



Ref: CommHR/NM/sf 022-2017

Mr Dmytro Shymkiv
Deputy Head
Administration of the President of Ukraine

Strasbourg, 2 May 2017

Dear Mr Shymkiv,

During my recent visit to Kyiv, I was informed that, at the end of March 2017, certain amendments were enacted to the Law on Corruption Prevention, requiring persons – who, either as members of civil society groups or otherwise – are involved in actions related to preventing and/or combating corruption to be bound by the same requirements for electronic filing of a public declaration of their assets as those incumbent on state officials and civil servants. Several of my interlocutors have expressed concerns that those amendments infringe upon the autonomy of civil society organisations to choose their field of activities, amount to discriminatory treatment of NGOs working on anti-corruption issues, and could be used to discredit the work of such NGOs. Moreover, the electronic filing requirements could also be applied with respect to anyone working on anti-corruption activities, including investigative journalists covering corruption issues, international members of boards of NGOs, or members of international organisations.

I, too, am concerned about the singling out of anti-corruption NGOs, persons working in them and other persons working against corruption in the above-mentioned legislative provisions by making them subject to the same filing requirements as public officials. NGOs are already subject to financial reporting rules, and media outlets must pay taxes and submit reports to the relevant tax authorities. In contrast, reporting on assets may be required of elected officials and civil servants, because they have been entrusted with spending public money, which entails corruption risks.

Council of Europe standards, as reflected in the Fundamental Principles on the Status of Non-Governmental Organisations in Europe, provide that “[i]n supervising the activities of NGOs, the administrative authorities should apply the same assumption as holds good for individuals, namely that, failing proof to the contrary, their activities are lawful” (paragraph 72). I would also like to point out that Recommendation (2007)14 by the Committee of Ministers (CM) of the Council of Europe on the legal status of non-governmental organisations in Europe clearly states that only “NGOs which have been granted any form of public support can be required each year to submit reports on their accounts and an overview of their activities to a designated supervising body” (paragraph 62). Furthermore, “[a]ll reporting should be subject to a duty to respect the rights of donors, beneficiaries and staff, as well as the right to protect legitimate business confidentiality” (paragraph 64). Moreover, persons belonging to an NGO should not be subject to any sanction because of their membership (paragraph 24), and the officers, directors and staff of an NGO with legal personality should not be personally liable for its debts, liabilities and obligations (paragraph 75).

The CM Recommendation (2007)14 also contains the following important principles in paragraphs 76 and 77: “[g]overnmental and quasi-governmental mechanisms at all levels should ensure the effective participation of NGOs without discrimination in dialogue and consultation on public policy objectives and decisions” and “NGOs should be consulted during the drafting of primary and secondary legislation which affects their status, financing or spheres of operation”. In this respect, it is most regrettable that those civil society organisations which could potentially be targeted under the revised legislation had not been consulted in the process of preparation and adoption of the amendments in question. However, I understand that there is currently a working group in the Presidential Administration which is discussing the possibility of further amendments to the legislation concerned, and that the working group includes representatives of civil society.

In my work as Commissioner for Human Rights of the Council of Europe, human rights defenders - including NGOs - are my key partners, and I consider it crucial that Council of Europe member states create and foster an enabling environment for their activities. I therefore call on your authorities to revise the legislation currently in force and remove any general or specific legal requirements on declaration of assets for civil society representatives or other persons working on anti-corruption or any related issues. Only those persons or organisations who receive public funding can be subjected to the more rigorous reporting requirements which apply to any other recipient of public budgetary resources.

I look forward to continuing a constructive dialogue and co-operation with your authorities.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Nils Muižnieks', with a long horizontal stroke extending to the right.

Nils Muižnieks