OSCE ODIHR NOTE OUTLINING KEY GUIDING PRINCIPLES OF FREEDOM OF ASSOCIATION WITH AN EMPHASIS ON NON-GOVERNMENTAL ORGANIZATIONS

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I. EXECUTIVE SUMMARY

2. This Note is offered as a guide for use by practitioners involved in drafting legislation on NGOs and freedom of association. It seeks to clarify key issues, in the area of both substantive and procedural law, and to discuss possible ways to address them in the light of the relevant international standards. The Note draws on best practice examples from the OSCE participating States (see Annex) to illustrate the various legislative options used to regulate issues pertaining to the freedom of association.

II. GUIDING PRINCIPLES

1. FREEDOM OF ASSOCIATION. PERMISSIBLE RESTRICTIONS THEREOF

3. The right to freedom of association is a fundamental human right secured by the major international treaties such as the International Covenant on Civil and Political Rights (ICCPR)[1] and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).[2] The freedom of association has also been recognized as an OSCE human dimension commitment[3].

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[1] International Covenant on Civil and Political Rights, Article 22 ("*1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. 2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right. 3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.*") [full text available at http://www.ohchr.org/english/law/ccpr.htm, last visited on 12 April 2005.]

[2] European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 11 ("*1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.*") [full text available at http://conventions.coe.int/treaty/en/Treaties/Html/005.htm, last visited on 12 April 2005.]

[3] Concluding Document of the Copenhagen Meeting of the CSCE Conference on the Human Dimension, para 9.3: "*The right of association will be guaranteed. The right to form and – subject to the general right of a trade union to determine its own membership – freely to join a trade union will be guaranteed. These rights will exclude any prior control. Freedom of association for workers, including the freedom to strike, will be guaranteed, subject to limitations prescribed by law and consistent with international standards;"; para 10:"In reaffirming their commitment to ensure effectively the rights of the individual to know and act upon human rights and fundamental freedoms, and to contribute actively, individually or in association with others, to their promotion and protection, the participating States express their commitment to (…) ensure that individuals are permitted to exercise the right to association, including the right to form and participate effectively in non-governmental organizations which seek the promotion and protection of*

The right to freedom of association is not absolute, however, any permissible grounds for restrictions on the exercise thereof are enumeratively prescribed by the limitations clauses of the relevant treaties, which do not allow to impose restrictions "*other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others*."[4] Such restrictions must be enacted only in accordance with the purpose for which such restrictions have been established.

4. Note that the limitations clause requires that such restrictions be **prescribed by law**. This is a crucial aspect of the regulation of freedom of association, aimed to ensure compliance with the principle of legal certainty and foreseeability. This requirement means that restrictions should have a formal basis in the law and be sufficiently precise for an individual or an association to assess whether or not their intended conduct would constitute a breach and what consequences this conduct may entail. As far as the required level of precision is concerned, the more specific the legislation is, the more precise the language needs to be (e.g., constitutional provisions, because of their general nature, may be less precise than other legislation).[5] With regard to the achievement of precision, clear criteria should be set out to govern the exercise of any discretionary power and to avoid the use of language intended to be, or giving the impression of being, subjective and thus not subject to judicial control. Legal rules limiting the right to freedom of association shall be clear and accessible to everyone. In this regard, it is important to bear in mind that legal certainty and foreseeability preclude the use of unpublished directions particularly where these are inconsistent with the terms of the published law.

5. The limitations clauses also require that any restrictions imposed be **necessary in a democratic society**. This implies that any measures must be proportionate to the legitimate aim pursued, and only imposed to the extent which is no more than absolutely necessary. While there is no single model of a democratic society, a society which respects the human rights set forth in internationally recognized human rights standards may be viewed as meeting this definition. The word 'necessity' does not mean 'absolutely necessary' or "indispensable', but neither did it have the flexibility of terms such as 'useful' or 'convenient': instead, the term means that there must be a 'pressing social need' for the interference. A restriction justified merely because its existence and use in practice provides a useful tool in achieving a social

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human rights and fundamental freedoms, including trade unions and human rights monitoring groups (para 10.3); allow members of such groups and organizations to have unhindered access to and communication with similar bodies within and outside their countries and with international organizations, to engage in exchanges, contacts and co-operation with such groups and organizations and to solicit, receive and utilize for the purpose of promoting and protecting human rights and fundamental freedoms voluntary financial contributions from national and international sources as provided by law." (para 10.4)

[4] International Covenant on Civil and Political Rights, Article 22, para 2.

[5] *See* European Court of Human Rights, *Rekvényi v. Hungary*, Judgment of the Court, 20 May 1999, para 34.

good is not acceptable. There must be strong justification for the law and its application.

6. With regard to the legitimate grounds in the pursuance of which restrictions on certain rights and freedoms may be placed, their interpretation can not be expanded to subsume or include other grounds than those specifically and explicitly spelled out under the relevant limitations clauses. The expression 'national security' shall be construed restrictively as justifying measures limiting certain rights only when they are taken to protect the existence of the nation or its territorial integrity or political independence against force or threat of force. It cannot be invoked as a reason for imposing limitations to prevent merely local or relatively isolated threats to law and order[6]. Neither can it justify restrictions upon the freedom of religion[7], which implies that restrictive measures affecting religious organizations can not be justified on the specific ground of national security. 'Public safety' means "*protection against danger to the safety of persons, to their life or physical integrity, or serious damage to their property*"[8]. With regard to the protection of the rights and freedoms of others, it is noteworthy that "*a limitation to a human right based upon the reputation of others shall not be used to protect the state and its officials from public opinion or criticism*"[9].

7. Against this background, it is particularly important to emphasize that measures to prevent and punish terrorism must be carefully tailored to recognize and guarantee due respect for the right to association. This protection requires states to ensure that laws or methods of investigation and prosecution are not purposefully designed or implemented in a way that distinguishes to their detriment members of a group based upon a prohibited ground of discrimination, such as religious beliefs, and to guarantee

[6] These criteria are extracted from the "Siracusa Principles" [United Nations, Economic and Social Council, U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities, Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, Annex, UN Doc E/CN.4/1985/4 (1985) *full text accessible at http://www1.umn.edu/humanrts/instree/siracusaprinciples.html; last visited on 20 April 2005]* adopted in May 1984 by a group of international human rights experts convened by the International Commission of Jurists, the International Association of Penal Law, the American Association for the International Commission of Jurists, the Urban Morgan Institute for Human rights, and the International Institute of Higher Studies in Criminal Sciences. Though not legally binding, these principles provide an authoritative source of interpretation of the ICCPR with regard to limitations clauses and issues of derogation in a public emergency.

[7] Neither Article 18 of the International Covenant on Civil and Political Rights nor Article 9 of the European Convention on Human Rights includes 'national security' among the legitimate grounds for subjecting the freedom of thought, conscience and religion to any limitations. International law expressly prohibits derogation from the freedom of thought, conscience or religion in time of public emergency (article 4.2). It can only be restricted upon with regard to its external manifestations and only on the following grounds that do not include "national security": public safety, public order, public health or morals and the fundamental rights and freedoms of others.

[8] Siracusa Principles, Principle VII.

[9] *Id.,* Principle VIII.

that methods of this nature are closely monitored and controlled to ensure against human rights infringements.

2. REGISTRATION AND LEGAL PERSONALITY

2.1 The right to acquire legal entity status and the right to associate informally

3. Associations or groups are protected as such in reference to a number of criteria enabling them as "associations" and which cannot be left at the discretion of the state. If states were able, at their discretion, by classifying an association as "public" or para-administrative" or by denying it the status of association to remove it from the scope of the freedom of association and the rights associated with it, "*that would give them such latitude that it might lead to results incompatible with the object and purpose of the Convention, which is to protect rights that are not theoretical or illusory but practical and effective*"[10]. The criteria which enable a group as an "association" are essentially the origin, the objective and the means of organization of the body concerned. Origin primarily refers to the founders: an entity founded for instance by the legislature is not likely to be considered an association. The entity considered is also required to pursue an aim, which is in the general interest, for instance the protection of health or the promotion of human rights. Finally, an entity which would "*employs processes of a public authority*[11]" would in principle not be considered an association. It is all a question of degree, however, and the jurisprudence evolved on some aspects of these issues.

4. It is essential that there is a possibility under the law to acquire legal entity status for the groups that so desire. The law should, however, never condition the exercise of the right to freedom of association on the acquisition of formal status.

5. The Fundamental Principles on the Status of Non-Governmental Organizations in Europe (hereinafter referred to as the Fundamental Principles) provide that "*NGOs can be either informal bodies, or organizations which have legal personality*."[12] The fact that non-governmental organizations may be formed as legal entities does not mean that individuals are required to form legal entities in order to exercise their freedom of association. The classifications operated in national law can only be a

[10] *Chassagnou and Others v. France*, judgment of the European Court of Human Rights (ECHR), 29 April 1999.
[11] *Le Compte, Van Leuven and De Meyere v. Belgium*, judgment of the European Court of Human Rights (ECHR), 23 June 1981.
[12] Fundamental Principles on the Status of Non-Governmental Organizations in Europe, Council of Europe, Principle 5 [full text in English and Russian available at http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Civil_society/, last visited on 10 March 2005]. It is worth mentioning that the Fundamental Principles, although not legally binding in general and with regard to Belarus in particular, still provide a valuable source of guidance in this regard as they allow to interpret the provisions of relevant binding international instruments.

starting point, but in no way may result in banning informal associations on the sole ground of their not having legal personality[13].

7. The freedom to informal association does not, however, preclude the possibility that certain institutional forms may be required if particular benefits are to be enjoyed. Certain privileges (such as state contracts or access to tax preferences) may be legitimately conditioned upon the establishment of a formal association.

2.2 The acquisition of legal entity status: Procedural requirements

8. For an NGO to become established as a legal entity[14], the law should ordinarily require that the founders hold a founding meeting and adopt the governing documents of the organization (charter or statue, bylaws, or the like). In addition to this, some countries may require that the minutes of the founding meeting and the governing documents be notarized. However, the law should not require filing any documents in addition to the governing documents and the founding meeting minutes. The only exception may be where the group seeks establishment in the form of a foundation, a fund or a trust, in which case a proof of sufficient financial means may be legitimately required.[15]

9. While it is clear that a minimum of two persons would be needed to form an association, the law may set a higher minimum number of founders where legal personality is sought. The number of founders required, however, "*should not be set at a level that discourages the establishment of an NGO.*"[16]

10. The law should not leave room for bureaucratic judgment or discretion as to the permitted purposes of the organization and the means by which it intends to pursue those purposes. Any organization formed for a lawful purpose should be allowed to acquire formal status as long as the appropriate documents are filed. It is generally advisable that the state agency responsible for granting legal entity status be independent of control by the executive branch of the government, although it does not necessarily need to be a court.[17]

11. It is essential that the process of legal entity establishment for NGOs be easy to understand, inexpensive and expeditious.[18] Comparison against the incorporation procedures for businesses may serve as a test, to ensure that the procedure required

[13] See *Chassagnou and Others v. France*, judgment of the European Court of Human Rights (ECHR), 29 April 1999; *The United Communist Party of Turkey and Others v. Turkey*, judgment of the ECHR, 30 January 1998; *Artico v. Italy*, judgment of ECHR, 13 May 1980.
[14] A legal entity or person needs to be understood as a corporate entity, which is capable of enjoying and being subject to legal rights and responsibilities.
[15] Fundamental Principles on the Status of Non-Governmental Organizations in Europe, Principle 28.
[16] *Id.*, Principle 16.
[17] *Id.*, Principle 33.
[18] *Id.*, Principle 28.

for NGOs is at least as simple and inexpensive. The Fundamental Principles require that "*[t]he rules for acquiring legal personality … be published together with a guide to the process involved.*"[19]

12. The law should set a clear and reasonably short deadline within which the responsible state agency must review the application for establishment of an NGO as a legal entity. The law should also make it clear that a failure on the part of the state agency to act within the timeframe set will automatically result in the establishment of the organization as a legal entity, and the state agency will be required to issue whatever documents or certificates are ordinarily issued to prove establishment.

2.3 Refusal to grant legal entity status

13. In accordance with the Fundamental Principles, "*[l]egal personality should only be refused where there has been a failure to submit all the clearly prescribed documents required, if 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 country concerned, or if there is an objective in the statutes which is clearly incompatible with the law.*"[20]

14. The law should expressly require that the responsible state agency provide a detailed written statement of reasons for any refusal to establish an NGO. Any refusal to grant legal entity status should be appealable at a court, and a reasonable deadline for such appeals should be available.

2.4 Flexibility of duration

15. Flexibility of duration is inherent in the very notion of freedom of association. With regard to NGOs established as legal entities, this means that they should be allowed to have perpetual existence (or limited existence, if chosen by the founders).

16. The law should never require renewal of registration or re-registration as a condition for an organization to continue its activities.

17. The updating of administrative information, such as the organizational address or the general representatives of the organization, should be automatically accepted and not subject to review.

3. TERMINATION, DISSOLUTION AND LIQUIDATION

18. Voluntary termination, dissolution and liquidation of assets of an NGO should be permitted upon an application by the highest governing body of the organization.

[19] *Id.*
[20] *Id.*, Principle 31.

Procedures for such voluntary termination, dissolution and liquidation should be designed to protect creditors and other stakeholders of the organization.

19. Grounds and procedures for involuntary termination and dissolution should be given especially serious consideration by the legislator since the government's discretion as to this matter can especially adversely impact the independence of civil society. The law should make it clear that the sanction of involuntary termination or dissolution can only be imposed as a measure of last resort. The Fundamental Principles establishes as a standard that *"[i]n exceptional circumstances and only with compelling evidence, the conduct of an NGO may warrant its dissolution."* [21] The requirement of compelling evidence is central to devising safeguards against abuse of involuntary termination and dissolution, and is best met with making the court the sole body accorded the right to terminate establishment.

4. SCOPE OF ACTIVITY

4.1 General activities

20. The Fundamental Principles state that "*[a]n NGO is free to pursue its objectives, provided that both the objectives and the means employed are lawful*."[22] For the interpretation of this provision, it should be borne in mind that the international standards do not allow to impose restrictions "*other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others*."

21. One of the features of a democratic society is pluralism, and therefore, the banning of an organization merely because its views are contrary to those of the traditional majority parties in that society can not be justified. On that basis, this is only in exceptional cases that the European Court of Human Rights has sanctioned the proscription of a particular organization which was thought to pose a sufficient threat to the values of that society[23]. Associations or groups which advocate changes in legislation or to the legal or constitutional structure of the state are allowed the protection of their right to association provided the means used to those ends are lawful and democratic. Associations or groups whose leaders incite others to use violence and/or support aims with one or more of the rules of democracy cannot rely on their right to association to protect them from sanctions imposed as a result. Furthermore, the state could reasonably prevent the implementation of a program or activities which are incompatible with democratic rules and other norms associated

[21] *Id.*, Principle 71.
[22] *See id.*, Principle 10.
[23] *Reefa Partisi Erbakan Kazan and Tekdal v. Turkey*, judgment of the ECHR, 2002: in this case, the Court held that the dissolution of the applicant's party by the Turkish Constitutional Court on the ground that it had become a centre of activities against the principles of secularism was within the state's margin of appreciation and thus justified within the terms of Article 11(2).

with the protection of human rights before it was given effect through any specific acts. In this regard, it may be relevant to rely on Article 17 of the ECHR, which provides that nothing in the Convention gives any person or group any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms laid down in the Convention. This notion may be used to distinguish groups whose purposes and activities are inimical to the notions of democracy and human rights from those whose ideas are merely inconsistent with other democratic, majority, views[24]. Finally, it is noteworthy that because proscription is such a draconian and severe step, based on potential harm, rather than specific criminal activities, the criminalization of political or other associations is commonly not held admissible.

22. Apart from the unacceptability of the objectives described above, the only restriction that may legitimately be imposed on the scope of activity of an NGO is a restriction on profit-making activities, which stems from the essence of freedom of association as a civil and political right rather than an economic one and the resulting basic principle that "*NGOs do not have the primary aim of making a profit.*"[25] This limitation, however, does not imply that an NGO cannot engage in profit-making activities as a matter of principle, but rather means that any profits accruing are ploughed back into the pursuit of the common objectives of the association rather than distributed to its membership.

4.2 Fundraising

23. Formal NGOs should be generally permitted to engage in any legitimate fundraising activity. The law should not treat such fundraising activities as economic ones.

24. The law should make it clear that the government cannot screen or require approval of specific grants or sources of funds. It may, however, be appropriate to require advance notice of fundraising campaigns or issuing identification documents to the fundraisers participating in in-person solicitations.

5. ORGANIZERS AND MEMBERS

5.1 General issues

[24] Nevertheless, any measures taken under that Article must be proportionate to the threat to the rights of others. Article 17 shall be reserved for those rare cases where the person of group has resorted to acts of violence or clear racial hatred. This approach is supported by Article 18 of the ECHR, which provides that the restrictions permitted under the Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed. Therefore, Article 17 may not be used to disqualify certain actions or bodies by reference only to the 'unacceptability' of that body's political or other ideals, thus side-stepping questions regarding the legitimacy and reasonableness of the particular measure.

[25] *Id.*, Principle 4.

25. The right to freedom of association under the international law is accorded to everyone. Both natural and legal persons should be free to establish an NGO.[26]

26. It is central to the enjoyment of the right to freedom of association that the membership of an NGO be voluntary and no one be forced to join an association. The only permissible exception from the principle of voluntary membership is membership in organizations established by law to regulate a profession (such as bar associations or associations of judges) in jurisdictions which treat such organizations as NGOs.

27. It is also essential that "*[n]ational law should not unjustifiably restrict the ability of any person, natural or legal, to join membership-based NGOs. The ability of someone to join a particular NGO should be determined primarily by its statutes, and should not be influenced by any unjustified discrimination.*"[27]

28. The law also cannot oblige all NGOs to be open to membership by anyone wishing to join, and an NGO should be generally free to choose whether or not to limit its membership to a particular group of persons.

5.2 Aliens

29. Aliens, i.e. foreign nationals or stateless persons, should be able to exercise freedom of association on equal terms with the citizens of the state. This stems from both the provisions of Article 22 of the ICCPR and the general guarantee of equality and prohibition against discrimination as enshrined by Article 2, para 1,[28] and Article 26[29] of the ICCPR. The general thrust of the Covenant is further reinforced by the CCPR General Comment No. 15[30] which expressly notes that *"[a]liens receive the benefit of the right of peaceful assembly and of freedom of association."*

30. Under European law, restrictions on political activity of aliens are permissible as far as their rights of freedom of expression, freedom of association and peaceful

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[26] *Id.*, Principle 15.
[27] *Id.*, Principle 21.
[28] International Covenant on Civil and Political Rights, Article 2, para 1 ("*Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*")
[29] *Id.*, Article 26 ("*All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*")
[30] CCPR General Comment No. 15 (On the Position of Aliens under the Covenant) [full text available at http://www.unhchr.ch/tbs/doc.nsf/0/bc561aa81bc5d86ec12563ed004aaa1b?Opendocument, last visited on 15 April 2005.]

assembly are concerned. Article 16 of the ECHR[31] seeks to justify, on grounds of national security and territorial integrity, a lesser protection to those rights in relation to an alien's political activities. The provision has been interpreted quite restrictively though, and the Court tends increasingly to require from governments to rely solely on the restrictions that are specific to the right in question. It is therefore recommended that no restrictions be placed on the aliens' right to found or join NGOs other than those permissible in respect of the freedom of association specifically[32].

5.3 Children

31. The Convention on the Rights of the Child[33] requires the States Parties to "*recognize the right of the child to freedom of association*."[34] As interpreted in conjunction with the principle of the best interest of the child,[35] this provision does not prevent the law from requiring that in certain cases a child's joining an association be subject to parental approval. The justifications for requiring a parental approval and/or setting a minimum age limit are especially strong where the child seeks to establish an NGO with legal entity status, with all the ensuing responsibilities.

5.4 Members of the armed forces and the police

32. The international standards permit "*the imposition of lawful restrictions on members of the armed forces and of the police*"[36] in their exercise of the right to freedom of association. The ECHR adds to the categories of persons whose right to associate with others may be lawfully restricted a third one, namely, "*members of … the administration of the State*."[37]

33. These provisions should, however, be interpreted in light of the principle of proportionality and never as a blanket prohibition on the exercise of the right to freedom of association by those belonging to the listed groups. The key criterion here is the compatibility with the person's position, including in terms of neutrality, and is

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[31] "*Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens*".
[32] See para 3 through 5.
[33] Ratified by Belarus on 1 October 1990.
[34] Convention of the Rights of the Child, Article 15 ("*1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly. 2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.*") [Full text available at http://www.ohchr.org/english/law/crc.htm, last visited on 15 April 2005.]
[35] *See id.*, Article 3, para 1 ("*1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. "*)
[36] *See* International Covenant on Civil and Political Rights, Article 22, para 2.
[37] *See* European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 11, para 2.

reflected in the provision in the Fundamental Principles that "*membership of an NGO may be incompatible with a person's position or employment.*" However, states enjoy a wide margin of appreciation in this regard and it is worth noting that in the opinion of the European Commission of Human Rights, an interference with the right to association may include the complete prohibition of that right[38].

6. LIABILITY

6. 1 Presumption of lawfulness

34. NGOs should benefit from the presumption that their activity is lawful in the absence of evidence to the contrary.[39] This implies, for instance, that there may not be any power to search the organization's premises or to seize any materials or other items present there without an objective ground for taking such action. Moreover, any search or seizure must be authorized by a judge and the terms of a warrant must be clear and precise.

6. 2 Sanctions

35. It is essential that the law make available a range of graduated sanctions imposable on organizations in compliance with the principle of proportionality, and a sanction that is being imposed is no more than absolutely necessary. Termination or dissolution should only be used as a measure of last resort.

6.3 Liability of NGO officers, directors and staff

36. The Fundamental Principles clearly delineate the grounds and limits for the liability of NGO officers, directors or staff. In particular, the Fundamental Principles provide that "*[t]he officers, directors and staff of an NGO with legal personality should not in principle be personally liable for its debts, liabilities and obligations.*"[40]

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[38] *Council of Civil Service Unions v. United kingdom*, judgment of the ECHR, 1987: in that instance, the government of the UK had banned trade union membership at the government intelligence headquarters at Cheltenham on the ground that such membership, and threat of industrial action, would be injurious to national security. In an action for judicial review the House of Lords held that the government had acted lawfully and fairly and proceedings were brought under the European Convention of Human Rights claiming a violation of Article 11. Declaring the application inadmissible the European Commission of Human Rights held that the employees at the headquarters fell into the definition of 'members of the administration of the state' and that the restrictions placed on their right of association were lawful under the terms of Article 11(2). In this case, the Commission concluded that the measures taken, although drastic, were neither arbitrary nor in violation of the applicant's rights.

[39] Cp. with presumption of innocence as guaranteed by Article 14, para 2, of the ICCPR ("*Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.* ")

[40] Fundamental Principles on the Status of Non-Governmental Organizations in Europe, Principle 72.

Furthermore, it is noted that "*[t]he officers, directors and staff of an NGO with legal personality may be liable to it and their parties for misconduct or neglect of duties*."[41]

7. REPORTING AND AUDIT

37. The law may and should require that organizations receiving more than minimal benefits from the state or intensely engaging in public fundraising report regularly (e.g. annually) on their finances and operations to the responsible state agency. The reporting requirement, however, should not apply to all organizations without exemption. The law should rather establish a level of activity that would trigger reporting and audit requirements. Normally, most membership-based organizations, especially if they do not receive special benefits such as tax benefits, should be exempted from the reporting requirement.

8. RELATIONS WITH THE GOVERNMENT

38. The Fundamental Principles provide that "*NGOs should be encouraged to participate in governmental and quasi-governmental mechanisms for dialogue, consultation and exchange, with the objective of searching for solutions to society's needs,*"[42] however, making a special mention that "*[s]uch participation should not guarantee nor preclude government subsidies, contracts or donations to individual NGOs or groups thereof.*"[43]

39. The requirement that "*NGOs should also be consulted during the drafting of primary and secondary legislation which affects their status, financing or spheres of operation*"[44] is of particular importance for the legislator seeking to improve the legal framework as it concerns NGOs.

[41] *Id.*, Principle 73.
[42] *Id.*, Principle 74.
[43] *Id.*, Principle 75.
[44] *Id.*, Principle 78.

9. OTHER ISSUES OF SPECIAL RELEVANCE

9.1 Regulation of foreign NGOs

40. The law should provide a level playing field for foreign and domestic organizations. If the foreign organization intends to have more than fleeting presence in the host country, it is appropriate to require that it is established in some form as a condition of operating in that country.

41. The legal requirements concerning reporting, taxation, and the like, should ordinarily apply indiscriminately to foreign and domestic organizations.

9.2 NGOs with funding from foreign sources

42. Formally established NGOs should be able to receive cash or in-kind donations from abroad, as long as all generally applicable foreign exchange and customs requirements are met. The laws should not impose levels of taxation or rates of exchange that would discourage NGOs from receiving foreign funding.