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EXPERT COUNCIL ON NGO LAW

SECOND ANNUAL REPORT

The Internal Governance of Non-Governmental Organisations

ADVANCE COPY

MEMBERS OF THE EXPERT COUNCIL ON NGO LAW

President (appointed by the Plenary of the Conference of INGOs):

Cyril Ritchie, who was instrumental in the writing of the original Council of Europe Guidelines on the functioning of NGOs in Europe, and represented the Conference of INGOs to the expert committee drafting the Committee of Ministers Recommendation – CM/Rec(2007) 14 – on the legal status of NGOs in Europe. Ritchie was from 2000-2008 President of the NGO Grouping on Civil Society and Democracy in Europe and its predecessors. Mr Ritchie resides in Geneva.

Co-ordinator (appointed by the Bureau of the Conference of INGOs):

Jeremy McBride, an English barrister who is Chair of Interights and who was instrumental in drafting both the Council of Europe "Fundamental Principles on the Status of NGOs in Europe" and CM/Rec(2007) 14. He serves as coordinator to the Expert Council. Mr McBride resides in Strasbourg

Members appointed by the Bureau of the Conference of INGOs:

Dragan Golubović, from Serbia, a Senior Legal Advisor with the European Centre for Not-for-Profit Law (ECNL), advising governments, Parliaments, judges, lawyers and NGOs on legal framework for NGOs. He collaborates with the Council of Europe, UNDP and OSCE on projects relating to freedom of association. Mr Golubović resides in Budapest.

Mihaela Preslavska*,* a NGO activist and lawyer from Bulgaria, is responsible for governance and accountability standards in the International Planned Parenthood Federation European Network, a pan-European body covering over 40 countries. Ms Preslavska resides in Bruxelles.

Eric Svanidze**,** a lawyer from Georgia heavily engaged in NGO issues. Svanidze also served on the expert committee drafting Recommendation CM/Rec(2007) 14. Svanidze is a former member of the European Committee for the Prevention of Torture. Mr Svanidze resides in Tbilisi.

In addition, a member of the Secretariat General of the Council of Europe attends the meetings of the Expert Council; and the Expert Council may itself appoint ad hoc members who are specialised on specific issues under examination.

For the 2009 thematic study on the internal governance of NGOs, one ad hoc member was appointed :

Katerina Hadži-Miceva Evans, from “the former Yugoslav Republic of Macedonia”, is a Senior Legal Advisor with the ECNL, advising governments, parliaments, judges, lawyers and NGOs on the legal framework for NGOs, government partnerships with NGOs and NGO sustainability. Mrs Hadži-Miceva Evans lives in Budapest.

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I INTRODUCTION

1. The Conference of International NGOs of the Council of Europe reflects and promotes the interests of civil society on a Pan-European basis. It is therefore natural and right that the Conference of INGOs is preoccupied with the rights, prerogatives and responsibilities of international and national NGOs throughout Europe. NGOs nationally and internationally need a secure legal environment; a secure and encompassing social environment; and an understanding and encouraging political environment. These are pre-conditions for NGOs to make their indispensable and irreplaceable contributions to public policy and harmonious societies.

2. The EXPERT COUNCIL ON NGO LAW, set up by the Conference in January 2008, is a precedent-setting initiative in the policy and legislative fields. The Expert Council is "to contribute to the creation of an enabling environment for NGOs throughout Europe by examining national NGO law and its implementation, and promoting its compatibility with Council of Europe standards and European good practice"[1].

3. The work of the Expert Council is bolstered by – and inspired by – the text adopted by the Council of Europe Committee of Ministers in October 2007: Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe ("Recommendation CM/Rec(2007)14"). This extremely well-thought-out document is a comprehensive endorsement of, and framework for, the "essential contribution made by NGOs to the development and realisation of democracy and human rights, in particular through the promotion of public awareness and participation in public life"[2].

4. In its first year, the Expert Council chose to carry out a thematic study on the CONDITIONS FOR THE ESTABLISHMENT OF NGOs. The final version of this text, including its six country case studies (Azerbaijan, Belarus, France, Italy, Russia, Slovakia) and its recommendations, was adopted by the Conference Plenary in January 2009.

5. For its second year, the Expert Council chose the theme INTERNAL GOVERNANCE OF NGOs. It is, as in 2008, based on responses to a questionnaire distributed to NGOs throughout Europe. It refers to the basic principle of self-governance of NGOs, as well as criteria such as requirements for an NGO statute, membership in the highest governing bodies, internal structure, employment, decision-making, auditing, reporting and inspection by relevant authorities. Our Co-ordinator Jeremy Mc Bride has been able to distil from the questionnaire a valuable Thematic Overview that forms the essence of this first report to the Conference of INGOs. The distillation also enabled us to identify six countries on which we have done specific analyses to illustrate the problems, challenges, and hopefully forward steps that could be taken. The final version will include country studies on Armenia, Cyprus, Ireland, Luxembourg, Moldova, and "the former Yugoslav Republic of Macedonia".

6. The members of the Expert Council are named by the Bureau of the Conference of INGOs, and its President is elected by the Conference Plenary. All members are jointly responsible for the Report that follows, which I commend for the careful scrutiny of both NGOs and governmental authorities. The legal and regulatory frameworks in many European countries, as well as administrative and judicial practices in them, need attentive and enlightened monitoring. In many cases they need review, clarification and strengthening. There is also need for dissemination of European standards and good practices, and in particular much greater awareness of the terms and advice of Recommendation CM/Rec(2007)14.

[1] Expert Council Mandate, January 2008.
[2] CM/Rec(2007)14 – Preamble

7. It is against that backdrop that I commend this 2009 Report to the attention of the Conference of International NGOs, which will make recommendations for action. I believe the Report – and its follow up – will also be of interest and relevance to other Council of Europe bodies and other institutions within Europe that are also concerned to strengthen democracy and the rule of law.

Cyril Ritchie
President
Expert Council on NGO Law

II THEMATIC OVERVIEW

8. The thematic overview concerning the internal governance of NGOs is in two parts. The first reviews the scope of international standards applicable to this issue, notably in the European Convention on Human Rights ("the European Convention") - as elaborated in the rulings of the European Court of Human Rights ("the European Court") - and Recommendation CM/Rec(2007)14. In the second part the responses to a questionnaire concerned with national law and practice regarding internal governance are analysed. The former establishes that NGOs should generally be able to manage their own affairs free from outside interference, while the latter discloses that full compliance with all that this requirement entails is still not achieved throughout Europe.

A Applicable standards

9. The self-governing character of NGOs is an essential aspect of the right to freedom of association guaranteed by Article 11 of the European Convention and many other international legal instruments[3].

10. It is also reinforced - both explicitly and implicitly - by numerous other commitments made by States, notably Recommendation CM/Rec(2007)14 and the Declaration of the Committee of Ministers of the Council of Europe on action to improve the protection of human rights defenders and promote their activities[4].

The general principle

11. The fundamental importance of an NGO being able to run its own affairs has been expressly articulated in Recommendation CM/Rec(2007)14, which stipulates self-governance as its first basic principle[5]. It has also been underlined by the European Court when faced with an

[3] In particular Article 22 of the International Covenant on Civil and Political Rights, Article 5(d)(ix) of the International Convention on the Elimination of All Forms of Racial Discrimination, Article 1-3 of the Convention on the Elimination of All Forms of Discrimination against Women, Article 15 of the Convention on the Rights of the Child, Articles 26 and 40 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 29 of the Convention on the Rights of Persons with Disabilities Articles 1, 2 (4,5) and 3 of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), Article 15 of the Convention relating to the Status of Refugees, Article 15 of the Convention relating to the Status of Stateless Persons, Articles 7 and 8 of the Framework Convention for the Protection of National Minorities and the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations. There are also guarantees concerned specifically with trade unions such as Article 8 of the International Covenant on Economic, Social and Cultural Rights, Article 5 of the European Social Charter, Article 5 of the Revised Charter and the Convention Concerning Freedom of Association and Protection of the Right to Organise of the International Labour Organization (ILO Convention No 87).

[4] Adopted by the Committee of Ministers on 6 February 2008 at the 1017th meeting of the Ministers' Deputies. See also Article 20 of the Universal Declaration of Human Rights, the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders) (GA Res 53/144, 9 December 1998), UN Basic Principles on the Independence of the Judiciary, the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Paras 9.3 and 10.3, and undertakings made at several OSCE meetings, namely, Vienna in 1989 (Questions relating to Security in Europe, paras 13.3, 13.6 and 21), Copenhagen (paras 10, 10.1-10.4, 11, 11.2, 32.2, 32.6 and 33) and Budapest (Chapter VIII, para 18), Council of Europe Recommendation R(94)12 'On the Independence, Efficiency and Role of Judges' and the European Charter on the Statute for Judges. Recommendation CM/Rec(2007)14 was preceded by the Council of Europe's Fundamental Principles on the Status of Non-governmental Organisations in Europe of the Council of Europe ("Fundamental Principles") which were noted by the decision of the Deputies at their 837th meeting on 16 April 2003

[5] In Paragraph 1.

attempt by the State to use - involuntarily - an NGO to achieve the fulfilment of a public objective by making membership of it compulsory.

12. It is certainly not uncommon to find public objectives being secured with the assistance of NGOs through some kind of partnership or contractual arrangement. There can be no objection to this and indeed this is one of the very reasons for encouraging civil society to develop; the non-governmental sector can often provide greater flexibility in responding to some problems and the fact that it is often much more closely linked to those in need of assistance can make it much better equipped to judge where efforts can most usefully be applied.

13. However, while it would be unwise for the State not to draw upon such a useful resource and for NGOs not to co-operate where they can, the willingness of the latter to do so should not lead to attempts by the State to take over particular NGOs and effectively make them agencies working under its control. In these circumstances the entity concerned will have lost the freedom to organise its own affairs and, insofar as this is not voluntary, there will be a violation of the right to freedom of association where a membership body is affected.

14. An instance of this happening can be seen in the attempt to use a taxi drivers' association as a way of administering the provision of taxi services in Iceland[6]. The regulation of such services was undoubtedly in the public interest and might well be a sufficient basis for requiring membership of a public law body[7] but the co-option of what was a private association in this case meant that the latter was no longer in a position to run its own affairs, which the European Court clearly saw as a crucial aspect of freedom of association, although it was the compulsion to belong to that association which gave rise to a violation of Article 11 of the European Convention in that particular case[8].

15. This perspective on self-governance is reinforced in Recommendation CM/Rec(2007)14 in a second basic principle, namely, that NGOS should not be subject to direction by public authorities[9].

16. The ability of an NGO to govern itself free of outside interference is not - any more than the right to freedom of association - absolute - but any restrictions imposed must have a legal basis, serve a legitimate purpose and not be disproportionate in their effect. Some admissible restrictions are expressly recognised in international standards and others may be inferred from them.

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[6] *Sigurdur A Sigurjónsson v Iceland*, no 16130/90, 30 June 1993.

[7] Such a body - which the European Court found the taxi drivers' association not to be - is outside the protection of Article 11 of the European Convention.

[8] See the concern of the UN Human Rights Committee that in Tunisia 'the Associations Act may seriously undermine the enjoyment of the freedom of association under article 22, particularly with respect to the independence of human rights non-governmental organisations. In this connection, the Committee notes that the act has already had an adverse impact on the Tunisian League for Human Rights'; CCPR/C/79/Add.43, 23 November 1994, para 12.

[9] Paragraph 6. In the Explanatory Memorandum it is emphasised that 'This does not mean that public authorities cannot choose to provide particular assistance to NGOs pursuing objectives that they consider to be of particular importance but the latter should be free to decide whether to accept or continue to receive such assistance. Furthermore neither legislation nor other forms of pressure should be used to make NGOs undertake particular activities considered to be of public importance' (Para 29). See also Principles 76 and 77 of the Fundamental Principles, which provide that consultation should not be seen by 'government as a vehicle to co-opt NGOs into accepting their priorities, or by NGOs as an inducement to abandon or compromise their goals and principles' and that government bodies 'can work with NGOs to achieve public policy objectives, but should not attempt to take them over or make them work under their control'.

Requirements for an NGO's Statute

17. The more matters concerning the governance of an NGO that are required to be included in its Statute, the more it is likely that an NGO will be deprived of the flexibility required in order to organise itself so that it can respond effectively to changing circumstances, whether these concern challenges or opportunities. This will be particularly so if subsequent amendments to the Statute require positive approval by a public authority[10]. While those who found or establish an NGO may have their own well-grounded reasons for limiting such flexibility in a given case, the exercise of the freedom of such persons to make that choice - itself a manifestation of the rights to freedom of association and to the peaceful enjoyment of possessions[11] - is to be distinguished from the imposition of limitations on internal governance as a matter of law.

18. This was clearly recognised in Recommendation CM/Rec(2007)14 as the only matters relevant to the internal governance of an NGO that that instrument states should generally be specified in the Statute are the highest governing body of the NGO, the frequency of meetings of that body, the procedure by which such meetings are to be convened, the way in which the highest governing body is to approve financial and other reports and the procedure for changing the Statute and dissolving the organisation or merging it with another NGO[12].

19. As the Explanatory Memorandum to the Recommendation makes clear, these are "the matters that are most likely to be crucial to establishing the conditions under which NGOs are to operate". The relatively short list is not intended to be exhaustive since the Explanatory Memorandum continues by stipulating that "[t]hose establishing or belonging to NGOs (as well as those responsible for their direction in the case of non-membership-based bodies) are free to specify additional matters in their statutes". However, the conclusion of this document in regard to the provision of such additional matters is most important, namely, that "they should not normally be under any obligation to do so"[13]. This is, of course, entirely consistent with the self-governance principle.

20. The highest governing body is the only matter of those listed in Recommendation CM/Rec(2007)14 for which some specific indication is also given as to content required for the Statute. Thus Paragraph 20 requires that this be composed of the membership in the case of a membership-based NGO. However, this is not an undue interference with the principle that NGOs should be self-governing since, as the Explanatory Memorandum notes, this 'is a manifestation of the exercise of freedom of association by their members'[14].

21. The scope for the content of the other matters listed for the Statute to be prescribed by national law is to some extent addressed in other provisions of the Recommendation but in many respects - following the self-governance principle - this is something that should be left to be determined by those who establish or belong to the NGO concerned.

Membership of the highest governing body and other bodies

22. Decision-making by an NGO can effectively be constrained by restrictions in national law as to who can serve on its various decision-making bodies.

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[10] See Paragraph 129 of the *First Annual Report*.
[11] The latter being pertinent in the case of persons providing the funds to establish a foundation.
[12] Paragraph 19.
[13] Paragraph 49.
[14] Paragraph 50. As regards non-membership-based NGOs the Explanatory Memorandum states that the freedom of association consideration is not applicable and 'so the highest governing body should be determined by the statutes, whether as originally drawn up by their founders or as subsequently amended in the prescribed manner' (Paragraph 51).

23. Such restrictions would, in the case of the highest governing body of an NGO that is membership-based, be those that affect who can be members of the NGO itself since - as has just been seen - that body must be composed of all of them. The only admissible restrictions can, therefore, be those which international standards accept regarding membership itself.

24. The ability to join associations is something that Article 11 of the European Convention provides as being open to "everyone" within a State's jurisdiction and the scope for imposing limitations on this capacity is quite limited. "Everyone" certainly means legal as well as natural persons as association is not one of the rights or freedoms that are capable of being exercised only by human beings[15]. The only exception in this regard would be public bodies since these are a part of the State which is bound to secure freedom of association and they cannot, therefore, be beneficiaries of this right.

25. The unqualified nature of the formulation in all instruments means that the freedom should be exercisable by children as much as by adults, without needing to rely on the specific guarantee in respect of the former in the Convention on the Rights of the Child. Nevertheless this would not preclude the adoption of protective measures to ensure that they are not exploited or exposed to moral and related dangers, so long as the total exclusion of the ability to associate did not result[16]. Such measures, insofar as they are proportionate and meet the requirements of legal certainty, could be justified as a restriction on their freedom pursuant to provisions such as Article 11(2) of the European Convention. However, in judging the appropriateness of any such measures account would also have to be taken of the need stipulated by the Convention on the Rights of the Child to respect 'the evolving capacities of the child'[17], which would mean that the effect of any restrictions that might be adopted would undoubtedly have to be diminished as those affected grow older[18].

26. The inclusive nature of "everyone" would in addition mean that freedom of association can, in principle, be exercised by people who are not actually citizens of the country concerned (whether they are citizens of another country or stateless persons)[19]. Although Article 16 of the European Convention does accept the possibility of some restrictions being imposed on the political activity of those who are not citizens and this is defined to cover freedom of association, such restrictions ought to be compatible with the Convention's overall objectives of political democracy, freedom and the rule of law and they ought not to be disproportionate.

27. It might, therefore, be possible to justify the exclusion of persons who are not citizens from membership of national political parties - which are not NGOs for the purpose of Recommendation CM/Rec(2007)14[20] - but it would certainly be harder to do so where the body was concerned only with local or non-party issues, particularly if those affected were established residents there.

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[15] This is recognised by paragraph 22 of Recommendation CM/Rec(2007)14.

[16] See the recommendation of the Committee on the Rights of the Child that Belarus 'guarantee to all children the full implementation of the rights to … freedom of association' (CRC/C/15/Add.180, 13 June 2002, para 34), that Georgia 'amend its legislation to ensure that youth are allowed to join political parties and that they fully enjoy their right to freedom of association' (CRC/C/15/Add.124, 28 June 2000, para 31). See also its concern that in Turkey 'persons under 18 cannot form associations' (CRC/C/15/Add.152, 9 July 2001, para 37).

[17] Article 5. This is acknowledged in paragraph 55 of the Explanatory Memorandum to Recommendation CM/Rec(2007)14.

[18] Restrictions on the ability of persons who are mentally ill or incapacitated could undoubtedly be justified on a similar basis but a failure when applying them to take due account of the capacities of those affected would breach the principle of proportionality.

[19] Paragraph 22 of Recommendation CM/Rec(2007)14 lists non-nationals as potential members of an NGO.

[20] Paragraph 1.

28. There is also likely to be a reluctance to accept restrictions as being justified under Article 16 where they relate to persons from a country with which the one imposing them has close political and institutional links[21].

29. Moreover restrictions on non-citizens joining NGOs with no political objectives - such as those concerned with sport and culture - could hardly be defended by invoking Article 16[22].

30. A person's imprisonment is likely to be a constraint on his or her ability to take a full part in the activities of an NGO but this should not generally be an obstacle to his or her becoming a member of one. Certainly it would be very difficult to demonstrate that a restriction on freedom of association which went beyond the inevitable impracticality of attending meetings was something really needed for the purposes of confinement and that is the test by which the impact of a deprivation of liberty on other human rights must be judged[23].

31. Nevertheless it is possible that some limits could be imposed on a person's exercise of freedom of association as a penalty for certain conduct, provided that a legitimate aim for them could be demonstrated and that they were sufficiently carefully drawn to avoid being challenged for a lack of proportionality.

32. Thus one of the penalties imposed on a Belgian newspaper editor who had collaborated with the German occupying authorities during the Second World War was a prohibition for life on involvement in the administration, management or direction of a

[21] See *Piermont v France*, nos 15773/89 and 15774/89, 27 April 1995 where Article 16 was not accepted as justifying restrictions on the exercise of freedom of expression by someone from another European Union member State and who was also a Member of the European Parliament. It is at least arguable that a similar approach would be appropriate where the country imposing the restriction and the country of those affected are both members of the Council of Europe. See also Paragraph 56 of the Explanatory Memorandum to Recommendation CM/Rec(2007)14.

[22] See *Moscow Branch of the Salvation Army v Russia*, no 72881/01, 5 October 2006, in which, following refusal of re-registration of the applicant because of its "foreign origin", the European Court found there to be no reasonable and objective justification for a difference in treatment of Russian and foreign nationals as regards their ability to exercise their right to freedom of religion through participation in the life of organised religious communities and that this ground for legal refusal had no legal foundation. In the case of refugees and stateless persons there is an obligation with respect to freedom of association that is probably narrower than that under the general guarantees in that it requires that those who are lawfully in the country concerned be given the most favourable treatment accorded to a foreign national in the same circumstances but only as regards 'non-political and non-profit-making associations and trade unions'; Convention relating to the Status of Refugees, Article 15 and Convention relating to the Status of Stateless Persons, Article 15. However, the minimum standards in these two instruments would not prevent refugees and stateless persons, as much as any foreign nationals, from enjoying the less-restricted freedom conferred by the general guarantees. The right accorded by Articles 26 and 40 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families is limited to trade unions and certain forms of associations (ones that protect their economic, social, cultural and other interests and, in the case of those who are documented or in a regular situation, ones that 'promote' these interests) but this last right does not prevail over the potentially wider right in more general instruments (Article 81). There is no comparable restriction to Article 16 in the other general guarantees of freedom of association but Article 1(2) of the International Convention on the Elimination of All Forms of Racial Discrimination does exclude differential treatment between citizens and non-citizens from its definition of discrimination. It is thus unlikely that some restriction on the political aspect of associational activity in respect of non-citizens might not be considered compatible with the freedom accorded by the other, ostensibly unrestricted, general guarantees but it seems improbable that anything going beyond the approach suggested appropriate for Article 16 of the European Convention would be considered acceptable. Certainly the UN Human Rights Committee has in the past expressed its concern 'at limitations to the exercise of freedom of association for long-term permanent residents in Estonia, particularly in the political sphere'; CCPR/C/79/Add.59, 9 November 1995, para 22.

[23] See *Golder v United Kingdom*, no 4451/70, 21 February 1975 and *Hirst v United Kingdom (No 2)*[GC], no 74025/01, 6 October 2005. The observation in the dissenting opinion of Judge Gölcüklü in *Djavit An v Turkey*, no 20652/92, 20 February 2003 that 'a person in police custody or detention pending trial cannot claim to be the victim of the infringement of … his freedom of association' (para 17) in the context of obstacles to attending meetings in a part of Cyprus ought to be regarded as an over-simplification of the position of such a person.

professional or non-profit making association or the leadership of a political association. The principle of such a penalty was not specifically dealt with by the former European Commission of Human Rights ("the European Commission") in *De Becker v Belgium* but it did consider other such indefinite restrictions affecting the applicant's freedom of expression could not be justified in so far as they covered non-political matters; the scope of the restriction was simply too broad[24].

33. It is evident that the European Court will require very cogent justification for such restrictions on the exercise of freedom of association and it is unlikely that they would be seen as acceptable where their scope did not correspond to the nature of the offence giving rise to them or they lasted for an undue length of time[25].

34. Moreover restrictions on membership on account of conduct where this has not led to a conviction or some other comparable ruling by a court are unlikely ever to be acceptable. This seems evident from the European Court's ruling in *Piroğlu and Karakaya v. Turkey*[26] that a requirement to annul the membership of a member of the executive board of the Izmir Branch of the Human Rights Association on account of her alleged involvement in illegal activities was unjustified as the person concerned, although taken into custody during protest action, had been released and no criminal proceedings had been brought against her.

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[24] The issue never went before the European Court as the applicant applied to have the case struck off after the restrictions on his civil and political rights had been withdrawn and the law permitting such penalties had been modified so that they would apply only for fixed periods determined according to the seriousness of the offence. In these circumstances it was not surprising that the Commission did not object to the case being struck off. *Cf* the upholding by the European Commission in Appl No 6573/74 *X v The Netherlands*, 1 DR 87 (1974) of a ban, albeit permanent, which affected only participation in public life (including the right to vote) for those who had been convicted of 'uncitizenlike' conduct during the Second World War.

[25] The ban on the founders and managers of three political parties from holding similar office in any other political body was an important consideration in the finding in both *United Communist Party of Turkey and Others v Turkey*, no 19392/92, 30 January 1998, *Socialist Party and Others v Turkey*, no 21237/93, 25 May 1998 and *Yazar, Karatas, Aksoy and the Peoples' Labour Party (HEP) v Turkey*, nos 22723/93, 22724/93, 22725/93, 9 April 2002 that their dissolution was disproportionate and thus a violation of Article 11. Equally, where a dissolution was upheld, such a ban on five of the party's leaders but none on its other 152 MPs was the basis for a finding that this measure was not disproportionate in *Refah Partisi (The Welfare Party) and Others v Turkey*, nos 41340/98, 41342/98, 41343/98, 31 July 2001 (Chamber) and 13 February 2003 (Grand Chamber). Furthermore in *Sadak and Others v. Turkey (No 2)*, nos 25144/94, 26149/95 to 26154/95, 27100/95 and 27101/95, 11 June 2002, *Kavakci v Turkey*, no 71907/01, *Sılay v Turkey*, no. 8691/02 and *Ilıcak v Turkey*, no 15394/02, 5 April 2007 the forfeiture of parliamentary seats following the dissolution of the applicant's party was found to violate Article 3 of Protocol No 1. See also the European Court's condemnation in *Labita v Italy* [GC], no 26772/95, 6 April 2000 of a comparable ban involving the disenfranchisement for two years of a suspected Mafioso because it had been imposed only after his acquittal of the offences which had initially led to his being placed under a special supervisory regime; it would have accepted a temporary suspension of voting rights where there was evidence of Mafia membership. However, see the previous footnote for the upholding of a permanent ban in very special circumstances. Apart from improper activities of a 'political' nature, the most likely justification for a restriction on this aspect of freedom of association would be some form of financial misconduct by the person concerned; this would probably support limitations on his or her becoming an office-holder in an association where this involved financial responsibility but it is doubtful if this would justify anything more extensive than that. Paragraph 57 of the Explanatory Memorandum to Recommendation CM/Rec(2007)14 reflects this approach in providing that "It is possible that a prohibition on involvement in NGOs might be a legitimate consequence of having committed certain offences but its scope and duration must always respect the principle of proportionality (see Appl. No. 6573/74, *X v. The Netherlands*, 1 DR 87 (1974)) and a ban on membership as an automatic consequence of imprisonment would never be justified". In *Zdanoka v Latvia* [GC], no 58278/00, 16 March 2006, the European Court, while accepting that it would not be contrary to Article 3 of Protocol No. 1 for the applicant's former position in the communist party, coupled with her stance during the attempts in 1991 to reverse Latvia's independence from the Soviet Union, to still warrant her exclusion from standing as a candidate to the national parliament, emphasised that "the Latvian parliament must keep the statutory restriction under constant review, with a view to bringing it to an early end" (para 135).

[26] Nos 36370/02 and 37581/02, 18 March 2008.

35. However, it is possible that some restrictions can be imposed on persons working in the public sector as regards membership of NGOs. Certainly the last phrase of Article 11 of the European Convention speaks directly to the scope of the freedom of association that can be enjoyed by such persons in that the guarantee is expressed not 'to 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'[27].

36. Whereas it will be relatively clear who falls within the first two categories[28], the reach of the third may be more problematic because of the varying approaches taken by States with regard to the organisation of the public sector. Nevertheless it is a category which the European Court has indicated should be 'interpreted narrowly'[29] and it is unlikely that the fact that someone is paid out of public funds or is formally categorised as a public servant will be decisive.

37. The Court has left open the question of whether it applies to teachers, notwithstanding the domestic designation of them as public servants[30] and in a different set of proceedings other public servants were only brought within the limitation because the purpose of the institution in which they worked resembled that of the armed forces and the police[31]. Furthermore in *Grande Oriente D'Italia di Palazzo Giustiniani v Italy*[32] the Court was not prepared to regard appointees by a regional authority to membership of various public and private bodies as coming within the scope of the limitation since their link with that authority was seen as even less close that of the teacher in the *Vogt* case with her employer. It is thus possible that the term 'administration of the State' will ultimately come to be regarded as applying only to higher-ranking officials, with restrictions being held appropriate because of the level and nature of their responsibilities[33] but nonetheless it is still likely to cover a wide range of people.

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[27] There is a limitation in similar terms in Article 8(2) of the International Covenant on Economic, Social and Cultural Rights but those in the Convention Concerning Freedom of Association and the Right to Organise, Article 9 and in the International Covenant on Civil and Political Rights, Article 22(2) apply only to the armed forces and the police.

[28] However, it remains to be determined whether these categories would embrace private security services working under contract to, or otherwise working with the authorisation of, the State.

[29] *Vogt v Germany* [GC], no 17851/91, 26 September 1995, para 67 and *Grande Oriente D'Italia di Palazzo Giustiniani v Italy*, no 35972/97, 2 August 2001, para 31.

[30] *Ibid*, para 68. However, see the UN Human Rights Committee's concern that in the Republic of Korea 'restrictions on the right to freedom of association of teachers and other public servants do not meet the requirements of article 22, para 2'; CCPR/C/79/Add.114, 1 November 1999, para 19.

[31] Appl No 11603/85, *Council of Civil Service Unions and Others v United Kingdom*, 50 DR 228 (1987) which concerned persons working at an institution which had the function of ensuring the security of military and official communications and of providing signals intelligence to the government.

[32] No 35972/97, August 2001.

[33] This functional approach was fundamental to certain restrictions being found proportionate in *Ahmed and Others v United Kingdom*, no 22954/93, 2 September 1998 (see below), although the ruling did not discuss whether local authority employees were part of the administration of the State. *Cf* the European Court's use in *Pellegrin v France* [GC], no 28541/95 8 December 1999 of a functional criterion to determine whether disputes about a public servant's employment came within the conception of 'civil rights and obligations' for the purpose of attracting the fair hearing guarantee in Article 6. In its view this provision was inapplicable only to disputes involving those 'public servants whose duties typify the specific activities of the public service in so far as the latter is acting as the depositary of public authority responsible for protecting the general interests of the State or other public authorities' (para 66) and the armed forces and the police were specifically instanced as examples of persons falling within this functional definition. The distinction was subsequently developed in *Vilho Eskelinen and Others v Finland* [GC], no 663235/00, 19 April 2007 so as to require convincing reasons for excluding any category of public servant from the protection of Article 6(1). The acceptance in Paragraph 24 of Recommendation CM/Rec(2007)14 of the possibility of NGO 'membership being found incompatible with a particular position or employment' also reflects a functional approach to this issue.

38. In imposing limitations on the freedom of association on those who do fall within the scope of this clause, it is clear that these must always have a basis in law[34], be for one of the purposes identified in the second paragraph of Article 11 and observe the principle of proportionality, even if they may be more extensive than the restrictions that would be considered acceptable in respect of anyone else[35]. Thus in *Vogt v Germany* the dismissal of a language teacher because of her membership and active involvement in the communist party was found to be a disproportionate measure to protect constitutional democracy when the party had itself not been banned and the applicant had not only asserted her belief in the constitutional order but had also never promoted the party ideology in the classroom[36].

39. On the other hand in *Ahmed and Others v United Kingdom*[37] – where the limitation clause was not actually invoked - the European Court upheld restrictions which prevented certain local authority employees from being active in an organisational and administrative capacity in political parties or from being office-holders in such parties as justified in order to maintain a longstanding tradition of political neutrality on the part of those advising and guiding elected members of the authority. In so doing the Court attached particular significance to the relatively precise functional definition of those covered by the restrictions[38] and the fact that they did not preclude either membership of a political party or involvement in all the activities of such a party[39].

40. In *Rekvényi v Hungary*[40] the European Court accepted that a complete prohibition on members of the police even belonging to a political party, as well as engaging in various forms of political activity, could be justified on account of 'the desires to ensure that 'the crucial role of the police in society is not compromised through the corrosion of the political neutrality of its officers'. In this regard it saw as particularly significant that Hungary was in transition from a totalitarian regime which had greatly relied on the direct commitment of the police to the ruling party – the aim was that 'the public should no longer regard the police as a supporter of the totalitarian regime but rather as a guardian of democratic institutions'[41] - but, as the *Ahmed* case indicated, political neutrality is of importance for all democratic societies and it is unlikely that a similar restriction could be justified merely because the recent political history of the society

[34] See *N F v Italy*, no 37119/97, 2 August 2001 and *Maestri v Italy* [GC], no 39748/98, 17 February 2004] in which prohibitions on members of the judiciary belonging to a Masonic lodge were found to be a violation of Article 11 because their terms were not sufficiently clear to allow even persons as well-informed as the applicants to realise that he could face disciplinary action as a result of joining, or remaining a member of, one. Judges Bonello, Stráznická, Jungwiert and Del Tufo dissented in *Maestri* on the issue of foreseeability but did not express any view as to the necessity in a democratic society of judges being barred from belonging to Masonic lodges. Judges Loucaides and Bîrsan dissented not only on the former issue but also, implicitly accepting that the restriction was compatible with Article 11, found that there was no violation of the Convention in this case.

[35] The acceptance that the restrictions might be more extensive than the application of the general restrictions in Article 11(2) was implicit in the consideration of whether the 'administration of the State' limitation was applicable after first finding in *Grande Oriente D'Italia di Palazzo Giustiniani v Italy*, no 35972/97, 2 August 2001 that the impugned restriction was not 'necessary in a democratic society'. Although in *Rekvényi v Hungary* [GC], no 25390/94, 20 May 1999 the European Court had previously left open the question of whether 'lawfulness' was the only condition governing restrictions where this clause was applicable, no limitation has yet been upheld where a legitimate aim did not exist and the principle of proportionality was not invoked. However, a restriction is unlikely to be regarded as 'lawful' if it is in some way arbitrary in its character or effect and it is unlikely that one which has no clear link to the performance of the responsibilities of those affected could ever be considered acceptable.

[36] [GC], no 17851/91, 26 September 1995.

[37] No 22954/93, 2 September 1998.

[38] It sought to catch those who were involved in the provision of advice to a local authority or who represented it in dealings with the media but it also made provision for certain categories of employees identified for this purpose to seek exemption where they were not actually involved in these functions.

[39] For an unsuccessful attempt to suggest that parliamentarians are in an analogous position to the public employees covered by the restriction in Article 11, see *Zdanoka v Latvia* [GC], no 58278/00, 16 March 2006.

[40] [GC], no 25390/94, 20 May 1999.

[41] *Ibid*, para 44.

concerned was not similar to that of Hungary. However, in upholding this restriction, the Court emphasised that considerable scope was still left to police officers to engage in political parties so that it could not be regarded as disproportionate in its effect on either freedom of association or expression[42]. The absence of such a possibility in another context could result in a similar membership prohibition being found excessive and thus a violation of Article 11 of the European Convention.

41. The case law concerning membership restrictions on persons working in the public sector has invariably concerned the possibility of belonging to political parties which, as has already been noted. are not NGOs for the purpose of Recommendation CM/Rec(2007)14. However, this does not mean that the principles in those cases could not be applicable to NGOs and thus justify in some instances restrictions on public officials belonging to them and thus serving on their highest governing bodies. This might be particularly true of NGOs that take on a campaigning role which makes them in this regard analogous to a political party. In addition the activities of an NGO - even though entirely lawful - could also be incompatible with the role being performed either by an individual official or a particular category of officials so that a choice would have to be made between retaining a given post and continuing. to be a member of the NGO concerned.

42. Thus in *Van der Heijden v The Netherlands*[43] no objection was taken to the termination of the contract of the regional director of a foundation which promoted the interests of immigrants and provided them with advice because he was a member of the bureau of a party which advocated a policy of repatriating immigrants. In the circumstances of the case the European Commission of Human Rights considered not only that it was reasonable for the employer to have some discretion concerning the composition of its staff but that also, in view of the applicant's professional duties and the specific nature of his work, the employer "could reasonably take account of the adverse effects which his political activities might have on the Foundation's reputation, particularly in the eyes of the immigrants whose interests it sought to preserve"[44].

43. This was again a case involving membership of a political party but - as the employee was working for a private body rather than in the public sector - the acceptance of his dismissal relied on the fact that there was a very public contradiction between the two aspects of this individual's life. It is possible that such a contradiction could also arise where politics was

[42] They could still 'sometimes subject to restrictions imposed in the interest of the service, expound election programmes, promote and nominate candidates, organise election campaign meetings, vote in and stand for elections to Parliament, local authorities and the office of mayor, participate in referenda, join trade unions, associations and other organisations, participate in peaceful assemblies, make statements to the press, participate in radio or television programmes or publish works on politics' (para 49). See also Appl No 18598/91, *Sygounis, Kotsis and Union of Police Officers v Greece*, 78 DR 71 (1994), in which no interference with the right to form and join trade unions was found to have been caused by a circular from the justice ministry to police departments asking them to appeal against any court decision establishing an association by members of the police because this had had no practical effect in dissuading police officers from joining; the association had been lawfully entered in the register of associations, its lawfulness had never been disputed and it had some 33,000 members. It was, however, also significant that an earlier circular prohibiting membership of the union and forbidding the latter from representing the interests of police officers had been suspended. In the light of all the case just discussed it seems unlikely that the upholding in Appl No 11603/85, *Council of Civil Service Unions and Others v United Kingdom*, 50 DR 228 (1987) of the complete prohibition of union membership for persons working at an institution which had the function of ensuring the security of military and official communications and of providing signals intelligence to the government would now be seen as proportionate, notwithstanding the national security dimension. This especially so since the prime concern was industrial action which could have been addressed by the less drastic measure of a prohibition on strikes. It should also be noted that the Freedom of Association Committee of the Governing Body of the ILO found this ban to be in breach of the ILO Convention (Case No 1261) and that it has since been revoked.

[43] Appl No 11002/84, 41 DR 264 (1985).

[44] *Ibid*, p 271. It was emphasised that there were no complaints against the applicant personally.

not involved, such as where an official had some responsibility for regulating the activities of the NGO to which he belonged. However, the existence of an unacceptable conflict of interest seems more likely where the official concerned is not merely a member of an NGO but is playing some form of executive role in it[45].

44. In any event any restrictions on membership of NGOs for persons working in the public sector should not be discriminatory. Thus the European Court in *Grande Oriente D`Italia di Palazzo Giustiniani v. Italy (No. 2)*[46] found objectionable an obligation to declare one's membership of a Masonic lodge when seeking nomination for public office because this requirement applied to membership of secret and Masonic associations but not to membership of any other associations. While accepting that .a prohibition on nominating Freemasons to public office, which had been introduced in order to "reassure" the public at a time when there had been controversy surrounding their role in the life of the country, could pursue the legitimate aims of protecting national security and preventing disorder, the European Court considered that membership of many other non-secret associations might create a problem for national security and the prevention of disorder where members of those associations held public office. In its view this might be the case for political parties or groups advocating racist or xenophobic ideas, or for sects or associations with a military-type internal structure or those that established a rigid and incompressible bond of solidarity between their members or pursued an ideology that ran counter to the rules of democracy, which was a fundamental element of "European public order". The violation of Article 14 taken in conjunction with Article 11 of the European Convention thus arose in the instant case because no objective and reasonable justification for the difference in treatment between secret and Masonic associations and non-secret associations had been advanced by Italy.

45. In the case of appointments to the highest governing body of a non-membership-based NGO or to the governance bodies other than the highest governing body in a membership-based one, the acceptability of restrictions are governed by their compatibility not with the right to freedom of association but with the principle of self-governance. As Paragraph 48 of Recommendation CM/Rec(2007)14 provides that "[t]he appointment, election or replacement of officers ...should be a matter for the NGOs concerned".

46. The Recommendation does accept that some persons "may be disqualified from acting as an officer of an NGO following conviction for an offence that has demonstrated that they are unfit for such responsibilities" However, as the Explanatory Memorandum notes "the scope of such restrictions would need to be clearly connected with the activities constituting the offences"[47]. This would certainly include offences involving fraud but it could also include offences that show someone is not suited to be involved in the activities undertaken by a particular NGO; a person convicted of sexual assaults on children would not, for example, be an appropriate office-holder in an NGO that works with or on behalf of children. Although the Recommendation refers only to "offences" as having a disqualifying effect, it is unlikely that this would preclude some disqualifications being imposed both for relevant regulatory offences as

[45] In *Grande Oriente D'Italia di Palazzo Giustiniani v Italy*, no 35972/97, 2 August 2001 the European Court found a violation of Article 11 of the European Convention when persons belonging to Masonic lodges were disqualified from appointment by a regional authority to various positions in public and private bodies as candidates for the posts had to declare that they did not belong to any such lodges. This was considered by the Court to be an inappropriate response to a generalised concern about the Masonic influence over public decision-making when there was nothing actually reprehensible in someone belonging to a lodge. However, in *Siveri and Chiellini v Italy* (dec.), no 13148/04, 3 June 2008 no objection was taken by the Court to a requirement for persons appointed to such positions to declare whether they belonged to a lodge where failure to make the declaration - but not membership - could lead to loss of those positions. See also the European Court's refusal in *Kiiiskinen and Kovalainen v Finland* (dec.), no 26323/95, 1 June 1999 to rule on whether the Masonic link between a judge and a party was of itself sufficient to lead to a lack of impartiality for the purposes of Article 6 of the European Convention; no such link was established in that case.

[46] No 26740/02,. 31 May 2007.

[47] Paragraph 97.

opposed to criminal ones and as a consequence of bankruptcy. However, as the Recommendation emphasises, in all instances any "disqualification should be proportionate in scope and duration".

47. Recommendation CM/Rec(2007)14 also makes it clear that not being a national of the country in which the NGO is established should not of itself be an obstacle to the person concerned being involved in its management[48]. Of course, as the Explanatory Memorandum makes clear persons "involved in their management should be subject to the generally applicable laws of the country in which they are established or operate as regards entry, stay and departure"[49]. However, there should not be any special limitation on non-nationals becoming involved in the management of NGOs.

48. It would also not be incompatible with the principle of self-governance to apply restrictions on persons who work in the public sector serving on the highest governing body of an NGO that is not membership-based or becoming a member of any executive body of an NGO that is membership-based, provided that those restrictions are consistent with the approach required - discussed above - for restrictions on being a member of membership-based NGOs.

49. Apart from circumstances where someone is legitimately precluded from taking part in the management as just outlined, there should not be attempts by public authorities to interfere with an NGO's choice of its management or representatives. Such an interference would not only be contrary to the Recommendation but would also constitute a violation of Article 11 of the European Convention where the NGO is membership-based and of Article 9 of the same instrument where it is a religious organisation.

50. Thus in *Hasan and Chaush v Bulgaria*[50] a violation of Article 9 of the European Convention - a specific application in this instance of the general freedom of association under Article 11 - was found when there was a re-designation of the leadership of a religious community, without any criteria or procedural safeguards, at the behest of a breakaway group. The effect of this was to favour that group, 'granting it the status of the only official leadership, to the complete exclusion of the hitherto recognised leadership. The acts of the authorities operated, in law and practice, to deprive the excluded leadership of any possibility of continuing to represent at least part of the Muslim community and of managing its affairs according to the will of that part of the community'[51]. This interference was found not to be prescribed by law 'in that it was arbitrary and was based on legal provisions which allowed an unfettered discretion to the executive and did not meet the required standards of clarity and foreseeability'[52].

51. In the *Hasan and Chaush* case the European Court did not have to consider whether an interference with the religious community that had a sounder legal basis could be justified but this seemed improbable in the particular circumstances of the case; as the Court observed in that case and in both *Serif v Greece*[53], and *Metropolitan Church of Bessarabia and Others v Moldova*[54], (in which a prosecution for having usurped the functions of a minister of a 'known religion' and a failure to recognise a church were respectively found not to be necessary in a democratic society), the State did not need to take measures to ensure that religious communities are brought under a unified leadership. This view was sustained in the subsequent

[48] Paragraph 49.
[49] Paragraph 99.
[50] [GC], no 30985/96, 26 October 2000.
[51] Para 82.
[52] Para 86.
[53] No 38178/97, 14 December 1999.
[54] No 45701/99, 13 December 2001.

case of *Supreme Holy Council of the Muslim Community v Bulgaria*[55] in which the enforced re-recognition of the original leadership in the *Hasan and Chaush* case was found not to be necessary in a democratic society as it had the effect of compelling the divided community to have a single leadership against the will of one of the two rival leaderships[56].

52. Although the case law of the European Court has so far only been concerned with the leadership of religious organisations, it is equally improbable that a State would be regarded as justified in interfering in the manner discussed with the selection of the management of NGOs, notwithstanding that it might be more convenient for the authorities if they did not have to deal with a multitude of bodies or if certain persons had leadership positions in them.

53. The principle of self-governance would not, however, preclude the adoption of a requirement that those responsible for decision-making in an NGO should be clearly identified since there may be instances when such decision-making gives rise to legal liabilities and both private bodies and the State will need to know against whom proceedings should be brought[57]. However, there is no need for the fulfilment of this requirement to entail oppressive regulation. Thus, while it could be achieved through notifying the authority responsible for recognition or registration, there are also other possible ways in which the underlying objective could be met; for example, a record at the NGO's bank of those authorised to take decisions on its behalf would probably be just as effective.

Selection of employees

54. There are no specific international standards relating to the selection by an NGO of its employees. However, as already seen with officers, Recommendation CM/Rec(2007)14 also makes it clear that not being a national of the country in which the NGO is established should not of itself be an obstacle to the person concerned becoming an employee of an NGO, which should only be required to observe the generally applicable employment laws[58].

Frequency of meetings

55. There are no specific international standards governing the frequency that can be required under national law for the holding of meetings of the highest governing body or any other executive body of an NGO, although Recommendation CM/Rec(2007)14 does provide that this is something that can be required to be specified in the Statute[59]. In principle, self-governance would dictate that the selection of the period is something that ought to be left for those establishing and running NGOs as they are likely to be best placed to determine what is most suitable for the particular circumstances of the organisations concerned. However, both

[55] No 39023/97, 16 December 2004.

[56] "As a result, one of the groups of leaders was favoured and the other excluded and deprived of the possibility of continuing to manage autonomously the affairs and assets of that part of the community which supported it" (para 95). A further intervention in the leadership dispute in the Bulgarian Orthodox Church was found in *Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria*, 412/03 and 35677/04, 22 January 2009, despite a response to a legitimate concern for the State authorities, to have been disproportionate, particularly as the legislation concerned did not meet the Convention standard of quality of the law and "their implementation through sweeping measures forcing the community to unite under the leadership favoured by the Government went beyond any legitimate aim and interfered with the organisational autonomy of the Church and the applicants' rights under Article 9 of the Convention in a manner which cannot be accepted as lawful and necessary in a democratic society, despite the wide margin of appreciation left to the national authorities" (para 159).

[57] Pursuant to Paragraph 75 of Recommendation CM/Rec(2007)14 the officers, directors and staff of an NGO with legal personality should not be personally liable for its debts, liabilities and obligations but they can be made liable to the NGO, third parties or all of them for professional misconduct or neglect of duties.

[58] Paragraph 49.

[59] Paragraph 19.

the recognition that some reporting and auditing requirements can be imposed on NGOs[60] and the fact that the Recommendation accepts that it would be legitimate to terminate the legal personality of an NGO for prolonged inactivity[61] implicitly give some guidance as to the acceptable minimum periodicity for such meetings that could be prescribed by law.

56. Thus, although the "prolonged inactivity" standard is envisaged in the Explanatory Memorandum as entailing at least "several years" elapsing between meetings of the highest governing body[62], that document also refers to there also having "been at least two failures to file annual reports on their accounts"[63] which would point to the need for at least a meeting of the highest governing body each year so that these can be adopted. This view is reinforced by the acceptance of a requirement for an annual report by an NGO receiving public support[64].

57. In the light of these two requirements, it would at least seem admissible to impose an annual meeting requirement for the highest governing bodies of NGOs that are in receipt of any form of public support but in the case of such bodies for other NGOs the failure to meet with this frequency could result in them being viewed as inactive and thus liable to have their legal personality terminated. Moreover the acceptance of public support - which is not obligatory - could also be the basis for imposing even more exacting requirements regarding the frequency with which the highest governing bodies of NGOs meet. Nevertheless such a requirement ought not to be excessive or purposeless since that would render the self-governance principle entirely meaningless.

58. There is no basis in international standards for concluding that it would, in general, be legitimate to impose a minimum frequency for meetings of NGO management bodies other than their highest governing bodies. Nonetheless a need to observe certain conditions in this regard where public support is received could not be regarded as objectionable so long as those conditions were also not excessive or purposeless.

Internal structure

59. In a membership-based NGO the members should ultimately determine who carries out its management but, while in some cases they might decide this directly, they should also be free - as Paragraph 46 of Recommendation CM/Rec(2007)14 recognises - to delegate the task to an intermediary body.

60. Indeed this may be especially desirable where the membership is particularly large, but whether they choose to do so is entirely a matter for them. This is confirmed by Paragraph 47 which provides that "NGOs should ensure that their management and decision-making bodies are in accordance with their statutes but they are otherwise free to determine the arrangements for pursuing their objectives".

61. This general freedom regarding the internal structure of NGOs is made equally applicable to ones that are not membership-based by the same Paragraph of the Recommendation.

62. Thus there should not normally be attempts - whether at the registration stage or subsequently - to prescribe in detail how an NGO should organise its affairs - whether it ought to have this or that management structure. However, the imposition of some such requirements could be an acceptable condition for obtaining certain benefits, such as exemption from

[60] See further below.
[61] Paragraph 44.
[62] Paragraph 89.
[63] *Ibid*. The imposition of an auditing requirement is permitted by Paragraph 65 in respect of NGOs in receipt of any form of public support.
[64] Paragraph 62.

taxation. Nevertheless they would have to be voluntarily accepted by the NGOs concerned and they should also have the freedom to surrender the benefits and to cease being bound by the requirements imposed.

63. Furthermore, as Paragraph 47 makes clear, "NGOs should not need any authorisation from a public authority in order to change their internal structure or rules".

64. Moreover NGOs should not require any authorisation to establish branches[65].

Decision-making

65. International standards do not prescribe any specific requirements as to how decisions are to be taken by NGOs or their management bodies. In particular there are no requirements as to whether certain decisions - including ones to amend the Statute or to dissolve the organisation - need to be taken by a special majority.

66. However, the need for a special majority would not, in principle, be objectionable if adopted by those establishing the NGO. Furthermore, in the case of a membership-based organisation the prohibition by law of any irrevocable delegation of decision-making power by the highest governing to some other management body would not be impermissible as that safeguards rather than undermines the right to freedom of association of those belonging to the NGO concerned[66]. They cannot, however, be precluded from making such a delegation in the first place.

67. In addition, Paragraph 19 Recommendation CM/Rec(2007)14 provides that the procedure by which meetings of the highest governing body of an NGO is something that can be required to be stipulated in its Statute. Any such requirement should be such as to ensure that members of the highest governing body are able to take part in the meeting being convened - probably entailing notice of at least a week in most instances - but it should not be so onerous that the holding of extraordinary meetings becomes impracticable and thus effectively negates the authority of the highest governing body of the NGOs concerned.

68. Although the decision-making process of an NGO must always comply with the requirements of its Statute, the limited requirements as to what these must contain and the principle of self-governance - as the Explanatory Memorandum of the Recommendation notes - generally rule out "other constraints on how they decide to pursue their objectives and manage the organisation"[67].

69. Thus the European Court observed in both *Freedom and Democracy Party (ÖZDEP) v Turkey*[68] and *Refah Partisi (The Welfare Party) and Others v Turkey*[69], that the decisions of party leaders should be 'made freely … if they are to be recognised under Article 11". In these cases the Court found that decisions in favour of voluntary dissolution and disciplinary actions against members respectively were taken only to avoid enforced dissolution (which was harsher in its effects than a voluntary one) and thus could not be used to prevent the party in the first case from claiming to be a victim of the enforced dissolution or to negate the support of the second party for the remarks made by the members concerned. This reasoning - which is reflected in the provision in Paragraph 6 of the Recommendation that NGOs should not be

[65] Paragraph 42 of the Recommendation. This is subject to the need for the approval of the host country where a branch is being established abroad; Paragraph 45.
[66] See Paragraph 91 of the Explanatory Memorandum to Recommendation CM/Rec(2007)14.
[67] Paragraph 93.
[68] No 23885/94, 8 December 1999 (para 26).
[69] Nos 41340/98, 41342/98, 41343/98 and 41344/98, 31 July 2001 (para 78), endorsed by the Grand Chamber in the judgment of 13 February 2003, at para 115.

subject to direction by public authorities - would be equally applicable to interferences with the decision-making of NGOs generally[70].

70. There is also a need to protect those managing NGOs against the more aggressive forms of interference with their freedom to decide, namely, harassment, intimidation and the use of violence. This is undoubtedly a positive obligation benefiting NGOs generally which arises from the right to freedom of association under Article 11 of the European Convention[71] but it is also required by specific standards relating to those NGOs that are human rights defenders[72].

71. It should also be noted that interference in the internal affairs of NGOs could also have implications for observing the respect due to property rights under Article 1 of Protocol 1; this issue has not, however, been so far pursued in the case law of the European Court.

72. However, there are a number of implicit limitations on the substantive decision-making capacity of NGOs.

73. Firstly, the primacy of the Statute - as well as the law governing the formation of NGOs - necessarily means that decisions to act for purposes outside either their objectives or powers would be unlawful.

74. Secondly, as the Explanatory Memorandum of Recommendation CM/Rec(2007)14 stipulates, "the freedom that NGOs ought to have with respect to decision making should not, however, lead their management to ignore the wide range of persons with a legitimate interest in the way in which the organisations concerned conduct themselves. The taking into account of these interests will require the use of a number of different techniques – notably consultation and reporting – and their precise form and scope will vary according to the character of the interest in question"[73].

75. Thirdly the fact that assets of some NGOs have come from public bodies and that their acquisition has been assisted by a favourable fiscal framework are reasons to ensure that these assets are carefully managed and that the best value is obtained when buying and selling them. Thus the Recommendation provides that NGOs with legal personality can be required "to act on independent advice when selling or acquiring any land, premises or other major assets where they receive any form of public support"[74].

76. Fourthly Paragraph 54 of the Recommendation makes it clear that "NGOs with legal personality should not utilise property acquired on a tax-exempt basis for a non-tax-exempt purpose"[75].

77. Fifthly, while Paragraph 56 of the Recommendation generally requires that national law permit an NGO to designate another NGO to receive its assets in the event of its termination, this freedom is subject to the prohibition on distributing any profits that it may have

[70] See also the call by the UN Human Rights Committee that in the Libyan Arab Jamahiriya 'Urgent steps should be taken by the State party to allow the free operation of independent non-governmental human rights organisations'; CCPR/C/79?Add.101, 6 November 1998, para 21.

[71] *Cf* the similar obligation recognised as arising under the right to freedom of expression in *Özgür Gündem v Turkey*, no 23144/93, 16 March 2000 with respect to a newspaper and those working for it.

[72] See the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities (Adopted by the Committee of Ministers on 6 February 2008 at the 1017th meeting of the Ministers' Deputies) and Article 12 of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders) (GA Res 53/144, 9 December 1998).

[73] Paragraph 95.

[74] Paragraph 53.

[75] As Paragraph 105 of the Explanatory Memorandum notes, "In the event of an NGO not being in a position to use the property for such purposes, it could thus be required to return the property concerned to the donor, to transfer it to another NGO that can use it for those purposes or to retain it on payment of the applicable taxes".

made to its members[76]. In addition it may also be constrained by an obligation to transfer assets obtained with the assistance of tax exemptions or other public benefits to other NGOs pursuing objectives for which such exemptions or benefits are granted. Moreover this freedom can be entirely precluded where the NGO's objectives or activities have been found to be inadmissible for reasons set out in Paragraph 11 of the Recommendation. In such a case the assets can instead be applied by the State for public purposes.

78. Sixthly, although Paragraph 48 of the Recommendation stipulates that NGOs should be free to decide on the admission and exclusion of members, Paragraphs 22 and 23 of the Recommendation subject this freedom to a prohibition on unjustified discrimination and a right for members to be protected against arbitrary exclusion. The latter restriction on decision-making is indeed required by the right to freedom of association for membership-based NGOs[77] whereas the former has so far not been directly addressed by the European Court. However, while compulsion to admit members would effectively amount to requiring someone to belong to an association against his or her will since it would be denying those who already belong to an association the freedom to choose with whom they wish to associate[78], the imposition of constraints on that freedom of choice where done in order to fulfil obligations to prevent discrimination on any inadmissible ground and thereby protect the rights of others is likely to be regarded as permitted by the second paragraph of Article 11[79].

79. Finally, the need to protect the interests of members and donors (both public and private) would undoubtedly justify the adoption of a requirement that NGOs keep a proper record of the proceedings of all the meetings of their decision-making bodies.

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[76] In Paragraph 9 of the Recommendation. The freedom only arises after all "liabilities of the NGO have been cleared and any rights of donors to repayment have been honoured".

[77] In Appl No 10550/83, *Cheall v United Kingdom*, 42 DR 178 (1985) the European Commission expressed the view that 'unions must remain free to decide, in accordance with union rules, questions concerning admission to and expulsion from the union' (p 186) but did see a role for the State in protecting a union against exclusion which was not in accordance with those rules.

[78] For examples of the European Court's case law on such compulsion, see, *Sigurdur A Sigurjónsson v Sweden*, no 16130/90, 30 June 1993, *Chassagnou and Others v France* [GC], nos 25088/94, 28331/95 and 28443/95, 29 April 1999 and *Sørensen and Rasmussen v Denmark* [GC], nos 52562/99 and 52620/99, 11 January 2006.

[79] See *Jersild v Denmark* [GC], no 15890/89, 23 September 1994 in which the Court accepted that the duty under Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination to prohibit the dissemination of racist ideas could be taken into account in assessing the acceptability under Article 10 of the European Convention of a restriction on freedom of expression. The issue of the right to join was raised but not resolved in *Rutkowski v Poland* (dec.), no 30867/96, 16 April 2002, which concerned the refusal to accept the applicant as a member of certain local branches of the Polish Hunting Association - because there were already too many members, he was from outside the relevant area, the tone of his application was not liked - in circumstances where such membership was required in order to practice hunting. The merits of the application were not examined because he had in the meantime become a member of a branch and, even assuming that his claims fell within the ambit of Article 11, the fact that he was thus able to practice hunting within the legal framework provided by domestic law meant that he could no longer be considered to be a victim. In finding that no civil rights or obligations were being determined, the European Court emphasised that the association was 'a private entity dealing with a private pastime or hobby, rather than, for example, a professional body exercising certain statutory obligations delegated by the State, to which members of that profession are obliged by law to belong in order to earn their livelihood' (para 2). This was used to justify the conclusion that the fair hearing guarantee in Article 6 was inapplicable – in contrast to the decisions concerning professional regulatory bodies (see, e.g., *Le Compte, Van Leuven and De Meyere v Belgium*, nos 6878/75 and 7238/75, 23 June 1981) - but it also serves to cast doubt on the admissibility in general of the State interfering with the membership decisions of such bodies, even if the regulatory framework for hunting might lead one to doubt that there was no public dimension to such decisions in the present case.

Pay and expenses

80. Most NGOs are unlikely to be able to pursue their objectives without employing some staff and/or having volunteers carrying out some activities on their behalf. It is not surprising, therefore, that it is recognised in Paragraph 55 of Recommendation CM/Rec(2007)14 that it is a legitimate use of NGOs' property to pay their employees and to reimburse the expenses of those who act on their behalf. As the Explanatory Memorandum notes market conditions and/or legislation will influence the level of payments made to staff, the need to ensure that property is properly used for the pursuit of an NGO's objectives would justify the imposition of a criterion of reasonableness for the reimbursement of expenses[80]. Furthermore in the case of NGOs with charitable or comparable status the legislation governing pay could well be driven by consideration of the need to ensure that their funds are predominantly devoted to the activities justifying the grant of this status. This need could affect both the level of individual payments and their total.

Challenging decisions

81. As has already been noted, admission to and expulsion from a membership-based NGO is generally a matter for the organisation itself. However, the rules governing membership in its Statute - which would need to conform either explicitly or implicitly with the prohibition in Paragraphs 22 and 23 of Recommendation CM/Rec(2007)14 on unjustified discrimination and a right for members to be protected against arbitrary exclusion - must always be observed. Thus national law should ensure that someone who has been refused admission, is facing expulsion or has been expelled has available an effective means - ultimately involving a court - of insisting on such observance[81].

82. The need for such a remedy is also an aspect of the right to freedom of association[82]. Moreover members of an NGO should be able to insist on the decision-making process being properly observed and should also be protected from any abuse of the dominant position of a particular group of members, such as by the adoption of rules that could be construed as wholly unreasonable or arbitrary[83]. This should generally be satisfactorily achieved by some legal basis for the member concerned to challenge the matter in the courts; there would rarely be any need for a State entity actually to intervene on his or her behalf[84].

83. There is, however, a legitimate interest in a State undertaking some regulation of NGOs to ensure respect for the rights of third parties (whether donors, employees, members or the public) and to ensure the proper use of public resources and respect for the law. Although the Explanatory Memorandum emphasises that self-regulation is the best means of ensuring proper behaviour on the part of NGOs[85], this interest on the part of the State would justify the existence of a power to take proceedings to challenge the lawfulness of their action and decisions. However, such a power should not be misused and its exercise should itself be subject to challenge by the NGO concerned in an independent and impartial court with full jurisdiction[86].

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[80] Paragraph 106.

[81] This made explicit in Paragraph 59 of the Explanatory Memorandum as regards expulsion.

[82] See Applic No 10550/83, *Cheall v. United Kingdom*, 42 DR 178 (1985).

[83] As was alleged in the *Cheall* case. This concerned the expulsion of the applicant from a union pursuant to an arrangement between unions that there should first be an inquiry about a person's status in his or her former union before being granted membership. However, such an arrangement was intended to prevent inter-union disputes and was not considered unreasonable. It was also significant that the effect of the expulsion did not lead to the applicant losing his job as union membership was not obligatory. See also Appl No 13537/88, *Johansson v Sweden*, 65 DR 202 (1990) where the inability to opt out of the collective home insurance arranged for the members of a trade union was not considered unreasonable.

[84] This is emphasised in Paragraph 120 of the Explanatory Memorandum.

[85] Paragraph 119.

[86] Paragraph 10.

84. Where decisions of NGOs are reasonably considered to affect the rights of others - whether donors, employees or anyone else - the latter should also be able to protect their interests through proceedings in a court to challenge the lawfulness of those decisions and to have them overturned or otherwise remedied in the event of the challenge being upheld.

Attendance at meetings

85. Although the need to ensure accountability will be a relevant consideration where an NGO is working with public authorities and/or enjoys some public support, this should certainly not permit unimpeded access to the way in which particular choices are being made by the NGO. Rather the principle of self-governance, as well as the right to freedom of association, would entitle an NGO to determine who attends meetings where decisions are to be taken as to its future activities and priorities and in particular to exclude representatives of public authorities - whose presence could be an indirect form of pressure - from them.

86. However, this freedom to determine attendance at such meetings would not enable an NGO either to impede genuine law enforcement action or to disregard observance of the requirement to keep a proper record of the proceedings. Moreover representatives of public authorities should still be able to attend meetings and other activities of NGOs that are intended to be open to the public.

Taking over management

87. Paragraph 70 of Recommendation CM/Rec(2007)14 is categorical that there should be no external intervention in the running of NGOs "unless a serious breach of the legal requirements applicable to NGOs has been established or is reasonably believed to be imminent". Any other approach would be inconsistent with the principle of self-governance and with, in the case of membership-based NGOs, the right to freedom of association.

88. Thus, as the Explanatory Memorandum indicates, such an intervention "should be extremely rare" and "be based on the need to bring an end to a serious breach of legal requirements where either the NGO has failed to take advantage of an opportunity to bring itself into line with those requirements or an imminent breach of them should be prevented because of the serious consequences that would follow"[87].

Auditing of accounts

89. International standards do not generally provide for a requirement that the accounts of an NGO be audited by someone independent of its management so as to afford a guarantee of objectivity. However it is recognised in the Explanatory Memorandum to Recommendation CM/Rec(2007)14 that there "may also be a general legal obligation for all entities with legal personality (including NGOs) of meeting certain objective criteria, such as net value of assets or average number of employees, to have their accounts audited, which would be applicable even where NGOs do not receive any public support"[88].

90. Furthermore Paragraph 65 of the Recommendation accepts that those "NGOs which have been granted any form of public support can be required to have their accounts audited by an institution or person independent of their management". Nonetheless it is noted in the Explanatory Memorandum that the scope of any such requirement should take account of the size of the NGO concerned[89]. Thus in the case of smaller ones it is suggested that the

[87] Paragraph 125.
[88] Paragraph 117.
[89] *Ibid*.

requirement of independence might be satisfied where the audit is carried out by a member who has no connection with the management. On the other hand the Explanatory Memorandum suggests that the use of the services of a professional auditor is likely to be considered more appropriate for those NGOs with substantial income and expenditure.

Reporting obligations

91. There are no international standards establishing a general requirement for NGOs to report to public authorities or indeed to anyone else as regards their accounts or their activities. However, in the case of membership-based NGOs the imposition by law of an obligation for some form of reporting obligation to the membership - linked to the holding of a meeting of the highest governing body - would not be objectionable since this would support rather than interfere with the primacy of that body and thus protect the equal say which all members should enjoy regarding the running of the organisations concerned.

92. Any obligation for an NGO to report on its accounts and activities to a donor that is a private body, a foreign government or an international organisation will invariably arise from the agreement reached between the two parties concerned and thus underpinned by ordinary contract law. There should not, therefore, be any need for the State itself to specify such an obligation - whether as to content or timing - and thereby interfere in the arrangement reached by those parties.

93. However, the State does have some legitimate interests which would justify the imposition on NGOs of some obligations to report to it as regards their income and activities and this is recognised in Recommendation CM/Rec(2007)14.

94. In the first place, as Paragraph 50 makes clear, the fundraising undertaken by NGOs will be subject to the "laws generally applicable to customs, foreign exchange and money laundering and those on the funding of elections and political parties". These will inevitably entail some reporting on income received and the use to which it has been put. The important point, however, is that this is a general obligation and the Explanatory Memorandum emphasises that the donations to NGOs should not give rise to any special reporting obligation[90].

95. Secondly, Paragraph 62 provides that NGOs "which have been granted any form of public support can be required each year to submit reports on their accounts and an overview of their activities to a designated supervising body". However, while accountability for the use of public funds can rightly be insisted upon, reporting obligations can be applied in a way that seriously impedes NGOs from actually doing anything and the Explanatory Memorandum thus stipulates that " such a reporting obligation should not be unduly burdensome and should not require the submission of excessive detail about either the activities or the accounts"[91]. Nonetheless it also makes it clear that this requirement would be " without prejudice to any particular reporting requirement in respect of a grant or donation" - i.e., those discussed in the preceding paragraph - and is also " distinct from any generally applicable requirement regarding the keeping and inspection of financial records and the filing of accounts".

96. Thirdly, Paragraph 63 provides that NGOs "which have been granted any form of public support can be required to make known the proportion of their funds used for fundraising and administration". The purpose of such a requirement is, as the Explanatory Memorandum points out, "to allay any concern that NGOs might not be devoting as much of their resources as

[90] Paragraph 101.
[91] Paragraph 114.

is practicable to the pursuit of their objectives ... This provision is not meant to set a particular limit for expenditure on fundraising and administrative overheads but to ensure transparency"[92].

97. However, Recommendation CM/Rec(2007)14 recognises that reporting obligations have the potential to encroach upon the rights of donors, beneficiaries and staff[93], as well as the right to legitimate business confidentiality and thus it provides that any such obligation should be subject to a duty to respect these rights[94]. Furthermore, while the Explanatory Memorandum emphasises that the need to respect these rights is not absolute and "should not be an obstacle to the investigation of criminal offences (e.g., in connection with money-laundering)", it also stipulates that "any interference with respect for private life and confidentiality should observe the principles of necessity and proportionality"[95].

98. Finally, although recognising that there is no reason to differentiate between foreign and other NGOs as regards the applicability of reporting requirements, Paragraph 66 of the Recommendation provides that the former should only be subject to them "in respect of their activities in the host country".

Inspection

99. Recommendation CM/Rec(2007)14 recognises the need for some regulatory controls over the operation of NGOs so as to guarantee respect for the rights of third parties (whether donors, employees, members or the public) and to ensure the proper use of public resources and respect for the law. As part of these controls, inspection of their books, records and activities is specified in Paragraph 68 as something to which they can be required to submit. However, the use of such a power ought to take place in accordance with the overarching consideration for regulation of NGOs, namely, that their "activities should be presumed to be lawful in the absence of contrary evidence"[96].

100. Paragraph 68 thus requires that inspection only take place "where there has been a failure to comply with reporting requirements or where there are reasonable grounds to suspect that serious breaches of the law have occurred or are imminent" As the Explanatory Memorandum emphasises, such an intervention in the internal operation of an NGO should not be based on "mere suspicion" and in most instances "is only likely to be justified where an NGO has failed to comply with reporting requirements, whether because no report has been made or because what has been produced gives rise to genuine concerns", although it is acknowledged that "it is possible that circumstances will warrant an inquiry even before a report is due"[97].

101. Furthermore, although regular powers of inspection may sometimes need to be supplemented by more exacting ones of search and seizure, the Recommendation stipulates that the exercise of the latter should not occur "without objective grounds for taking such measures and appropriate judicial authorisation"[98]. The object of this qualification is, as the Explanatory Memorandum makes clear, to ensure that the "the guarantees applicable to the search of persons and premises under Article 8 of the European Convention" are observed[99]. Although this means that judicial authorisation should normally be obtained prior to any search taking place, it is recognised that, consistent with the interpretation of that guarantee, the need for such authorisation "can be dispensed with where the power is subject to both very strict

[92] Paragraph 115.
[93] Notably the right to life and security and the right to respect for private life, which could be prejudiced by disclosure; Paragraph 116 of the Explanatory Memorandum.
[94] Paragraph 64.
[95] Paragraph 116.
[96] Paragraph 67.
[97] Paragraph 122.
[98] Paragraph 69.
[99] Paragraph 123.

limits and subsequent judicial control, providing a sufficient guarantee against arbitrary interference with the right to respect for private life"[100].

102. It should also be noted that monitoring of an NGO's activities through surveillance techniques such as the interception of communications must also be capable of justification in accordance with the requirements of Article 8 of the European Convention. In the absence of such justification there would be legitimate grounds for complaint about non-observance of this or other comparable provisions[101].

B Review of national practice

103. In the preparation of its second thematic study a questionnaire on the issue of internal governance was sent to NGOs in all member states of the Council of Europe and Belarus. This questionnaire was directed to a broad range of issues relating to the internal governance of NGOs which have a formal legal status[102]. Although the response was not

[100] Paragraph 124, citing *Camenzind v Switzerland*, no 21353/93, 16 December 1997.

[101] See, e.g., Appl No 23413/94, *L C B v United Kingdom*, 83 DR 31 (1995) , in which it was found that the applicant had not adduced sufficient evidence to demonstrate a reasonable likelihood of the interception of the communications of persons belonging to an association that was campaigning for compensation for servicemen exposed to experimental nuclear explosions. The applicant had alleged that the interception was an interference with his freedom of association and expression but the complaint was dealt with by the European Commission under the right to respect for correspondence under Article 8 as the *lex specialis*. The alleged surveillance of a Jehovah's Witness was raised in *Tsavachidis v Greece*, no 28802/05; the former European Commission of Human Rights found a violation of Article 8 but not of freedom of religion, with no separate issue arising in respect of Article 11. The case was subsequently resolved by a friendly settlement; 21 January 1999.

[102] The questions asked were as follows:

1. What requirements relating to the internal governance of an NGO must be contained in its articles of association, constitution or statute, in order for it to be able to acquire legal personality or to be registered?
2. Are any categories of persons prohibited by law from serving on (a) The highest governing body of an NGO, or (b) A management body of an NGO? If so, please specify the categories and the bodies concerned and whether such prohibition is applicable only to particular categories of NGOs. Is any category of person prohibited by law from being employed by an NGO? If so, please specify the categories, the capacities concerned and whether the prohibition is applicable only to particular categories of NGOs.
3. Is any category of person prohibited by law from being employed by an NGO? If so, please specify the categories, the capacities concerned and whether the prohibition is applicable only to particular categories of NGOs.
4. Is any frequency required by law or practice as to the holding of meetings of the highest governing body of an NGO, or particular categories of them? If so, please give details. Are there such requirements for other governing bodies of an NGO?
5. Does the law prescribe any special majority to be achieved in order for the highest governing body of an NGO, or particular categories of them, to (a) amend their articles of association, constitution or statutes or (b) take any other types of decision? If so, please specify the majority required for either, or both, of these purposes. Are there such requirements for other governing bodies of an NGO?
6. Does the law impose any limits on the power of delegation of decision-making by highest governing body of an NGO, or particular categories of them? If so, please give details?
7. Is there any requirement for an NGO, or particular categories of NGOs, to obtain authorisation from a public authority before any change to its internal structure or rules can be implemented? If so, please give details?
8. Is it possible for an NGO to establish and/or close branches without the prior authorisation of a public authority where these branches do not have a distinct legal personality from that of the NGO concerned? If so, please give details.
9. Does the law impose any limits on the payment by NGOs or particular categories of them, of fees or expenses to (a) Employees, or (b) Members of any of their management bodies? If so, please give details. Where such payments are possible, are there any special tax regimes applicable?
10. To what extent is it possible for the decision of the highest governing body or any other organ of an NGO to be challenged in a court (and, where successful, annulled or suspended) by (a) a member of the NGO, (b) a public authority, or (c) a member of the public? If so, please give details as to who can challenge such a decision and the requirements for so doing.

comprehensive, there were replies in respect of 34 of the 48 countries concerned. In many instances there were two or more respondents in respect of each country[103]. However, not all questions were answered by all respondents.

104. In the case of countries for which there were several respondents, the responses generally corroborated each other or provided complementary information. However, in a few instances the responses were contradictory and this is noted throughout the review, with the predominant response being accorded the lead position in it.

105. It does not seem as if all the responses are entirely accurate. Certainly more requirements concerning the contents of articles of association, constitution or statute of an NGO are likely to exist than were acknowledged by respondents and it is also questionable whether the general absence of concern about official interference in the internal governance of NGOs is as warranted as the responses suggest.

106. The review only provides an overview of the position in the countries in respect of which the questionnaire was answered and certainly does not provide a deep enough appreciation of how formal rules work in practice. It is organised into sub-sections that follow the individual questions asked of respondents and the text of each question is set out in a footnote at the beginning of the relevant sub-section.

107. Nevertheless, despite their limitations, a number of broad conclusions emerged from the responses received and these can be seen in the review of them set out in the following sub-sections. Some of these conclusions are echoed in the more in-depth analyses of the situation in certain countries that were subsequently undertaken.

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11. Are there any circumstances in which public officials can insist on attending a meeting of (a) an NGO's highest governing body, or (b) any of its management bodies? If so, please specify the circumstances and the conditions applicable to such attendance, including whether it is only possible in the case of particular categories of NGOs.
12. Are there any circumstances in which a public authority can take over the management of an NGO? If so, please specify the circumstances and the conditions applicable to such a take-over, including whether it is only possible in the case of particular categories of NGOs.
13. Is an NGO, or particular categories of NGOs, required by law to have their accounts audited on a periodic basis? If so, please specify the period concerned and any requirements as to who may or must audit the accounts.
14. Are NGOs, or particular categories of NGO, required to report to any public authority on (a) the receipt of any donation/grant/sponsorship from a private or foreign entity, and/or (b) the expenditure of such a donation/grant/sponsorship? If so, please specify the nature of the reporting requirement.
15. Are NGOs, or particular categories of NGOs, required by law to produce a report on their activities on a periodic basis? If so, please specify what must be contained in such a report, the period applicable to it and the persons or bodies to whom it must be submitted. Is any such requirement conditional to the receipt of any public funding?
16. Are there any circumstances in which the law authorises or requires an external body to inspect the books, records and activities of an NGO, or particular categories of NGOs, and/or those of their management bodies and staff? If so, please specify the circumstances and the conditions applicable to such an inspection.
17. Are there any matters relating to the involvement of public authorities in the internal governance of an NGO, or particular categories of NGOs, which give rise to concern and which have not been addressed in the foregoing questions? If so, please specify them.

[103] The countries with the number of respondents in brackets were: Albania (1), Armenia (3), Austria (1), Azerbaijan (2), Belarus (2), Belgium (5), Bulgaria (1), Croatia (1), Cyprus (2), Czech Republic (2), Estonia (2), Finland (2), France (8), Germany (4), Greece (1), Hungary (2), Ireland (2), Italy (1), Luxembourg (3), Moldova (1), Netherlands (4), Norway (1), Poland (1), Portugal (1); Russia (1); Serbia (1), Slovakia (1), Spain (2), Sweden (1), Switzerland (7), "the former Yugoslav Republic of Macedonia" (1), Turkey (1), Ukraine (1) and United Kingdom (3).

Requirements relating to the statute[104]

108. The requirements relating to the internal governance of an NGO which must be included in the articles of association, constitution or statute of an NGO were reported by respondents from most countries as comprising at least some of the following:

- Procedures for becoming and resigning as a member[105];
- Members' rights and obligations[106];
- Procedure and time-frame for convening the supreme body[107];
- Matters reserved for decision by the supreme body[108];
- Procedures for forming bodies elected by the supreme body, changing their composition, their terms of authority and decision-making procedures[109];
- The specification that the internal rules of the organisation shall be based on the principle of democratic representation and democratic expression of the will of its members[110];
- The range of authority of officials entitled to represent the organisation without a power of attorney[111] and the procedure for choosing such persons[112];
- The specification of bodies authorised to make decisions on acquiring, possessing, using, managing and sale of property[113];
- The specification of the body authorised to define the level of membership fees and the procedure for their collection[114];
- Procedures for setting up separate branches and institutions[115];
- Procedures for supervising the organisation's activities[116];
- Procedures for challenges by members to decisions of the organisation's bodies[117];
- Procedures for making changes and amendments to the articles of association, charter or statute[118];

[104] Q 1: What requirements relating to the internal governance of an NGO must be contained in its articles of association, constitution or statute, in order for it to be able to acquire legal personality or to be registered?

[105] Armenia, Azerbaijan, Belarus, Cyprus (associations but not clubs), Italy, Luxembourg, Moldova and Ukraine.

[106] Armenia, Azerbaijan, Belarus, Belgium, Cyprus (associations and non-profit companies but not clubs), Estonia, Finland, Germany, Italy; Netherlands, Norway, Ukraine and United Kingdom.

[107] Armenia, Azerbaijan, Belgium, Cyprus (associations but not clubs), Estonia, Finland (only one respondent) France (only two respondents), Germany (only two respondents), Hungary, Luxembourg, Netherlands (only one respondent), Poland, Russia, Sweden, Switzerland (only two respondents), "the former Yugoslav Republic of Macedonia", Turkey and United Kingdom.

[108] Armenia and Belarus.

[109] Armenia (including individual positions in them. This is required only it is intended to have such bodies), Azerbaijan, Belarus, Belgium (only two respondents), Cyprus (associations and clubs), France, Czech Republic (only one respondent), Germany, Hungary, Ireland, Italy, Luxembourg, Moldova, Netherlands (only one respondent), Norway, Poland, Portugal, Russia, Sweden, Switzerland, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and United Kingdom.

[110] Croatia and Germany (only one respondent).

[111] Armenia (this is not required if such authority is not granted), Cyprus (associations and clubs) and Czech Republic (only one respondent).

[112] Armenia (this is not required if such authority is not granted), Croatia, Cyprus (associations and clubs), Czech Republic (only one respondent), Italy and Switzerland (only one respondent).

[113] Armenia (this is not required if these functions are performed by the supreme body).

[114] Armenia (this is not required if membership fees are not envisaged or if the sum and the procedure for collection is stipulated in the charter).

[115] Armenia (this is required only it is intended to have such bodies), Cyprus and Ukraine.

[116] Armenia (this is not required if supervision is carried out by the supreme body) and Estonia (as regards trade unions only).

[117] Armenia (this is not required if the creation of bodies other than the supreme body is not envisaged), Azerbaijan and Belarus.

- Procedures for re-organisation and liquidation[119];
- Distribution of assets on dissolution[120];
- Procedure for audit[121];
- The number of auditors and their period of office[122];
- The financial year[123];

109. Apart from the inclusion of the required provisions the respondent for one country states that there is sometimes an express authorisation to include other provisions as well[124] and the respondent for another country reports that officials may add other requirements in the exercise of their discretion to grant registration[125].

110. In respect of one country there were said to be no requirements for any of the three forms of NGO that can be established but if no provisions are made in the case of one of them – non-profit companies – the relevant (but not specified) provisions of the Civil Code are to be followed and in a later answer it was suggested that the regulations concerning the internal structure and governance had to be in the statute and also that it has the capacity to open or close branches[126].

111. As regards another country the only requirement was reported as being to have a code of ethics defining the behaviour or attitude of employees[127].

112. In the case of a third country the respondent referred only to the legislation on associations without any elaboration as to what, if anything, this required[128].

113. No details were provided with respect to a fourth country as to the internal governance requirements for certain types of NGOs[129].

114. The question was misunderstood in the case of five other countries, with details being provided in the first as to the decisions and authorisations required in order to undertake certain types of activities[130] and in the second and third as to the process of registration and admissible objectives[131], while for the fourth the respondent specified only “social aspects and

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[118] Armenia, Azerbaijan, Belarus, Cyprus (associations but not clubs), Luxembourg (only one respondent) and Ukraine.
[119] Armenia, Azerbaijan, Belarus, Cyprus (associations but not clubs), Ukraine and United Kingdom.
[120] Belgium (only one respondent), Cyprus, Estonia, Finland (only one respondent), Luxembourg and Netherlands (only one respondent).
[121] Azerbaijan, Cyprus (associations but not clubs), Estonia (foundations only), Luxembourg, Portugal (assumed this is meant by “collective fiscalization organ”), Sweden (only foundations) and Switzerland (only one respondent and then only as regards foundations).
[122] Finland (there has to be at least one auditor and a deputy; only one respondent).
[123] Finland (only one respondent).
[124] Armenia (so long as these do not contravene the requirements of other laws).
[125] Cyprus (associations but not clubs. This approach also seems to be adopted with respect to foundations but the actual legal requirements were not themselves specified)
[126] Greece.
[127] Albania.
[128] Austria.
[129] Cyprus (charities (although these are apparently defunct), foundations and voluntary organisations).
[130] Bulgaria (the activities concerned for profit ones, health and social services. Authorisation for social services was required from the Ministry of Labour and Social Policies and, in the case of those for children, the State agency for Child Protection. Also NGOs need to establish a separate entity for health oriented activities).
[131] Czech Republic (although a later answer indicated that the decision-making process for a change in the statute needed to be specified in it) and Serbia.

no discrimination"[132] and in respect of the fifth the respondent gave details only as to the forms of associations[133].

Prohibitions on membership of governing or management bodies[134]

115. For thirteen countries there were respondents reporting that no categories of person were prohibited from serving on either the highest governing body of an NGO or on any of its management bodies[135].

116. A respondent for another country also reported that were no restrictions relating to membership of the highest governing body of an NGO[136]. However, the same respondent and also the respondent for another country stated that non-citizens who are not domiciled in it cannot be a member and thus on the supreme body of an organisation whose purpose is to influence (unspecified) state issues[137].

117. In respect of one country a respondent stated that there were no explicit prohibitions in respect of either of the bodies but that in practice non-citizens did seem to be prevented from acting as founders, directors and members of NGOs[138]. In respect of part of another country non-citizens were excluded from so acting[139]

118. The only restrictions reported as existing in five countries – affecting both the highest governing body and management bodies – were age-related, i.e., excluding children who are variously defined as being under eighteen[140] or under sixteen[141] or under fourteen[142]. In another country there is an absolute prohibition on membership of these bodies by persons under fourteen but persons between fourteen and eighteen can become members of an NGO with the written consent of his or her legal representative[143]. Although this would enable them to become members of its supreme body there is also authorisation for the charter to include specific stipulations regarding the rights and obligations of "underage members", which could presumably affect their ability to contribute to decision-making and become members of a management body.

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[132] Slovakia.
[133] Spain.
[134] Q 2: Are any categories of persons prohibited by law from serving on (a) The highest governing body of an NGO, or (b) A management body of an NGO? If so, please specify the categories and the bodies concerned and whether such prohibition is applicable only to particular categories of NGOs. Is any category of person prohibited by law from being employed by an NGO? If so, please specify the categories, the capacities concerned and whether the prohibition is applicable only to particular categories of NGOs.
[135] Austria, Belgium (only two respondents, Czech Republic (but one respondent reported that criminal offenders and employees of potential beneficiaries could not serve on the governing body of a foundation), Moldova, Netherlands, Norway, Poland, Portugal, Slovakia, Spain, Sweden, Switzerland and "the former Yugoslav Republic of Macedonia".
[136] Finland .
[137] Greece.
[138] Cyprus (essentially affecting non-Cypriot citizens not holding permanent residency in Cyprus and Turkish-Cypriots. For the latter the problem arises from not having a Republic of Cyprus identity card and not knowing the name of their address in Greek, particularly as the names of streets constructed after the 1974 Turkish invasion exist only in Turkish).
[139] Cyprus (the TRNC).
[140] Azerbaijan (except for youth public association where the age restriction affects only those under sixteen) and Germany (two respondents but see n 163).
[141] Albania and Belarus (this has possibility of membership below that age if in statute and with written consent of legal representatives but a person must be 18 to be on management body).
[142] Ukraine (persons between 6 and 18 can, however, be members of a children's organisation and persons over 35 cannot be members of a youth organisation).
[143] Armenia.

119. Similarly it was reported in the case of one country that persons under eighteen can become members with the approval of their parents or legal representative but they cannot vote[144], while for another country it was stated that persons with no or limited capacity to act can become members of NGO on the basis of not having any decision-making power in its bodies[145]

120. In one country the response in respect of both matters was that the standard rules in the matter of civil rights applied[146], in respect of another it was reported that membership of these bodies was not open to those subject to incapacity[147] and in the case of a third legal capacity was a requirement[148]. In all instances full details were not given but presumably the restrictions affect not only children but also those with limited mental capacity[149].

121. In one country participation in NGOs is not open to (a) foreign citizens and stateless persons ordered by a court to be removed, (b) persons on a list concerned with the prevention of money laundering and the financing of terrorism and (c) persons in relation to whom a court has determined that their activities include features of extremist activities[150].

122. In another country judges, members of the armed forces and the police and public prosecutors cannot serve on either the highest governing body or any management body of an NGO[151].

123. The respondent for one country stated that the age restriction on membership applied only to the management board[152].

124. In one country the President and one Vice President of the management body have to be domiciled there[153] and in another half the members of the management body must be resident in the country, another member state of the European Economic Area or Switzerland[154].

125. In another country there are no general restrictions regarding management bodies but specific laws have an impact on the ability of individuals to serve on them[155].

126. In a third country it was not possible for public servants, persons excluded from public affairs and those under a criminal verdict to serve on management bodies[156].

127. In the latter country and in a fourth one[157] there is also a bar on a member becoming a member of an NGO's supervising body if he or she is also involved in another of its bodies.

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[144] Luxembourg (only one respondent; encouragement to take this into account in framing statutes regarding their role)
[145] Croatia.
[146] Italy.
[147] France (only some respondents; other responses are reported below).
[148] Russia.
[149] One respondent for France cited both children and those under tutelage.
[150] Russia.
[151] Turkey.
[152] Bulgaria (members must be over eighteen as the names must be registered in court and this requires maturity).
[153] Finland (only one respondent)
[154] Estonia.
[155] Greece (the legal representative of an NGO wishing to receive a permit for the establishment and operation of a mental health structure cannot be a public health professional, the director of specially recognised charity associations cannot be non-citizens and cannot be previously convicted for felonies and misdemeanours in order to be funded by the state or to get a permit for the operation of structures offering public health or education services and certain professionals – such as civil servants, members of the armed forces and university professionals – require permission to take on this role).
[156] Hungary.

128. In respect of another country it was reported that the chairman of the executive committee must not be incompetent and none of the members can be bankrupt[158].

129. The latter restriction was also applied in another country to NGOs generally[159] whereas in the case of a third country there was only a bar on trustees of a charity – but not members of management bodies of other NGOs – who have been adjudicated bankrupt, have made a composition with creditors, have been convicted of an indictable offence, have been subject to an order made under companies or pensions legislation or have been removed by court order from the position of charity trustee[160], while in two other countries the latter restrictions applied either to all the members of a management body[161] or to the directors of NGOs taking the form of a company[162].

130. However, in the case of the last country a court may order persons convicted of any indictable offence or of any offence involving fraud or dishonesty to be barred from serving as a director of a company or taking part in the company's management[163].

131. The possibility of a judicial bar on someone serving on a management body was also reported as existing in three other countries[164].

132. The respondents for three countries stated that persons with a criminal record cannot serve on the management board[165] and such a bar was also stated to be applicable by a respondent for one country to persons who have not paid their taxes[166].

Prohibitions on employment[167]

133. The respondents for twenty-seven countries stated that no category of person was prohibited by law from being employed by an NGO[168].

134. Moreover the respondent for four other countries reported that the only restriction with regard to being employed by an NGO arises from a more general bar on certain persons undertaking any paid work on account of their particular status[169].

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[157] Armenia.
[158] Finland (only one respondent).
[159] United Kingdom.
[160] Ireland.
[161] Estonia.
[162] Germany (two respondents).
[163] Ireland.
[164] France (only one respondent; for "wrongdoing"), Serbia (for an offence related to managing someone else's money) and United Kingdom (legislation referred to but details not given).
[165] Belarus, Bulgaria and France (only one respondent).
[166] France (only one respondent).
[167] Q 3: Is any category of person prohibited by law from being employed by an NGO? If so, please specify the categories, the capacities concerned and whether the prohibition is applicable only to particular categories of NGOs.
[168] Albania, Austria, Azerbaijan (one respondent but the other stated the military and servants could not be employees), Belgium, Croatia, Cyprus, Czech Republic, Estonia, Finland, France (three respondents but two others listed restrictions noted below and several did not know), Germany, Hungary, Ireland, Italy, Luxembourg, Netherlands, Norway, Poland, Portugal, Russia, Serbia, Slovakia, Spain, Sweden, Switzerland, and "the former Yugoslav Republic of Macedonia.;
[169] Armenia (such as members of the government, representatives in the National Assembly, public servants, judges and members of the Constitutional Court; this was referred to by only one respondent); Bulgaria (state officers); Greece (civil servants, members of the armed forces and university professors cannot do so without a special permit); and Turkey (civil servants).

135. In respect of one country the respondent stated that an NGO's statute could impose restrictions on management board members being employees, which might have an indirect effect on the employment of some people[170].

136. The accuracy of the foregoing position might be doubted given that one of the respondents for a country in respect of whom the majority of respondents said there were no restrictions on employment pointed to the bar on employing illegal immigrants[171] and a similar bar was reported by the respondent for another country as its sole restriction[172]. This bar is of general application and not directed at NGOs in particular, even if some NGOs dealing with immigration issues might find it a handicap in their work.

137. Another restriction of general application noted by a respondent taking the minority view in respect of its country was the prohibition on employing children under 16 years of age[173].

138. A more targeted restriction reported by another respondent from the same country which also took the minority viewpoint was the bar on persons convicted of certain unspecified offences from directing public health bodies[174], which would include ones run by NGOs.

139. The question was not answered by the respondents for three countries[175].

Frequency of meetings[176]

140. The respondents for eight countries stated there was no legal requirement as to the frequency of meetings of an NGO's highest governing body[177] and for six others it was stated that this was a matter to be determined only by the rules of the NGO concerned[178],

141. However, in eighteen countries there was a minimum legal requirement as to when the meetings of an NGO's highest governing body should be held. In fifteen of them such a meeting must be convened at least once every year[179], in two others it must be convened once every two years[180] and in another country there is a requirement for this body to meet twice a

[170] Bulgaria
[171] France (one respondent).
[172] United Kingdom (one respondent)
[173] France (one respondent).
[174] France (another respondent).
[175] Belarus, Moldova and Ukraine.
[176] Q 4: Is any frequency required by law or practice as to the holding of meetings of the highest governing body of an NGO, or particular categories of them? If so, please give details. Are there such requirements for other governing bodies of an NGO?
[177] Croatia, Cyprus, Czech Republic, Greece (but yearly meetings for the General Assembly seems to be the practice with Boards of Directors meeting every month), Netherlands (one respondent said there was an annual General Assembly but it was not clear whether this was a legal requirement, a provision in the statute or practice), Norway, Russia (but they are held annually in practice) and Sweden.
[178] Albania, Austria, Belarus (there must be provision for this), Serbia (but financial reporting requirements can affect the matter), "the former Yugoslav Republic of Macedonia", Turkey and Ukraine.
[179] Azerbaijan, Belgium (only two respondents; another respondent said it was for the administrative council to fix and a fourth said that there was no legal requirement), Bulgaria; Estonia (only foundations but this was also the practice for associations), Finland (only one respondent, relying on the length of the financial year being 12 months; the other respondent stated there was no such requirement), France (however, one respondent stated that it was a matter for the statute and another stated that there was no requirement), Germany (two respondents said there was no legal requirement but that it was the practice because of the need to produce annual reports), Ireland (for companies but not for unincorporated associations), Italy, Luxembourg, Poland, Slovakia, Spain, Switzerland (one respondent said this was only for foundations and a matter of practice for associations, while another said a meeting was needed every two years and three others said there was no requirement) and United Kingdom.
[180] Armenia (the rules for other bodies must, however, be specified in the charter).

year[181], while in yet another there was an annual requirement for foundations but only a five-yearly one for associations[182].

142. The respondent for one country stated that there was also provision for one third of the members to convene an extraordinary general meeting of the supreme body and also stated that the notice required for convening a meeting of the highest governing body was specified by law as being 14 days [183].

143. In eight countries requirements regarding the frequency of meetings of other bodies were said not to exist[184] and they were not specified by the respondents for three other countries[185]. In the case of one country the holding of the meetings of such bodies was said to be optional[186].

144. In one country there was a minimum legal requirement as regards the holding of meetings for the board if nothing concerning this was specified in the statute of the NGO concerned[187].

145. In the case of one country the respondent reported that charities were recommended by the regulatory body concerned with them to have a certain frequency for meetings of their boards[188].

146. The question appeared to have been misunderstood in the response for one country regarding the frequency of meetings for bodies other than the highest governing body[189].

Special majorities[190]

147. In respect of fifteen countries respondents reported that either the law required only a majority of votes of the members participating in the meeting of an NGO's highest governing body[191] or the question of whether a special majority would be required for votes at that meeting on certain issues was a matter left to be determined by the rules of the NGO concerned[192].

148. In one country a special majority is required if no rules are prescribed in the statute of the NGO for amending its statute or dissolving the organisation[193]

149. In sixteen countries there was generally no requirement for a special majority except as regards the adoption of proposals to amend an NGO's statute[194]. For six of those countries

[181] Portugal.
[182] Hungary.
[183] Armenia. Information on these matters was not requested.
[184] Belgium, Bulgaria, Croatia, Cyprus, Czech Republic (but one respondent reported that a yearly meeting was required for foundations, funds and PBOs), Finland, Italy and Poland.
[185] Albania, Armenia and Austria.
[186] Azerbaijan.
[187] Norway (4 times per year; the rules applicable to companies are applied where no other provision is made).
[188] United Kingdom (only one respondent; at least two per year).
[189] Slovakia ("all NGO") .
[190] Q 5: Does the law prescribe any special majority to be achieved in order for the highest governing body of an NGO, or particular categories of them, to (a) amend their articles of association, constitution or statutes or (b) take any other types of decision? If so, please specify the majority required for either, or both, of these purposes. Are there such requirements for other governing bodies of an NGO?
[191] Azerbaijan (but one respondent stated that over half the members must be present), Ireland (only one respondent; the other suggested that a percentage approval ranging from 20-60% could be required but this is probably a reflection of different provisions in articles of association) and Moldova.
[192] Albania, Armenia, Austria, Belarus, Bulgaria, Croatia, Czech Republic, Hungary (but court practice seems to require a qualified majority for amendment to statutes and mergers), Serbia, Slovakia, Sweden and Ukraine.
[193] Norway (two-thirds of those present)

such a requirement also existed for the adoption of proposals to amend the objectives[195], in one of them for setting up executive bodies and terminating their powers prematurely[196] and it also existed for five of them as regards decisions to dissolve the NGO[197]. The last matter was also the only instance of a special majority being needed for decisions of the highest governing body of an NGO in one country[198].

150. In addition in one of the countries supposedly not generally requiring a special majority for decisions, one was needed for convening an extraordinary assembly of members[199] and in another there was a requirement for decisions not involving an amendment to the statutes[200].

151. In the case of one country there was said to be a need for unspecified special majorities in the case of governing bodies other than the highest governing body[201].

Limits on power of delegation[202]

152. The respondents for twenty-six countries reported that there was no limit on the power of delegation of decision-making by an NGO's highest governing body[203] or that this was a matter left to be determined by the rules of the NGO concerned[204].

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[194] Belgium (the majority of two-thirds of the members present or represented, although one respondent said that only a simple majority was required), Cyprus (three-quarters of the members must vote in favour of the change. It is also possible to include a special majority requirement in the statute of a foundation; in the TRNC this was a matter left to the charter), Estonia, (two-thirds of the members present), Finland (one respondent said three-quarters of the given votes was needed whereas the other stated that no special requirement existed), France (a two-thirds majority but two respondents stated that it was a matter left to statute and another said that only a simple majority was needed), Germany (one respondent stated that it was a matter for the statute), Greece (only for societies: the presence of half the members and a three-quarters of those present), Italy (the attendance of at least three-quarters of the members and the majority of the votes in favour is required), Luxembourg (two-thirds of the members), Netherlands (only one respondent; a two-thirds majority), Poland (50% plus one of the members), Portugal (a two-thirds majority); Russia (a two-thirds majority); Spain (a two-thirds majority); Switzerland (a two-thirds majority but two respondents stated that this only applied to associations and four others said no special majority was needed. In addition one respondent said the founder alone could change the objective of a foundation and then only after 10 years), Turkey (a two-thirds majority) and United Kingdom (75% majority).

[195] Belgium (the majority of four-fifths of the members present or represented; only two of the respondents), Estonia (the support of nine-tenths of the members is needed), Germany (one respondent said the approval of all members was required but another said a three-quarters' majority was needed to change the statute generally), Greece (only for societies: the agreement of all members, to be given in writing where a member is not present), Luxembourg (a three-quarters majority) and Russia (a two-thirds majority).

[196] Russia (a two-thirds majority).

[197] France (only one respondent – two-thirds), Greece (only for societies: the presence of half the members and a three-quarters of those present), Luxembourg (two-thirds of the members), Portugal (two-thirds of the members) and Russia (a two-thirds majority).

[198] "the former Yugoslav Republic of Macedonia" (a two-thirds' majority).

[199] Germany (only one respondent mentioned this; two-thirds majority of members).

[200] Poland (25% of the members + 1; this applied to other bodies as well).

[201] Germany (only one respondent and another said there were no such requirements)

[202] Q 6: Does the law impose any limits on the power of delegation of decision-making by highest governing body of an NGO, or particular categories of them? If so, please give details?

[203] Belgium (only two respondents), Croatia, Cyprus, Czech Republic, Estonia, Finland (only one respondent; the question was not answered by the other), France, Germany (only two respondents; another respondent reported that NGOs were required to specify which officers had been authorised with the power of legal representation and could act on behalf of the governing body), Greece, Ireland (although the governing body remained responsible), Italy, Luxembourg, Moldova, Netherlands, Norway, Poland, Serbia, Slovakia, Spain, Sweden, Switzerland (but see the responses by one respondent below), Turkey and "the former Yugoslav Republic of Macedonia".

[204] Albania, Austria and United Kingdom.

153. However, in one country there could be no delegation on matters within the (unspecified) exclusive competence of the highest governing body[205] and in five countries there were reported to be restrictions on delegation by the highest governing body with respect to decision-making that concerned at least some of the following matters:

- Approval of the charter[206];
- Amendments to the charter or the adoption of a new one[207];
- Admission and expulsion of members[208];
- Election of board members[209];
- Election of subordinate bodies[210];
- Decisions to terminate the authority of subordinate bodies[211];
- Decisions on restructuring the organisation[212];
- Decisions to participate in other organisations[213];
- All main issues of association's activity[214];
- Decisions on acquisition and use of property[215];
- Internal control of compliance of activity with statute[216];
- Election of audit body and internal inspection of financial and economic activity[217];
- Approval of financial statement[218];
- Approval of annual report[219];
- Decisions on dissolution[220]; and
- Matters otherwise so specified in the charter[221].

154. The respondent for one country indicated that official authorisation was needed for certain decisions by a particular form of NGO regardless of the body taking them[222].

155. It appears that the question was misunderstood by the respondents in respect of two countries[223].

Authorisation for changes to internal structure and rules[224]

[205] Russia.
[206] Armenia (if not approved at the founders' assembly) and Azerbaijan.
[207] Armenia, Azerbaijan, Belarus and Hungary.
[208] Switzerland (only one respondent and then just in respect of associations).
[209] Switzerland (only one respondent and then just in respect of foundations).
[210] Armenia (if there is provision for them), Azerbaijan, Belarus and Switzerland (only one respondent and then just in respect of associations).
[211] Armenia (if there is provision for them) and Switzerland (only one respondent and then just in respect of associations).
[212] Armenia (unless ordered by a court) and Belarus.
[213] Azerbaijan and Belarus.
[214] Ukraine (no definition exists and it is determined on a case by case basis referring to the statutes).
[215] Azerbaijan.
[216] Belarus.
[217] Belarus and Switzerland (only one respondent and just in respect of foundations).
[218] Switzerland (only one respondent and then just in respect of foundations).
[219] Azerbaijan.
[220] Armenia (unless ordered by a court), Azerbaijan, Belarus and Hungary.
[221] Armenia.
[222] Greece (charities must get approval from the Ministry of Economy to pay debts, sell or rent property, stop or start an activity and invest an inheritance)
[223] Bulgaria (it was stated that for profit activities should be in the same sphere as the NGO's other work) and Portugal (the response dealt with use of proxies in members' meetings).
[224] Q 7: Is there any requirement for an NGO, or particular categories of NGOs, to obtain authorisation from a public authority before any change to its internal structure or rules can be implemented? If so, please give details?

156. In twenty-three countries prior authorisation from a public authority was not required before a change in an NGO's internal structures or rules could be implemented[225] but in two of them such changes only had to be notified to the registration body[226]

157. In one country a requirement of prior authorisation existed only in respect of one type of NGO[227] and in the case of another it was suggested that prior authorisation could be required for a change that related to certain unspecified public law and tax exemption issues[228].

158. However, in seven countries the internal structure and rules were matters that had to be specified in an NGO's charter and, as with any amendment to the latter, changes to them were thus something that had first to be approved by the registration authority[229].

159. In another country all such changes had to be registered with the Ministry of Justice before taking effect[230].

160. In the case of one country the question appeared to have been misunderstood[231].

Authorisation to establish or close branches[232]

161. In twenty-eight countries it was possible for an NGO to establish and/or close branches without the prior authorisation of a public authority where these branches do not have a distinct legal personality from that of the NGO concerned[233] but in five of them there is a requirement to notify the registration authority of the change[234].

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[225] Albania, Austria, Azerbaijan, Belgium (only two respondents; a third said it must be in accordance with Belgian law and a fourth said publication in Moniteur Belge was required), Croatia, Czech Republic (but one respondent reported a 15-day notification requirement following adoption), Estonia, (but the register of NGOs should be notified of changes in the composition of the management board), Finland (only the one respondent; the other stated that all changes to the statutes had to be approved by the lawyers of the National Board of Patents and Registration of Finland but had not specified this to be a matter to be included in the statutes), France, Hungary (unless it changed the basic data of the NGO), Ireland (insofar as the provisions are not in the articles of association), Netherlands (one respondent said it was required if it involved a change of the statutes which might lead it to acquire different corporate rights), Luxembourg, Norway, Poland, Portugal, Slovakia, Spain, Sweden, Switzerland (so long as no change in statutes was involved according to one respondent), Turkey, Ukraine and United Kingdom.

[226] Austria and Ukraine.

[227] Cyprus (foundations; amendments must be approved by a court).

[228] Germany (two respondents; a third reported no restrictions and the question was not answered by a fourth).

[229] Armenia (although internal rules of the organisation do not require such a change or approval), Azerbaijan, Belarus (only one respondent), Greece, Italy, Russia, Serbia (but not mentioned in answer on statute) and "the former Yugoslav Republic of Macedonia" (but not stipulated in answer on statute).

[230] Moldova.

[231] Bulgaria (it was stated that authorisation was needed in order to provide social services).

[232] Q 8: Is it possible for an NGO to establish and/or close branches without the prior authorisation of a public authority where these branches do not have a distinct legal personality from that of the NGO concerned? If so, please give details.

[233] Albania, Armenia, Austria, Belgium (only two respondents; a third answered "No" but given the structure of the question and the absence of elaboration it could have meant that there was no requirement and a fourth did not answer the question), Croatia (the answer was "No" but from the context it seems as if "Yes" was intended), Cyprus, Czech Republic, Estonia (only one respondent; the other stated that a formal branch could not be established except as an independent legal person), Finland, France, Germany, Hungary, Ireland, Luxembourg, Moldova (there must be provisions for this in the Statute), Netherlands (one respondent said prior authorisation was needed from the Minister of Justice if it involved the lay-off of personnel), Norway, Poland (but it was also stated that this requires a 50% + 1 majority which could mean that it is a matter requiring an amendment to the statute), Portugal, Russia, Serbia, Spain, Sweden, Switzerland, "the former Yugoslav Republic of Macedonia" (the matter is not dealt with in the NGO law), Turkey, Ukraine and United Kingdom.

[234] Armenia and Czech Republic (only as regards changes of seat), Russia, Serbia and Turkey.

162. In one other country the need for authorisation will only arise if, in the particular circumstances of the NGO concerned, an amendment to the statute is needed to establish or close a branch[235].

163. The respondent for one country stated that the national tax authority must first be notified so that it can perform a tax control that will subsequently permit or prohibit the opening or closing of a branch[236].

164. In the case of one country the establishment of a branch is subject to a registration process entailing prior authorisation but, although notification must be given, permission is not needed to close a branch[237].

165. In one country the establishment of a branch must first be registered with the relevant local court[238].

166. The respondent for one country stated that prior approval was required to establish or close a branch but it was not made clear whether this was because it involved a change to the statutes or for some other reason[239].

167. In the case of one country the question was clearly misunderstood[240].

Restrictions on payments to employees and management board members[241]

168. In twenty-three countries there were reported to be no restrictions as regards paying either an NGO's employees or the members of any of its management bodies[242], although in four of them there was said to be a minimum wage requirement that had to be observed[243] and in respect of another one of them the respondent stated that there were restrictions affecting only one form of NGO and then only as regards fees[244].

169. The respondents for six countries reported that there was no limit as regards employees but that the directors of charities or non-commercial organisations could only be reimbursed for expenditure incurred on their behalf[245] or for their expenses[246]. There are

[235] Azerbaijan.
[236] Greece.
[237] Belarus (but an NGO cannot have less branches than is provided for in its statute).
[238] Bulgaria (the branch also needs a separate bank account and legal representative).
[239] Italy.
[240] Slovakia (the response to the question was: "Honorary Member of ADPS only with a consultative voice")
[241] Q 9: Does the law impose any limits on the payment by NGOs or particular categories of them, of fees or expenses to (a) Employees, or (b) Members of any of their management bodies? If so, please give details. Where such payments are possible, are there any special tax regimes applicable?
[242] Albania, Armenia, Austria, Azerbaijan, Belarus, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, Italy, Luxembourg, Moldova, Netherlands (one respondent said there were limits on the payments that can be made to directors where funding came from the government), Norway, Serbia, Slovakia, Sweden, Switzerland (one respondent indicated that directors of charities were expected to work on an honorary basis), "the former Yugoslav Republic of Macedonia", Turkey and Ukraine.
[243] Albania, Belarus, Italy and Serbia.
[244] Cyprus (as regards charities) but there is also a restriction on self-dealing in the case of foundations which could possibly affect some payments.
[245] Germany (only one respondent; three others said the salaries of persons employed by charities must be reasonable), and Spain (there is also a minimum wage for employees).
[246] France (one respondent as regards associations generally but four others stated that there were no restrictions, while two others dealt only with payment against invoices), Ireland (this also applies to other NGOs but the directors can be paid for work unrelated to their role as members of the governing body), Portugal (directors can be paid if the volume or complexity of the work requires the person's prolonged presence; applies to associations generally), Russia and United Kingdom.

unspecified restrictions in a seventh country on the payments that can be made to the chair and governing body members of public benefit organisations[247].

170. In respect of one country it was reported that there were no restrictions regarding employees except those that might be imposed under a funding arrangement but that not only could the directors of charities not be paid but that the statutes of other NGOs might also have such a restriction on paying them[248].

171. The only restriction noted by the respondent for one country concerned the level of the payments that could be made[249].

172. In respect of one country there was said to be a limit on the overall level of administrative expenses that could be incurred if the NGO had tax-exempt status and it was reported that payments to members of a non-profit organisation could, if disproportionate, lead to the organisation concerned being re-classified as a commercial body[250]. In respect of another country the expenditure on administrative and managerial staff of a charitable organisation - as opposed to the staff implementing its programme - must not exceed 20% of the financial funds used by it during any fiscal year[251].

173. The respondents for twenty-one countries[252] stated that no special tax regime was applicable to payments made to employees and members of management bodies but the respondent for another country stated that it had some special (favourable) arrangements regarding such payments.[253]. This issue was not addressed by the respondents for six countries[254].

Challenging decisions of governing bodies[255]

174. In one country the decision of the NGO's highest governing body or of any other organ could be challenged by anyone on the basis that the decision concerned was in conflict with the law and had been denounced to the police[256].

175. In the case of twenty-six countries the respondents reported that members of NGOs can bring a challenge in court to a decision of the NGO's highest governing body or of any other organ[257]. In respect of one of them it was stated that the effect of this challenge is to suspend

[247] Hungary.
[248] Greece
[249] Poland (2 mean salaries for employees and 3 mean salaries for management board members)
[250] Belgium (only one respondent; two others said that there were no limits and the question was not answered by a fourth).
[251] Russia.
[252] Albania, Armenia, Azerbaijan, Belarus, Bulgaria, Finland (only Umbrella of Women's Organisations), Germany, Ireland, Luxembourg, Moldova, Netherlands, Portugal, Russia, Serbia, Slovakia, Spain, Sweden, Switzerland, Turkey, Ukraine and United Kingdom.
[253] Norway (payments of less than 500 euros to a single employee need not be reported to the tax authorities and there is an exemption from the employer's fee (14.1% of the total salaries paid) where no employee receives more than 5625euros and total salary bill is no more than 56250 euros.
[254] Austria; Croatia; Cyprus; Czech Republic; France (three respondents, one did not know, another referred to social security benefits and need for proof and two others stated that there was no special regime) and "the former Yugoslav Republic of Macedonia".
[255] Q 10: To what extent is it possible for the decision of the highest governing body or any other organ of an NGO to be challenged in a court (and, where successful, annulled or suspended) by (a) a member of the NGO, (b) a public authority, or (c) a member of the public? If so, please give details as to who can challenge such a decision and the requirements for so doing.
[256] Czech Republic (one respondent stated that a legal interest had to be demonstrated).
[257] Armenia, Austria, Azerbaijan, Belarus, Belgium, Bulgaria, Croatia (for non-compliance with the statute and after no action being taken by either the authorised body or the NGO's assembly 30 days after it was raised with it),

the implementation of the disputed decision and that it is only members who can challenge such decisions[258]. For three countries a deadline for bringing a challenge was specified[259].

176. In the case of another country it was stated that a challenge by a member could only be brought if he or she had been mandated to do so by the highest governing body or by a higher body than the one taking the decision impugned[260]

177. In one country the only power that a public authority had with respect to challenging decisions by NGOs was through the initiation of dissolution proceedings[261]. However, in twelve countries the respondents stated that such a challenge can be mounted in the case of an alleged non-compliance with the law[262], in two others it was reported to be possible in principle without further details being given[263] and in six countries it seems to be generally possible[264]. In the case of two other countries a public authority was said to be able to challenge NGO decisions without elaborating on the grounds for this being possible[265].

178. In one country it was not specifically indicated whether a public authority could bring a challenge as it was only specified that the body must have a specific legal interest which suggests otherwise[266].

179. In fifteen countries a legal challenge by a member of the public to decisions by NGO bodies could be made[267] while with respect to four countries it was reported that such challenges were not possible[268].

180. In respect of one country it was stated that a challenge can be brought to the continued use by an NGO in its name of the name of a prominent member of the public by him or her or by his or her heirs if this use is without his or her consent or by the heirs only if the organisation's activities cast a shadow on the prestige of the person concerned[269].

Estonia, Finland, France, Germany, Greece (where the decision is against the law or the provisions in the statutes), Hungary, Ireland, Italy, Luxembourg, Moldova, Norway (for breach of statute or laws), Poland, Russia (but the person's rights and legitimate interests must be infringed upon), Serbia (for non-compliance with the statute), Slovakia, Switzerland, Turkey, Ukraine and United Kingdom.

[258] Austria.

[259] Armenia (within 10 days of the decision being taken according to one respondent but 60 days according to a second and not mentioned by a third), Greece (within six months) and Switzerland (within one month; only one respondent mentioned this).

[260] Portugal.

[261] Armenia (this is possible in respect of activities aimed at forced overthrow of the constitutional order, inciting ethnic, racial and religious hatred and making propaganda of violence or war, the commission of numerous or gross violations of the law, the carrying out of activities contrary to the statutory purposes and the commission of gross violations and breaches of law by the founders or other authorised persons while founding it).

[262] Belarus, Croatia (following inspection), Hungary, Ireland, Luxembourg, Norway, Portugal, Russia, Serbia, Switzerland, Ukraine and United Kingdom.

[263] Finland and Turkey.

[264] Azerbaijan, Belgium, Bulgaria, Germany (only one respondent), Italy and Poland.

[265] France and Moldova.

[266] Greece

[267] Azerbaijan, Belarus (decisions affecting private law rights), Belgium (if his or her rights are affected), Bulgaria, Finland (if his or her rights are affected); France (if interests affected), Ireland, Germany (only two respondents and one said that this was subject to demonstrating an interest), Italy, Luxembourg (decisions affecting private law rights), Norway (decisions affecting private law rights), Serbia (decisions affecting private law rights), Switzerland (decisions affecting private law rights according to two respondents, a third stated that it was possible but the basis was not made clear and the question was not answered by four others), Turkey, Ukraine; (decisions affecting private law rights) and United Kingdom (decisions affecting private law rights).

[268] Croatia, Moldova, Poland and Portugal.

[269] Armenia.

181. One respondent did not know whether challenges to NGO decisions were possible[270], another reported simply that the matter was not dealt with in the NGO law[271] and two others dealt with issue of civil liability of board for causing damage[272].

182. In three countries the question did not seem to have been understood[273].

Attendance at meetings by public officials[274]

183. In twenty-four countries there is no possibility of public officials being able to insist on attending a meeting of either an NGO's highest governing body or of any of its management bodies[275].

184. In three other countries insistence on attending such meetings was not generally possible but it was exceptionally in two of them where the NGOs were charities[276] and in a third where a court order for surveillance had been obtained by virtue of evidence that the activities of the NGO concerned were harmful to the public[277].

185. In respect of one country it was stated that enforced attendance was possible in the case of certain (unspecified) legal regimes[278]

186. In respect of three other countries such attendance was said to be possible[279] but that in the case of one of them it did not usually happen[280]. As regards a fourth country it was said that it was possible as officials were authorised to take part in events conducted by associations but the meaning of 'events' was not really clarified[281].

[270] Spain.
[271] "the former Yugoslav Republic of Macedonia".
[272] Netherlands (only one respondent) and Sweden.
[273] Albania ("Only the judicial person representing the NGO can be challenged in the court"), Cyprus (the response dealt with the issue of personal liability of members or directors (but one respondent said challenges in the TRN were possible by all three categories listed in the question) and Slovakia ("only full members of the ADPS and after it representatives – presidents of basic organisations of ADPS").
[274] Q 11: Are there any circumstances in which public officials can insist on attending a meeting of (a) an NGO's highest governing body, or (b) any of its management bodies? If so, please specify the circumstances and the conditions applicable to such attendance, including whether it is only possible in the case of particular categories of NGOs.
[275] Albania, Austria, Azerbaijan (but attendance at open meetings was possible), Bulgaria, Croatia, Cyprus (but one respondent said attendance by officials in the TRNC occurred), Czech Republic, Estonia, Finland, France (one respondent suggested that it was possible in the case of NGOs that were manifestations of public entities), Germany, Hungary (but the meetings of public benefit organisations should be open to everyone), Italy, Luxembourg, Moldova, Netherlands, Norway, Russia, (but public events can be attended), Slovakia, Spain, Sweden, Switzerland, "the former Yugoslav Republic of Macedonia" and Turkey (but it was reported that nonetheless this often occurred).
[276] Greece (the Minister can appoint a public commissioner to attend board meetings and oversee the legality of decisions taken. In the event of disagreement the matter is determined by the relevant overseeing body. This power is used in practice only for specially recognised charities) and the United Kingdom (only one respondent and only in respect of a charity under investigation).
[277] Serbia.
[278] Belgium (only one respondent; two others said it was not possible and the question was not answered by a fourth).
[279] Armenia (upon a well-grounded demand of the state authorised body in the field of justice), Belarus (there is a duty to give notice to the relevant authorities of the holding of meetings of the highest governing body) and Poland.
[280] Poland.
[281] Ukraine (it was said that events included the meetings covered by the question but this is not evident from the wording of the provision cited).

187. The question did not appear to have been understood in respect of two countries[282].

Taking over management by public authorities[283]

188. The respondents for twenty-two countries entirely ruled out the possibility of the management of an NGO being taken over by a public authority[284].

189. In the case of four countries this was also said to be generally the case but in one of them there was an exception enabling a court, at the request of a member, to appoint a board of directors with specific tasks when all or most of its members have quit[285] and in the case of three others it was possible in the case of wrongdoing to apply to a court for the appointment of a judicial administrator[286]. In the case of yet two others it was possible for the prosecutor to intervene if the legitimate operation of the NGO cannot be secured in any other way[287] and in respect of one of them a court can appoint a supervisor to secure the NGO's functioning and, for a foundation, take over the management where the founder is incapacitated and there is no provision for succession.

190. Furthermore the respondents for two countries stated that it was possible but only in respect of a specified kind of NGO[288] and in the case of another country it was said to be possible in the case of fraud[289].

191. Contradictory responses were given by the two respondents for one country[290]

192. In the case of one country the question was not answered[291] and in the case of another it was simply stated that the matter was not dealt with in NGO law[292].

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[282] Ireland (one respondent referred to power to nominate officials as members of the boards of NGOs pursuant to provisions in the articles of association and another referred to the investigative powers of a new Charities Regulator) and Portugal (referred to powers to require holding of a meeting).

[283] Q 12: Are there any circumstances in which a public authority can take over the management of an NGO? If so, please specify the circumstances and the conditions applicable to such a take-over, including whether it is only possible in the case of particular categories of NGOs.

[284] Albania, Armenia (only one respondent but another said that it was possible in the case of bankruptcy), Austria, Azerbaijan (only one respondent but another said that it was possible in the case of bankruptcy), Belarus, Bulgaria (except in the case of its dissolution); Croatia, Cyprus (but one respondent said that in the TRNC an association's activities can be stopped provisionally in situations of national security, public order and protection of general ethics where a delay in getting a court ruling was likely), Czech Republic (but one respondent said that a takeover was possible for a foundation that could not complete its highest decision body), Estonia, France (one respondent said it was possible for entities financed by public funds), Germany (only two respondents and in the case of one of them just foundations), Ireland (but the Charities Regulator can seize a charity's assets and dissolve it), Luxembourg, Moldova, Netherlands, Poland, Russia, Serbia, Slovakia, Sweden (but public authorities can be involved in appointing board members to certain (unspecified) forms of public association) and Ukraine.

[285] Greece (the task could be to call elections for a new board).

[286] Belgium (only one respondent; two others said it was not possible and the question was not answered by a fourth), Portugal (where needed to protect interests of organisation) and Switzerland (UECC and UWE said it was not possible).

[287] Hungary and Turkey (a court can then call a general assembly to create a new governing body).

[288] Italy (with respect to associations recognised as NGOs by the public authority through a decree of the President of the Republic. The public authority can intervene and take over the management by appointing an external commissioner if the governing body is not acting in conformity with the NGO's statutes. The commissioner can also invalidate decisions already taken that were contrary to the statute and to the civil code) and United Kingdom (only one respondent; in respect of charities).

[289] Spain.

[290] Finland (one respondent said it was possible according to the normal causes of action but the other said it was not possible).

[291] Norway.

[292] "the former Yugoslav Republic of Macedonia".

Auditing of accounts[293]

193. There was no requirement in five countries that the accounts of NGOs be audited[294] but in one of them an annual balance sheet had to be produced[295].

194. However, in twenty other countries there was a requirement that an NGO's accounts be audited on a periodic basis[296]. Nevertheless this obligation only arises in some of them if a certain level of income or economic activity was involved[297], if one of three conditions was fulfilled[298], if at least two conditions were fulfilled[299], if the organisation concerned had a particular legal form[300] or if it received public funding and was a certain type of NGO[301]. Moreover in one of them it could be carried out on a simplified basis where certain criteria were satisfied[302]. However, in another one of them the audit is reported to be carried out by the government[303].

195. With respect to twelve of them it was specified that such an audit had to be on a yearly basis[304].

196. In one other country[305] there was an express requirement for an audit for two kinds of NGO[306], it was an implicit requirement for a third[307] and it could be required for a fourth which in any event must furnish annual accounts[308]. There is no requirement for the fifth form[309]. The auditor for two of them must be a professional one[310]

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[293] Q 13: Is an NGO, or particular categories of NGOs, required by law to have their accounts audited on a periodic basis? If so, please specify the period concerned and any requirements as to who may or must audit the accounts.

[294] Armenia (but it can be done on a voluntary basis), Croatia, Czech Republic (although this response seems inconsistent with the response to inspection which refers to a declaration of accounts; one respondent stated that an audit was mandatory for foundations, funds and PBOs with an endowment or turnover above a certain level)), Hungary and Moldova.

[295] Hungary.

[296] Albania, Austria, Azerbaijan (one respondent stated that there was no requirement), Belarus (only one respondent; for funds only but both refer to provision for internal audit in statute), Belgium, Estonia, Finland, France, Germany (just foundations in the case of one respondent and only if commercially active to a large extent for another), Ireland, Netherlands (only one respondent), Luxembourg, Norway, Poland, Portugal, Slovakia, Spain, Sweden, Switzerland, Turkey and United Kingdom.

[297] Bulgaria (if the amount exceeds 200,000 BGN (102.258 EUR)), Netherlands (a turnover of 4.4 million euros for two successive years), Poland (1.5 million zlotys), Serbia (sums equal to middle or large enterprises but for others a balance once a year is required), Sweden (the level was not specified) and United Kingdom (not specified).

[298] Norway (more than 20 paid staff or possessions worth more than 20 million NOK or sales above 2 million NOK annually).

[299] Switzerland (only one respondent; assets above CHF 10 million, turnover of CHF 20 million and 50 full-time positions; an exemption was also possible for foundations whose assets were below CHF 200,000 for two consecutive years, which made no public appeal for donations and it was not needed for a reliable assessment of its financial situation).

[300] Estonia (foundations) and Ireland (those that are companies but charities with an income over 500,000 euros will soon be required to submit accounts whatever their legal form and those whose income is below this threshold will have to submit examined (i.e., not fully audited) accounts).

[301] Estonia (political parties, which are not NGOs for the purpose of Recommendation CM/Rec(2007) 14).

[302] Belgium (only two respondents).

[303] Turkey.

[304] Albania, Azerbaijan, Finland, France (only two respondents), Luxembourg, Netherlands, Norway, Poland, Slovakia, Spain, Switzerland and United Kingdom.

[305] Cyprus.

[306] Foundations and not-for profit companies.

[307] Associations, in view of the stipulation that the members appoint auditors unless stated otherwise in the memorandum of association

[308] Charities

[309] Voluntary associations.

[310] Foundations and non-profit companies.

197. Furthermore in the case of four countries where auditing was required it was reported that the audit had to be carried out by an authorised service provider[311]. However, this is only optional in one other country[312] and in another three countries this was required just for larger organisations[313] or where a certain level of economic activity was involved[314]. Generally no details were given as to whether there were requirements as to who might audit the accounts.

198. In the case of one country it was reported that NGOs must submit regularly – every three months – financial documentation to a public authority but it is not clear that this entails an audit[315]. This is equally the case with the annual reports said to be required of charitable organisations in another country[316].

199. The question appeared to have been misunderstood in the case of one country[317] and was not answered in respect of another one[318].

Reporting obligations

Donations, grants and sponsorship[319]

200. In thirteen countries there was a requirement to report to a public authority donations from a private or foreign entity [320]. In respect of one of them this entailed the provision of both financial and narrative reports and also bank statements[321] and in two of them authorisation to receive such donations was required if they were above a certain value[322].

201. In one country there is only a reporting requirement in respect of tax-relieved donations[323] and in another the obligation exists only if the NGO is on the list of organisations with income tax deduction[324]. .

[311] Azerbaijan, France, Spain and Switzerland (only two respondents).
[312] Germany (only one respondent).
[313] Luxembourg (details not provided) and Portugal
[314] Austria (the financial volume was not specified)
[315] Ukraine
[316] Russia.
[317] Italy (it was indicated that the balance of NGOs recognised through a decree of the President of the Republic or by the Ministry of Foreign Affairs could be periodically checked).
[318] "the former Yugoslav Republic of Macedonia"
[319] Q 14: Are NGOs, or particular categories of NGO, required to report to any public authority on (a) the receipt of any donation/grant/sponsorship from a private or foreign entity, and/or (b) the expenditure of such a donation/grant/sponsorship? If so, please specify the nature of the reporting requirement.
[320] Albania, Azerbaijan, Belarus (under the law governing humanitarian help), Belgium (only one respondent stated that it was required for the purpose of authorisation; another said that there was no requirement, a third stated that it occurred only in the report on an NGO's accounts and a fourth stated that it was not in the law), Bulgaria, Finland (one respondent said an income tax return was needed where a charge was made for services but the other referred to obligations from state funders), Germany (only one respondent), Greece (all donations had to be reported to the National Tax Authority and donations via a last will and testament also had to be reported to the Ministry of Economy or the Prefecture Authorities. There were also special (unspecified) regulations concerning charities and social institutions), Luxembourg, Poland (from the obtained 1% of tax), Russia, Turkey and "the former Yugoslav Republic of Macedonia" (a declaration of the reason for the transfer must be signed).
[321] Albania.
[322] Belgium (100,000 euros) and Luxembourg (12,500 euros).
[323] Austria (in order to check if the preconditions for enrolment in the list of NGOs with tax relief is fulfilled, i.e., enjoying the status of non-profit organisation)
[324] Estonia (only one respondent).

202. In one country there is an obligation to notify all donations exceeding 126.97 euros that are made for "political purposes and the aggregate value of such donations must not exceed 6,348.69 euros in any one year. Such donations may not be received from non-citizens or from foreign-based organisations[325].

203. In respect of five countries the reporting requirement was said specifically to cover the expenditure of the donation[326].

204. Only in the case of one country did the respondent indicate the form of the report[327].

205. With respect to eight countries there was said to be no obligation to report either the receipt or expenditure of donations from a private or foreign entity[328], while in the case of seven other countries it was reported that, although there is no special reporting obligation, the information would be disclosed to the tax authorities indirectly through accounting reports and balance sheets that the general law requires[329].

206. The question appears to have been misunderstood in respect of two countries[330].

207. In the case of one country it was reported that NGOs must submit regularly – every three months – financial documentation to a public authority to demonstrate operation and money flow (includes expenditure)[331].

Activities[332]

208. In eleven countries the production by NGOs of a report on their activities on a periodic basis is not required[333], is a matter left to be determined by the rules of the NGO concerned[334] or is only required for certain NGOs[335].

[325] Ireland (only one respondent; political purposes are defined as promoting or opposing the interests of a political party, presenting, directly or indirectly, a party's policies, promoting or opposing the interests of a third party in connection with the management of an election campaign or promoting directly or indirectly the election of a parliamentary candidate. Notification is to the Standards in Public Office Commission).

[326] Azerbaijan, Bulgaria (but only as part of the annual report of the NGO), Poland, Russia and "the former Yugoslav Republic of Macedonia" (but as part of a general annual report on activities).

[327] Azerbaijan (a written and formal notification).

[328] Croatia (but donors – including government bodies – do require it in respect of expenditure), Cyprus, Hungary, Italy, Moldova, Netherlands, Norway and Sweden.

[329] Armenia, Czech Republic (only foundations, funds and PBOs according to one respondent), France (however, two respondents stated that there was no reporting obligation), Serbia, Switzerland (however, three respondents stated that there was no reporting obligation), Portugal and United Kingdom.

[330] Slovakia ("yes, basic organisations of ADPS") and Spain (referred to accounts in respect of public grants).

[331] Ukraine

[332] Q 15: Are NGOs, or particular categories of NGOs, required by law to produce a report on their activities on a periodic basis? If so, please specify what must be contained in such a report, the period applicable to it and the persons or bodies to whom it must be submitted. Is any such requirement conditional to the receipt of any public funding?

[333] Azerbaijan (one respondent stated that it may be a condition in a grant agreement but another stated that foundations were required to print annual reports on the use made of their property), Croatia, Czech Republic (although this response seems inconsistent with the response to inspection which refers to a declaration of accounts and according to one respondent an annual report was required of foundations, funds and PBOs), Luxembourg, Netherlands (one respondent said it was required for bodies receiving government grants), Norway, Poland, Portugal, Serbia and Sweden.

[334] Albania.

[335] Cyprus (charities as regards financial matters and more generally as regards non-profit companies and voluntary associations; but one respondent stated that in TNRC decisions of a general assembly must be forwarded within 10 days to the department of social and municipal affairs).

209. In sixteen countries the submission to a public authority of an annual report covering the activities undertaken by NGOs and how their resources were spent was required[336].

210. In one country there was only such a reporting requirement for NGOs that were charities[337] and in two others it existed just for publicly subsidised or funded bodies[338].

211. In one country there is a general requirement to submit to state bodies reports and information in the manner and cases stipulated by law but no such provision has been elaborated[339], although another respondent for that country stated that there was a specific reporting obligation for organisations implementing a charitable programme to report on their activities[340].

212. NGOs in one country were reported as being required to publish regularly statutory documents, members of management board, data on sources of financing and expenditure but the need for a specific annual report was not mentioned[341].

213. Similarly a respondent for one country just stated that copies of minutes of board meetings of NGOs must be filed with the supervising authority[342].

214. The question was not really addressed in the case of one country[343].

Inspection[344]

215. The respondents for three countries reported that inspection by an external body of the books, records and activities of an NGO was not possible[345].

216. However, the respondent for another country reported that such an inspection took place once a year as part of the regular inspection process[346], while the respondent for yet another country stated that such a regular inspection was only possible with respect to the balance sheets of the organisation concerned[347].

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[336] Belarus (also covers details about members and those on elected bodies), Belgium (only one respondent; the question was not answered by two others and a fourth stated that there was no requirement), Bulgaria, Estonia, Finland, France (only one respondent; three respondents stated that the obligation applied only to publicly funded bodies, another said that there was only a reporting requirement with respect to the general assembly, yet another said that there was no requirement and one did not know), Germany, Hungary (only public benefit organisations; others must publish an annual financial statement), Ireland (longstanding for companies but recent for charities), Italy (to be submitted to the Ministry of Foreign Affairs; not clear whether this applies to all NGOs), Moldova (just one page), Russia, Slovakia, "the former Yugoslav Republic of Macedonia", Turkey and United Kingdom (if it is a charity or a company).

[337] Greece (but reports were in practice made by other NGOs).

[338] Germany (only one respondent; the report must be regular and contain the main activities, publications and membership developments) and Spain

[339] Armenia (one respondent suggested that the requirement might be interpreted as empowering state bodies to require reports where there is a suspicion regarding the legality of the activities concerned)

[340] Applying to the programmes qualified as charitable by the State Humanitarian Assistance Committee. A third respondent stated that there was no reporting requirement.

[341] Ukraine.

[342] Switzerland. However another respondent said an annual report was required for foundations and two others said such a report was required generally, while two others said it was not.

[343] Austria (reference was made only to the checking whether preconditions for tax relief were met).

[344] Q 16: Are there any circumstances in which the law authorises or requires an external body to inspect the books, records and activities of an NGO, or particular categories of NGOs, and/or those of their management bodies and staff? If so, please specify the circumstances and the conditions applicable to such an inspection.

[345] Belgium (one respondent; another said yes to check accounts), Netherlands and Norway.

[346] Croatia (i.e., in respect of matters such as labour and tax).

[347] Albania.

217. In the case of one country it was indicated that there was both the possibility of regular inspection and a power to undertake an inspection where there were specific concerns about the compliance of an NGO's activities and financial arrangements with the law[348].

218. The respondents for twenty-two countries reported the existence of a power of inspection[349]. In ten of them this power was exercisable to supervise compliance of an organisation's activities with the law[350], while it could be used to look for fraud or any other financially suspect activities in the case of six of them[351], for non-payment of taxes in the case of another twelve of them [352] and for the purpose of checking their balance in one of them[353]. In addition it is possible in one of them in respect of NGOs that are providing services on behalf of public authorities[354] or are publicly subsidised[355] or in case of their insolvency and bankruptcy[356]. Furthermore it is possible in another country pursuant to an inquiry into the affairs of a charity[357], in yet another in respect of its economic activities[358] and in the case of three others pursuant to a broad discretionary power[359].

219. In the case of one country the power of inspection appeared to be only exercisable in respect of just one form of NGO[360]

220. In another country an inspection by an external body could be undertaken pursuant to a request by the highest governing body of an NGO or by one of its donors[361].

221. In the case of one country an NGO's accounting records may be inspected by the financial office any time within five years of their declaration[362].

222. The question was not addressed by the respondents for two countries[363] and for another it was only stated that external auditing was encouraged[364].

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[348] Belarus (according to Vashkevich such an inspection usually results in small breaches being found and the director being fined 300-500 euros (50-100% of his or her monthly salary)).

[349] Armenia, Bulgaria, Estonia, Finland (only one respondent; the other said there was no power), France, Germany, Greece, Ireland, Italy (only in the case of NGOs recognised by a decree of the President of the Republic or by the Ministry of Foreign Affairs), Hungary, Luxembourg (only one respondent), Netherlands(only one respondent), Moldova, Poland, Portugal, Russia, Serbia, Slovakia, Sweden, Switzerland (three respondents but three others stated that it was not possible and the question was not answered by another), Ukraine and United Kingdom

[350] Armenia (the body can warn the organisation concerned and suggest the order and terms for fixing the violation), Estonia, Finland (only one respondent), France (only two respondents), Greece, Hungary, Ireland, Russia, Serbia and Ukraine.

[351] Bulgaria, France (only two respondents), Ireland, Luxembourg (only Louis Robert), Netherlands (only two respondents) and Switzerland (only two respondents).

[352] Estonia, Finland (only one respondent), Germany, Greece, Hungary, Moldova, Poland, Russia, Serbia, Spain, Slovakia and Switzerland (only one respondent).

[353] Italy.

[354] Germany (only one respondent).

[355] Germany (only one respondent).

[356] Germany (only one respondent).

[357] United Kingdom.

[358] Sweden.

[359] France (only one respondent), Poland (by the governor of the province but this does not usually happen) and Portugal.

[360] Cyprus (as regards clubs whose premises, books and papers may be inspected at any time to investigate any issue relating to it or to obtain the names and addresses of those present, although one respondent reported an open-ended power in the TRNC).

[361] Azerbaijan (one respondent; the other respondent referred only to the powers of warning and dissolution).

[362] Czech Republic.

[363] Austria (reference was made instead to the need for authorised professional auditors in the event of activities surpassing a certain (unspecified) financial volume) and "the former Yugoslav Republic of Macedonia".

[364] Turkey.

Other matters of concern[365]

223. For twenty-three countries respondents reported no matters of concern about the involvement of public authorities in the internal governance of NGOs that were not raised under the specific questions in the questionnaire[366].

224. In one of these countries it was stated that there was no ground for concern as public authorities were not involved in the internal governance of NGOs[367].

225. However, in one country it was suggested that there could be grounds for concern arising from the fact that a public authority was amongst the NGO's founders but no elaboration as to what this might entail was given[368].

226. Another respondent from the same country considered that there was a lack of good internal governance rules[369].

227. One respondent reported that there was a problem of having a majority of nominated members from public authorities on the boards of NGOs which can affect their independence[370].

228. Furthermore, in respect of another country, concern was expressed about the high level of discretion and lack of consistency in regulatory decisions and the absence of implementing regulations for the applicable laws, as well as about the multiplicity of forms of NGO and the regulatory regimes applicable to them[371].

229. A respondent from a different country reported that NGOs were heavily dependent on grants from public authorities for funding, with these generally being given only for short-term projects. This was seen as an effective way to control the activities of NGOs. The respondent expressed a wish for alternative sources of funding - such as tax benefits for private and corporate donors – to be established in order to address this problem[372].

230. Only in respect of one country was it explicitly stated that there was too much involvement on the part of public authorities in matters of NGOs' internal governance[373].

231. One respondent took a more critical stance of NGOs themselves, suggesting that they were "favourised" and that their activities are only political[374].

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[365] Q 17: Are there any matters relating to the involvement of public authorities in the internal governance of an NGO, or particular categories of NGOs, which give rise to concern and which have not been addressed in the foregoing questions? If so, please specify them.

[366] Albania, Armenia, Austria, Belgium (only two respondents; the question was not answered by the other two), Croatia, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Luxembourg, Netherlands, Portugal, Russia, Slovakia, Sweden, Switzerland, "the former Yugoslav Republic of Macedonia", Ukraine and United Kingdom.

[367] Albania.

[368] Azerbaijan (only one respondent).

[369] This respondent stated that "Azerbaijani legislation does not provide mechanisms for ensuring that NGOs enact internal governance mechanisms which prevent conflicts of interest and otherwise reflect international good practices. It would be legitimate for the government to introduce new provisions in the legislation meant to promote accountability and transparency within the NGO sector, as long as those measures are commensurate with the public benefits granted to the NGOs on which the obligations are imposed

[370] Ireland (only one respondent).

[371] Cyprus.

[372] Norway.

[373] Belarus (only one respondent).

[374] Serbia

232. One respondent answered this question by citing, without elaboration, the fact that it was only a court that can decide on dissolution and then only for grounds provided for by law[375].

233. Another respondent stated "No, unless there is a serious lawlessness determined by a court order"[376].

234. One respondent professed to be unfamiliar with the theme[377].

235. The question was not answered with respect to one country[378].

[375] Armenia (only one respondent).
[376] Turkey.
[377] Spain (referring to the case “Anesva” without further elaboration).
[378] Moldova.

III CONCLUSIONS AND RECOMMENDATIONS

236. This analysis only provides an overview of the position in the countries in respect of which the questionnaire was answered and certainly does not provide a deep enough appreciation of how formal rules work in practice. Moreover it is not in a position to confirm the accuracy of the information provided by the respondents.

237. Nonetheless a number of problems do seem to emerge.

238. Firstly it may justifiably be queried whether all the detailed requirements relating to internal governance are appropriate for all forms of NGOs in individual countries and the existence of a discretion to impose additional ones at the registration stage seems unwarranted.

239. Secondly there is a lack of clarity as to the entitlement of all persons and in particular children and non-citizens to participate fully in the decision-making of NGOs.

240. Thirdly there appear to be some undue controls over the freedom of NGOs to adapt their internal rules and structures and to establish and close branches which do not have a discrete legal personality.

241. Fourthly the basis for challenges to the decision-making of NGOs by public authorities appears in some countries to be unduly wide and unconnected with legitimate public interests related to their regulation.

242. Fifthly the scope in a few instances for enforced attendance of public officials at internal meetings of NGO decision-making bodies seems unjustified.

243. Sixthly the scope of obligations with respect to the auditing of accounts and reporting on activities is not always entirely clear and may not always be appropriate.

244. Seventhly there appears to be some significant influence exercised over NGO decision-making through the power of authorities to grant or withdraw public funding and through the participation of officials as board members, which does not always seem to be connected with legitimate public interests related to the regulation of NGOs.

245. Finally, as was also evident from the conclusions in the Expert Council's First Annual Report, the several organs of the Council of Europe need to make stronger efforts to raise awareness throughout Europe of the exemplary terms of Recommendation CM/Rec(2007) 14.

246. These are all matters which merit continued scrutiny but the following measures seem necessary to improve the present situation.

247. Firstly the appropriateness of specific legal requirements relating to internal governance need to be reviewed with a view to lightening the burden placed on NGOs and removing any scope for imposing requirements at registration or grant of legal personality which are not prescribed in the law.

248. Secondly inappropriate obstacles to the full participation of children and non-citizens in the decision-making of NGOs ought to be removed.

249. Thirdly restrictions on the freedom of NGOs to adapt their internal rules and structures and to establish and close branches without discrete legal personality should be removed.

250. Fourthly the basis for public authorities to challenge the decision-making of NGOs should be limited to circumstances in which there is a legitimate public interest to be protected.

251. Fifthly public officials should have no general authority to attend the meetings of NGO decision-making bodies without an invitation.

252. Sixthly there is a need to ensure that the scope of obligations relating to the auditing of accounts and reporting on activities is clarified and does not place an undue burden on NGOs.

253. Seventhly public authorities should not use their powers to grant or withdraw funding or the participation of officials in meetings of NGO decision-making bodies to exercise undue influence on the decisions being taken by NGOs.

254. Finally, the organs of the Council of Europe need to make stronger efforts to raise awareness throughout Europe of Recommendation CM/Rec(2007) 14, particularly through promoting its widespread dissemination and supporting training activities for NGOs and public authorities.

ANNEX 1

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Terms of reference

EXPERT COUNCIL ON NGO LAW

Adopted at the meeting of the Conference of INGOs on 22 January 2008

Background

The initiative for the creation of the Expert Council on NGO Law goes back to the first Regional NGO Congress organised by the Conference of INGOs on 24-26 March 2006 in Warsaw which proposed "the creation of an expert council to evaluate the conformity of national NGO and other relevant legislation and its application with Council of Europe standards and European practice. NGOs could pool their resources and co-operate with the Conference of INGOs and the Council of Europe to this effect."

The Expert Council is an initiative by NGOs for NGOs in all Council of Europe member States and Belarus.

The Conference of INGOs decided on 6 October 2006 to take the lead in the creation of the Expert Council.

The Expert Council operates under the authority of the Conference of INGOs of the Council of Europe.

The creation of the Expert Council on NGO Law gives follow-up to both the Warsaw Declaration, adopted at the Third Summit of Heads of State and Government of the Council of Europe member States on 16-17 May 2005, which stated that "democracy and good governance can only be achieved through the active involvement of citizens and civil society", and Recommendation CM/Rec(2007)14 on the legal status of NGOs.

The Expert Council on NGO Law relates to the implementation of project 2006/DGAP/943 "Relations with INGOs" of the Programme of Activities of the Council of Europe.

Mandate

The Expert Council aims to contribute to the creation of an enabling environment for NGOs throughout Europe by examining national NGO law and its implementation and promoting its compatibility with Council of Europe standards and European good practice.

Activities

To achieve its aim, the Expert Council:

- Monitors the legal and regulatory framework in European countries, as well as the administrative and judicial practices in them, which affect the status and operation of NGOs,

- Identifies both matters of concern and examples of good practice,

- Provides advice on how to bring national law and practice into line with Council of Europe standards and European good practice,

- Proposes ways in which Council of Europe standards could be developed,

- Encourages and supports NGOs to work together on issues concerning the NGO legislation and its implementation and

- Reports on its activities, its findings and its proposals with regard to Council of Europe standards and European good practice.

The Expert Council pursues a thematic approach with regard to all European countries. It deals in particular with issues addressed in Recommendation CM/Rec(2007)14 on the legal status of NGOs. When considered appropriate, the Expert Council may prepare reports on problems occurring in a particular country for the attention of the Conference of INGOs.

The Conference of INGOs or groups of NGOs can refer issues to the Expert Council, which can also take up issues on its own initiative. It receives information from NGOs, States, the Council of Europe and other intergovernmental institutions. It can carry out its own research.

The Expert Council complements the Council of Europe's assistance to governments on matters pertaining to NGO legislation such as the provision of legislative expertise and assistance activities on drafting or reforming NGO legislation. It therefore works in liaison with relevant Council of Europe bodies and services.

The Expert Council holds annual meetings and its members co-operate throughout the year by electronic means of communication.

Reporting

The Expert Council presents an annual report to the Conference of INGOs on its work. If need be, it may submit ad hoc reports on matters of particular urgency to the Conference of INGOs. The reports will contain recommendations for action by the Conference of INGOs.

Follow-up

The Conference of INGOs decides on the follow-up to be given to the reports of the Expert Council. It publishes the reports, ensures their dissemination to NGOs and relevant Council of Europe, national and intergovernmental bodies. It monitors the implementation of the Expert Council's recommendations.

Membership

The Expert Council is composed as follows:

- President

- Co-ordinator

- Three member

- Ad hoc members

All members act in their personal capacity.

A representative of the Secretariat General of the Council of Europe attends the meetings of the Expert Council.

Members of the Expert Council have all or most of the following qualifications:

- Legal expertise in NGO law (including the regulatory framework), other relevant laws (such as tax legislation), administrative and judicial practices affecting the status and operation of NGOs and human rights,

- NGO experience at national and international level, including experience in managing a NGO and NGO networks,

- Knowledge of European standards and good practice,

- Experience with the issues at stake in more than one European country,

- Availability and

- Proficiency in English.

The Conference of INGOs appoints the President of the Expert Council for a three-year term. The co-ordinator and the other members are appointed by the Bureau of the Conference of INGOs for a three-year term. The Expert Council appoints ad hoc members who are specialised on issues under examination for a one-year term, renewable.

Financial aspects

The budget of the Conference of INGOs (which is essentially funded by the Council of Europe) bears the travel and subsistence expenses for all members attending the meetings of the Expert Council and the cost of small expert fees for the written contributions of the members.

The co-ordinator has a consultant contract.

Evaluation

The Expert Council's operation will be reviewed by the Conference of INGOs in its third year of functioning with a view to determining whether the creation of a permanent structure is necessary.

ANNEX 2

Recommendation CM/Rec(2007)14
of the Committee of Ministers to member states
on the legal status of non-governmental organisations in Europe

(Adopted by the Committee of Ministers on 10 October 2007
at the 1006th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.*b* of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity between its members and that this aim may be pursued through the adoption of common rules;

Aware of the essential contribution made by non-governmental organisations (NGOs) to the development and realisation of democracy and human rights, in particular through the promotion of public awareness, participation in public life and securing the transparency and accountability of public authorities, and of the equally important contribution of NGOs to the cultural life and social well-being of democratic societies;

Taking into consideration the invaluable contribution also made by NGOs to the achievement of the aims and principles of the United Nations Charter and of the Statute of the Council of Europe;

Having regard to the Declaration and Action Plan adopted at the Third Summit of Heads of State and Government of the Council of Europe (Warsaw, 16-17 May 2005);

Noting that the contributions of NGOs are made through an extremely diverse body of activities which can range from acting as a vehicle for communication between different segments of society and public authorities, through the advocacy of changes in law and public policy, the provision of assistance to those in need, the elaboration of technical and professional standards, the monitoring of compliance with existing obligations under national and international law, and on to the provision of a means of personal fulfilment and of pursuing, promoting and defending interests shared with others;

Bearing in mind that the existence of many NGOs is a manifestation of the right of their members to freedom of association under Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms and of their host country's adherence to principles of democratic pluralism;

Having regard to Article 5 of the European Social Charter (revised) (ETS No. 163), Articles 3, 7 and 8 of the Framework Convention for the Protection of National Minorities (ETS No. 157) and Article 3 of the Convention on the Participation of Foreigners in Public Life at Local Level (ETS No. 144);

Recognising that the operation of NGOs entails responsibilities as well as rights;

Considering that the best means of ensuring ethical, responsible conduct by NGOs is to promote self-regulation;

Taking into consideration the case law of the European Court of Human Rights and the views of United Nations human rights treaty bodies;

Taking into account the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, United Nations General Assembly Resolution A/RES/53/144;

Drawing upon the Fundamental Principles on the Status of Non-Governmental Organisations in Europe;

Having regard to the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations (ETS No. 124) (hereinafter Convention No. 124) and to the desirability of enlarging the number of its contracting parties;

Recommends that the governments of member states:

– be guided in their legislation, policies and practice by the minimum standards set out in this recommendation;

– take account of these standards in monitoring the commitments they have made;

– ensure that this recommendation and the accompanying Explanatory Memorandum are translated and disseminated as widely as possible to NGOs and the public in general, as well as to parliamentarians, relevant public authorities and educational institutions, and used for the training of officials.

I. Basic principles

1. For the purpose of this recommendation, NGOs are voluntary self-governing bodies or organisations established to pursue the essentially non-profit-making objectives of their founders or members. They do not include political parties.

2. NGOs encompass bodies or organisations established both by individual persons (natural or legal) and by groups of such persons. They can be either membership or non-membership based.

3. NGOs can be either informal bodies or organisations or ones which have legal personality.

4. NGOs can be national or international in their composition and sphere of operation.

5. NGOs should enjoy the right to freedom of expression and all other universally and regionally guaranteed rights and freedoms applicable to them.

6. NGOs should not be subject to direction by public authorities.

7. NGOs with legal personality should have the same capacities as are generally enjoyed by other legal persons and should be subject to the administrative, civil and criminal law obligations and sanctions generally applicable to those legal persons.

8. The legal and fiscal framework applicable to NGOs should encourage their establishment and continued operation.

9. NGOs should not distribute any profits which might arise from their activities to their members or founders but can use them for the pursuit of their objectives.

10. Acts or omissions by public authorities affecting an NGO should be subject to administrative review and be open to challenge by the NGO in an independent and impartial court with full jurisdiction.

II. Objectives

11. NGOs should be free to pursue their objectives, provided that both the objectives and the means employed are consistent with the requirements of a democratic society.

12. NGOs should be free to undertake research, education and advocacy on issues of public debate, regardless of whether the position taken is in accord with government policy or requires a change in the law.

13. NGOs should be free to support a particular candidate or party in an election or a referendum provided that they are transparent in declaring their motivation. Any such support should also be subject to legislation on the funding of elections and political parties.

14. NGOs should be free to engage in any lawful economic, business or commercial activities in order to support their not-for-profit activities without any special authorisation being required, but subject to any licensing or regulatory requirements generally applicable to the activities concerned.

15. NGOs should be free to pursue their objectives through membership of associations, federations and confederations of NGOs, whether national or international.

III. Formation and membership

A. Establishment

16. Any person, be it legal or natural, national or non-national, or group of such persons, should be free to establish an NGO and, in the case of non-membership-based NGOs, should be able to do so by way of gift or bequest.

17. Two or more persons should be able to establish a membership-based NGO but a higher number can be required where legal personality is to be acquired, so long as this number is not set at a level that discourages establishment.

B. Statutes

18. NGOs with legal personality should normally have statutes, comprising the constitutive instrument or instrument of incorporation and, where applicable, any other document setting out the conditions under which they operate.

19. The statutes of an NGO with legal personality should generally specify:

a. its name;
b. its objectives;
c. its powers;
d. the highest governing body;
e. the frequency of meetings of this body;
f. the procedure by which such meetings are to be convened;
g. the way in which this body is to approve financial and other reports;

h. the procedure for changing the statutes and dissolving the organisation or merging it with another NGO.

20. The highest governing body of a membership-based NGO should be the membership and its agreement should be required for any change in the statutes. For other NGOs the highest governing body should be the one specified in the statutes.

C. Membership

21. No person should be required by law or otherwise compelled to join an NGO, other than a body or organisation established by law to regulate a profession in those states which treat such an entity as an NGO.

22. The ability of any person, be it natural or legal, national or non-national, to join membership-based NGOs should not be unduly restricted by law and, subject to the prohibition on unjustified discrimination, should be determined primarily by the statutes of the NGOs concerned.

23. Members of NGOs should be protected from expulsion contrary to their statutes.

24. Persons belonging to an NGO should not be subject to any sanction because of their membership. This should not preclude such membership being found incompatible with a particular position or employment.

25. Membership-based NGOs should be free to allow non-members to participate in their activities.

IV. Legal personality

A. General

26. The legal personality of NGOs should be clearly distinct from that of their members or founders.

27. An NGO created through the merger of two or more NGOs should succeed to their rights and liabilities.

B. Acquisition of legal personality

28. The rules governing the acquisition of legal personality should, where this is not an automatic consequence of the establishment of an NGO, be objectively framed and should not be subject to the exercise of a free discretion by the relevant authority.

29. The rules for acquiring legal personality should be widely published and the process involved should be easy to understand and satisfy.

30. Persons can be disqualified from forming NGOs with legal personality following a conviction for an offence that has demonstrated that they are unfit to form one. Such a disqualification should be proportionate in scope and duration.

31. Applications in respect of membership-based NGOs should only entail the filing of their statutes, their addresses and the names of their founders, directors, officers and legal representatives. In the case of non-membership-based NGOs there can also be a requirement of proof that the financial means to accomplish their objectives are available.

32. Legal personality for membership-based NGOs should only be sought after a resolution approving this step has been passed by a meeting to which all the members had been invited.

33. Fees can be charged for an application for legal personality but they should not be set at a level that discourages applications.

34. Legal personality should only be refused where there has been a failure to submit all the clearly prescribed documents required, a name has been used that is patently misleading or is not adequately distinguishable from that of an existing natural or legal person in the state concerned or there is an objective in the statutes which is clearly inconsistent with the requirements of a democratic society.

35. Any evaluation of the acceptability of the objectives of NGOs seeking legal personality should be well informed and respectful of the notion of political pluralism. It should not be driven by prejudices.

36. The body responsible for granting legal personality should act independently and impartially in its decision making. Such a body should have sufficient, appropriately qualified staff for the performance of its functions.

37. A reasonable time limit should be prescribed for taking a decision to grant or refuse legal personality.

38. All decisions should be communicated to the applicant and any refusal should include written reasons and be subject to appeal to an independent and impartial court.

39. Decisions on qualification for financial or other benefits to be accorded to an NGO should be taken independently from those concerned with its acquisition of legal personality and preferably by a different body.

40. A record of the grant of legal personality to NGOs, where this is not an automatic consequence of the establishment of an NGO, should be readily accessible to the public.

41. NGOs should not be required to renew their legal personality on a periodic basis.

C. Branches; changes to statutes

42. NGOs should not require any authorisation to establish branches, whether within the country or (subject to paragraph 45 below) abroad.

43. NGOs should not require approval by a public authority for a subsequent change in their statutes, unless this affects their name or objectives. The grant of such approval should be governed by the same process as that for the acquisition of legal personality but such a change should not entail the NGO concerned being required to establish itself as a new entity. There can be a requirement to notify the relevant authority of other amendments to their statutes before these can come into effect.

D. Termination of legal personality

44. The legal personality of NGOs can only be terminated pursuant to the voluntary act of their members – or in the case of non-membership-based NGOs, its governing body – or in the event of bankruptcy, prolonged inactivity or serious misconduct.

E. Foreign NGOs

45. Without prejudice to applicability of the articles laid down in Convention No. 124 for those states that have ratified that convention, foreign NGOs can be required to obtain approval, in a manner consistent with the provisions of paragraphs 28 to 31 and 33 to 39 above, to operate in the host country. They should not have to establish a new and separate entity for this purpose. Approval to operate can only be withdrawn in the event of bankruptcy, prolonged inactivity or serious misconduct.

V. Management

46. The persons responsible for the management of membership-based NGOs should be elected or designated by the highest governing body or by an organ to which it has delegated this task. The management of non-membership-based NGOs should be appointed in accordance with their statutes.

47. NGOs should ensure that their management and decision-making bodies are in accordance with their statutes but they are otherwise free to determine the arrangements for pursuing their objectives. In particular, NGOs should not need any authorisation from a public authority in order to change their internal structure or rules.

48. The appointment, election or replacement of officers, and, subject to paragraphs 22 and 23 above, the admission or exclusion of members should be a matter for the NGOs concerned. Persons may, however, be disqualified from acting as an officer of an NGO following conviction for an offence that has demonstrated that they are unfit for such responsibilities. Such a disqualification should be proportionate in scope and duration.

49. NGOs should not be subject to any specific limitation on non-nationals being on their management or staff.

VI. Fundraising, property and public support

A. Fundraising

50. 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.

B. Property

51. NGOs with legal personality should have access to banking facilities.

52. NGOs with legal personality should be able to sue for the redress of any harm caused to their property.

53. NGOs with legal personality can be required to act on independent advice when selling or acquiring any land, premises or other major assets where they receive any form of public support.

54. NGOs with legal personality should not utilise property acquired on a tax-exempt basis for a non-tax-exempt purpose.

55. NGOs with legal personality can use their property to pay their staff and can also reimburse all staff and volunteers acting on their behalf for reasonable expenses thereby incurred.

56. NGOs with legal personality can designate a successor to receive their property in the event of their termination, but only after their liabilities have been cleared and any rights of donors to repayment have been honoured. However, in the event of no successor being designated or the NGO concerned having recently benefited from public funding or other form of support, it can be required that the property either be transferred to another NGO or legal person that most nearly conforms to its objectives or be applied towards them by the state. Moreover the state can be the successor where either the objectives or the means used by the NGO to achieve those objectives have been found to be inadmissible.

C. Public support

57. NGOs should be assisted in the pursuit of their objectives through public funding and other forms of support, such as exemption from income and other taxes or duties on membership fees, funds and goods received from donors or governmental and international agencies, income from investments, rent, royalties, economic activities and property transactions, as well as incentives for donations through income tax deductions or credits.

58. Any form of public support for NGOs should be governed by clear and objective criteria.

59. The nature and beneficiaries of the activities undertaken by an NGO can be relevant considerations in deciding whether or not to grant it any form of public support.

60. The grant of public support can also be contingent on an NGO falling into a particular category or regime defined by law or having a particular legal form.

61. A material change in the statutes or activities of an NGO can lead to the alteration or termination of any grant of public support.

VII. Accountability

A. Transparency

62. NGOs which have been granted any form of public support can be required each year to submit reports on their accounts and an overview of their activities to a designated supervising body.

63. NGOs which have been granted any form of public support can be required to make known the proportion of their funds used for fundraising and administration.

64. All reporting should be subject to a duty to respect the rights of donors, beneficiaries and staff, as well as the right to protect legitimate business confidentiality.

65. NGOs which have been granted any form of public support can be required to have their accounts audited by an institution or person independent of their management.

66. Foreign NGOs should be subject to the requirements in paragraphs 62 to 65 above only in respect of their activities in the host country.

B. Supervision

67. The activities of NGOs should be presumed to be lawful in the absence of contrary evidence.

68. NGOs can be required to submit their books, records and activities to inspection by a supervising agency where there has been a failure to comply with reporting requirements or where there are reasonable grounds to suspect that serious breaches of the law have occurred or are imminent.

69. NGOs should not be subject to search and seizure without objective grounds for taking such measures and appropriate judicial authorisation.

70. No external intervention in the running of NGOs should take place unless a serious breach of the legal requirements applicable to NGOs has been established or is reasonably believed to be imminent.

71. NGOs should generally be able to request suspension of any administrative measure taken in respect of them. Refusal of a request for suspension should be subject to prompt judicial challenge.

72. In most instances, the appropriate sanction against NGOs for breach of the legal requirements applicable to them (including those concerning the acquisition of legal personality) should merely be the requirement to rectify their affairs and/or the imposition of an administrative, civil or criminal penalty on them and/or any individuals directly responsible. Penalties should be based on the law in force and observe the principle of proportionality.

73. Foreign NGOs should be subject to the provisions in paragraphs 68 to 72 above only in respect of their activities in the host country.

74. The termination of an NGO or, in the case of a foreign NGO, the withdrawal of its approval to operate should only be ordered by a court where there is compelling evidence that the grounds specified in paragraphs 44 and 45 above have been met. Such an order should be subject to prompt appeal.

C. Liability

75. The officers, directors and staff of an NGO with legal personality should not be personally liable for its debts, liabilities and obligations. However, they can be made liable to the NGO, third parties or all of them for professional misconduct or neglect of duties.

VIII. Participation in decision making

76. 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. This participation and co-operation should be facilitated by ensuring appropriate disclosure or access to official information.

77. NGOs should be consulted during the drafting of primary and secondary legislation which affects their status, financing or spheres of operation.