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## **Rapporteur Group on relations between the Council of Europe and NGOs (GR-ONG)**

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### **Legal Cooperation of the Council of Europe for the development and consolidation of democratic stability**

**DEMO-DROIT PROGRAMME**

**THE LEGAL STATUS OF NON-GOVERNMENTAL ORGANISATIONS  
AND THEIR ROLE IN A PLURALISTIC DEMOCRACY**

Multilateral meeting  
organised by the Council of Europe  
in cooperation with the Japan Foundation

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**Guidelines to promote the development and strengthening of NGOs  
in Europe**

## **BACKGROUND**

1. Non-governmental Organisations (NGOs) have a fundamental role in the development and consolidation of democratic stability and pluralism. Civil society has great diversity and NGOs include a large variety of activities such as safeguarding freedoms and human rights, saving the environment, promoting social and community development, setting technical and professional standards, stimulating educational and cultural renewal, caring for the poverty-stricken or disabled, advocating legislative changes and voicing people's basic needs and aspirations. NGOs are guarantors of the principles and values of human society and thus need to cooperate with democratic governments.
2. The increasing development of NGOs is inseparable from the aspiration to freedom and democracy which is the "raison d'être" of the Council of Europe and guides its member States. NGOs carry out work of value to the international community and contribute to the achievements of the aims and principles of the Statute of the Council of Europe and the United Nations Charter.
3. Council of Europe member States are committed to promote the rule of law and the protection of fundamental freedoms which form the basis of a genuine democracy and in particular the freedoms of opinion, expression and association.
4. Laws permitting NGOs to be established as legal persons play a crucial role in making effective the freedom of association, guaranteed by the European Convention on Human Rights and protected by international and constitutional law. Further, the freedom of expression - equally guaranteed by the European Convention on Human Rights and protected by international and constitutional law - is a freedom that has little meaning unless implemented through laws permitting interest groups to be formed.
5. The aim here is not to present a model law for NGOs but to recommend a set of principles to be embodied in NGO laws in a democratic society governed by the rule of law. NGO laws should be suitable to the legal system of the country and should be prepared in consultation with representatives of the NGO sector.

## **LEGAL ASPECTS**

6. An appropriate role for laws for the NGO sector is to permit and encourage the existence of such organisations and to afford them legal existence and protection so long as the NGO meets generally applicable standards of legality and responsible behaviour.

Laws governing NGOs should be oriented towards enabling NGOs to operate independently on the basis of accountability and transparency and encouraging effective self-regulation of the NGO sector.

7. NGOs should have the same rights generally applicable to legal persons and they should be subject to the same civil law and criminal law obligations and sanctions that are generally applicable to legal persons.

8. The rule of law is essential for the development of any modern democratic society. Essential to the development of the rule of law is the right of all legal persons in the society, including legal persons such as NGOs, to appeal decisions affecting them to independent courts.

All acts or decisions affecting NGOs should be subject to the same administrative and judicial review that are generally applicable to legal persons. There should be no need to have any provisions in the NGO laws dealing with these issues, as they should be provided for in the general laws governing the judiciary and administrative appeals.

9. The presumption behind all NGO laws should be that individuals, groups, and legal persons are entitled to form associations for any legal, non-profit purpose. Establishment of an NGO should be voluntary, not mandatory. It should generally be possible for all natural and legal persons in a democratic society to form an NGO through a relatively quick, easy, and inexpensive process.

10. There are particular benefits that can be obtained only by becoming a legal person. When an NGO is established it normally becomes a separate legal person. That generally means that the NGO and not its members, is liable for its debts, contracts, and obligations. Only an established NGO may be eligible for government grants or tax breaks.

11. A foreign NGO should receive the same rights, powers, privileges, and immunities enjoyed by domestic NGOs as long as the foreign NGOs' activities are consistent with the public order in the host country. The rules for foreign NGO establishment should generally be the same as for domestic NGO establishment. Similarly, there should be no special rules or limitation for NGOs that include foreign nationals on their board or staff.

12. The principal documents that should be required to be filed in establishing an NGO are the governing documents of the organisation, which should adequately state the nature and purpose of the organisation, provide for an adequate governance structure, state the powers and limitations of the organisation, identify the founders, directors, and officers, state the location of the principal headquarters, and identify a legal representative.

13. The administrative process for the registration of NGOs should be applied with a minimum amount of discretion provided. The government ministry or agency responsible for the registration of NGOs should publish rules and regulations applicable, and forms that explain the process. It should provide assistance to NGOs that are seeking formal legal status, and it should be required to provide a written statement of reasons for any refusal to register an NGO.

Decisions not to register an NGO or to terminate one should be appealable, both administratively and to an independent court. In some countries it may be found appropriate that it be the courts that function as the registering body.

14. It is ordinarily not necessary to require proof that the organisation has the financial wherewithal to accomplish its stated purposes. If the organisation is able to raise funds and provide the intended goods and services, it will have proved that there is a need for it.

15. All existing NGO laws allow individuals to establish an NGO, but many laws do not allow other legal persons, such as associations, to establish an NGO. It is highly desirable to allow legal persons to establish NGOs. This enables like-minded NGOs to form umbrella groups to pursue matters of mutual interest.

16. NGOs that seek grants, contracts, tax preferences, or other concessions, should be required to register so that agencies of the government can determine what NGOs have been established and what their purposes, powers, and limitations are. In addition any individual or legal person doing business with an NGO (e.g. leasing it space, selling goods) should be able to determine whether it has been established as a recognized legal person. It is also important that the public have access to this information. For their own protection, citizens need to be able to check whether a purported NGO that seeks their support is really established or not.

17. Laws governing NGOs should provide that no net earnings or profits of an NGO may be distributed as such to any person.

NGOs should be allowed to engage in economic activities so long as the principal purpose of the NGO is to pursue a public purpose or the mutual benefit of its members. If an NGO does derive net profits from an economic activity, they must be used for the public or mutual benefit purposes for which it was formed, and they must not be distributed to any person. This principle - the principle of non-distribution - is the single most important feature distinguishing NGOs from for-profit entities.

18. The law should permit an NGO, in its governing documents or by resolution, to designate another similar NGO to which any assets remaining after the payment of all debts and obligations should go. In some situations, large donors may have imposed a contractual obligation that funds received from it be returned in the event of termination. A good practice is for an NGO to select another NGO

engaged in the same or a very similar kind of activity to receive its assets upon termination.

19. NGOs are often key participants in framing and debating issues of public policy, and they should have the right to engage freely in research, education, and advocacy on issues of public debate, even where the positions they take are not in accord with stated government policy. The law should create no obstacles to such legitimate activities.

20. An NGO that is properly established in one country should generally be allowed to solicit and receive cash or in-kind donations or transfers from another country, a multilateral agency, or an institutional or individual donor in another country, so long as all generally applicable foreign exchange and customs laws are satisfied.

Generally speaking, the rules should be the same for foreign and domestic funding. If domestic funders must be disclosed in annual reports, the same rules should apply to foreign funders. If domestic funders are entitled to support any legal activity that is permissible for domestic NGOs to engage in, foreign funders should be entitled to the same privileges.

## **OTHER ASPECTS**

### Government-NGO relationships

21. NGOs and governments should in each appropriate sector establish mechanisms for dialogue, consultation and exchange in a spirit of openness and with the overriding objective of searching for optimum solutions to society's needs and problems.

Such consultative mechanisms are neither a competition with nor a replacement for the roles played by political parties, trade unions, employers' associations or commercial lobbies.

22. The existence of and participation in government-NGO consultative mechanisms neither guarantees nor precludes government subsidies, contracts or donations to individual NGOs or groups of NGOs. No consultation should be viewed by government as a vehicle to coopt NGOs to government priorities, nor by NGOs as an inducement to abandon their goals and principles.

23. It goes without saying that such government-NGO consultations should take place at all stages of the drafting of legislation and administrative decrees that affect and frame NGO status, financing or spheres of influence. NGOs should acquire the expertise to make competent input to all aspects of such discussions, whether political or technical. Appropriate training in relevant fields including managerial skills should be encouraged.

24. Government-NGO trust and partnership take time to establish and develop. In some countries it may be found useful for the government to designate an office or a person as the focal point for channeling NGO contacts.

### General NGO governance issues

25. In their structures and decision-making NGOs need to be sensitive to a variety of actors: members, users, beneficiaries, boards, supervisory authorities, staff, funders and in specific circumstances government departments (national or local, as relevant).

26. NGOs need clearly-written statutes (constitutions, articles of association, etc) and internal rules. The latter need to fulfil legal requirements, to meet obligations undertaken by virtue of the NGO having joined an external network or umbrella organisation, or respond to commitments made to donors or supporters. Changes in internal structures and rules are wholly within the responsibility of the NGO and require no governmental authorisation or intervention.

27. The methods whereby NGOs admit or exclude members, appoint or elect or replace officers and staff, and determine organisational levels of responsibility and accountability are wholly the concern of the NGO and of no external authority (except in cases where an act occurs that infringes, for

example, normal criminal or civil law, insurance obligations, fiscal or similar regulations).

28. In other words, an NGO is sovereign in determining its internal arrangements for the carrying out of the mission or programme for which its members brought it into existence, or maintain it in existence. Unless and until an NGO breaks the law, external legal entities have no role in the conduct of its internal affairs.

#### Coordination and networking among NGOs

29. NGOs are free to join, or to refuse to join, any grouping of like-minded or compatible NGOs. This matter will be determined by the appropriate governing or executive organ of each NGO.

30. Joining a collective NGO mechanism is neither an abandonment of an NGO's "independence" nor a dilution of stated objectives and aspiration. It is rather an affirmation of the enhanced potential of collective and collaborative actions, and an opening of gateways to potential new audiences and achievements. It can also be a way of demonstrating the strength of solidarity and reinforcing common values.

NGO networks and coordinating bodies can:

- foster complementarity among NGO programmes but also between NGOs and the business or government sectors;
- provide for better coverage of activity sectors or of geographical regions;
- enhance donor potential, increase NGO credibility and efficiency, reduce conflicting messages transmitted to authorities or the public, present common positions to national or international institutions;
- provide economical training opportunities, share specialized services (legal, auditing, printing, library, etc.) and set common standards.

31. NGO networks and coordinating bodies are also booster microphones for small NGOs, while large NGOs can speak through them with the even greater authority conferred by numbers. Such networks and bodies are invaluable intermediaries vis-à-vis government to mobilize and channel NGO input on matters subject to consultation, to reflect the concerns of all NGOs or to give the seal of collective approval to agreements and compacts.

#### Self-regulation /Codes of conduct

32. The NGO sector must be concerned to demonstrate its commitment to effectiveness, accountability, high standards, participatory processes, good governance, voluntary ethics, equality of opportunity, probity of officers and staff.

33. Self-regulation is most prevalent and successful in countries where the legal system for NGOs is most highly developed. This suggests that both the laws governing NGOs and the sector's own awareness of the need for ever higher standards go hand in hand. Responsible NGOs are increasingly aware that the success of their sector depends to a large extent on whether the public regards it as efficient, effective, and ethical. Further, self-regulatory codes are often developed to enable groups of NGOs working in a specific sector to deal with the particular needs and challenges of that sector.

34. The adoption and internal enforcement of a clear, strong code of conduct is a powerful statement to donors, beneficiaries, and other interested parties that the NGO has standards and takes meaningful steps to enforce them. Replicated by numerous NGOs in any society, the process of adopting and enforcing codes of conduct can measurably raise the actual and perceived status and integrity of the sector.

#### European Convention on the recognition of the legal personality of international non-governmental

### organisations (ETS No 124)

35. The Council of Europe has recognised as early as 1951 the importance of NGOs in building up a pluralistic democracy and values their contribution to the activities of the Organisation. In 1986 a European Convention on the recognition of the legal personality of international non-governmental organisations was opened for signature by member States. Under the European Convention the legal personality and capacity as acquired by an NGO in the contracting State in which it has statutory office are recognised as of right in the other contracting States. The aim of the Convention is to facilitate the activities of NGOs at international level provided that certain conditions are met and in particular that activities are carried out in at least two States.

36. A Council of Europe seminar on the application of the European Convention was held on 9-10 February 1998 to encourage all member States that have not yet ratified Convention 124 to initiate ratification procedures as soon as possible.

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