authorities. Moreover, the Venice Commission, while recognizing that “it is justified to require the utmost transparency in matters pertaining to foreign funding”, has considered that “An administrative authority may be entrusted with the competence to review the legality (not the expediency) of foreign funding, using a simple system of notification – not one of prior authorisation. The procedure should be clear and straightforward, with an implicit approval mechanism. The administrative authority should not have the ultimate decision-making power in such matters. This should be left to the courts.”²⁶¹

222. State practices that raise the deepest concerns in this area are: outright prohibitions on access to foreign funding; requiring associations to obtain government approval prior to receiving such funding; undue delay in receiving approval for implementing foreign-funded projects; requiring the transfer of funds from foreign sources through a centralized government fund; imposing excessive reporting requirements, banning or restricting foreign-funded associations from engaging in human rights, advocacy or other activities; stigmatizing or delegitimizing the work of foreign-funded associations by requiring them to be labelled in a pejorative manner;²⁶² initiating audit or inspection campaigns to harass such associations; and imposing criminal penalties on associations for failure to comply with any above-mentioned constraints on funding.

223. As already mentioned above, and as emphasized by the UN Special Rapporteur on the rights to freedom of peaceful assembly and association, the ability of associations to access funding and other resources from domestic, foreign and international sources is an integral part of the right to freedom of association. Consequently, such constraints violate Article 22 of the ICCPR and other human rights instruments, including the ICESCR.²⁶³ Indeed, states may instead consider encouraging support of associations from foreign sources by creating tax or other incentives for businesses and natural persons to profit from supporting associations. Other incentives may include reducing costs of bank transfers or making donations from international organizations tax free.

LAW ON ASSOCIATIONS OF SERBIA (2009)

Article 36

The association may acquire assets from membership fees, voluntary contributions, donations and presents (in cash or in kind), financial subsidies, dead persons' estates, interest rates on deposits, rental fees, dividends and in other ways permitted by the law. Individuals and corporate bodies that make contributions and give presents to the associations may be exempt from particular tax liabilities in accordance with the law introducing the relevant type of public revenue.

F. Accountability, supervision and supervisory authorities

224. The need for transparency in the internal functioning of associations is not specifically established in international and regional treaties owing to the right of associations to be free from interference of the state in their internal affairs. However, openness and transparency are

²⁶⁰ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Funding of associations and holding of peaceful assemblies)*, UN Doc. A/HRC/23/39, 24 April 2013, para. 35..

²⁶¹ Venice Commission, “Interim Opinion on the Draft Law on Civic Work Organisations of Egypt”, CDL-AD(2013)023, 18 June 2013, para. 43. See also OSCE/ODIHR and Venice Commission, “Joint Interim Opinion on the Draft Law Amending the Law on Non-Commercial Organisations and Other Legislative Acts of Acts of the Kyrgyz Republic”, CDL-AD(2013)030, 16 October 2013, <http://www.legislationline.org/download/action/download/id/4857/file/239_FOASS_KYR_16%20Oct%202013_en.pdf>.

²⁶² This is the case, for example, if they are labelled as “foreign agents”. See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Funding of associations and holding of peaceful assemblies)*, UN Doc. A/HRC/23/39, 24 April 2013, Section 20.

²⁶³ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Funding of associations and holding of peaceful assemblies)*, UN Doc. A/HRC/23/39, 24 April 2013, Section 20.

fundamental for establishing accountability²⁶⁴ and public trust. The state shall not require but shall encourage and facilitate associations to be accountable and transparent. This issue has also been addressed by recommendations of the Committee of Ministers of the Council of Europe in the context of non-governmental organizations.²⁶⁵

LAW ON ASSOCIATION OF THE REPUBLIC OF CROATIA (2001)

Publicity of the work of associations

Article 9

(1) The method of implementation of the publicity of work shall be determined in the association's statute.

(2) The association shall inform the members of the activities of the association in accordance with the general act of the association.

225. Reporting requirements, where these exist, should not be burdensome, should be appropriate to the size of the association and the scope of its operations and should be facilitated to the extent possible through information technology tools (see the section on associations and new technologies, below). Associations should not be required to submit more reports and information than other legal entities, such as businesses, and equality between different sectors should be exercised. Special reporting is permissible, however, if it is required in exchange for certain benefits, provided it is within the discretion of the association to decide whether to comply with such reporting requirements or forgo them and forsake any related special benefits, where applicable.

226. For instance, insofar as associations utilize public funding to achieve their goals and objectives, legislation may establish guidelines to ensure that tax payers have access to information regarding the statutes, programmes and financial reports of associations. The publication of such documents may be considered necessary to ensure an open society and prevent corruption. However, any such reporting requirements should not create an undue and costly burden on associations and should also be proportional to the amount of funding received. Different reporting rules may apply to special associations, such as political parties.²⁶⁶

227. Reporting should be facilitated by the creation of, for example, online web portals where reports can be published, so long as this does not overburden the association. Reporting requirements should not be regulated by more than one piece of legislation, as this can create diverging and potentially conflicting reporting requirements and, thus, diverging liability for failure to fulfil them. Finally, associations should not, to the extent possible, be required to submit the same information to multiple state authorities; to facilitate reporting, the state authorities should seek to share reports with other departments of the state if necessary.

FOUNDATIONS ACT OF THE REPUBLIC OF ESTONIA (1995)

Article 14

(...)

(5) The annual report and documents submitted together with the report shall be submitted to the register electronically (...).

228. All regulations and practices on oversight and supervision of associations should take as a starting point the principle of minimum state interference in the operations of an association. As

²⁶⁴ See Council of Europe, *Fundamental Principles on the Status of Non-governmental Organisations in Europe*, 2002, paras. 60-65.

²⁶⁵ Council of Europe, *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*, 10 October 2007, Section VII.

²⁶⁶ See OSCE/ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (Warsaw: ODIHR, 2011), para. 192 of which states that "It is reasonable for states to legislate minimum requirements that must be satisfied before the receipt of public funding. Such requirements may include:

- Registration as a political party;
- Proof of a minimum level of support;
- Gender-balanced representation,
- Proper completion of financial reports as required (including for the previous election); and
- Compliance with relevant accounting and auditing standards."

See also paras. 201-206.

noted elsewhere in these Guidelines, the right to privacy applies to an association and its members; this means that oversight and supervision must have a clear legal basis and be proportionate to the legitimate aims they pursue.²⁶⁷ Oversight and supervision of associations should not be invasive, nor should they be more exacting than those applicable to private businesses. Such oversight should always be carried out based on the presumption of lawfulness of the association and of its activities. Moreover, such oversight should not interfere with the internal management of associations, and should not compel associations to co-ordinate their objective and activities with government policies and administration.

229. The bodies charged with the supervision of associations should be defined by law. Legislation should clearly indicate the scope, purpose and limits of the mandates of such bodies. Requirements for expertise (such as in the case of financial regulations, which may require accountants) may necessitate the need for more than one body for the supervision of associations. Minimizing the number of supervisory bodies involved in the process will help ensure transparency, deter corruption and ensure the proper functioning and simplicity of the regulatory system. State authorities should ensure that they are sufficiently accessible to the association in terms of communication, and that those employed by these bodies are trained and competent to deal with associations. Consideration may be given to ensuring that the government body in charge of granting the status of legal entity to an association is separate from the government body or bodies in charge of their oversight and supervision. To ensure greater transparency and increase regulatory independence, legislation should define the procedure for appointing supervisory bodies, as well as the grounds for inspecting associations, the duration of inspections and the documents that need to be produced during inspection.²⁶⁸

LAW ON THE NATIONAL CIVIL FUND OF HUNGARY (2003)

This law establishes a highly detailed procedure, whereby civic sector support funds are raised and distributed and their use monitored. The monitoring body represents both the state and the non-governmental organization sector at national and regional levels. It also provides for a set of transparency requirements concerning the internal workings of the body administering the Fund.

230. In general, legislation should grant supervisory bodies the ability to investigate and pursue potential violations. Without such investigative powers, these bodies are unlikely to be able to effectively implement their mandate. However, the regulations on inspection must be clear, should not be excessive, vaguely defined or provide public authorities with too much discretion. This could lead to abuse and a selective approach being taken, as well as to the misuse of the regulations, potentially leading to harassment.

231. The legislation should specifically define in an exhaustive list the grounds for possible inspections. Inspections should not take place unless there is suspicion of a serious contravention of the legislation, and should only serve the purpose of confirming or discarding the suspicion.²⁶⁹ Regulations on inspections must also contain clear definitions of the powers of inspecting officers, must ensure respect for the right to privacy of the clients, members and founders of the associations, and must provide redress for any violation in this respect. Any justified need for an inspection should also provide associations with ample warning time before the inspections, as well as information on the maximum duration of an inspection. In

²⁶⁷ Venice Commission, "Opinion on Federal Law N. 121-FZ on Non-Commercial Organizations ("Law on Foreign Agents"), on Federal Laws N. 18-FZ and N. 147-FZ and On Federal Law N. 190-FZ on Making Amendments to the Criminal Code ("Law on Treason") of the Russian Federation", CDL-AD(2014)025, 27 June 2014, para. 90, available at <[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)025-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)025-e)>.

²⁶⁸ The OSCE/ODIHR *Guidelines on the Protection of Human Rights Defenders* states that "Any administrative and financial reporting requirements must be reasonable and provided for in law. Any inspections of NGO offices and financial records must have a clear legal basis and be fair and transparent. Audits should be specifically regulated by legislation. Such legislation should clearly define in an exhaustive list the grounds for possible inspections and the documents that need to be produced during the inspection. Furthermore, it should provide for a clearly defined and reasonable period of prior warning and maximum duration of inspections." See OSCE/ODIHR, *Guidelines on the Protection of Human Rights Defenders* (Warsaw: ODIHR, 2014), para. 67.

²⁶⁹ See Venice Commission, *Compilation of Venice Commission Opinions concerning Freedom of Association (revised July 2014)*, CDL-PI(2014)004, page 24 (Section 8.5.4.) available at <[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2014\)004-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2014)004-e)>.

addition, where associations are required to provide documents prior to or during inspection, the number of documents required should be defined and reasonable, and associations should be given sufficient time to prepare them.²⁷⁰ Legislation should also contain safeguards to ensure the respect of the right to privacy of clients, members and founders of associations, as well as provide redress for any violation in this respect.

National Association for the Advancement of Colored People (NAACP) v. Patterson, 357 U.S. 449 (1958)

An association, in the course of judicial proceedings challenging the restrictions imposed on the exercise of its activities, was ordered by the court, on the state's motion, to produce many of the association's records, including its membership lists. For failure to do so, the association was adjudged in contempt and fined \$100,000. The Supreme Court of Alabama, which was reviewing the validity of this latter judgement, held that "[i]mmunity from state scrutiny of [the association]'s membership lists is here so related to the right of [the association]'s members to pursue their lawful private interests privately and to associate freely with others in doing so as to come within the protection of the Fourteenth Amendment. The State has failed to show a controlling justification for the deterrent effect on the free enjoyment of the right to associate which disclosure of [the association]'s membership lists is likely to have. [...] In the circumstances of this case, compelled disclosure of [the association]'s membership lists is likely to constitute an effective restraint on its members' freedom of association".

232. Finally, there may be situations where audits (understood as the verification of an association's financial and accounting records and supporting documents provided by an independent professional) are required by donors. At least in cases where associations receive public funding, it may be necessary to provide them with adequate funds to conduct such audits, regardless of whether the funds are from a public or private source. States should assist by providing funds for such audits in cases where associations have difficulties in carrying them out.

233. Where supervisory bodies also have the power to carry such audits, they should not apply more cumbersome procedures to conduct audits of associations' activities, as defined in legislation, than they do to audit other entities, such as businesses. An audit should not be tantamount to an inspection or the reconciliation of accounts. Under no circumstances should the audit process result in the harassment of an association.

234. In case of the non-compliance with requirements on reporting, the legislation, policy and practice of the state should provide associations with a reasonable amount of time to rectify any oversight or error. Sanctions should only apply in cases where associations have committed serious infractions and should always be proportional. The prohibition and dissolution of associations should always be measures of last resort.

G. Liability and sanctions

235. Legislation may introduce administrative, civil and criminal sanctions²⁷¹ for associations, as for other entities, in case they are in violation of relevant regulations. These may take the form of fines, the withdrawal of state subsidies or, in extreme cases, the suspension of their activities or their de-registration or dissolution.

**LAW ON PUBLIC ORGANIZATIONS AND ASSOCIATIONS OF LATVIA (1993)
Section 7.2**

Members of public organisations shall not be liable for the civil legal commitments of the relevant public organisation.

²⁷⁰ OSCE/ODIHR, *Guidelines on the Protection of Human Rights Defenders* (Warsaw: ODIHR, 2014), para. 67, <<http://www.osce.org/odihr/119633?download=true>>.

²⁷¹ On criminal sanctions, see ECtHR, *Christian Democratic People's Party v. Moldova* (Application no. 28793/02, judgment of 14 February 2006), para. 65, where the Court held as follows: "The dominant position the government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries or the media (see *Castells v. Spain*, 23 April 1992, § 46, Series A no. 236)".

236. In the cases of associations that do not have legal personality, legislation may require that liability is borne by individual members²⁷² of the association.²⁷³ Nevertheless, the individual acts of one member of an association should not impinge on the entire association, and the member should be held personally accountable.²⁷⁴

237. Any sanctions introduced must always be consistent with the principle of proportionality, that is, they must be the least intrusive means to achieve the desired objective. Sanctions must at all times be enforceable and effective to ensure the specific objectives for which they were enacted. When deciding whether to apply sanctions, authorities must take care to apply the measure that is the least disruptive and destructive to the right to freedom of association. For example, if an association is in breach of a legal requirement to submit financial statements, the first response should be to request rectification of the omission(s); a fine or other small penalty should only be issued at a later date, if appropriate. In the case of *Korneenko v. Belarus*, the UN Human Rights Committee examined the prohibition of an unregistered association that was dissolved based on the improper use of equipment that it had received through foreign funding for the production of propaganda materials, as well as for deficiencies in the accompanying documentation. The Committee concluded that the dissolution of an association in response to deficient documentation was a disproportionate response.²⁷⁵ More generally, any penalties for the late or incorrect submission of reports, or other small offences, should never be higher or harsher than penalties for similar offences committed by other entities, such as businesses.

238. Sanctions should, if circumstances so allow, be preceded by a warning with information as to how a violation may be rectified. In that case, the association should be given ample time to rectify the violation or omission.²⁷⁶ The law should also clearly define who may institute proceedings against an association.

239. Sanctions amounting to the effective suspension of activities, or to the prohibition or dissolution of the association, are of an exceptional nature.²⁷⁷ They should only be applied in cases where the breach gives rise to a serious threat to the security of the state or of certain groups, or to fundamental democratic principles. In any case, these types of drastic sanctions should ultimately be imposed or reviewed by a judicial authority.

240. Associations should not be sanctioned repeatedly for one and the same violation or action. Appeals against sanctions imposed should have the effect of suspending the enforcement of sanctions until the appeals are completed. This avoids situations in which lengthy appeal procedures lead to the quasi-disappearance of the association due to frozen accounts or high penalties, even where the appeal is ultimately successful. In cases concerning grave crimes or relating to national security, it is reasonable not to suspend sanctions during appeal procedures, however.

241. The burden of proof for violations leading to sanctions should always be on the authorities. This includes providing adequate evidence to support the claim of a violation leading to sanctions. Procedures leading to the imposition of sanctions should be transparent

²⁷² See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Best practices that promote and protect the rights to freedom of peaceful assembly and of association)*, UN Doc. A/HRC/20/27, 21 May 2012., para. 56, which states that “individuals involved in unregistered associations should be free to carry out any activities, including the right to hold and participate in peaceful assemblies, and should not be subject to criminal sanctions”.

²⁷³ ECtHR, *Fraktion Sozialistischer Gewerkschafter im ÖGB Vorarlberg and 128 of its individual members (Köpruner, Falschlunger and Others) v. Austria* (Application no. 12387/86, decision of 13 April 1989).

²⁷⁴ See OSCE/ODIHR, *Guidelines on the Protection of Human Rights Defenders* (Warsaw: ODIHR, 2014), para. 209, which state that, “While laws and regulations may require that individual members of an NGO or other association that does not have legal personality bear liability, such provisions must not be abused as a means of exerting pressure on individual human rights defenders for their for their work”.

²⁷⁵ See UN Human Rights Committee, *Korneenko et al v. Belarus* (Communication no. 1274/2004, 31 October 2006), paras. 7.6-7.7; see also Conte, A. and Burchill, R., “Defining Civil and Political Rights: The Jurisprudence of the United Nations Human Rights Committee” Second edition, Ashgate 2009, p. 93-94.

²⁷⁶ ECtHR, *Özbek and Others v. Turkey* (Application no. 35570/02, 6 October 2009), para. 37.

²⁷⁷ ECtHR, *Vona v. Hungary* (Application no. 35943/10, judgment of 9 July 2013).

and clear, but do not always need to be accompanied by a high level of publicity. This is to ensure that the public right to information is adequately balanced with the potential damage to the reputation of the association prior to a finding as to its liability or guilt. Moreover, decisions made by supervisory bodies should be subject to appeal by an independent and impartial tribunal or court. In the framework of supervision, state officials should be held administratively and criminally liable for not protecting or for violating the rights of associations.

H. Termination, prohibition and dissolution, and access to justice

242. The existence of an association may be terminated by decision of its members or by way of a court decision. Thus, termination may be voluntary or involuntary.

243. Voluntary termination of an association may occur when the association has met its goals and objectives, or, for example, when it wishes to merge with another association or no longer wishes to operate. The voluntary nature of such termination means that this decision must be taken by the association's members, who may be subject to any rules prescribed in the association's charter or statute, where applicable.

244. Involuntary termination of an association, which may take the form of dissolution or prohibition, may only occur following a decision by an independent and impartial court.

245. In the particular case of non-governmental organizations, the Council of Europe Recommendation on the legal status of non-governmental organizations in Europe stipulates that associations may only be dissolved in cases of bankruptcy, prolonged inactivity or serious misconduct.²⁷⁸

246. Cases of bankruptcy or of prolonged inactivity have not featured in international case law relating to involuntary termination. However, with respect to bankruptcy, it would not be appropriate to apply different rules to associations than those that are applied to other entities. Furthermore, prolonged inactivity is unlikely to be established without, for example, several years having elapsed since the last meetings of the association and repeated failures to file any annual reports that might be required. Moreover, it would be appropriate for the relevant authorities to double-check whether any apparent prolonged inactivity is actually the result of a failure in communication between the association concerned and the state.

247. In its case law on involuntary termination, the ECtHR has been mainly concerned with political parties that have been dissolved or prohibited on account of their objectives and activities being considered inadmissible.

248. The ECtHR leaves a certain margin of appreciation to member states in assessing the necessity to prohibit or dissolve a political party. However, in the numerous judgements that it has handed down on this issue, it has displayed a strict approach to examining the implications of such an action by a state for a democratic system of governance. The standard line of reasoning applied by the ECtHR in such cases is that "the exceptions set out in Article 11 are, where political parties are concerned, to be construed strictly; only convincing and compelling reasons can justify restrictions on such parties' freedom of association. In determining whether a necessity within the meaning of Article 11 (2) exists, the Contracting States have only a limited margin of appreciation [...]"²⁷⁹ This approach should be translated into an obligation on states to also adopt a strict approach to the use of such sanctions by substantiating the need for their application²⁸⁰ and then only doing so as a measure of last resort.

²⁷⁸ Council of Europe, *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*, 10 October 2007, para. 44.

²⁷⁹ ECtHR, *United Communist Party of Turkey v. Turkey* [GC] (Application no. 19392/92, judgement of 30 January 1998), para. 46.

²⁸⁰ ECtHR, *Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan* (Application no. 37083/03, judgement of 8 October 2009).

249. Furthermore, as already recommended by the OSCE/ODIHR and the Venice Commission,²⁸¹ the possibility to dissolve a political party (or to prohibit its formation) should be exceptionally narrowly tailored and applied only in extreme cases. Political parties should never be dissolved for minor infractions, such as minor administrative or operational breaches of conduct. Less intrusive sanctions should be applied in such cases.

250. Thus, the involuntary termination of political parties has only been upheld in cases in which it has been established that a political party's objectives or activities entailed a tangible and immediate threat to democracy.²⁸²

251. The ECtHR has drawn a distinction between a political party and an ordinary association ("social organization") when assessing their involuntary termination due to the threat that their objectives and activities posed to democracy. In relation to the latter, it held that any such measure "must be supported by relevant and sufficient reasons, just as in the case of dissolution of a political party, although in the case of an association, given its more limited opportunities to exercise national influence, the justification for preventive restrictive measures may legitimately be less compelling than in the case of a political party".²⁸³ Such reasons were found to exist in the case of the large-scale, co-ordinated intimidation by an association, related to the advocacy of racially motivated policies, on account of the negative consequences that such intimidation has on the political will of the people.²⁸⁴

252. In general, any penalty or sanction amounting to the effective dissolution or prohibition of an association must be proportionate to the misconduct of the association and may never be used as a tool to reproach or stifle its establishment and operations.

253. Associations should not be prohibited or dissolved owing to minor infringements, including cases where the association's chosen name is not in line with legislation, or of other infringements that may be easily rectified. In addition, associations should be provided with adequate warning about the alleged violation and be given ample opportunity to correct infringements and minor infractions, particularly if they are of an administrative nature.

254. Furthermore, the individual wrongdoing of founders or members of an association, when not acting on behalf of the association, should lead only to their personal liability for such acts, and not to the prohibition or dissolution of the whole association.

255. Although a less intrusive sanction than termination, any suspension of the activities of an association can still only be justified by the threat that the association in question poses to democracy,²⁸⁵ and should also only be based on a court order or be preceded by judicial review. A suspension should always be a temporary measure that does not have a long and lasting effect. A lengthy suspension of activities would otherwise effectively lead to a freezing of the operations of an association, resulting in a sanction tantamount to dissolution.

256. It is also essential that any decision leading to the suspension, prohibition or dissolution of an association be communicated in a timely manner and be subject to review by an independent and impartial tribunal.²⁸⁶

²⁸¹ OSCE/ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (Warsaw: ODIHR, 2011), paras. 89-96.

²⁸² ECtHR, *Refah Partisi (the Welfare Party) and others v. Turkey* [GC] (Application nos. 41340/98, 41342/98, 41343/98 and 41344/98, judgement of 13 February 2003) paras. 126-135; and *Herri Batasuna and Batasuna v. Spain* (Application nos. 25803/04 and 25817/04, judgement of 30 June 2009).

²⁸³ See ECtHR, *Vona v. Hungary* (Application no. 35943/10, judgement of 9 July 2013), para. 57.

²⁸⁴ *Ibid.*

²⁸⁵ ECtHR, *Christian Democratic People's Party v. Moldova* (Application no. 28793/02, judgement of 14 February 2006).

²⁸⁶ See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Funding of associations and holding of peaceful assemblies)*, UN Doc. A/HRC/23/39, 24 April 2013, which states in para. 81 that "(c) To ensure that a detailed and timely written explanation for the imposition of any restriction is provided, and that said restriction can be subject to an independent, impartial and prompt judicial review".

257. Legislation should clearly state what happens to the assets and property of associations where their termination is involuntary. Where involuntary termination is based on the non-compliance of the association's objectives or activities with international standards or with legislation that is consistent with such standards, the legislation may provide that the funds or assets concerned should pass to the state. In other cases, providing for an automatic transfer may be considered disproportionate.²⁸⁷

258. Where the termination is voluntary, it should be initiated by the association itself, for example, in accordance with its founding instrument or by decisions of its members.²⁸⁸ The association's freedom to determine who should succeed to its assets is only subject to the prohibition on distributing profits that it may have made among its founders and members. Regarding the transfer of assets obtained with the assistance of tax exemptions or other public benefits, it may be legitimate to have them transferred to associations with similar objectives.²⁸⁹

LAW OF THE REPUBLIC OF FRANCE RELATING TO THE CONTRACT OF ASSOCIATION (1901, AS LAST AMENDED IN 2005)

Article 9

In case of voluntary dissolution, dissolution provided by the by-laws, or imposed by a court, the assets of the association shall be vested in accordance with the by-laws or, in the absence of provision in the by-laws, according to the rules determined by a general meeting.

DECREE RELATING TO THE IMPLEMENTATION OF THE LAW OF 1 JULY 1901 RELATING TO THE CONTRACT OF ASSOCIATION (1901, AS LAST AMENDED IN 2012)

Article 14

If the by-laws do not provide the modalities of liquidation and transfer of assets of an association in the event of its dissolution, by any method whatsoever, or if the general meeting which decides the voluntary dissolution has not taken decision in this regard, the court, at the request of the public prosecutor [*ministère public*] appoints a curator. The curator organizes, within the time specified by the court, the convening of a general meeting whose mandate is only to decide about the transfer of the assets; the curator exercise his/her powers in accordance with Article 813 of the Civil Code applicable to unsettled estates.

Article 15

When the general meeting is organized to vote on the transfer of assets, regardless of the method of transfer, it cannot, in line with the provisions of Article 1 of the Law of 1 July 1901, allocate any portion of the assets of the association to the members, except for the reversal of their contributions.

²⁸⁷ See, for example, Conference of INGOs of the Council of Europe, Report by the Expert Council on NGO Law on "Sanctions and Liability in Respect of NGOs" (January 2011), para. 53, <http://www.coe.int/t/ngo/Source/Expert_Council_NGO_Law_report_2010_en.pdf>.

²⁸⁸ See in the case of NGOs, Council of Europe, Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe, 10 October 2007, para. 56 which states that "NGOs with legal personality can designate a successor to receive their property in the event of their termination, but only after their liabilities have been cleared and any rights of donors to repayment have been honoured. However, in the event of no successor being designated or the NGO concerned having recently benefited from public funding or other form of support, it can be required that the property either be transferred to another NGO or legal person that most nearly conforms to its objectives or be applied towards them by the state. Moreover the state can be the successor where either the objectives or the means used by the NGO to achieve those objectives have been found to be inadmissible".

²⁸⁹ See, for example, Conference of INGOs of the Council of Europe, Report by the Expert Council on NGO Law on "Sanctions and Liability in Respect of NGOs" (January 2011), para. 53, <http://www.coe.int/t/ngo/Source/Expert_Council_NGO_Law_report_2010_en.pdf>.

FINNISH ASSOCIATIONS ACT (1989)

Section 40

When an association has decided to dissolve, the executive committee has to attend to the liquidation measures caused by the dissolution, unless the association has appointed one or more other liquidators for the task to replace the executive committee. No liquidation measures are needed, however, if the association, on deciding on dissolution, has at the same time approved a final account, drawn up by the executive committee, according to which the association has no debts.

LAW NO. 8788 ON NON-PROFIT ORGANIZATIONS OF THE REPUBLIC OF ALBANIA (2001)

Article 44

Dissolution by Court Decision

A court may decide the dissolution of a non-profit organization on the request of its members, its decision-making organs, or the competent state organ in cases when:

- a) the activity of the non-profit organization comes into conflict with the Constitution;
- b) the non-profit organization performs illegal activity;
- c) the non-profit organization was not established according to the requirements of law;
- ç) the non-profit organization has gone bankrupt according to the law of bankruptcy.

Except when the activity of the organization constitutes a serious threat to the public, the court shall inform the organization in writing about the violation of law and give it 30 days to correct its activity.

Article 45

Manner of Examining the Request

The examination of a request to dissolve a non-profit organization is done in the presence of representatives of the non-profit organization, of the supervising organ and, as the case may be, the members who presented the request.

When, on the request of the interested parties contemplated in the first paragraph of article 44, the court assesses that it is the case, it preliminarily recommends to the non-profit organization to take action to conform its program or activity with the Constitution and this law, in a set time period, suspending the examination of the case.

When the recommendations are applied properly, the court decides to end the adjudication. Otherwise, it examines the case after the set time period has been completed.

Article 46

Liquidation

When dissolution has been decided by the non-profit organization itself, the liquidation is realized by one or more liquidators, designated according to the charter and always before de-registration by the court.

When the court decides on the dissolution, it also designates a liquidator, vesting in him the competencies necessary for the conduct of the liquidation procedure.

In all cases, the liquidators have authority and responsibility over the assets, the property and the representation of the non-profit organization and of [word missing], from the date of their appointment until the conclusion of the liquidation.

Article 47

The Activity of the Liquidators

The liquidators evaluate the financial condition of the non-profit organization and its property at the moment of the taking of the decision for its dissolution, and they identify all the possible creditors and debtors.

After the payment of the obligations that the organization has to the state and to other creditors and the receipt of obligations from third parties, the liquidator values the property that remains and sees that this property goes to the destination specified by the charter, its competent organ, the court or the law.

In no case is distribution or disposition in favor of the members or other persons who are subjects of the charter or the establishment act of the organization or their relatives

permitted.

In cases when the non-profit organization has obtained tax exemptions or fiscal relief, donations from the public or state grants, all property that remains after the payments of obligations is distributed to other non-profit organizations that follow the same goals as or goals similar to the liquidated organization. In cases when a non-profit organization dissolves voluntarily, the organizations profiting from the property that remains are specified in the charter or in a decision of the highest decision making organ. When this specification is not done, the organizations that profit are determined by the court.

I. Associations and new technologies

259. In general and where applicable, associations should enjoy the same rights and freedoms as individuals. At the very least, this should apply to those associations that have legal personality. In particular, this concerns the right to freedom of expression, which is fundamental to the exercise of the right to association. Legislation should take into account that the right of associations to freedom of expression includes the right to choose, without state interference, the form in which their ideas are conveyed, including through the use of new technologies and media.²⁹⁰

United Nations Human Rights Council, “The promotion, protection and enjoyment of human rights on the Internet” (29 June 2012)

1. Affirms that the same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one’s choice, in accordance with articles 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights;

[...]

5. Calls upon all States to address security concerns on the Internet in accordance with their international human rights obligations to ensure protection of freedom of expression, freedom of association, privacy and other human rights online, including through national democratic, transparent institutions, based on the rule of law, in a way that ensures freedom and security on the Internet so that it can continue to be a vibrant force that generates economic, social and cultural development;

260. In the last decade, new technologies, in particular the Internet, have greatly facilitated the exercise of the freedom of association, as well as other fundamental rights. In particular, new technologies have enhanced the ability of persons and groups of persons to form, join and participate in all forms of associations, including non-governmental organizations and political parties. Good practices include providing increased access to the Internet, thereby allowing persons who share mutual interests to come together and pursue their common objectives online. Many of the traditional activities undertaken by political parties, non-governmental organizations and other associations can be exercised online. These activities can include registering, gathering signatures, fundraising and making donations. Allowing associations to conduct such activities online can be considered good practice; however, the legislation of some states still requires that associations hold meetings at which members are physically present, for example. The use of new technologies also offers an opportunity to enhance the transparency and accessibility of associations.

261. Legislation should ensure that an association can exist online or, at the very least, can conduct many of its activities online. On the other hand, states must be wary of the fact that persons may be associated online without their express consent and not of their own volition. Such involuntary associations or memberships should not lead to legal consequences for the persons concerned.

²⁹⁰ See OSCE/ODIHR and Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, 2nd edition (Warsaw: ODIHR, 2010), para. 163, which states that, in the case of assemblies, the right to freedom of expression includes the right to choose the form in which ideas are conveyed, without unreasonable interference by the authorities.

262. Regulations should remain flexible so that any registration or reporting requirements can be conducted online, and public administration should have in place the necessary infrastructure to facilitate this, thus simplifying the establishment and conduct of business and operations of associations.

263. State authorities must also keep in mind that any restrictions on the online exercise of freedom of expression or freedom of association by, for example, constricting the Internet space within which associations establish and function, may amount to a disproportionate interference with the exercise of these rights. All such restrictions relating to the online activities of associations are subject to the same principles of proportionality, legality and necessity in a democratic society as any other limitations.²⁹¹

264. Given the new means of electronic communication and, as such, the new ways in which persons can associate, states should be wary of stifling the exercise of any of these rights by restricting Internet access or by using new technologies and media to reprimand, target or punish those who exercise their rights.²⁹² Their positive obligation extends also to ensuring that third parties do not interfere with the exercise of the rights of individuals to associate or of the rights of associations themselves.

265. New technologies also include surveillance technologies, which raise questions and concerns with respect to the exercise of the freedom of association, but also with respect to other rights of associations as entities and of their members, including the right to privacy. To a greater or lesser extent, surveillance is being conducted by states primarily with the aim of fighting crime and protecting national security. While such aims are acceptable, surveillance measures can nonetheless amount to undue limitations on the right to association and the right to privacy of associations and their members and, as such, the extent of their interference must be proportional. In particular, measures of surveillance should comply with the minimum requirements and safeguards provided for in the case law of the European Court of Human Rights.²⁹³

266. Moreover, the UN Human Rights Committee has considered that any restriction on the operation of information dissemination systems, including that of Internet service providers, is not legitimate unless it conforms with the test for restrictions on freedom of expression under international law.²⁹⁴ The UN Special Rapporteur on Freedom of Opinion and Expression also noted the importance for states to be transparent about the use and scope of communications surveillance techniques and powers, particularly when dealing with Internet service providers.²⁹⁵

267. In the absence of a court order supported by objective evidence, it should be unlawful to compel Internet service providers to share with the authorities all information exchanged online or via other electronic technologies between individuals belonging to an association or between

²⁹¹ See Brown, Ian, "Report on Online Freedom Expression, Assembly and Association and the Media in Europe", MCM(2013)007, p. 17,

[http://www.coe.int/t/dghl/standardsetting/media/belgrade2013/Online%20freedom%20of%20expression.%20assembly.%20association_MCM\(2013\)007_en_Report_IanBrown.pdf](http://www.coe.int/t/dghl/standardsetting/media/belgrade2013/Online%20freedom%20of%20expression.%20assembly.%20association_MCM(2013)007_en_Report_IanBrown.pdf), which states that "Blocking access to associations' websites, and communications tools such as webmail and social networking sites, can have a significant negative impact on assembly and association." See also the 2011 report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/17/27, 16 May 2011, paras 29-21 on arbitrary blocking or filtering of content [online].

²⁹² For examples from the Middle East and North Africa; see Rutzen, Douglas and Zenn, Jacob, "Association and Assembly in the Digital Age", International Journal of Not-for-Profit Law / vol. 13, no. 4, December 2011 / 53.

²⁹³ ECtHR, *Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria* (Application no. 62540/00, judgment of 28 June 2007), paras. 76, 85 and 87-88. See also ECtHR, *Uzun v. Germany* (Application no. 35623/05, judgment of 2 September 2010), para. 63. For more information on minimum requirements and safeguards, see OSCE/ODIHR, "Opinion on the Draft Law of Ukraine on Combating Cybercrime", 22 August 2014, paras. 44-47,

http://www.legislationline.org/download/action/download/id/5594/file/255_CRIM_UKR_22Aug2014_en.pdf.

²⁹⁴ See UN HRC, *General Comment No. 34 on Freedom of Opinion and Expression*, 12 September 2011, para. 43, <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>.

²⁹⁵ UN Special Rapporteur on Freedom of Opinion and Expression, Report to the Human Rights Council, A/HRC/23/40, 17 April 2013, paras. 91-92, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.40_EN.pdf.

associations themselves. Legislation shall also not force Internet service providers to retain data relating to such communications. Given the impact that such measures may have on the right to respect for private and family life and the right to protection of personal data, they must be prescribed by law and be necessary in a democratic society. In particular, limitations on the material and personal scope of such measures should be provided, and substantive and procedural safeguards should exist to ensure that the public authorities access and use data only when necessary, such as in the context of criminal investigation.

268. As pointed out in the 2009 report of the UN Special Rapporteur on the Promotion and Protection of Fundamental Rights while Countering Terrorism, “The rights to freedom of association and assembly are also threatened by the use of surveillance. These freedoms often require private meetings and communications to allow people to organize in the face of Governments or other powerful actors. Expanded surveillance powers have sometimes led to a ‘function creep’, when police or intelligence agencies have labelled other groups as terrorists in order to allow the use of surveillance powers which were given only for the fight against terrorism.”²⁹⁶ These powers are then used to impair the operations of an organization by, for example, freezing bank accounts, to the extent that they effectively extinguish the organization from existence.

269. As regards efforts to prevent terrorist activity on the Internet (such as by regulating, filtering or blocking online content deemed to be illegal under international law), all such restrictions should be in compliance with international human rights standards and exercised according to the rule of law, so as not to impact unlawfully on the freedom of expression and the free flow of information.

270. The blocking of websites of associations, or of certain sources of information or communication tools, can have a significantly negative impact on associations.²⁹⁷ Security measures should be temporary in nature, narrowly defined to meet a clearly set out legitimate purpose and prescribed by law. These measures should not be used to target dissent and critical speech.²⁹⁸

271. Legislators must, therefore, narrowly tailor any provisions that permit the surveillance of associations, and must ensure that they are always based on a court order. Any provisions constituting an interference with the use of the Internet and other communication tools, including social media, must be proportionate and the least intrusive of all options available. Any surveillance measures must always be open to judicial review.

272. Further, associations and their founders and members should have the right to seek redress for any undue interference with and violation of their right to freedom of association or privacy, or of other related rights, as a result of state surveillance, even where the said surveillance is being conducted based on legislation that aims to protect national security or fight crime.

²⁹⁶ UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Report to the Human Rights Council, A/HRC/13/37, 28 December 2009, para. 36.

²⁹⁷ See 2013 Report by Ian Brown, *Report on Online Freedom Expression, Assembly and Association and the Media in Europe*, MCM(2013)007, p. 17. See also ECtHR, *Socialist Party v. Turkey* (Application no. 21237/93, judgment of 25 May 1998), para. 47.

²⁹⁸ See the OSCE Representative on Freedom of the Media, “Freedom of Expression on the Internet: A study of legal provisions and practices related to freedom of expression, the free flow of information and media pluralism on the Internet in OSCE participating States”, OSCE, 2010, available at <<http://www.osce.org/fom/80723>>.

ANNEXES

Annex A – Selected International and Regional Instruments

This section includes a selection of excerpts from relevant international and regional instruments critical to the regulation and functioning of the right to freedom of association in the OSCE region, as discussed in this document. Treaties such as the International Covenant on Civil and Political Rights and the European Convention on Human Rights represent legal obligations for the states that have ratified them. Other instruments, such as the Universal Declaration of Human Rights and the Copenhagen Document, while not legally binding, are particularly compelling commitments undertaken by the states that have endorsed them.

A. United Nations

ILO Convention (No. 87) on Freedom of Association and Protection of the Right to Organize (1948)

Article 2

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

Article 3

1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.
2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Article 4

Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.

Article 5

Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.

(...)

Article 11

Each Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise.

Convention relating to the Status of Refugees (28 July 1951)

Article 15

As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances.

UN Convention relating to the Status of Stateless Persons (1954)

Article 13

As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible, and in any event, not less favourable than that accorded to aliens generally in the same circumstances.

International Convention on the Elimination of All Forms of Racial Discrimination (21 December 1965)

Article 4

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, *inter alia*:

(...)

(b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;

(...)

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- (a) The right to equal treatment before the tribunals and all other organs administering justice;
- (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;
- (c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;
- (d) Other civil rights, in particular:

(...)

(viii) The right to freedom of opinion and expression;

(ix) The right to freedom of peaceful assembly and association;

International Covenant on Civil and Political Rights (16 December 1966)

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
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.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

International Covenant on Economic, Social and Cultural Rights (16 December 1966)

Article 8

1. The States Parties to the present Covenant undertake to ensure:
 - (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
 - (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
 - (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
 - (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.
2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Convention on the Elimination of All Forms of Discrimination against Women (18 December 1979)

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(...)

- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Convention on the Rights of the Child (20 November 1989)

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the 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.

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (18 December 1990)

Article 26

1. States Parties recognize the right of migrant workers and members of their families:
 - (a) To take part in meetings and activities of trade unions and of any other associations established in accordance with law, with a view to protecting their economic, social, cultural and other interests, subject only to the rules of the organization concerned;
 - (b) To join freely any trade union and any such association as aforesaid, subject only to the rules of the organization concerned;
 - (c) To seek the aid and assistance of any trade union and of any such association as aforesaid.
2. No restrictions may be placed on the exercise of these rights other than those that are prescribed by law and which are necessary in a democratic society in the interests of national security, public order (ordre public) or the protection of the rights and freedoms of others.

Convention on the Rights of Persons with Disabilities (13 December 2006)

Article 29 - Participation in political and public life

States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to:

(...)

- b. Promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:
 - i. Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;
 - ii. Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.

Universal Declaration of Human Rights (10 December 1948)

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

B. Council of Europe

Convention for the Protection of Human Rights and Fundamental Freedoms (4 November 1950) as amended by Protocols Nos. 11 and 14

Article 11

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security

or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

European Social Charter (18 October 1961, as revised in 1996)

Part 1

5. All workers and employers have the right to freedom of association in national or international organisations for the protection of their economic and social interests.

European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations (24 April 1986)

Article 1

This Convention shall apply to associations, foundations and other private institutions (hereinafter referred to as "NGOs") which satisfy the following conditions:

- a. have a non-profit-making aim of international utility;
- b. have been established by an instrument governed by the internal law of a Party;
- c. carry on their activities with effect in at least two States; and
- d. have their statutory office in the territory of a Party and the central management and control in the territory of that Party or of another Party.

Article 2

1. The legal personality and capacity, as acquired by an NGO in the Party in which it has its statutory office, shall be recognised as of right in the other Parties.
2. When they are required by essential public interest, restrictions, limitations or special procedures governing the exercise of the rights arising out of the legal capacity and provided for by the legislation of the Party where recognition takes place, shall be applicable to NGOs established in another Party.

Article 3

1. The proof of acquisition of legal personality and capacity shall be furnished by presenting the NGO's memorandum and articles of association or other basic constitutional instruments. Such instruments shall be accompanied by documents establishing administrative authorisation, registration or any other form of publicity in the Party which granted the legal personality and capacity. In a Party which has no publicity procedure, the instrument establishing the NGO shall be duly certified by a competent authority. At the time of signature or of the deposit of the instrument of ratification, acceptance, approval or accession, the State concerned shall inform the Secretary General of the Council of Europe of the identity of this authority.
2. In order to facilitate the application of paragraph 1, a Party may provide an optional system of publicity which shall dispense NGOs from furnishing the proof provided for in the preceding paragraph for each transaction that they carry out.

Article 4

In each Party the application of this Convention may only be excluded if the NGO invoking this Convention, by its object, its purpose or the activity which it actually exercises:

- a. contravenes national security, public safety, or is detrimental to the prevention of disorder or crime, the protection of health or morals, or the protection of the rights and freedoms of others; or
- b. jeopardises relations with another State or the maintenance of international peace and security.

Framework Convention for the Protection of National Minorities (1 February 1995)

Article 7

The Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion.

Article 8

The Parties undertake to recognise that every person belonging to a national minority has the right to manifest his or her religion or belief and to establish religious institutions, organisations and associations.

Convention on preventing and combating violence against women and domestic violence (12 April 2011)

Article 9

Parties shall recognise, encourage and support, at all levels, the work of relevant non-governmental organisations and of civil society active in combating violence against women and establish effective co-operation with these organisations.

C. Other Regional Instruments

American Convention on Human Rights (22 November 1969)

Article 16. Freedom of Association

1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.
2. The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.
3. The provisions of this article do not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police.

Charter of Fundamental Rights of the European Union

Article 12

Freedom of assembly and of association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

African Charter on Human and Peoples' Rights

Article 10

1. Every individual shall have the right to free association provided that he abides by the law.
2. Subject to the obligation of solidarity provided for in Article 29, no one may be compelled to join an association.

(...)

Article 29

The individual shall also have the duty:

1. To preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need.

2. To serve his national community by placing his physical and intellectual abilities at its service;
3. Not to compromise the security of the State whose national or resident he is;
4. To preserve and strengthen social and national solidarity, particularly when the latter is strengthened;
5. To preserve and strengthen the national independence and the territorial integrity of his country and to contribute to his defence in accordance with the law;
6. To work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of the society;
7. To preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well being of society;
8. To contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African unity.

Arab Charter on Human Rights

Article 24

Every citizen has the right:

1. To freely pursue a political activity.
2. To take part in the conduct of public affairs, directly or through freely chosen representatives.
3. To stand for election or choose his representatives in free and impartial elections, in conditions of equality among all citizens that guarantee the free expression of his will.
4. To the opportunity to gain access, on an equal footing with others, to public office in his country in accordance with the principle of equality of opportunity.
5. To freely form and join associations with others.
6. To freedom of association and peaceful assembly.
7. No restrictions may be placed on the exercise of these rights 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 health or morals or the protection of the rights and freedoms of others.

D. OSCE Commitments

Madrid 1983 (Questions Relating to security in Europe: Principles)

The participating States will ensure the right of workers freely to establish and join trade unions, the right of trade unions freely to exercise their activities and other rights as laid down in relevant international instruments. They note that these rights will be exercised in compliance with the law of the State and in conformity with the State's obligations under international law. They will encourage, as appropriate, direct contacts and communication among such trade unions and their representative.

Sofia 1989 (Preamble)

The participating States reaffirm their respect for the right of individuals, groups and organizations concerned with environmental issues to express freely their views, to associate with others, to peacefully assemble, as well as to obtain, publish and distribute information on these issues, without legal and administrative impediments inconsistent with the CSCE provisions. These individuals, groups and organizations have the right to participate in public debates on environmental issues, as well as to establish and maintain direct and independent contacts at national and international level.

Vienna 1989

(13) In this context [Participating States] will

(...)

(13.5) - respect the right of their citizens to contribute actively, individually or in association with others, to the promotion and protection of human rights and fundamental freedoms;

Copenhagen 1990

(7) To ensure that the will of the people serves as the basis of the authority of government, the participating States will

(...)

(7.6) — respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities;

(...)

II

(9) The participating States reaffirm that

(...)

(9.3) — the right of association will be guaranteed. The right to form and — subject to the general right of a trade union to determine its own membership — freely to join a trade union will be guaranteed. These rights will exclude any prior control. Freedom of association for workers, including the freedom to strike, will be guaranteed, subject to limitations prescribed by law and consistent with international standards;

(...)

(10) In reaffirming their commitment to ensure effectively the rights of the individual to know and act upon human rights and fundamental freedoms, and to contribute actively, individually or in association with others, to their promotion and protection, the participating States express their commitment to

(...)

(10.3) — ensure that individuals are permitted to exercise the right to association, including the right to form, join and participate effectively in non-governmental organizations which seek the promotion and protection of human rights and fundamental freedoms, including trade unions and human rights monitoring groups;

(10.4) — allow members of such groups and organizations to have unhindered access to and communication with similar bodies within and outside their countries and with international organizations, to engage in exchanges, contacts and co-operation with such groups and organizations and to solicit, receive and utilize for the purpose of promoting and protecting human rights and fundamental freedoms voluntary financial contributions from national and international sources as provided for by law.

(...)

III

(26) The participating States recognize that vigorous democracy depends on the existence as an integral part of national life of democratic values and practices as well as an extensive range of democratic institutions. They will therefore encourage, facilitate and, where appropriate, support practical co-operative endeavours and the sharing of information, ideas and expertise among themselves and by direct contacts and co-operation between individuals, groups and organizations in areas including the following:

(...)

- developing political parties and their role in pluralistic societies,
- free and independent trade unions,
- developing other forms of free associations and public interest groups,

(...)

(30) The participating States recognize that the questions relating to national minorities can only be satisfactorily resolved in a democratic political framework based on the rule of law, with a functioning independent judiciary. This framework guarantees full respect for human rights and fundamental freedoms, equal rights and status for all citizens, the free expression of all their legitimate interests and aspirations, political pluralism, social tolerance and the implementation of legal rules that place effective restraints on the abuse of governmental power.

They also recognize the important role of non-governmental organizations, including political parties, trade unions, human rights organizations and religious groups, in the promotion of tolerance, cultural diversity and the resolution of questions relating to national minorities.

(...)

Persons belonging to national minorities have the right freely to express, preserve and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all its aspects, free of any attempts at assimilation against their will. In particular, they have the right

(...)

(32.2) — to establish and maintain their own educational, cultural and religious institutions, organizations or associations, which can seek voluntary financial and other contributions as well as public assistance, in conformity with national legislation;

(...)

(32.6) — to establish and maintain organizations or associations within their country and to participate in international non-governmental organizations. (...)

Paris 1990

Human Rights, Democracy and Rule of Law

We affirm that, without discrimination, every individual has the right to (...) freedom of association and peaceful assembly (...)

Non-governmental Organizations

We recall the major role that non-governmental organizations, religious and other groups and individuals have played in the achievement of the objectives of the CSCE and will further facilitate their activities for the implementation of the CSCE commitments by the participating States. These organizations, groups and individuals must be involved in an appropriate way in the activities and new structures of the CSCE in order to fulfil their important tasks. (...)

Bonn 1990 (Preamble)

Recognizing the relationship between political pluralism and market economies, and being committed to the principles concerning:

(...)

- Economic activity that accordingly upholds human dignity and is free from (...) denial of the rights of workers freely to establish or join independent trade unions,
(...)

Moscow 1991

(43) The participating States will recognize as NGOs those which declare themselves as such, according to existing national procedures, and will facilitate the ability of such organizations to conduct their national activities freely on their territories; to that effect they will

(43.1) - endeavour to seek ways of further strengthening modalities for contacts and exchanges of views between NGOs and relevant national authorities and governmental institutions;

(43.2) - endeavour to facilitate visits to their countries by NGOs from within any of the participating States in order to observe human dimension conditions;

(43.3) - welcome NGO activities, including, inter alia, observing compliance with CSCE commitments in the field of the human dimension;

(43.4) - allow NGOs, in view of their important function within the human dimension of the CSCE, to convey their views to their own governments and the governments of all the other participating States during the future work of the CSCE on the human dimension.

(43.5) During the future work of the CSCE on the human dimension, NGOs will have the opportunity to distribute written contributions on specific issues of the human dimension of the CSCE to all delegations.

(43.6) The CSCE Secretariat will, within the framework of the resources at its disposal, respond favourably to requests by NGOs for non-restricted documents of the CSCE.

(43.7) Guidelines for the participation of NGOs in the future work of the CSCE on the human dimension might, inter alia, include the following:

(i) NGOs should be allotted common space at such meeting sites or in their immediate vicinity for their use as well as reasonable access, at their own expense, to technical facilities, including photocopying machines, telephones and fax machines;

(ii) NGOs should be informed and briefed on openness and access procedures in a timely manner;

(iii) delegations to CSCE meetings should be further encouraged to include or invite NGO members.

The participating States recommend that the Helsinki Follow-up Meeting consider establishing such guidelines. (...)

Helsinki 1992

Relations with international organizations, relations with non-participating states, role of non-governmental organizations

(14) The participating States will provide opportunities for the increased involvement of non-governmental organizations in CSCE activities.

(15) They will, accordingly:

- apply to all CSCE meetings the guidelines previously agreed for NGO access to certain CSCE meetings;
- make open to NGOs all plenary meetings of review conferences, ODIHR seminars, workshops and meetings, the CSO when meeting as the Economic Forum, and human rights implementation meetings, as well as other expert meetings. In addition each meeting may decide to open some other sessions to attendance by NGOs;
- instruct Directors of CSCE institutions and Executive Secretaries of CSCE meetings to designate an "NGO liaison person" from among their staff;
- designate, as appropriate, one member of their Foreign Ministries and a member of their delegations to CSCE meetings to be responsible for NGO liaison;
- promote contacts and exchanges of views between NGOs and relevant national authorities and governmental institutions between CSCE meetings;
- facilitate during CSCE meetings informal discussion meetings between representatives of participating States and of NGOs;
- encourage written presentations by NGOs to CSCE institutions and meetings, titles of which may be kept and provided to the participating States upon request;
- provide encouragement to NGOs organizing seminars on CSCE-related issues;
- notify NGOs through the CSCE institutions of the dates of future CSCE meetings, together with an indication, when possible, of the subjects to be addressed, as well as, upon request, the activations of CSCE mechanisms which have been made known to all participating States.

(16) The above provisions will not be applied to persons or organizations which resort to the use of violence or publicly condone terrorism or the use of violence.

(...)

(15) Non-governmental organizations having relevant experience in the field of the Human Dimension are invited to make written presentations to the implementation meeting, e.g. through the ODIHR, and may be invited by the implementation meeting, on the basis of their written presentations, to address specific questions orally as appropriate.

(...)

(18) These seminars will be organized in an open and flexible manner. Relevant international organizations and institutions may be invited to attend and to make contributions. So may NGOs with relevant experience. Independent experts attending the seminar as members of national delegations will also be free to speak in their own capacity.

Budapest 1994

Decision on the human dimension

3. The participation of non-governmental organizations (NGOs) was a welcome addition to the implementation review. In their statements, these organizations contributed ideas and raised issues of concern for participating States to take into consideration. They also informed the participating States of their activities, such as in the area of conflict prevention and resolution. The experience of the Budapest Review Conference invites further consideration with regard to promoting within the CSCE the dialogue between governments and NGOs of the participating States, in addition to State-to-State dialogue.

(...)

17. The participating States and CSCE institutions will provide opportunities for increased involvement of NGOs in CSCE activities as foreseen in Chapter IV of the Helsinki Document 1992. They will search for ways in which the CSCE can best make use of the work and information provided by NGOs. The Secretary General is requested to make a study on how participation of NGOs can be further enhanced.

Istanbul 1999

27. Non-governmental organizations (NGOs) can perform a vital role in the promotion of human rights, democracy and the rule of law. They are an integral component of a strong civil society. We pledge ourselves to enhance the ability of NGOs to make their full contribution to the further development of civil society and respect for human rights and fundamental freedoms.

Maastricht 2003

36. (...) Based on its human dimension commitments, the OSCE strives to promote conditions throughout its region in which all can fully enjoy their human rights and fundamental freedoms under the protection of effective democratic institutions, due judicial process and the rule of law. This includes secure environments and institutions for peaceful debate and expression of interests by all individuals and groups of society. Civil society has an important role to play in this regard, and the OSCE will continue to support and help strengthen civil society organizations.

Ministerial Declaration on the Occasion of the 60th Anniversary of the Universal Declaration of Human Rights (Helsinki 2008)

We reiterate that everyone has the right to freedom of thought, conscience, religion or belief, freedom of opinion and expression, freedom of peaceful assembly and association. The exercise of these rights may be subject to only such limitations as are provided by law and consistent with our obligations under international law and with our international commitments.

Astana 2010

6. The OSCE's comprehensive and co-operative approach to security, which addresses the human, economic and environmental, political and military dimensions of security as an integral whole, remains indispensable. Convinced that the inherent dignity of the individual is at the core of comprehensive security, we reiterate that human rights and fundamental freedoms are inalienable, and that their protection and promotion is our first responsibility. We reaffirm categorically and irrevocably that the commitments undertaken in the field of the human dimension are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned. We value the important role played by civil society and free media in helping us to ensure full respect for human rights, fundamental freedoms, democracy, including free and fair elections, and the rule of law.

Annex B – Selected International and Regional Case Law

ASSOCIATIONS

- ECtHR, *Le Compte, Van Leuven and De Meyere v. Belgium*, Application no. 6878/75, 23 June 1981
- ECtHR, *Sigurdur A Sigurjónsson v. Iceland*, Application no. 16130/90, 30 June 1993
- ECtHR, *Chassagnou and Others v. France* [GC], Application no. 25088/94, 29 April 1999
- ECtHR, *Popov and Others, Vakarelova, Markov and Bankov v. Bulgaria* (dec.), Application no. 48047/99, 6 November 2003
- UN HR Committee, *Wallman et al. v. Austria*, Communication no. 1002/2001, 1 April 2004
- ECtHR, *Slavic University in Bulgaria & Others v. Bulgaria* (dec.), Application no. 60781/00, 18 November 2004
- IACtHR, *Río Negro Massacres v. Guatemala*, Series C no. 250, 4 September 2012.
- ECtHR, *Özbek and Others v. Turkey*, Application no. 35570/02, 6 October 2009

FORMATION

Capacity

- ECtHR, *United Communist Party of Turkey and Others v. Turkey* [GC], Application no. 19392/92, 30 January 1998
- ECtHR, *Moscow Branch of the Salvation Army v. Russia*, Application no. 72881/01, 5 October 2006
- ECtHR, *Demir and Baykara v. Turkey* [GC], Application no. 34503/97, 12 November 2008
- ECtHR, *Matelly v. France*, Application no. 10609/10, 2 October 2014

Number of members

- ECtHR, *Zhechev v. Bulgaria*, Application no. 57045/00, 21 June 2007

Informal entities

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