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Address by the President of the INGO Conference, Anna Rurka, at the OSCE's 2016 Human Dimension Implementation Meeting in Warsaw on 21 September 2016

Mr Moderator, Ladies and Gentleman, dear colleagues,

First of all, I would like thank you for the invitation and the opportunity to introduce this thematic session from the perspective of the Conference of International Non-governmental Organisations of the Council of Europe. Let me switch into French, now.

The Conference of INGOs is one of the institutions of the Council of Europe and is a collective body representing over 300 international non-governmental organisations holding participatory status with the Council. Participatory status, of which we are very proud, is the product of a joint process taken forward by the Council of Europe and the INGOs, which started out with consultative status in 1952. The difference which the Conference of INGOs makes at the Council of Europe stems from the fact that our work with NGOs involves peer-to-peer action. The Conference helps to analyse the impact of legal regulations on the right to freedom of association, which includes several dimensions that are all vital to the operation of NGOs. This is because the right to freedom of association may be looked at on the basis of minimum requirements (for instance, the requirements and procedures for setting up associations). We must be more ambitious, however, and aim for effective NGO participation in political decision-making processes. Such participation would not be possible if NGOs did not exist as legal and institutional structures.

Freedom of association is the very foundation of a strong civil society and a vital component of pluralist democracy. That is why the Secretary General of the Council of Europe devoted an entire chapter in his most recent report to freedom of association and assembly. Moreover, the repeated excessive restrictions on NGOs in Azerbaijan, Turkey and the Russian Federation have been the subject of several reports by the Parliamentary Assembly of the Council of Europe, the Commissioner for Human Rights and the Conference of INGOs itself. In this connection, I should like to draw your attention to the fact that the Venice Commission yesterday published its preliminary opinion on the draft amendments to the constitution of Azerbaijan (on which a referendum is due to be held on 26 September in a tense political context in which rights defenders are suffering oppression). The Venice Commission remains very critical of the amendments, which involve further undermining of the balance of powers in Azerbaijan and restrictions on organised civil society's freedom of association and expression. In its view, they are disproportionate. If the authorities stick to the referendum in spite of the Venice Commission's objective criticisms, they will be submitting a text to the public that breaches the commitments which the state itself made at international level. Against this background, how then is it possible to prevent the potential manipulation of civil society? In the Council of Europe, we therefore have some countries where the problem of respect for the right to freedom of association is systemic and is related to a lack of press freedom and of impartiality of the justice system, etc., as well as some other countries where restrictions on or discrimination against human rights defender give cause for concern, for instance Hungary and Poland.

The right to freedom of association has played and continues to play a key part in some democratic transformation processes. The new wave of authoritarianism which has emerged in recent years is targeted more specifically at organised civil society or its activists (human rights defenders defending press freedom, civil and political rights, minority rights, and anticorruption NGOs) or quite simply NGOs which defend the views of vulnerable groups so as to give them a say in public policies. The regimes concerned marginalise or eliminate all sources of opposition on the ground of threats to the constitutional order. These developments do not help us to expand or sometimes just even maintain respect for the rights and freedoms enshrined in international treaties. The relevant instruments, Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe and the joint ODIHR – Venice Commission guidelines on freedom of association, unanimously underline that the right to freedom of association is a fundamental human right which is often a prerequisite for other rights and freedoms. Recommendation 2007(14) introduces as a standard the right of NGOs, and I quote, to “be free to solicit and receive funding – cash or in-kind donations – not only from public bodies in their own state but also from institutional or individual donors, another state or multilateral agencies, subject only to the laws generally applicable to customs, foreign exchange and money laundering and those on the funding of elections and political parties”, unquote. States have a positive obligation, which is very often set out in their constitutions, to ensure enjoyment of the right to freedom of association.<sup>1</sup> But that is not enough. In addition to all the attacks on the actual existence of NGOs and their leaders’ freedoms, we are witnessing deterioration in the working conditions of NGOs and serious undermining of their independence. To reduce the gravity of the situation of NGOs and human rights defenders, the authorities play down the importance of civil and political rights in public discourse and stress that this area concerns a small number of NGOs and that the situation is not at all representative of the organised civil society sector as a whole.

I quite agree that the indivisibility and interdependence of human rights mean that we should not give some rights precedence over others, but social, economic and cultural rights cannot be respected either when civil and political rights are not, except in nanny states which overprotect individuals while restricting their individual freedoms.

Although not on the same scale, the restrictions also concern service provider NGOs and not just watchdog NGOs. NGOs whose role is to assist and advise the public highlight the threats to their funding in the event of their criticising the authorities. They engage in self-censorship in order to protect the population groups which they support. That shows just how closely the rights to freedom of expression and freedom of association are tied up.

To be more thorough, I will divide the obstacles to respect for freedom of association into several categories (legal, political, economic and social). The legal obstacles include:

- restrictions on the registration of associations;
- the various obligations or excessive supervision in the procedure for the reports submitted by the NGOs to the supervisory authorities;
- the lack of a right of appeal, which means centralisation of administrative power and a reduction in judicial power;

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<sup>1</sup> *In many countries, this right is enshrined in the constitution (and where successive legislative regulations require the authority of independent justice to rule on the establishment or winding up of associations, this at least provides a guarantee that the relevant associations cannot be wound up for explicitly political reasons).*

- procedural rules (from derived legislation) which are restrictive or inapplicable;
- the existence of legislation prohibiting NGOs from conducting political activities defined as actions aimed at bringing about change in the broad sphere of public policies. I hope that the dialogue with the Russian Federation in this connection is going to be pursued;
- legislation stigmatising NGOs which receive foreign funding (the infamous status of NGOs as “foreign agents”) or legislation prohibiting such funding;
- anti-terror legislation which restricts freedoms on the basis of suspicions founded on probabilities rather than proof. The victims of the predictive approach to justice are therefore visible minorities and the institutional bodies which represent them. When combating radicalisation, it is very easy to describe individuals as radicalised in an unverifiable manner or to accuse whistle-blowers of being followers of conspiracy theories.

**With regard to the political obstacles**, I see three key aspects: **a lack of political pluralism** leading to polarisation of political parties, an increase in hate speech impacting on public debate and processes of interaction within civil society itself. NGOs which do not toe the line of the majority party suffer “hidden” discrimination – which never officially appears as such – in particular in access to public funding. This is a key factor in **the process of politicisation of NGOs by the authorities but also by the NGOs themselves**, which turn themselves into political parties when the legislation governing the establishment and funding of parties is less restrictive than that governing the operation of NGOs or when they set up parties in a display of opposition or as the expression of a political project serving as an alternative to successive governments (Podemos, for instance).

**The economic obstacles exist on several levels:**

- On a macro level, austerity measures have an impact on the public funds allocated to NGOs. Civil society no longer wishes to pay for the consequences of the political elites’ errors in economic governance. It should be remembered that the major economic crises in the 20th century led to upsurges in extremism.
- The lack of transparency in the distribution of public funding and the resulting unequal treatment of NGOs in access to such funding is a real problem (even in connection with calls for projects). Some government departments have specific lists of NGOs which must receive funding under all circumstances and as a matter of priority. NGOs’ fear of losing public funding has a serious impact on their independence. Few government authorities agree to fund watchdog NGOs without restricting their freedom of expression. The NGOs concerned therefore turn to domestic and foreign private donors. One of the recommendations made at the end of the debate held at the Council of Europe on 6 and 7 June about political activities and foreign funding of NGOs concerned the fact that independent donors should take greater account of the difficult context in which human rights NGOs work so as to ensure their basic operation. Donors should focus less on the obligation to achieve results or the outcome of the work to be done by the organisations being funded.

At the end of this section, I should like to mention the societal obstacles which are rarely taken into account. Here I would include civil society’s limited concern for the fact that checks and balances play a key part in maintaining social stability and also the lack of information among the broader public about the importance of human rights and human rights defenders’ key role in ensuring the rights and freedoms of all citizens. Independent

media (where such exist) and the social media should help to promote the value of NGOs' work.

To me, the presence here today of governments and NGOs and other institutions demonstrates that there is a shared desire to improve respect for and effectiveness of the right to freedom of association. If that is the case, what positive steps can governments take to make it easier to exercise the right to freedom of association, in particular for women, young people, vulnerable groups and minorities?

The obstacles need to be turned into opportunities so as to strengthen civil society and its independence. To that end, there is a need for strong political will and a long-term commitment to making changes and training the authorities about the specific nature of NGOs' role and co-operation with them. NGOs are not implementers of political decisions but experts with know-how and real understanding of the public and the actual situation on the ground. We need to move towards co-management of advisory bodies. That is possible if we know the role of all the parties beforehand and they are able to exchange their respective know-how and expertise. Under those conditions, it is possible to adopt the view of the "Other" in understanding the relevant problem or social issue. Even when funded with public subsidies, political advocacy should not be seen as a form of criticism that destabilises the authorities in power but as a source of information and knowledge which NGOs wish to share with the authorities and with a broader audience. It is also necessary to involve vulnerable groups more closely in the evaluation of public policies, including public expenditure.

Secondly, the effectiveness of the legislation which enables taxpayers to pass on 1, 2 or 3% of their tax (depending on the country) to associations or foundations of their choice needs to be strengthened. If backed up by broader information campaigns, such legislation would involve civil society more closely in pursuing the public interest. Funding sources of this kind boost NGOs' independence in relation to the authorities and private funders.

Thirdly, there is an urgent need to facilitate access to information of public interest. If the authorities are convinced of the usefulness of having a properly informed civil society (a right), the procedures will follow. It is necessary to support the NGOs which lobby every day to obtain information of public interest or help individuals to do so.

Fourthly, the effectiveness of public consultations is currently an indicator of the way in which NGOs are regarded by the authorities. In some countries, the authorities make excessive use of emergency orders in the legislative process. While this clearly responds to other shortcomings, it rules out any public consultation and thereby automatically denies the role of associations as experts supposed to take part in the decision-making process. As a result, some decision-makers consult associations informally, but this type of interaction lacks transparency and does not ensure equal treatment. Various types of genuine public consultation processes conducted entirely transparently and in a non-discriminatory and thorough manner are therefore a key stage in the drafting of legislation and in political decision-making. The Council of Europe is aware of the issue. The Secretary General has recommended the drafting of guidelines on the meaningful participation of civil society in political decision-making. These guidelines are currently being drawn up in a working process involving government representatives, the Conference of INGOs and a broad public consultation exercise.

In conclusion, I should like to underline that the countries where the separation of powers and the independence of the judiciary have not been fully achieved must redouble their efforts to strengthen the right to freedom of association. If we want more democracy, we should share power, not centralise it!

The public interest emerges when individuals identify with one another and form a community, become involved and set up associations to take action together. Power comes from collective action, not from individuals. Collective action restores dignity, without which there can be no freedom. This is therefore an invitation to the authorities to initiate new political practices, go beyond mere declarations and strengthen a responsible, plural civil society.

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