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Speech at the round-table on 'Foreign funding of non-governmental organisations', Venice, 4 October 2017

Ladies and gentlemen,

First, I would like to thank the organisers for holding this event, which is so important for our organisation and our members.

The Conference of INGOs closely monitors developments in legislative regulations relating to NGOs.

There are two sides to our approach

- by country¹
- by specific themes linked to the functioning of NGOs²

There are three parts to my statement today: first, I will give some examples of the types of measures NGOs currently face in member states, citing our recent opinions and declarations. Then I will briefly mention the possible consequences of these measures. I will conclude by putting forward some proposals for action.

In its opinion regarding the Hungarian law on the transparency of organisations receiving support from abroad, the Venice Commission commented that (and I quote) “the legitimacy of aims in this particular field greatly depends on the context surrounding the adoption and application of relevant provisions” (end quote). This means that the context can have a considerable influence on the legitimacy of the aim pursued by the law. I believe that this is a significant step forward given the current context.

Discrimination against NGOs can be seen in both legislation and practice. Restrictions can be introduced through clearly communicated measures or they can occur when the adopted regulations lack clarity, opening themselves up to several interpretations. In this regard, I can cite bills such as the one in Poland aiming to create the National Institute of Freedom for the Development of Civil Society, which does not explicitly mention restrictions on foreign funding but lacks clarity on this point, as underlined by the ODIHR in its opinion. However, it is clear enough that by authorising the executive to have direct control over NGO funding procedures, restrictions on this type of funding can easily be put in place. The rhetoric used to stigmatise NGOs receiving foreign grants, media campaigns and intimidation of NGOs that do not subscribe to the ideology promoted by the party in power, or that openly oppose the laws judged unconstitutional, show that it is only a matter of time before these types of restrictions are introduced.³

We know that the freedom of association and the freedom of assembly are not absolute rights and that restrictions are possible. The problem occurs when the reasons prompting the authorities to restrict foreign funding are not evidence-based. In this connection, I would like

¹ Opinions published on Azerbaijan, the Russian Federation, Cyprus and Hungary. A report on the freedom of assembly in Turkey (currently being drafted).

² For example, the most recent work on the regulation of the political activities carried out by NGOs.

³ Even yesterday, the leading party's Twitter account mentioned that last year's protest against the very restrictive bill on abortion received foreign funding, in particular from Soros organisations.

to mention the explanatory memorandum to the law on the transparency of organisations receiving support from abroad in Hungary, which states that greater transparency is necessary to take into account (and I quote) “the challenges posed by financial flows of non-transparent origin associated with money laundering and the financing of terrorism” (end quote). As the Venice Commission noted in its opinion on 31 May 2017, the statistical data provided by the Office of the Prosecutor General of Hungary “did not reveal that civil society organisations, in particular those receiving foreign funding, were involved in the commission of those crimes”.

Laws relating to NGOs are passed without consideration being given to the public interest, and at times even against the opinions of representative organisations in the sector concerned. Public consultations should be organised in a reliable, objective and meticulous way at every step of the legislative process, especially when major changes have been made by the public authorities at the various stages of the whole endeavour.⁴

It is alarming that governments no longer need specific laws on “foreign agents”, such as those adopted in the Russian Federation, to weaken NGOs in the public sphere. Labelling occurs through the rhetoric used, sometimes even in specific campaigns, targeting certain national and international NGOs by name, as well as through excessive bureaucratic procedures. The objective or the consequence is the “delegitimisation” of these NGOs, weakening their ability to act in the public sphere. In the public eye, speculations relating to foreign funding are associated with treason against the nation. This has a significant impact on the relationships between NGOs and the general public.

At the same time, there has been an increase in the number of pro-government NGOs subsidised by the executive and/or having privileged (and non-transparent) access at the various decision-making levels (the Russian Federation, Hungary and Poland). Those in receipt of public grants are gradually being replaced by these new organisations. In a democracy, co-operation between NGOs and public authorities is based on the principle of subsidiarity. However, civil society is self-organised – its nature and programme are independent of any public authority.

Two additional aspects:

Legislative restrictions impose additional demands on NGOs in the form of reports to be submitted to the authorities. Often, other organisations, including profit-making organisations, do not have to meet the same demands (bill in Ukraine under consultation). It should not be forgotten that an organisation receiving grants must first submit a report to the funding body on the way in which the money has been spent. It is clear, therefore, how the conflict of interests between public authorities and funding bodies significantly impacts freedom of association. With the restrictions come regulations that endanger the data protection (with regard to both NGO members and those benefitting from the activities carried out by NGOs).

Different organisations are now focusing their thoughts on the most appropriate funding model to enable NGOs to maintain their independence in a context of restrictions. This needs very careful consideration, because the entrepreneurial model also has its risks and could make NGOs dependent on large multinationals.

⁴ Poland can be cited again as an example. According to the National Federation of Polish NGOs (comprising some 2,000 civil society organisations), out of 48 contributions received during public consultations, 33 were against the bill, 15 contained criticisms and only 2 gave a positive assessment. The bill was passed in a process which prevented NGO representatives from expressing their opinions on the key phase of the bill. Another example is in Hungary, which organised public consultations (about the law on the transparency of organisations receiving support from abroad) by asking loaded questions that already included responses.

The series of laws passed in the Russian Federation, relating to the term of foreign agent or undesirable organisations, highlights the consequences of restrictive measures.

- A weaker engagement of NGOs in public life and debate, caused by the ineffectiveness of participatory mechanisms and self-censorship or a lack of action by NGOs, because of the risks involved.
- NGOs are prevented from carrying out activities in the heart of local communities because of the labels attached to them.
- The smallest NGOs disappearing as they are unable to cope with the pressure and restrictions.
- The division between the organisations considered as “in the public interest” and illegal “foreign agents” polarises society and prompts organisations that wish to benefit from state funding to follow the political line promoted by those in power.
- Severing of ties between national NGOs and international NGOs, of which they are members.

Let us take, for example, the register of organisations classified as “undesirable on Russia’s territory”, established pursuant to the legislation passed in May 2015. This category applies to NGOs whose activities are considered a threat to the constitutional order, defence and the national security of the Russian Federation. While only foreign or international NGOs can be declared “undesirable”, national NGOs that have collaborated with them can face criminal and administrative charges. Something similar can be seen in Turkey and although the reasons for it are different, the effect is the same: out of fear, many national NGOs do not wish to maintain their contacts with foreign partners.

To conclude, I would like to make a few suggestions:

- I believe that more consideration should be given to the impact of the law on freedom of association and to the aim pursued by the authorities. Cutting funding sources will not make NGOs more political than they already are, rather, this will intensify the existing political problems between donors and public authorities or between the different national parties.
- Second, sociological analyses show that today, the ways of organising civil society and the ways to engage Europeans in public life are changing. This change requires adapting how NGOs are funded, donors having a degree of flexibility and, above all, increased funding from civil society (the 1% mechanism).
- We should turn our full attention to the definition of “political activities”, especially with regard to restrictions on access to funding. We know that NGOs monitoring the application of human rights, fundamental freedoms and the rule of law which, in the 1990s wished to remain outside the political sphere, are now being obliged to become more involved in politics. In a context in which authorities seek to restrict political activities, they should adopt an approach which limits the definition of political activities to the actions carried out by political parties. Not everything that concerns public affairs should be considered as political. Conversely, if there are no restrictions on these activities, then a broad definition can remain. The work to defend human rights, democracy and the rule of law is prejudicial to NGOs active in countries which have adopted a broad definition and which seek to restrict the activities of those NGOs.
- Access to funding, including foreign funding, is part of the right to the freedom of association. We should not forget that in some countries, funding from national sources is insufficient and the bulk of funding comes from abroad (approximately 90% of civil society organisations in Moldova are funded in this way).

As the Secretary General stated in his report, “Legitimate concerns such as protecting public order or preventing extremism, terrorism and money-laundering cannot justify controlling NGOs or restricting their ability to carry out their legitimate watchdog work, including human rights advocacy” (SG report p.69). Recently, NGOs have been negatively affected by the legal, legislative, social and economic environment. We must reverse the negative trends if we want NGOs to continue to demonstrate courage in speaking out to ensure that international standards and the rule of law are implemented.

Thank you for your attention

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