



COMMENTS TO THE DRAFT LAW AMENDING THE LAW OF THE REPUBLIC OF ARMENIA ON PUBLIC ORGANIZATIONS

November 13, 2018

The European Center for Not-for-Profit Law (ECNL)¹ is pleased to provide comments on the proposed amendments to art. 24 to the Law of the Republic of Armenia on Public Organizations published for consultation on 29 October 2018. ECNL has been following the developments related to the legal environment for civil society organizations in Armenia and has previously provided assistance and comments in the process of adoption of the Law on Public Organizations in 2016. The current comments are developed as part of the public consultation initiated by the Government of the Republic of Armenia.

1. BACKGROUND

On October 29, 2018 the Armenian government has published a new draft law aiming to amend the Law on Public Organizations for public consultation (hereinafter: “*Draft Law*”). The amendment changes the reporting requirements, which currently are set by the law only for public organizations that receive public funds from central or local governments. The Draft Law extends the reporting requirement to all public organizations by ordering reports on their annual financial and in-kind incomes to be published on the special government-administered website.² The report will have public and non-public parts. The public part shall include the amount of financial and non-financial income by names, residency and legal status of all sources that are legal entities, while the non-publicized part shall contain the names, addresses, phone number and passport data for all physical persons that have donated to public organizations. The latter information can be accessible only for the authorized state body.

2. RELEVANT RIGHTS AND STANDARDS

The rights and freedoms of associations and their members are protected by the right to freedom of association, as set out in Article 22 of the International Covenant on Civil and Political Rights (ICCPR) and Article 11 of the European Convention on Human Rights and Freedoms (ECHR). According to the standards adopted by the Council of Europe, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association as well as the Venice Commission this right also includes the right to seek, secure and utilize resources, as otherwise freedom of

¹ The European Center for Not-for-Profit Law (ECNL) is a leading European resource and research center in the field of civil society law. Its mission is to promote an enabling legal and fiscal environment for civil society in Europe and beyond. ECNL has demonstrated deep commitment to empower civil society organizations and ensure their sustainability. ECNL experts have provided support that directly and positively influenced more than 50 laws affecting civil society organizations across Central and Eastern Europe and the CIS.

² Currently this website is <https://www.azdarar.am/>

association would be deprived of all meaning.³ In addition, CSOs and their staff, members and donors enjoy the right to privacy as guaranteed by Art. 17 of the ICCPR and Art. 8 of the ECHR.

3. THE AMENDMENT LACKS CLEAR ARGUMENTATION AND IS NOT PROPORTIONATE

The 2017 Law on Public Organizations introduced clear reporting standards for CSOs that receive state funding, thus was considered as a positive step towards creating enabling environment for the Armenian civil society. Now, almost 2 years after the law was adopted, the government is proposing heightened reporting obligations not only for CSOs that receive state funds but for all organizations.

CSOs can be legitimately subjected to reporting requirements. According to para. 62 of the Council of Europe Recommendation CM/Rec (2007)14 on the legal status of non-governmental organisations in Europe, organizations 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. The Venice Commission and the OSCE/ODIHR have also stated in several of their joint opinions that the resources received by CSOs may legitimately be subjected to reporting and transparency requirements. However, **according to international standards, such requirements shall not be unnecessarily burdensome, but proportionate to the size of the organization and the scope of its activities, taking into consideration the value of its assets and income.**⁴

In the case of the proposed amendments, there is no differentiation between big and small organizations or organizations without any income. It is unreasonably burdensome to require that all organizations, regardless of whether they have had any activity or income during the year, must be obliged to publish reports.

As the Venice Commission notes, a country's national interest, including the fight against corruption, money-laundering and terrorist financing, does not justify imposing new reporting requirements for all associations without a concrete threat for the public and/or the constitutional order or any concrete indication of individual illegal activity.⁵

A narrowly construed and applied restriction can only be properly justified if there is specific evidence of problems, with restrictions designed to solve these specific problems. There is no clear evidence of existing problems with CSO reporting as also noted in the findings of MONEYVAL,

³ See the OSCE/ODIHR and Venice Commission Joint Opinion on the Romanian Draft Law No. 140/2017 on Amending Governmental Ordinance No. 26/2000 on Associations and Foundations; adopted at the Venice Commission's 114th Plenary Session (Venice, 16-17 March 2018). See also the Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/23/39, of 24 April 2013, para. 8, and Recommendation CM/Rec(2007)14 of the Council of Europe Committee of Ministers to member states on the legal status of nongovernmental organisations in Europe, para. 50.

⁴ OSCE/ODIHR Joint Guidelines, para. 104. CDL-AD(2017)015, Opinion on the draft law on the transparency of organisations receiving support from abroad of Hungary, para. 52; CDL-AD(2013)030, Joint Interim Opinion on the Draft Law amending the Law on non-commercial Organisations and other legislative Acts of the Kyrgyz Republic, para. 69; CDL-AD(2013)023, Interim Opinion on the Draft Law on Civic Work Organisations of Egypt, para. 40.

⁵ OSCE/ODIHR and Venice Commission Joint Opinion on the Romanian Draft Law No. 140/2017 on Amending Governmental Ordinance No. 26/2000 on Associations and Foundations; adopted at the Venice Commission's 114th Plenary Session (Venice, 16-17 March 2018), para. 66. ECtHR, *Sindicatul "Păstorul cel Bun" v. Romania*, no. 2330/09, 31 January 2012, para. 69.

the permanent monitoring body of the Council of Europe entrusted with the task of assessing compliance with the related international standards on anti-money laundering and financial management. In July 2018 MONEYVAL prepared a follow-up report on Armenia which evaluated the compliance of the Armenian legislation for CSOs with the Special Recommendation 8 of the Financial Action Task Force (FATF)⁶ on the possibility for abuse of CSOs for terrorist financing purposes. According to the MONEYVAL report, Armenia was rated as “compliant” (an improvement compared to the previous score “largely compliant”) and according to the report conclusions:

“23. Armenia has clear policies to promote accountability, integrity and public confidence in the administration and management of NPOs, depending on the type of NPO (i.e. specific requirements for foundations, charities, religious organisations, etc.).”⁷

4. REPORTING REQUIREMENTS VIOLATE THE PRIVACY OF CSOS AND THEIR DONORS

The Draft Law requires that the public section of the report should reveal the name of donors, while the non-public part must also contain the name and surname, amount of entry, and in case of availability - passport data, public service number, residence address or address of registration, and phone number of those who donate to public organizations. Furthermore, the proposed amendments demand such organizations to publish the names of members, representatives of governing bodies, staff and volunteers that have used the organization’s financial resources during the year.

For any requirement to disclose information, there should be a legitimate aim providing a solid rationale, why disclosure of such information is necessary. At the same time, para. 64 of Recommendation CM/Rec(2007)14 on the legal status of non-governmental organisations in Europe emphasizes that **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**. The OSCE/ODIHR Joint Guidelines on Freedom of Association also state:

“228. All regulations and practices on oversight and supervision of associations should take as a starting point the principle of minimum state interference in the operations of an association. As noted elsewhere in these Guidelines, the right to privacy applies to an association and its members; this means that oversight and supervision must have a clear legal basis and be proportionate to the legitimate aims they pursue.”

Without a legitimate aim, which is clearly missing from the proposed amendment, such exposure of the personal information of staff and donors is not appropriate and hardly justifiable. Revealing personal data of staff and donors instead of respecting their established right to anonymity entails a serious risk of intruding to their privacy. Such a risk adversely affects the willingness of individuals to donate to CSOs and has a negative impact on CSOs activities.

⁶ <http://fatfplatform.org/special-recommendation-8/>

⁷ <http://www.fatf-gafi.org/media/fatf/documents/reports/fur/Moneyval-1st-Regular-Follow-Up-Report-Armenia-2018.pdf>

5. REPORTING REQUIREMENTS MAY PUT PUBLIC ORGANIZATIONS IN A LESS ADVANTAGEOUS POSITION

Any reporting should not discriminate CSOs, should be proportionate and not violate their rights. The OSCE/ODIHR Joint Guidelines on Freedom of Association state:

"225. Reporting requirements, where these exist, should not be burdensome, should be appropriate to the size of the association and the scope of its operations Associations should not be required to submit more reports and information than other legal entities, such as businesses, and equality between different sectors should be exercised. Special reporting is permissible, however, if it is required in exchange for certain benefits, provided it is within the discretion of the association to decide whether to comply with such reporting requirements or forgo them and forsake any related special benefits, where applicable."

Para. 7 of Recommendation CM/Rec (2007)14 on the legal status of non-governmental organisations in Europe also reiterates that CSOs 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 them.

It is not clear from the Draft Law why all public organizations shall submit such detailed information or why this particular set of information, which include sensitive personal data shall be submitted. It is also important to see if the reporting requirements put public organizations at a disadvantage compared to others, including religious organizations, political parties, trade unions, foundations as well other forms of non-trade organizations exempted from the scope of the Law on Public Organizations⁸.

7. CONCLUSION

This analysis concludes that the Draft Law is not in line with international standards and best practices, thus will likely have a negative impact on the Armenian civil society sector, and restrict freedom of association. The key problems of the Draft Law include:

1. While CSOs may be subject to reporting requirements if they have received any form of public support, the requirements set by the proposed amendments are disproportionate and imposed without a properly justified, legitimate reason.
2. The reporting requirements and the related administrative burdens should not put public organizations in a less advantageous position compared to the reporting requirements imposed on the business sector and other organizations exempted from the scope of the law in force.
3. The provision that require public organizations to name all donors of an organization (both legal entities and individuals) individually do not respect the right to privacy of the organizations, its members and donors.
4. The opinion of CSOs needs to be taken into consideration when developing and adopting any legislation that affects them, including at the stage of developing specific reporting forms.

⁸ Article 1(2) of the Law on Public Organizations

Based on the above analysis, we recommend the drafters to:

- To remove the requirements for CSOs to list individually all donors of an organization (both legal entities and individuals) which poses a threat to the right of privacy of both the organization and its donors.
- To remove the requirements for CSOs to publish the names of members, representatives of governing bodies, staff and volunteers that have used the organization's financial resources during the year.
- To ensure that the reporting requirements are proportionate and take into consideration the size of the organization and the value of its assets and income, focusing on organizations that receive financial support from the state.
- To ensure that the CSO opinions are taken into consideration and that the adopted changes would not provide a heavy burden on CSOs.

We remain available to provide further information as necessary to ensure that the Draft Law is in line with international standards and best practices.