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COMPENDIUM OF COUNCIL OF EUROPE PRACTICE RELATING TO THE RIGHT TO FREEDOM OF ASSOCIATION AND THE POSITION OF NON-GOVERNMENTAL ORGANISATIONS

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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.

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Foreword

In the more than ten years since the Expert Council on NGO Law was created in January 2008 as a major organ of the Conference of INGOs of the Council of Europe, the Expert Council has issued close to thirty Opinions/Reports/Recommendations/Reviews/Statements.

These have been oriented in many diverse ways towards implementing the Expert Council's mandate to seek to create and improve an enabling environment for NGOs throughout Europe, notably by analyzing and proposing improvement in NGO legislation and its implementation.

The Expert Council's texts have covered major thematic issues and country situations, and have broadly contributed to reinforcing the Conference of INGOs as one of the pillars of the Council of Europe, and as a competent and energetic member of the Council of Europe Quadrilogue.

The present Compendium is once again a mine of information, thoroughly researched and clearly set out. As always with Mr McBride's texts, the extensive footnotes are indispensable references, enabling the reader to pinpoint standards, sources and linkages. The Compendium covers the practices of a wide range of Council of Europe bodies relating to freedom of association and NGOs, and brings to the fore information not previously easily accessible.

For this reason, I commend the study and use of the text throughout the Council of Europe and among the members of the Conference of INGOs. The Compendium will be a valuable contribution to ongoing discussions on enhancing synergies - and consequently decisions and practical results - among the diverse Council of Europe actors. The Conference of INGOs remains ready to be a positive promoter of such synergies.

Cyril Ritchie
President, Expert Council on NGO Law

Executive summary

This compendium examines the practice of Council of Europe bodies whose activities deal in some way with the enjoyment of the right to the freedom of association and/or the position of NGOs.

It first reviews the general standard-setting undertaken by these bodies and then deals with the various issues concerning associations and NGOs that have been addressed in the work of these bodies.

Thus, it considers the way in which the activities and role of associations and NGOs has been underlined as important and needing encouragement; the requirements for their formation and the problems faced in achieving this; the extent to which their activities and objectives may be limited and the situations in which this has unjustifiably occurred; the problems affecting their membership and internal management; the rights and enabling environment required for them to operate and the challenges faced in ensuring that both exist; the duty to protect them and the situations in which this has not occurred; the appropriate degree of supervision over their activities and operation and the way in which supervision can become an excessive burden; the requirements regarding penalties (including dissolution) that should be, but are not always, observed; and the particular problems faced in ensuring the right to freedom of association in the context of trade union activity.

The compendium concludes by emphasising the importance of coordination between the different bodies and the value in them drawing lessons from each other's experience but also by underlining the continued need for the work being undertaken by all the bodies concerned.

A. Introduction

1. This compendium is concerned with the practice of those Council of Europe bodies – other than the European Court of Human Rights ("the European Court")[1] - whose activities have in some way dealt with aspects of the enjoyment of the right to freedom of association and/or the position of non-governmental organisations ("NGOs").

2. Practice for this purpose is treated as covering both the elaboration of standards and the focus on their implementation through the provision of advice, the giving of opinions and the monitoring of the implementation of commitments made by member States.

3. There is not, as the Secretary General has observed, a specific monitoring mechanism to prevent violations of freedom of association, although he has suggested that such a mechanism - able to react rapidly to urgent challenges, report back to the Committee of Ministers, and make recommendations – was needed.[2]

4. However, different elements of such a mechanism can be seen in the activities of many of the bodies within the Council of Europe – whether established by the Statute, specific treaty provision, pursuant to resolutions of the Committee of Ministers or on some other basis – that have been studied for the purpose of preparing this compendium.

5. Out of all the different Council of Europe bodies, the following have especially manifested some relevant practice: the Advisory Committee on the Framework Convention on National Minorities ("the Advisory Committee"); the Commissioner for Human Rights ("the Commissioner"); the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism ("MONEYVAL"); the Committee of Ministers; the Conference of International Non-Governmental Organisations (including its Expert Council on NGO Law (respectively "the Conference of INGOs" and "the Expert Council"); the Consultative Council of European Judges ("CCJE"); the Consultative Council of European Prosecutors ("CCPE"); the European Commission against Racism and Intolerance ("ECRI"); the European Commission for Democracy through Law ("the Venice Commission"); the European Committee of Social Rights the European Committee on Democracy and Governance ("CDDG");; the European Committee on Legal Co-operation ("CDCJ"); the Parliamentary Assembly of the Council of Europe ("PACE"); the Secretary General; and the Steering Committee for Human Rights ("CDDH").

6. There are several other bodies whose activities might have been expected to have some relevance for this compendium but which have not as yet done so, namely, the Conference of

[1] For the case law of the European Court see J. McBride, 'NGO Rights and Their Protection under International Human Rights Law' in J-F Flauss (ed), *International Human Rights Law and non-governmental organisations*', (Bruylant, 2005), pp 157-232, the thematic studies prepared by the Expert Council on NGO Law of the Council of Europe's Conference of INGOs (available at https://www.coe.int/en/web/ingo/ngo-legislation#{"10852256":[0]}) and AssociatiOnline (http://www.associationline.org/).

[2] *State of Democracy, Human Rights and the Rule of Law in Europe*, SG (2014) 1, at p. 8.

the Parties to the CETS 198[3], the Council of Europe Committee on Counter-Terrorism ("CDCT")[4] and the Human Rights Trust Fund[5]. In addition, the Sexual Orientation and Gender Identity Unit is only beginning a review of the implementation of Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity, which covers freedom of association.[6]

7. The compendium does not deal with the extensive participation of NGOs in the work of the Council of Europe. This is facilitated not only by the grant by it of participatory status but also by the reliance placed on their input by both some of the bodies named above and others such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the Group of Experts on Action against Trafficking in Human Beings and the Group of Experts on Action against Violence against Women and Domestic Violence.

8. In addition, it should be noted that NGOs often act as representatives of applicants to the European Court and can be authorised – pursuant to the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints - to lodge collective complaints alleging violations of the European Social Charter ("the Charter") in those States which have ratified this Additional Protocol. Furthermore, it be noted that NGOs also contribute to the supervision by the Committee of Ministers of the execution of judgments of the European Court.[7]

9. The compendium first considers the ways in which the Council of Europe has been responsible for the elaboration of treaty provisions generally concerned with the right to freedom of association and the position of NGOs and supplementation of these through certain other forms of standard-setting undertaken by the bodies under review. It then examines their practice – including more specific standard-setting - regarding particular issues, namely, the importance of associations and NGOs, formation, activities and objectives, membership, internal management, rights and an enabling environment, protection, supervision and penalties and dissolution, as well as the particular application of the right to freedom of association in connection with trade unions.

10. The practice covered concerns that occurring since the adoption of Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-

[3] This is a monitoring mechanism for the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism.
[4] Formerly the Committee of Experts on Terrorism ("CODEXTER"). The CDCT is tasked with developing appropriate and practical soft law instruments such as recommendations and guidelines for member States to consider and apply in the fight against terrorist activity. As such, it can be expected to develop relevant practice in the future.
[5] This funds projects intended to assist the implementation of the European Convention on Human Rights ("the European Convention") and other Council of Europe human rights instruments or the assuring of the full and timely national execution of the judgments of the European Court but has not funded any specifically concerned with the issues addressed in this compendium.
[6] See further, fn. 32 below.
[7] See Rules 8(3), 9(2), 14(3) and 15(3) of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, as amended on 18 January 2017.

governmental organisations in Europe ("Recommendation CM/Rec(2007)14")[8] up until 18 May 2018.

11. The instances cited are intended to indicate the approach regarding associations and NGOs considered appropriate by the bodies concerned. Insofar as reference is made to the situation in particular member States, this does not necessarily reflect the current position in them.

B. Standard-setting

12. The right to freedom of association is specifically guaranteed in Article 11 of the European Convention on Human Rights ("the European Convention").[9]

13. In addition, particular treaty guarantees regarding this right have been adopted for national minorities[10] and non-citizens[11], as well as in the context of tackling terrorism[12] and protecting economic and social rights[13].

[8] Adopted by the Committee of Ministers on 10 October 2007.

[9] "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

[10] Thus, Article 7 of the Framework Convention for the Protection of National Minorities provides: "The Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion".

[11] Thus, Article 3 of the Convention on the Participation of Foreigners in Public Life at Local Level provides that: "Each Party undertakes, subject to the provisions of Article 9, to guarantee to foreign residents, on the same terms as to its own nationals: … b the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of their interests. In particular, the right to freedom of association shall imply the right of foreign residents to form local associations of their own for purposes of mutual assistance, maintenance and expression of their cultural identity or defence of their interests in relation to matters falling within the province of the local authority, as well as the right to join any association."

[12] Thus, Article 12 of the Council of Europe Convention on the Prevention of Terrorism – which requires the establishment of a criminal offence relating to the involvement of groups in terrorism (see para. 73 below) - provides that:"1 Each Party shall ensure that the establishment, implementation and application of the criminalisation under Articles 5 to 7 and 9 of this Convention are carried out while respecting human rights obligations, in particular the right to freedom of expression, *freedom of association* and freedom of religion, as set forth in, where applicable to that Party, the Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, and other obligations under international law. 2 The establishment, implementation and application of the criminalisation under Articles 5 to 7 and 9 of this Convention should furthermore be subject to the principle of proportionality, with respect to the legitimate aims pursued and to their necessity in a democratic society, and should exclude any form of arbitrariness or discriminatory or racist treatment" (emphasis added). There is a similar requirement in Article 8 of the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism, which requires the criminalisation of participating in an association or group for the purpose of terrorism (see para. 74 below).

[13] Thus, the European Social Charter and the European Social Charter (revised) provide: "**Article 5 –The right to organise** With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Contracting Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national

14. There are also treaties with provisions to facilitate the recognition of the legal personality of international NGOs[14] and the maintenance and development of links between groups using a regional or minority language and other groups in the State employing a language used in identical or similar form, as well as the establishment of cultural relations with other groups in the State using different languages[15].

15. Moreover, there are provisions in other treaties which encourage or require States to work with NGOs in respect of a wide range of matters, namely, to ensure access to cultural heritage[16], to combat the manipulation of sports organisations[17], to facilitate transnational voluntary service[18], to increase awareness of the value of landscapes[19], to prevent and combat

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laws or regulations. **Article 6 –The right to bargain collectively** With a view to ensuring the effective exercise of the right to bargain collectively, the Contracting Parties undertake: 1 to promote joint consultation between workers and employers; 2 to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements; 3 to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes; and recognise: 4 the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into. **Article 19 –The right of migrant workers and their families to protection and assistance** With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Contracting Party, the Contracting Parties undertake: … 4 to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters: … b membership of trade unions and enjoyment of the benefits of collective bargaining." In addition, Article 28 of the European Social Charter (revised) ("the Revised Charter") provides: "With a view to ensuring the effective exercise of the right of workers' representatives to carry out their functions, the Parties undertake to ensure that in the undertaking: a they enjoy effective protection against acts prejudicial to them, including dismissal, based on their status or activities as workers' representatives within the undertaking; b they are afforded such facilities as may be appropriate in order to enable them to carry out their functions promptly and efficiently, account being taken of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned". Furthermore, the European Convention on the Legal Status of Migrant Workers provides: "**Article 28 – Exercise of the right to organise** Each Contracting Party shall allow to migrant workers the right to organise for the protection of their economic and social interests on the conditions provided for by national legislation for its own nationals."

[14] In order to benefit from the provisions of the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations an international NGO must: have a non profit-making aim of international utility; have been established by an instrument governed by the internal law of a Party; carry on substantive activities in at least two Parties; and have its statutory office in the territory of a Party and central management and control in that State or in another Party. The Convention establishes rules on the proof to be furnished to the authorities in the Party where the recognition is sought and sets out exceptional cases in which a Party may refuse recognition, such as where the activities of the organisation in question contravene national security, public safety, or is detrimental to the prevention of disorder or crime, etc.).

[15] Article 7b of the European Charter for Regional or Minority Languages. In addition under Article 14, the Parties undertake "a to apply existing bilateral and multilateral agreements which bind them with the States in which the same language is used in identical or similar form, or if necessary to seek to conclude such agreements, in such a way as to foster contacts between the users of the same language in the States concerned in the fields of culture, education, information, vocational training and permanent education."

[16] Article 12 of the Council of Europe Framework Convention on the Value of Cultural Heritage for Society provides that: The Parties undertake to: …c recognise the role of voluntary organisations both as partners in activities and as constructive critics of cultural heritage policies".

[17] The Council of Europe Convention on the Manipulation of Sports Competitions contains a range of provisions to encourage organisations that govern sports or organise sports competitions to cooperate in the fight against manipulation of these competitions and the assessment and management of the risk of this occurring, as well as to encourage them to take measures to combat manipulation.

[18] The European Convention on the Promotion of a Transnational Long-term Voluntary Service for Young People is concerned with such service undertaken, inter alia, in "non-profit-making and non-governmental organisations

trafficking in human organs[20], to prevent and combat violence against women and domestic violence[21], to prevent the sexual exploitation and sexual abuse of children[22], to prevent trafficking in human beings[23], to promote tolerance[24], to provide a safe, secure and welcoming environment at sports events[25] and to tackle the use of doping in sport[26].

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undertaking voluntary service for the benefit of society, and contributing to the development of democracy and solidarity; or –youth organisations, that is, non-governmental organisations run for and by young people" (Art. 2.2).

[19] Article 6 of the European Landscape Convention provides that: "A Each Party undertakes to increase awareness among the civil society, private organisations, and public authorities of the value of landscapes, their role and changes to them". In addition, Article 11.1 of this Convention allows for the possibility of conferring the Landscape award of the Council of Europe "on non-governmental organisations having made particularly remarkable contributions to landscape protection, management or planning".

[20] Article 19.5 of the Council of Europe Convention against Trafficking in Human Organs provides that: "Each Party shall provide, by means of legislative or other measures, in accordance with the conditions provided for by its domestic law, the possibility for groups, foundations, associations or governmental or non-governmental organisations, to assist and/or support the victims with their consent during criminal proceedings concerning the offences established in accordance with this Convention").

[21] This is addressed in several provisions in the Council of Europe Convention on preventing and combating violence against women and domestic violence, namely, Articles 7 ("3 Measures taken pursuant to this article shall involve, where appropriate, all relevant actors, such as government agencies, the national, regional and local parliaments and authorities, national human rights institutions and civil society organisations"), 8 ("Parties shall allocate appropriate financial and human resources for the adequate implementation of integrated policies, measures and programmes to prevent and combat all forms of violence covered by the scope of this Convention, including those carried out by non-governmental organisations and civil society"), 9 ("Parties shall recognise, encourage and support, at all levels, the work of relevant non-governmental organisations and of civil society active in combating violence against women and establish effective co-operation with these organisations"), 13 ("Parties shall promote or conduct, on a regular basis and at all levels, awareness-raising campaigns or programmes, including in co-operation with national human rights institutions and equality bodies, civil society and non-governmental organisations, especially women's organisations, where appropriate, to increase awareness and understanding among the general public of the different manifestations of all forms of violence covered by the scope of this Convention, their consequences on children and the need to prevent such violence"), 17 ("1 Parties shall encourage the private sector, the information and communication technology sector and the media, with due respect for freedom of expression and their independence, to participate in the elaboration and implementation of policies and to set guidelines and self-regulatory standards to prevent violence against women and to enhance respect for their dignity. 2 Parties shall develop and promote, in co-operation with private sector actors, skills among children, parents and educators on how to deal with the information and communications environment that provides access to degrading content of a sexual or violent nature which might be harmful") and 18 ("Parties shall take the necessary legislative or other measures, in accordance with internal law, to ensure that there are appropriate mechanisms to provide for effective co-operation between all relevant state agencies, including the judiciary, public prosecutors, law enforcement agencies, local and regional authorities as well as non-governmental organisations and other relevant organisations and entities, in protecting and supporting victims and witnesses of all forms of violence covered by the scope of this Convention, including by referring to general and specialist support services as detailed in Articles 20 and 22 of this Convention")

[22] This is addressed in several provisions of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, namely, Articles 9 ("2 Each Party shall encourage the private sector, in particular the information and communication technology sector, the tourism and travel industry and the banking and finance sectors, as well as civil society, to participate in the elaboration and implementation of policies to prevent sexual exploitation and sexual abuse of children and to implement internal norms through self-regulation or co-regulation … 4 Each Party shall encourage the financing, including, where appropriate, by the creation of funds, of the projects and programmes carried out by civil society aiming at preventing and protecting children from sexual exploitation and sexual abuse"), 14 ("2 Each Party shall take measures, under the conditions provided for by its internal law, to co-operate with non-governmental organisations, other relevant organisations or other elements of civil society engaged in assistance to victims") and 31 ("5 Each Party shall provide, by means of legislative or other measures, in accordance with the conditions provided for by its internal law, the possibility for groups, foundations, associations or governmental or non-governmental organisations, to assist and/or support the victims with their consent during criminal proceedings concerning the offences established in accordance with this Convention").

[23] Thus, Article 5.6 of the Council of Europe Convention on Action against Trafficking in Human Beings provides that: "Measures established in accordance with this article shall involve, where appropriate, non-governmental organisations, other relevant organisations and other elements of civil society committed to the prevention of trafficking in human

16. These treaty provisions have been supplemented by other forms of standard-setting by the bodies under review.

17. The most significant in this respect are Recommendation CM/Rec(2007)14[27] and the Joint Guidelines on Freedom of Association adopted by the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights ("Joint Guidelines")[28], which draw upon the case law of the European Court and give both precision and detail regarding the standards to be observed.

18. CDCJ, at the request of the Committee of Ministers, carried out an assessment of the implementation of Recommendation CM/Rec(2007)14 by member States through a questionnaire sent to them just over two years after its adoption. However, only 17 member States replied to questions concerned with the translation of Recommendation CM/Rec(2007)14 into national languages and the measures taken with respect to its dissemination, the training of officials, as well as the legislative and other steps taken – whether before or subsequent to its adoption - to implement the substantive requirements concerning the position of NGOs. [29]

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beings and victim protection or assistance". In addition Article 16.5 provides that: "Each Party shall adopt such legislative or other measures as may be necessary to establish repatriation programmes, involving relevant national or international institutions and non governmental organisations" and Article 35 provides that: "Each Party shall encourage state authorities and public officials, to co-operate with non-governmental organisations, other relevant organisations and members of civil society, in establishing strategic partnerships with the aim of achieving the purpose of this Convention".

[24] Thus, Article 3.3 of the Council of Europe Convention on the Prevention of Terrorism provides that: "Each Party shall promote tolerance by encouraging inter-religious and cross-cultural dialogue involving, where appropriate, non-governmental organisations and other elements of civil society with a view to preventing tensions that might contribute to the commission of terrorist offences".

[25] Thus, Article 8 of the Council of Europe Convention on an Integrated Safety, Security and Service Approach at Football Matches and Other Sports Events provides that:"1 The Parties shall encourage all agencies to develop and pursue a policy of proactive and regular communication with key stakeholders, including supporter representatives and local communities, based on the principle of dialogue, and with the aim of generating a partnership ethos and positive co-operation as well as identifying solutions to potential problems.2 The Parties shall encourage all public and private agencies and other stakeholders, including local communities and supporter representatives, to initiate or participate in multi-agency social, educational, crime-prevention and other community projects designed to foster mutual respect and understanding, especially among supporters, sports clubs and associations as well as agencies responsible for safety and security".

[26] Thus, Article 3 of the Anti-Doping Convention provides that: "2 They [the Parties] shall ensure that there is practical application of this Convention, and in particular that the requirements under Article 7 are met, by entrusting, where appropriate, the implementation of some of the provisions of this Convention to a designated governmental or non-governmental sports authority or to a sports organisation".

[27] This drew on "The Fundamental Principles on the Status of Non-governmental Organisations in Europe", which had been adopted at multilateral meetings held in Strasbourg on 19 to 20 November 2001, 20 to 22 March 2002 and 5 July 2002.

[28] CDL-AD(2014)046, 17 December 2014.

[29] For an analysis of the replies, see: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805ce6d8.

19. There has also been specific recognition in Recommendations of the Committee of Ministers to member States of the right to freedom of association for judges[30] and members of the armed forces[31].

20. Furthermore, Recommendations have also been adopted by the Committee of Ministers concerning the application of the right to freedom of association to the Internet[32]and the need

[30] Recommendation CM/Rec(2010)12 on judges: independence, efficiency and responsibilities, which provides that: "Judges should be free to form and join professional organisations whose objectives are to safeguard their independence, protect their interests and promote the rule of law".

[31] CM/Rec(2010)4 on human rights of members of the armed forces. This provides that: "53. No restrictions should be placed on the exercise of the rights to freedom of peaceful assembly and to freedom of association other than those that are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. 54. Members of the armed forces should have the right to join independent organisations representing their interests and have the right to organise and to bargain collectively. Where these rights are not granted, the continued justification for such restrictions should be reviewed and unnecessary and disproportionate restrictions on the right to assembly and association should be lifted. 55. No disciplinary action or any discriminatory measure should be taken against members of the armed forces merely because of their participation in the activities of lawfully established military associations or trade unions. 56. Members of the armed forces should have the right to join political parties, unless there are legitimate grounds for certain restrictions. Such political activities may be prohibited on legitimate grounds, in particular when a member of the armed forces is on active duty. 57. Paragraphs 53 to 56 should not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces".

[32] Recommendation CM/Rec(2015)6 on the free, transboundary flow of information on the Internet, which provides that "1.1. States have an obligation to guarantee to everyone within their jurisdiction the right to freedom of expression and the right to freedom of assembly and association, in full compliance with Articles 10 and 11 of the ECHR, which apply equally to the Internet. These rights and freedoms must be guaranteed without discrimination on any ground such as gender, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status … 2 …States are obliged to ensure that the blocking of content or services deemed illegal is in compliance with Articles 8, 10 and 11 of the ECHR. In particular, measures adopted by State authorities in order to combat illegal content or activities on the Internet should not result in an unnecessary and disproportionate impact beyond that State's borders. States should strive to develop measures which are the least intrusive and least disruptive and implement them following a transparent and accountable process. Measures adopted or promoted by States should be regularly reviewed to determine their practical effectiveness and whether they are still necessary or proportionate … 3 …States should encourage, facilitate and support the development of appropriate self-regulatory codes of conduct so that all stakeholders respect the right to respect for private and family life, the right to freedom of expression and the right to freedom of assembly and association, in full compliance with Articles 8, 10 and 11 of the ECHR, with particular regard to the free flow of Internet traffic … 4.1 .1. States should promote multi-stakeholder co-operation in the development and implementation of technical best practices that respect the right to freedom of expression, the right to freedom of assembly and association and the right to respect for private and family life, including evaluations of the necessity of actions and proportionality of measures that may have a transboundary impact on Internet traffic". In addition, Recommendation CM/Rec(2016)5 on Internet freedom provides that: "3.1. Individuals are free to use Internet platforms, such as social media and other ICTs in order to associate with each other and to establish associations, to determine the objectives of such associations, to form trade unions, and to carry out activities within the limits provided for by laws that comply with international standards. 3.2. Associations are free to use the Internet in order to exercise their right to freedom of expression and to participate in matters of political and public debate. 3.3. Individuals are free to use Internet platforms, such as social media and other ICTs in order to organise themselves for purposes of peaceful assembly. 3.4. State measures applied in the context of the exercise of the right to peaceful assembly which amount to a blocking or restriction of Internet platforms, such as social media and other ICTs, comply with Article 11 of the Convention. 3.5. Any restriction on the exercise of the right to freedom of peaceful assembly and right to freedom of association with regard to the Internet is in compliance with Article 11 of the Convention, namely it: - is prescribed by a law, which is accessible, clear, unambiguous and sufficiently precise to enable individuals to regulate their conduct; - pursues a legitimate aim as exhaustively enumerated in Article 11 of the Convention; - is necessary in a democratic society and proportionate to the legitimate aim pursued. There is a pressing social need for the restriction. There is a fair balance between the exercise of the right to freedom of assembly and freedom of association and the interests of the society as a whole. If a less intrusive measure achieves the same goal, it is applied. The restriction is narrowly construed and applied, and does not encroach on the essence of the right to freedom of assembly and association".

to ensure that the enjoyment of this right is not affected by either discrimination on grounds of sexual orientation or gender identity[33] or the regulation of lobbying[34], as well as with the need for greater efforts to ensure its protection in the workplace and for those who act as human rights defenders[35].

21. The need to respect the right to freedom of association is also emphasised in the Guidelines of the Committee of Ministers to member states on the protection and promotion of human rights in culturally diverse societies.[36]

22. Furthermore, the Committee of Ministers have elaborated Guidelines for civil participation in political decision making that have the purpose of strengthening and facilitating participation by individuals, NGOs and civil society at large in political decision making.[37]

[33] Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity, which provides that: "9. Member states should take appropriate measures to ensure, in accordance with Article 11 of the Convention, that the right to freedom of association can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, discriminatory administrative procedures, including excessive formalities for the registration and practical functioning of associations, should be prevented and removed; measures should also be taken to prevent the abuse of legal and administrative provisions, such as those related to restrictions based on public health, public morality and public order. 10. Access to public funding available for non-governmental organisations should be secured without discrimination on grounds of sexual orientation or gender identity. 11. Member states should take appropriate measures to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression to which they may be exposed, including when allegedly committed by state agents, in order to enable them to freely carry out their activities in accordance with the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities. 12. Member states should ensure that non-governmental organisations defending the human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons".

[34] Thus, Recommendation CM/Rec(2017)2 on the legal regulation of lobbying activities in the context of public decision making provides that: "4. Legal regulation of lobbying activities should not, in any form or manner whatsoever, infringe the democratic right of individuals to: *a.* express their opinions and petition public officials, bodies and institutions, whether individually or collectively; *b.* campaign for political change and change in legislation, policy or practice within the framework of legitimate political activities, individually or collectively".

[35] Thus, in Recommendation CM/Rec(2016)3 on human rights and business, it is stated that*:* "59. Member States should reinforce efforts to meet their obligations with regard to workers under the UN Covenant on Economic, Social and Cultural Rights, the European Convention on Human Rights, the European Social Charter, the European Social Charter (revised) and the fundamental conventions of the International Labour Organization concerning in particular freedom of association, the right to collective bargaining, the prohibition of discrimination, child and forced labour, and all other relevant international instruments, including those relating to the health and safety of workers and people working in the informal economy. 60. Member States should involve social partners in the drafting and implementation of policies on matters which are particularly sensitive with regard to workers' rights … 69. Member States should ensure that the activities of human rights defenders within their jurisdiction who focus on the adverse effects of business-related activities on human rights are not obstructed, for example through political pressure, harassment, politically motivated or economic compulsion. In particular, the fundamental rights enjoyed by human rights defenders in accordance with Articles 10 and 11 of the European Convention on Human Rights must be protected. 70. Member States should protect and also support, for example through their diplomatic and consular missions, the work of human rights defenders who focus on business-related impacts on human rights in third countries, in accordance with existing international and European standards".

[36] Adopted on 2 March 2016; paras. 4, 8 and 23-26.

[37] Adopted on 27 September 2017. These set out, in particular, the conditions enabling civil participation, the principles governing it, the fundamentals of civil participation in political decision-making and the types of civil participation (provision of information, consultation, dialogue and active involvement) and the implementing measures required.

23. Moreover, the ability of judges and prosecutors to form associations is seen by the CCJE and the CCPE as a requirement flowing from the guarantee of their independence.[38]

24. Finally, the Secretary General has elaborated and then revised criteria for measuring freedom of association that are intended to allow more specific reporting on the quality of the legal framework and of its implementation in practice.[39]

C. Importance

25. The significant contribution that can be made by NGOs in a wide range of areas has been recognised in many Recommendations of the Committee of Ministers.[40]

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[38] Paragraph 38 of the Explanatory Note to Opinion No. 12 of the former and Opinion No. 4 of the latter on the relations between Judges and Prosecutors in a democratic society (the "Bordeaux Declaration"). The CCPE has also stated that prosecutors enjoy the right to freedom of association in principle IX of its Opinion No. 9 on European norms and principles concerning prosecutors ("the Rome Charter"), 17 December 2014.

[39] The latest version was introduced in *State of Democracy, Human Rights and the Rule of Law in Europe A security imperative for Europe*, SG(2016)1, at pp. 62-63. The criteria are as follows: The free exercise of freedom of association does not depend on registration; There is an appropriate legal basis for registration of NGOs, restricting any limitations on such registration in order to respect the principle of proportionality and appropriate procedures; The legislation is precise and specific, and the outcomes of its application are foreseeable; Prohibition or dissolution of associations is a measure of last resort; Sanctions for non-respect of the legislation are foreseeable and proportionate and are not applied in an arbitrary and discriminatory manner; The implementation of the legislation on freedom of association is guided by a presumption in favour of the lawfulness of associations' creation, objectives and activities; The administrative authorities do not have excessive discretion and procedures are carried out in accordance with the standards of good administration; Effective judicial review mechanisms are
available.; NGOs are free to express their opinions through their objectives and activities, without hindrance or adverse consequences resulting from the content of such opinions; NGOs have the right to participate in matters
of political and public debate, irrespective of whether their views are in accordance with those of the government; NGOs have the right to peacefully advocate changes in legislation; Associations are free to seek, receive and use financial, material and human resources, whether domestic, foreign or international, for the pursuit of their activities, subject to respect for legal requirements which are in compliance with international standards; and Public funding is available and is provided in a non-discriminatory manner.

[40] See, in particular, CM/Rec(2007)16 on measures to promote the public service value of the Internet, CM/Rec(2007)17 on gender equality standards and mechanisms, CM/Rec(2008)3 on the guidelines for the implementation of the European Landscape Convention, CM/Rec(2008)4 on strengthening the integration of children of migrants and of immigrant background, CM/Rec(2008)5 on policies for Roma and/or Travellers in Europe, CM/Rec(2008)6 on measures to promote the respect for freedom of expression and information with regard to Internet filters, CM/Rec(2008)10 on improving access of migrants and persons of immigrant background to employment, CM/Rec(2009)1 on electronic democracy (e-democracy), CM/Rec(2009)3 on monitoring the protection of human rights and dignity of persons with mental disorder, CM/Rec(2009)6 on ageing and disability in the 21st century: sustainable frameworks to enable greater quality of life in an inclusive society, CM/Rec(2009)10 on integrated national strategies for the protection of children from violence, CM/Rec(2010)2 on deinstitutionalisation and community living of children with disabilities, CM/Rec(2010)7 on the Council of Europe Charter on Education for Democratic Citizenship and Human Rights Education, CM/Rec(2010)9 on the revised Code of Sports Ethics, CM/Rec(2010)10 on the role of women and men in conflict prevention and resolution and in peace building, CM/Rec(2011)3 on the principle of autonomy of sport in Europe, CM/Rec(2011)5 on reducing the risk of vulnerability of elderly migrants and improving their welfare, CM/Rec(2011)9 on fostering social mobility as a contribution to social cohesion, CM/Rec(2011)10 on promotion of the integrity of sport to fight against manipulation of results, notably match-fixing, CM/Rec(2012)1 on public service media governance, CM/Rec(2012)2 on the participation of children and young people under the age of 18, CM/Rec(2012)8 on the implementation of good governance principles in health systems, CM/Rec(2013)3 on ensuring full, equal and effective participation of persons with disabilities in culture, sports, tourism and leisure activities, CM/Rec(2014)1 on the Council of Europe Charter on shared social responsibilities, CM/Rec(2014)6 on a

26. Furthermore, the positive view of the role that can be played by associations and NGOs is also evident from the reports and other documentation produced by many of the other bodies under review.

27. Thus, the Secretary General has emphasised the value of the watchdog work of NGOs in monitoring state action and exposing human rights abuses[41], their decisive role in ensuring the accountability of public or elected officials and the fact that civil society empowerment is an essential element to the legitimacy and effectiveness of anti-corruption reforms and is one of the cornerstones of any genuine democracy[42], as well as the value of governments working in partnership with NGOs[43].

28. Moreover, PACE has made it clear that it regards NGOs as the natural allies of parliaments in the performance of their function of oversight, prevention and awareness raising in this matter. As a result, it has considered it indispensable for measures to be taken to support and promote their action in order to refine policies and legislation in the area of racism and xenophobia and to ensure that the point of view of minority groups is taken into account in their preparation, implementation and monitoring.[44]

29. Furthermore, the Venice Commission has underlined that freedom of association is "a key right" that enables natural persons – including non-citizens - and legal entities to collaborate on a voluntary basis without public interference in order to realise a common goal, notably the pursuit, promotion and defence of their common interests.[45]

Guide to human rights for Internet users, CM/Rec(2015)2 on gender mainstreaming in sport, CM/Rec(2015)6 on the free, transboundary flow of information on the Internet, CM/Rec(2016)4 on the protection of journalism and safety of journalists and other media actors, CM/Rec(2016)7 on young people's access to rights, CM/Rec(2017)1 on the European Cultural Heritage Strategy for the 21st century, CM/Rec(2017)4 on youth work
CM/Rec(2017)5 on standards for e-voting, CM/Rec(2017)7 on the contribution of the European Landscape Convention to the exercise of human rights and democracy with a view to sustainable development, CM/Rec(2017)8 on Big Data for culture, literacy and democracy, CM/Rec(2017)9 on gender equality in the audiovisual sector, CM/Rec(2017)10 on improving access to justice for Roma and Travellers in Europe, CM/Rec(2018)4 on the participation of citizens in local public life and CM/Rec(2018)6 on terrorists acting alone.

[41] *State of Democracy, Human Rights and the Rule of Law in Europe*, SG (2014) 1, at p. 31.

[42] *State of Democracy, Human Rights and the Rule of Law in Europe Role of institutions Threats to institutions*, SG(2018)1, at p. 54

[43] *State of Democracy, Human Rights and the Rule of Law in Europe*, SG (2014) 1 ("Governments that formalise partnerships with civil organisations, particularly non-governmental organisations (NGOs) that specialise in assisting victims, can make valuable headway. This can also enhance their involvement in defining anti-trafficking policies. States have the responsibility to ensure funding for assista5nce and accommodation to victims of trafficking, especially when this task is delegated to competent NGOs"; p. 17)

[44] NGOs' role in combating intolerance, racism and xenophobia, Resolution 1910 (2012). In this Resolution, PACE recommended that member and observer States, and parliaments in particular take a range of measures in conjunction with qualified NGOs and encourage and support NGOs in their relevant actions (notably as regards monitoring, documenting and denouncing discrimination and prevailing upon the authorities to tackle intolerance, racism and xenophobia through appropriate laws and measures. PACE also encouraged the Secretary General of the Council of Europe to review and reinforce co-operation with international non-governmental organisations, and namely to propose implementing agreements for the instruments already in existence against discrimination, racism and intolerance with the competent Council of Europe directorates and organs in order to provide solutions to specific situations and further the culture of participation in the member States.

[45] *Compilation of Venice Commission Opinions concerning Freedom of Association (revised July 2014)*, CDL-PI(2014)004, 3 July 2014 ("*Compilation*"), p. 4

30. It has also emphasised that it is "an essential prerequisite for other fundamental freedoms", notably those of thought, conscience, religion, opinion and expression.[46]

31. In addition, the Venice Commission has indicated that the public engagement of citizens to NGOs, "parallel to that of participation in the formal political process, is of paramount importance and represents a crucial element of a healthy civil society".[47]

32. Also, ECRI has underlined on several occasions the important role played by associations and NGOs in its recommendations to governments of member States that their activities - particularly with respect to combating racism and hate speech, facilitating the participation of minorities and assisting irregularly present migrants[48] - be supported and encouraged. In addition it has recommended that they be involved in developing methods to promote equality and to tackle discrimination[49] and that associations with a legitimate interest in combating racism, racial discrimination and hate speech be given a special status with respect to related legal proceedings[50]. These recommendations have then be reiterated in ECRI's monitoring reports for individual countries.

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[46] *Compilatio*n, p. 5.

[47] *Compilation*, p. 10.

[48] *ECRI General Policy Recommendation N° 3: Combating racism and intolerance against Roma/Gypsies*, ("to support the activities of non-governmental organisations, which play an important role in combating racism and intolerance against Roma/Gypsies and which provide them in particular with appropriate legal assistance; - to encourage Roma/Gypsy organisations to play an active role, with a view to strengthening civil society ..."); *ECRI General Policy Recommendation N°9: The fight against antisemitism*, ("support the activities of non-governmental organisations, which play an important role in fighting antisemitism, promoting appreciation of diversity, and developing dialogue and common anti-racist actions between different cultural, ethnic and religious communities .."); *ECRI General Policy Recommendation N°12: Combating racism and racial discrimination in the field of sport*, ("19. provide funding for social, educational and information activities for non-governmental organisations active in the field of combating racism and racial discrimination in sport"); *ECRI General Policy Recommendation No. 14 on Combating Racism and Racial Discrimination in Employment*, ("Ensure Take steps to improve knowledge of equality rights and of the existence of specialised bodies and complaint mechanisms, including provisions for mediation, reconciliation and arbitration, among groups of concern to ECRI and to improve knowledge of anti-discrimination law and practice among judges and lawyers and, accordingly: ... c) Protect and support the advocacy work of civil society organisations working to eliminate racial discrimination and advance equality"); *ECRI General Policy Recommendation N°15 on combating hate speech* ("4. f. support non-governmental organisations, equality bodies and national human rights institutions working to combat hate speech"); and *ECRI General Policy Recommendation N°16 on safeguarding irregularly present migrants from discrimination* ("15. Encourage competent authorities, in cooperation with civil society, to raise awareness amongst irregularly present migrants, service providers and public authorities about entitlements and access to services (such as education, health care, housing, social security and assistance, labour protection and justice) for all persons, regardless of their immigration or migratory status; … 35. Encourage civil society bodies to ensure that their activities and services include all individuals within the jurisdiction in so far as those activities and services relate to the delivery of human rights").

[49] *ECRI General Policy Recommendation No. 14 on Combating Racism and Racial Discrimination in Employment*, ("4. Adopt a national plan for all national government departments, regional and local authorities, and state agencies to enable the social partners and civil society organisations articulating the interests of groups experiencing inequality and disadvantage to be consulted and provide expertise on the most effective methods to promote equality and eliminate racial discrimination and racial harassment in employment") and *ECRI General Policy Recommendation N°15 on combating hate speech* ("8. … e. provide standing for those targeted by hate speech, equality bodies, national human rights institutions and interested non-governmental organisations to bring proceedings that seek to delete hate speech, to require an acknowledgement that it was published or to enjoin its dissemination and to compel the disclosure of the identity of those using it").

[50] *ECRI General Policy Recommendation N°7: National legislation to combat racism and racial discrimination*, ("25. The law should provide that organisations such as associations, trade unions and other legal entities which have,

33. Similarly, the Advisory Committee has emphasised the need to work with minority associations when managing programmes and projects related to the cultural activities of national minorities and that justifications should be provided whenever their recommendations are not followed.[51]

34. The valuable role that can be played by associations has equally been noted by the Commissioner, pointing to their contribution to public debate and ensuring the participation of the individual in public debate, thereby confirming the definition of civil society as "democracy in action".[52] Moreover, the particular importance of the role played by human rights defenders has been emphasised.[53]

35. However, the Commissioner has also underlined that consultation with associations was necessary for their contribution to be most effective[54].

36. In addition, the CCJE has adopted opinions stating that judges' associations can play a valuable role in encouraging and facilitating training, working in conjunction with the judicial or other body which has direct responsibility[55], and in being able and ready to respond promptly and efficiently to challenges or attacks on judges and courts by the media (or by political or other social actors by way of the media) for reasons connected with the administration of justice [56], as well as in making the judge's specific insight available in teaching programmes and public debate[57]. It also considers that such associations should play a role in putting forward judge candidates (or a list of candidates) for election.[58]

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according to the criteria laid down by the national law, a legitimate interest in combating racism and racial discrimination, are entitled to bring civil cases, intervene in administrative cases or make criminal complaints, even if a specific victim is not referred to. If a specific victim is referred to, it should be necessary for that victim's consent to be obtained").

[51] *Thematic Commentary No. 3 The Language Rights of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs*, para. 23.

[52] See, e.g.: *Report by the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, on his visit to Belgium 15-19 December 2008*, CommDH(2009)14, 17 June 2009,; *Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, Following his visit to Bosnia and Herzegovina on 27-30 November 2010, CommDH(2011)11, 29 March 2011*; and *Report by the Commissioner for Human Rights Mr Thomas Hammarberg on his visit to Montenegro (2 – 6 June 2008),* CommDH(2008)25, 8 October 2008.

[53] Human Rights Comment, 29 August 2016; "These actors perform essential tasks in: making the human rights systems function by bringing complaints before domestic and international mechanisms; helping victims of human rights violations to access remedies and obtain other forms of support and reparation; advocating for changes in policy and legislative frameworks and their implementation; and raising public awareness on human rights. In some cases, NGOs and individual human rights defenders are the only recourse for victims and vulnerable persons".

[54]*Report by the Commissioner for Human Rights Mr Thomas Hammarberg on his visit to Montenegro (2 – 6 June 2008),* CommDH(2008)25, 8 October 2008; "23. Consultation with NGOs in legislation and policy development does not yet appear to be satisfactory. Civil society representatives with whom the Commissioner consulted commonly highlighted their perception of a lack of real, systematic consultation on issues where they have expertise to support the Government in terms of legislation and policy development. The Commissioner stresses the added value in effectively involving the non-governmental community as a constructive partner for consultation and dialogue on issues of human rights concern".

[55] *Opinion No. 4 on training for judges*, 27 November 2003, para. 16.

[56] *Opinion no. 7 on "justice and society*", 25 November 2005, para. 55.

[57] *Ibid*., para. 12.

[58] *Opinion No. 10 on "Council for the Judiciary in the service of society"*, 23 November 2007, para. 28.

37. Also, the CCPE has stated that associational activity on the part of prosecutors can be useful in fighting crime across borders.[59]

38. Finally, the role of organised civil society in leading people to democracy has been underlined in a resolution of the Conference of INGOs[60]

D. Formation

39. The Expert Council has prepared a study on the conditions of establishment of NGOs, which reviews European and international standards and their application in the case law of the European Court, together with the approach taken to their implementation by six countries.[61]

40. The Venice Commission has underlined that freedom of association encompasses the right to found an association without any unlawful interference by the State or by other individuals.[62]

41. Furthermore, it considers that registering an association should be optional and not a legal requirement[63], albeit that a failure to register may have certain consequences for the legal status and legal capacity of the association involved[64].

42. However, given that there may be certain benefits to legal registration, the Venice Commission accepts that it may be appropriate to impose certain necessary formalities for this purpose.[65]

43. Nonetheless, it also considers that the recognition of an association as a legal entity is an inherent part of the freedom and that burdensome constraints or provisions that grant excessive governmental discretion in giving approvals prior to obtaining legal status should be carefully limited.[66]

44. The Venice Commission has thus found amendments to the legislation on registration in one country had further added complications to an already complicated and lengthy procedure. In addition, it considered that these amendments- conditioning the views, activities and conduct of an NGO before allowing it to obtain the legal personality necessary for its operation - went

[59] In *Opinion No. 11 on the quality and efficiency of the work of prosecutors, including when fighting terrorism and serious and organised crime*, 18 November 2016, para. 85. In this connection, it cited the example of the International Association of Prosecutors, which was said to have contributed to systematising international standards related to the exercise of prosecutorial functions, and to connecting prosecutors all over the world through thousands of contact points (such as the network of prosecutors dealing with terrorist cases established in 2015 and the network of prosecutors dealing with cybercrime created in 2010).
[60] Resolution adopted on 29 January 2015 CONF/PLE(2014)RES2 Civil society, peace and democracy in Ukraine.
[61] *Conditions of Establishment of Non-Governmental Organisations*, OING Conf/Exp (2009) 1, January 2009.
[62] See, e.g., *Compilation*, pp. 8 and 9.
[63] *Compilatio*n, p. 28.
[64] *Compilation*, p. 13.
[65] *Compilation*, p. 28 (this was in the context of religious communities).
[66] *Compilation*, pp. 13 and 16.

against the core of the values underlying the protection of civil and political rights and clashed with the whole ideological framework underlying democracy such as pluralism, broadmindedness and tolerance.[67]

45. The same conclusion was reached by the Expert Council.[68]

46. The Committee of Ministers has also recognised that registration schemes for associations and NGOs, if used arbitrarily, can have a chilling effect on NGOs[69].

47. Similarly, the Commissioner has been concerned about the continued existence of a prior authorisation requirement before associations can be established in one country and about the delays affecting the removal of this requirement.[70]

48. In addition, the Advisory Committee has been concerned about aspects of the registration process in three countries, notably as regards its length, cost, complexity and unpredictability, with these difficulties particularly affecting minority organisations in two of them[71] and organisations working for the protection of human rights (including minority rights) in the third[72].

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[67] *Opinion on the Compatibility with Human Rights Standards of the Legislation on Non-Govermental Organisations of the Republic of Azerbaijan*, CDL-AD(2011)035, 19 October 2011, paras. 111 and 120.

[68] *Opinion on amendments in 2009 to the NGO law in Azerbaijan and their application*, OING Conf/Exp (2011) 2, September 2011

[69] Thus in Recommendation CM/Rec(2016)4 on the protection of journalism and safety of journalists and other media actors, it was stated that: "37. A chilling effect also results from the arbitrary use of administrative measures such as registration and accreditation schemes for journalists, bloggers, Internet users, foreign correspondents, NGOs, etc., and tax schemes, in order to harass journalists and other media actors, or to frustrate their ability to contribute effectively to public debate".

[70] *Report of the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, following his visit to Monaco on 20-21 October 2008*, CommDH(2009)10, 11 March 2009, paras. 65-66.

[71] *Moldova* (ACFC/OP/III(2009)003, 11 December 2009, "103. …, the Advisory Committee notes that Muslim organisations, and notably the Spiritual Board of Muslims, have repeatedly submitted requests for registration after the entry into force of the new law. All of these requests have been unsuccessful. The authorities have, on the one hand, explained to the Advisory Committee that these requests did not comply with the requirements of the Law on religious denominations. On the other hand, Muslim minority representatives complain that they are facing unjustified and disproportionate administrative obstacles in their attempts to have their confession registered and that the authorities refuse to engage in a dialogue with them on this issue. 104. Additionally, the Advisory Committee notes with concern that Muslim believers report continuous pressure from the police, consisting in frequent raids to their premises, notably on Fridays at the time of prayer, and disproportionate occurrences of controls, including fiscal. Muslims also stress the difficulty to find premises to practice their religion, due *inter alia* to the lack of official registration. 105. The Advisory Committee finds this situation worrying. It is of the opinion that the fact that the large majority of the Moldovan population is of Orthodox confession must not prevent persons of different confessions from enjoying the right to manifest their religion or belief and to establish religious institutions, organisations and associations, as guaranteed by Article 8 of the Framework Convention; and *Romania* (ACFC/OP/III(2012)001, 5 October 2012, "120. The Advisory Committee notes with regret that the situation with regard to the registration conditions envisaged for organisations of national minorities has not changed in Romania. Persons belonging to national minorities can establish non-governmental organisations (NGOs) under the generally applicable legislation. However, in the absence of a specific procedure for the recognition of NGOs representing national minorities, it is difficult for such organisations to benefit from provisions in the electoral legislation. These provisions establish particular conditions for candidates representing organisations of national minorities competing for seats in the Chamber of deputies specifically reserved for representatives of national minorities (see related comment under Article 15 below)" (footnotes omitted)).

[72] *Azerbaijan* (ACFC/OP/III(2012)005, 3 September 2013, "60. … The Advisory Committee notes with concern that registration formalities continue to pose particular difficulties for non-governmental organisations engaged in the

49. Nonetheless, the Advisory Committee has welcomed the conferment of the power of registration on a judicial body in one of the countries about which it had previously expressed concern.[73]

50. There has also been a welcome by ECRI for the removal of the differential treatment in one country between citizens and non-citizens as regards the exercise of the right to freedom of association.[74]

51. However, there has been particular concern on the part of various bodies about the impact of registration procedures on associations and NGOs connected to religion.

52. Thus, the Venice Commission has observed that the process of obtaining legal personality status should be open to as many communities as possible, not excluding any community on the ground that it is not a 'traditional' or 'recognized' religion, or through excessively narrow interpretations or definitions of 'religion' or 'belief'[75]. It has also considered that the refusal of registration because of the community's name should only occur if there is a very high risk that the name of an applicant community will be confused with the name of another community recognized under Article 4A.[76]

53. Moreover, the Venice Commission does not consider it appropriate for access to legal personality to be denied on the ground that either some of the founding members of the community in question are foreign, non-citizen persons or that its headquarters are located abroad"[77] or it is not organised on a clear, hierarchical basis[78].

54. ECRI has also drawn attention to difficulties that religious associations face in one country in order to obtain registration, namely, as regards the need for a higher number of members than is the case for other associations.[79]

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protection of human rights, including minority rights, who are viewed as critical of the government or even as "enemies of the government" [especially in the case of organisations that receive international support or want to open branches of foreign NGOs]. The Advisory Committee welcomes the fact that a number of organisations continue to perform important functions in the area of human rights promotion and defence and maintain working relations with relevant government agencies despite not being legally registered. It is concerned by the lack of legal certainty for these organisations as well as by the impression shared by a number of civil society representatives that the registration process functions as a 'performance review tool' rather than a clear and transparent legal procedure for acquiring the status of a legal entity" (footnotes omitted).

[73] *Bulgaria* (FCNM/II(2012)001, 23 January 2012, para.134. This followed the adoption of legislation that made the role of the Religious Affairs Directorate of the Bulgarian Council of Ministers - which was previously a directing and controlling organ – only an advisory one.

[74] *Second report on Monaco*, CRI(2011)3, 8 December 2010, para. 23.

[75] *Compilatio*n, p. 29

[76] *Compilation*, p. 32

[77] *Compilation*, p. 32

[78] *Compilation*, p. 33

[79] *Fourth Report on Romania*, CRI (2014)19, 19 March 2014, paras. 11-12

55. Furthermore, the Advisory Committee has pointed to the risk of discrimination where a particular church was exempted from the requirement to register[80]. It has also noted the advantages enjoyed in two countries by one or more churches on account of their different legal status from that of other churches[81], as well as the inability of one church in a third country to obtain legal status at all[82].

56. ECRI has also drawn attention to the differential treatment in yet another country as regards the status of churches and the consequential benefits that flow from this.[83]

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[80] *Bulgaria* (FCNM/II(2012)001, 23 January 2012, para. 135.

[81] *Georgia* (ACFC/OP/I(2009)001, 10 October 2009;"92. …The Advisory Committee notes in fact that, while the Georgian Orthodox Church is recognised and protected as both a Church and a public entity, other religious groups can only register as nongovernmental organisations or non-profit-making private-law associations, so they cannot enjoy the same conditions in respect of the exercise of their religious activities. Furthermore, various sources reported an often hostile approach by the Georgian Orthodox Church hierarchy, which, it seems, seeks by various means to consolidate its dominant position to the detriment of the other denominations' (footnotes omitted)) and *Serbia* (ACFC/OP/II(2009)001, 25 June 2009, "142. The Advisory Committee finds that the Law on Churches and Religious Communities which was adopted in 2006 gives rise to a number of concerns. These relate in particular to the obligation for those religious organisations which are not among the seven "traditional churches and religious communities" listed in the law to re-register following a complex procedure which involves the obligation to submit the names and signature of the members of the religious community concerned. The Advisory Committee further notes that while there is no obligation for churches and religious communities to register, non-registered churches are not able to benefit from certain rights such as the right to acquire legal personality or the right to construct religious buildings. In view of the foregoing, the Advisory Committee finds that the Serbian legal framework raises issues of compatibility with both the principle of free self-identification contained in Article 3 and the right to establish religious institutions enshrined in Article 8 of the Framework Convention. 143. A further complication for those persons belonging to national minorities whose religion is not included among the seven traditional churches results from the provision of the law (Article 21) according to which religious organisations whose name contains the same or part of the name of a church that has already been entered into the register may not be entered into the Register. This provision affects in particular orthodox churches other than the already registered Serbian Orthodox Church. The Advisory Committee notes in particular, that such a provision was invoked, among other grounds, to deny registration of the Montenegrin Orthodox Church. It further notes that in its last decision, dated 18 June 2008, to reject the application of the Montenegrin Orthodox Church, the Ministry of the Interior referred to the fact that registering the Montenegrin Orthodox Church would entail a territorial overlapping between the Montenegrin and Serbian Orthodox dioceses which would be against Orthodox Church law. The Advisory Committee acknowledges that the Serbian Orthodox Church played a particular role in the history of the country and may therefore have a dominant position. However, the Advisory Committee finds that the authorities should respect all religious communities and churches in line with Article 7 of the Framework Convention and that any restriction to this right should be understood within the limits of Article 9 paragraph 2 of the European Convention on Human Rights" footnotes omitted). The latter comments were reiterated in ACFC/OP/III(2013)006, 23 June 2014, paras. 117-123

[82] *"the former Yugoslav Republic of Macedonia"* (ACFC/OP/III(2011)001, 7 December 2011, '99. The Advisory Committee notes that the Venice Commission … recommended that "attention should be paid to reviewing the status and rights of non registered religious entities, the registration process and related issues, freedom of religion and of religious practice". 100. The Advisory Committee notes with regret that the law, which was subsequently adopted and which entered into force on 1 May 2008, did not follow the above-mentioned recommendations and is perceived by persons belonging to the Serb national minority to be "designed to prevent the Serbian Orthodox Church ever being able to gain legal status." 101. The status of the Serbian Orthodox Church whose followers are principally persons belonging to the Serb national minority remains unclear. The Church which has around 3000 followers is not allowed by the state to build or maintain any churches in the country. *Recommendation* 102. The Advisory Committee calls upon the authorities to review legislative provisions and administrative practice to ensure that persons belonging to national minorities do not suffer any discrimination in the exercise of their right to practise their religion, in public or in private, individually or in community with others'). This view was reiterated in ACFC/OP/IV(2016)001, 20 December 2016, paras. 53-54

[83] *Third report on Romania*, CRI(2006)3, 24 June 2005; "14. If a religious community is to be recognised as a cult or a religion, it must submit a series of documents on its statutes, internal organisation and doctrine. All religious communities enjoying the status of religious cult receive some operational benefits including financial support from the state commensurate with the number of members, tax relief and the right to teach their religion in state schools.

57. The Advisory Committee, the Commissioner and ECRI have all expressed their concern about the existence of a mandatory re-registration requirement for religious communities in one country.[84] In addition the Commissioner has drawn attention to the burden that a proposed re-registration requirement would entail for NGOs in a second country[85] and ECRI has been concerned about the fact that some non-traditional religious groups have not been able to re-register in a third country[86].

58. In addition, the Commissioner has expressed concern about an obstacle established to the continued operation of international NGOs as a result of requiring a prior agreement concerning their activities in circumstances where the procedure for the conclusion of such an agreement and the activities that were not permitted to be undertaken were unclear[87].

59. The Venice Commission does not consider that NGOs should be required to seek authorisation in order to establish branches, whether within the country or abroad.

60. Moreover, while it accepts that foreign NGOs may be required to obtain authorization to operate in a country other than the one in which they have been established, the Venice Commission does not consider that they should be required to establish a new and separate entity for this purpose.[88]

However, Romanian NGOs deplore the fact that government grants to recognised religious associations are allocated in an arbitrary fashion. ECRI also notes that since its second report on Romania, only one religious association has been granted the status of religious cult. 15. ECRI notes with concern reports that although it does not have the status of a state religion, the Orthodox Church, which is the majority religion in Romania, holds a dominant position in Romanian society. The other religions thus consider that the Orthodox Church has too much influence on the authorities' policies. It also appears to receive benefits that the other religions do not have, such as chapels in prisons and detention centres. This Church is also said to exert a lot of influence over government decisions on matters such as the award of status as a religious cult to religious associations. ECRI also notes that given the number and diversity of officially recognised and practised cults in Romania, the inter-religious dialogue between the Orthodox Church and other religious denominations could be improved. In particular, the dialogue between this Church and the Greek Catholic Church is apparently at a low ebb, mainly on account of the manner in which the authorities handle the issue of the restitution of property confiscated during the communist period. 16. ECRI also notes with concern reports that members of the Orthodox Church were engaging in all manner of harassment against followers of the Greek Catholic Church with a certain degree of complacency from the authorities. ECRI has also been informed that although religious education is not compulsory in Romania, there are cases in some state schools where pupils receive religious instruction against their parents' will. ECRI recommends that the Romanian authorities safeguard the principle of equality between all religious denominations in accordance with the Constitution. It recommends in this regard that they send a clear signal to that effect by enforcing compliance with the principle of the separation of the Church and the State, which is provided for in the Constitution, at all levels and in all areas. 18. ECRI also recommends that the Romanian authorities apply the provisions governing religious cults and religious associations in a transparent and equitable manner. It recommends on this matter that they ensure that the decision on whether or not to award the status of religious cult to a religious association is taken in the light of all the relevant factors and without interference by any third party whatsoever" (footnotes omitted).

[84] *Azerbaijan* (ACFC/OP/III(2012)005, 3 September 2013; *Observations on the human rights situation in Azerbaijan Freedom of expression, freedom of association, freedom of peaceful assembly*, CommDH(2011)33, 29 September 2011); and *ECRI Report on Azerbaijan (fourth monitoring cycle)*, 23 March 2011.

[85] *Report by Thomas Hammarberg Commissioner for Human Rights of the Council of Europe following his visit to Armenia from 18 to 21 January 2011*, CommDH(2011)12, 9 May 2011.

[86] *Fourth report on the Russian Federation*, CRI(2013)40, 20 June 2013.

[87] *Observations on the human rights situation in Azerbaijan Freedom of expression, freedom of association, freedom of peaceful assembly*, CommDH(2011)33, 29 September 2011'.

[88] *Compilation*, p. 14. See also *Opinion on the Compatibility with Human Rights Standards of the Legislation on Non-Govermental Organisations of the Republic of Azerbaijan*, CDL-AD(2011)035, para. 111.

E. Activities and objectives

61. Practice under this heading has focused both on the approach required in general for controls over activities and objectives and the nature of particular controls affecting the pursuit of cross-border activities, the formation of associations and political parties linked to minorities and the undertaking of political activity, as well as the requirement to act against racism and extremism and the use of measures supposedly adopted for that purpose

1. In general

62. The Venice Commission has emphasised that it is "at the heart of the freedom of association that an individual or group of individuals may determine its organization and lawful purposes, and put these purposes into practice by performing those activities that are instrumental to its functions".[89]

63. It has also emphasised that "only convincing and compelling reasons can justify restrictions on the freedom of association" and that all restrictions must respect the principle of proportionality.[90]

64. Furthermore, the Venice Commission has stated that a system of prior authorization of some or all of the activities of an association would be incompatible with the freedom of association and would inevitably be "impracticable, inefficient and costly, as well as likely to generate a significant number of applications to courts, with a consequent unwarranted transfer of workload (and danger of clogging up) to the judiciary".[91]

2. Cross-border activities

65. The Advisory Committee has emphasised the importance for all national minorities - not just for minorities with a kin-State but including, in particular, the Roma - of being able to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, with visa liberalisation being seen as particularly important for this purpose.[92]

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[89] *Compilation*, p. 9.
[90] *Compilation*, pp. 10-12
[91] Compilation, p. 17.
[92] See *Albania* (ACFC/INF/OP/I(2003)004, 12 September 2002, para.78 and ACFC/OP/II(2008)003, 1 December 2008, paras. 215-218); *Kosovo** (ACFC/OP/III(2013)002, 10 September 2013, paras. 158-159; *Latvia* (ACFC/OP/I(2008)002, 30 March 2011, paras. 174-176; *Lithuania* (ACFC/OP/II(2008)001, 4 July 2011, paras. 192-193); *Montenegro* (ACFC/OP/I(2008)001, 6 October 2008, para. 108; *Poland* (ACFC/OP/II(2009)002, 7 December 2009, paras. 207-208; *Slovak Republic* **(**ACFC/OP/III(2010)004, 18 January 2011, paras. 197- 198; *Switzerland* (ACFC/OP/III(2013)001, 15

66. Furthermore, it has called on two countries not to interfere with such contacts, including where these involve the participation in international NGOs.[93] The Advisory Committee has also called on one of those countries and four others to ensure that the operation of such contacts is not adversely affected by reforms or budgetary constraints[94], by the behaviour of border officials[95] or by tensions between the countries involved[96].

67. However, the Advisory Committee has welcomed and encouraged the conclusion of bilateral agreements between many neighbouring States that facilitate these contacts[97].

November 2013, paras. 127-128; and "*the former Yugoslav Republic of Macedonia"* (ACFC/OP/III(2011)001, 7 December 2011,paras. 176-177.

[93] *Azerbaijan* (ACFC/OP/III(2012)005, 3 September 2013, "127. ...Persons belonging to the Talysh minority continue to face significant problems when wishing to develop and maintain contacts across borders, or to participate in the activities of non-governmental organisations, including at international level ...128. The Advisory Committee calls on the authorities again not to interfere with the rights of persons belonging to national minorities to develop and maintain contacts across borders, especially with communities who share the same ethnic, cultural, linguistic or religious identity. These rights include the participation in activities of non-governmental organisations at international level, as explicitly provided in Article 17 of the Framework Convention"); and *Russia* (ACFC/OP/III(2011)010, "239. The Advisory Committee is concerned to learn that minority organisations benefitting from support from some neighbouring states, and/or engaged in co-operation with organisations from such countries, have in some instances experienced adverse reactions from the authorities as a result of inter-state tensions. They reported being considered as "traitors" or "extremists" when cooperating with some states on legitimate interests for the minority groups concerned, including preservation of the language and culture. This situation is not in line with the principles of Article 17 of the Framework Convention and the Advisory Committee expects that the Russian authorities will make efforts to ensure that any such practices are discontinued. *Recommendation* 240. The Advisory Committee urges the authorities to refrain from any undue interference with the right for persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers").

[94] *Denmark* (ACFC/OP/III(2011)002, 1 December 2011, paras. 126-129); *Ireland* (ACFC/OP/III(2012)006, 19 April 2013, paras. 146-147); and *United Kingdom* (ACFC/OP/III(2011)006, 22 December 2011, paras. 205-209.

[95] *Georgia* (ACFC/OP/I(2009)001, 10 October 2009; "165. Several representatives of national minorities met by the Advisory Committee reported problems when crossing borders. This applies *inter alia* to persons belonging to the Kist minority, but particularly to Azeris, who complain of recurrent difficulties when travelling between Georgia and Azerbaijan. Allegations of harassment and racist insults by Georgian customs officials were made to the Committee, as were complaints about anti-corruption measures directed disproportionately and without justification against persons belonging to the Azeri minority who engage in cross-border trade. 166. The Advisory Committee asks the authorities to give all due attention to this problem and to ensure that cross-border exchanges between persons belonging to national minorities and persons living in neighbouring countries are not impeded arbitrarily or without justification. It points out that such exchanges are particularly important to the preservation and development of the culture and identity of persons belonging to national minorities, as well as to their socioeconomic situation".

[96] *Russia* (ACFC/OP/III(2011)010; "242. It is of deep concern to the Advisory Committee that persons belonging to the Georgian minority faced police harassment, expulsions and other practical difficulties in 2006 and beyond, in the wake of tensions in the relations between the Russian Federation and Georgia (see also remarks on Article 6 above). The Advisory Committee notes with deep concern that Tajiks in the Russian Federation have also been selectively subjected to similar circumstances in the autumn of 2011, following the eruption of tension between the Russian Federation and Tajikistan. Such situations are not compatible with the principles of the Framework Convention. *Recommendations* 243. The Advisory Committee urges the authorities to ensure that no violations of the rights protected by the Framework Convention occur as a result of tensions with neighbouring countries. 244. It also reiterates its encouragement to conclude bilateral agreements in order to improve the protection of the persons belonging to the national minorities concerned").

[97] *Albania* (ACFC/INF/OP/I(2003)004, 12 September 2002, para.79 and ACFC/OP/II(2008)003, 1 December 2008, paras. 219-220); *Azerbaijan* (ACFC/OP/III(2012)005, 3 September 2013, paras. 127-129); *Cyprus* (ACFC/OP/III(2010)002, 8 October 2010, para.'175; *Estonia* (ACFC/OP/III(2011)004, 7 November 2011, para. 181); *Georgia* (ACFC/OP/I(2009)001, 10 October 2009, paras. 168-169); *Germany* (ACFC/OP/III(2010)003, 6 December 2010, paras. 187-189); *Hungary* (ACFC/OP/III(2010)001, 17 September 2010, paras. 146-147); *Italy* (ACFC/OP/III(2010)008, 30 May 2011, paras. 251-254); *Latvia* (ACFC/OP/I(2008)002, 30 March 2011, paras. 177-178); *Moldova* (ACFC/OP/III(2009)003, 11 December 2009, paras. 182-184); *Montenegro* (ACFC/OP/I(2008)001, 6

68. It has also emphasised the importance of these contacts even in cases where some of the members of the minority are in territory that is not within the control of the State concerned[98] and it has been concerned about security considerations which impede them[99].

69. The value of cross-border links for minorities has also been recognised by ECRI[100].

3. Minority characterisation

70. The Advisory Committee has expressed concern about obstacles in two countries to the formation of associations solely on account of these having a national minority characteristic[101], as have the Commissioner regarding a third country[102] and ECRI regarding both that country and another one[103].

October 2008, para.109); *Netherlands* (ACFC/OP/I(2009)002, 17 February 2010, paras. 88-89 and ACFC/OP/II(2013)003, 20 December 2013, paras. 123-124); *Poland* (ACFC/OP/II(2009)002, 7 December 2009, paras. 209-214); *Romania* (ACFC/OP/III(2012)001, 5 October 2012, paras. 195-196 and ACFC/OP/IV(2017)005, 16 February 2018, paras. 161-162); *Serbia* (ACFC/OP/II(2009)001, 25 June 2009, paras. 263-266); *Slovak Republic* **(**ACFC/OP/III(2010)004, 18 January 2011, paras. 196-199); *Slovenia* (ACFC/OP/III(2011)003, 28 October 2011, paras. 138-140); *"the former Yugoslav Republic of Macedonia"* (ACFC/OP/III(2011)001, 7 December 2011, paras. 179-180); and *Ukraine* (ACFC/OP/III(2012)002, 28 March 2013, paras. 152-154).

[98] *Cyprus* (ACFC/OP/III(2010)002, 8 October 2010, paras. 170-172).

[99] *Kosovo** (ACFC/OP/III(2013)002, 10 September 2013; "87. The Advisory Committee notes with concern that security considerations still limit the freedom of movement in specific areas of Kosovo*, affecting in particular members of minority communities living in enclaves and preventing them from enjoying freedom of assembly and association as protected by Article 7 of the Framework Convention ... *Recommendation* 88. The Advisory Committee calls again on the authorities to ensure the enjoyment of rights as protected by Article 7 of the Framework Convention by addressing the continued limitations to the freedom of movement").

[100] *Fourth report on Ukraine*, CRI(2012)6, 8 December 2011; "88. The 1992 Law on National Minorities does not contain any express provisions on Crimean Tatars. Furthermore, in the absence of a kinstate, they do not have access to the advantages available to minorities that are able to receive the assistance of associations in their kin-state in accordance with Article 15 of that Law; nor can they benefit from the specific provisions in favour of undertaking teaching and cultural studies abroad contemplated by its Article 7. Against this background – in which the constitutional possibility for recognition as an indigenous people has not been given effect and in which Crimean Tatars are inevitably in a less favourable position than other national/ethnic minorities covered by the 1992 Law on National Minorities – in 2010, civil society representatives prepared and forwarded to the highest levels of government their own proposal for a Draft Law on the Status of the Crimean Tatar People in Ukraine under which Crimean Tatars would be recognised as an indigenous people of Ukraine. As yet, however, there has been little official reaction to this text").

[101] *Azerbaijan* (ACFC/OP/III(2012)005, 3 September 2013, para. 60) and *Bulgaria* (FCNM/II(2012)001, 23 January 2012, paras. 131-132 and ACFC/OP/III(2014)001, 30 July 2014, paras. 81-85).

[102] *Follow-up report on the Hellenic Republic (2002 – 2005),* CommDH(2006)13, 29 March 2006; "41. … The Commissioner noted that it has been generally observed in the past that Greek citizens belonging to groups defined by linguistic or cultural criteria could meet difficulties in exercising their right to freedom of expression or association and to identify themselves as they wish, a right secured in Article 3 of the Framework Convention for the Protection of National Minorities signed by Greece on 22 September 1997 but not yet ratified. The Commissioner expressed the wish that the Greek authorities continue to show greater receptiveness to diversity in their society and that Greece ratify the Framework Convention for the Protection of National Minorities, and sign and ratify the European Charter for Regional or Minority Languages ... 44. Complaints have continued to be made to the Commissioner as regards the **right to identify oneself as one sees fit**. Indeed, it is not possible today in Greece for those who claim they are members of a minority to use any word they wish in the denominations by which they would like to identify themselves collectively, for instance when registering associations. 45. The Commissioner repeats his recommendation that Greece become a Party to the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages. This would open the way to independent expert advice and review of outstanding issues affecting the Muslim minority".

[103] *Fourth report on Greece* (CRI(2009)31, 2 April 2009; "11.The situation of the recognition of the right to freedom of association as concerns certain groups living in Greece (Macedonians and Turks) remains. In this regard, since ECRI's

71. In addition, the Advisory Committee has been concerned about restrictions on national minorities forming their own political parties both directly in two countries[104] and indirectly in two others[105], as well as in both respects in a thematic commentary[106].

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third report, the European Court of Human Rights has rendered three judgements against Greece for violating Article 11 of the European Convention on Human Rights (freedom of assembly and association) as concerns members of the ethnic Turk community. Concerning ethnic Macedonians and the judgement of *Sidiropoulos and Others v. Greece* mentioned in its third report, ECRI was informed that the issue of the registration of the organisation in question (the Home of the Macedonian Culture) is pending before the Supreme Court as it has not yet been registered. It further appears that the ethnic Turkish organisations which were the subject of the abovementioned judgments have not been registered either. ECRI wishes in this regard to bring to the Greek authorities' attention the European Court of Human Rights' finding that associations seeking an ethnic identity were also important to the proper functioning of democracy. It considered that pluralism was also built on the genuine recognition of, and respect for, diversity and the dynamics of, inter alia, cultural traditions, ethnic and cultural identities and religious beliefs. 113. ECRI notes that progress still has to be made on the recognition of the right of members of minority groups to freedom of association and also freedom of expression ... 115. ECRI strongly recommends that the Greek authorities take measures to recognize the rights of the members of the different groups living in Greece, including to freedom of association, in full compliance with the relevant judgements of the European Court of Human Rights" (footnotes omitted)) and *Fourth report on Turkey* (CRI(2011)5, 10 December 2010; 38. In its third report on Turkey, ECRI recommended that the Turkish authorities pursue their efforts to grant greater freedom to associations. It recommended that they revise the wording of Article 5 of the Law on Associations (Law No. 5253 of 2004) - which prohibits associations whose purpose is to "create forms of discrimination on the grounds of race, religion, sect or region or create minorities on these grounds, and destroy the unitary structure of Turkey" - so as to avoid any interpretations contrary to freedom of association as guaranteed by the European Convention on Human Rights. ECRI notes that this provision is still in force, and shares the concern expressed by the Council of Europe's Commissioner for Human Rights that the part of this provision directed against associations whose purpose is to "create minorities ... and destroy the unitary structure of the Republic of Turkey" is at best ambiguous and leaves an excessively broad margin of appreciation to the state to ban the establishment of associations whose purpose is simply to promote or protect the rights of existing minority groups in Turkey. More generally, ECRI refers to the recent report of the Commissioner of Human Rights, the opinion of the Venice Commission and the resolution of the Parliamentary assembly that deal with this and related issues ... 41 ECRI recommends that the Turkish authorities rapidly implement the recommendations already made by other international bodies, in particular the Council of Europe's Commissioner for Human Rights, Venice Commission and Parliamentary Assembly, with respect to measures that could be taken to ensure that Turkish law and practice are fully in line with Council of Europe standards in the field of freedom of association ... It emphasises the particular importance of freedom of association for persons belonging to minority groups in enabling them to express and promote the identity of their minority group and preserve and uphold their rights as members of minority groups" (footnotes omitted)).

[104] *Bulgaria* **(**FCNM/II(2012)001, 23 January 2012, para. 130 and ACFC/OP/III(2014)001, 30 July 2014, para. 80) and *Russia* (ACFC/OP/III(2011)010, para. 136-140).

[105] *Georgia* (ACFC/OP/I(2009)001, 10 October 2009: "86. The Advisory Committee notes that Article 6 of Georgia's law on political associations, adopted on 31 October 1997, explicitly prohibits the setting up of political parties on a regional or territorial basis. The Advisory Committee observes that this provision has already been invoked as a ground for refusing to register a political association representing the interests of the Armenian minority (Virkh). It may therefore be interpreted as restricting the scope for persons belonging to national minorities to set up political parties representing their legitimate interests. Yet such parties could make it possible for the concerns and interests of persons belonging to national minorities, particularly in the regions where they live in substantial numbers, to be better represented and possibly better taken into account, in elected bodies at local and central level. While it fully understands that this law was adopted in the context of a fear of separatism, following the conflicts with Abkhazia and Ossetia in the 1990s, the Advisory Committee considers that such a provision is likely to have a negative impact on the effective participation of persons belonging to national minorities in public affairs (also see the comments on Article 15.) Therefore, it calls on the authorities to take all the necessary measures to eliminate any unjustified limitations to the creation of political parties representing the legitimate interests of national minorities. They should, in particular, avoid any restrictive interpretation of the law on political associations" (footnote omitted)) and *Moldova* (ACFC/OP/III(2009)003, 11 December 2009; "95. 96. A new Law on political parties was adopted in December 2007. The Advisory Committee notes with regret that it prohibits the creation of political parties on the basis of ethnic or national origin. Moreover, under the new Law, the registration of a political party requires at least 4 000 active members residing in at least 50% of the administrative units of the country, with not less than 120 members residing in each of the administrative units. 97. Even though the Advisory Committee acknowledges that persons belonging to national minorities have been elected in various bodies on the lists of mainstream political parties, it is concerned that the provisions of the Law on political parties restrict the scope for persons belonging to national minorities to set up

72. These concerns have also been voiced by the Commissioner[107] and ECRI[108].

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political parties representing their legitimate interests. Yet such parties could make it possible for the concerns and interests of persons belonging to national minorities, particularly in the regions where they live in substantial numbers, to be better represented and possibly better taken into account in elected bodies, at the local and central levels … Therefore, the Advisory Committee considers that these provisions raise problems of compatibility with regard to the principles of Article 7 of the Framework Convention").

[106] *Commentary on the Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs* (ACFC/31DOC(2008)001, 5 May 2008; "75. The right of every person belonging to a national minority to freedom of peaceful assembly and freedom of association as stipulated in Article 7 of the Framework Convention implies, *inter alia*, the right to form political parties and/or organisations. Legislation which prohibits the formation of political parties on an ethnic or religious basis can lead to undue limitations of this right. Any limitation should, in any case, be in line with the norms of international law and the principles embedded in the European Convention on Human Rights. 76. The registration of national minority organisations and political parties may be subject to certain conditions. Such requirements should, however, be designed so that they do not limit, unreasonably or in a disproportionate manner, the possibilities for persons belonging to national minorities to form such organisations and thereby restrict their opportunities to participate in political life and the decision-making process. This concerns, *inter alia*, numerical and geographical conditions for registration ... 156. State Parties are requested to ensure that the right of every person belonging to a national minority to freedom of peaceful assembly and of association, as embedded in Article 7 of the Framework Convention, is respected. This includes the right to form minority associations and political parties, which are important forms of participation. State Parties should refrain from any unjustified interference with the exercise of this right, and create conditions allowing minority associations and parties to acquire and enjoy legal personality, and to operate freely. The right to freedom of assembly and association is a prerequisite to the enjoyment of the provisions of Article 15, even though it is not sufficient in itself to ensure effective participation" (footnotes omitted).

[107] *Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Bulgaria from 3 to 5 November 2009*, CommDH(2010)1, 9 February 2010; "48. In order to protect the unity and integrity of the state, Article 11(4) of the Bulgarian Constitution prohibits the existence of political parties on ethnic, racial or religious lines. The Commissioner is aware of the concern expressed by the Venice Commission and shared by ECRI that such provisions could be used to prevent linguistic, ethnic or religious minority groups from organising themselves. The Commissioner recalls that the European Court of Human Rights has repeatedly held that restrictions on the rights to freedom of association and assembly must always be proportionate to the objectives pursued and that the Court has found Bulgaria in breach of the Convention in cases concerning the Macedonian minority.49. In 2005 and 2006, the European Court of Human Rights held that Bulgaria violated the right to freedom of association and assembly due to the unjustified dissolution of the party in 2000 and the domestic court's refusal to register a Macedonian association in 1998/99 as well as prohibiting without justification several commemorative meetings between 1998 and 2003.50. The Commissioner notes that the execution of some of these judgments is still pending before the Council of Europe Committee of Ministers. He noted with satisfaction that Macedonian organisations were able to hold meetings in 2008 and that a Bill for a new Meetings and Marches Act was submitted to Parliament at the end of 2008m ... As for the registration of political parties, the Commissioner commends the amendment made in January 2009 to the Political Parties Act 2005, decreasing the number of members required from 5 000 to 2 500. The Commissioner was informed that in the case of the dissolution of the political party Umo Ilinden-PIRIN, the Supreme Court of Cassation in May 2009 decided as last instance that the party could not demand re-registration as they had not respected the formalities of the relevant law at the time, that is, the 2005 Political Parties Act. Until this final decision, the party had sought re-registration since January 2006 in two complete sets of domestic proceedings … 52. The Commissioner believes that domestic law potentially restricting freedom of association should be precise and its application proportionate to the aims pursued in the context of a democratic society. Regardless of the outcome of the new applications lodged with the Court, the Commissioner considers necessary the establishment by the authorities of an open, sincere and systematic dialogue with all minorities in Bulgaria, including the Macedonian one, in line with the Council of Europe standards. Furthermore, it would send a positive signal to all minority groups if the domestic law, including the Constitution, could be amended in such a way that the rights to freedom of association and assembly enshrined in the European Convention on Human Rights were better safeguarded in practice for minorities".

[108] *Fourth report on Bulgaria*, (CRI(2009)2, 20 June 2008; "12. Decision No. 4 of the Constitutional Court, dated 21 April 1992, provides that the Constitution of the Republic of Bulgaria recognizes at the same time the existence of religious, linguistic and ethnic differences, including the bearers of such differences. 13. However, in the above-mentioned opinion, with regard to Article 11 (4) of the Constitution, the Venice Commission expressed concern that such provisions could be used to prevent minority linguistic, ethnic or religious groups from organising themselves at all. 14. In a judgment handed down by the European Court of Human Rights following an application lodged by the United Macedonian Organisation Ilinden on the grounds that the Bulgarian courts had refused to register it, the Court stated that this refusal was disproportionate to the objectives pursued, and accordingly held that there had been a

73. While the Advisory Committee has also welcomed the removal of such restrictions[109], it has been concerned about the impact on national minorities of general requirements concerning the number of members required for the formation of a political party[110].

4. National security

74. The Venice Commission has considered that a law whereby an NGO may be included in a list of organisations threatening the foundation of the constitutional order of a country, its defence capability or security – with the consequence of being prohibited from operating on the territory of the country through structural units, implementing projects there, distributing

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violation of Article 11 of the European Convention on Human Rights. ECRI notes in this regard that this group has still not been registered. 15. In the above-mentioned judgement, the Court also stated that, while in the context of Article 11 it had often referred to the essential role played by political parties in ensuring pluralism and democracy, associations formed for other purposes, including those seeking an ethnic identity, were also important to the proper functioning of democracy. It considered that pluralism was also built on the genuine recognition of, and respect for, diversity and the dynamics of, inter alia, cultural traditions, ethnic and cultural identities and religious beliefs. 16. ECRI recommends that the Bulgarian authorities ensure that the principle of freedom of association, as provided for in Article 11 of the European Convention on Human Rights, is respected without any discrimination and that it is applied in accordance with the relevant case law of the European Court of Human Rights"' (footnotes omitted)) and *Fourth report on Turkey* (CRI(2011)5, 10 December 2010; "'39. Article 81 of the Law on Political Parties provides that political parties shall not (a) assert that there exist within the territory of the Turkish Republic any national minorities based on differences relating to national or religious culture, membership of a religious sect, race or language; or (b) aim to destroy national unity by proposing, on the pretext of protecting, promoting or disseminating a non-Turkish language or culture, to create minorities on the territory of the Turkish Republic or to engage in similar activities. The criteria for imposing penalties on political parties and the proportionality of such penalties are governed by various of the provisions of this law. In its third report on Turkey, ECRI noted with approval constitutional and legislative amendments that would make it more difficult to ban a political party in future, and that allowed for less severe sanctions than banning political parties. In 2007, the Council of Europe's Committee of Ministers closed its supervision of the execution of a series of judgments of the European Court of Human Rights, some of which had been based in part on Article 81 of the Law on political Parties. ECRI notes that in deciding to close the examination of these cases, the Committee of Ministers recalled the importance of the Turkish authorities' continued efforts to ensure the direct effect of the Court's judgments in the interpretation of the Turkish Constitution and law. ECRI is concerned that - even though it cannot be implemented in a manner contrary to the Constitution - the continued existence of Article 81 may inhibit the creation and functioning of parties that peacefully advocate the protection of minorities and the promotion of their rights. It notes that in December 2009 the Constitutional Court ordered the closure of one political party, apparently due to its alleged links with a terrorist organisation; while some party officials are reported to have made some provocative statements around the time when the case was being heard, ECRI notes that according to NGOs, the evidence in the initial indictment consisted mostly of non-violent statements by party officials and members. The reasoning applied by the Constitutional Court in this case does not appear to have been made public as yet. Proceedings have since been set in motion to close the new party created to replace the party closed in December 2009. ECRI is also concerned that criminal proceedings continue to be brought against members of political parties using languages other than Turkish, and in particular Kurdish, at political gatherings. It welcomes the information that in April 2010, Parliament approved a Bill to amend the Law on Basic Provisions on Elections and Voter Registers so as to allow political parties to use languages other than Turkish during election campaigns ... 41 ECRI recommends that the Turkish authorities rapidly implement the recommendations already made by other international bodies, in particular the Council of Europe's Commissioner for Human Rights, Venice Commission and Parliamentary Assembly, with respect to measures that could be taken to ensure that Turkish law and practice are fully in line with Council of Europe standards in the field of freedom of association and the functioning of political parties. It emphasises the particular importance of freedom of association for persons belonging to minority groups in enabling them to express and promote the identity of their minority group and preserve and uphold their rights as members of minority groups" (footnotes omitted)).

[109] *Albania* (ACFC/INF/OP/I(2003)004, 12 September 2002, para. 42)

[110] *Bulgaria* (FCNM/II(2012)001, 23 January 2012; "a) Positive developments 129. The Advisory Committee notes that the Political Parties Act was amended in January 2009. According to the amendments introduced, the number of members required for the foundation of a political party decreased from 5,000 to 2,500").

information materials, organising and conducting mass actions and public events and taking part in them and using any bank accounts and deposits for other purposes than those stipulated in the law concerned – was flawed because of the vague definition of certain fundamental concept and the blanket application of the sanctions, which were to be applied in the absence of clear and detailed criteria following a judicial decision or an appropriate judicial appeal.[111]

75. Similar observations had been made by the Expert Council with respect to the provisions in this law, both when it was still a draft[112] and following its adoption[113]

5. Political activity

76. The Expert Council has prepared a study on the regulation of political activities of NGOs which showed that in some countries there were no limitations but that in others their engagement was limited.[114] However, where limitations applied, these were found: to be clearly prescribed in the law and to specify the exact type of activities that are affected; to be clearly linked to activities related to political parties and elections, versus the broad spectrum of public policy activities that NGOs are engaged in; to typically relate to a specific legal form of an NGO or its public benefit/charity status; and to reflect an increased tendency to separate political activities in the sense of party politics and elections from public policy activities and to allow NGOs to freely express their opinions and engage in policy processes.

77. The Commissioner has expressed concern about the imposition of restrictions on the political activity of associations, including the very way in which that term has been defined, solely on the basis of the associations concerned receiving some form of support from outside the country.[115]

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[111] *Opinion on Federal Law no. 129-fz on amending certain legislative acts (Federal Law on Undesirable Activities of Foreign and International Non-Governmental Organisations)*, CDL-AD(2016)020, concerning a law of the Russian Federation.

[112] *Opinion on the draft Federal Law on introducing amendments to certain legislative acts of the Russian Federation #662902-6*, OING (2014) 3, December 2014.

[113] *Opinion on Federal Law of 23 May 2015 #129-fz "on introduction of amendments to certain legislative acts of the Russian Federation" (Law on "Undesirable" Organisations)*, OING (2015) 1, November 2015

[114] *Regulating Political Activities of Non-Governmental Organisations*, OING Conf/Exp (2015) 3, December 2015.

[115] *Opinion of the Commissioner for Human Rights on the legislation of the Russian Federation on non-commercial organisations in light of Council of Europe standards, CommDH2013)15, 15 July 2013*; "50. The implementation of the Law on Foreign Agents so far has proved that concerns expressed by many local and international actors about the broad and vague character of the definition of "political activity" used in the law allowing for its arbitrary interpretation were justified. 51. The present wording of the Law on Foreign Agents allows to qualify as "political activity" any engagement by NGOs aimed at influencing public opinion and/or decision-making processes through proposals for changes to policies pursued by governmental bodies. In the Commissioner's view, these activities are a natural and widely-used instrument at the disposal of civil society institutions. As has been underlined in the Code of Good Practice for Civil Participation in the Decision-Making Process, "one of the major concerns of modern democracies is the alienation of citizens from the political process. In this context, […], civil society constitutes an important element of the democratic process. It provides citizens with an alternative way, alongside those of political parties and lobbies, of channelling different views and securing a variety of interests in the decision-making process". The CoE Committee of Ministers in its CM/Recommendation(2007)14 of October 2007 stated that "governmental 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. Such participation should ensure the free expression of the diversity of people's opinions as to the functioning of society" 52. Based on the results of the inspections to date, the

78. Similar concern about these restrictions was expressed by the Expert Council.[116]

79. Furthermore, the Venice Commission considers that the definition of 'political activities' – in connection with the treatment of associations or NGOs as foreign agents - needs to be carefully reformulated – and consistently applied – so as not to target human rights defenders and non-commercial organisations advocating, by lawful means and within the limits of the national legislation, peaceful changes of governmental policy.[117]

6. Racism and extremism

80. ECRI, with reference to relevant international obligations[118], has recommended that the measures to combat racist organisations should include banning them 'where it is considered

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range of activities which were recognised as "political" encompass the following: providing information to the United Nations Committee Against Torture on Russia's compliance with the Convention Against Torture; bringing cases to and litigating before the European Court of Human Rights; advocating on environmental issues, including with state authorities; monitoring human rights violations and raising public awareness on the results of the monitoring; organising seminars, round table discussions and other events to discuss governmental policies and foreign policy; providing state officials with ideas, opinions and recommendations on public interest policy and similar activities. All of these activities fall under the legitimate exercise of the right to freedom of expression ...80. Any continuing use of the term "foreign agent" in the legislation and practice in relation to non-governmental organisations would only lead to further stigmatisation of civil society in the Russian Federation and will have a "chilling effect" on its activities. Transparency and accountability of the non-commercial sector cannot and should not be achieved by labelling civil society institutions and by introducing unjustified discriminatory treatment for some of them. 81. The Russian Federation has mature, reputable and efficiently functioning human rights institutions. The relevant human rights structures, most notably those operating at the federal level, have been involved in the dialogue with the authorities since the very beginning, when the draft legislation was still under consideration in the Parliament, and provided important and pertinent suggestions as to the ways to ensure that the legislation in question would not interfere with the basic rights and duties of civil society institutions and would not become an obstacle to their exercise of the important function of a public "watchdog". Human rights institutions have an important contribution to make to the public debate, and key decision-makers should be encouraged to ensure that it is reflected in legislative and administrative decision-making processes. This would certainly contribute to improving the quality of the process as such and of its end results. 82. The notion of "political activity" as defined in the Law on Foreign Agents, the use of the term "foreign agent" and the possibility of applying criminal charges for "malevolent" non-compliance with the Law interfere with the free exercise of the rights to freedom of association and freedom of expression as defined in the case-law of the European Court of Human Rights. These provisions should be fundamentally revised, if not repealed. The same applies to the new definition of treason following the 2012 amendments" (footnotes omitted). These concerns were reaffirmed in *Opinion of the Commissioner for Human Rights Legislation and Practice in the Russian Federation on Non-Commercial Organisations in Light of Council of Europe Standards: an Update*, CommDH(2015)17.

[116] *Opinion on the Law introducing amendments to certain legislative acts of the Russian Federation regarding the regulation of the activities of non-commercial organisations performing the function of foreign agents*, OING (2013) 1, August 2013; "The vague definition of political activities in the Law gives the public authority broad discretionary power to determine what activities of NCOs are deemed political, and effectively prevents a NCO from engaging in any kind of otherwise legitimate advocacy activities, before it is entered into the foreign agent registry. This is of particular concern given the gravity of sanctions against NCOs which refuse to register as "foreign agents"".

[117] *Compilatio*n, para, 24.

[118] Apart from Articles 10 and 11 of the European Convention on Human Rights, the international obligations cited were: the Convention of the International Labour Organisation concerning Discrimination in Respect of Employment and Occupation, the European Charter for Regional or Minority Languages, the European Social Charter and its additional protocols, the Framework Convention for the Protection of National Minorities, the International Covenant on Civil and Political Rights and its first additional protocol, the UNESCO Convention against Discrimination in Education, the United Nations Convention on the Elimination of All Forms of Racial Discrimination and the United Nations Convention relating to the Status of Refugees.

that this would contribute to the struggle against racism'[119]. Such an approach has been supported by PACE.[120]

81. With the same object in mind, ECRI has also recommended the adoption of constitutional and legal restrictions on the exercise of freedom of association, as well as the suppression of public financing of organisations (including political parties) that promote racism) and the making of the prohibition on discrimination applicable to membership of professional organisation and the rules of non-profiting making associations, independent professions and workers' and employers' organisations[121].

82. Similar recommendations have also been made by ECRI with respect to political parties and other organisations that use hate speech or fail to sanction its use by their members.[122]

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[119] *ECRI General Policy Recommendation N°1: Combating racism, xenophobia, antisemitism and intolerance*, adopted by ECRI on 4 October 1996.

[120] Racist, xenophobic and intolerant discourse in politics, Resolution 1345 (2003), in which it recommended that member States "establish legal procedures for the suspension, prohibition or dissolution of political groups and parties as a last resort in exceptional cases of racist, xenophobic or intolerant discourse of exceptional gravity, ensuring that such measures are proportionate to the conduct in question and are applied under procedures guaranteeing fair trial and effective safeguards against arbitrariness, in full recognition of the rights and freedoms of the ECHR as interpreted by the Court's jurisprudence and in accordance with the Venice Commission Guidelines".

[121] *ECRI General Policy Recommendation N°7: National legislation to combat racism and racial discrimination*, adopted by ECRI on 13 December 2002 ('3. The constitution should provide that the exercise of freedom of expression, assembly and association may be restricted with a view to combating racism. Any such restrictions should be in conformity with the European Convention on Human Rights. 7. The law should provide that the prohibition of discrimination applies to all public authorities as well as to all natural or legal persons, both in the public and in the private sectors, in all areas, notably: ... membership of professional organisations ... 14. The law should provide that discriminatory provisions which are included in ... rules governing profit-making or non-profit-making associations, and rules governing the independent professions and workers' and employers' organisations should be amended or declared null and void. 16. The law should provide for an obligation to suppress public financing of organisations which promote racism. Where a system of public financing of political parties is in place, such an obligation should include the suppression of public financing of political parties which promote racism. 17. The law should provide for the possibility of dissolution of organisations which promote racism); *ECRI General Policy Recommendation N°9: The fight against antisemitism*, adopted by ECRI on 25 June 2004 ('Recommends that the governments of the member States: ...ensure that the law provides for an obligation to suppress public financing of organisations which promote antisemitism, including political parties; - ensure that the law provides for the possibility of disbanding organisations that promote antisemitism'); and *ECRI General Policy Recommendation No. 14 on Combating Racism and Racial Discrimination in Employment*, adopted on 22 June 2012 ('1) Ensure that national legislation affords genuine protection against direct and indirect discrimination in employment and that it is implemented in practice, *inter alia* through encouragement of self-regulation of the private sector, and, accordingly: ... b) Ensure that the scope of national anti-discrimination employment law includes membership of and involvement in professional organisations and trade unions and the enjoyment of the benefits provided by such organisations, collective bargaining, remuneration, vocational training and guidance, social protection and the exercise of economic activity ... d) Ensure that discriminatory provisions which are included in individual or collective contracts or agreements, internal regulations of enterprises, and rules governing the independent professions, access to credit and loans, and workers' and employers' organisations are amended or abrogated' ... 2) ... c) Protect and support the advocacy work of civil society organisations working to eliminate racial discrimination and advance equality').

[122] *ECRI General Policy Recommendation N°15 on combating hate speech*; the governments of member States are recommended to "9, withdraw all financial and other forms of support by public bodies from political parties and other organisations that use hate speech or fail to sanction its use by their members and provide, while respecting the right to freedom of association, for the possibility of prohibiting or dissolving such organisations regardless of whether they receive any form of support from public bodies where their use of hate speech is intended or can reasonably be expected to incite acts of violence, intimidation, hostility or discrimination against those targeted by it".

83. These general recommendations have also been echoed in its reports on individual countries.[123]

84. ECRI has also been concerned about the effectiveness of the actual use made of powers to ban racist organisations[124] and has even called for action to be taken against a specific organisation[125].

85. At the same time, it has emphasised the need for intensive training of prosecutors and judges to ensure that due consideration is given to freedom of association when applying criminal provisions on incitement to national, racial or religious hostility.[126]

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[123] See, e.g., *Fifth report on Belgium)*, CRI(2014)1, 4 December 2013, paras. 8-9; *Fourth report on Croatia*, CRI(2010)45, 20 June 2012, paras. 25 and 26; *Fifth report on Denmark*, CRI(2017)20, 23 March 2017, paras. 11-12; *Fifth report on Estonia*, CRI(2015)36, 16 June 2015, paras. 20-21; *Fifth report on Germany*, CRI(2014)2, 5 December 2013, paras. 18-19; *Fifth report on Liechtenstein*, CRI(2018)18, 15 May 2018, paras. 6-7; *Fifth report on Luxembourg*, CRI(2017)4, 6 December 2016, paras. 16-17; *Second report on Montenegro*, CRI(2017)37, 20 June 2017, paras. 11-12; *Fifth report on Norway*, CRI(2015)2, 10 December 2014, paras. 12-13; *Fifth report on Poland*, CRI(2015)20, 20 March 2015 paras. 19 and 21; *Fourth report on Romania*, CRI(2014)19, 19 March 2014, paras. 7-8; *Fifth report on San Marino*, CRI(2018)1, 6 December 2017, para. 35; *Third report on Serbia*, CRI(2017)21, 22 March 2017, paras. 14 and 15; *Fifth report on Spain*, CRI(2018)2, 5 December 2017, paras. 21-22; *Fifth report on Turkey*, CRI(2016)37, 29 June 2016, paras. 20-21. Attention has also been drawn to the recommendation about the withdrawal of public financing from organisations, including political parties, which promote racism in *Report by Nils Muižnieks Commissioner for Human Rights of the Council of Europe following his visit to Germany on 24th April and from 4 to 8 May 2015*, CommDH(2015)20, para. 191.

[124] See, e.g., *Fourth report on Poland* (CRI(2010)8, 28 April 2010; "23. In its third report, ECRI recommended that the authorities should take action, in accordance with Article 13 of the Constitution and national law, against groups that promote racism, as *per* its General Policy Recommendation No. 7. 24. ECRI notes that, under Article 29 of the Law on Associations, the competent court, at the request of the prosecutor, may disband an association engaging in activities that are "flagrantly" or "repeatedly against the law. The authorities have informed ECRI that all appellate prosecutors' offices were instructed in 2005 and 2006 to assess whether available evidence - collected in criminal-investigation proceedings - warrants the disbanding of groups promoting racism. So far action has only been taken against the National-Radical Camp in Opole. The relevant proceedings (started in 2007) were adjourned pending the outcome of a criminal case against some of its members. They were resumed following the latter's conviction and the group in question was disbanded by the court of first instance in 2009. 25. ECRI has received information that the National-Radical camp in Opole is not the only group promoting racism in Poland. Associations bearing the same name have been registered in other parts of the country. Even if their membership is limited, ECRI is concerned about their activities. ECRI is also not convinced about the need to rely on evidence collected in criminal proceedings in order to institute disbandment proceedings; usually the burden of proof in civil cases is not the same as in criminal ones. 26. ECRI recommends that the authorities take an active stance in collecting evidence that would warrant the disbanding of groups promoting racism. The evidence in question need not be such as to warrant criminal action against the groups' members" (footnotes omitted)).

[125] *Statement by the European Commission against Racism and Intolerance concerning racist and xenophobic political activities in Greece*: "The European Commission against Racism and Intolerance (ECRI) of the Council of Europe wishes to express its deep concern about the rise and activities, in Greece, of Golden Dawn, a neo-Nazi, racist and xenophobic political party, which is represented in the Hellenic Parliament. This party openly uses virulent nationalist and anti-immigration rhetoric, drawing on the vulnerability of the Greek public during a time of extreme economic crisis in the country. Members of Golden Dawn have systematically carried out acts of violence and hate crimes, at times tolerated by the police, against immigrants, political opponents, ethnic minorities and those who express concern about the situation. ECRI calls upon the Greek authorities to take firm and effective action to ensure that the activities of Golden Dawn do not violate the free and democratic political order or the rights of any individuals. While ECRI recognises that everyone has the right to associate freely in political parties, their prohibition or enforced dissolution may be justified in the case of parties which advocate the use of violence. ECRI furthermore recalls its declaration on the use of racist, antisemitic and xenophobic elements in political discourse, adopted on 17 March 2005".

[126] *Fourth report on Azerbaijan* CRI(2016)17, 17 March 2016, para. 35.

86. The Advisory Committee has expressed similar concern about the actual use being made in one country of legislation on countering and prosecuting extremism with respect to persons or organisations engaged in minority protection and against 'non-traditional' Muslim groups[127].

87. Moreover, ECRI has also expressed such a concern in respect of the same country about not only the use made of this legislation but also its scope[128], as well as about other legislation concerning religions that is comparable in nature[129].

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[127] *Russia* (ACFC/OP/III(2011)010; "132. The Advisory Committee notes with concern that the legislation on countering and prosecuting extremism continues to be sometimes used against persons or organisations engaged in minority protection, and "non-traditional" Muslim groups. Minority representatives have in particular informed the Advisory Committee that, when voicing concerns about the protection of human and minority rights, they are sometimes accused of being "traitors", "extremists" and threatened with prosecution under the legislation against extremist activities … Some representatives, involved in human and minority rights, have also allegedly been accused of "inciting social hatred", and consequently prevented from continuing their activities. Therefore, the Advisory Committee welcomes the decision of the Supreme Court of the Russian Federation of 2011 providing guidance concerning prosecution for "extremism" and indicating *inter alia* that criticising politicians and political organisations must not be considered as incitement to hatred' ... 139. The Advisory Committee also calls upon the authorities to ensure that the law on countering extremist activities is applied in a non-discriminatory manner and is not used to hamper the activities of persons and groups advocating legitimate concerns of persons belonging to national minorities and, more generally, the protection of human rights. Inspections and audits of the activities of NGOs, including those involved in minority issues, carried out by state authorities must not result in limitations on the freedom of association and assembly, other than those necessary in a democratic society" (footnotes omitted)),

[128] *Fourth report on the Russian Federation* (CRI(2013)40, 20 June 2013; "22. The Federal Law on Combating Extremist Activity of 25 July 2002, mentioned in ECRI's third report, is the other major tool to counter extremism. It has been amended several times, in 2006, 2007 and 2008. Article 1 defines as extremist the activity of public and religious associations or any other organisations, or of mass media, or natural persons, to plan, organise, prepare and perform any of 13 specific acts, including incitement to social, racial, ethnic or religious discord, and propaganda of exclusiveness, superiority or inferiority of an individual based on his/her social, racial, ethnic, religious or linguistic identity, or his/her attitude to religion. 23. "Liquidation" of an extremist organisation or the prohibition of its activity are the main sanctions, along with the banning of extremist materials. Individuals cannot be punished for extremism under the law, but can be prosecuted under the Code of Administrative Offences (for failure to comply with official warnings given against inadmissible extremist activity, which can result in the imposition of a fine) or under Article 282 of the Criminal Code. 24. Materials which are declared extremist by a court, on the basis of a submission by the prosecutor and following an expert evaluation of the material, are entered into the Federal List of Extremist Materials, which is maintained by the Ministry of Justice and which is made public on the Internet and in the media. Persons found guilty of the illegal manufacture, spread and storage of works included in the Federal List of Extremist Materials are liable to administrative or criminal proceedings. ECRI notes that there are no set criteria in the law for establishing how materials may be classified as extremist, thus leaving a wide margin of appreciation. 25.The law has been criticised both nationally, including by the Public Chamber and the Presidential Council for Civil Society Institutions (which has also submitted proposals to the President for amendments), and internationally, most recently by the European Commission for Democracy through Law (Venice Commission), for its broadness, lack of clarity and openness to different interpretations leading to arbitrariness. It can be applied to extremely serious acts of terrorism as well as to more banal activities since no element of violence is required. 26. ECRI is concerned not only that the scope for misuse of the law is wide but also that the law is being over-used (see section below) and sometimes for matters which should not be within its scope. For example, trade unions have been punished under the law for inciting social discord. ECRI is aware that it has operated in conjunction with Article 282 of the Criminal Code as an instrument of oppression of some politically unpopular opinions and has been used against certain human rights activists, especially those involved in monitoring violations of the rights of vulnerable groups. Such activities have been construed as actions aimed at the incitement of enmity towards the State. Some minority religious groups known to be peaceful have also been targeted and their religious materials have been declared extremist and banned (see also *Vulnerable/Target Groups – Religious minorities*). 27. In response to the widespread criticism, the Supreme Court issued a Resolution, in June 2011, on judicial practice in criminal cases involving extremist offences. It instructed that only statements calling for genocide, mass repressions, deportations, or the carrying out of other illegal actions, including with the use of violence, against categories of people constitute actions inciting hatred or enmity. On the other hand, criticism of political organisations or political, ideological or religious convictions should not in themselves be considered as actions directed at inciting hatred or enmity. The instruction warns that it is important to consider the individual's intention in distributing

88. The Commissioner has drawn attention to concern in one country that the term "racism" is frequently equated with organised and violent right-wing extremism and considers that the approach to combating racism in it should be significantly broadened, from one which focuses almost exclusively on the activities of extremist, and notably far-right, organised groups to one which reflects the reality that racism, including racially motivated offences, often come from individuals not at all associated with these groups.[130]

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propaganda works; if the intention is not to incite hatred or enmity or to hurt the dignity of others, prosecutions should not be initiated. Human rights defenders and members of religious communities particularly targeted have welcomed the Supreme Court's intervention. 28. ECRI considers that the law itself should set out clearly and precisely the definitions and standards to be applied. Moreover, a law which foresees such heavy sanctions should have a high threshold so that only organisations which promote hatred or violence can be targeted and not ones which do not necessarily represent a threat to social or public order. This would ensure that legitimate efforts to combat racism as a form of extremism do not result in violations of civil liberties. 29. ECRI strongly recommends that the Russian Federation authorities revise the definition of extremism in the Federal Law on Combating Extremist Activity to ensure that it only applies to serious cases where hatred or violence are involved. The law should also specify clearly the criteria to be met when declaring any material extremist. 30. ECRI encourages the authorities do their utmost to prevent any over-use or misuse of the anti-extremist legislation, in line with the instruction of the Supreme Court ... 141. As already mentioned, the Russian Federation's anti-extremism legislation is sometimes used to target minority religious faiths. ECRI notes with concern that the law is interpreted to cover as extremist the teaching of the superiority of the doctrine of minority religions over that of other faiths. In particular, Jehovah's Witnesses and Said Nursi followers have been punished with dissolution of their religious communities and banning of their publications which have been placed on the Federal List of Extremist Materials, as well as criminal prosecutions against their members. For example, in October 2011, six readers of Said Nursi were convicted in Nizhny Novgorod, three of whom received prison terms; a Jehovah's Witness married couple were convicted in July 2012 in the Siberian city of Chita for distributing extremist materials and sentenced to 200 hours of labour. Attempts have been made to declare as extremist the Bhagavad-Gita As It Is, the holy book of Hare Krishna devotees, and have it banned by a court in Tomsk. In April 2011, a court banned the activities of the local Protestant Grace Church throughout the Khabarovsk region. Furthermore, ECRI notes that the peaceful practice of religious worship is regularly disrupted for these communities by police raids, confiscations of works and arrest and detention of worshipers").

[129] *Fourth report on the Russian Federation*, (CRI(2013)40, 20 June 2013; "142. In addition, ECRI notes that the 1997 Federal Law on Freedom of Conscience and Religious Associations is another tool which can be used against minority religious groups. It contains similar provisions to those in the anti-extremism legislation, notably Article 14 providing for the liquidation of a religious organisation and prohibition of the activity of a religious association based on a number of grounds, such as violation of the integrity of the Russian Federation or incitement of social, racial, national, or religious enmity. However, unlike in the anti-extremism legislation, there is no provision for issuing warnings which can result in the imposition of fines; forced dissolution and a ban on activities is the only sanction which courts can apply. The European Court of Human Rights pointed out in its judgement of 10 June 2010 in the case of *Jehovah's Witnesses of Moscow v. Russia* that this constitutes a most severe form of interference and called for the introduction into domestic law of less radical alternative sanctions, such as a warning, a fine or a withdrawal of tax benefits ... 144. ECRI notes with interest that the Office of the federal Ombudsman has a religious freedom department, which receives and responds to complaints. The office received 3 000 religious freedom complaints in 2009, five times more than in the previous year. The office estimated that approximately 75% of these represented genuine violations of religious freedom rights granted by law. 145. These matters are of great concern to ECRI since they provide evidence of religious intolerance on the part of the State. In its view, a revision of the Federal Law on Freedom of Conscience and Religious Associations, along the lines recommended by the European Court of Human Rights establishing less radical alternative sanctions, is necessary. 146. ECRI strongly recommends that the Russian Federation authorities revise Article 14 of the 1997 Federal Law on Freedom of Conscience and Religious Associations to provide for alternative, less severe sanctions").

[130] *Report by Nils Muižnieks Commissioner for Human Rights of the Council of Europe following his visit to Germany on 24th April and from to 8 May 2015*, CommDH(2015)20, paras. 172-174 and 189.

7. Terrorism

89. The Council of Europe Convention on the Prevention of Terrorism recognises that associations or groups might be involved in terrorism and that contribution to the commission of terrorism by them should be an offence.[131]

90. Furthermore, the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism requires the States parties to it to adopt such measures as may be necessary to establish "participating in an association or group for the purpose of terrorism" when committed unlawfully and intentionally, as a criminal offence under its domestic law.[132]

91. However, the Commissioner has been concerned about the wide interpretation given to anti-terrorism legislation in one country.[133]

92. The potential for associations and NGOs to be involved in terrorist activity, as well as money-laundering, has been a particular concern of MONEYVAL, which monitors compliance with the International Standards on Combating Money-Laundering and the Financing of Terrorism & Proliferation of the Financial Action Task Force ("FAFT") by those member States which are not members of FAFT. Of these standards, Recommendation No. 8 concerning non-profit organisations is particularly pertinent for associations and NGOs.

93. Recommendation No. 8 currently requires that countries should review the adequacy of laws and regulations that relate to non-profit organisations which the country has identified as being vulnerable to terrorist financing abuse.[134] Countries should apply focused and proportionate measures, in line with the risk-based approach, to such non-profit organisations to protect them from terrorist financing abuse, including: (a) by terrorist organisations posing

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[131] Namely, in Articles 6 ("For the purposes of this Convention, "recruitment for terrorism" means to solicit another person to commit or participate in the commission of a terrorist offence, or to *join an association or group*, for the purpose of contributing to the commission of one or more terrorist offences by *the association or the group*" (emphasis added)) and 9 ("1Each Party shall adopt such measures as may be necessary to establish as a criminal offence under its domestic law: …c Contributing to the commission of one or more offences as set forth in Articles 5 to 7 of this Convention by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either: i be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in Articles 5 to 7 of this Convention; or ii be made in the knowledge of the intention of the group to commit an offence as set forth in Articles 5 to 7 of this Convention").

[132] Article 2(2). For the purpose of this Protocol, "participating in an association or group for the purpose of terrorism" means to participate in the activities of an association or group for the purpose of committing or contributing to the commission of one or more terrorist offences by the association or the group; Article 2(1).

[133] *Report by Thomas Hammarberg Commissioner for Human Rights of the Council of Europe Following his visit to Turkey from 10 to 14 October 2011*, CommDH(2012)2, 10 January 2012; "150. The Commissioner expresses his concerns about the wide margin of interpretation and application allowed by provisions of the Turkish Anti-Terrorism Act and Article 220 of the Turkish Criminal Code, in particular in cases where membership in a terrorist organisation has not been proven and when an act or statement is deemed to coincide with the aims or instructions of a terrorist organisation. The Commissioner considers, in particular, that more efforts are needed to refine this legislation and train prosecutors and judges as to the frontier between the offences of terrorism and membership of a criminal organisation on the one hand, and acts falling under the protection of the rights to freedom of thought, expression, association and assembly on the other hand, in accordance with the case-law of the European Court of Human Rights".

[134] Recommendation No. 8 was revised in June 2016; http://www.fatf-gafi.org/publications/fatfgeneral/documents/plenary-outcomes-june-2016.html.

as legitimate entities; (b) by exploiting legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures; and (c) by concealing or obscuring the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.

94. This version of the recommendation involves a significant change from the previous one in that the entire non-profit sector is no longer labelled as being "particularly vulnerable" for terrorist abuse; the new language puts the focus only on those organisations that are found to be at risk. It is also welcome that the revision now includes a call on countries to ensure that responses to such at-risk organisations are proportionate, effective, and respectful of international human rights law.[135]

95. However, MONEYVAL's previous and current round of evaluations are based on the former version of Recommendation No. 8.[136] As a consequence these evaluations focus primarily on the suitability of the legal framework relating to non-profit organisations to ensure that it meets financial transparency requirements and on the effective monitoring of the compliance by these organisations with their legal obligations.

96. In these evaluations there has been reference to the issue of there being a risk of the misuse of organisations but generally in the context of no review having been made to establish whether such a risk exists[137], with one instance of the review being seen as in need of improvement[138].

97. The need to ensure respect for human rights standards has not been mentioned in the current round of evaluations.

98. However, in a follow-up report to one of the countries previously noted not to have carried out a risk assessment, MONEYVAL observed that such an assessment had subsequently been carried out and that legislation had been adopted which required organisations receiving funds above a certain level from foreign sources to register as organisations "receiving support from abroad", with the possibility of dissolution as a penalty for non-compliance.[139]

99. Moreover, although this legislation referred in its preamble both to transparency and the fight against money-laundering and the financing of terrorism, the follow-up report indicated that it

[135] It is important, as the Financial Action Task itself emphasises, that this Recommendation be applied in the light of its "Interpretive Note". This provides, in particular, that it is only concerned with those non-profit organisations that primarily engage: "in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of "good works". This definition is based on those activities and characteristics of an organisation which put it at risk of terrorist financing abuse, rather than on the simple fact that it is operating on a non-profit basis. The "Interpretive Note" provides that measures implemented pursuant to the Recommendation should take place "in a manner which respects countries' obligations under the Charter of the United Nations and international human rights law".

[136] See https://www.coe.int/en/web/moneyval/moneyval-brief/statutory_documents.

[137] See the Fifth Round Mutual Evaluation Reports for Armenia (para. 216), Hungary (paras. 230 and 338), Serbia (para. 330) and Slovenia (para. 307).

[138] The Fifth Round Mutual Evaluation Report for Ukraine; paras. 373-375.

[139] This legislation was also the subject of opinions discussed in paras. 143-145 below.

had not actually been based on any risks identified in the risk assessment carried out and that MONEYVAL had written during the legislative process to express concern that what was then a draft law had not been the result of the application of a risk-based approach. As a result, it was stated in this report that the question of the proportionality of the legislation within the meaning of Recommendation No. 8 would be assessed.[140]

F. Membership

100. The Venice Commission has, on several occasion, encouraged that membership requirements for registration purposes as such be limited and it has also called for considering equalising the minimum number of founders of religious organizations to those of any public organizations.[141]

101. In addition, the Venice Commission has emphasised that the right to freedom of association encompasses not only the positive right to join an existing association without any unlawful interference by the State or by other individuals but also the negative right not to be compelled to join an association that has been established pursuant to civil law.[142]

102. Furthermore, the Advisory Committee has emphasised that compulsion to associate by reference to visible or linguistic characteristics is incompatible with the Framework Convention[143].

103. Moreover, the CCJE considers that specialist judges must have the same right as all other judges to become and remain members of judges' associations. This is because, in its view, separate associations for specialist judges would not be desirable in the interests of the cohesion of the judicial body as a whole.[144]

104. Also, the Bureau of the CCJE has expressed the view that an obligation pursuant to a legislative amendment in one country for judges to disclose their membership in judges' associations could be regarded as an interference with the right to form and freely join such associations, thus having an adverse effect on judicial independence.[145]

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[140] Hungary, 1st Enhanced Follow-up Report & Technical Compliance Re-Rating, MONEYVAL(2017)21, paras. 108-109.
[141] Compilation, p. 31
[142] Compilation, p. 8.
[143] *Thematic Commentary No. 3 The Language Rights of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs* (5 July 2012); '17. ... The association of persons with a specific group based on visible or linguistic characteristics or on presumption without their consent is not compatible with the Framework Convention' (footnote omitted).
[144] Opinion No. 15 on the specialisation of judges, 13 November 2012, para. 67; "Their specific subject-orientated interests as specialist judges, such as professional exchanges, conferences, meetings etc. should be provided for; however, their status-related interests can and should be safeguarded within a general association of judges".
[145] Opinion of the Bureau of the Consultative Council of European Judges (CCJE) following the request of the Bulgarian Judges Association to provide an opinion with respect to amendments of 11 August 2017 of the Bulgarian Judicial System Act, CCJE-BU(2017)10, 31 October 2017.

G. Internal management

105. The Expert Council has prepared a study on the internal governance of NGOs, which reviews European and international standards and their application in the case law of the European Court, together with the approach taken to their implementation by six countries.[146]

106. The Venice Commission has emphasised that the corollary to the principle of the independence of associations from the government is that they should be entitled to decide their own internal structure, to choose and manage their own staff and to have their own assets. Furthermore, it considers that the State may not issue instructions on the management and activities of the associations.[147]

107. For similar reasons, ECRI has expressed concern about attempts to restrict the choice of the political representatives for persons belonging to associations of persons belonging to national minorities.[148]

108. However, the Advisory Committee has noted as positive steps taken in one country to reverse interference with the internal organisation of the Muslim Community.[149]

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[146] *The Internal Governance of Non-Governmental Organisations*, OING Conf/Exp (2010) 1, January 2010.

[147] Compilation, pp. 8, 9 and 25.

[148] *Third report on Romania*, (CRI(2006)3, 24 June 2005; "23. A draft law on the status of national minorities is currently before the Romanian Parliament. This draft, which was drawn up in 1995 and has since been amended several times, contains in its Article 3 a definition of Romanian national minorities. These are defined as communities which have lived in Romania for at least a century, have their own national, ethnic, cultural, linguistic and religious identity and wish to preserve, express and promote that identity. This draft law includes a chapter on cultural autonomy which provides for national minorities' right to have their own institutions in areas such as culture, education and the media. Moreover, this chapter defines the manner in which these institutions are to function and be monitored and provides for the right to education in minority languages, the political representation of national minorities and their closer involvement in the decision-making process. The draft law enshrines the principle of non-discrimination, prohibiting all forms of discrimination and incitement to discrimination. 24. However, ECRI notes with concern that the chapter of this draft law relating to national minority organisations makes all new organisations wishing to represent minorities subject to the same requirements as those provided for in Law No. 67/2004 on Local Elections. This chapter thus contains a series of conditions which are virtually impossible for these organisations to meet. It also maintains the status quo by providing that all national minority organisations which are already members of the Council for National Minorities and are represented in Parliament will preserve their legal status and have the rights and powers provided for in the draft law on the status of national minorities. Since, as indicated below, one effect of these conditions is that they infringe the right of national minorities to choose their representatives, ECRI considers that they put national minorities at a disadvantage in relation to the majority, which is free to choose its political leaders at all levels. 25. ECRI recommends that the Romanian authorities adopt the draft law on the status of national minorities without delay. It urges them to scrap or amend any provisions of this law which might infringe the right of national minorities to choose their political representatives at local level" (footnotes omitted).

[149] *Bulgaria* (FCNM/II(2012)001, 23 January 2012, para. 134; these steps followed judgments of the European Court in *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, 26 October 2000 and *Supreme Holy Council of Muslim Community v. Bulgaria*, no. 39023/97,16 December 2004.

H. Rights and enabling environment[150]

8. In general

109. The Venice Commission has underlined that members of NGOs, as well as NGOs themselves, enjoy fundamental human rights, including freedom of association and freedom of expression.[151]

110. It has also emphasised that States have both to protect freedom of association by ensuring that its exercise is not prevented by actions of individuals and to fulfil this freedom through actively creating the legal framework in which associations can operate.[152]

111. Furthermore, PACE has stressed that all States Parties to the European Convention have agreed to ensure respect for freedoms of assembly and association and of expression and information, and thus to create a favourable environment for the exercise of those freedoms, guided by the case law of the European Court, Recommendation CM/Rec(2007)14 and the Joint Guidelines.[153]

112. Moreover, the Committee of Ministers has called for particular measures to be taken by member States with regard to both the position of human rights defenders[154] and the situation in culturally diverse societies.[155]

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[150] See also the sections on Supervision and on Penalties and dissolution below

[151] *Compilation*, p. 10

[152] *Compilation*, p. 9.

[153] How can inappropriate restrictions on NGO activities in Europe be prevented?, Resolution2096 (2016). This was adopted following a report of the Committee on Legal Affairs and Human Rights; How to prevent inappropriate restrictions on NGO activities in Europe? (Doc. 13940).

[154] Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities, 6 February 2008. The measures called for were for member States to: "i) create an environment conducive to the work of human rights defenders, enabling individuals, groups and associations to freely carry out activities, on a legal basis, consistent with international standards, to promote and strive for the protection of human rights and fundamental freedoms without any restrictions other than those authorised by the European Convention on Human Rights; ii) take effective measures to protect, promote and respect human rights defenders and ensure respect for their activities; iii) strengthen their judicial systems and ensure the existence of effective remedies for those whose rights and freedoms are violated; iv) take effective measures to prevent attacks on or harassment of human rights defenders, ensure independent and effective investigation of such acts and to hold those responsible accountable through administrative measures and/or criminal proceedings; v) consider giving or, where appropriate, strengthening competence and capacity to independent commissions, ombudspersons, or national human rights institutions to receive, consider and make recommendations for the resolution of complaints by human rights defenders about violations of their rights; vi) ensure that their legislation, in particular on freedom of association, peaceful assembly and expression, is in conformity with internationally recognised human rights standards and, where appropriate, seek advice from the Council of Europe in this respect; vii) ensure the effective access of human rights defenders to the European Court of Human Rights, the European Committee of Social Rights and other human rights protection mechanisms in accordance with applicable procedures; viii) co-operate with the Council of Europe human rights mechanisms and in particular with the European Court of Human Rights in accordance with the ECHR, as well as with the Commissioner for Human Rights by facilitating his/her visits, providing adequate responses and entering into dialogue with him/her about the situation of human rights defenders when so requested; ix) consider signing and

113. In addition, CDDH's Drafting Group on Civil Society has prepared an 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, which has been adopted by CDDH.[156] This was intended to assist in identifying gaps in the protection of activities of civil society organisations, human rights defenders and national human rights institutions and to point to a number of standards and good practices of Council of Europe member States which can be used to address them.

114. CDDH's Drafting Group on Civil Society has also prepared a compilation of measures and practices in place in member States for the protection and promotion of civil society space based on a questionnaire sent to them.[157]

115. The Drafting Group is also charged with preparing a non-binding legal instrument on civil society space for the Committee of Ministers. This is expected to emphasise the need to strengthen the protection and promotion of the civil society space in Europe and to call on member States to take specific steps for this purpose, as well as calling on Council of Europe bodies and institutions to pay special attention to issues concerning the enabling environment in which all human rights defenders, including civil society organisations, can safely and freely operate in Europe.[158]

116. CDDG has prepared guidelines for meaningful civil participation in political decision-making which ultimately became Recommendation CM/Rec(2018)4 of the Committee of Ministers to member States on the participation of citizens in local public life.[159] The Appendix to this Recommendation states that member States should recognise and enhance the role played by associations and groups of citizens as key partners in developing

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ratifying the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations (ETS No. 124); x) consider signing and ratifying the 1995 Additional Protocol to the European Social Charter 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; xi) provide measures for swift assistance and protection to human rights defenders in danger in third countries, such as, where appropriate, attendance at and observation of trials and/or, if feasible, the issuing of emergency visas". The Declaration also called on all Council of Europe bodies and institutions, to pay special attention to issues concerning human rights defenders in their respective work and invited the Commissioner to strengthen the role and capacity of his Office in order to provide strong and effective protection for human rights defenders.

[155] Guidelines of the Committee of Ministers to member states on the protection and promotion of human rights in culturally diverse societies, 2 March 2016; "Member States should take concrete measures to create an environment conducive to the development of civil society, including defenders of human rights, and make consultation and collaboration with civil society a common practice when drafting policies and action plans at national, regional and local levels, with a view to protecting and promoting human rights in culturally diverse societies" (para. 68).

[156] CDDH(2017)R87 Addendum IV. The Committee of Ministers took note of this Analysis at the 1293rd meeting of Ministers' Deputies on 13 September 2017.

[157] *Protection and promotion of the civil-society space: Compilation of measures and practices in place in the Council of Europe member States*, CDDH-INST92018)05, 11 May 2018. This will be complemented by an overview and general conclusions that can be drawn from the contributions received (22 member States responded to the questionnaire).

[158] The preliminary draft is in CDDH-INST(2017)04Rev.

[159] https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016807954c3.

and sustaining a culture of participation and as a driving force in the practical application of democratic participation.[160]

117. Finally, the Expert Council, together with the Cyprus NGO Initiative on Law Reform and the Office of the Commissioner of Volunteerism and NGOs, produced a policy paper that sought to promote a discussion as to how the potential of civil society in Cyprus can be unlocked and energised, especially through measures to be undertaken by the Government of the Republic of Cyprus and civil society structures.

118. This policy paper identified six challenges that needed to be tackled to facilitate the empowerment of civil society in Cyprus, namely, establishing a more positive perception of its value, developing a modern legal framework for it, securing sufficient access for it to resources, developing its capacity, promoting its participation and securing access to justice for it. Specific recommendations - directed both to the Government (at the national and local level) and to civil society - were made to address these challenges.[161]

9. Challenging developments

119. However, the Secretary General has drawn attention to the fact that some states target NGOs, curtailing their existence or activities with excessive formalities, financial reporting obligations, limits on foreign funding, and sanctions. He has emphasised that member States must not claim the protection of public order or prevention of extremism, terrorism or money laundering to control NGOs or restrict their ability to function. In addition, he has recommended that the registration and reporting requirements for NGOs be simplified and made transparent and fair and that they have unimpeded legal and transparent access to resources, including foreign and local funding.[162]

120. The Secretary General has also noted instances of legislative changes or proposals that undermine or threaten the normal functioning and active engagement of NGOs and observed that, in a number of States, the formal mechanisms by which civil society groups are consulted are "superficial and ineffective", with some attempts by governments to control legitimate citizen initiatives.[163]

121. Furthermore, the Secretary General has also drawn attention to other developments that have an adverse effect on the functioning of NGOs, such as provision for their blanket de-registration, their dissolution or their qualification as "undesirable" on grounds that are not admissible, as well as financial reporting obligations, limits on foreign funding and an overly broad definition of "political activity" in legislation that limits their ability to engage in

[160] Para. A.12.
[161] *Civil Society in Cyprus: Building for the Future*, 2015.
[162] *State of Democracy, Human Rights and the Rule of Law in Europe*, SG (2014) 1, at p. 31.
[163] *State of Democracy, Human Rights and the Rule of Law in Europe A shared responsibility for democratic security in Europe*, SG(2015)1, at p. 11.

activities aimed at voicing opinions, shaping policies or influencing policy-making processes.[164]

122. Moreover, the Secretary General 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.[165]

123. In addition, PACE has noted that in certain Council of Europe member States the situation of civil society has dramatically deteriorated over the last few years, in particular following the adoption of restrictive laws and regulations, some of which have been strongly criticised by the Venice Commission, the Commissioner and the Conference of INGOs.[166]

124. In this connection, it referred to NGOs encountering various impediments to their registration, operating and financing or, despite an appropriate legal framework, certain NGOs such as human rights defenders and watchdog organisations being stigmatised. It also expressed concern about the situation in two particular countries[167] and called upon member States to take particular steps to address the problems identified[168].

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[164] *State of Democracy, Human Rights and the Rule of Law in Europe A security imperative for Europe*, SG(2016)1, at p. 9. These points were echoed in *State of Democracy, Human Rights and Rule of Law Populism – How strong are Europe's checks and balance*s, SG(2017)1, at p. 9 and in *State of Democracy, Human Rights and Rule of Law Role of institutions Threats to institutions*, SG(2018), at pp. 55-61

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

[166] *How can inappropriate restrictions on NGO activities in Europe be prevented?*, Resolution2096 (2016).

[167] Azerbaijan (recalling its Resolution 2062 (2015) [see fn. 205 below] on the functioning of democratic institutions in Azerbaijan and condemning once again the deterioration of the working conditions of NGOs and human rights activists following changes to the legislation on NGOs that impose inappropriate restrictions on their activities, as well as calling on Azerbaijan to amend its legislation on NGOs in accordance with the recommendations of the Venice Commission and to fully and promptly implement judgments of the European Court of Human Rights, in particular those finding violations of the freedoms of association, assembly and expression) and the Russian Federation (expressing strong concern about the so-called "foreign agents law" modifying the Russian legislation on non-commercial organisations, to the effect that NGOs receiving foreign funding are obliged to register as "foreign agents" and noting that dozens of NGOs have been unilaterally registered as foreign agents by the Minister of Justice and that even the laureate of the Assembly's 2011 Human Rights Prize, the Nizhny Novgorod Committee against Torture, was forced to close down for this reason. The Assembly was also worried about the adoption of the law on undesirable organisations, the implementation of which may lead to the closure of major international and foreign NGOs. It called on Russia to amend the legislation on NGOs in accordance with the Venice Commission's Opinions and on the authorities to implement the remaining provisions of this legislation in accordance with the international standards on the right to freedom of association and other relevant human rights).

[168] Namely, to:"7.1. fully implement Committee of Ministers Recommendation CM/Rec(2007)14; 7.2. review existing legislation with a view to bringing it into conformity with international human rights instruments regarding the rights to freedom of association, assembly and expression, by making use of the expertise of the Council of Europe, and in particular of the Venice Commission; 7.3. refrain from adopting any new laws which would result in inappropriate restrictions on NGOs; 7.4. ensure that NGOs are effectively involved in the consultation process concerning new legislation which concerns them and other issues of particular importance to society; 7.5. ensure an enabling environment for NGOs, in particular by refraining from any harassment (judicial, administrative or tax) and smear campaigns; 7.6. 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".

125. The Conference of INGOs has adopted resolutions deploring legislative changes that have worsened the operating environment for civil society[169] and expressing concern about the impact of a prolonged state of emergency on civil society[170].

126. Also, the Expert Council has drawn attention to legislative amendments in one country that have reversed in a number of significant respects previous efforts to develop a legal framework for the establishment and operation of NGOs that meets the requirements of international standards.[171]

127. The Commissioner has similarly drawn attention to the shrinking space for human rights organisations. The growing pressure and increased obstacles for them was seen as taking a variety of forms: legal and administrative restrictions; judicial harassment and sanctions, including criminal prosecution for failure to comply with new restrictive regulations; smear campaigns and orchestrated ostracism of independent groups; and threats, intimidation and even physical violence against their members. In some cases, the climate is so negative that it forces human rights work to the margins or even underground.[172]

128. As a consequence, the Commissioner emphasised that a constructive dialogue on matters of public interest, based on facts, is to the benefit of all and that, instead of stigmatising NGOs, governments should facilitate their participation in mechanisms for dialogue and consultations on public policy, with the objective of identifying solutions to society's needs. Furthermore, governments should treat NGOs equally irrespectively of their sources of funding and should

[169] Resolution adopted on 27 January 2012 CONF/PLE(2012)RES1 Concerning Civil Society in Belarus, notably as regards legislation on freedom of assembly, freedom of expression, particularly on the Internet and freedom of association, notably de facto prohibiting international support and financing of the NGOs.

[170] Resolution CONF/PLE(2017)RES1 adopted by the Conference of INGOs on 27 January 2017 Protecting the freedoms of association and expression in Turkey under the State of Emergency, with particular concern that this opened the door to violence towards civil society and its activists under increasing polarisation and repression.

[171] *Opinion on amendments in 2009 to the NGO law in Azerbaijan and their application*, OING Conf/Exp (2011) 2, September 2011 and *Opinion on the NGO Law of the Republic of Azerbaijan in the light of amendments made in 2009 and 2013 and their application*, OING Conf/Exp (2014) 1, September 2014. This was especially so as regards the restrictions on 'political' and 'governmental' activities, the choice of names, the ability to be founders and office-holders, the capital requirements for foundations and the basis on which foreign NGOs will be allowed to operate, as well as the requirements governing the receipt and use of funding, the excessive formalisation of the role of volunteers, the threat of disclosure of details relating to members, the considerable enhancement of regulatory requirements and supervisory powers and the introduction of new and extended penalties. It was emphasised that these amendments needed to be "appreciated in the context of (a) the continuing problem of delay in registration, particularly as regards NGOs working in the field of human rights, the situation of internally displaced persons and social issues that are seen as reflecting criticism of government policy, (b) the declining annual figure for new registrations of NGOs, with 548 being registered in 2006 but only 144 in 2011, (c) the apparent failure to register grants made to NGOs, (d) the freezing of bank accounts of NGOs and the seizure of the personal accounts of their presidents, (d) the apparent refusal of hotels to allow events organised by NGOs to be held on their premises167, (e) the subjecting of a significant number of NGOs to official sanctions and restrictions regarding their activities, leading to the stopping of the implementation of their projects, (f) the many reports of various forms of harassment of both domestic and foreign NGOs and those who work for them, (g) the stigmatising of NGOs by politicians, particularly those receiving funds from abroad, (h) the criminal proceedings brought against leaders of NGOs promoting human rights and peace on seemingly improbable charges and (i) the continued failure of the courts to operate as an effective control over both the registration process and other action taken against NGOs, which is perhaps unsurprising given that the Minister of Justice chairs the Judicial-Legal Council which deals with such matters as disciplinary liability and dismissal of judges" (para. 231 of the 2014 Opinion).

[172] *The Shrinking Space for Human Rights Organisations*, (*Human Rights Comment)*, 4 April 2017.

always retain the presumption of lawfulness of an NGO's activities according to the states' international obligation to create an enabling environment conducive to the work of human rights defenders.[173]

129. In addition, the Commissioner has expressed particular concern about the stigmatizing rhetoric used in one country against NGOs active in the field of promoting human rights and democratic values, with politicians questioning the legitimacy of their work and alleging that foreign funding had been used to support political activities.[174]

130. The absence of an enabling environment for organisations established by national minorities in one country has also been a matter of concern for the Advisory Committee, essentially on account of the use of disproportionate checks and audits, increased difficulties in obtaining access to funding and a restrictive view of the activities falling within the remit of "culture".[175]

131. Moreover, in a thematic commentary, the Advisory Committee has drawn attention to its "deep concern" about the overall working conditions for NGOs engaged in the protection of minority rights having been made difficult in two countries, pointing out that their role in promoting the awareness and understanding of human and minority rights standards in society is crucial and must be supported rather than hindered.[176]

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[173] *Ibid.*

[174] Letter addressed to the Minister of the Prime Minister's Office, Hungary, 9 July 2014.

[175] *Russia* (ACFC/OP/III(2011)010; "133. The Advisory Committee is also deeply worried by information provided by NGOs active in the field of human rights and minority rights that they are facing increasingly serious problems in the exercise of the right to freedom of association, expression and opinion. Despite the fact that the State Duma adopted in June 2009 amendments to the 2006 Law on NGOs, which lifted a number of administrative requirements imposed on NGOs, interlocutors of the Advisory Committee report that their organisations are subjected to disproportionate checks and audits by the authorities. Access to funding has reportedly become increasingly difficult, as a result of the legislation on NGOs adopted in 2006. The Advisory Committee finds this situation particularly serious and not compatible with the rights protected by Article 7 of the Framework Convention. 134. In addition, the Advisory Committee is informed that the Federal Ukrainian National-Cultural Autonomy was disbanded following an audit by the Ministry of Justice in 2009 and a decision of the Supreme Court of November 2010. Information brought to the attention of the Advisory Committee indicates that the suspension of the activities of the Ukrainian national cultural autonomy is connected to, on the one hand, a lack of compliance with minor formal requirements under the legislation on NGOs and on national-cultural autonomies and, on the other hand, alleged engagement in activities advocating "nationalism and separatism". Moreover, it is informed that the suspension is also connected to alleged involvement in issues which go beyond activities aimed at preserving and promoting minority cultures, whereas activities of national-cultural autonomies should, according to the law on national-cultural autonomies, be limited to the remit of culture (see also remarks on Article 5 above). The Advisory Committee is also aware that an inspection of the activities of the Union of Ukrainians in Russia is under way and that the federal Library of Ukrainian Literature in Moscow was closed down based on allegations of keeping material considered extremist. 135. The Advisory Committee is concerned that suspending the activities of both the federal national-cultural autonomy and the Union of Ukrainians in Russia would result in there not being a single organisation for persons belonging to the Ukrainian minority at federal level. It is important to ensure that such persons continue to have a voice and functioning NGO structures at federal level. Furthermore, the Advisory Committee believes that, in general, it is essential for the authorities to ensure that state inspection on the activities of organisations advocating minority rights does not result in limitations on the freedom of association and assembly that are discriminatory or unnecessary in a democratic society" (footnote omitted)).

[176] *Thematic Commentary No. 4 The Scope of Application of the Framework Convention for the Protection of National Minorities*, ACFC/56DOC(2016)001, para. 68. The two countries were Azerbaijan and the Russian Federation.

132. Finally, the Venice Commission has expressed concern about the cumulative effect of stringent requirements introduced in one country with respect to the reporting of grants and donations and other obligations in respect of them when added to the existing wide discretion given to the executive authorities regarding the registration, operation and funding of NGOs. In its view, this was likely to have a chilling effect on civil society, especially on associations devoted to key issues such as human rights, democracy and the rule of law.[177]

10. Financial support

133. The Commissioner has called for support to be given to associations representing sexual minorities as part of efforts to tackle discrimination against them.[178]

134. Nonetheless, the Commissioner has also expressed concern regarding the way in which public funding for associations is distributed in one country.[179]

135. Similarly, ECRI has drawn attention to the problem of inconsistency in the application of tax breaks for religious associations and the differential treatment of national/minority organisations in terms of access to public funds to promote and protect their identity.[180]

136. However, ECRI has also drawn attention to the danger of compromising the independence of NGOs and with this their ability to promote critical views, change and continuous improvement as a result of the stepping up of State funding of them and reducing other sources of funding. In particular, it was concerned about the effect that a crackdown on independent NGOs was having, namely, that members of vulnerable groups could no longer turn to such organisations in order to receive aid and assistance in cases of hate speech and other instances of racism and discrimination.[181]

137. At the same time ECRI has drawn attention to the need to ensure that NGOs and other civil society actors working on issues relating to groups of concern to it receive sufficient funding.[182]

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[177] *Opinion on the Law on Non-Governmental Organisations (Public Associations and Funds) as amended of the Republic of Azerbaijan*, CDL-AD(2014)043, para. 93.
[178] *Memorandum to the Latvian Government Assessment of the progress made in implementing the 2003 recommendations of the Council of Europe Commissioner for Human Rights*, CommDH(2007)9, 16 May 2007, para. 89.
[179] *Report by the Commissioner for Human Rights Mr Thomas Hammarberg on his visit to Montenegro (2 – 6 June 2008)*, CommDH(2008)25, 8 October 2008; "24. The majority of NGOs receive funding from independent or international donors. A far lesser number receive government grants to support their functioning. The current system of state funding allocation has provoked many civil society groups to request that the process for allocating funds to NGOs be made more transparent and that the state should set clear criteria for the distribution of these funds. In a political and social climate which is shrouded by a lingering perception of corruption throughout the system, the Commissioner calls upon the authorities to ensure this process is transparent to avoid any such damaging perceptions".
[180] *Fourth report on Romania*, CRI(2014)19, 19 March 2014, paras. 11-1 and 79-80.
[181] *Fifth report on Azerbaijan* CRI(2016)17, 7 June 2016, para. 36.
[182] *Fifth report on Denmark*, CRI(2017)20, 16 May 2017, para. 59.

138. The Venice Commission considers that States may choose to grant certain privileges to religious or belief communities or organizations. It instances in this regard financial subsidies, settling financial contributions to religious or belief communities through the tax system, membership in public broadcasting agencies. Furthermore, it considers that it is only when granting such benefits that additional requirements may be placed on religious or belief communities but even then those requirements must remain proportionate and non-discriminatory.[183]

11. Foreign funding

139. The Commissioner also pointed out that, in order to effectively perform their legitimate functions NGOs should be free to solicit and receive funds not only from public bodies in their own state but also from institutional or individual donors, another state or multilateral agencies. Many human rights and anti-corruption NGOs have no other choice but to look abroad for funding, as government funding for NGOs in some countries is rarely allocated to advocacy NGOs addressing sensitive topics.[184]

140. The Venice Commission recognises that the prevention of money-laundering and terrorist financing might be legitimate reasons to restrict foreign funding of NGOs but it has also emphasised that these legitimate aims should not be used as a pretext to control NGOs or to restrict their ability to carry out their legitimate work, notably in defence of human rights.

141. Moreover, it does not consider that such aims do not require nor justify either the prohibition of foreign funding or a system of prior authorisation by the government of its receipt by NGOs. In its view, an administrative authority might be entrusted with the competence to review the legality but not the expediency of foreign funding following notification of its receipt [185]

142. In addition, the Venice Commission has considered that labelling associations or NGOs that receive foreign funding as "foreign agents" was an unnecessary negative qualification and would mean that they would not be able to function properly, since other people and - in particular - representatives of the State institutions will very likely be reluctant to co-operate with them, in particular in discussions on possible changes to legislation or public policy.[186]

143. Similar concerns have been voiced by PACE, the Venice Commission, the Commissioner and the Expert Council about legislative proposals in one country that would oblige NGOs in receipt of a certain amount of annual funding originating from sources outside it to register as

[183] *Compilation*, p. 29
[184] *The Shrinking Space for Human Rights Organisations*, (*Human Rights Comment)*, 4 April 2017.
[185] *Compilation*, pp. 17-18 and 21-22.
[186] *Compilation*, p. 21.

"foreign-funded" and to adopt a self-labelling practice or be subject to fines and the possibility of dissolution, as well as to fulfil enhanced reporting obligations.[187]

144. In particular, PACE could not accept the allegations that civil society organisations served foreign interest groups, rather than the public interest, and might endanger the national security and sovereignty of a country simply because they receive foreign funding over a certain yearly threshold. Moreover, both it and the Venice Commission were also concerned about the need for consultation with NGOs before the draft law's adoption and the fact that the proposals did not apply to all organisations. The Venice Commission was additionally concerned about the need for three years without foreign funding to elapse before an NGO that had been registered as "foreign-funded" could be de-registered.

145. In addition, the Commissioner has expressed concern about legislative proposals in the same country to introduce mandatory licences for NGOs so that it would only be possible to organise, support or finance migration into it while in possession of such a licence, which would be issued following an assessment of the related national security aspects. NGOs failing to abide by this requirement could then be subject to sanctions, including a fine and ultimately dissolution. Furthermore, any such NGO that receives any amount of funding from abroad would be required to pay a 25% tax on such foreign funding.[188]

12. Consultation

146. Although arrangements for consulting certain associations in one country were seen as welcome by ECRI, their effectiveness in achieving a genuine dialogue in practice was called into question.[189]

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[187] Respectively in: *Alarming developments in Hungary: draft NGO law restricting civil society and possible closure of the European Central University*, Resolution 2162 (2017); *Opinion on the Draft Law on the Transparency of Organisations Receiving Support from Abroad*, CDL-AD(2017)015; Letter to the Speaker of the National Assembly of Hungary, 26 April 2017 and *Opinion on the Hungarian Draft Act on the Transparency of Organisations Supported from Abroad*, Conf/Exp(2017)1, 24 April 2017.

[188] Statement, 15 February 2018.

[189] *Fourth report on Albania*, (CRI(2010)1, 15 December 2009;" '127. … Under the National Strategy for Improving the Living Conditions of the Roma Community, efforts have been made to reinforce grassroots Roma associations' capacities with regard to representation of their communities' interests and to programme management; Roma associations were also involved in the preparation of the Progress Report on the Implementation of the National Strategy for Improving the Living Conditions of the Roma Community, in particular via consultation and discussion processes. ECRI notes with regret that, despite these efforts, Roma associations still consider that their proposals are not duly taken into account, that local authorities' priorities disregard the Roma communities' needs and that they are excluded from the decision-making process; the decisions taken are still often incomprehensible for Roma associations. ECRI underlines that dialogue must be further reinforced at all decision-making levels; although it is clearly not possible for all communities' wishes to be granted all the time, enhancing their possibilities of influencing decisions can improve both the quality of these decisions and the prospects of arriving at solutions acceptable for all concerned. 128. ECRI encourages the Albanian authorities to pursue their efforts aimed at reinforcing Roma associations' capacities with regard to representation of their communities' interests and to programme management. 129. ECRI recommends that the Albanian authorities strengthen their dialogue with the Roma and Egyptian communities to ensure that greater consideration is given to their concerns at all levels. 130. ECRI again recommends that the Albanian authorities encourage and support the involvement of minority groups and grassroots organisations in the development, implementation and evaluation of projects and measures that directly affect them" (footnotes omitted).

I. Protection

147. The Committee of Ministers has adopted a Declaration in which it condemned all attacks on and violations of the rights of human rights defenders in Council of Europe member states or elsewhere, whether carried out by state agents or non-state actors.[190]

148. PACE has also expressed deep concern about increased reprisals against human rights defenders in certain member States and has noted that restrictive legislation on registration, funding, especially foreign funding, or on anti-terrorist measures is being used to restrict human rights defenders' activities or even to arbitrarily arrest them, to bring serious criminal charges and to condemn them to long prison sentences. It condemned these practices and expressed support for the work of human rights defenders, who put their security and personal life at risk for the promotion and protection of the rights of others, including those from the most vulnerable and oppressed groups (migrants and members of national, religious or sexual minorities) or to combat impunity of State officials, corruption and poverty. As a result it called on member States to strengthen the protection and role of human rights defenders.[191]

149. In addition, PACE has expressed concern about the harassment and closure of most NGOs in Crimea "that are critical of Russia's illegal annexation of the region".[192]

150. The Conference of INGOs has similarly adopted resolutions deploring the harassment of NGOs[193], as well as a declaration and a recommendation relating, in particular, to such action taken against human rights defenders[194].

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[190] *Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities*, 6 February 2008.

[191] *Strengthening the protection and role of human rights defenders in Council of Europe member States*, Resolution 2095 (2016). In this resolution, it called on member States to "6.1. refrain from any acts of intimidation of and reprisals against human rights defenders, and in particular from physical attacks, arbitrary arrests and judicial or administrative harassment; 6.2. ensure an enabling environment for the work of human rights defenders and effective protection against acts of intimidation and reprisals against them, and conduct effective investigations into any such acts in order to effectively fight against impunity; 6.3. refrain from adopting laws that impose disproportionate restrictions on defenders' activities and that limit their access to funding, including foreign funding, or repeal such legislation; 6.4. ensure that human rights defenders are included, where possible, in the legislative process concerning human rights and fundamental values; 6.5. refrain from conducting smear campaigns against human rights defenders and condemn such campaigns conducted in the media or by other non-state actors; 6.6. refrain from placing human rights organisations and their members under unlawful surveillance; 6.7. take measures to raise awareness and promote knowledge about human rights defenders' work and its recognition by society; 6.8. actively support the development of vibrant civil societies and promote rather than restrict international contacts and co-operation at this level; 6.9. show solidarity with organisations and individuals that defend human rights by designating, in their relevant foreign missions, diplomats specifically responsible for keeping in contact with human rights defenders. See also *Situation of human rights defenders in Council of Europe member states*, Resolution 1660 (2009) and *The situation of human rights defenders in Council of Europe member States*, Resolution 1891 (2012).

[192] *Consideration of the annulment of the previously ratified credentials of the delegation of the Russian Federation* (follow-up to paragraph 16 of Resolution 2034 (2015)), Resolution 2063 (2015).

[193] Resolution adopted on 27 January 2012 CONF/PLE(2012)RES1 Concerning Civil Society in Belarus (notably as regards the imprisonment of human rights defenders and the confiscation of an organisation's property); Resolution adopted on 27 June 2012 CONF/PLE(2012)RES3 Concerning civil society in Belarus (concerning politically motivated arrests, the imposition of obstacles to election observation, the persecution of Independent analytical, research and academic institutions and the putting of pressure on lawyers defending political and civil society activists);

151. Furthermore, the Commissioner has expressed concern about the demolition in one country of a building in which several human rights organisations were housed, resulting in the loss of their equipment and materials.[195]

152. The Commissioner has also been concerned about the operating climate for human rights defenders in another country[196] and has stressed the need for human rights organisations and defenders working in the field of women's rights in another country to be able to carry out their activities in an environment free from intimidation and threats[197].

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[194] Declaration CONF/PLE(2014)DEC1 adopted by the Conference of INGOs on 26 June 2014 Protection of Human Rights Defenders in Europe, about them being imprisoned for their human rights activities and Recommendation CONF/PLE(2016)REC1 adopted by the Conference of INGOs on 24 June 2016 Protection of Human Rights Defenders in the Transnistrian region of the Republic of Moldova: the case of "Promo LEX" Association established in the Republic of Moldova, concerning especially the need for an immediate, thorough, and impartial investigation into all reported cases of reprisals against human rights defenders, with a view to publishing the results and bringing those responsible to justice in accordance with international standards.

[195] *Observations on the human rights situation in Azerbaijan Freedom of expression, freedom of association, freedom of peaceful assembly*, CommDH(2011)33, 29 September 2011; "The Commissioner is particularly concerned to hear that a building where several human rights organisations were located, including the Office of the Institute for Peace and Democracy, was demolished on 11 August 2011 in the framework of a reconstruction programme being implemented in Baku. The Commissioner had called upon the authorities to halt these forced evictions. In this specific case, the demolition was carried out despite a court decision prohibiting the destruction of the building pending a hearing scheduled for September, and in the absence of any prior notification or compensation offer to the owners. The building's occupants were unable to retrieve any of their belongings, and their working materials - such as computers, documents, and books - were destroyed. The circumstances of the demolition, which occurred in the evening, give reason to believe that it was carried out in retaliation against the activities of Leyla Yunus, the director of the Institute and owner of the house, who was an outspoken critic of corruption and forced evictions in Azerbaijan. The Commissioner urges the authorities to investigate the responsibility for the building's demolition in such a manner and in contravention of the above-mentioned court decision. The persons affected should at the very least obtain adequate compensation for the loss of their property".

[196] *Report by the Commissioner for Human Rights Mr Thomas Hammarberg on his visit to Montenegro (2 – 6 June 2008),* CommDH(2008)25, 8 October 2008; "25. The operating climate for human rights defenders is generally poor. Journalists, media outlets and civil society opinion leaders appear to be in an uneasy position in the country for reasons ranging from subtle pressure, lawsuits and financial restrictions to more serious physical abuse, intimidation, threats and even killings. Many instances of direct or indirect pressure on these people have come to the attention of the Commissioner, over which he expresses his deep concern. The killing of a senior media figure and repeated instances of violence and threats to critical and outspoken persons are of particular concern to the Commissioner. He reiterates that such persons deserve an environment in which they may peacefully defend their basic rights and the human rights of others while seeking reforms in the country for the benefit of all persons. 26. While stressing that these instances may not be related to the authorities but rather a result of the actions of individuals or groups of individuals, the Commissioner underlines that the authorities have a responsibility to ensure a conducive environment exists for raising human rights concerns and that when any such instances occur they be fully investigated, prosecuted and the perpetrators brought to justice".

[197] *Report by Nils Muižnieks Commissioner for Human Rights of the Council of Europe following his visit to Armenia from 5 to 9 October 2014,* CommDH(2015)2, 10 March 2015: "164. The Commissioner received worrying information about a wave of threats and attacks targeting civil society organisations and human rights defenders active in the fields of women's rights and gender equality on the occasion of the discussion and adoption of the Law on Equal Rights and Equal Opportunities for Women and Men in 2013. This process sparked fierce opposition on the part of certain groups hostile to the concept of gender equality, and who equated it to "promotion of homosexuality". A legislative proposal banning homosexual propaganda was even briefly posted on the website of the Police Service in the summer 2013, but was rapidly removed. NGOs reported that, following the controversy, officials avoided using the term "gender", although it appears in many international and domestic documents applicable in Armenia. 165. Conservative and radical groups reportedly disseminated misleading and defamatory information about human rights organisations and defenders supporting the law, describing them as "traitors to the nation", "destroyers of families" and "a threat to Armenian values". The NGO Women's Resource Centre was the subject of on-line harassment, including threats to bomb the Centre and burn women's rights defenders for speaking out on gender issues. No charges were brought against the

153. Moreover, ECRI has expressed concern about limits on the extent of protection against harassment in one country's proposed legislation to tackle discrimination.[198]

154. The Advisory Committee has been concerned about the apparent harassment of some community leaders and its impact on those belonging to the communities concerned in one country[199], as well as of those advocating and seeking to protect minority rights in another[200].

155. Similar concerns with respect to three other countries have been expressed by ECRI.[201]

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authors of these threats. An MP allegedly even registered a complaint with the Prosecutor General's Office against the NGO, requesting an investigation into the organisation and its activities".

[198] *Fourth report on the United Kingdom*, (CRI(2010)4, 17 December 2009; "56. ECRI notes with concern, however, that while harassment on grounds of a person's religion or belief or of their sexual orientation is prohibited in a number of cases, such as in the field of employment, harassment on these grounds is not prohibited in all cases. Protection from harassment on these grounds is in fact expressly excluded in a number of specific fields, such as the provision of goods and services, the exercise of public functions or the disposal or management of premises; nor is harassment on these grounds prohibited with respect to certain persons, such as pupils or prospective pupils of schools or members or potential members, of associations. ECRI emphasises that, no matter what the field or who the victim, harassing a person on the above grounds has just as devastating an impact on the victim as harassing a person on the basis of the other characteristics protected under the Equality Bill ... 57. ECRI encourages the authorities in their efforts to prepare consolidated legislation providing equal protection to individuals against discrimination on grounds such as race, colour, religion, nationality and national or ethnic origin. It strongly recommends that the authorities extend the protection against harassment set forth in the Equality Bill to harassment on the basis of religion, and draws the authorities' attention in this respect to its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, in which religion is included as a protected characteristic in the fight against racism and racial discrimination".

[199] *Bulgaria* (FCNM/II(2012)001, 23 January 2012; "136. The Advisory Committee has received disturbing reports from the media and the representatives of the Pomak communities in Garmen and Ribnovo about arrests of local community leaders by the authorities in March and September 2009, charged with promoting radical Islamism, exerting pressure on others to force them to practice religion and for instigating religious hatred and ethnic hostility. The Advisory Committee was further informed that no charges were ever brought against the persons arrested, and the Pomak community leaders consider that these actions constitute harassment aimed at preventing the local population from exercising its right to cultivate their traditions and religion which constitute the foundation for their identity as Pomaks").

[200] *Georgia* (ACFC/OP/I(2009)001, 10 October 2009; "87. Although the situation has improved over recent years, the Advisory Committee is particularly concerned at the reports of serious problems in the exercise of the right to freedom of expression and opinion by members of non-governmental organisations, human rights defenders and independent journalists. Non-governmental sources also refer to attempts by persons in high places in governmental structures or by political representatives to influence the editorial policy and programmes of the media. 88. The Advisory Committee notes with concern information about persons belonging to national minorities who have been subjected to pressure, and even harassment, by representatives of State bodies when their viewpoints differed from those of the authorities. The Advisory Committee finds this situation particularly serious and in no circumstances compatible with the rights protected by Article 7 of the Framework Convention. It urges the authorities to take all necessary steps to ensure that these rights are fully respected and to prevent**,** investigate and punish any unjustified violation or limitation of these rights of persons belonging to national minorities. 89. Persons belonging to the Armenian minority, in particular, drew the attention of the Advisory Committee and other international bodies to the situation of activists defending the rights of Armenians who had been arrested and imprisoned on extremely serious charges, which they regarded as ill-founded. The Advisory Committee is of the opinion that, irrespective of the nature of the accusations and the grounds brought against these persons, the authorities should ensure that the rights of defendants and/or detained persons are fully respected. In general, the Advisory Committee wishes to point out that advocating minority rights, as protected by the Framework Convention, must in no circumstances lead to measures of sanctioning of those involved" (footnote omitted).

[201] *Third report on Slovenia*, (CRI(2007)5, 30 June 2006;"78. In its second report, ECRI noted that the German-speaking minority groups were still faced with some prejudice and stereotyping, notably linked to the events of the Second World War and encouraged the authorities to pay attention to this problem. ECRI is not aware of any specific

J. Supervision

156. The Commissioner has drawn attention to the potential burden for NGOs in one country of certain proposed reporting requirements and powers of inspection.[202]

157. The burden that would result from new reporting requirements for certain NGOs in another country was also considered to be a matter of concern by the Expert Council[203]

158. Similarly, the Venice Commission – while recognising that State bodies should be able to exercise some sort of limited control over the activities of non-commercial organizations with a view to ensuring transparency and accountability within the civil society sector – considers that such control should not be unreasonable, overly intrusive or disruptive of lawful activities. In its view, excessively burdensome or costly reporting obligations could create an environment of excessive State monitoring over the activities of non-commercial organizations, which would hardly be conducive to the effective enjoyment of freedom of association. As a result, it considers that reporting requirements must not place an excessive burden on the organization.[204]

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initiatives having been taken in this field and notes that some manifestations of intolerance towards the members of these groups, including in the form of insulting graffiti sprayed on the premises of their cultural associations, have continued to occur ... 81. ECRI reiterates its recommendation that the Slovenian authorities continue and strengthen their efforts to specifically address prejudice and stereotyping still facing the German-speaking communities'); *Fourth report on Ukraine*, (CRI(2012)6, 8 December 2011; "134.Antisemitic incidents and offences, including the desecration of Jewish cemeteries and acts of graffiti or vandalism against Jewish schools, monuments and associations, continue to be reported throughout Ukraine. In a number of these cases, the response of the authorities was sluggish and in at least one case involving the painting of swastikas on Jewish property, the police treated the offence as simple hooliganism ...137. ECRI encourages the authorities to pursue their efforts to bring to justice persons, including politicians, who engage in antisemitic discourse in public and via the broadcast, print and electronic media); and *Fifth report on Sweden*, (CRI(2018)3, 5 December 2017; "29. … ECRI also recommends that the authorities fully investigate the vandalism and threats against Umeå's Jewish community, ensure that the local authorities liaise with the city's Jewish association to establish its security needs, and provide all necessary protection measures to allow the association to carry out its activities in safety").

[202] *Report by Thomas Hammarberg Commissioner for Human Rights of the Council of Europe following his visit to Armenia from 18 to 21 January 2011*, CommDH(2011)12, 9 May 2011; "118. .... Moreover, the amendments would require that public organisations issue annual activity and financial reports disclosing sources of funding and that one thousand printed copies of those reports be provided. According to the OSCE ODIHR expertise, some of the draft amendments are not in line with relevant international standards and constitute excessive interference with NGOs' work ... 119. The Commissioner discussed with the Minister of Justice another question which has drawn sharp criticism from NGOs. The National Assembly Committee on Human Rights discussed a governmental decision, adopted on 5 August 2010, creating a new inspectorate within the Ministry of Justice to supervise the lawfulness of activities of legal entities. NGO representatives have expressed concern that, with this decision, the government could try to gain additional control over their activities. The Ministry of Justice explained that the establishment of the inspectorate was intended for certain types of non-commercial organisations and would not interfere in the activity of NGOs. According to the Minister, the creation of the inspectorate aims at ensuring accountability of the organisations concerned. 120. The Commissioner stresses that there should not be disproportionate interference of the State with the work and functioning of the civil society sector".

[203] *Opinion on the Law introducing amendments to certain legislative acts of the Russian Federation regarding the regulation of the activities of non-commercial organisations performing the function of foreign agents*, OING (2013) 1, August 2013; "The new reporting and supervisory rules unduly single out NCOs based on their otherwise legitimate source of income (foreign funds) and on their political activities. They impose additional administrative and financial burdens on those organisations which are likely to hamper their ability to carry out their statutory mission" (para. 117).

[204] Compilation, p. 25.

159. In particular, the Venice Commission has found that the intrusive nature of new obligations imposed in one country on NGOs with respect to the receipt of grants and donations and to reporting to the state authorities was such as to amount to a *prima facie* violation of the right to freedom of association. Furthermore, the Venice Commission has considered that this enhanced state supervision of NGOs seemed to reflect a very paternalistic approach towards NGOs and called for sound justification, as did the new and enhanced penalties that could be imposed upon NGOs even for rather minor offences.[205]

160. Subsequently, PACE called on the authorities in this country to review the law on NGOs with a view to addressing the concerns formulated by the Venice Commission and creating an environment conducive to the work of civil society.[206]

161. Furthermore, the Venice Commission has – together with the OSCE Office for Democratic Institutions and Human Rights – viewed as unnecessary and inconsistent with the rights to freedom of association and to respect private life draft legislation that was designed by another country to replace previously imposed and criticised e-declaration requirements for anti-corruption activists1 by a regime of burdensome tax reporting and enhanced public disclosure of detailed financial information which civil society organisations whose total annual income exceeds approximately €14,350 (as well as individual beneficiaries of international technical assistance) would have had to submit.[207] It was considered that, in their current form, the stringent disclosure requirements in the draft legislation, coupled with severe sanctions in case of non-compliance, would be likely to have a chilling effect on civil society and might even jeopardise the very existence of a number of organisations in the event of their losing their non-profit status as a sanction.

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[205] *Opinion on the Law on Non-Governmental Organisations (Public Associations and Funds) as amended of the Republic of Azerbaijan*, CDL-AD(2014)043, paras. 91-92. There was also concern about changes which put branches and representations of foreign NGOs into a yet more disadvantaged position with respect to other NGOs, namely, through additional reporting obligations, special penalties, limited validity of the agreements signed with the State and the excessive discretion of the State authorities to intervene in the matters of their internal life (para. 90).

[206] *The functioning of democratic institutions in Azerbaijan*, Resolution 2062 (2015); "It is indeed worrying that the shortcomings in the country's NGO legislation have negatively affected NGOs' ability to operate. The strict control of NGOs by State authorities is likely to interfere with the right to freedom of association guaranteed by Article 11 of the Convention. In this regard, the Assembly condemns the crackdown on human rights in Azerbaijan where working conditions for NGOs and human rights defenders have significantly deteriorated and some prominent and recognised human rights defenders, civil society activists and journalists are behind bars. The Assembly calls on the Azerbaijani authorities to ensure objective trials of the cases of these detained people. At the same time, the Assembly takes note of the adoption of the Law on Public Participation, which establishes public control over central and local executive powers and local self-governing bodies, thus ensuring the participation of civil society institutions in decision-making processes".

[207] *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.

162. Also the Expert Council[208] and the OSCE Office for Democratic Institutions and Human Rights with the Venice Commission[209] have considered problematic in a number of respects a draft law prepared by a third country which would have affected associations and foundations recognised in one country as being of public utility. In particular, there was concern about possible restrictions on activities that were not of an unambiguously party political character (with the risk of undermining the right of associations to undertake advocacy on issues of public debate), the potential for discriminatory treatment in selection for recognition as being of public utility (as well as in the actual allocation of public support) and the procedure leading to the withdrawal of recognition of public utility. Moreover, the need for proposed, extensive reporting obligations for all associations regardless of whether they were ones of public utility appeared questionable since substantive reporting obligations to a specialised body already existed[210]. Furthermore, it was considered that the proposed requirements and sanctions for non-compliance would be likely to have a chilling effect on civil society.

163. The Expert Council also expressed concern about yet another country's proposed disclosure requirements regarding the pursuit of activities deemed to be in the general interest insofar as this could affect NGOs.[211] The concern related to the lack of clarity in certain proposals, the fact that the obligations that would arise from them were not dependent on being in receipt of public funding and the exclusion from their application of political parties and religious organisations.

164. In addition, the Commissioner has expressed concern about the scope and actual use of powers of inspection in another country[212], as well as the differential treatment of associations

[208] *Opinion on the Romanian Draft Law 140/2017 on Associations and Foundations*, Conf/Exp(2017)3, 11 December 2017.

[209] *Joint Opinion on Draft Law No. 140/2017 on amending Governmental Ordinance No. 26/2000 on Associations and Foundations*, CDL-AD(2018)004.

[210] These would have entailed the publication of detailed financial reports every six months, including the identity of individual sources of income regardless of the amount, coupled with severe sanctions in case of non-compliance (suspension of the activities for a period of 30 days and in case of continuous non-compliance, immediate dissolution proceedings).

[211] *Opinion on the Draft Amendments to the Serbian Law on Access to Information of Public Utility*, Conf/Exp(2018)1, 18 April 2018.

[212] *Opinion of the Commissioner for Human Rights on the legislation of the Russian Federation on non-commercial organisations in light of Council of Europe standards, CommDH2013)15, 15 July 2013*;"43. During his visit to the Russian Federation in April 2013, the Commissioner received contradictory information as to the purpose of the inspections. In some cases reference was made to the need to ensure compliance with anti-extremism legislation; in others the need to establish which organisations are carrying out "political activities", in order to ensure the implementation of the Law on Foreign Agents; in other circumstances it was said that the purpose was to verify compliance with the legislation in general. 44. The Commissioner has also received conflicting accounts about whether these inspections were ordinary (planned) or extraordinary. According to the legislation in force at the time of the inspections, the only ground for an extraordinary inspection of an NCO could have been a request from the election commission to verify information about the donations to political parties. While most of the Commissioner's official interlocutors indicated that the inspections were of the planned type, many of the organisations which were subject to such inspections claimed that they were not on the list of the organisations where an inspection was planned for 2013. Moreover, in some cases, the organisation had just undergone a planned inspection by the Ministry of Justice, when the Prosecutor's Office announced that it would be subject to yet another inspection. 45. As of 24 June 2013, at least 64 NGOs have been affected by the measures undertaken to enforce the Law on Foreign Agents. At least 7 administrative cases were brought to court against NGOs for alleged failure to apply for registration in a Register of organisations performing the function of foreign agents. Seventeen NGOs had received notices of violation of the Law on Foreign

involved in 'political activity' and receiving 'foreign funding' as regards arrangements for reporting and supervision[213].

Agents from the prosecutor's office. At least 40 NGOs were given official warnings to abstain from violating the Law on Foreign Agents, meaning that the affected NGOs should seek registration in the above-mentioned Register, if they pursue their statutory activities (which in the meantime had been qualified as being "political"). 46. Although the Law on Foreign Agents exempts "protection of plant and animal life" from the definition of "political activity", at least 14 environmental groups have received official warnings from the prosecutor's office that they might be required to register as "foreign agents," and one environmental advocacy NGO was already ordered to do so.47. In two cases, official warnings were issued by the prosecutor's office and subsequently revoked. This happened in the case of an NGO providing assistance to individuals with cystic fibrosis and an NGO dealing with the preservation of wildlife. 48. The two issues emerging from the implementation of the Law on Foreign Agents are the use of sanctions (and the choice of sanction) in each particular case and what could be qualified as a retrospective application of the Law. There seems to be a lack of clear, consistent and identifiable criteria that would explain why in some cases it was decided to bring administrative charges against the organisation and its management; while in other cases the organisations were ordered to correct the violation by registering; and yet in other cases it was decided to give an official warning about the necessity to register. It appears that the choice of sanctions to be applied remained at the discretion of a particular local prosecutor's office in charge of carrying out the inspections. Moreover, in many of these cases the decisions about whether the organisation carries out "political activity" were made based on past activities and/or because foreign funding had been received in the past, i.e. before the Law on Foreign Agents was enacted and entered into force.49. The Commissioner's overall assessment of those inspections is that they were carried out in an unnecessarily intrusive and disproportionate manner ... 62. As has been already noted above (paragraphs 43 and 44), the reasons and legal grounds for these inspections in many cases were not clearly defined. Inspectors generally requested to be provided with statutory and operational documentation, as well as financial and tax reports and documentation for years 2010-2013. In those cases where the prosecutors were accompanied by representatives of other federal oversight bodies, the scope of documents requested was much broader. In St. Petersburg, for example, inspectors asked to produce documents such as a rat control certificate, results of chest X-rays of NGO employees, rubbish disposal arrangements etc. Consequently, several NGOs have questioned the legality of the inspections and brought their cases to domestic courts" (footnotes omitted). These concerns were reaffirmed in *Opinion of the Commissioner for Human Rights Legislation and Practice in the Russian Federation on Non-Commercial Organisations in Light of Council of Europe Standards: an Update*, CommDH(2015)17.

[213] *Ibid.;* '57. The Law on Foreign Agents requires that organisations involved in "political activity" and receiving "foreign funding" should register in a special Register and would consequently be subject to different requirements and obligations in terms of self-identification and reporting. The use of the term "foreign agent" (*inostranniy agent*) is of particular concern to the organisations affected by the implementation of the Law on Foreign Agents, since it has usually been associated in the Russian historical context with the notion of a "foreign spy" and/or a "traitor" and thus carries with it a connotation of ostracism or stigma. This conclusion is supported by the findings of an opinion poll carried out by the Levada Centre (a Russian institute for sociological surveys) which found that 62% of respondents negatively perceive the term "foreign agent". Therefore, being labelled as a "foreign agent" signifies that an NGO would not be able to function properly, since other people and - in particular - representatives of the state institutions will certainly be reluctant to co-operate with them, in particular in discussions on possible changes to legislation or public policy. 58. As an illustration of the above-mentioned pattern, the Commissioner was informed of a case during the winter months of 2013 when homeless people were refusing to accept an offer of shelter from representatives of a non-commercial organisation engaged in providing support to people in need, indicating that they were unwilling to accept help from "foreign agents". 59. As to the funding of the activities of the non-governmental organisations, Article 50 of Recommendation CM/Rec (2007)14 of the Committee of Ministers of the Council of Europe to member states on the legal status of non-governmental organisations in Europe states that "NGOs should 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". Paragraph 50 of the CM Explanatory memorandum to the above-mentioned Recommendation states that "the ability of NGOs to solicit donations in cash or in kind will, notwithstanding the possibility of them also engaging in some economic activity, always be a crucial means for them to raise the funds required in order to pursue their objectives. It is important that the widest range of possible donors can be approached by NGOs. (…) The only limitation on donations coming from outside the country should be the generally applicable law on customs, foreign exchange and money laundering, as well as those on the funding of elections and political parties. Such donations should not be subject to any other form of taxation or to any special reporting obligation" ...65. In principle, the Ministry of Justice is the authorised governmental agency vested with power to regulate activities of non-commercial organisations, including their registration, reporting and ensuring due oversight over their activities. In 2011-2012, the Ministry of Justice initiated and carried out 226

165. Similar concerns about these measures were expressed by the Expert Council.[214]

166. The Venice Commission has also expressed concern about the use of extraordinary inspections in respect of foreign-funded NGOs for reasons and on legal grounds that did not appear to be clearly defined. In addition, it emphasised that such inspections should not take place unless there is suspicion of a serious contravention of the legislation or any other serious misdemeanour. In the Venice Commission's view, inspections should only serve the purpose of confirming or discarding the suspicion and should never be aimed at molesting NGOs and preventing them from exercising activities consistent with the requirements of a democratic society.[215]

K. Penalties and dissolution

167. The Expert Council has prepared a study on sanctions and liability in respect of NGOs, which reviews European and international standards and their application in the case law of the European Court, together with the approach taken to their implementation by four countries.[216]

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extraordinary inspections of NGOs. In 41 cases, such inspections had not been authorised by the Prosecutor's Office. Nevertheless, its role in the on-going (extra)ordinary inspections was not fully clear. Based on his discussions with various interlocutors in Russia, the Commissioner obtained the impression that the Ministry of Justice played an auxiliary role, while the Prosecutor's Office has been taking the lead by virtue of the powers vested in it by the Federal Law on the Prosecution Service of the Russian Federation and in fulfilment of its supervisory function in relation to execution of the laws in force. This *de facto* change of roles appears to be partially rooted in legislative provisions which do not clearly delimit the roles and duties between the two institutions with regard to the oversight of NGO activities, but apparently allow those to overlap. This has certainly contributed to the overall confusion with regard to the implementation of the Law on Foreign Agents. 66. In January 2013, a human rights organisation in the Chuvash Republic applied to the Ministry of Justice with a request to register as a "foreign agent", but was declined. In its commentary on the decision not to include the organisation into the Registry of non-commercial organisations performing the function of a foreign agent, the Ministry of Justice explained its decision by pointing out that the declared goals of the organisation – rooting out the human rights violations on the territory of Chuvash Republic – were fully in line with the human rights principles embodied in the Russian Constitution and legislation in general. The Prosecutor's Office has subsequently qualified the Ministry of Justice's decision not to include the above-mentioned organisation in the Register as abuse of authority. 67. On 28 June 2013, the Ministry of Justice announced that the first organisation had been registered in the Register of non-commercial organisations performing the functions of a foreign agent – a non-commercial partnership promoting competition in the member states of the Commonwealth of Independent States ...78. The legislation regulating the activities of NGOs in Russia should be revised, with the aim of establishing a clear, coherent and consistent framework in line with applicable international standards. Reporting and accounting requirements should be the same for all NGOs, regardless of the sources of their income. They should be transparent and coherent and not interfere with NGOs' on-going daily work. There should be no more than one governmental institution dealing with issues such as registration, reporting, regulating and overseeing the work of the NGOs. Other agencies should exercise their supervisory powers only in cases where there are reasonable and objective grounds to believe that the organisation in question has violated its legal obligations; and should do so in consultation with the authorised governmental institution in charge of NGOs' (footnotes omitted). These concerns were reaffirmed in *Opinion of the Commissioner for Human Rights Legislation and Practice in the Russian Federation on Non-Commercial Organisations in Light of Council of Europe Standards: an Update*, CommDH(2015)17.

[214] *Opinion on the Law introducing amendments to certain legislative acts of the Russian Federation regarding the regulation of the activities of non-commercial organisations performing the function of foreign agents*, OING (2013) 1, August 2013

[215] *Compilation*, p. 24.

[216] *Sanctions and Liability in Respect of NGOs*, OING Conf/Exp (2011) 1, January 2011.

168. The Commissioner has expressed concern about the severity of penalties for breach of requirements governing certain associations in one country.[217]

169. Similar concern has been expressed by the Expert Council about the penalties adopted by another country[218]

170. Moreover, the Venice Commission considers that a maximum fine should only be imposed if a smaller one would not properly ensure the prevention of new offences by the same or other offenders.[219] In its view, severe criminal sanctions should only be applied in case of serious wrongdoing and that they should always be proportional to this wrongdoing.[220]

171. Furthermore, the Venice Commission has emphasised that the generally accepted method to prevent freedom of association from being abused for criminal purposes, including the violation of human rights, is to react to an association's real activities and to conduct proceedings which would determine whether these are prohibited by law.[221]

172. The Conference of INGOs has adopted resolutions expressing concern about the enforced closure of NGOs.[222]

173. The Commissioner has also underlined the limited circumstances in which resort to dissolution is acceptable[223].

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[217] *Ibid."*72. On 25 June 2013, the Ministry of Justice decided to suspend for a six-month period the activities of the Association Golos, based on the provisions of the Law on NCOs. The decision was taken due to the organisation's failure to register as an organisation performing the functions of a foreign agent. The Commissioner has concerns about this decision, in light of Recommendation CM/Rec(2007)14 of the Committee of Ministers to member States on the legal status of non-governmental organisations in Europe, which provides that "the legal personality of NGOs can only be terminated pursuant to the voluntary act of their members […] or in the event of bankruptcy, prolonged inactivity or serious misconduct". The same principle has been upheld by the Court in *Tebieti Mühafize Cemiyyeti and Israfilov v. Azerbaijan.* Prolonged suspension of the NGO activities would amount to its *de facto* dissolution, and therefore should apply only in exceptional cases and be proportionate to the offence committed. 73. The Law on Foreign Agents also allows for the application of criminal prosecution and imprisonment for the "malevolent" non-compliance with the provisions of this Law, which in the Commissioner's view, is a severe penalty, and one hardly qualifying as being "necessary in democratic society" and proportionate to the offence of "deliberate non-registration""(footnotes omitted).

[218] *Opinion on the Law introducing amendments to certain legislative acts of the Russian Federation regarding the regulation of the activities of non-commercial organisations performing the function of foreign agents*, OING (2013) 1, August 2013; "The scope and severity of the new sanctions and penalties against NCOs— and in particular against NCOs-foreign agents—coupled with the vague language by which they are formulated, presents a threat for the very existence of NCOs. Those sanctions and penalties are reflective of the overall structural problems with the Law i.e. overly restrictive regulatory approach towards the exercise of otherwise legitimate NCOs activities and their foreign source of income" (para. 118).

[219] *Compilation*, p. 19

[220] *Compilation*, p. 19

[221] *Compilation*, p. 15.

[222] Resolution adopted on 27 January 2012 CONF/PLE(2012)RES1 Concerning Civil Society in Belarus, regarding the only remaining registered national human rights organization.

[223] *Ibid.*; "79. The grounds for an NGO's dissolution should be limited to the three recognised by international standards: bankruptcy; long-term inactivity; and serious misconduct. They should apply equally to all types of NGOs, and be subject to full procedural guarantees. Sanctions - such as suspension of the organisation's activities and/or its dissolution - should be applied only as a last resort when all less restrictive options have been unsuccessful. Any such sanctions should be proportional to the offence committed and meet a pressing social need".

174. Furthermore, the Venice Commission has considered that a warning preceding dissolution based on a broad interpretation of vague legal provisions in itself constituted a violation of freedom of association.[224]

175. In addition, the Venice Commission considers that dissolution and prolonged suspension, amounting to its de facto dissolution, should be limited to the three grounds recognised by the international standards: bankruptcy; long-term inactivity and serious misconduct. Moreover, in its view, these measures should only be applied as a last resort, when all less restrictive options have been unsuccessful and enforced dissolution should be pronounced by an impartial and independent tribunal in a procedure offering all guarantees of due process, openness and a fair trial. The Venice Commission also considers that the effects of the decision on dissolution should be suspended pending the outcome of judicial review.[225]

176. The Commissioner, while accepting that private entities might provide logistical and financial support to terrorist activities, has questioned the need for, and proportionality of, the extensive use of dissolution in a country pursuant to emergency administrative powers and the consequent transfer of their assets to public funds.[226]

177. Similar concerns have been expressed by the Expert Council.[227]

178. In respect of the taking of a decision to dissolve religious organisations, the Venice Commission has drawn attention to the need to have regard to the possible grave consequences of such a measure for the religious life of all members of a religious community and thus for care that it not be taken merely because of the wrongdoing of some of its

[224] *Compilation*, p. 15.
[225] Compilation, p. 19
[226] Memorandum on the human rights implications of the measures taken under the state of emergency in Turkey, CommDH(2016)35: "37. …this risk could in all likelihood also have been eliminated in most cases by freezing their assets or suspending their activities, pending a final judicial decision, based on material evidence and individual reasoning. The Commissioner is not convinced that dissolution of private entities enumerated in long lists, in an entirely irrevocable fashion involving the takeover of their assets by the Treasury, was the most proportionate measure in order to strike a proper balance between the objective risks considered and the applicable human rights, including the rights to a fair trial, to property, to freedom of association, to freedom of expression and to an effective remedy. In any event, administrative measures are wholly inappropriate for these purposes in the Commissioner's view. 38. For these reasons, the Commissioner calls on the Turkish authorities to stop applying the same sweeping measures, which use opaque criteria and would, at least in principle, allow for stereotypical and non-individualised reasoning and which derogate from the most basic principles of due process, indiscriminately to all these sectors, groups, individuals and private entities. There is an urgent need for a far more nuanced approach, taking into account the specific circumstance not only of each group, but also of each entity and individual, in order to ensure that the measures and sanctions are proportionate to those circumstances. A good indicator of such proportionality would be the consideration given to using ordinary procedures and safeguards to the widest extent possible in each case. 39. The Commissioner considers it particularly urgent to put an immediate stop to the closure, on the basis of a simple administrative decision or an executive order, of legal persons, such as newspapers, TV stations, associations, private companies, etc., and to the transfer of their assets to the Treasury. He considers that simplified rules allowing the transfer of assets to public funds during on-going judicial proceedings can also lead to irrevocable damages. The authorities must reverse the measures already taken in this respect when this is still possible. At any rate, the final dissolution or transfer of property should never occur without a proper judicial review with a final judgement, which must include the possibility of remedial action where necessary, including compensation".
[227] *Opinion on the impact of the state of emergency on freedom of association in Turkey*, OING (2017) 2, 30 November 2017.

individual members. In its view, such a collective sanction would be inappropriate and the wrongdoings should be addressed through criminal, administrative or civil proceedings against the individuals concerned and measures (such as official warnings, fines, temporary suspension) that would enable the organisations to take corrective action, with dissolution only being a measure of last resort.[228]

179. The CCJE considers that, because of the delicate task of guaranteeing fundamental rights and freedoms, supervision of all administrative law measures concerning prohibition of association should be entrusted to ordinary courts (including administrative courts) composed of professional judges, established by the law, with full guarantees of independence.[229]

L. Trade unions

1. Right to organise

180. The Commissioner has noted with concern that in one country there was no legislation on trade unions.[230]

181. Also, the European Committee of Social Rights ("the European Committee") has concluded that, in respect of another country, it had not been established that the right to form or join trade unions was guaranteed in practice.[231]

182. In addition, it has concluded that the situation in a third country was not in conformity with the right to organise because there were no professional organisations nor trade unions protecting the social and economic interests of the police.[232]

183. Furthermore, the European Committee has concluded that the situation in various countries was not in conformity with the right to organise as a result of prohibitions or restrictions on forming or joining trade unions that affected civil servants[233], employees of the prosecutor's

[228] Compilation, p. 35
[229] Opinion No. 8 on "The role of judges in the protection of the rule of law and human rights in the context of terrorism", 10 November 2006, para. 33.
[230] *Follow-up Report to the Recommendations of the Commissioner for Human Rights Following His Visit to the Principality of Andorra from 10-12 January 2001*, CommDH(2003)7, 19 June 2003; "laws on Associations and on the Register of Associations, as required by article 17 of the Constitution (guaranteeing the right to association), have been adopted on the 24th July and 1st August 2001 respectively. The Law on Associations contains a provision extending its application to professional and trade union associations until such time as a specific law regulating their establishment and functioning is adopted. Whilst this development has removed some of the ambiguity surrounding the legal personality of trade union or professional associations, this interim solution ought not to be allowed to continuing delaying the passing of more specific legislation".
[231] Estonia (Conclusions 2014, 5 December 2014); the European Committee referred to a failure to demonstrate the existence of adequate protection against discrimination for workers who wish to form a trade union.
[232] Azerbaijan (Conclusions 2014, 5 December 2014).
[233] Albania (Conclusions 2010, 14 December 2010; it had not been established that the prohibition from enjoying the right to form a trade union was not being applied to an excessively high proportion of senior civil servants).

office[234], foreign workers[235], home workers[236], informal sector workers[237], the police and their employees[238], security service personnel[239], self-employed workers[240] and those working in liberal professions[241], as well as a result of prohibitions on membership by sectoral bodies of national organisations[242].

184. Furthermore, the CCJE has issued an opinion stating that judges have the right to join trade unions[243].

185. However, the European Committee has considered that a prohibition on the police establishing trade unions did not violate the right to organise where the police representative associations enjoyed the basic trade union rights within the meaning of that provision.[244]

[234] Armenia (Conclusions 2014, 5 December 2014; they could not form or join trade unions) and Georgia (Conclusions 2014, 5 December 2014 and Conclusions 2016,, 9 December 2016).

[235] Armenia (Conclusions 2015, 4 December 2015; it had not been established that migrant workers did not enjoy equal rights with respect to membership of trade unions), Bulgaria (Conclusions 2010, 14 December 2010 and Conclusions 2014, 5 December 2014; their right to form or participate in the formation of trade unions was subject to a prior authorisation requirement), Cyprus (Conclusions 2011, 9 December 2011; it had not been established that migrant workers did not enjoy equal rights with respect to membership of trade unions), Slovenia (Conclusions 2011, 9 December 2011; it had not been established that migrant workers did not enjoy equal rights with respect to membership of trade unions), Turkey (Conclusions 2011, 9 December 2011; it had not been established that migrant workers did not enjoy equal rights with respect to being founders), Ukraine (Conclusions 2014, 5 December 2014; the right of nationals of other Parties to the Charter to form trade unions was restricted) and United Kingdom (Conclusions XIX-4, 9 December 2011; it had not been established that migrant workers did not enjoy equal rights with respect to membership of trade unions).

[236] Poland (Conclusions XIX-3, 17 December 2010 and Conclusions 2014, 5 December 2014; these did not enjoy the right to form trade unions). In addition, it was concluded that it had not been established that migrant workers enjoyed equal rights to membership of trade unions in Armenia (Conclusions 2015, 4 December 2015), Cyprus (Conclusions 2011, 9 December 2011), Italy (Conclusions 2011, 9 December 2011), Slovenia (Conclusions 2011, 9 December 2011) and United Kingdom (Conclusions XIX-4, 9 December 2011).

[237] Armenia (Conclusions 2014, 5 December 2014; they could not form or join trade unions) and Georgia (Conclusions 2016, 9 December 2016; it had not been established that the right to organise applied to staff of the prosecutor's offices)

[238] Albania (Conclusions 2010, 14 December 2010; police personnel did not enjoy the right to form trade unions), Armenia (Conclusions 2010, 14 December 2010 and Conclusions 2014, 5 December 2014; civilian employees could not form or join trade unions and police officers were prohibited from joining them), France (*European Council of Police Trade Unions (CESP) v. France*, Complaint No. 101/2013, Decision on the merits, 27 January 2016; a blanket prohibition of professional associations of a trade union nature and of the affiliation to such associations where the gendarmerie was functionally equivalent to either a police force or an armed force) and Georgia (Conclusions 2014, 5 December 2014 and Conclusions 2016, 9 December 2016; it had not been established that the right to organise applied to staff of law enforcement bodies).

[239] Armenia (Conclusions 2014, 5 December 2014; civilian employees could not form or join trade unions).Czech Republic (Conclusions XIX-3, 17 December 2010; it had not been established that depriving members of the security and intelligence service from the right to form trade unions and prohibiting them from forming any type of association to protect their economic and social interests was justified) and Poland (Conclusions XIX-3, 17 December 2010; staff of the internal security agency).

[240] Armenia (Conclusions 2014, 5 December 2014; they could not form or join trade unions).

[241] Armenia (Conclusions 2014, 5 December 2014; they could not form or join trade unions).

[242] Ireland (Conclusions 2014, 5 December 2014 (police representative associations) and *European Organisation of Military Associations (EUROMIL) v. Ireland*, Complaint No. 112/2014, Decision on merits, 12 September 2017 (military representative associations)).

[243] Opinion no. 3 on ethics and liability of judges, 19 November 2002, para. 34.

[244] *European Confederation of Police (EuroCOP) v. Ireland*, Complaint No. 83/2012, Decisions on merits, 2 December 2013.

186. In addition, the European Committee has found the situation not to be in conformity with the right to organise where: there were restrictions on certain trade unions acquiring legal personality[245]; there were high membership requirements for forming trade unions[246] and employers' organisations[247]; there were difficulties connected with registration[248]; there was a possibility of imposing restrictions through terms of employment contracts[249]; and there was insufficient protection against dismissal on grounds of membership or involvement in trade union activities[250].

187. Furthermore, the European Committee has concluded that the situation is not in conformity with the right to organise where there were restrictions on the functions that could be

[245] Republic of Moldova (Conclusions 2010, 14 December 2010 and Conclusions 2014, 5 December 2014; those not operating nationwide were required to belong to a national, sectoral or inter-sectoral trade union in order to acquire legal personality).

[246] Georgia (100 persons, Conclusions 2010, 14 December 2010); Latvia (a minimum of 50 members or at least one quarter of the employees of an undertaking, Conclusions XIX-3, 17 December 2010 and Conclusions XX-3, 5 December 2014); and Lithuania (30 members, Conclusions 2010, 14 December 2010). However, in its 2014 Conclusions 2014 on Georgia (5 December 2014), the European Committee only concluded that it had not been established that the minimum number had presented no obstacle to the founding of organisations

[247] Armenia (Conclusions 2014, 5 December 2014; the number of employers required to form employers' organisations was cited as being as follows: at the national level, over half of the employers' organisations operating at the sectoral and territorial levels; at the sectoral level, over half of the employers' organisations operating at the territorial levels; and at the territorial level: the majority of employers in a particular administrative territory or employers' organisations from different sectors in a particular administrative territory. There were similar prerequisites for federations of trade unions at the territorial, sectoral and national levels for the purpose of representing workers' labour, professional, social and economic rights and interests, and protection in labour relations with employers' organisations and state bodies, by requiring the participation of more than half of the trade unions which include the majority of workers at the respective level) and Serbia (Conclusions 2014, 5 December 2014) ;the founding members must employ no less than 5% of the total number of employees in a given branch of industry, group, sub-group, or a line of business or in a territory of a given territorial unit).

[248] Malta (Conclusions 2010, 14 December 2010 and Conclusions 2014, 5 December 2014; had not been established in respect of a country whether there were adequate remedies against refusals to register police trade unions), Republic of Moldova (Conclusions 2014, 5 December 2014; it had not been established that the national law was being applied in such a way that it did not impair the freedom to register a trade union) and Ukraine (Conclusions 2014, 5 December 2014 it had not been established that the fees charged for the registration of the employers' organisations were reasonable).

[249] Georgia (Conclusions 2010, 14 December 2010); workers might thus be forced to accept restrictions on their right to establish, to join or not to join a trade union in order to obtain employment. However, in its 2014 Conclusions 2014 (5 December 2014), the European Committee only concluded that it had not been established that the legal framework allowing restrictions on the right to organise that may be included in employment contracts was not detrimental to the right to organise.

[250] Armenia (Conclusions 2014, 5 December 2014 and Conclusions 2016, 9 December 2016; protection not established), Azerbaijan (Conclusions 2014, 5 December 2014; not established that there was provision for adequate and proportionate compensation to the harm suffered by a worker discriminated against for having joined a trade union), Belgium (Conclusions 2010, 14 December 2010; not established that victims of discrimination based on trade union membership could at least able to obtain compensation proportional to the real damage suffered and the existence of adequate protection against discrimination based on trade union membership in areas other than recruitment and dismissal such as promotion), Bulgaria (Conclusions 2014, 5 December 2014; legislation did not provide for adequate compensation proportionate to the harm suffered by the victims of discriminatory dismissal based on involvement in trade union activities), Georgia (Conclusions 2010, 14 December 2010 and Conclusions 2014, 5 December 2014; not established that there was sufficient of protection against discrimination based on trade union membership in the context of recruitment and dismissal), Ireland (Conclusions 2014, 5 December 2014; there was no such protection under national law), Republic of Moldova (Conclusions 2010, 14 December 2010 and Conclusions 2014, 5 December 2014; not established that there was provision by law of compensation and penalties in case of discrimination based on trade union membership) and Ukraine (Conclusions 2014, 5 December 2014 and Conclusions 2016; not established whether there was provision for compensation that was adequate and proportionate to the harm suffered by the victim).

performed by a trade union or as to who could perform them. Thus, it reached this conclusion where: some categories of civil servants cannot perform trade union functions [251]; there were difficulties regarding either the access of trade union representatives to workplaces to carry out their responsibilities[252] or the criteria of representativeness for trade unions[253]; there were restrictions as to who could be chosen to stand in works council elections[254]; there were restrictions on the ability of trade unions to indemnify or discipline their members[255]; there was an inability to exercise certain trade union prerogatives[256]; there was a nationality requirement for those representing the two sides of industry at the economic and social council[257]; and where legislation dealing with the international shipping register provided that collective agreements on wages and working conditions concluded by trade unions there were only applicable to seafarers resident in that country[258].

188. Moreover, the European Committee has concluded that it had not been established in one country that, in practice, the free exercise of the right to form trade unions was ensured in multinational companies[259] and the Commissioner has also expressed concern about the

[251] Poland (Conclusions XIX-3, 17 December 2010 and Conclusions 2014, 5 December 2014); namely, deputies to the voïvodeship veterinary offices, to the Office for Registration of Medicinal Products, Medical Devices and Biocidal Products, and the Office for Forest Seed Production.

[252] Armenia (Conclusions 2014, 5 December 2014; it was not established that they had such access) and Spain (Conclusions XIX-3, 17 December 2010; it was not established that representatives of trade unions other than the most representative have access to workplaces).

[253] Belgium (Conclusions 2010, 14 December 2010; there were no pre-established, clear and objective criteria of representativeness for trade unions operating in the private sector), Georgia (Conclusions 2014, 5 December 2014 and Conclusions 2016, 9 December 2016); the European Committee wished to know whether participation in certain consultation or collective bargaining procedures were restricted to certain trade unions deemed the most "representative in order to establish whether the conditions regarding their representativeness were detrimental to the right to organise), Portugal (Conclusions 2014, 5 December 2014; the criteria were not adequate) and Ukraine (Conclusions 2014, 5 December 2014 and Conclusions 2016, 9 December 2016; it was not established that the criteria were open to judicial review).

[254] Luxembourg (Conclusions XX-3, 5 December 2014; national legislation did not permit trade unions to freely choose their candidates for joint works council elections, regardless of nationality and it was not established that migrant workers enjoyed equality as regards the possibility of being elected to works council).

[255] United Kingdom (Conclusions XIX-3, 17 December 2010 and Conclusions 2014, 5 December 2014; legislative provisions which made it unlawful for a trade union to indemnify an individual union member for a penalty imposed for an offence or contempt of court and which severely restricted the grounds on which a trade union may lawfully discipline members were considered to represent unjustified incursions into the autonomy of trade unions).

[256] France (*European Council of Police Trade Unions (CESP) v. France*, Complaint No. 101/2013, Decision on the merits, 27 January 2016; a national professional association for members of the gendarmerie could not protect its representatives from harmful consequence, particularly reprisal, that the exercise of their representative activities or prerogatives may have on their employment where the gendarmerie was functionally equivalent to a police force and could not appeal to and take action in courts concerning the conditions applying to military personnel and against individual decisions harming the collective interests of the profession where the gendarmerie was functionally equivalent to an armed force) and Romania (Conclusions 2014, 5 December 2014; the right of the non-representative trade unions to bargain and sign a collective agreement, to negotiate through the collective agreement at company level to have access to premises and facilities for their activities, to participate in board meetings of the company to discuss matters of professional, economic and social interest and to receive from the employers or their organisations the necessary information for conducting collective bargaining was restricted).

[257] Romania (Conclusions 2010, 14 December 2010).

[258] Denmark (Conclusions XIX-3, 17 December 2010 and Conclusions XX-3, 5 December 2014).

[259] Azerbaijan (Conclusions 2010 – Azerbaijan, 14 December 2010, Conclusions 2014, 5 December 2014 and Conclusions 2016, 9 December 2016).

restrictions in practice in another country on the operation of trade unions within international firms based with operations there[260].

189. In addition, the Commissioner has expressed concern about the fact that in one country the ability to join a trade union or to strike is limited in the case of foreigners to those with a residence permit or leave to stay[261] but ECRI has subsequently concluded that this restriction had been removed by a legislative reform[262].

190. The European Committee has concluded that the permissibility of closed shop practices in two countries – whereby applicants for employment were required to join a particular union – was not in conformity with the right to organise.[263] Similarly, in respect of another country, it has concluded that the existence of priority clauses in collective agreements which gave priority to members of certain trade unions in respect of recruitment and termination of employment infringed the right not to join trade unions.[264].

191. It has also concluded that the statutory obligation on an employer to pay the industry charge infringed the right to organise[265].

192. However, the European Committee has not considered that legislation allowing employers who were members of national employer organisations to derogate from certain provisions of

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[260] *Follow-up Report on Hungary (2002-2005)*, CommDH(2006)11, 29 March 2006; "86. ... During the visit trade unions explained the difficulties in obtaining trade union representation in some large foreign firms. 87. Although relations between trade unions and firms are difficult to evaluate, it is for the state to secure full enjoyment of employment rights to all employees on its territory. Hungary's geographical position, Hungarians' skills and qualifications, and Hungarian accession to the European Union have made the country extremely attractive to large international groups. However, such large firms frequently import new managerial approaches and sometimes impose working conditions which are less respectful of the workforce's wishes. In some cases they seek to restrict development of trade unions in the workplace for fear of an increase in worker claims. As a result, even though trade unions are relatively well organised in Hungary outside such firms, inside them they are seldom represented, which deprives the workforce of an essential protection tool".

[261] *Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to Spain (10-19 March 2005)*, CommDH(2005)8, 9 November 2005, para. 76.

[262] *Fourth report on Spain*, CRI(2011)4, 7 December 2010; "79. In its third report, ECRI recommended that the Spanish authorities keep the provisions of the Aliens Law under close review, particularly to ensure that they do not restrict the right of non-citizens to associate, strike or join a trade union. 80. ECRI notes that the Law on the Rights and Freedoms of Foreigners in Spain and their Social Integration is, in part, the result of a Constitutional Court decision of 2007 recognising immigrants' right to associate, join trade unions and strike, regardless of their administrative situation. It also incorporates the EU Directives in this field".

[263] France (Conclusions 2010, 14 December 2010 (as regards the book industry)) and Ireland Conclusions 2014, 5 December 2014 (in general).

[264] Iceland (Conclusions XIX-3, 17 December 2010 and Conclusions XX-3, 5 December 2014). The evidence in support of a collective complaint that there was a closed shop in practice in respect of dock workers was found to be insufficient in *Bedriftsforbundet v. Norway*, Complaint No. 103/2013, Decision on the merits, 17 May 2016. Furthermore, although pre-entry closed shop clauses set out in certain collective agreements reserving in practice employment for members of a certain union had been found to violate Article 5 in the determination of a collective complaint (*Confederation of Swedish Enterprise v. Sweden*, Complaint No. 12/2002, decision on the merits of 22 May 2003), the Committee of Ministers subsequently took note of the fact that these clauses had been eradicated from all collective agreements; Assessment of the follow-up: Confederation of Swedish Enterprise v. Sweden, Collective Complaint No. 12/2002, 7 July 2016.

[265] Iceland (Conclusions XX-3, 5 December 2014). This followed a similar conclusion reached by the European Court in *Vörður Ólafsson v. Iceland*, no. 20161/06, 27 July 2010.

labour legislation in local collective agreements, thus disadvantaging employers who are not members of national employer organisations, affected freedom of association in a manner that was more serious than was necessary for the effectiveness and coherence of a system of collective bargaining.[266]

193. On the other hand, the European Committee has concluded that the situation was not in conformity with the right of workers' representatives to protection under Article 28 of the Revised Charter where: it had not been established that the facilities granted to workers' representatives were adequate or appropriate[267]; it had not been established that facilities identical to those afforded to trade union representatives were provided to other workers' representatives[268]; legislation did not provide for adequate protection in the event of an unlawful dismissal based on the employee's status as a trade union representative or activities linked to this status[269]; it had not been established that workers' representatives, other than trade union representatives, were granted adequate protection[270]; legislation made no provision for the reinstatement of worker representatives unlawfully dismissed[271]; it had not been established that the protection was adequate against prejudicial acts other than dismissal[272]; such protection was not extended for a reasonable period after the end of period of their mandate[273];

2. Consultation

194. The European Committee has concluded that the situation was not in conformity with the right to collective bargaining where joint consultation did not take place in the public sector[274] or this had not been established[275] or did not take place on several levels[276].

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[266] *Federation of Finnish Enterprises v. Finland*, Collective Complaint No. 35/2006, Decision on the merits, 16 October 2007. Mr. Tekin Akillioglu agreed that the Article 5 complaint was unfounded but considered that legislation and practice was incompatible with the spirit of Article 6 paragraphs 2 and 3 on the basis that a privilege based on the notion of representativeness might not be consistent with the promotion of collective bargaining.

[267] Armenia (Conclusions 2010, 14 December 2010 and Conclusions 2016, 9 December 2016; "adequate") and Ukraine (Conclusions 2014, 5 December 2014 and Conclusions 2016, 9 December 2016; "appropriate").

[268] Republic of Moldova (Conclusions 2010, 14 December 2010, Conclusions 2014, 5 December 2014 and Conclusions 2016, 9 December 2016).

[269] Bulgaria (Conclusions 2010, 14 December 2010 and Conclusions 2014, 5 December 2014), Republic of Moldova (Conclusions 2010, 14 December 2010, Conclusions 2014, 5 December 2014 and Conclusions 2016, 9 December 2016; when exercising their functions outside the scope of collective bargaining) and Slovak Republic (Conclusions 2014, 5 December 2014).

[270] Ukraine (Conclusions 2014, 5 December 2014 and Conclusions 2016, 9 December 2016).

[271] Finland (Conclusions 2014, 5 December 2014).

[272] Armenia (Conclusions 2010, 14 December 2010 and Conclusions 2016, 9 December 2016); Republic of Moldova (Conclusions 2010, 14 December 2010, Conclusions 2014, 5 December 2014 and Conclusions 2016, 9 December 2016; when exercising their functions outside the scope of collective bargaining).

[273] Albania (Conclusions 2010, 14 December 2010), Armenia (Conclusions 2010, 14 December 2010 and Conclusions 2014, 5 December 2014), Austria (Conclusions 2014, 5 December 2014), Azerbaijan (Conclusions 2014, 5 December 2014 and Conclusions 2016, 9 December 2016), Lithuania (Conclusions 2014, 5 December 2014), Norway (Conclusions 2014, 5 December 2014 and Conclusions 2016, 9 December 2016), Romania (Conclusions 2014, 5 December 2014).

[274] Georgia (Conclusions 2014, 5 December 2014).

[275] Albania (Conclusions 2010, 14 December 2010), Bulgaria (Conclusions 2010, 14 December 2010 and Conclusions 2014, 5 December 2014; it was not established that joint consultation took place in practice and that joint consultative

195. It also reached such a conclusion where: minimum membership requirements excessively limited the possibility of trade unions to participate effectively in consultations[277]; it had not been established that refusals of the representative status to trade unions were subject to judicial review[278]; the criteria used to determine representativeness in respect of joint consultation were not adequate[279]; the joint consultation did not cover all matters of mutual interest of workers and employers[280] or this had not been established[281]; and legislation affecting the right to bargain collectively was passed without any consultation of trade unions and employers' organisations [282].

196. However, in one instance, the Committee has concluded that sufficient evidence had not been adduced to demonstrate that the government had systematically refused to consult the union on matters of mutual interest or to grant it the right to participate in the processes that are directly relevant for the determination of the working conditions applicable to the police.[283]

3. Negotiation

197. The European Committee has concluded that the situation was not in conformity with the right to collective bargaining where: the coverage of workers by collective agreements was weak[284]; it had not been established that there was an appropriate legislative framework [285]; there were shortcomings in the promotion of voluntary negotiations[286] or it was not established that the conclusion of collective agreements was promoted[287]; participation did not

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bodies existed in the public service) and "the former Yugoslav Republic of Macedonia" (Conclusions 2014, 5 December 2014).

[276] Georgia (Conclusions 2014, 5 December 2014).

[277] Armenia (Conclusions 2014, 5 December 2014).

[278] Albania (Conclusions 2010, 14 December 2010).

[279] Portugal (Conclusions 2014, 5 December 2014).

[280] Georgia (Conclusions 2014, 5 December 2014).

[281] Azerbaijan (Conclusions 2014, 5 December 2014 and Conclusions 2016, 9 December 2016), Croatia (Conclusions, XIX-3, 17 December 2010 and Republic of Moldova (Conclusions 2010, 14 December 2010).

[282] Spain (Conclusions XX-3, 5 December 2014)

[283] *European Council of Police Trade Unions (CESP) v. Portugal*, Collective Complaint No. 40/2007, Decision on the merits, 23 September 2008. It also concluded that the adoption of certain legislative amendments were not of such a scope as to amount to a lack of consultation.

[284] Latvia (Conclusions XIX-3, 17 December 2010) and Lithuania (Conclusions 2010, 14 December 2010).

[285] Republic of Moldova (Conclusions 2010, 14 December 2010).

[286] Azerbaijan (Conclusions 2014, 5 December 2014; not adequate), Bulgaria (Conclusions 2014, 5 December 2014; not sufficiently), Estonia (Conclusions 2014, 5 December 2014; not sufficiently), Georgia (Conclusions 2014, 5 December 2014; not promoted in practice), Latvia (Conclusions XX-3, 5 December 2014; not sufficiently), Lithuania (Conclusions 2014, 5 December 2014; not efficiently), Slovak Republic (Conclusions 2014, 5 December 2014; not sufficiently) and Sweden (Conclusions 2014, 5 December 2014; the statutory framework on posted workers did not promote the development of suitable machinery for voluntary negotiations between employers and workers' organisations with a view to the regulation of terms and conditions of employment by means of collective agreements).

[286] Georgia (Conclusions 2014, 5 December 2014).

[287] Bulgaria (Conclusions 2010, 14 December 2010), Georgia (Conclusions 2010, 14 December 2010), Republic of Moldova (Conclusions 2014, 5 December 2014) and Slovak Republic (Conclusions XIX-3, 17 December 2010).

extend to civil servants[288], employees in the public sector[289] and police and military representative associations[290]; trade unions could not enter negotiations unless they represented at least 33% of the employees at the level at which the agreement was concluded (company, sector or country)[291]; there were substantive limits on the matters that could be included in collective agreements[292]; and collective agreements on wages and working conditions concluded by trade unions were only applicable to seamen resident in the country[293].

198. Such a conclusion was also reached by the European Committee where: workers did not have the right to bring legal proceedings against employers who had made offers to co-workers in order to induce them to surrender their union rights and where, in such cases, trade unions also could not claim a violation of the right to collective bargaining[294]; employers could disregard a collective agreement[295]; and where trade unions were forced to negotiate and conclude collective agreements with foreign companies abroad[296].

4. Arbitration

199. The European Committee has concluded that the situation was not in conformity with the right to collective bargaining where there was no effective conciliation, mediation or

[288] In respect of Albania (Conclusions 2010, 14 December 2010), Armenia (Conclusions 2010, 14 December 2010), Croatia (Conclusions XIX-3, 17 December 2010), Republic of Moldova (Conclusions 2010, 14 December 2010) and Slovak Republic (Conclusions XIX-3, 17 December 2010) it had not been established that civil servants were entitled to participate in the processes that result in the determination of the regulations applicable to them.

[289] Georgia (Conclusions 2014, 5 December 2014 and Conclusions 2016, 9 December 2016).

[290] France (*European Council of Police Trade Unions (CESP) v. France*, Complaint No. 101/2013, Decision on the merits, 27 January 2016; consultation bodies had no legal authority to allow for participation, beyond mere consultation, in processes that are directly relevant for the determination of the procedures applicable to members of the gendarmerie or where their professional associations were not provided with a means to effectively represent their members in all matters concerning their material and moral interests as a result of their activity being restricted by the fundamental principles of military service) and Ireland (*European Confederation of Police (EuroCOP) v. Ireland*, Complaint No. 83/2012, Decisions on merits, 2 December 2013 and *European Organisation of Military Associations (EUROMIL) v. Ireland*, Complaint No. 112/2014, Decision on merits, 12 September 2017. The associations were unable to participate in national pay agreement discussions and had no bargaining rights with regard to general pay increases). See also Ireland (Conclusions 2014, 5 December 2014).

[291] "the former Yugoslav Republic of Macedonia" (Conclusions XIX-3, 17 December 2010).

[292] Sweden (Resolution CM/ResChS(2014)1: Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, 5 February 2014; legislation only allowed collective agreements to regulate, with the backing of collective action, the minimum rate of pay or other minimum conditions in the case of foreign posted workers or, as regards the particular case of posted agency workers, their pay or certain other conditions).

[293] Denmark (Conclusions XIX-3, 17 December 2010 and XX-3, 5 December 2014).

[294] United Kingdom (Conclusions XIX-3, 17 December 2010 and Conclusions XX-3, 5 December 2014).

[295] Georgia (Conclusions 2010, 14 December 2010, Conclusions 2014, 5 December 2014 and Conclusions 2016, 9 December 2016) and Spain (Conclusions XX-3, 5 December 2014). In respect of both countries, it had not been established that it was not possible for an employer to do this unilaterally.

[296] Sweden (Resolution CM/ResChS(2014)1: Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, 5 February 2014; this compulsion arose from the fact those companies were not obliged to create a branch office with independent management in Sweden and, as regards posted workers, the statutory framework did not promote the development of suitable machinery for voluntary negotiations between employers and workers' organisations with a view to the regulation of terms and conditions of employment by means of collective agreements).

arbitration service[297] or there was none in the public service[298] or where it had not been established that arbitration, conciliation or mediation procedures existed in the public sector[299].

200. Such a conclusion was also reached by it where: decisions of a court of inquiry into a labour dispute were binding on the parties even without their prior consent[300]; recourse to compulsory arbitration was permitted in circumstances which went beyond the limits set out in Article G of the Revised Charter[301]; and it had not been established that mediation was voluntary and recourse to compulsory arbitration was only permitted within the limits of Article G of the Revised Charter[302].

5. Collective action

201. The European Committee has concluded that the situation in one country was not in conformity with the right to collective bargaining where it had not been established that the right to collective action of workers and employers, including the right to strike, was adequately recognised in one country[303].

202. Similarly, the Commissioner has noted with concern that in another country there was a lack of clarity relating to the protection in its constitution for the right to strike.[304]

203. Furthermore, the European Committee has concluded that the situation was not in conformity with the right to collective bargaining where: the right to strike was denied to all civil servants[305] and they were only permitted to engage in symbolic action[306]; the right to strike

[297] Georgia (Conclusions 2010, 14 December 2010 and Conclusions 2014, 5 December 2014).
[298] Bulgaria (Conclusions 2010, 14 December 2010 and Conclusions 2014, 5 December 2014).
[299] Armenia (Conclusions 2014, 5 December 2014), Azerbaijan (Conclusions 2014, 5 December 2014) and Croatia (Conclusions XIX-3, 17 December 2010).
[300] Malta (Conclusions 2010, 14 December 2010, Conclusions 2014, 5 December 2014 and Conclusions 2016, 9 December 2016).
[301] Albania (Conclusions 2010, 14 December 2010), Malta (Conclusions 2014, 5 December 2014), Republic of Moldova (Conclusions 2010, 14 December 2010) and Portugal (Conclusions 2014, 5 December 2014). Article G – like Article 31 of the Charter - sets out the permissible basis for permissible restrictions on rights that are not specified in a right itself, namely, ones prescribed by law and necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals).
[302] Portugal (Conclusions 2010, 14 December 2010).
[303] Georgia (Conclusions 2014, 5 December 2014 and Conclusions 2016, 9 December 2016).
[304] *Follow-up Report to the Recommendations of the Commissioner for Human Rights Following His Visit to the Principality of Andorra from 10-12 January 2001*, CommDH(2003)7, 19 June 2003; "The absence of specific legislation elaborating on the right to strike ostensibly guaranteed by article 19 of the Constitution, and which is required by that article, has not been remedied since the Commissioner's visit. It would appear to be the position of the Andorran authorities that the as the provision of the Constitution is directly applicable as a fundamental right, there is no pressing need for further detailed legislation. However, it is clear that the absence of specific legislation creates considerable uncertainty with respect to the extent of, and conditions on the exercise of the right to strike and consequently discourages its use in practise".
[305] Albania (Conclusions 2010, 14 December 2010), Denmark (Conclusions XIX-3, 17 December 2010 and Conclusions 2014, 5 December 2014), Estonia (Conclusions 2010, 14 December 2010) and Ukraine (Conclusions 2010, 14 December 2010 and Conclusions 2014, 5 December 2014).
[306] Bulgaria (Conclusions 2010, 14 December 2012, Conclusions 2014, 5 December 2014 and Resolution CM/ResChS(2012)4 Confederation of Independent Trade Unions in Bulgaria (CITUB), Confederation of Labour

was denied to the police[307] and to employees in particular sectors[308]; and strikes not aimed at achieving a collective agreement were prohibited[309].

204. However, the European Committee has not considered that a prohibition on the right to strike of members of the armed forces amounted to a violation of Article 6(4) of the Charter[310] and the CCJE has issued an opinion accepting that restrictions may be placed on the right of judges to strike.[311]

205. On the other hand, the European Committee has concluded that the situation was not in conformity with the right to collective bargaining where: it had not been established that the restrictions to the right to strike of certain categories of employees complied with the conditions laid down by Article 31 of the Charter or Article G of the Revised Charter[312]; restrictions were imposed on workers on strike to protect the enterprise's installations and equipment and to ensure their uninterrupted functioning do not comply with the conditions established by Article G of the Revised Charter[313]; the scope for workers to defend their interests through lawful collective action was excessively circumscribed[314]; there were

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"Podkrepa" (CL "Podkrepa") and European Trade Union Confederation (ETUC) against Bulgaria, Complaint No. 32/2005, 10 October 2012; they could wear or display signs, armbands, badges or protest banners, which the law qualified as strike).

[307] Ireland (*European Confederation of Police (EuroCOP) v. Ireland*, Complaint No. 83/2012, Decisions on merits, 2 December 2013 and Conclusions 2014, 5 December 2014).

[308] Albania (those working in the electricity and water supply services; Conclusions 2010, 14 December 2010), Bulgaria (the electricity, healthcare and communications sectors (Resolution CM/ResChS(2012)4 Confederation of Independent Trade Unions in Bulgaria (CITUB), Confederation of Labour "Podkrepa" (CL "Podkrepa") and European Trade Union Confederation (ETUC) against Bulgaria, Complaint No. 32/2005, 10 October 2012) and civilian personnel of the Ministry of Defence and any establishments responsible to the Ministry ((Conclusions 2010, 14 December 2012 and Conclusions 2014, 5 December 2014)); Czech Republic (all categories of personnel are prohibited from striking at nuclear power stations, oil or gas pipelines, in the fire service and air traffic control centres; Conclusions XIX-3, 17 December 2010); Republic of Moldova (Conclusions 2010, 14 December 2010 and Conclusions 2014, 5 December 2014 (all employees in electricity and water supply services, telecommunication and air traffic control and to public officials and employees in sectors such as the public administration ("internal affairs") state security sectors and national defence in another country);

[309] Germany (Conclusions XIX-3, 17 December 2010).

[310] *European Organisation of Military Associations (EUROMIL) v. Ireland*, Complaint No. 112/2014, Decision on merits, 12 September 2017; "having regard to the specific nature of the tasks carried out by members of the armed forces, the special circumstances of members of the armed forces who operate under a system of military discipline, the potential that any industrial action could disrupt operations in a way that threatens national security, the Committee considers that there is a justification for the imposition of the absolute prohibition on the right to strike" (para. 117).

[311] Opinion no. 3 on ethics and liability of judges, 19 November 2002, para. 34.

[312]Czech Republic (Conclusions XIX-3, 17 December 2010; health care and social care establishments and in telecommunications), Hungary (Conclusions 2014, 5 December 2014; civil servant officials), Republic of Moldova (Conclusions 2014, 5 December 2014 and Conclusions2016, 5 December 2016; customs authorities), Slovak Republic (Conclusions XIX-3, 17 December 2010 and Conclusions 2014, 5 December 2014; employees of healthcare or social care facilities; employees operating nuclear power plant facilities, facilities with fissile material and oil or gas pipeline facilities; judges, prosecutors and air traffic controllers; members of the fire brigade, members of rescue teams set up under special regulations, and employees working in telecommunications operations) and Ukraine (Conclusions 2014, 5 December 2014; the emergency and rescue services, at nuclear facilities, in underground undertakings as well as at electric power engineering enterprises and the transport sector).

[313] Republic of Moldova (Conclusions 2014, 5 December 2014).

[314] United Kingdom (Conclusions XIX-3, 17 December 2010 and Conclusions XX-3, 5 December 2014); lawful collective action was limited to disputes between workers and their employer, thus preventing a union from taking action against the de facto employer if this was not the immediate employer, and the courts had excluded collective

requirements for the union to fulfil representativeness criteria[315] the right to call a strike was reserved in principle only to trade unions in circumstances where their forming was subject to an excessive time frame[316] or one could not be readily formed by a group of workers[317] or there were other such restrictions as to who could call a strike[318]; a certain level of service had to be maintained[319]; workers were not involved on the same footing as employers during the procedures that were conducted to determine the "minimum service" required in connection with the restrictions on the right to strike with regard to some "general interest" services[320]; it had not been established that recourse to compulsory arbitration to define minimum services in the case of a state-owned company fell within the limits set by Article G of the Revised Charter[321]; a high level of support for the strike was required[322]; notice of a ballot on industrial action had to be given to an employer in addition to the strike notice to be issued before taking action[323]; the public mediator had the power decide that several settlement proposals in different sectors were to be considered as a whole for voting purposes, so that the results of the voting in the different sectors were then linked together[324]; a delay was imposed on taking strike action[325]; the exact duration of strikes concerning essential public services had to be notified to the employer prior to strike action[326]; and workers who were not

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action concerning a future employer and future terms and conditions of employment in the context of a transfer of part of a business.

[315] France (Conclusions 2010, 14 December 2010 and Conclusions 2014, 5 December 2014; as regards the public sector) and Romania (Conclusions 2010, 14 December 2010 and Conclusions 2014, 5 December 2014).

[316] Croatia (Conclusions XIX-3, 17 December 2012) and Portugal (Conclusions 2010, 14 December 2010 and Conclusions 2014, 5 December 2014). In both countries it could take up to thirty days to establish a trade union).

[317] Germany (Conclusions XIX-3, 17 December 2010 and Conclusions XX-3, 5 December 2014).

[318] Cyprus (Conclusions 2010, 14 December 2010 and Conclusions 2014, 5 December 2014; a decision to call a strike must be endorsed by the executive committee of a trade union) and Hungary (Conclusions 2014, 5 December 2014; right to call a strike in the civil service was restricted to trade unions which are parties to the agreement concluded with the government and these could only do so with the approval of a majority of the staff concerned)

[319] Bulgaria (Resolution CM/ResChS(2012)4 Confederation of Independent Trade Unions in Bulgaria (CITUB), Confederation of Labour "Podkrepa" (CL "Podkrepa") and European Trade Union Confederation (ETUC) against Bulgaria, Complaint No. 32/2005, 10 October 2012; a requirement in the railway sector for the maintenance of satisfactory transport services for the population of not less than 50% of the level of transport service provided prior to strike action was held to go beyond those permitted by Article G and therefore constituted a violation of Article 6§4 of the Revised Charter as it was not sufficiently clear to allow workers in the sector concerned wishing to call or to participate in a strike to assess what is the scope of minimum services required by the law in order to meet the required 50% threshold and as it was unclear what were the criteria for determining the 50% threshold).

[320] Serbia (Conclusions 2014, 5 December 2014).

[321] Portugal (Conclusions 2014, 5 December 2014)

[322] Armenia (Conclusions 2014, 5 December 2014; where a vote by two-thirds of an organisation's (enterprise's) employees is required by secret ballot. If a strike is declared by a subdivision of an organisation, a vote by two-thirds of the employees of that subdivision is required. However, if such a strike hampers the activities of other subdivisions, the strike should be approved by two-thirds of the employees of the subdivision, which may not be less than half of the total number of employees of the organisation. Further to the amendment of this Article on 24 June 2010, "in case of absence of a trade union in the organization, the responsibility for declaring a strike by the decision of the staff meeting (conference) is transferred to the relevant branch or regional trade union) and Czech Republic (Conclusions XX-3, 5 December 2014; the right to call a strike in disputes regarding the conclusion of collective agreements was subject to a majority requirement of two-thirds of the votes cast and a quorum requirement of 50% of the employees concerned by the agreement).

[323] United Kingdom (Conclusions XIX-3, 17 December 2010 and Conclusions XX-5, 5 December 2014)

[324] Denmark (Conclusions XIX-3, 17 December 2010).

[325] Czech Republic (Conclusions XX-3, 5 December 2014; 30 days had to elapse before mediation attempts were deemed to have failed and strike action could then be taken).

[326] Bulgaria (Conclusions 2014, 5 December 2014) and Italy (Conclusions 2010, 14 December 2010 and Conclusions 2014, 5 December 2014).

members of the trade union which had called a strike were prevented from participating in the strike unless they join that union and did not enjoy the same protection as the trade union members if they participated in a strike[327].

206. In addition, the European Committee reached such a conclusion where: trade unions could not take action to improve the employment conditions of posted workers if the employer showed that such workers enjoyed conditions of employment (including wage levels and other essential aspects of work) that were at least as favourable as the minimum conditions established in agreements at central level.[328]; injunctions and legislation were used to put an end to strikes or impose restrictions on them[329]; recourse to compulsory arbitration to put an end to a strike in circumstances going beyond those permitted by Article G of the Revised Charter could be had by employers[330] or the government[331]; and employers could ask the courts to order the end of picketing activity[332].

207. Furthermore, it also reached such a conclusion where: the deductions from the wages of striking state employees in one country were not always proportional to the duration of the strike[333]; an employer was able to dismiss all employees for taking part in a strike[334] or the protection of workers against dismissal when taking industrial action was either insufficient[335] or had not been established[336]; and only authorised trade unions, which were trade unions holding a negotiation licence, their officials and members were granted immunity from civil liability in the event of a strike[337].

[327] Denmark (Conclusions XX-3, 5 December 2014).
[328] Sweden (Resolution CM/ResChS92014)1; Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TC)) v. Sweden, Complaint No. 85/2012, 5 February 2014 and Conclusions 2014, 5 December 2014. This restriction was also in violation of Article 19(4)(b) as it meant that foreign posted workers lawfully within the territory of Sweden were not guaranteed treatment not less favourable than that of Swedish workers respect to the enjoyment of the benefits of collective bargaining).
[329] Iceland (Conclusions XX-3, 5 December 2014; legislation was adopted to put an end to a strike in circumstances which went beyond those permitted by Article 31 of the Charter), Italy (Conclusions 2010, 14 December 2010 and Conclusions 2014, 5 December 2014; it had not been established that the government's power to issue injunctions or orders restricting strikes in essential public services falls within the limits of Article G of the Charter).
[330] Romania (Conclusions 2010, 14 December 2010).
[331] Norway (Conclusions 2010, 14 December 2010 and Conclusions 2014, 5 December 2014) and Spain (Conclusions XIX-3, 17 December 2010 and Conclusions XX-3, 5 December 2014).
[332] Belgium (Resolution CM/ResChS(2012)3: Collective Complaint No. 59/2009 by the European Trade Union Confederation (ETUC)/ Centrale Générale des Syndicats Libéraux de Belgique (CGSLB)/ Confédération des Syndicats chrétiens de Belgique (CSC)/ Fédération Générale du Travail de Belgique (FGTB) v. Belgium, 4 April 2012 and Conclusions 2014, 5 December 2014; it was legitimate for striking workers to attempt to involve all their fellow workers in their action and a restriction on picketing which did not violate the right of other workers to choose whether or not to take part in the strike action was not justified where there was a lack of precision and consistency regarding an emergency relief procedure that allowed courts to order the end of picketing activity and unions were completely excluded from this procedure).
[333] France (Conclusions 2010, 14 December 2010).
[334] Ireland (Conclusions 2014, 5 December 2014).
[335] United Kingdom (Conclusions XIX-3, 17 December 2010 and Conclusions XX-3, 5 December 2014)
[336] Armenia (Conclusions 2014, 5 December 2014).
[337] Ireland (Conclusions 2014, 5 December 2014).

M. Conclusion

208. The compendium demonstrates a considerable volume and range of activity undertaken by a multitude of Council of Europe bodies with respect to the right to freedom of association and the position of NGOs.

209. There has been, in particular, an extensive amount of standard-setting that builds on and complements the fundamental guarantee of the right to freedom of association in Article 11 of the European Convention. This standard-setting not only addresses the many different sectors for which this right is important but it also deals with specific issues regarding its implementation and the need to overcome the various challenges to its enjoyment that continue to arise.

210. The crucial contribution of associations and NGOs to developing and realising democratic society and culture, sport and many other aspects of human well-being is evident both in the many documents that have been adopted and the various ways in which practice within member States is examined.

211. The compendium focuses primarily on issues that have been found to be problematic. It has done so as a way of demonstrating the scope of the right to freedom of association and the requirements to be fulfilled to ensure an environment in which associations and NGOs can not only be formed but can flourish. Although such an environment is generally available in Europe, it is not something that can be taken for granted as the phenomenon known as "the shrinking space for civil society" too readily underlines.

212. It is evident from the compendium that there is a good deal of consistency in the approach followed by different Council of Europe bodies in the way that they deal with issues that affect associations and NGOs. Undoubtedly there are areas in which some greater coordination and sensitivity could be achieved, as well as ones in which better use could be made by one body of the experience of one or more other ones. In particular, there seem to be lessons that could be learned from the approach taken to the elaboration of the specific standards concerning trade unions when seeking better protection for associations and NGOs. However, despite the different ways in which their mandates might be framed, there is already a remarkable level of cross-referencing between the outputs of the various Council of Europe bodies relating to associations and NGOs.

213. Although, as previously noted[338], there is no single mechanism, devoted to the right to freedom of association, the wide front of activity set out above demonstrates that the protection and promotion of the interests of associations and NGOs is not being neglected. Indeed, given the complexity of the issues involved in implementing the right to freedom of association and, in particular, in ensuring an enabling environment, it is undoubtedly

[338] See para. 3 above.

beneficial to have many actors looking after the interests of associations and NGOs, even if the primary responsibility in that regard remains that of member States.

214. The compendium has shown that the activities and role of associations and NGOs continues to be valued and vital. At the same time, despite their existence and operation being both a particular manifestation of the values of the Council of Europe and a means through which those values can be realised, associations and NGOs continue to face many challenges and obstacles. The work of the bodies highlighted above is impressive but it is far from finished.