



CONFERENCE OF INGOs
OF THE COUNCIL OF EUROPE

CONFERENCE DES OING DU
CONSEIL DE L'EUROPE

**EXPERT COUNCIL ON NGO LAW
CONF/EXP(2020)1**

February 2020

EXPERT COUNCIL ON NGO LAW

**NON-GOVERNMENTAL ORGANISATIONS: REVIEW OF
DEVELOPMENTS IN STANDARDS, MECHANISMS AND CASE LAW
2017-2019**

**Review prepared by Mr Jeremy McBride on behalf of the
Expert Council on NGO Law of the
Conference of INGOs of the Council of Europe**

The opinions expressed in this work are the responsibility of the author(s) and do not necessarily reflect the official policy of the Council of Europe.

INDEX

EXECUTIVE SUMMARY	4
A. INTRODUCTION	5
B. STANDARDS	5
C. MECHANISMS	19
D. CASE LAW	41
E. CONCLUSION	55

EXECUTIVE SUMMARY

This review covers many developments of note relating to non-governmental organisations that are relevant to the mandate of the Expert Council between 30 September 2017 and 31 December 2019. It deals with a wide range of issues relating to standards, the work of various mechanisms and case law.

The developments relating to standards involve the elaboration of standards relating to access to court, children with imprisoned parents, combating sexism, digital citizenship, education, participation in local public life, sport and terrorism. They also include the important clarification or rehearsal of requirements relating to civil society space, funding, the protection of human rights defenders and reporting and disclosure requirements.

The issues addressed by the mechanisms are concerned particularly with issues affecting civil society space (which is undergoing ever increasing pressure, partly attributable to efforts to counter terrorism, the impact of which on non-governmental organisations is not always taken into account), the criminalisation of some of their legitimate activities, the problems faced by human rights defenders (both in general but also those dealing with the environment, people on the move and human rights defenders who are women) and the contribution that non-governmental organisations can make to the 2030 Agenda for Sustainable Development.

The case law developments relate to: the concept of association; formation; re-registration; prohibition; and dissolution.

The review shows that the situation of non-governmental organisations continues to generate considerable activity in terms of standard-setting, the functioning of various supervisory and other mechanisms and in regional courts and tribunals. This is noted to be both an endorsement of the immensely valuable role that non-governmental organisations continue to play but also a reflection of the considerable pressures to which they continue to be subject. Thus, continued efforts to ensure the effective implementation of all the standards that have been elaborated to enable non-governmental organisations to play their role in an effective manner clearly remains vital for the maintenance of democratic societies.

A. INTRODUCTION

1. There have been many developments of note relating to non-governmental organisations that are relevant to the mandate of the Expert Council on NGO Law (“the Expert Council”) between 30 September 2017 and 31 December 2019. The principal ones – which deal with standards, the work of various mechanisms and case law - cover a very wide range of issues and are summarised in the paragraphs that follow.

B. STANDARDS

2. The developments concern a wide range of issues, namely, ones relating to access to court, children with imprisoned parents, civil society space, combating sexism, digital citizenship, education, freedom of association, funding, human rights defenders, participation in public affairs and in local public life, refugees, reporting and disclosure requirements, sport, terrorism and some consolidated opinions and practices.
3. These issues illustrate the considerable contribution that is and can be made by non-governmental organisations. At the same time, they show the many difficulties and obstacles that can be put in the way of them making that contribution.

Access to court

4. The role to be played by non-governmental organisations in facilitating equal access to legal services and to court for Roma and Travellers, as well as in ensuring the effectiveness of judicial remedies for them, was underlined in Recommendation CM/Rec(2017)10 of the Committee of Ministers to member States on improving access to justice for Roma and Travellers in Europe.¹
5. In particular, it recommended that member States:
 3. facilitate equal access to legal services for Roma and Travellers by: ...
 - e. encouraging law faculties and other educational institutions, in co-operation with non-governmental organisations – including Roma- and Traveller-based associations and specialised women’s organisations, as well as bar associations and other similar professional associations of lawyers – to include the following in their training programmes (including their continuing professional development programmes): anti-discrimination rules at national, European, and international levels; legislation on gender equality and on violence against women; the case law of the Court relating to Roma and Travellers; other areas of law that particularly affect Roma and Travellers; information about the nature and scale of anti-Gypsyism and the history and the current situation of Roma and Travellers; and the role of the legal profession in protecting the rights of minorities, including Roma and Travellers ...
 5. facilitate equal access to court and ensure the effectiveness of judicial remedies for Roma and Travellers by: ...
 - o. ensuring that organisations such as associations, trade unions, bodies for the promotion of equal treatment and other legal entities which have, according to criteria laid down by national law, a legitimate interest in combating racism and racial discrimination, may engage either on behalf of or in support of Roma and Travellers, with their approval, in any judicial and/or administrative procedure provided for the enforcement of anti-discrimination provisions, or intervene in such

¹ Adopted by the Committee of Ministers on 17 October 2017 at the 1297th meeting of the Ministers' Deputies.

procedures, and considering allowing such organisations to bring complaints on behalf of Roma and Travellers, including criminal complaints, even if no specific victim is referred to, without prejudice to national rules of procedure concerning representation and defence before the courts ... w. ensuring co-operation with non-governmental organisations, including Roma and Traveller organisations and specialised women's organisations, in developing support mechanisms, outreach and awareness-raising programmes to facilitate access to justice ensuring co-operation with non-governmental organisations, including Roma and Traveller organisations and specialised women's organisations, in developing support mechanisms, outreach and awareness-raising programmes to facilitate access to justice.

Children with imprisoned parents

6. In Recommendation CM/Rec(2018)5 of the Committee of Ministers to member States concerning children with imprisoned parents², the basic principles included the recommendation that:

National authorities shall endeavour to provide sufficient resources to State agencies and civil society organisations to support children with imprisoned parents and their families to enable them to deal effectively with their particular situation and specific needs, including offering logistic and financial support, where necessary, in order to maintain contact.³

Civil society space

7. The Human Rights Council has adopted a Resolution in which it reaffirmed that creating and maintaining a safe and enabling environment in which civil society can operate free from hindrance and insecurity assists States in fulfilling their existing international human rights obligations and commitments, without which equality, accountability and the rule of law are severely weakened, with implications at the national, regional and international level.⁴

8. Amongst the many issues addressed by the Resolution in securing such a space, it urged:

States to ensure that the issue of the creation and maintenance of a safe and enabling environment for civil society is addressed in the context of the universal periodic review, and encourages States in that regard to consult civil society in the preparation of their national reports, to consider including in their national reports information on relevant domestic provisions and steps, to consider making relevant recommendations to States under review and to assist States in the implementation of relevant recommendations through, inter alia, the sharing of experiences, good practices and expertise and offering technical assistance on the basis of requests and with the consent of the States concerned, and conducting broad consultations with civil society in the follow-up to their review.

9. It also called upon:

States to review, and update as appropriate, their frameworks for engagement with civil society to ensure that those frameworks reflect and respond to the challenges faced, in order to support improved civil society engagement with international and regional organizations, and welcomes efforts already made in this regard.

² Adopted by the Committee of Ministers on 4 April 2018 at the 1312th meeting of the Ministers' Deputies.

³ Principle 6.

⁴ 38/12. *Civil society space: engagement with international and regional organizations*, 6 July 2018.

10. Similarly, in a report by the United Nations High Commissioner for Human Rights, the importance of the role played by civil society and the environment required for this to occur was emphasised.⁵

11. Thus, it was stated that:

45. A dynamic, diverse and independent civil society, able to operate freely, is a key element in securing the protection and promotion of human rights at both the national and international levels. Civil society actors monitor the human rights situation at national level, mobilize public support for human rights issues and report on human rights violations. They make a crucial contribution to the effective functioning of the international human rights mechanisms. The important role of civil society and the need to maintain a safe and enabling environment in which it can freely operate, have been highlighted by several resolutions of the Human Rights Council, which remains attentive to any threat to human rights defenders or reprisal for any form of cooperation with the United Nations or its mechanisms.

12. The report also made it clear that strengthening the role of civil society at national, regional and international levels was a strategic priority for the Office of the High Commissioner (“OHCHR”), indicating its valued partnership with various NGOs in connection with the universal periodic review and noting that:

has elaborated a series of practical guides aimed at increasing the engagement of civil society actors with international human rights mechanisms and promoting follow-up to the recommendations formulated by such mechanisms. OHCHR advocates for the inclusion of civil society in national mechanisms for reporting and follow-up and their active participation in efforts to implement human rights recommendations, resulting in greater enjoyment of human rights by all, especially the most vulnerable.⁶

13. However, concern about the shrinking space for civil society has led to both a Recommendation of the Committee of Ministers and a Resolution of the Parliamentary Assembly of the Council of Europe.

14. The former - Recommendation CM/Rec(2018)11 of the Committee of Ministers to member States on the need to strengthen the protection and promotion of civil society space in Europe⁷ - was a response to the Committee of Ministers’

deep concern at the shrinking space for civil society resulting, *inter alia* from restrictive laws, policies and austerity measures taken recently by member States

and its

grave concern about the considerable and increasing number of allegations and reports of threats of a serious nature, risks and dangers faced by human rights defenders, including women human rights defenders, online and offline, and the prevalence of impunity for violations and abuses against them in many countries, where they face threats, harassment and attacks and suffer insecurity, including through restrictions on, *inter alia*, the rights to freedom of expression, association or peaceful assembly, and the right to privacy, or through abuse of criminal or civil proceedings.

⁵ *Implementation and enhancement of international cooperation in the field of human rights*, A/HRC/41/25, 29 April 2019.

⁶ *Ibid.*, para. 46.

⁷ Adopted by the Committee of Ministers on 28 November 2018 at the 1330th meeting of the Ministers' Deputies.

15. In its Appendix, the Recommendation sets out a set of principles which member States are recommended to ensure are complied with in relevant national legislation and practice, so as to strengthen the protection and promotion of civil society space in Europe.
16. These principles are as follows:

I. National legal framework and political and public environment to protect and promote civil society space

Member States should:

- a. ensure an enabling legal framework and a conducive political and public environment for human rights defenders, enabling individuals, groups, civil society organisations and national institutions for the protection and promotion of human rights (NHRIs) to freely carry out activities, on a legal basis, consistent with international law and standards, to strive for the protection and promotion of all human rights and fundamental freedoms;
- b. ensure that legislation, in particular on freedom of association, peaceful assembly and expression, is drafted and applied in conformity with international human rights law and standards and, where appropriate, seek advice from the Commissioner for Human Rights, the Venice Commission and the Expert Council on NGO Law of the Conference of International Non-Governmental Organisations and other bodies of the Council of Europe;
- c. remove any unnecessary, unlawful or arbitrary restrictions to civil society space, in particular with regards to freedom of association, peaceful assembly and expression;
- d. ensure that the various forms of hate crime, including acts of violence, hate speech and public incitement to hatred and violence, are prohibited under national law, and take measures to prevent and combat cases of hate crime and hate speech, in particular by carrying out effective investigations with the aim of ending impunity;
- e. ensure that everyone, including human rights defenders, can effectively participate in decision-making, notably by giving them full access to information, taking into account the Council of Europe Convention on Access to Official Documents (ETS No. 205);
- f. ensure timely and transparent public consultations in policy development and draft legislation, especially where it may affect civil society;
- g. address the gaps in the implementation, at national level, of international law and standards relevant to the protection of civil society and the promotion of its work, as identified in the “Analysis on the impact of current national legislation, policies and practices on the activities of civil society organisations, human rights defenders and national institutions for the promotion and protection of human rights”, adopted by the Steering Committee for Human Rights (CDDH);
- h. establish effective, independent, pluralistic and adequately funded NHRIs in compliance with the Paris Principles, or where they already exist, strengthen them for the protection and promotion of all human rights and fundamental freedoms, including in their role to protect and promote an effective environment for civil society, co-operate and seek assistance, when needed, from the European Network of National Human Rights Institutions (ENNHRI), as well as from regional and international bodies such as the Office of the United Nations High Commissioner for Human Rights (OHCHR), the ODIHR/OSCE, the Council of Europe Commissioner for Human Rights, and the Venice Commission;
- i. respect the freedom of human rights defenders, including civil society organisations, to seek, receive and utilise resources from domestic, foreign and international sources;
- j. co-operate with the Council of Europe human rights mechanisms and in particular with the European Court of Human Rights in accordance with the European Convention on Human Rights, as well as with the Commissioner for Human Rights by facilitating his/her visits, providing adequate responses and discussing the situation of human rights defenders with him/her when so requested;
- k. consider signing and ratifying the 1995 Additional Protocol to the European Social Charter providing for a System of Collective Complaints (ETS No. 158) and to consider recognising the right of national NGOs fulfilling the criteria mentioned therein to lodge collective complaints before the European Committee of Social Rights.

II. National measures to protect civil society space

Member States should take effective measures to protect civil society space, in particular to:

- a. prevent violations of the rights of human rights defenders including smear campaigns, threats and attacks against them, and other attempts to hinder their work;

- b. ensure the independent and effective investigation of such acts and hold those responsible accountable through appropriate administrative measures or criminal procedures, and ensure that criminal, civil and administrative laws and procedures are not applied in a way that hinders and criminalises the work of human rights defenders
- c. ensure, while respecting their legal traditions, the independence of their judicial systems and ensure the existence of effective remedies for those whose rights and freedoms are violated;
- d. consider giving, or where appropriate strengthening, the competence and capacity of independent NHRIs to effectively carry out their role to protect civil society space through their monitoring, investigation, reporting and complaints handling functions;
- e. facilitate the effective access of human rights defenders, NHRIs and civil society organisations, to international and regional human rights mechanisms, including the European Court of Human Rights, the European Committee of Social Rights and other human rights protection mechanisms in accordance with applicable procedures;
- f. provide measures for swift assistance and protection for human rights defenders in danger in other countries, such as, where appropriate, attendance and observation of trials and/or, if feasible, the issuing of emergency visas.

III. National measures to promote civil society space

Member States should take effective measures to promote civil society space, in particular to:

- a. ensure access to resources to support the stable funding of human rights defenders, including NHRIs and civil society organisations, and increase efforts to promote their activities;
- b. ensure women human rights defenders are able to access specific support, funding, and protection, including against gender-based violence, and guarantee an environment in which they can work free from violence and discrimination;
- c. explicitly recognise the legitimacy of human rights defenders, including NHRIs and civil society organisations, and publicly support their work, acknowledging their contribution to the advancement of human rights and the development of a pluralistic society;
- d. facilitate and support programmes to guarantee that human rights defenders have access to the necessary skills, tools and training they require without discrimination, in order to enable and equip them to conduct their human rights work.

IV. Support from Council of Europe bodies and institutions

Member States should call on Council of Europe bodies and institutions to pay special attention to issues concerning the enabling environment in which all human rights defenders, including NHRIs and civil society organisations, can safely and freely operate in Europe. This should include:

- a. providing information and documentation, including on relevant case law and other European standards, as well as encouraging co-operation and awareness-raising activities with civil society organisations and encouraging human rights defenders' participation in Council of Europe activities;
- b. ensuring that Council of Europe local offices promote civil society's, NHRIs' and human rights defenders' work and give visibility to key judgments of the European Court of Human Rights, recommendations of the Commissioner for Human Rights, the Venice Commission, and Parliamentary Assembly resolutions concerning the safe and enabling environment for human rights defenders.
- c. paying special attention within the Committee of Ministers to the execution of judgments of the European Court of Human Rights concerning human rights defenders and the enabling environment for human rights work, which have yet to be implemented;
- d. ensuring continuous dialogue and debates on threats to civil society, NHRIs and human rights defenders, in particular to address threats and attacks on human rights defenders and to express concern for the unjustified detention and criminal charges which effectively lead to halting civil society work in Council of Europe member States;
- e. keeping under review the question of further Council of Europe action in this field.

17. In the latter – New restrictions on NGO activities in Council of Europe member States⁸ - the Parliamentary Assembly recalled its previous Resolutions on this issue and noted with concern that:

in several Council of Europe member States, the space for civil society has been shrinking over the last few years, especially in respect of NGOs working in the area of human rights. This has been

⁸ Resolution 2226 (2018), 27 June 2018.

mainly due to restrictive laws and regulations concerning registration requirements or funding, administrative harassment, smear campaigns against certain groups and threats or intimidation against NGO leaders and activists.

18. After referring to concerns regarding specific member States⁹, it called on them all to:

- 10.1. fully implement Committee of Ministers Recommendation CM/Rec(2007)14 on the legal status of non-governmental organisations in Europe;
- 10.2. review and repeal or amend legislation that impedes the free and independent work of NGOs and ensure that this legislation is in conformity with international human rights instruments regarding the rights to freedom of association, assembly and expression (including the Joint Venice Commission–OSCE/ODIHR Guidelines on Freedom of Association and on Freedom of Peaceful Assembly), by making use of the Council of Europe, and in particular of the Venice Commission and the Expert Council on NGO Law of the Conference of International Non-Governmental Organisations;
- 10.3. refrain from adopting new laws which would result in unnecessary and disproportionate restrictions or financial burdens on NGO activities;
- 10.4. ensure that NGOs can seek, receive and use transparent funding and other resources, whether domestic or foreign, without discrimination or undue impediments;
- 10.5. ensure that NGOs are effectively involved in the consultation process concerning new legislation which concerns them and other issues of particular importance to society, such as the protection of human rights;
- 10.6. ensure an enabling environment for civil society, in particular by refraining from any harassment (judicial, administrative or tax-related), negative public discourse, smear campaigns against NGOs and intimidation of civil society activists;

⁹ Thus, it stated that: “5. The Assembly recalls its Resolution 2184 (2017) on the functioning of democratic institutions in Azerbaijan and Resolution 2185 (2017) Azerbaijan’s Chairmanship of the Council of Europe: what follow-up on respect for human rights? and condemns the lack of a conducive environment for the activities of NGOs and reprisals against civil society activists in Azerbaijan. It calls on Azerbaijan to amend its legislation on NGOs in accordance with the case law of the European Court of Human Rights and the recommendations of the European Commission for Democracy through Law (Venice Commission) (Opinions Nos. 636/2011 and 787/2014). 6. Recalling its Resolution 2162 (2017) Alarming developments in Hungary: draft NGO law restricting civil society and possible closure of the European Central University, the Assembly expresses concern about the entry into force of the law on the transparency of organisations receiving support from abroad and calls on Hungary to repeal the provisions of this text that are not in line with the Venice Commission’s recommendations (Opinion No. 889/2017). It is also alarmed by the adoption by the Hungarian Parliament of the “Stop-Soros” package of laws restricting the freedoms of NGOs working for refugees’ and migrants’ rights and their members, and calls on Hungary to revise these laws in accordance with the opinion of the Venice Commission and the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR) adopted on 22 June 2018. 7. The Assembly remains concerned about the implementation of the “foreign agents law” and the “law on undesirable organisations”, which has led to the closure of dozens of domestic NGOs that received foreign funding and termination of operations of the major international and foreign donor organisations that supported the activities of Russian NGOs. The Assembly reiterates its calls on the Russian Federation to amend the legislation on NGOs in accordance with the Venice Commission Opinions Nos. 716/2013, 717/2013 and 814/2015. 8. Recalling its Resolutions 2156 (2017) on the functioning of democratic institutions in Turkey and 2209 (2018) State of emergency: proportionality issues under Article 15 of the European Convention on Human Rights, the Assembly is particularly worried about the high number of associations and foundations (nearly 1 600) closed on the basis of state of emergency measures. It calls on Turkey to lift the state of emergency as soon as possible, to ensure that the closed NGOs dispose of an effective remedy against the decision concerning their definitive closure and to reconsider the necessity and proportionality of the measures restricting the freedoms of association, assembly and expression, in light of the case law of the European Court of Human Rights and the recommendations of the Venice Commission (Opinion No. 865/2016). 9. The Assembly calls on Romania and Ukraine to reject the recently proposed draft laws imposing additional financial reporting obligations on NGOs, unless they are amended according to the recommendations of the Venice Commission and the OSCE/ODIHR (see, respectively, Opinions Nos. 914/2017 and 912/2018) and to submit them to broad public consultations. It also calls on Ukraine to repeal as soon as possible the e-declaration requirements for anti-corruption activists introduced by Law No. 1975-VIII of 23 March 2017”.

10.7. sign and/or ratify the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations (ETS No. 124), if this has not yet been done.¹⁰

Combating sexism

19. In the Appendix to Recommendation CM/Rec(2019)1 of the Committee of Ministers to member States on preventing and combating sexism¹¹, the measures which member States were recommended to consider included those to:

Encourage collaboration between professionals (for example journalists, educators, law-enforcement agents) and civil society organisations to determine and share good practices on preventing and combating sexism ...

Encourage independent professions, professional organisations and trade unions to embrace the fight against sexism within their organisations, including in their internal rules ...

Urge sport federations and associations and cultural institutions at all levels to prepare codes of conduct to prevent sexism and sexist behaviour which should include provisions for disciplinary action. Foster zero tolerance towards sexism and sexist hate speech in cultural and sporting events.¹²

Digital citizenship

20. In Recommendation CM/Rec(2019)10 of the Committee of Ministers to member States on developing and promoting digital citizenship education¹³, member States were recommended to invite civil society to contribute its implementation. In this connection, the Appendix stated that:

Civil society organisations are a valued part of the digital citizenship education system and provide the platforms, tools and resources to empower citizens to contribute actively in all areas related to digital citizenship education. It is important that the role of the civil society sector, especially in the field of general education and early childcare, is acknowledged and supported. Co-operation with other sectors should also be supported, especially in monitoring, evaluation and promotion of digital citizenship skills and education in these and other fields, as well as promoting the dissemination of findings and results.

¹⁰ In Recommendation 2134 (2018), with the same title as the Resolution and adopted on the same day, the Parliamentary Assembly recommended that the Committee of Ministers: “1.1. call again on member States of the Council of Europe to implement its Recommendation CM/Rec(2007)14 on the legal status of non-governmental organisations in Europe and continue to take stock of progress made to this end; 1.2. continue its thematic debates on the role and functioning of NGOs in the Council of Europe and its exchanges with the Conference of International Non-Governmental Organisations (INGOs) on a regular basis; 1.3. strengthen its interaction with civil society representatives through a more developed framework for dialogue, including the holding of regular meetings that are open to the public; 1.4. continue to promote European and international standards that are relevant for the creation and maintenance of a safe and enabling environment for civil society and to exchange good practices in this area; 1.5. in this respect, continue to strengthen synergies within the Council of Europe, between all the stakeholders concerned, in particular the Secretary General, the Commissioner for Human Rights, the Conference of INGOs and the Assembly; 1.6. establish a mechanism aimed at receiving, analysing and reacting to alerts on possible new restrictions on the right to freedom of association in Council of Europe member States; 1.7. develop and adopt guidelines on foreign funding of NGOs in the member States (on the basis of a study currently being finalised by the European Commission for Democracy through Law (Venice Commission)), as proposed in the 2016 annual report by the Secretary General of the Council of Europe on the state of democracy, human rights and the rule of law”.

¹¹ Adopted by the Committee of Ministers on 27 March 2019 at the 1342nd meeting of the Ministers' Deputies.

¹² Respectively in paragraphs I.B.9, II.D.3 and II.H.4.

¹³ Adopted by the Committee of Ministers on 21 November 2019 at the 1361st (Budget) meeting of the Ministers' Deputies.

Education

21. An important element in Recommendation CM/Rec(2019)9 of the Committee of Ministers to member States on fostering a culture of ethics in the teaching profession¹⁴ was the empowerment of professional bodies. In particular, it was recommended that, in the development of codes of ethics for the teaching profession, public authorities and professional bodies should
 12. encourage ongoing guidance from the professional bodies responsible for the codes to help teachers implement them;
 13. support schools, higher education institutions and professional bodies in enforcing the codes fairly and impartially;
 14. ensure that, if challenged, all decisions on the enforcement of codes of ethics are subject to judicial review, to make certain that the process and decision are impartial, fair and duly grounded.

Freedom of association

22. The African Commission on Human and Peoples' Rights has adopted Guideline on Freedom of Association and Assembly in Africa.¹⁵ These deal with the legal framework applicable; legal personality; formation legal personality; purposes and activities; oversight; internal governance structures; financing; federations and cooperation; and sanctions and remedies.
23. The Guidelines are informed by ten fundamental principles which should be borne in mind throughout when contemplating and interpreting the rights in question and their specification as laid out in these guidelines, namely:
 - i. **Presumption in favor of the right:** The presumption shall be in favor of the exercise of the rights to freedom of association and assembly.
 - ii. **Enabling framework:** Any legal framework put in place or other steps taken relative to the rights to freedom of association and assembly shall have the primary purpose of enabling the exercise of the rights.
 - iii. **Political and social participation of an independent civil society:** The independence of civil society and the public sphere shall be ensured, and the participation of individuals in the political, social and cultural life of their communities shall be enabled.
 - iv. **Human rights compliance:** All constitutional, legislative, administrative and other measures shall comply with the full extent of regional and international human rights obligations, deriving from the rights to freedom of association and assembly and all other guaranteed rights.
 - v. **Impartiality of governance agencies:** Authorities with governance oversight shall conduct their work impartially and fairly.
 - vi. **Simple, transparent procedures:** Procedures relating to the governance of associations and assemblies shall be clear, simple and transparent.
 - vii. **Reasoned decisions, judicial review:** State decisions shall be clearly and transparently laid out, with any adverse decisions defended by written argumentation on the basis of law and challengeable in independent courts of law.
 - viii. **Limited sanctions:** Sanctions imposed by states in the context of associations and assemblies shall be strictly proportionate to the gravity of the harm in question and applied only as a matter of last resort and to the least extent necessary.
 - ix. **The right to a remedy:** The right to a remedy shall be protected in cases of violation of the rights to association and assembly.

¹⁴ Adopted by the Committee of Ministers on 16 October 2019 at the 1357th meeting of the Ministers' Deputies.

¹⁵https://www.achpr.org/public/Document/file/English/guidelines_on_freedom_of_association_and_assembly_in_africa_eng.pdf.

x. **More protective standard:** If conflict between provisions of these guidelines and other international and regional human rights standards arise, the more protective provision takes precedence.

Funding

24. In a review of the applicable international standards, the European Commission for Democracy through Law (Venice Commission) concluded and recommended as follows in its Report on Funding of Associations:

States must create an enabling environment in which associations can effectively operate and facilitate access of associations to funding, including foreign funding, in order to achieve their aims; *Legitimate aims of interference with the right of associations to seek financial and material resources:*

- Any measure restricting the right of associations to seek, secure and use resources, including foreign resources, must pursue one of the legitimate aims under Article 11(2) ECHR and 22(2) ICCPR;

- Reporting obligations may be considered to pursue the legitimate aim of preventing terrorism financing and money laundering by enhancing transparency as regarding financing of such activities; public disclosure obligations are not suitable for this purpose;

- “Public disclosure obligations” could pursue the legitimate aim of prevention of disorder only as concerns formal lobbying activities (and funding of political parties) carried out by associations. Lobbying as a professional remunerated activity should be clearly defined in the legislation and be clearly distinguished from ordinary advocacy activities of civil society organisations, which should be carried out unhindered;

Proportionality of interference with the right of associations to seek financial and material resources:

- Any reporting obligations should be based on a prior risk assessment concerning the specific involvement of the NGO sector in the commission of crimes such as terrorism financing and money laundering;

- At the legislative stage, an assessment should be made of whether the interference is the least intrusive of all possible means that could have been adopted. State authorities should consult those associations whose interests might be affected during the drafting process;

- The authorities should ensure that the overlap of additional reporting/public disclosure obligations with other already existing measures does not create an environment of excessive state monitoring; in the fight against crime, priority should be given to already existing instruments (banking laws, anti-terror legislation) before resorting to new cumbersome reporting obligations;

- The sanctions imposed on associations in case of violation of obligations stemming from legislation on foreign funding should be proportionate and the sanction of dissolution should never be imposed solely for violation of those obligations, but only in cases of “serious misconduct” such as terrorism financing and money laundering;

- There should be a range of sanctions to be imposed along a gradual scale of punishment. Minor mistakes should lead to lighter sanctions;

- Sanctions should be preceded by a warning with information as to how a violation may be rectified. The association concerned should be given sufficient time to rectify the violation or omission. Before the issuance of a warning, the association should be offered the possibility to seek clarifications about the alleged violation;

Discrimination:

- Any difference in treatment among civil society organisations concerning the reporting/public disclosure obligations on their funding, should be justified on the basis of objective and reasonable grounds;

- Any difference in treatment between the civil society sector and other legal persons/non-state entities, such as the business sector concerning the reporting/disclosure obligations on their funding, should be justified on the basis of objective and reasonable grounds;

- States should refrain from imposing negative labels on foreign-funded associations which may stir distrust of the public in those associations and have a chilling effect on their legitimate activities;

- State authorities should refrain from conducting negative campaigns against civil society organisations receiving foreign funding, such as portraying them as acting against the interest of the society;

Guarantee of effective legal protection:

- Legal provisions concerning the funding of associations and any limitations implied therein should be clear, precise and certain, and should be interpreted and applied in a manner that enhances the effective exercise of the right to freedom of association to ensure that the enjoyment of that right is practical and effective, and not theoretical or illusory;

- The interpretation and application of any regulation concerning foreign funding of associations should be subject to judicial review by an independent and impartial court;

- The association concerned should be allowed to participate in the hearing in fair proceedings and be given sufficient and equal opportunity to present its own arguments and oppose those of the other party;

- Judicial review should not be limited in scope and the judge involved in the procedure should have sufficient discretion in order to be able to make a proportionality assessment of the measure interfering with the rights of the association concerned;

- The association concerned is entitled to a judicial decision within a reasonable time.¹⁶

Human rights defenders

25. In its Resolution Protecting human rights defenders in Council of Europe member States¹⁷, the Parliamentary Assembly noted that:

in the majority of Council of Europe member States, human rights defenders are free to work in an environment conducive to the development of their activities. Nevertheless, it notes that over the past few years the number of reprisals against human rights defenders has been on the rise. New restrictive laws on NGO registration and funding have been adopted. Many human rights defenders have been subject to judicial, administrative or tax harassment, smear campaigns and criminal investigations launched on dubious charges, often related to alleged terrorist activities or purportedly concerning national security. Some have been threatened, physically attacked or arbitrarily arrested, detained or imprisoned. Others have even been assassinated. As a result, the space for human rights defenders' action is becoming more and more restricted, exposing them to ever greater risks.

and it condemned

these developments and reaffirms its support for the work of human rights defenders, who often put at risk their security and life for the promotion and protection of the rights of others, including the most vulnerable and oppressed groups (migrants, refugees and members of minorities – national, religious or sexual), or in order to combat impunity of State officials and corruption. It particularly deplores the fact that some of the most serious attacks on human rights defenders, including murders, abductions and torture, have still not been effectively investigated.

26. It thus called upon member States to:

5.1. respect the human rights and fundamental freedoms of human rights defenders, including their right to liberty and security, a fair trial and their freedom of expression, assembly and association;

5.2. refrain from any acts of intimidation or reprisal against human rights defenders and protect them against attacks or harassment by non-State actors;

5.3. ensure that human rights defenders have access to effective domestic remedies with respect to violations of their rights, especially those related to their work;

¹⁶ CDL-AD(2019)002, 18 March 2019, para. 150.

¹⁷ Resolution 2225 (2018), 26 June 2018.

- 5.4. more actively propose friendly settlement under Article 39 of the European Convention on Human Rights (ETS No. 5) in cases of obvious violation, particularly of the rights of human rights defenders and of lawyers presenting applications before the European Court of Human Rights;
- 5.5. conduct effective investigations into all acts of intimidation or reprisal against human rights defenders, and especially cases of assassinations, physical attacks and threats;
- 5.6. ensure an enabling environment for the work of human rights defenders, in particular by reviewing legislation and bringing it into line with international human rights standards, refraining from organising smear campaigns against defenders and other civil society activists and firmly condemning such campaigns where organised by non-State actors;
- 5.7. encourage human rights defenders to participate in public life and ensure that they are consulted on draft legislation concerning human rights and fundamental freedoms, as well as that concerning the regulation of their activities;
- 5.8. refrain from arbitrary surveillance of human rights defenders online and other communications;
- 5.9. facilitate the granting of emergency visas, residence permits or asylum to human rights defenders who are at risk in their own countries and provide them with temporary refuge, if need be;
- 5.10. fully co-operate with the Council of Europe Commissioner for Human Rights in addressing individual cases of persecution and reprisals against human rights defenders;
- 5.11. evaluate the sufficiency, as measured by concrete results, of their efforts taken to protect human rights defenders since the adoption of the United Nations Declaration on Human Rights Defenders and the Committee of Ministers' Declaration on Council of Europe action to improve the protection of human rights defenders and promote their activities.¹⁸

Participation public affairs and in local public life

27. The Office of the United Nations High Commissioner for Human Rights has published *Guidelines for States on the effective implementation of the right to participate in public affairs*,¹⁹ which the Human Rights Council – in a resolution adopted by consensus²⁰ -

¹⁸ It also welcomed and encouraged “parliamentary initiatives such as that by the German Bundestag providing for individual parliamentarians to look after cases of threats, intimidation or persecution of human rights defenders”. In addition, in a Recommendation of the same name that was adopted on the same day (Recommendation 2133(2018)), it recommended that the Committee of Ministers: “1.1. continue its dialogue with human rights defenders, in particular by holding regular exchanges of views with them, in the framework of the work of its subordinate bodies; 1.2. support the work of the Council of Europe Commissioner for Human Rights in the field of protecting human rights defenders, including by ensuring that sufficient financial and human resources are available to this institution; 1.3. establish a platform, similar to the Platform to promote the protection of journalism and the safety of journalists, for the protection of human rights defenders, or another mechanism for monitoring and reacting to cases of reprisals against human rights defenders in Council of Europe member States, as also called for in Recommendation 2121 (2018) on the case for drafting a European convention on the profession of lawyer; 1.4. request information from the Secretary General of the Council of Europe on the implementation to date of his proposal to establish a mechanism for regularly reporting on and reacting to cases of intimidation of human rights defenders co-operating with Council of Europe bodies, and share this information with the Assembly; 1.5. streamline its work in this area through better co-ordination with the Council of Europe Commissioner for Human Rights, the Conference of International Non-Governmental Organisations, the Secretary General, the Registry of the European Court of Human Rights and the Assembly; 1.6. adopt without delay the draft declaration of the Committee of Ministers on the need to strengthen the protection and promotion of the civil society space in Europe, as prepared by the Steering Committee for Human Rights (CDDH); 1.7. organise a high-level seminar to mark the 10th anniversary of the Committee of Ministers Declaration on Council of Europe action to improve the protection of human rights defenders and promote their activities and the 20th anniversary of the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms of 9 December 1998, as recommended by the CDDH; 1.8. strengthen its co-operation on the protection of human rights defenders with other international organisations, in particular the European Union, the Organization for Security and Co-operation in Europe (OSCE) and the United Nations”.

¹⁹ https://www.ohchr.org/Documents/Issues/PublicAffairs/GuidelinesRightParticipatePublicAffairs_web.pdf.

²⁰ Resolution 39/11, October 2018.

had taken note of with interest and had presented them as a set of orientations for States and other relevant stakeholders.

28. The guidelines refer to a number of basic principles that should guide the effective implementation of the right to participate in public affairs. Of particular note from the perspective of non-governmental organisations is the inclusion in them of recommendations relating to:

- the importance of States ensuring that right to freedom of association, together with rights to freedom of opinion and expression, including the right of access to information, and the rights to freedom of peaceful assembly are protected and implemented in national legal frameworks;
- the need for legitimate and vital role of civil society actors regarding participation in public affairs to be recognized, with the independence and pluralism of such actors being respected, protected and supported, and States not imposing undue restrictions on their ability to access funding from domestic, foreign or international sources;
- the need for civil society actors choosing to participate in regional and international meetings being safe and not subject to acts of reprisal;
- the need for the participation of civil society actors in meetings of international organizations, mechanisms and other forums, at all relevant stages of a decision-making process, being allowed and proactively encouraged;
- the need for States to end all acts of intimidation and reprisals against civil society actors engaging or seeking to engage with international forums, and/or participating in any related event, with all such acts being investigated, effective remedies being provided and preventive measures to prevent their recurrence being implemented.

29. The issue of participation at the local level was specifically addressed in Recommendation CM/Rec(2018)4 of the Committee of Ministers to member States on the participation of citizens in local public life.²¹ Amongst the basic principles of a local democratic participation policy included in the Appendix to the Recommendation was the need to

recognise and enhance the role played by associations and groups of citizens as key partners in developing and sustaining a culture of participation and as a driving force in the practical application of democratic participation.²²

30. Furthermore, amongst the steps and measures to encourage participation of citizens in local decision-making and in the management of local affairs was the need to:

encourage and duly recognise the spirit of volunteering that exists in many local communities, for example through grant schemes or other forms of support and encouragement for non-profit, voluntary and community organisations, citizens' action groups, etc., or through the forging of contracts or agreements between these organisations and local authorities concerning the respective rights, roles and expectations of these parties in their dealings with one another.²³

²¹ Adopted by the Committee of Ministers on 21 March 2018 at the 1311th meeting of the Ministers' Deputies.

²² Paragraph A.12.

²³ B.III.8.

Refugees

31. The contribution that could be made by youth organisations was particularly recognised Recommendation CM/Rec(2019)4 of the Committee of Ministers to member States on supporting young refugees in transition to adulthood.²⁴
32. Thus, amongst its many recommendations were the following:
 35. Member States are encouraged to support youth organisations and youth work offering non-formal education/learning opportunities for young refugees in transition to adulthood, through the funding of programmes and projects and the creation of specific and relevant training opportunities for youth workers, including peer learning and the exchange of practices.
 36. Youth organisations and youth work should be supported and encouraged to deliver appropriate leisure and recreational activities for young refugees in transition to adulthood which support their growth, development, mental well-being and integration into society.
 42. Member States should work together with relevant youth organisations, youth work providers, local authorities and other institutions involved with young people and non-formal education/learning to exchange good practice examples of youth work and non-formal education/learning targeted at young refugees in transition to adulthood.
 44. Member States and other youth work and youth policy stakeholders should help build, according to national legislation and practice, the capacity of young refugees in transition to adulthood by providing spaces where they can organise and express themselves, interact with young people of the hosting country and participate in a meaningful way, including by supporting the establishment of organisations led by them.

Reporting and disclosure requirements

33. The relevant international standards were reviewed in a study by the Expert Council.²⁵
34. Although the applicable international instruments and case law did not specifically address all the issues surrounding the legitimate scope of NGOs reporting and disclosure obligations, they did establish certain key principles regarding them.
35. These related particularly to the level of detail required, the burden resulting from the accumulation of requirements, the way in which NGOs reporting and disclosure obligations are portrayed by public authorities and the importance of the presumption in favour of the lawfulness of the objectives and activities of NGOs.
36. In addition, where terrorism and money laundering were the grounds for imposing reporting and disclosure obligations on NGOs, the relevant measures would be deemed legitimate only if they were targeted and proportionate, and in line with a risk-based, case by case and flexible approach.
37. In addition, transparency and accountability *per se* were not legitimate grounds for interference with freedom of association but could only be invoked as a means to attain the legitimate goals set out in Article 11(2) of the European Convention on Human Rights (“the European Convention”).

²⁴ Adopted by the Committee of Ministers on 24 April 2019 at the 1344th meeting of the Ministers' Deputies.

²⁵ CONF/EXP(2018)3, 27 November 2018.

38. Moreover, NGOs should be put on equal footing with private businesses with respect to their reporting and disclosure obligations, insofar as the reporting and disclosure obligations of the latter were not themselves excessive
39. Furthermore, any duty to disclose private data of persons affiliated with the organisation (such as donors, members, members of the board, volunteers) would need to meet the requirement for legitimacy and proportionality.
40. Finally, it was incumbent on a Member State to ensure that the frequency and mandatory content of those requirements as well as sanctions levied for the breach of those duties meet international standards, including the exhaustive legitimate grounds for interference, necessity and proportionality

Sport

41. Member States of the Council of Europe were recommended, particular in order to strengthen the fight against corruption in sport particular in order to strengthen the fight against corruption in sport, in Recommendation CM/Rec(2018)12 of the Committee of Ministers to member States on the promotion of good governance in sport²⁶ to encourage sports organisations acting on their territory to:

- apply the principles of democracy in their decision-making and operations, and further strengthen their transparency, inclusiveness and democratic ways of functioning, as well as their accountability;
- develop and implement appropriate good governance measures within their own regulations and procedures;
- foster a good governance culture through educational initiatives;
- achieve a balanced representation in the diversity of their members – including gender equality – within their decision-making processes;
- co-operate with independent experts reviewing the good governance of sports organisations, where appropriate;
- publish the results of any self-assessment on good governance;
- establish external evaluations and audit policies, as appropriate;
- share information on corrupt practices with law-enforcement authorities.²⁷

Terrorism

42. In Recommendation CM/Rec (2018)6 of the Committee of Ministers to member States on terrorists acting alone, it was recommended that member States should consider involving, among others, academic civil society, religious leaders and community leaders in the preparation and distribution of narratives and messages countering terrorist propaganda.
43. This Recommendation further emphasised the role of civil society in certain, more specific points:

- 26. Recognising that preventing terrorism requires the participation of society as a whole, member States are encouraged to engage with civil society actors with a view to building trust and forging

²⁶Adopted by the Committee of Ministers on 12 December 2018 at the 1332nd meeting of the Ministers' Deputies.

²⁷ Para. 7.

co-operation in preventing the radicalisation of individuals leading to terrorism and, where relevant, establishing disengagement, de-radicalisation and social reintegration programmes.

27. Where appropriate, member States are encouraged to identify and develop arrangements with civil society and the private sector, in particular with internet service providers and communication technology companies, for the purpose of preventing radicalisation leading to terrorism through the internet and facilitating the early detection of terrorists acting alone

The role of civil society in countering radicalisation leading individuals to terrorism

28. Member States should, as appropriate, engage with relevant civil society actors to identify local pull-and-push factors in radicalisation leading individuals to terrorism, with a view to designing programmes to prevent and pre-empt such processes of radicalisation.

29. Member States should ensure that such programmes include early warning mechanisms for the timely detection of signs of radicalisation leading to terrorism, the devising of effective and tailored narratives and messages countering terrorist propaganda, and the provision of suitable activities promoting a sense of belonging to society at large, in particular as regards individuals at risk of radicalisation leading to terrorism.

Consolidated opinions and practice

44. The European Commission for Democracy through Law (“the Venice Commission”) and the Expert Council have respectively produced an updated Compilation of Opinions concerning Freedom of Association²⁸ and a first Compendium of Opinions²⁹.

45. The Expert Council has also produced Compendium of Council of Europe Practice relating to the Right to Freedom of Association and the Position of Non-governmental Organisations.³⁰

C. MECHANISMS

46. A number of the mechanisms concerned with the implementation of human rights commitments have addressed issues relating to the exercise of the right to freedom of association and the work of non-governmental organisations. These issues have been concerned with civil society space, human rights defenders and sustainable development, as well as many different ones arising in a wide range of countries.

Civil society space

47. In his first thematic report, the new Special Rapporteur on the rights to freedom of peaceful assembly and of association – Clément Nyaletsossi Voule -drew attention to the following global trends identified in the different regions with regard to the exercise of the rights to freedom of peaceful assembly and of association:

(a) the use of legislation to suppress the legitimate exercise of freedom of peaceful assembly and of association; (b) the criminalization of, and indiscriminate and excessive use of force to counter or repress, peaceful protest; (c) the repression of social movements; (d) the stigmatization of, and attacks against, civil society actors; (e) restrictions targeting particular groups; (f) limitations on

²⁸ CDL-PI(2019)007, 3 December 2019.

²⁹ CONF/EXP(2018)4, December 2018.

³⁰ CONF/EXP(2018)2, 30 June 2018.

rights during electoral periods; (g) the negative impact of rising populism and extremism; and (h) obstructions encountered in the digital space.³¹

48. This issue was one which the Special Rapporteur returned to in his annual report for 2019, in which he addressed the interlinkages between closing civil society space, poverty, national policy and the exercise of the rights to freedom of peaceful assembly and of association.³²
49. In this report, the Special Rapporteur reiterated that the exercise of the rights to freedom of peaceful assembly and of association helped to create, strengthen and expand an enabling environment, at the national and international levels, through which all actors, including civil society, can contribute meaningfully to achieving development goals by participating and expressing their views and shaping policies. He stressed that the unobstructed exercise of these rights was crucial for the implementation of development and poverty eradication efforts because they empowered people to articulate their voices and to organize around shared interests. In particular, he considered that these rights provide people living in poverty with opportunities to be agents of the development of their communities. In his view, they enabled them to participate in the design, implementation and monitoring of poverty interventions and other policies, programmes and interventions that affect their lives, and to hold duty bearers accountable.
50. The Special Rapporteur thus concluded:
- that development actors should not neglect the threat that the closing of civic space poses to the effectiveness of their policies and programmes. In particular, the development community cannot limit its attention to the lack of material resources and access to services of those living in poverty and most marginalized, while ignoring the fact that these groups are unable to organize to protect and claim their rights. This is all the more important as poverty has become more entrenched and economic inequality continues to increase around the world, causing discontent and furthering exclusion, in direct contradiction of the 2030 Agenda.
51. Moreover, the Secretary General of the Council of Europe has emphasised the need to reject and reverse the trend toward virulent government-led campaigns against selected associations, human rights defenders or civil society leaders that at times amplify the adverse effects of oppressive legislative provisions.³³
52. While drawing attention to the fact that some member States had increased their engagement with civil society – notably through experimenting with innovative participatory governance and policy making, especially at local level, and given increased recognition to the social, economic and educational value of civil society engagement and activism – the Secretary General underlined that the ability of NGOs to communicate with the public, especially those that aim to hold governments accountable, continued to be impeded by varying degrees.³⁴

³¹ A/HRC/38/34, 26 July 2018.

³² A/74/349, 11 September 2019.

³³ *State of Democracy, Human Rights and Rule of Law Role of institutions Threats to institutions*, SG(2018), at p. 47.

³⁴ *Ready for Future Challenges – Reinforcing the Council of Europe*, SG(2019)1, at p. 18.

53. In addition, he noted that the trend of a shrinking civic space was troubling, not only for civil society actors, but for democratic security and stated that it was essential that member states took measures to guarantee the unimpeded exercise of freedom of association.
54. In order to comply with their human rights obligations and ensure an enabling environment for civil society participation in development and poverty eradication programmes, the Special Rapporteur on the rights to freedom of peaceful assembly and of association recommended that States:

- (a) Ensure that enabling legal, political, economic and social environments exist for civil society to operate freely, including by ensuring that the rights to freedom of peaceful assembly and of association and other human rights are enjoyed by everyone, without discrimination;
- (b) Recognize that civil society is essential for implementing development and poverty eradication strategies as a key component of efforts to leave no one behind, and institutionalize their participation at the national, regional and international levels, including organizations working with and advocating for people living in poverty. In particular, they should recognize civil society's contribution to enhancing the legitimacy of the State's performance. Scrutiny of official data can increase public and donor trust in a Government, while scrutiny of government policies and programmes can help to ensure that "no one is left behind", thereby contributing to a more peaceful society;
- (c) Recognize the right of individuals living in poverty to organize and participate in the design, implementation and evaluation of any policy, programme or strategy that affects their rights, at the local, national and international levels, in accordance with the United Nations guiding principles on extreme poverty and human rights. This should include the duty of policymakers and public officials working on poverty eradication issues to actively seek and support the meaningful participation of people living in poverty and civil society working with and advocating for them;
- (d) Review legislation and practices to ensure that any restrictions on the rights to freedom of peaceful assembly and of association are prescribed by law, necessary in a democratic society and proportional to the aim pursued. Any restrictions should be subject to an independent, impartial and prompt judicial review;
- (e) Refrain from any unwarranted restriction to civic space, as this has a negative impact on the reduction of poverty, social cohesion, inequality and governance, and generates an environment in which there is a heightened risk of social conflict, including violence;
- (f) Protect civil society organizations and community leaders that seek to engage in development and poverty eradication efforts from retaliation or interference by State agents or non-State actors. All allegations of such reprisals must be promptly, thoroughly and independently investigated. Access to effective remedies and reparation should be guaranteed to victims and their families;
- (g) Lift restrictions that prevent national and international civil society groups from gaining access to the financial and human resources that they need to carry out their work;
- (h) Grant financial and logistical assistance to civil society groups based in poor and rural areas, including long-term funding for capacity-building to community-based organizations, to facilitate their participation in development and poverty eradication efforts;
- (i) Repeal laws that require individuals to obtain prior authorization to hold an assembly. Where a system of prior notification is in place, there is a presumption in favour of assemblies, and States must ensure that those participating in non-notified assemblies should not be arrested, detained or fined solely for their participation in such an assembly;
- (j) Abolish the criminalization of peaceful protests or other activities of civil society aimed at denouncing and reducing inequality, discrimination and corruption and at promoting good governance, accountability and human rights, including for people living in poverty and marginalized groups. In particular, repeal laws that criminalize road blocking and spontaneous assemblies;
- (k) Ensure that administrative and law enforcement officials are adequately trained in relation to respect for the rights of individuals belonging to groups living in poverty and marginalized groups to freedom of peaceful assembly and of association, in particular in relation to their specific protection needs;
- (l) Ensure that law enforcement authorities who violate the rights of people living in poverty and marginalized groups to freedom of peaceful assembly and of association are held personally and

fully accountable for such violations by an independent and democratic oversight body and by the courts of law and that their victims have the right to a timely and effective remedy and to obtain redress.

55. The particular impact that measures and practices used to counter terrorism and to prevent and counter extremism have had on the rights of civil society actors and human rights defender was the subject of a report by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.³⁵
56. The report found that, since 2001, civil society space had been shrinking around the globe and that this was indisputably linked to the expansion of security measures. It gave an empirically based assessment of the scale of misuse of such measures and identified trends and patterns in State practice.
57. The problems were seen as stemming from: overly broad definitions of terrorism; legislation criminalizing the legitimate exercise of fundamental freedom; legislation strictly regulating the existence of civil society; measures that limit various forms of support for terrorism; indiscriminate legislation choking civil society; increased use of administrative measures; devolution of regulation to private actors; overlapping, cumulative and sustained forms of harassment; media campaigns; physical harassment; judicial harassment³⁶; and group persecution.
58. The effect of this was seen as leading to: a chilling effect on action by civil society; its stigmatization and financial marginalisation; its co-option into discriminatory government agendas; the drawing of humanitarian actors into a security-driven political agenda; the silencing of criticism and opposition in international forums; and a complete lack of accountability for global violations that are occurring.
59. With a view to ensuring that efforts to counter terrorism, to prevent and counter violent extremism and to protect national security are not abused to close civic spaces, the

³⁵ A/HRC/40/52, 1 March 2019.

³⁶ I.e., the increasing use of spurious criminal proceedings under security legislation against civil society.

report made extensive recommendations to the United Nations³⁷, States³⁸ and civil society³⁹.

³⁷ “73. The United Nations, particularly the Security Council, the Counter-Terrorism Committee and its Executive Directorate, the Office of Counter-Terrorism and the Counter-Terrorism Implementation Task Force, as well as the General Assembly and the Human Rights Council, must genuinely, proactively, meaningfully and constructively engage with a broad representation of local and international, diverse and independent civil society actors on counter-terrorism and the prevention and countering of violent extremism. In particular: (a) Civil society’s input must be sought in developing all resolutions on counter-terrorism and prevention and countering of violent extremism to offer views and assess strategy and to provide information on the possible adverse impact of proposed measures on civil society; (b) The Counter-Terrorism Committee and its Executive Directorate should meet formally and regularly with civil society actors on substantive and country issues, and the Security Council should consider regular briefings by civil society on thematic items and on geographic agenda items; (c) Given the close working relationship between civil society and United Nations human rights mechanisms, formal and transparent cooperation between United Nations counter-terrorism bodies and human rights mechanisms must be enhanced. This mandate holder and other relevant special procedure mandate holders should be formally invited on a regular basis to brief the Counter-Terrorism Committee and its Executive Directorate. The General Assembly should convene an open yearly debate on the fourth pillar of the United Nations Global Counter in which civil society is fully and meaningfully included; (d) Representation within the envisaged civil society unit of the Office of Counter-Terrorism must be inclusive, legitimate, diverse and independent and the unit must be given meaningful capacity to offer views on policy and strategy and to deepen the information and data available to, and share experiences with, the Office. Best practices from the Human Rights Council and the Human Rights Committee should be emulated; (e) The United Nations must lead the way in ensuring that it remains a safe, secure and inclusive space for civil society. Care must be taken that international procedures, including accreditation processes for civil society, are not instrumentalized by unchecked, overly broad national counter-terrorism and security claims; (f) The Security Council should unambiguously exempt humanitarian action from its counter-terrorism measures and expressly clarify that humanitarian protection and assistance must never be conceptualized as support for terrorism or suppressed and criminalized on that basis; (g) Office of Counter-Terrorism and United Nations Global Counter-Terrorism Coordination Compact entities should ensure, prior to any formal cooperation with outsource entities, that they fully comply with human rights norms and standards; 74. United Nations counter-terrorism bodies must be accountable for the human rights implications of the international counter-terrorism framework. The Counter-Terrorism Committee and its Executive Directorate must engage more proactively with Governments on the way in which national implementing measures may breach international human rights law, particularly measures that affect civil society, including the definition of terrorism and the criminalization of legitimate expression and opinion. The Committee and its Executive Directorate must refuse any visit where human rights issues are off the agenda, where they cannot bring a human rights expert or where they cannot meet local civil society act”.

³⁸ “75. States must ensure that their measures to address the threats of terrorism, violent extremism and protect national security do not negatively affect civil society. In particular: (a) Definitions of terrorism and of violent extremism in national laws must not be overly broad and vague. They must be precise and sufficiently narrow to not include members of civil society or non-violent acts carried out in the exercise of fundamental freedoms. Emergency measures must be strictly limited and not used to crack down on civil society actors; (b) Legitimate expression of opinions or thought must never be criminalized. Non-violent forms of dissent are at the core of freedom of expression. Reporting on, documenting or publishing information about terrorist acts or counter-terrorism measures are essential aspects of transparency and accountability. The key role of the Internet, particularly within repressive societies or for marginalized groups, must be recognized and protected; (c) Damage to property, absent other qualifications, must not be construed as terrorism; (d) Measures aimed at regulating the existence of, controlling and limiting the funding of civil society must comply with requirements of proportionality, necessity and non-discrimination. Failure to comply with administrative requirements must never be criminalized; (e) Regulatory measures relating to terrorism financing and removal of “terrorist content” must comply with principles of legality, proportionality, necessity and non-discrimination and be subject to adequate oversight and accountability mechanisms. They should not be left solely to private actor enforcement; (f) Humanitarian actors should be protected from any forms of harassment, sanctions or punishment resulting from measures to counter terrorism or violent extremism. Humanitarian action must be clearly exempt from measures criminalizing various forms of support for terrorism. States should consider broadening these exemptions to all civil society actors involved in supporting respect for international norms; (g) Judicial access and remedies must be available to all civil society actors affected by terrorism sanctions regimes; (h) All national and institutional actors involved in countering terrorism and preventing and countering violent extremism must be conscious of the indirect impact that overlapping, sustained and cumulative measures have on civil society, notably in creating a chilling effect that will affect all actors even without direct targeting. Particular care must be taken to avoid the

60. As the Special Rapporteur made clear, targeting civil society violates human rights and makes for inept and poorly executed counter-terrorism practice.
61. The legal and practical restrictions faced by civil society organisations in playing a crucial role in promoting fundamental rights within the European Union was the subject of a report published in 2018 by the European Union Agency for Fundamental Rights.⁴⁰
62. The report focused on challenges relating to the regulatory environment, finance and funding, participation, the existence of a safe space and a space for exchange and dialogue.
63. The Agency set out the following opinions based on its analysis of the situation within the European Union:
 - Member States and the EU should pay increased attention when drafting and implementing legislation in areas which potentially (directly or indirectly) affect civil society space, including freedom of expression, assembly and association, to ensure that their legislation does not place disproportionate requirements on civil society organisations and does not have a discriminatory impact on them, thereby diminishing civil society space. In so doing, they should fully respect applicable EU and relevant international treaty law;
 - The EU and Member States should ensure that lobbying regulations and transparency laws and their application comply with applicable EU and international law and do not disproportionately restrict or hinder human rights advocacy – including during election periods, such as for European Parliament elections;
 - EU institutions and Member States are encouraged to ensure that funding is made available for CSOs working on the protection and promotion of the EU’s foundational values of fundamental rights, democracy and the rule of law; including for small grassroots organisations. Such funding should cover, as appropriate, the variety of activities of CSOs such as service provision, watchdog activities, advocacy, litigation, campaigning, human rights and civic education and awareness raising. As part of the free movement of capital, CSOs should be free to solicit, receive and utilise funding not only from public bodies in their own state but also from institutional or individual donors, and public authorities and foundations in other states or from international organisations, bodies or agencies;
 - Member States and EU institutions should make sure that organisations that represent persons with disabilities are provided with funding, including for personal assistance, reasonable adjustments and support, to enable them to fulfil their role under the Convention on the Rights of Persons with Disabilities (CRPD);
 - The European Commission should further improve the availability of information regarding existing funding schemes by ensuring easy onestop-shop overviews of funding made available to CSOs that work in the field of fundamental rights; by promoting its one-stop-shop portal on funding possibilities; and by expanding its database on projects funded in different areas to highlight particularly successful and impactful projects. The European Commission should consider adopting guidance for Member States clarifying the applicability of the four ‘fundamental freedoms’ under the EU common market regime to CSOs, including foundations and philanthropic organisations;

stigmatization, marginalization, co-optation and exclusion of civil society, as well as securitization; (i) Oversight mechanisms at the national and international levels need to be developed and strengthened to remedy the global human rights violations resulting from the development of deeply flawed matrices adopted in the name of countering terrorism, violent extremism and threats to national security”.

³⁹ “76. Civil society must find creative ways to raise awareness to the global crisis it faces resulting from global security frameworks. In particular: (a) It must deepen its engagement with the global counter-terrorism architecture, including United Nations agencies and bodies traditionally seen as dealing with security-related issues, as well as with new outsource entities, including the Financial Action Task Force and the Global Counterterrorism Forum; (b) It must innovate to find entry points at the national level for oversight and accountability purposes; (c) It should continue to report on, analyse and raise awareness of the impact of these measures in a systematic and open manner”.

⁴⁰ *Challenges facing civil society organisations working on human rights in the EU.*

- The European Commission and Member States should consider favouring multi-annual and core funding over short-term project-based funding, which would allow for a more sustainable basis for the work of CSOs as well as long-term planning. For the sake of more effective application procedures, two-step procedures could be used more frequently, where initial applications are short, and only preselected projects from the first round are required to deliver a full application file. Audit and reporting requirements placed on CSOs and other associations should be proportionate to public funding made available and to the size and structure of the receiving organisation. In the context of co-funding, the requirements should be proportionate and take better account of the scope of projects and the type of organisations applying;
- EU institutions and Member States should uphold their obligations under Article 4(3) of the CRPD to consult closely with and involve persons with disabilities and their representative organisations in all decisions that are relevant to them. Participation of persons with disabilities in public and political life should be encouraged in line with Article 29(b) of the CRPD. More generally, EU institutions and Member States should maintain an open, transparent and regular dialogue with CSOs active in the area of human rights to guarantee that EU legislation and EU policies as well as national legislation and policies implementing the latter are in line with the EU Charter of Fundamental Rights. Where relevant rules in support of CSOs' active participation in human rights are already in place, authorities should ensure that these are implemented in practice. This involves making available adequate human and financial resources to allow for proper participation processes, and providing public servants with training on, and sufficient time for, engaging such organisations. Tools and methods used by public authorities for implementing participation could be diversified and improved. Full use should be made of the newly adopted Council of Europe 'Guidelines for meaningful civil participation in political decision-making';
- Member States should refrain from the stigmatisation of human rights CSOs and their members. Moreover, they should actively condemn any crimes – including hate crimes – committed against CSOs and their members and fully implement their positive obligations under international law and applicable EU law to protect CSOs and their members. Data on hate crimes against human rights CSOs should be collected and published; and
- The EU should consider supporting the establishment of an appropriate space for exchange and dialogue to promote the support of civil society actors engaged in the protection and promotion of fundamental rights in the EU. This would also allow for an enhanced regular dialogue between civil society organisations and the EU institutions

Criminalisation of activities

64. Inevitably linked to the shrinking space for civil society has been the criminalisation of activities undertaken by non-governmental organisations. This was the subject of a study prepared by the Expert Council, which focused on this response to the work of these organisations carrying out humanitarian assistance and related work in support of refugees and other migrants in Council of Europe member States.⁴¹

65. The study found that:

the laws criminalising NGO activity and the enforcement of such laws impact significantly on legitimate NGO activity, negatively affecting freedom of association and related human rights. The laws themselves are vague and the way in which they have been applied lack legal certainty. While they pursue the legitimate aim of countering migrant smuggling, the limitations placed on lawful NGO activities are not necessary or proportionate. Thus, even though freedom of association is not an absolute right, the criminalisation of NGOs humanitarian activities in support of refugees and other migrants in order to prevent migrant smuggling is not a legitimate, necessary or proportionate basis for tackling this ill. There are more effective and less intrusive routes to achieve the aim.⁴²

⁴¹ *Using Criminal Law to Restrict the Work of NGOs Supporting Refugees and Other Migrants in Council of Europe member States*, CONF/EXP(2019)1, December 2019.

⁴² *Ibid.*, para. 115.

66. In addition, it concluded that:

iii) The use of the word “illegal” when referring to migrants negatively impacts the general public’s perception of migrants, legitimising policies that are not in line with human rights guarantees and contributing to xenophobia and discrimination. It also contributes to public backlashes, threats and violence against NGOs supporting refugees and other migrants.

iv) In many states, criminal acts perpetrated against NGOs supporting refugees and other migrants have not been adequately investigated or prosecuted.

v) Criminalisation has led to greater policing of NGO activities, and a more cumbersome regulatory context.⁴³

Human rights defenders

67. The issues dealt with in relation to human rights defenders have concerned their situation in general, as well as those dealing with the environment, people on the move and both those human rights defenders who are women and those operating in conflict and post-conflict situations.

68. In a report to the United Nations General Assembly⁴⁴, the Special Rapporteur on the situation of human rights defenders presents an overview of the 2018 global survey of the situation of human rights defenders in more than 140 countries and territories in order to mark the twentieth anniversary of the Declaration on Human Rights Defenders.

69. The survey revealed three key trends and issues: the evolution of the use of the term “human rights defenders”, the development of mechanisms and practices to support them and the relevance of legal and administrative frameworks for their protection. The survey also highlighted the role played by various stakeholders vis-à-vis human rights defenders, in particular, regional organisations, businesses and the United Nations system.

70. In its conclusion, the Special Rapporteur observed that:

70. A renewed commitment to the Declaration on Human Rights Defenders presents the best pathway towards the realization of the human rights and freedoms enshrined in the Declaration. The struggles of human rights defenders are not without hope. In the spirit of the diverse, transnational and intergenerational social movement that is the human rights defender community, it is apt to close with a saying adopted by various groups in their struggle, from youth and student human rights defenders in Mexico to sexual orientation and gender identity activists in Greece: “Nos enterraron sin saber que también somos semillas.” (They buried us not knowing that we are also seeds.).

71. In a second report to the General Assembly⁴⁵, the Special Rapporteur discussed the persisting impunity for human rights violations committed against human rights defenders and the challenges that exist in combating it. He outlined a regulatory framework on the right to access to justice, including due diligence in investigations. He also elaborated on the de facto and legal barriers to access to justice.

⁴³ *Ibid.*, para. 131.

⁴⁴ A/73/215, 25 October 2018.

⁴⁵ A/74/159, 15 July 2019.

72. The report offers essential guidelines for ensuring due diligence in the investigation of such violations and describes good practices implemented by States and civil society are described. The report contains recommendations addressed to all relevant parties on how to combat impunity effectively.⁴⁶

⁴⁶ Thus, “147. The Special Rapporteur recommends that States: (a) Incorporate into their domestic legislation the rights and obligations set out in the Declaration on Human Rights Defenders, after consultation with the various groups of human rights defenders; (b) Strengthen the independence of investigative and judicial bodies; establish legal safeguards against undue internal or external interference; (c) Eliminate de facto and de jure barriers that impede access to public information and to justice, taking into account the diversity of human rights defenders; (d) Adopt public policies to protect the right to defend human rights in safe environments, which recognize diversity (women; boys and girls; lesbian, gay, bisexual, transgender and intersex persons; indigenous persons; persons of African descent; rural dwellers; and persons with disabilities) and the obstacles that different groups face, including impunity. Such policies should include mechanisms for periodic evaluation and be developed with the participation of beneficiary populations and experts; they should also be allocated adequate resources; (e) Assess the effectiveness of and strengthen national mechanisms for the protection of human rights defenders, in order to integrate them into comprehensive public policies and facilitate the establishment of open channels for coordination with investigative bodies; (f) Criminalize acts of violence against human rights defenders appropriately, and impose consequences commensurate with their gravity (whether criminal, civil, administrative or disciplinary in nature). Include effective mechanisms for access to comprehensive reparations; (g) Establish investigation policies that include the principles, guidelines and good practices described in this report. They should be flexible and contain mechanisms for regular evaluation. There should be a particular emphasis on identifying the intellectual authors; (h) Establish specialized bodies composed of independent, qualified professionals with training in and awareness of the defence of human rights, which use a differentiated approach and possess sufficient (material and human) resources for their operation; (i) Establish ad hoc investigative mechanisms that include international actors when there are indications of the involvement of State agents or there is reasonable doubt regarding the independence of bodies, for emblematic cases or cases of systematic violence against human rights defenders; (j) Enact the legal reforms required to ensure that victims, family members and representative organizations can participate at all stages of the investigation process; (k) Establish or strengthen mechanisms for the protection of witnesses and justice system personnel, taking into account the differentiated approach; (l) Record human rights violations committed against human rights defenders in a disaggregated manner, taking into account their specific characteristics and including actions taken by the State to ensure justice and the results achieved; (m) As noted in a report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (A/HRC/41/35), independent mechanisms should be established to monitor and investigate the use of digital technologies for surveillance, to ensure that any such use is consistent with the principles of legality, necessity and legitimacy of objectives; (n) Prevent the involvement of the armed forces in public security tasks or control of social protests; (o) Establish independent and effective mechanisms for the supervision of all public security forces; (p) Protect the right to consultation of indigenous peoples and communities affected by extractive or other projects. 148. The Special Rapporteur recommends that national human rights institutions: (a) Establish protection of the right to defend human rights and protection of human rights defenders as a major focus of strategic plans; (b) Generate disaggregated records of violations committed against human rights defenders and follow up on those cases, within their areas of competence; (c) Monitor and take note of instances of violence against human rights defenders. 149. The Special Rapporteur recommends that enterprises: (a) Integrate the Guiding Principles on Business and Human Rights and the guidelines set out in a recent report of the United Nations High Commissioner for Human Rights on the topic (A/HRC/32/19) into their practices and internal regulations; (b) Exercise due diligence to ensure respect for the human rights of human rights defenders throughout the entire production chain. Companies that sell surveillance technology should refrain from doing so if there are indications that it is being used in ways that violate human rights. Companies that employ private security personnel must provide the necessary training so that their staff understand the role of human rights defenders. 150. The Special Rapporteur recommends that the United Nations system and regional bodies for the protection of human rights: (a) Declare an international day against impunity for violations of the rights of human rights defenders; (b) Promote the adoption of an international protocol for the investigation, with due diligence and a differentiated approach, of threats made against human rights defenders; (c) Instruct the United Nations specialized agencies to provide technical support to States in the development of legislation to prevent and eradicate impunity for cases of violence against human rights defenders; (d) Establish ad hoc follow-up mechanisms for emblematic cases and for situations of systematic violence against human rights defenders; (e) Ensure that acts of intimidation and retaliation against human rights defenders who cooperate with the United Nations or with other international bodies are categorically condemned, lead to diplomatic consequences and are taken into account when recruiting for official positions in such international bodies; (f) Strengthen strategies for

73. The Human Rights Council has adopted a Resolution in which it expressed *grave concern* at the situation of environmental human rights defenders around the world, and strongly condemned the killing of and all other human rights violations or abuses against environmental human rights defenders, including women and indigenous human rights defenders, by State and non-State actors, and stresses that such acts may violate international law and undermine sustainable development at the local, national, regional and international levels.⁴⁷
74. It stressed, in particular, that human rights defenders, including environmental human rights defenders, must be ensured a safe and enabling environment to undertake their work but also called upon States:
- (e) To provide a safe and empowering context for initiatives organized by young people and children to defend human rights relating to the environment;
 - (f) To promote a safe and enabling environment in which individuals, groups and organs of society, including those working on human rights and environmental issues, including biodiversity, can operate free from violence, threats, hindrance and insecurity;
75. Moreover, in addition to urging States to take all measures necessary to ensure the rights, protection and safety of all persons, including environmental human rights defenders, who exercise, inter alia, the rights to freedom of opinion, expression, peaceful assembly and association, online and offline, which are essential for the promotion and protection of human rights and the protection and conservation of the environment, the Resolution called upon them:
- to ensure that all legal provisions and their application affecting human rights defenders are clearly defined, determinable and non-retroactive in order to avoid potential abuse, to the detriment of fundamental freedoms and human rights, and specifically to ensure that the promotion and the protection of human rights are not criminalized, and that human rights defenders are not prevented from enjoying universal human rights owing to their work, whether they operate individually or in association with others.
76. In a report in 2018, the Special Rapporteur on the situation of human rights defenders, reviewed the overall situation of persons acting to defend the rights of all people on the move.⁴⁸ His aim was to draw attention to the difficult situation of those who act in solidarity with people on the move and who seek to promote and to strive for the protection of their rights.

follow-up to cases of violence against human rights defenders, focusing on the individual aspects of each case, and include impunity as a factor in the monitoring indicators for Sustainable Development Goal 16. 151. The Special Rapporteur recommends that multilateral financial institutions: Establish internal due diligence standards to prevent violence against human rights defenders in connection with any projects funded and, when applicable, establish objective mechanisms to penalize such practices and ensure access to reparations. 152. The Special Rapporteur recommends that civil society organizations and academic institutions: (a) Ascertain what de facto or de jure obstacles are impeding human rights defenders' access to justice and promote litigation and impact strategies (including observatories and reports) to eliminate those obstacles; (b) Monitor the extent of impunity and report on that subject to international mechanism; (c) Assess existing forms of protection and conduct research on the types of violence faced by human rights defenders (including the psychosocial impacts of impunity) and on the barriers that restrict their right to access to justice, and make recommendations; (d) Create inclusive spaces for reflecting and shedding light on the obstacles faced by human rights defenders and make recommendations".

⁴⁷ Resolution 40/11. *Recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development*, 21 March 2019.

⁴⁸ A/HRC/37/51, 16 January 2018.

77. The Special Rapporteur pointed out that:

Defenders of people on the move are also often less visible than other types of human rights defenders owing to a number of factors, including the location of their work and the fact that people on the move are themselves marginalized. Other identities or occupations that defenders have may prevent them from being seen as human rights defenders working with people on the move. They may see themselves as medical doctors or humanitarian workers, or as working within the refugee rights movement rather than as human rights defenders

and underlined that:

The challenges that defenders face cannot be separated from those confronting those whose rights they defend, not least because many of the latter are also the former. Just as people on the move too frequently face policies designed to create a hostile environment, so too do defenders acting in solidarity with and advocating for the rights of people on the move face a growing number of restrictions and controls.

These challenges dangerously reinforce each other, leading to a downward spiral of marginalization and the posing of ever greater obstacles to the effective exercise of their rights. Such restrictions and controls must be reconsidered in ongoing discussions on the rights of people on the move and sustainable approaches to migration. The role of human rights defenders advocating for the rights of people on the move must be a core element of renewed commitments to, and action plans and monitoring regimes for, people on the move.

78. The Special Rapporteur recommended that States:

- (a) Take all measures to protect the right to life, liberty and security of person of people on the move and those who defend their rights;
- (b) Recognize publicly the important role played by defenders of people on the move and the legitimacy of their work; and condemn publicly all instances of violence, discrimination, intimidation or reprisals against them, and emphasize that such practices can never be justified;
- (c) Enable people to promote and protect human rights regardless of their immigration status; in particular, people on the move and those who defend their rights should be able to exercise, inter alia, their right to freedom of information, freedom of expression, freedom of association and freedom of assembly;
- (d) Ensure that perpetrators of crimes against people on the move and those who defend their rights – including employers, law enforcement officials, traffickers, and criminal gangs – are held accountable for their actions and brought to justice;
- (e) In relation to the rescue of persons at sea specifically, observe legal provisions as contained, inter alia, in the International Convention for the Safety of Life at Sea, the International Convention on Maritime Search and Rescue, and the Convention on the Law of the Sea; ensure that people are not criminalized for rescuing people at sea, and that masters of vessels sailing under their flag observe rules regarding rescue at sea; and allow vessels in distress to seek haven in their waters, granting those on board at least temporary refuge;
- (f) Ensure that all human rights defenders in exile benefit from the prohibition of refoulement to persecution, as articulated in the Convention relating to the status of refugees and other international instruments and customary international law;
- (g) Ensure that national protection mechanisms for human rights defenders at risk are accessible to defenders of people on the move, including by increasing training of staff involved in protection about and outreach to defenders of people on the move;
- (h) Ensure that visa regimes and other policies and practices do not undermine temporary international relocation initiatives for human rights defenders, and more fully operationalize policies that provide for humanitarian visas for human rights defenders at risk;
- (i) Ensure that people on the move and those who defend their rights have access to justice and to effective remedies through national courts, tribunals and dispute-settlement mechanisms, regardless of their immigration status; ensure that they are not threatened with or subject to arrest, detention or deportation when reporting crimes, labour rights violations, and other forms of human rights violations; and ensure they have the necessary support for pursuing remedies through effective access to justice in national courts, tribunals and dispute-settlement mechanisms, with the support of unions (where applicable), interpreters and legal assistance;

(j) Ensure that national law and administrative provisions and their application facilitate the work of all actors providing humanitarian assistance to and defending the human rights of people on the move, including by avoiding any criminalization, stigmatization, impediment, obstruction or restriction thereof (including in assistance provided by local authorities, such as regional or municipal bodies) that is contrary to international human rights law

79. In a report on the situation of women human rights defenders, the Special Rapporteur on the situation of human rights defenders reviewed the situation of women human rights defenders, covering the period since 2011.⁴⁹
80. This report focused, in particular, on the additional gendered risks and obstacles women human rights defenders face and recognizes their important role in the promotion and protection of human rights. The Special Rapporteur referred to the relevant normative framework for the work of women human rights defenders, described the challenging environments in which they operate and analysed the impact of patriarchy and heteronormativity, gender ideology, fundamentalisms, militarization, globalization and neoliberal policies on the rights of such defenders.
81. The Special Rapporteur also referred to the situation of specific groups of women human rights defenders. The report contains recommendations and examples of good practices to support the building of diverse, inclusive and strong movements of women human rights defenders, and recommendations addressed to all stakeholders to ensure that women defenders are supported and strengthened to promote and protect human rights.
82. In particular, States were recommended to:
- (a) Protect the rights of women defenders, including by taking a public stand against all State and non-State actors who violate these rights, ceasing all attacks and threats against women defenders and investigating all that occur, ensuring that impunity does not prevail;
 - (b) Ensure that women defenders enjoy a safe and enabling environment to exercise their rights, considering their specific and diverse needs. This includes addressing systemic and structural discrimination and violence that women defenders experience and enacting laws that recognize and protect the rights of all human rights defenders, with a specific focus on the needs of women defenders;
 - (c) Ensure that non-State actors – including businesses, faith-based groups, the media and communities – meet their legal obligations to respect human rights. The Guiding Principles on Business and Human Rights are key for business enterprises;
 - (d) Prioritize the protection of women defenders in online spaces and adopt laws, policies and practices that protect their right to privacy and protect them from libel and hate speech;
 - (e) Dedicate part of their budget to strengthening the participation of women in human rights activities, ensuring that they are supported to respond meaningfully to issues in a sustainable manner;
 - (f) Refrain from interfering with funding provided to women for human rights work and ensure that legal and administrative frameworks do not restrict access to funding for human rights activism;
 - (g) Address barriers to the participation of women defenders in public life, including in regional and international human rights forums, such as travel bans, visa restrictions and their lack of identity or travel documents and resources;
 - (h) Assess protection practices for women defenders against the seven principles underpinning good protection practices and examine ways of strengthening those practices.

⁴⁹ A/HRC/40/60, 10 January 2019.

83. In his report on human rights defenders operating in conflict and post-conflict situations⁵⁰, the Special Rapporteur addressed their critical contribution in these settings, spelt out the applicable legal framework and the attached obligations, and considered current trends with respect to their protection and key rights for them to operate effectively.
84. The Special Rapporteur reviewed the initiatives of States and other stakeholders, and the United Nations response to date. He also highlighted the extreme risks to which defenders are exposed, the wide-ranging attempts to silence their work and the persistence of protection gaps and impunity, in spite of positive developments.
85. The Special Rapporteur called for compliance with the existing legal norms and standards, and suggested ways forward to protect and support defenders striving to operate in these contexts in recommendations addressed to States and de facto authorities⁵¹, national human rights institutions⁵², local, regional and international

⁵⁰ A/HRC/43/51, 30 December 2019.

⁵¹ These should: “(a) Uphold respect for human rights and international humanitarian law, including peremptory and customary norms, securing the protection and operations of defenders, including journalists, humanitarian workers, health and education professionals and those assisting internally displaced persons and refugees; (b) Become parties to international human rights and international humanitarian law instruments of direct relevance, such as the International Convention for the Protection of All Persons from Enforced Disappearance, and endorse and follow through on relevant initiatives; (c) Uphold respect for the right of defenders to communicate with international human rights mechanisms, including by inviting special procedure mandate holders to visit their countries and by granting them, OHCHR and ad hoc investigation mechanisms effective access to all parts of the territory under their jurisdiction or effective control; (d) Develop comprehensive gender- and age-sensitive legislation and policies protecting human rights defenders in line with the Declaration on Human Rights Defenders and the United Nations human rights treaty bodies and set up protection mechanisms accessible to defenders operating in conflict and post-conflict areas; (e) Create or strengthen national human rights institutions in conformity with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), securing their ability to deploy in conflict-affected areas and, where applicable, to investigate and address violations against defenders without undue limitations or restrictions; (f) Effectively disseminate the Declaration on Human Rights Defenders and ensure training of all State personnel deployed to conflict-affected areas, including military, police and other security personnel, as well as staff of both civil and military courts, where applicable; (g) Develop or support, with relevant civil society and professional organizations, psychological support and rehabilitation programmes for defenders affected by conflict-induced and work-related trauma, in line with existing guidance; (h) Uphold commitments in peace negotiations and peacebuilding processes, notably under the women, peace and security agenda, to ensure the participation of diverse civil society actors, including women, children and youth defenders; (i) Deepen the engagement by diplomatic missions with defenders operating in conflict and post-conflict areas and with official or de facto authorities whose actions or omissions affect the protection and operations of defenders; (j) Support and facilitate domestic, regional and international relocation initiatives and access thereto, including through flexible procedures and visa policies, ensure that these are equally accessible to defenders irrespective of their gender and take into account their family situation or other circumstances; (k) Strengthen the protection of foreign defenders relocated from conflict affected States and ensure their access to effective international protection procedures, their protection against refoulement and their access to complaints and protection mechanisms and to an effective remedy when still faced with threats or other violations of their rights”.

⁵² These should: “(a) Strengthen the protection of the right to promote and protect human rights as a key strategic priority, reach out to defenders outside the capital in conflict and post-conflict areas and provide protection and support as necessary; (b) Set up early warning mechanisms and focal points for the protection of defenders, and support the development of inclusive national and regional defenders’ networks; (c) Develop accessible, affordable and holistic protection programmes, including for physical and digital security and psychosocial support; (d) Undertake a systematic review of legislation, including exceptional legislative or executive provisions, assessing consistency with international standards, notably on freedom of association, peaceful assembly, freedom of expression and access to information of public interest”.

NGOs⁵³, donors and funding partners⁵⁴ and entities and mechanisms of the United Nations system⁵⁵.

86. In addition, the Special Rapporteur recommended that:

70. The International Criminal Court should systematize reporting on intimidation and reprisals and undertake a participatory assessment of potential protection gaps for defenders submitting information to or cooperating with the Court as intermediaries and of the practices of its various organs.

71. International and regional reconstruction and development banks should adopt due diligence standards and zero-tolerance policies, protocols and procedures to address intimidation and reprisals against defenders raising human rights concerns in relation to projects financed by them.

Sustainable development

87. The Special Rapporteur on the rights to freedom of peaceful assembly and of association published a report in which he addressed the linkages between the exercise of the rights to freedom of peaceful assembly and of association and the implementation of the 2030 Agenda for Sustainable Development.⁵⁶

⁵³ These should: “(a) reach out for support to the less prominent defenders active in conflict and post-conflict areas and in the context of humanitarian interventions, beyond visible human rights organizations and networks, and support leadership programmes, including for women defenders and defenders displaced as a result of conflict; (b) Ensure that partnerships with local and national defenders are equitable and designed in ways that recognize and mitigate the specific risks they face. This can entail conducting gender-sensitive risk assessments and developing security plans, security training and emergency response mechanisms and solutions, including relocation where appropriate”.

⁵⁴ These should: “(a) Ensure and maintain core support to defenders – individuals and organizations alike – whose operations can be affected by armed conflict or deliberate interferences and provide for budgets to cover protection measures, such as physical and digital security-related training and equipment, health and psychosocial wellbeing interventions, and legal advice and defence; (b) Ensure or maintain equal and steady support to human rights defenders active in areas affected by hostilities, in conflict-induced humanitarian crises and in post-conflict phases; (c) Support and facilitate meetings of defenders with international stakeholders, including relevant international NGOs, and opportunities for peer meetings and back the development of defenders’ networks. 68. The Secretary-General should develop a United Nations-wide strategy on human rights defenders in line with the Declaration on Human Rights Defenders and secure the engagement of the United Nations, in particular the special envoys, the representatives of the Secretary-General, United Nations departments, specialized agencies and programmes, with defenders in humanitarian aid, peacebuilding and post-conflict development interventions”.

⁵⁵ These should: “(a) Ensure that attention is systematically paid to defenders in situations under review by the Security Council and in the mandates of peace operations and consider systematically including those responsible for violating defenders’ rights in sanctions lists; (b) Ensure systematic focus on the situation of defenders in State reviews by treaty bodies, activities of special procedure mandate holders and ad hoc investigation mechanisms such as commissions of inquiry and fact-finding missions; (c) Strengthen opportunities for peer exchanges and staff training for United Nations staff on the principles of doing no harm and due diligence, digital safety and security when cooperating with defenders, in particular for OHCHR and ad hoc investigation mechanisms; (d) Follow up systematically on cases of reprisal in conflict and post-conflict contexts and pay greater attention to them, including in the context of elections for membership in the Human Rights Council and the sessions of the Working Group on the Universal Periodic Review; (e) Raise the awareness of States or de facto authorities on the protection due to defenders and their rights, including in contexts of emergency and armed conflict, and facilitate defenders’ access to both regional and international complaints human rights mechanisms; (f) Ensure that the forthcoming United Nations system-wide guidelines on community engagement in building and sustaining peace recognize the role of human rights defenders in peacebuilding and support their participation and involvement; Strengthen procedures and develop guidance on access to international protection and refugee status determination for defenders from conflict and post-conflict areas”.

⁵⁶ A/73/279, 7 August 2018.

88. This report highlighted the following areas where the exercise of the rights to freedom of peaceful assembly and of association is crucial in the implementation of the 2030 Agenda., namely:

103. Ensuring participation and inclusiveness. The rights to freedom of peaceful assembly and of association empower the most marginalized, underrepresented and vulnerable individuals, groups and populations by mobilizing public opinion and political will, raising awareness of societal issues and challenges, enhancing participation in decision-making and bringing unique knowledge and experience to shape policies and strategies and build solutions. In essence, those rights give a voice to and allow the participation of the beneficiaries of the Sustainable Development Goals.

104. Creating an enabling environment for civil society. The exercise of the rights to freedom of peaceful assembly and of association helps to create, strengthen and expand an enabling environment, at the national and international levels, through which all actors, including civil society, can contribute meaningfully to achieving all of the Goals and their targets, as well as the integrity of the process, by participating and expressing their views and shaping policies.

105. Ensuring transparency and accountability. The exercise of those rights promotes transparency by addressing inequality, corruption, governance failures and injustice, which impede the realization of the Goals. It also ensures the effective monitoring of compliance with States' pledges by holding institutions to account for the implementation of the Goals and targets.

106. Creating partnerships with civil society. Through the exercise of the rights to freedom of peaceful assembly and of association, a "revitalized global partnership for Sustainable Development based on a spirit of strengthened global solidarity" can be built within and across national boundaries to overcome the challenges to realizing the Goals and to bring together beneficiaries, Governments, private businesses, civil society, the United Nations and other actors.

107. Supporting labour rights. The rights to freedom of peaceful assembly and of association also provide an essential foundation for social dialogue, effective labour market governance and the realization of decent work and other rights, through representation, negotiation, mobilization and dialogue.

89. The Special Rapporteur recommended that States:

(a) Increase the awareness of the Agenda and the engagement of all stakeholders, including civil society actors and beneficiaries, at the grass-roots level;

(b) Recognize the value of civil society engagement in accompanying the implementation of the Sustainable Development Goals as a key component of efforts to leave no one behind, and institutionalize their participation at the national level, including through workers' organizations;

(c) Ensure that enabling legal, political, economic and social environments exist for civil society to operate freely, including by ensuring that the rights to freedom of peaceful assembly and of association and other human rights are enjoyed by everyone, without discrimination;

(d) Avoid any restriction to civic space, as this has a negative impact on the reduction of poverty, inequality and insecurity, and generates an environment in which there is a heightened risk of social conflict, including violence;

(e) Abolish any criminalization of peaceful protest or other activities of civil society aimed denouncing and reducing inequality, discrimination and corruption and at promoting good governance, accountability and human rights, including for minority groups;

(f) Create multi-stakeholder platforms that include civil society and other relevant actors, to contribute to the planning, implementation and monitoring of the Goals and their targets, and provide a space to raise concerns regarding policies, restrictions, laws and other obstacles that may hinder the realization of the Goals, including civil society organizations' participation in their realization;

(g) Connect the follow-up and review processes for the implementation of the Goals to the implementation of the outcomes of human rights mechanisms and States' commitments during the universal periodic review, including the recommendations of the Special Rapporteur, in order to promote coherence and generate an enabling environment for sustainable development;

(h) Lift restrictions that prevent national and international civil society groups from gaining access to the financial and human resources they need to carry out their work, and give due consideration to the report of the Special Rapporteur on the ability of associations to have access to financial resources;50

- (i) Ensure access to information and transparency on matters relating to the implementation of the Goals, in order to allow the meaningful participation of all stakeholder;
- (j) Ensure that national action plans to implement the Goals recognize the need to protect the rights to freedom of peaceful association and of assembly to enable the participation and mobilization of all stakeholders in the 2030 Agenda.

Issues relating to particular countries

90. The issues that have been addressed by the various mechanisms concerned with the situation of non-governmental organisations in particular countries have been primarily concerned with the failure to ensure an enabling environment and proposals which could well have this effect. However, they have also included recommendations as to how to secure such an environment.

Armenia

91. Following his visit to Armenia in 2018, the Special Rapporteur on the rights to freedom of peaceful assembly and of association made the following recommendations to the Government, namely, that it:

- (a) Ensure that existing legislation dealing with the right to freedom of association is coherent and in accordance with international law and standards, particularly in relation to reporting requirements, the right to privacy and suspension or dissolution of associations, and avoid enacting regressive regulations in the future;
- (b) Consider whether the State Revenue Committee is the authority best placed to monitor NGOs;
- (c) Ensure that all administrative authorities dealing with the right to association are duly trained on international human rights standards in order to create a favourable and enabling environment for civil society;
- (d) Increase efforts to ensure that a meaningful proportion of public funds is allocated, in an accessible, transparent and inclusive way, to a wide range of civil society organizations representing diverse views of society;
- (e) Continue enlarging the civic space for a wide range of civil society actors by combating hate speech and incitement to hatred towards minority groups and condemning the use of discriminatory statements in public discourse, including by public figures;
- (f) Ensure that the security and safety of civil society actors, including human rights defenders, when reasonably required, is provided without unduly restricting their right of freedom of association;
- (g) Increase efforts to promote the rights to form and join strong trade unions that could assist workers in claiming rights and better working conditions and ensure the full implementation of the recommendations laid out in the reports of the ILO Committee of Experts on the Application of Conventions and Recommendations.⁵⁷

Belarus

92. In connection with the implementation of the right to freedom of association under Article 22 of the International Covenant on Civil and Political Rights (“the International Covenant”), the Human Rights Committee was concerned about:

undue restrictions on the freedom of association. While noting plans to amend the Public Associations Act and the Political Parties Act in order to simplify the registration of non-governmental organizations (NGOs), the Committee is concerned about the restrictive and disproportionate rules on the registration of public associations and political parties, requiring, inter alia, relatively high numbers of founders, geographical diversity, high fees for registering non-profit associations and limits on the use of residential premises as an official address, resulting in the inability of many associations, including most human rights NGOs, to meet the registration

⁵⁷ A/HRC/41/41/Add.4, 13 May 2019.

requirements. The Committee is further concerned about the criminalization of the organization of or participation in the activities of unregistered public associations under article 193-1 of the Criminal Code and, while noting plans to repeal that article and replace it with an administrative offence imposed by a non-judicial official, the Committee nonetheless raises its concern about the necessity and proportionality of such a measure.

and also about:

(a) The denial of registration to public associations such as Gender Partnership and the Ruzha Gender Centre (because of their statutory purpose of counteracting gender discrimination), the Viasna Human Rights Centre, PACT and the Lambda Human Rights Centre;

(b) The repeated denial of registration to new political parties, with no such parties registered since 2000;

(c) The restrictive regulations on foreign funding (Presidential Decree No. 5 of 31 August 2015), which limit the purposes for which such funding may be used and prohibit such use, inter alia, for “the organization or conduct of assemblies, rallies, marches, demonstrations, picketing or strikes”; and the imposition of criminal liability for obtaining foreign funding in contravention of the law (article 369-2 of the Criminal Code);

(d) Obstacles to registering trade unions; the application of the Mass Events Act to trade unions; limitations on the right to strike; anti-union interference, including the discriminatory use of fixed-term contracts in cases involving trade union activists; and specific problems in the application of collective bargaining (arts. 19, 22 and 25).⁵⁸

93. It thus considered that:

The State party should revise relevant laws, regulations and practices with a view to bringing them into full compliance with the provisions of articles 22 and 25 of the Covenant, including by:

(a) Simplifying registration rules so as to ensure that public associations and political parties can exercise their right to association meaningfully;

(b) Repealing article 193-1 of the Criminal Code and considering not replacing it with an administrative offence;

(c) Ensuring that regulations governing foreign funding for public associations do not lead in practice to undue control or interference over their ability to influence public opinion and to operate effectively, including by revisiting the list of activities for which foreign funding may be used;

(d) Addressing the obstacles to the registration and operation of trade unions, lifting the undue limitations on the right to strike, investigating all reports of interference in the activities of trade unions and of the retaliatory treatment of trade union activists, and revising the procedures governing collective bargaining with a view to ensuring compliance with the Covenant.

Hungary

94. A draft legislative package which directly affected NGOs, particularly in relation to their work on behalf of migrants, was the subject of a Joint Opinion of the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (“OSCE/ODIHR”).⁵⁹

95. The Joint Opinion accepted that the introduction of a criminal offence establishing criminal liability for intentionally assisting irregular migrants to circumvent immigration rules was not in and by itself contrary to international human rights standards and might be considered as pursuing the legitimate aim of prevention of disorder or crime under Article 11(2) of the European Convention.

⁵⁸ Concluding observations on the fifth periodic report of Belarus, CCPR/C/BLR/CO/5, 22 November 2018.

⁵⁹ *Joint Opinion on the provisions of the so-called “Stop Soros” draft legislative package which directly affect NGOs (in particular draft Article 353a of the Criminal Code on facilitating illegal migration)*, CDL-AD(2018)013, 25 June 2018.

96. However, it concluded that the draft provision in question went far beyond that as it would criminalise organisational activities which were not directly related to the materialization of the illegal migration, such as “preparing or distributing informational materials”. As such, it ran counter to the role of assistance to victims by NGOs, restricting disproportionately the rights guaranteed under Article 11, and also criminalised advocacy and campaigning activities, which constituted an illegitimate interference with the freedom of expression guaranteed under Article 10 of the European Convention.

97. Furthermore, the provision was considered to lack the required clarity to qualify as a “legal basis” within the meaning of Article 11. Moreover, it was considered that there might be circumstances in which providing “assistance” was a moral imperative or at least a moral right. As such, the provision could result in further arbitrary restrictions to and prohibition through heavy sanctions of the indispensable work of human rights NGOs and leave migrants without essential services provided by such NGOs. Thus, it was considered that:

Under the draft provision, as it currently stands, persons and/or organisations that carry out informational activities, support individual cases, provide aid on the border of Hungary may be under risk of prosecution even if they acted in good faith in line with the international law for supporting the asylum seekers or other forms of legal migrants, for instance victims of trafficking. The proposed amendment therefore criminalises activities that are fully legitimate including activities which support the State in the fulfilment of its obligations under international law. Moreover, as “financial gain” is not considered as an element of the offence (but only as an aggravating circumstance), the draft provision is not accompanied by a humanitarian exception clause.⁶⁰

98. The draft provision was also found to lack the requisite precision needed to meet the foreseeability criterion as understood in the case law of the European Court of Human Rights (“the European Court”). In this connection, it was observed of the draft provision that:

As it criminalises the initiation of an asylum procedure or asserting other legal rights on behalf of asylum seekers, it entails a risk of criminal prosecution for individuals and organisations providing lawful assistance to migrants. Moreover, a humanitarian exception clause is not provided and the draft provision lists open options as to the targeted organisational activities, while advocacy and campaigning activities, including informing individuals of their rights and legal protections, are not excluded from its scope. It should be reiterated that only intentionally encouraging migrants to circumventing the law could give rise to criminal prosecution. Assistance by NGOs of asylum seekers in applying for asylum and lodging appeals cannot be regarded as such circumvention. In addition, the provision risks jeopardising the funding of NGOs as it does not clearly differentiate “financial gain” as the strict counterpart of an illegal activity and “any income” generated in the ordinary activities of NGOs. The individual criminal liability of an NGO member and the liability of the legal entity are not differentiated and the legal consequence of criminal conviction of an NGO member under Article 353A could be that the NGO as such could be dissolved on the basis of Act CIV of 2001, which appears to be disproportionate.⁶¹

99. Although the Joint Opinion refers throughout to “the draft provision”, it had actually been adopted without waiting for the views of the Venice Commission and OSCE/ODIHR who concluded that it should be repealed⁶².

⁶⁰ Para. 103 (footnotes omitted).

⁶¹ Para. 104 (footnote omitted).

⁶² The Joint Opinion also emphasised that the draft provision had not been submitted to a meaningful public consultation, with adequate opportunity for engagement before its adoption.

100. In connection with the implementation of the right to freedom of expression under Articles 19, 21 and 22 of the International Covenant⁶³, the Human Rights Committee was concerned about:

unreasonable, burdensome and restrictive conditions imposed on some non-governmental organizations (NGOs) receiving foreign funding under Act LXXVI of 2017 on the Transparency of Organizations Supported from Abroad, including the requirement that certain NGOs should register as “foreign-supported organizations” and publicly identify their foreign supporters. Despite the information provided by the State party delegation claiming that the law aims to ensure transparency regarding NGO funding sources, the Committee notes a lack of sufficient justification for the imposition of these requirements, which appear to be part of an attempt to discredit certain NGOs, including NGOs dedicated to the protection of human rights in Hungary (arts. 19, 21, 22 and 26)

and about

the recently introduced package of three draft laws before the parliament, also known as the “Stop-Soros” package (T/19776, T/19775 and T/19774), which, if adopted, will impose serious restrictions on the operations of civil society organizations and of critics of the State party’s immigration policy. The Committee is concerned that, by alluding to the “survival of the nation” and to the protection of citizens and culture and by linking the work of NGOs to an alleged international conspiracy, the package will stigmatize NGOs and curb their ability to carry out their important activities in support of human rights, particularly the rights of refugees, asylum seekers and migrants. The Committee is also concerned that the imposition of restrictions on foreign funding directed to NGOs may be used to apply illegitimate pressure on them and to interfere unjustifiably with their activities. It is particularly concerned about the proposals contained in the package for the imposition of: (a) significant additional reporting requirements and financial burdens on NGOs described as “organizations supporting migration”; (b) a 25 per cent tax on foreign funding for NGOs working for the protection of the rights of refugees, asylum seekers and migrants; and (c) restraining orders banning individuals from an 8-km zone inside the country’s borders, or third-country nationals from the entire territory of the country, for what are claimed to be reasons of national security and danger to the public (arts. 19, 22 and 25).

101. It thus considered that:

54. The State party should revise Act LXXVI of 2017 on the Transparency of Organizations Supported from Abroad, with a view to bringing it in line with the State party’s obligations under the Covenant, particularly articles 19, 21, 22 and 26, and take into account the opinion adopted in this regard by the European Commission for Democracy through Law (the Venice Commission) in 2017

and that

56. The State party should reject the draft laws known as the “Stop-Soros” package introduced before the parliament on 13 February 2018 and ensure that all legislation relating to NGOs is fully consistent with its international obligations under the Covenant, reflects the important role of NGOs in a democratic society and is designed to facilitate, not undermine, their operations.

Lithuania

102. In connection with the implementation of the right to freedom of expression under Article 19 of the International Covenant⁶⁴, the Human Rights Committee was concerned about:

initiatives that would restrict and inhibit freedom of expression, including that of individuals addressing the complicity of Lithuanians in Nazi crimes against Jews and others. In particular, it is

⁶³ CCPR/C/HUN/CO/6, 9 May 2018.

⁶⁴ CCPR/C/LTU/CO/4, 29 August 2018.

concerned at reports that the names of associations, news agencies, journalists, human rights defenders and other individuals are published in the annual Assessment of Threats to National Security by the State Security Department, and at the absence of any information regarding the criteria and procedures for such publication or its justification.

103. It thus considered that:

The State party should cease publicly referring to individuals and entities that exercise their freedom of expression as “national security threats”. It should ensure that all of its initiatives, legislative or otherwise, guarantee that authors, journalists, human rights defenders and other individuals and associations are able to freely exercise their right to freedom of expression, in accordance with article 19 of the Covenant and the Committee’s general comment No. 34.

Romania

104. The proposed amendment of three provisions in Law 26/2000 on Associations and Foundations, as well as the proposed introduction of an entirely new provision, was considered in an Opinion of the Expert Council.⁶⁵
105. The provisions to be amended would have concerned, respectively, the conditions for recognising an association or foundation as one of public utility⁶, the rights and obligations accruing from such recognition – including the activities in which they may engage - and the duration for which a particular act of recognition can be given. The new provision would have concerned a reporting obligation that has to be fulfilled by all associations, foundations and federations, regardless of whether they are recognised as ones of public utility. In addition, existing associations and foundations that were currently recognised as being of public utility would have been required to re-apply for such a recognition under the amended version of the Law.
106. It was concluded that there could be no objection to the proposal to state in more specific terms what is to be regarded as being in “the general or community interest” as is proposed in the amendment as a basis for conferring public utility status on associations and foundation.
107. However, there was considered to be grounds for concern as regards the specificity of the listed groups of activities coming within that interest, the potential for discriminatory treatment of certain associations and foundations and the proposed prohibition on those associations undertaking any kind of political activities.
108. There was also considered to be a need for clarity and appropriateness of the requirement regarding the value of assets for each year of operation for the association or foundation seeking public utility recognition be at least equal to the value of its initial assets.
109. In addition, there was concern about proposals for (a) the use of an algorithm as the basis for allocating public (financial) support as this was likely to create a risk of discriminatory treatment, (b) the withdrawal of support being framed in terms of breach of the conditions required for recognition as an entity of public utility without any distinction being made as to the significance of any particular alleged non-compliance with them and (c) excessive and over-frequent requirements for reporting.

⁶⁵ *Opinion on the Romanian draft Law 140/2017 on Associations and Foundations as adopted by the Senate on 20 November 2017, CONF/EXP(2017)3, 11 December 2017.*

Serbia

110. Draft amendments to the Law on Access to Information of Public Utility were the subject of an Opinion of the Expert Council.⁶⁶
111. This found, in the first place, that the proposed expansion of the notion of public authority to any legal or natural person which either pursues activities deemed in the general interest or is entrusted to perform public authority, with respect to the information relating to those activities or public authority it performs was problematic. This was because it did not provide any guidance as to the scope and substance of activities deemed in “general interest”. As a result, an NGO which was otherwise established to pursue activities deemed in “public interest” or in “public benefit interest” could fall into the notion of a public authority, triggering the full range of disclosure obligations envisaged in the Law, irrespective of whether the NGO was the recipient of public funds.
112. Secondly, there was considered to be a lack of guidance that could facilitate the drawing of a clear-cut line between those activities relating to public authority which an association or other NGO were entrusted to perform and the other activities carried out in course of business.
113. Thirdly, it was also considered that the draft amendments did not provide any guidance as to how the “predominant” public funding threshold was to be established and the concept of dominant funding threshold was also considered to fall short of the proportionality requirement in Article 11 of the European Convention. This would have unduly burdened NGOs with onerous disclosure obligations, despite the fact that existing regulation provided sufficient protection and transparency of public funds awarded to NGOs.
114. The Opinion thus suggested that: (a) the notion of “legal persons which pursue activities deemed in general interests” should pertain only to legal persons which are otherwise subject to the Law on Public Enterprises; (b) the notion of “legal person which is predominantly being funded by public authorities” should pertain only to a narrow range of associations and other NGOs which were established by virtue of a separate law and were directly funded by public authorities; and (c) specific examples of such NGOs should be given in order to avoid any uncertainty.

Turkey

115. The impact of the state of emergency on the right to freedom of association was the subject of an Opinion of the Expert Council.⁶⁷
116. Particular concern was expressed about the lack of proportionality of measures providing for the dissolution and confiscation of the asset of NGOs given that the objective might have been equally achieved through a temporary freeze of activities and asset of NGOs.
117. In addition, there was concern about the observance of the requirement of independence and impartiality of the body charged with providing remedies for those challenging the

⁶⁶ *Opinion on the draft amendments to the Serbian Law on Access to Information of Public Utility as prepared by the Ministry of Public Administration and Local Self-government*, CONF/EXP(2018)1, 18 April 2018.

⁶⁷ *Opinion on the Impact of the State of Emergency on Freedom of Association in Turkey*, CONF/EXP(2017)2, 30 November 2017.

relevant decisions, as well as about its ability to deal with the volume of cases before it in a timely manner.

Ukraine

118. Draft laws on introducing changes to some legislative acts – namely, ones to ensure public transparency of information on finance activity of public associations and of the use of international technical assistance and on introducing changes to the tax code to ensure public transparency of the financing of public associations and of the use of international technical assistance - were the subject of a Joint Opinion of the Venice Commission and OSCE/ODIHR.⁶⁸
119. The draft laws were designed to replace previously imposed and criticised e-declaration requirements for anti-corruption activists with a regime of tax reporting and public disclosure of detailed financial information, to be submitted by civil society organisations (public associations) whose total annual income exceeded 300 subsistence minimums (currently approximately €14 350) and individual beneficiaries of international technical assistance.
120. In the Joint Opinion, the Venice Commission and the OSCE/ODIHR considered that the new financial disclosure regime would conflict with freedom of association, the right to respect for private life and the prohibition of discrimination. It could not see a need for such amendments and recommend that they be reconsidered in their entirety.
121. However, it also stated that:

If the authorities nevertheless maintained their plans to introduce new financial reporting and disclosure obligations, it would be necessary to clearly substantiate the need for such amendments and to significantly improve the existing draft provisions so as to ensure their legitimacy and proportionality. In their current form, the stringent disclosure requirements, coupled with severe sanctions in case of non-compliance, are likely to have a chilling effect on the civil society and may even jeopardise the very existence of a number of civil society organisations which may lose their non-profit status as a sanction.

122. Furthermore, the Opinion recommended that the e-declaration requirements for anti-corruption activists introduced in an earlier law be cancelled before the deadline for submission of the first e-declarations and that the following action be taken with respect to the draft laws under review:

B. Remove the new financial reporting and disclosure requirements under draft laws No. 6674 and 6675 in their entirety or, at a minimum, narrow them down substantially, so as to ensure that they fully respect international standards pertaining to the freedom of association, the right to privacy and the prohibition of discrimination and are based on compelling evidence that they are necessary in a democratic society and proportionate to a legitimate aim. In particular,

- public associations should not be made subject to stricter financial reporting and disclosure requirements than other non-profit organisations, businesses or other legal entities and they must be guaranteed the same rights as other legal entities;

⁶⁸ *Joint Opinion on draft Law No. 6674 On introducing changes to some legislative acts to ensure public transparency of information on finance activity of public associations and of the use of international technical assistance and on draft Law No. 6675 on introducing changes to the Tax Code of Ukraine to ensure public transparency of the financing of public associations and of the use of international technical assistance*, CDL-AD(2018)006, 16 March 2018.

- the income threshold for determining the organisations covered by the new requirements should be significantly increased, and less stringent requirements should apply to organisations which have not received any form of public support;

- reporting on and public disclosure of the identity of the ten most-paid employees of civil society organisations, and of some of the donors and contractors of such organisations should be removed;

- the reporting and disclosure requirements for individual persons who receive income from donors of international technical assistance should be removed;

C. If new financial reporting and disclosure obligations for these civil society organisations were to be introduced, to significantly amend the provisions on sanctions of draft law No. 6675 so as to ensure better clarity as well as proportionality, including by

- providing for the possibility to correct potential mistakes;

- extending the range of sanctions available which should be proportionate to different types and degrees of violations of the rules;

- removing loss of organisations' non-profit status from the list of sanctions or, at a minimum, making it clear that this can only be imposed – preferably by a court – as a sanction of last resort; and

D. Conduct inclusive and effective consultations concerning draft laws No. 6674 and 6675 at all stages of the lawmaking process, including during discussions before Parliament up until and in any case before their adoption. It should be ensured that civil society organisations, which will be affected as a result of the entry into force of this legislation and the general public are fully informed and be given a meaningful opportunity to submit their views in good time, prior to the adoption of the draft laws.⁶⁹

D. CASE LAW

123. The case law developments have been those arising from the judgments and decisions of the European Court in respect of provisions under the European Convention, particularly the right to freedom of association in Article 11, and from views of the United Nations Human Rights Committee (“the Human Rights Committee”) as regards the rights to manifest religious beliefs and to freedom of association under Articles 18 and 22 of the International Covenant. They have related to the following issues: the concept of association; formation; membership; re-registration; pursuit of activities; prohibition; and dissolution.

Association

124. A complaint by an army officer about being automatically affiliated to a body for administering the compulsory supplementary social insurance scheme for members of the armed forces and being required to contribute to it until his retirement as amounting to interference with his negative right of association was rejected in *Üstüner v. Turkey* (dec.), no. 20006/08, 10 April 2018 on the basis that this body was not an association for the purposes of Article 11.
125. In reaching this conclusion, the European Court referred to: this body having been established under the auspices of the Ministry of Defence and founded and regulated by a specific law; its purpose as part of the social policy of the State; its decision-making bodies and managers usually being appointed, in accordance with the procedures provided for by legislation, by the ministerial and military authorities; and

⁶⁹ Para. 13.

its financial control being ensured by an official audit of the State, like all the other state organs.

126. Moreover, the fact that the body was financially independent and that its relations with third parties fell under private law in the context of its commercial and industrial activities which aim to enhance the capital constituted by its members' contributions was not considered by the European Court to alter its status as an official body.

Formation

127. There have been several cases concerned with the refusal to register associations, particularly those which minority groups and religions have sought to establish, but also ones promoting the interests of LGBT persons and seeking to protect human rights.
128. One of them – *United Macedonian Organisation Ilinden and Others v. Bulgaria (No. 3)*⁷⁰ concerned the United Macedonian Organisation Ilinden, (“Ilinden”), whose aim is to achieve the recognition of a Macedonian minority and organise commemorative events at various sites in the Pirin region of Bulgaria. Among other things, they allege that there have been massacres of the minority in the past and that rights’ problems persist. The European Court has dealt with similar complaints by the group in the past and found violations of Article 11 of the European Convention.
129. The refusal to register Ilinden as an association was based on two grounds: (a) the risk of tensions in the region where it was based in the event of its registration; and (b) the right of the majority of Bulgarians not to be exposed to its strong views, which they considered offensive. The Court noted that it had previously found both of those grounds insufficient to justify bans on Ilinden’s rallies⁷¹ and it considered not only that were they equally insufficient to justify a refusal to register it but also that there had been no developments since its judgment concerning the bans on the rallies that could cast doubt on the correctness of its findings then.
130. The Court also referred to the Sofia Court of Appeal’s conclusions on the potential risks resulting from Ilinden’s registration which it had based on information, derived from unspecified media sources, of which it had taken judicial notice. This approach was considered to have deprived the applicants of any opportunity to debate the reliability of that information or its significance for the well-foundedness or otherwise of the registration request.
131. Moreover, the European Court noted that there had been no explanation as to why that information had been regarded as correct and the unspecified media sources from which it had obtained it as reliable. Furthermore, there had been no proper explanation as to why the appeal court had regarded the unspecified events and situations to which it referred – including the ethnic and religious tensions in unnamed neighbouring countries and the migrant crisis then affecting Europe – as so closely connected with the perceived risks resulting from Ilinden’s registration. As a consequence, the European Court concluded that the appeal court had not based its decision on a solid

⁷⁰ No. 29496/16, 11 January 2018.

⁷¹ In *Stankov and the United Macedonian Organisation Ilinden*, no. 29221/95, 2 October 2001.

assessment of the relevant facts, or provide convincing and compelling reasons for that decision, as required under its case-law.

132. A finding of a violation of Article 11 in respect of another refusal to register Ilinden was also found by the European Court in *Yordan Ivanov and Others v. Bulgaria*⁷².
133. The refusal to register had been based on two grounds, namely, (a) Ilinden advocated separatist ideas capable of arousing confrontational attitudes and based on “untenable” historical interpretations and (b) the characterisation of its goals as political and therefore only capable of being pursued by a political party.
134. Both of these grounds had previously been held by the European Court to be insufficient to justify a refusal to register.⁷³ Moreover, the European Court considered that some purported formal problems with Ilinden’s registration papers – not clearly setting out the competences of its constituent bodies and not making it clear which of the several copies of the articles of association filed with the court, in which differences appeared, had been the ones adopted at the founding meeting - did not seem so serious as to amount to stand-alone grounds to refuse to register it..
135. The refusal of two sets of applications to register a religious association - and thereby obtain legal entity status - was held in “*Orthodox Ohrid Archdiocese (Greek-Orthodox Ohrid Archdiocese of the Peć Patriarchy)*” v. “*the former Yugoslav Republic of Macedonia*”⁷⁴ to amount to a violation of Article 11 of the European Convention, interpreted in the light of Article 9.
136. The European Court reached this conclusion firstly on the basis that, insofar as the refusals were based on several supposed formal deficiencies in them (namely, compliance with statutory time limits, the person submitting them, the fact that the name did not indicate its specific form and having a temporary seat), these were not relevant and sufficient reasons. It did so by having regard not only to the actual terms of the relevant legislation but also to the fact that the focus had not been on the substance of the applications and that the refusals did not make clear what their exact import was for not allowing the applicant’s registration.
137. Secondly, reliance for the refusal on the view that the association had been set up by a foreign church or State was inconsistent with its establishment by Bulgarian nationals and, in any event, it did not appear that the relevant legislation precluded registration of a religious organisation founded by a foreign church or State.
138. Thirdly, the European Court considered that the name chosen for the applicant association was sufficiently specific as to distinguish it from the Macedonian Orthodox Church-Ohrid Archdiocese (“the MOC”) and, indeed, there was nothing to suggest that it intended to identify itself with the MOC. It also noted that the public had been sufficiently informed about the applicant association, its leadership and the positions they represented, and that these were perceived as conflicting with those of the MOC.

⁷² No. 70502/13, 11 January 2018.

⁷³ In *United Macedonian Organisation Ilinden – Pirin and Others* (No. 2), no. 41561/07, 18 October 2011.

⁷⁴ No. 3532/07, 16 November 2017.

139. Fourthly, whereas the autocephaly and unity of the MOC was a matter of utmost importance for adherents and believers of that church, and for society in general, the European Court emphasised that this could not justify, in a democratic society, the use of measures which, as in the present case, went so far as to prevent the applicant comprehensively and unconditionally from even commencing any activity.
140. Finally, the European Court underlined that its case law in this respect was clear: the role of the authorities in a situation of conflict between or within religious groups was not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other. In its view, there could be no justification for measures of a preventive nature to suppress freedom of assembly and expression, other than in cases of incitement to violence or rejection of democratic principles – however shocking and unacceptable certain views or words used may appear to the authorities, and however illegitimate the demands made may be. In this regard, it noted that at no stage in the registration proceedings and in the proceedings before it was it alleged that the applicant association advocated the use of violence or any anti-democratic means in pursuing its aims.
141. In *Bektashi Community and Others v. the former Yugoslav Republic of Macedonia*⁷⁵, the European Court also found violations of Article 11 read in the light of Article 9 in respect of the refusal to re-register the applicant association as a religious organisation – as which under previous legislation it had previously been lawfully operating - and then to register it as such in fresh proceedings.
142. The first decision was considered by the European Court not to be necessary in a democratic society as it had been based on purely formal grounds - notably that it had not been registered by the Commission for Religious Communities and Groups as a religious entity prior to 1998, but only listed in 2000 - for which no legitimate aim or pressing social need had been shown. In the Court’s view, exclusive reliance on such a formal ground, without reference being made to any reason related to the applicant association’s operation before the legislation requiring re-registration had entered into force, could hardly appear justified in respect of religious associations which are long established in the country and familiar to the competent authorities, as was the case with the applicant association. It was also notable that the decision had overlooked the fact that the applicant association had notified the Ministry of its existence in 1993 and, as stated by the registration court, had that been the case, it would have obliged the Commission to register the applicant association under previous legislation.
143. The second decision was partly based on the inclusion of “Bektashi” in the intended name of the applicant association, as this was included in the name of an already registered religious group “Ehlibeyt Bektashi Religious Group of Macedonia”. The European Court found that the view that the term “Bektashi” had thus been treated as “decisive and represented a synonym for the religious entity”. However, similarly to the preceding case, the European Court considered that the name chosen for the applicant association was sufficiently specific to distinguish it from the “Ehlibeyt Bektashi Religious Group of Macedonia”. Moreover, another distinguishing element in the intended name of the applicant association was that, unlike the other entity, its proposed form would be a religious community. Furthermore, no substantive reasons

⁷⁵ No. 48044/10, 17 April 2018.

had been provided to justify the potential risk of confusion among believers in the present case.

144. The other ground that had been relied on for the refusal of registration concerned the doctrinal sources of the applicant association, which they found to be identical to the doctrinal sources of the already registered “Islamic Religious Community”. The European Court noted that that conclusion had been made on the basis of an assessment by the domestic courts of the applicant association’s fundamental precepts and their comparison with the precepts of the “Islamic Religious Community” but without any prior consultation with the applicants before that finding, notwithstanding that the registration court could have asked for an additional explanation. In the European Court’s view, such an assessment and interpretation of the applicant association’s basic tenets of creed was incompatible with the State’s role as a neutral and impartial organiser of the exercise of various religions, faiths and beliefs, which excludes, save for very exceptional cases, any discretion on the part of the State to assess the legitimacy of religious beliefs or the ways in which those beliefs are expressed.
145. Furthermore, no explanation was given for the resulting finding of this fresh scrutiny having regard to the fact that both the applicant association and the “Islamic Religious Community” had been active and had already existed in the respondent State for many years and there was no argument that their doctrinal sources in the meantime had changed or had led to confusion among believers. Insofar as it might be inferred from the decision that the non-registration of the applicant association was necessary in order “to prevent religious conflicts”, the European Court observed that no evidence had been produced that the denomination seeking recognition presented any danger for a democratic society. In these circumstances, and having regard to the fact that the applicant association had lawfully existed and operated in the respondent State as an independent religious community for many years before the new legislation had entered into force, the European Court considered that the reasons for refusing registration of the applicant association should have been particularly weighty and compelling but no such reasons had been put forward by the authorities.
146. A refusal to register another foundation with religious objectives was also found in *Altinkaynak and Others v. Turkey*⁷⁶ to violate Article 11.
147. In this case, the aims of the foundation concerned the religious needs of Adventists, notably building premises for prayer, determining the modalities of religious practice, organising training, creating a library, publishing books and producing radio and television broadcasts.
148. In reviewing the refusal decisions, the European Court found both a contradiction and an ambiguity. The former related to the view that the followers of a religious belief had the freedom to organize the collective practice of their belief, if necessary, by creating foundations but a foundation could not have the aim of meeting the religious needs of its followers. The latter stemmed from the equation of the terms "religious needs" of people adhering to the belief of Adventists with "interests of a determined community", which the legal prohibition of discrimination precluded a foundation from serving exclusively.

⁷⁶ No. 12541/06, 15 January 2019.

149. In the view of the European Court, such an assimilation led to a confusion between, on the one hand, meeting the needs related to the collective practice of followers of a specific belief and, on the other hand, exercising discrimination by helping or not helping needy people depending on the communities to which they belong. It considered that, in reality, a foundation intended to finance the religious activities of a specific church could not, by definition, have the aim of meeting the religious needs of believers of other religions or other beliefs. Yet, to interpret the provisions of domestic law, as seemed to have occurred in this case, so as to achieve a contrary result would be tantamount to prohibiting outright foundations intended to finance the collective practice of a specific belief.
150. The European Court accepted that it was entirely legitimate that in a Contracting State, public utility services or social or humanitarian aid could not be refused to people in need on the grounds that they do not belong to a determined community. On the other hand, it considered that it could not reasonably be inferred from this principle that people in need could not benefit from these services or aids, on the ground that they were to be considered to be part of a specific community. As the conclusions reached by the domestic authorities in this case were based on such a deduction, the European Court concluded that they did not constitute relevant or sufficient grounds for refusing to grant the foundation legal personality.
151. A refusal by the State Commission on Religious Affairs to register a religious organisation established by Jehovah's Witnesses by reference to a legislative requirement to have a list of 200 founding members approved by a local district council was held by the Human Rights Committee in *Bekmanov and Egemberdiev v. Kyrgyzstan*⁷⁷ to be in violation of the authors' right to manifest their religion under Article 18(3) of the International Covenant.
152. It did so, noting that no arguments had been advanced as to why this requirement was necessary and considering the significant consequences of a refusal of registration, which was required in order to enjoy rights to conduct religious meetings and assemblies, to own or use property for religious purposes, to produce and import religious literature, to receive donations, to carry out charitable activity and to invite foreign citizens to participate in religious events.
153. The Human Rights Committee also held, taking into account both that (a) in the oblast concerned 245 out of the 252 registered religious organisations were Islamic and none were affiliated with Jehovah's Witnesses and (b) no reasonable and objective grounds had been provided for distinguishing the authors' religious organisation from other registered organisations, that they had been subjected to differential treatment based on their religious belief in violation of Article 26.
154. In the light of these findings, the Human Rights Committee did not examine separately claims relating to the rights to freedom of association under Article 22 and to an effective remedy under Article 2(3)(a) and (b) read in conjunction with Article 14.
155. The refusal to register three organisations, two of which focused on defending LGBT rights and a third on developing sport for LGBT people and combating homophobia,

⁷⁷ Communication No. 2312/2013, Adoption of Views, 29 March 2019.

was held in *Zhdanov and Others v. Russia*⁷⁸ not to be “necessary in a democratic society” and therefore in violation of Article 11. In one case the refusal of registration meant that the organisation could not be created as a non-profit organisation and in the two other cases it meant that the organisations – which were public associations – could not acquire the status of a legal entity and the rights associated with that status.

156. Insofar as the aim of the refusal was to protect society’s moral values and the institutions of family and marriage, the European Court emphasised that the absence of a European consensus on the question of same-sex marriage was of no relevance to the present case because conferring substantive rights on “homosexual persons” was fundamentally different from recognising their right to campaign for such rights. It considered that there was no ambiguity about the other member States’ recognition of the right of individuals to openly identify themselves as gay, lesbian or any other sexual minority, and to promote their rights and freedoms, in particular by exercising their rights to freedom of peaceful assembly and association.
157. The European Court thus concluded that the refusal to register the associations could not be justified on the grounds of the protection of moral values or the institutions of family and marriage and could not therefore be considered to pursue the legitimate aim of the protection of morals.
158. Nor was the European Court convinced that a refusal to register an association defending LGBT rights could be justified on the ground that the associations threatened Russia’s sovereignty, safety and territorial integrity because their activities might result in a decrease in the population. In the first place, it had previously found that there was no link between “the promotion of homosexuality and the demographic situation”⁷⁹, which depends on a multitude of conditions, such as economic prosperity, social-security rights and accessibility of childcare and, secondly, neither the national courts nor the Government had explained how a hypothetical decrease in the population could affect national security and public safety. In addition, they had not provided any assessment of such an impact.
159. The European Court was also not convinced that the refusals to register the associations could be considered to pursue the legitimate aim of the protection of the rights of others. This was because the European Convention did not guarantee the right not to be confronted with opinions that are opposed to one’s own convictions and it would be incompatible with the underlying values of the Convention if the exercise of the rights in it by a minority group were made conditional on this being accepted by the majority.
160. This meant that the only legitimate aim put forward by the authorities for the interference with the right to freedom of association could be the prevention of hatred and enmity, which could lead to disorder. In this connection, the European Court noted that the authorities had believed that the majority of Russians disapproved of LGBT rights or with the idea of equality of different-sex and same-sex relations and that therefore the applicants could become the victims of aggression.

⁷⁸ No. 12200/08, 16 July 2019.

⁷⁹ See *Bayev and Others v. Russia*, no. 67667/09, 20 June 2017.

161. However, in the view of the European Court, the role of the authorities in such circumstances was not to simply remove the cause of tension, but to ensure that the competing groups tolerated one another. Furthermore, it considered that their duty was to take reasonable and appropriate measures to enable organisations such as the applicants to carry out their activities without fear of physical violence. In addition, the European Court concluded that there was no evidence that the authorities had taken any such measures but had, instead, had simply decided to avert a risk of disorder by restricting the applicants' freedom of association.
162. In addition, given that the applicant organisations' aim of promoting LGBT rights had been a decisive factor for refusing their registration, the European Court also found that they had suffered a difference in treatment on grounds of sexual orientation, in violation of Article 14 taken in conjunction with Article 11.
163. Furthermore, in the case of one of the organisations, it found a violation of the right to a fair hearing under Article 6 because the domestic courts had dismissed the appeal of the association and its founders as out of time, without any explanation as to how they had calculated the starting date of the time-limit or the date on which they considered that the appeal had been lodged.
164. However, the complaints by a founder of one of the associations were held to be inadmissible as an abuse of the right of petition on account of his having published statements about the European Court and its judges on social networking accounts, which were virulently and personally offensive and threatening.
165. The repeated refusals by the Ministry of Justice to register an association – and thereby obtain the status of a legal entity and associated rights such as obtaining funding, opening a bank account or hiring employees - because of the failure to specify the powers of a “legal representative” in their founding document was held in *Jafarov and Others v. Azerbaijan*⁸⁰ to be an interference with the right to freedom of association that was not “prescribed by law” within the meaning of Article 11(2) of the European Convention.
166. In the view of the European Court, the relevant legislation, as applied and interpreted at the time, had not provided a precise definition of the term “legal representative” used in the context of a legal entity. Furthermore, it considered that it was not clear in what circumstances such a person could be considered to have been appointed.
167. Moreover, it observed that in the applicants' case, the Ministry of Justice had never officially clarified who it considered to be the “legal representative” of the association and that there had been a discrepancy between the Government's position before it on this issue and the finding in that regard by the appeal court. In addition, the European Court noted that the interpretation of the relevant provision as requiring that the applicants mention the “legal representative” in their founding decision and specify his or her powers had ignored the fact that the provision stated in plain language that these were requirements only if they had actually chosen to appoint such a person.

⁸⁰ No. 27309/14, 25 July 2019.

168. The European Court emphasised that, in a situation where the law was not clear and was open to various interpretations, the domestic courts should have given a reasonable definition of the term “legal representative” and the situations where the law required his or her powers to be specified. However, it considered that by and large the courts had limited themselves to upholding the Ministry’s actions as lawful without any detailed reasoning, thus avoiding the crux of the applicants’ arguments.
169. As a result, the European Court found that the law, as in force and applied at the time, had failed to protect against arbitrary application by the authorities, and had not met the “quality of law” requirement of the Convention. Furthermore, it found that the Ministry had not complied with the requirements of domestic law on the registration procedure since, instead of notifying the applicants of all the omissions in its application after the first review, as required by law, it had found a new omission after each successive request. This meant that the provision requiring that deficiencies in applications for registration be identified all in one review had not therefore been applied correctly in the applicants’ case, resulting in an unlawful delay and *de facto* preventing the applicants’ association from obtaining legal-entity status.
170. The finding of a violation of Article 11 on these grounds led the European Court to conclude that it did not need to satisfy itself that the other requirements of Article 11 (2) – i.e., as regards a legitimate aim and the necessity of the interference - had been complied with. In particular, it was thus not required to rule on the applicants’ claim that the real reason for the refusals had been to prevent them from carrying out their human rights work.

Membership

171. The array of acts that could potentially constitute a basis for the application of a severe criminal sanction in the form of imprisonment under a provision stipulating that “anyone who commits a crime on behalf of an (illegal) organisation, even if they are not a member of that organisation, shall also be punished for being a member of the organisation, was held in *Işıkırık v. Turkey*⁸¹ to be so vast that the wording of the provision, including its extensive interpretation by the domestic courts, did not afford a sufficient measure of protection against arbitrary interferences by the public authorities.
172. As that case showed, this approach would mean that the mere fact of being present at a demonstration, called for by an illegal organisation, and openly acting in a manner expressing a positive opinion towards the organisation in question was sufficient to be considered acting “on behalf of” the organisation and thus authorising the punishing of the person in question as an actual member.
173. The European Court considered that the conviction of the applicant of membership of an armed organisation merely on account of his attendance at two public meetings, which, according to the first-instance court, were held in line with the instructions by the PKK, and his acts therein, that is to say, walking close to coffins and making a “V” sign during the funeral and applauding during the demonstration to entail a violation of

⁸¹ No. 41226/09, 14 November 2017.

his right to freedom of peaceful assembly under Article 11 since the relevant provision was not “foreseeable” in its application.

174. The same conclusion regarding the lack of foreseeability was reached by the European Court in *Bakir and Others v. Turkey*⁸² as regards a related provision stipulating that “anyone who aids an (illegal) organisation knowingly and willingly, even if he does not belong to the hierarchical structure of the organisation, shall be punished as a member of the organisation”.
175. In this case, the applicants had been present at a legally organised demonstration but the fact that they had chanted slogans, carried banners, worn clothes and carried pennants with “ESP” (the Socialist Platform of the Oppressed) written on them and had had red ribbons attached to their arms during that demonstration was considered by the Turkish courts to constitute sufficient evidence to conclude that - as members of legal organisations - they had aided the MLKP (an illegal armed organisation), for which they could be punished as actual members of it.
176. Furthermore, convictions for membership of an organisation proscribed as a terrorist one on the grounds that their acts constituted moral coercion (namely, intimidation) of the public were held in *Parmak and Bakir v. Turkey*⁸³ to be contrary to the requirement in Article 7 of the European Convention that offences and the relevant penalties must be clearly defined by law.
177. The European Court reached this conclusion on account of the Turkish courts having adopted a novel interpretation of the definition of “terrorism” in the relevant provision - “any act committed by means of pressure, force and violence, terror, intimidation, oppression or threat” with one or more of the specified political or ideological aims - as capable of embracing acts that constituted moral coercion.
178. The convictions in this case were founded on the applicants having meetings with each other, disseminating flyers, possessing legal and illegal periodicals and a manifesto, the contents of which were found by the trial court to amount to moral coercion of the public. It was undisputed that there was no evidence that the organisation in question had engaged in any violent acts or that it had intended to pursue its aims through the use of force and violence or other terrorist methods. This had been the first time that the domestic courts were called to determine whether the organisation could be proscribed as a terrorist organisation since there existed no judicial precedents concerning the same organisation.
179. The Court emphasised that it did

not lose sight of the difficulties associated with the fight against terrorism and the challenges States face in the light of the changing methods and tactics used in the commission of terrorist offences. The Court is also mindful of the absence of a universally accepted definition of terrorism. However, this does not mean that the fundamental safeguards enshrined in Article 7 of the Convention, which include reasonable limits on novel or expansive judicial interpretations in the area of criminal law, stop applying when it comes to prosecution and punishment of terrorist offences. The domestic

⁸² No. 46713/10, 10 July 2018.

⁸³ No. 22429/07, 3 December 2019.

courts must exercise special diligence to clarify the elements of an offence in terms that make it foreseeable and compatible with its essence.⁸⁴

It thus concluded that the domestic courts had unjustifiably extended the reach of the criminal law to the applicants' case in contravention of the guarantees of Article 7.

Re-registration

180. A complaint about lengthy non-enforcement of the judgement ordering its re-registration was held in *SROO Sutyazhnik v. Russia*⁸⁵ not to have caused the associated concerned any significant disadvantage.
181. The European Court acknowledged that formally it had taken the national authorities three years to enforce the judgment. However, it noted that the focal point of the legal dispute resolved by the judgment had been re-registration of the association under the new legislative framework and that this goal had evidently been achieved by its registration in the list of legal entities by the Ministry of Taxation some four months later. In the view of the European Court, nothing in the parties' submissions or the documents in the case-file had demonstrated that the association had encountered any real difficulties in its operation, except for rather speculative claim of not being able to receive grants from international funds. In its view, it thus appeared that nothing was objectively at stake for the association in the enforcement of the judgment.
182. Although there could be a possible violation of Articles 6 and 11 of the European Convention from a purely legalistic and formalistic standpoint, the European Court considered that it had been reasonably insignificant and therefore did not merit European supervision. In its view, nothing in the available material demonstrated that the respect for human rights required further examination of this case or that the association had been denied justice by the domestic tribunals. Its application was thus inadmissible under Article 35(3) (b) and (4) of the European Convention.
183. The association's further complaint that the national authorities precluded its reorganization into an international public association was considered by the European Court to be manifestly ill-founded. In the Court's opinion, the refusal of reorganization on account of the association's failure to provide the authorities with the articles of association adopted after 1 July 1999 and a registration certificate issued after the same date did not involve an obligation that was excessive, unreasonable or prejudiced. Moreover, it observed that after these documents had become available for filing after 11 May 2005, the association had not made further attempt to reorganize itself into an international public association, while nothing had prevented it from doing so.

Pursuit of activities

184. A requirement that an non-governmental organisation remove an article from its website – on which it had referred to a politician's speech as “verbal racism” - and to publish the conclusion of the court imposing it, as well as pay court fees and the

⁸⁴ *Ibid*, para. 77.

⁸⁵ (dec.), no. 23818/06, 24 September 2019.

politician's legal costs was held in *GRA Stiftung gegen Rassismus und Antisemitismus v. Switzerland*⁸⁶, to be an unjustified interference with its right to freedom of expression.

185. The non-governmental organisation worked to promote tolerance and condemn all types of racially motivated discrimination. Its article had been posted in response to a speech by the politician at the time of the referendum in Switzerland about banning the construction of minarets, in which he had emphasised that it was time to stop the expansion of Islam, stating that the Swiss guiding culture was based on Christianity, could not allow itself to be replaced by other cultures and that the prohibition would be an expression of the preservation of one's own identity.
186. The politician had brought proceedings against the non-governmental organisation of his personality rights and the Swiss courts had concluded that his statement could not be understood as verbally racist and that the general interest of informing the public and the reduced level of protection for personality rights for people who engaged in a political debate neither justified the dissemination of untruths nor the publication of value judgments that did not appear to be justified with regard to the underlying facts.
187. However, the European Court disagreed with the view that the posting was devoid of a factual basis, particularly in the light of international and national criticism of the tone of political debate in Switzerland. Moreover, in its view, there was no suggestion that the politician's speech was being said to amount to the offence of racial discrimination. Furthermore, there was no gratuitous personal attack on or insult to the politician. Rather, the posting was about the perception of the speech and so it had no consequences for the politician's private or professional life. Finally, although the sanction imposed was acknowledged to be mild, the European Court saw it as having a chilling effect on the exercise of the non-governmental organisation's freedom of expression that might discourage it from pursuing its statutory aims and criticising political statements and policies in the future.
188. It thus concluded that the domestic courts had not given due consideration to the principles and criteria laid down by the Court's case-law for balancing the right to respect for private life and the right to freedom of expression. Instead they had

exceeded the margin of appreciation afforded to them and failed to strike a reasonable balance of proportionality between the measures restricting the applicant organisation's right to freedom of expression and the legitimate aim pursued.⁸⁷

Prohibition

189. The effective prohibition on forming a political party as a result of its would-be founder being threatened and prosecuted immediately after announcing his intention to do this was held by the United Nations Human Rights Committee in *Saidov v. Tajikistan*⁸⁸ to be in violation of his right to freedom of association under Article 22 of the International Covenant.

⁸⁶ No. 18597/13, 9 January 2018.

⁸⁷ *Ibid*, at para. 80.

⁸⁸ Communication No. 2680/2015, Adoption of Views, 4 April 2018.

190. The Human Rights Committee recalled its view that the existence and operation of associations, including those which peacefully promote ideas not necessarily favourably received by the government or the majority of the population, was a cornerstone of a democratic society.⁸⁹ Furthermore, it also recalled that a State party must also demonstrate that a prohibition of an association is necessary to avert a real, and not only hypothetical, danger to national security or democratic order, and that less intrusive measures would be insufficient to achieve the same purpose.⁹⁰
191. In the light of these requirements, the *de facto* prohibition on starting a political party, and the absence of any explanation by the State party for such action, the Human Rights Committee considered that the restriction imposed on the author was disproportionate and did not meet the requirements of article 22 (2). It also found violations of the rights to liberty and security, to a fair trial and to freedom of expression in respect of the actin taken against the author.

Dissolution

192. There were three unsuccessful challenges to the dissolution of associations.
193. In the first, the dissolution in 2005 of a foundation set up in order to promote social, cultural and economic cooperation between its members and contribute to scientific, social and economic development following the conclusion by inspectors that its local branches had carried out unlawful activities which went beyond its social purpose and the aims laid down in its statute was not considered in *Fondation Zehra and Others v. Turkey*⁹¹ to violate Article 11 as it was “necessary in a democratic society”.
194. The European Court observed that a foundation whose actions were aimed, in reality, at introducing Sharia in a State party to the European Convention could hardly be regarded as an association complying with the democratic ideal underlying the whole of the Convention. As to the foundation’s activities aimed at setting up educational establishments designed to counter the promotion of the principles of secularism and pluralist democracy – principles that were portrayed in its newsletter articles as undesirable – the European Court considered that the judicial authorities, in taking the measures complained of, could be said to have satisfied their obligation to ensure that the national curriculum was organised in an objective, critical and pluralistic manner, enabling pupils to develop a critical mind with regard to religion in a calm atmosphere free of any proselytism.
195. Although noting that, in pluralist democracies, even ideas diverging from those of a democratic system could be expressed in public debate provided that they did not give rise to hate speech or incite others to violence, the European Court emphasised that this interpretation of freedom of expression did not preclude the Contracting States from taking measures to ensure that a foundation did not deploy its assets to serve educational policy goals that were contrary to the values of pluralist democracy and in breach of the rights and freedoms guaranteed by the European Convention.

⁸⁹ See *Korneenko et al. v. Belarus*, Communication No. 1553/2007, Adoption of Views, 20 March 2009.

⁹⁰ See *Jeong-Eun Lee v. Republic of Korea*, Communication No. 1119/2002, Adoption of Views, 20 July 2005.

⁹¹ No. 51595/07, 10 July 2018.

196. As it was clear from the activities of the applicant foundation that it pursued an aim other than that set forth in its statute, the European Court considered that the authorities had been entitled to intervene to put an end to that divergence without having to wait for the covert aim to be achieved, namely the setting-up of educational establishments and the propagation of ideas opposed to pluralist democracy among students. In the European Court's view, the national courts had thus not overstepped their margin of appreciation in finding that there had been a pressing social need – in order to protect the specific nature of education in a pluralist democratic society, preserve public order and protect the rights of others – to prevent the applicant foundation from achieving its covert aim of providing teaching at secondary and university level with the ultimate goal of establishing a regime based on Sharia.
197. The Court also found that, given that the applicant foundation's activities had ceased for a limited period only (having been re-entered in the list of foundations in 2014), that most of its properties had been returned to it and that the few properties that remained at the disposal of the public services had been selected on the basis of an objective criterion prescribed by law, the measure complained of had not been disproportionate to the aims pursued.
198. The second case concerned the dissolution of an association on the basis that it had achieved the goal for which it had been set up – the creation of a university ("Titu Maiorescu University") to whom its assets and staff had been transferred. This measure was considered to be justified in *Association Titu Maiorescu Independent University and Others v. Romania*⁹² on account of it being for reasons determined by a "pressing social need" which were convincing and compelling.
199. The European Court considered that the domestic court of last resort had presented exhaustive reasoning demonstrating why the association had basically ceased to exist after the setting up of the university. It also noted that the domestic law applicable to associations provided for the possibility of dissolving an association should it be demonstrated that it has achieved the goal for which it has been created, or if it could not achieve its goal.
200. Although neither the applicable law nor any other documents expressly stipulated that after the creation of the university the association would cease to exist or should have been dissolved, the European Court noted that there was no document in the file providing any information about any activities performed by the association after the university was set up. Furthermore, even after the creation of the university the association maintained the word "university" in its name and the European Court agreed with the Government's argument that the coexistence of the university and the association could be misleading for third parties.
201. In the third case, the dissolution of a foundation on the ground that its resources were insufficient to cover its expenses and that it was no longer capable of fulfilling its registered purposes of research, advice and publications in the field of the main natural or social sciences, establishment of universities or faculties with the aim of pursuing

⁹² (dec.), no. 48950/09, 9 October 2018.

such research, economic and commercial activities, various types of social assistance, etc. was held in *Fondation Mihr v. Turkey*⁹³ also not to have violated Article 11.

202. The European Court noted that the domestic civil courts had found that the foundation was no longer doing anything to fulfil its aims because it no longer had any assets except for two buildings which generated its sole revenue from small rents, any donations it received were minimal, the income indicated in its balance sheet both before and after the dissolution procedure had been insignificant, and its publication or radio broadcasting activities had been restricted, mainly for economic reasons. It further noted that the aims of the foundation corresponded to aims of public utility or general interest and it took the view that to expect from the foundation that it should meet minimum financial criteria was justified by the need to preserve the efficiency and credibility of the system of public-interest foundations in Turkey.
203. As a result, and without prejudice to the question of the re-establishment of the foundation (which was still pending in the national courts), the European Court concluded that the reasons given to find that it had been dissolved for financial difficulties were “relevant and sufficient” In its view, dissolution had met a pressing social need, was proportionate to the legitimate aims pursued and was therefore necessary in a democratic society.
204. The European Court also considered that the complaint that there had been a denial of the right to a fair hearing was manifestly ill-founded given that the findings of experts at the request of the parties, including that of the foundation, had been carefully examined and taken them into account in the assessment of evidence, and that there had been a sufficiently reasoned judgment.

E. CONCLUSION

205. It remains the case that there are considerable expressions of support at the regional and global level for the valuable contribution made by non-governmental organisations across a wide range of activities but especially as regards efforts to ensure the protection of human rights and fundamental freedoms. Unfortunately, as seen in previous updates, the position of non-governmental organisations in many jurisdictions remains under pressure, thereby undermining and even preventing them from making that contribution.
206. At the same time, it is important to note that there has been no weakening of the regional and international standards regarding the right to freedom of association and of other rights and freedoms which underpin the ability to establish non-governmental organisations and to pursue the objectives of their founders and members.
207. While the legitimacy of the role and activities of non-governmental organisations is thus not open to question, there continues to be a pressing need for efforts to ensure that regional and international standards are more widely respected than at present.

⁹³ no. 10814/07, 7 May 2019.