

Ref: CommHR/DM/sf 026-2023

Mr Nenad STEVANDIĆ
President of the National Assembly of Republika Srpska

Strasbourg, 18 September 2023

Dear President,

As Council of Europe Commissioner for Human Rights, my mandate is to foster effective observance of human rights in all 46 member states of the Council of Europe. An important part of my work is to engage in dialogue with member states' governments and parliaments, and to assist them in addressing possible shortcomings in their laws and practices. In this context, I am writing in relation to the Draft Law on Special Registry and Transparency of the Work of Non-Profit Organisations ("the Draft Law"), which is included in the agenda of the session of the National Assembly of Republika Srpska ("the National Assembly") scheduled for 26 September 2023.

At the outset, I would like to underline that non-governmental organisations (NGOs) play an important role in a democratic society, and that these organisations, as well as their members, enjoy inalienable rights, including the right to freedom of association and expression, and to protection against discrimination.

The Draft Law aims to establish a register of associations, foundations as well as foreign and international NGOs receiving any form of foreign funding or other assistance of foreign origin, designating them as "non-profit organisations" ("NPOs"). It establishes a separate legal regime for such organisations, subjecting them to reporting requirements and inspections which do not apply to other NGOs, including the requirement that all their materials include the mark "NPO". It provides sanctions for those organisations which fail to fulfil the obligations set out therein, including the possibility of banning the concerned "NPO" activities and thereby the "NPO" itself.

The Draft Law raises several concerns in the light of Council of Europe standards in the field of human rights, as noted in the [joint opinion](#) of the Venice Commission and the OSCE/ODIHR on the Draft Law adopted on 9-10 June 2023. The main conclusions contained in the Opinion are: there is a lack of clear *rationale* for developing the Draft Law and of any risk assessment or consultation with associations and others potentially affected; the overly vague and ambiguous provisions are likely to fail the test of lawfulness, foreseeability and proportionality; significant burden is placed on "NPOs" by the reporting requirements; disproportionate fines; and there is a lack of provisions guaranteeing access to effective remedies. The Venice Commission and ODIHR called upon the authorities of Republika Srpska to reconsider the adoption of the Draft Law entirely and to engage in further consultation with all stakeholders with a view to guaranteeing the enjoyment of the rights to freedom of association and freedom of expression in Republika Srpska.

As I have already emphasised in my work in other Council of Europe member states, the legitimate aim of increasing the transparency of the work of NGOs should not be sought through disproportionate or discriminatory means, to the detriment of the effective enjoyment of human rights and freedoms. The European Court of Human Rights has [found](#) a violation of Article 11 of the European Convention on Human Rights in relation to the legislation of the Russian Federation on so-called "foreign agents". In particular, the Court established that creating a special status and a legal regime for organisations receiving foreign funding was not justified and that such initiatives had a significant chilling effect on NGOs and their ability to perform their legitimate civil society functions.

I cannot but see this legislative proposal against the background of an increasingly restrictive environment for civil society and dissenting voices in Republika Srpska, amplified by the recent adoption by the National Assembly of the amendments to the Criminal Code of Republika Srpska reintroducing defamation as a criminal offence, 20 years after defamation was decriminalised in Bosnia and Herzegovina, which I [criticised](#).

In light of these considerations, I call on the members of the National Assembly to refrain from adopting the Draft Law on Special Register and Transparency of the Work of Non-Profit Organisations. Bosnia and Herzegovina has been a Council of Europe member since 2002, and its entities – Republika Srpska and the Federation of Bosnia and Herzegovina – are bound by the standards and values of this organisation for ensuring the protection of human rights, democracy and the rule of law. Instead of further restricting the rights of NGOs and human rights defenders, the authorities of Republika Srpska should foster a safe and enabling environment for their work, in line with the Council of Europe's Committee of Ministers [Recommendation CM/Rec\(2018\)11](#) on the need to strengthen the protection and promotion of civil society space in Europe.

I would be grateful if you could ensure that all members of the National Assembly receive a copy of this letter and I stand ready to assist the Assembly in any matters concerning freedoms of expression and association.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Dunja Mijatović', with a stylized flourish at the end.

Dunja Mijatović