This document has been provided by the International Center for Not-for-Profit Law (ICNL).

ICNL is the leading source for information on the legal environment for civil society and public participation. Since 1992, ICNL has served as a resource to civil society leaders, government officials, and the donor community in over 90 countries.

Visit ICNL's **Online Library** at
http://www.icnl.org/knowledge/library/index.php
for further resources and research from countries all over the world.

REGISTRATION OF ASSOCIATIONS IN CENTRAL AND EASTERN EUROPE AND THE NEWLY INDEPENDENT STATES: A SURVEY[1]

By Rachel L. Holmes

Part I: Introduction

This paper evaluates key features of legislation governing registration of associations in Central and Eastern Europe (CEE) and the Newly Independent States (NIS). It is based upon a review of English language documents.

I. International Law in the Protection of the Freedom of Association

Freedom of association has been recognized as an international right for 50 years – in Article 20 of the Universal Declaration of Human Rights of 1948, in Article 11 of the European Convention on Human Rights ("ECHR"), which entered into force in 1953, and in Article 22 of the International Convention on Civil and Political Rights ("ICCPR"), which entered into force in 1976. Until recently, however, it was one of the least developed of fundamental freedoms.

In a landmark decision, the European Court of Human Rights unanimously held in July 1998 that the refusal by Greek courts to register a Macedonian cultural association was an interference with the applicants' exercise of their right to freedom of association. The Court stated unequivocally that "the right to form an association is an inherent part" of the right to freedom of association. "That citizens should be able to form a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of the right to freedom of association, without which the right would be deprived of any meaning." (Sidiropoulos & Others v. Greece)

Of nearly equal importance is the January 1998 decision of the European Court of Human Rights holding that the action by the Government of Turkey to dissolve the United Communist Party of Turkey was a violation of Article 11 of the ECHR. The Court stated that "the Convention was designed to maintain and promote the ideals and values of a democratic society." Since "political parties make an irreplaceable contribution to political debate, which is at the very core of the concept of a democratic society," they can be shut down only for "convincing and compelling reasons." Furthermore, political parties are essential to the protection of the freedom of speech guaranteed in Article 10 of the ECHR (United Communist Party of Turkey v. Turkey) Similar reasoning would seem to apply to non-governmental organizations.

These decisions under the ECHR are of global significance, for Article 11 of the ECHR, protecting freedom of association, is essentially the same as Article 22 of the ICCPR. Thus, decisions of the European Court for Human Rights, which are final and not subject to review, are directly relevant to interpreting and applying Article 22 of the ICCPR, a convention that has been ratified by 140 nations.

Under both the ECHR and the ICCPR, the freedom of association can be restricted only (i) in the interests of national security or public safety, (ii) for the prevention of disorder or crime, (iii) for the protection of health or morals, or (iv) for the protection of the rights or freedoms of others. Any restrictions must be "prescribed by law," and they must be "necessary in a democracy" to achieve one of the four listed objectives. In both the Sidiropoulos and Communist Party cases, the Court emphasized that exceptions must be "construed strictly," that only "clear and compelling" reasons can justify restrictions, that any restrictions must be "proportional to the legitimate end pursued," and that there must be "relevant and sufficient" evidence with "decisions based on an acceptable assessment of the relevant facts" before a restriction can be justified.[2]

Finally, the Court in the Communist Party case held that the freedom of association would be largely theoretical and illusory if it were limited to the founding of an association, for a government might otherwise immediately disband it. "It follows that the protection afforded by Article 11 lasts for an association's entire life and that dissolution of an organization by a country's authorities must accordingly satisfy the requirements" of Article 11 of the ECHR.

Although many questions remain, the Sidiropoulos and Communist Party cases provide strong international law protection for the freedom of association and the right to form legal entities to pursue that freedom.[3] They also articulate very tough standards that must be satisfied before the freedom of association can be interfered with or restricted.

II. Concept of an NGO

The term "NGO" (Non-Governmental Organizations) refers to the myriad of organizations, some of them formally constituted and some of them informal, that are independent of government and that are characterized primarily by humanitarian or cooperative, rather than commercial, objectives, and that generally seek to promote human rights, relieve suffering, promote the interests of the poor, protect the environment, provide basic social services, undertake community development, and other organizations working in the human dimension.[4] These NGOs, which include associations, societies, foundations, charitable trusts, nonprofit corporations, or other legal entities, do not operate for profit—viz., if any profits are earned, they are not and cannot be distributed as such. NGOs do not include trade unions, political parties, churches, or profit-distributing cooperatives.

A fundamental distinction between types of NGOs that is relevant to the legal benefits and burdens placed upon them is whether an NGO is organized and operated primarily for the mutual benefit of a defined group of individuals (often the members of a membership organization) or primarily for the benefit of the public.

This paper will focus exclusively on legally established associations (i.e. membership associations). This is not to diminish other types of NGOs nor to diminish the legal problems confronting them. These problems may be studied in a future paper.

III. Possible Areas of State Regulation

There are three areas in which the State may be involved in the formation of associations: 1) in the creation of an association without legal entity status; 2) in the creation of an association wishing to attain legal entity status; and 3) in the entitlement of tax benefits.

First, the freedom of association includes the right to associate informally and the guarantee that no one can be required to join an association. Just as international law requires that the right to establish a legal entity be reasonably available to all, so to it would prohibit a State from requiring the formation of a legal entity to exercise the freedom of association. In some countries, the advantages for attaining legal entity status are not great and the burdens (e.g. annual reports) may make formal establishment undesirable. (See, for example, Italy.) As a consequence, many small associations choose not to be formally established. Other organizations, however, may choose to register as private companies, foundations, political parties, trade unions, or other legal entities if they believe this serves their purpose. There are distinct advantages and disadvantages of each form of organization, and the laws of each country must be examined in detail to determine which form of entity is most appropriate.

Second, the State must not unduly restrict the legal establishment of associations. According to the Court in the Sidiropoulos case, the State may only restrict the freedom of association under any of the four exceptions listed above in Section II. These exceptions are to be strictly construed

by the registration authorities. This means that when an association applies for legal entity status, the registration authority must not only determine whether the association followed the procedure outlined by law (e.g. the founders must have an organizational meeting, and a board of directors must be chosen before an application for registration can be filed) but also whether the association's purposes are appropriate, within the limits outlined in the Sidiropoulos case (see Part I, Section II above).

Once the application for registration has been approved and, in many countries, when the name of the organization is formally enrolled on a register of NGOs, the association acquires existence as a legal entity. Acquisition of legal entity status generally means that it is the legal entity that is liable for the debts, contracts, leases and obligations that are entered into, not the individual founders or members themselves.

Some civil law systems permit the formation of a legal entity without a formal filing with any court or government agency. In France, for example, an association can obtain legal entity status simply by filing a declaration with the respective regional department and publishing it in the Journal Officiel.

In the Netherlands no government agencies are involved in the establishment of associations. Rather, its laws merely stipulate the steps an organization must follow in order to acquire legal entity status. Thus, for example, an "informal association" can be formed without formal action and its constitutive and governing rules need not be laid down in a notarial deed. An adequate expression of the will to work together is sufficient. "Formal associations," on the other hand, are established by an execution of a notarial deed and registration in the Public Trade Register held by the Chambers of Commerce and Industry.

In Sweden establishment of an association requires no official registration. Instead, the association need only have two founders and an oral or written charter. If these minimum conditions are met, the association automatically becomes a legal entity without any further registration or other acts of state.

Many common law systems permit the establishment of associations without a formal filing with any court or government agency. For example, in the United States, an association can simply adopt a charter without seeking formal incorporation. For such unincorporated associations, however, personal liability is not limited.[5] Should the association wish to incorporate formally, it merely files its charter with the Secretary of State.

Third, a principal motivation for seeking legal entity status is to become eligible for tax benefits. There are basically two ways in which the State can confer tax benefits. One is through an initial registration process in which the registration authority deems that the association is entitled to tax benefits in addition to legal entity status. In other words, the registration authority determines whether the association has public benefit status (within the limitations articulated in the Sidiropoulos case).

Once it makes that determination and grants legal entity status, the association is entitled to the tax benefits conferred on public benefit associations. The Czech Republic employs this method, leading to a more careful scrutiny in their registration process.

The second way a state can confer tax benefits is by requiring the association to first register for legal entity status, and then, subsequently, register for tax benefits. Hungary and the United States both employ this method.

This paper will focus on the legal registration requirements for associations, regardless of whether the motivation for registration is to become eligible for tax benefits, to shield individuals

from legal liability, to establish a more certain and stable governance structure, or any other reason. In short, it will focus on *how* legal entity status is obtained, not *why*. [6]

Part II: Analysis of Registration for Legal Entity Status

I. Organizational Requirements

Laws governing NGOs should be written and administered so that it is relatively quick, easy and inexpensive to establish an association as a legal entity. Individuals, legal entities, and even organs of the state should be entitled to establish associations for any legal, not-for-profit purpose. Foreign individuals and legal entities should also be allowed to establish associations with the same rights, powers, privileges and immunities enjoyed by domestic associations.

To acquire legal entity status, the state law can impose reasonable conditions that must be met before the association achieves legal entity status. The most common of these are founder requirements.

A. Founder Requirements

1. Number of Founders

A number of countries require two to five founders. Examples include Albania, Bulgaria, the Czech Republic, Estonia, Lithuania, Slovakia, Armenia, Russia, and Ukraine. Others require ten founders, including Hungary, Latvia, Slovenia, Belarus, and Kyrgyzstan. A few countries require a significantly greater number of founders, which poses a practical obstacle to the formation of associations, particularly associations promoting less popular goals. For example, Bosnia requires 30 founders; Poland, 15 for its "full" associations; and Romania, 20.

Any provision of a law governing NGOs may be so onerous that it impedes the right to the freedom of association. Thus, requiring a number of founders so high that it is very difficult to form legally registered associations would violate international law. There is no fixed number that is the maximum allowed. Rather, the issue must be examined on a facts and circumstances basis.

2. Foreign Founders

In many states, like Bulgaria, Estonia, Russia, Moldova, and Ukraine, foreigners are permitted to be founders. By contrast, in places like Azerbaijan, Belarus, and Yugoslavia, the laws explicitly state that only citizens may be founders. In Yugoslavia, for instance, the law does not permit foreigners to establish associations or for foreign associations to operate legally in the Yugoslav territory. As an example of an another approach, foreigners in Romania may establish associations provided that 50% of the members of the board and executive body are Romanian citizens. As an example of yet another approach, foreigners in Macedonia and Bosnia may establish associations provided they “permanently reside” in the territory.

3. Legal Entities as Founders

While all existing NGO laws in CEE and the NIS allow individuals to establish associations, a few do not allow legal entities to establish associations. Yugoslavia’s Law on Associations, for example, explicitly forbids legal entities

from founding an association. Similarly, the recently-enacted Macedonian Law on Associations and Foundations precludes legal entities from founding associations, however, they may be members of associations, and furthermore, NGOs may form umbrella groups. It is an important best practice to allow legal entities, including agencies of the government, to establish associations. This permits like-minded associations to form umbrella groups to pursue matters of mutual interest. For example, environmental NGOs should be allowed, and even encouraged, to form an association to coordinate their activities, share knowledge and skills among themselves, and to speak as a group on important environmental issues. Similarly, it should be permissible for city police forces or state-owned museums to form national associations for similar purposes.

II. Document Requirements

For the most part, the application process is very similar in all the CEE and NIS countries. Successful registration depends upon adherence to the legal formalities when submitting the documents, but the document requirements tend to be minimal. [7]

One relatively minor concern with the application process is the requirement in some countries that foreign associations submit copies in two different languages. For example, in Kazakhstan and Tajikistan, foreign associations are required to produce documents in both the Republic language and Russian. Some foreign NGOs have complained that it would be less of a burden if they were allowed to choose one or other of the two languages.[8]

III. Registration Authority

A. Registration Authority

Registration authority can be vested in the courts or in ministries. It can operate at the national level, local level, or both. Where registration authority is vested in ministries, it can be assigned to a single ministry (for example, the Ministry of the Interior) or in ministries that have responsibility over particular functions (e.g. health, education, research).

Across CEE, the prevailing pattern is to register with the local district courts. The presumption by many in the region is often that registration with court-based systems are more open and less subject to political interference than registration with a ministry which may be more restrictive or subject to political influence. In addition, many countries have moved away from registration with the Ministry of Interior, which in former times had associations with the secret police.

Typically, each district court maintains its own register, but all registration decisions are compiled and collected into a national register at the Supreme Court or another central registration locus. Almost all of the CEE countries have a central register; Croatia and Romania do not. There are some CEE countries which vest registration authority in a ministry. For example, in Bosnia, an association must register with the Ministry of Justice or one of its local branches;[9] in Croatia, with the Ministry of Public Administration or one of the local administration; and in the Czech Republic, with the Department of Civic Affairs at the Ministry of Interior, but not at a district or local level.

In every country in the NIS except Georgia, registration is currently vested with the Ministry of Justice and/or its local administrative bodies. In Georgia, registration is vested in the courts. Of the several draft NGO laws being considered in the NIS, only the Azerbaijani draft has proposed vesting the registration authority in the courts.

In many of the countries of CEE and the NIS, registration is carried out through registration authorities located throughout the country, thus making registration accessible for associations

outside the capital cities. In Azerbaijan, however, registration is carried out only through the Ministry of Justice central office in Baku, the capital city. That restraint makes it difficult to register associations in regions outside of Baku.

B. Degree of Discretion

The degree of discretion vested in court registration authorities and ministries varies. Typically, the registration authority vested in the courts simply verifies that the claimed purposes are consistent with those stipulated in law and that the association complies with the minimum requirements as to legal form. While there are some ministries with clearly limited responsibilities (for example, the Czech Republic), more often ministerial level authorities also have the power to determine whether a particular organization is needed in a particular field, regardless of whether its purposes are consistent with those that are legally permissible. Sometimes this is because the legal provisions on establishment are not clear about the kinds of organizations that may be established.

For instance, in many NIS countries, including Azerbaijan, Kazakhstan, Tajikistan, and Uzbekistan, registration authorities might require associations to change or modify their purpose in order to comply with written and unwritten laws inherited, in part, from the past and encouraged by lack of clarity in the legislation. In other words, the laws of public associations explicitly or implicitly give these registration authorities broad discretion in interpreting which organizations may be established. Nonetheless, it should be permissible to establish an association to engage in any legally permitted activity that is not primarily intended to make profits. Any derogation from that standard raises the possibility of inconsistency with emerging international law standards for the freedom of association.

Prior control is another good example of a registration authority's extreme discretionary power. Prior control means the direct involvement of the government prior to registration. Prior control continues to be a problem in Romania, Bulgaria, Poland, and Uzbekistan. Prior to registration, in Romania, the founders of an association must request an opinion from the ministry or other central public administrative body having jurisdiction over the activities proposed by the association. This opinion serves only an advisory purpose because the court has ultimate authority over registration decisions, but it can be quite influential. In addition, the founders must prove that the association has a legal right to use the premises where its headquarters will be located. When an application is submitted for review, the prosecutor and the ministry or the central public administrative body that issued the advisory opinion are required to participate in the hearings, which are open to the public.

Similarly, in Bulgaria registration of associations is decided after an open hearing with the participation of the public prosecutor. Although many associations have succeeded in registering in recent years, this is a remnant of the communist period and should be changed.

In Poland the court informs the local administrative bodies about the application and the administration may then within 14 days express its opinion before the court or enter the proceedings as an interested party. If the administration or public prosecutor intervenes and opposes registration, the registration court may forbid the establishment of the association, particularly for "associations simple."

In Uzbekistan founders are required to convene an organizational meeting to adopt a charter and elect officers. Such conferences officially require local government approval, which, since mid-1992, has been virtually impossible for groups independent of the government to obtain. Only after the conference has been conducted are founders permitted to file all of the organizational documents with the Ministry of Justice.

All of the above-mentioned illustrations of prior control are obstacles in forming associations and may be of debatable legitimacy in light of the principles set for in the Sidiropoulos and Communist Party cases (see Part I, Section II).

C. Requirement to Register

In many CEE and NIS countries (e.g. Russia), operations of unregistered public associations are permitted (that is, not expressly prohibited). In other countries, the lack of registration simply means that any group that is unregistered does not receive the benefits that are conferred upon public associations such as legal entity status or preferential tax treatment. (See, for example, western European countries such as Sweden or Germany.) But, in several countries like Bosnia, Moldova, Kazakhstan, Tajikistan, and Uzbekistan, a different obstacle is created by the requirement that associations must register as legal entities, or they will not be allowed to operate in the country.

As an example, Article 12 in Tajikistan's Public Associations Law explicitly states that public associations are allowed to carry out their activities only after they are registered with the Ministry of Justice or its local agencies. It is a violation of the law, therefore, to exist as an unregistered public association. However, there appear to be no provisions on sanctions for failure to register. (See also Yugoslavia.)

In Kazakhstan public associations not registered according to the order prescribed in the Law on Public Associations are not allowed to work in the Republic. Moreover, in 1995, the Decree of the President established administrative responsibility for punishment of unregistered associations. These provisions do not correspond with the norms of the Kazakhstan Constitution and Civil Code.

Similarly, Uzbekistan's Law on Public Associations forbids operations of public associations with unregistered by-laws. These apparent limitations on the right of individuals to come together and operate freely in informal associations is clearly inconsistent with the right to freedom of association protected by the European Convention on Human Rights and the International Covenant of Civil and Political Rights.

Generally, the founders can file an application for registration with the appropriate registration authority in the area where the association is located immediately after the founding of an association. For the most part, there are no time limits on when to file an application for registration. But in countries where registration is mandatory, founders must file an application and submit all the required documents within 15 to 30 days after the founding of an association in order to become a legal entity. For example, in Yugoslavia and Turkmenistan, associations are required to register with the registration court within 30 days of being founded. In Bosnia the Law on Association of Citizens explicitly states that an application for registration must be submitted within 15 days of holding a founding assembly. This requirement, combined with the law's stipulation that associations which are not registered are not permitted to operate in the territory of the Federation of Bosnia (see Section III, C above), appears to be an infringement on the right to freedom of association.

D. Registration Fees

Finally, associations are typically required to pay a registration fee upon submission of their applications, although no payment is required in Hungary. Registration fees vary from $1 US in Croatia and Turkmenistan, to $45 US in Bulgaria and $180 US in Tajikistan. In much of the NIS, international public associations must pay an average of 20 minimum monthly salaries plus $100-$200 US. This fee is usually feasible for well-funded foreign associations, but for other public associations the payment of a fee of 10-20 minimum monthly salaries might not be manageable.

For example, individuals have complained that the registration fee in Tajikistan has posed a severe obstacle to registration. A receipt should be provided by the registration authorities upon payment of the fee.

IV. Registration Process

Once the application is filed, the registration authorities typically have 30 to 120 days to make a decision. As soon as the registration authorities make a decision, they have approximately 10 days to inform the association of its approval or rejection. Most countries in CEE and NIS follow this procedure. In addition, several countries have provisions in their laws offering default registration should the registration authority fail to act upon the application within the stated time. For those that provide default registration, the stipulated time is generally 30 to 40 days. (See, for example, Czech Republic, Slovakia and Croatia. [10])

Under the old law in Macedonia, default registration was available after 30 days but it was not possible to prove when the documents were submitted (i.e. it was difficult to get a receipt indicating submission of documents), so this default period was often exceeded. Providing for default registration when no action is taken within a reasonable period of time precludes officials who are overseeing establishment procedures from using delay as a means of effectively denying establishment to an organization they do not favor. (Countries that do not provide default registration include Hungary, Romania, and the NIS countries.)

V. Grounds for Refusal to Register

Generally speaking, registration may be rejected if the court or Ministry determines that the purpose of the association is not permitted, the association is a political party or religious society, or the association's purpose is otherwise prohibited by law. Registration may also be rejected if the application contains deficiencies and the applicant fails to correct the deficiencies identified by the registering authority in the statute or other document. Registration may also typically be denied if the name chosen by the new association is already in use by another. Usually, as is the case in most CEE and NIS countries, the registering authority must identify the faults within five to 10 days of submission so that the problem can be corrected. Again, in a country with default registration, registration becomes automatically valid if the court or Ministry does not inform the association of its decision within 30 days or more.

As a matter of international law, registration may be only be rejected if the application falls within the one of the four grounds for refusal set for by the Court in the Sidiropoulos case (see Part I, Section I above).

In the NIS if founders fail to make the required changes in their applications regarding their purpose or other important provisions in their statutes, as requested by the registration authorities, then the registration authorities will deny their registration. Again, the laws on public associations are usually so ambiguous that they provide broad discretion in interpreting the reasons for denying an application. This problem, in particular, affects human rights organizations. Insufficient legislation, and other barriers such as corruption, discourages new associations from being created in most of the NIS countries.

VI. Right to Appeal

In case of rejection, an association almost universally has the right to appeal. Typically, in both CEE and the NIS, associations have the right to appeal to the Supreme Court anywhere from 10 to 30 to 60 days after the rejection has occurred. This right of appeal is variously stipulated in the public associations laws, in the administrative laws, or in the civil codes.

While most countries request that the appeals process be handled by the courts, some countries request that the appeals be handled administratively. For instance, Article 30 of the Law on Association of Citizens in Bosnia provides that appeals can be initiated through an administrative proceeding in court. The court reviews the legality of the decision, i.e. whether the law was adequately applied to a particular set of facts, and it has the power to overturn the ministry's decision.

This can become a problem because deciding appeals based on an administrative record where the issues are purely legal is less burdensome and quicker than an administrative proceeding where there is a de novo review of the facts as well as the law. (See also Croatia where there is no particular provision in the law regarding appeals, hence, administrative appeals presumably takes place.)

In Azerbaijan, as another example, the appeals process is difficult. Associations have to apply to appeal to the Supreme Court and present to the court, a written response from the registration authority. This becomes an expensive and time-consuming process. Similarly, in Kyrgyzstan, if registration of an association is denied or delayed, the association may appeal to the Supreme Court. However, if the court decides that the decision of the Ministry of Justice was improper, the law is unclear as to who is responsible for taking corrective action.

VII. Time When an Association Becomes a Legal Entity

Generally, the moment that a registration authority approves the application and renders its decision is the moment that an association becomes a legal entity. This is usually formalized by entering the association into the register. This appears to be the norm for CEE and the NIS.

Hungary, in an interesting approach, requests that the court send a copy of its decision over to the public prosecutor's office, which, from the moment of registration, has powers of general supervision over associations. The public prosecutor, upon receiving notice of an association's registration, then has the obligation to see that the association complies with the law. For instance, the prosecutor is empowered to notify the association if he or she finds any wrongdoing, such as evidence of illegal activities or neglect of duties. The prosecutor may also warn the association against conducting future illegal activities. When the association receives a notice or warning from the public prosecutor, the association has approximately 30 days to rectify the situation. This example aptly illustrates the role that a government official can play in scrutinizing the activities of an association as soon as registration has occurred.

VIII. Grounds for Dissolution

Generally, the legislation in CEE and the NIS provides for involuntary dissolution by the courts for the following reasons: 1) an association can be involuntarily dissolved if it remains inactive for more than a year; 2) if it has fewer than the required number of members; 3) if it commits a criminal offense or encourages others to commit a criminal offense; or 4) if its conduct infringes onto the rights and freedoms of others. Decisions regarding involuntary dissolution are appealable.

In Croatia, for example, the law is too broad with respects to suspension of activities. It lists no specific criteria setting forth when the association is deemed to have ceased to exist, thus creating broad discretionary room for shutting down associations. In other countries, especially in the NIS, the term "impossibility" of purpose presents problems. Mainly, it gives registration authorities broad discretion in determining whether an association's purpose is feasible. This is contrary to the international legal principal that registration authorities have no right to say whether an association's activity or purpose is "impossible."

IX. International Organizations

UNHCR has been interested in NGO law reform throughout the Newly Independent States, largely because its work with displaced persons increasingly demands interaction with indigenous NGOs. UNHCR believes that, in order for the sector to become more dependable and effective, the legal framework governing its activities must be strengthened: increasing the security, independence, and sustainability of the sector, and its public accountability and transparency. For example, UNHCR has taken the lead in seeking to improve the legal framework in Azerbaijan, working with the Soros Foundation and ICNL in assisting in the drafting of new laws.

Together with the Council of Europe, UNHCR has sponsored high-level regional conferences throughout the NIS, highlighting the importance of the sector and the need for a fair and effective legal foundation for its operations. The Council's interest in seeing that European standards are adopted in western NIS and the Caucasus countries has precipitated its participation in this effort.

Likewise, the United States Agency for International Development (USAID) has supported NGO law reform throughout Central and Eastern Europe as well as Central Asia. It has supported ICNL in its mission to assist in developing and drafting NGO laws in 14 countries in CEE and eight countries in the NIS.

X. Recommendations

- That the governments work with the NGO sector and other interested parties in developing a supportive legal and regulatory framework for NGO law reform.
- That the process of establishing an association be quick, simple, and inexpensive.
- That foreigners and legal entities be allowed to establish associations on terms comparable to those for individual citizens.
- That the minimum number of founders be 10 or less.
- That the laws on public associations be made clear and specific so as to avoid ambiguity, which can lead to arbitrary abuses of the law by registration authorities.
- That discriminatory or arbitrary delays be avoided by providing for default registration, so that registration is automatic after the expiration of a stated deadline.
- That relief be provided for associations paying high registration fees—e.g. excuse the fee for associations that prove that they are unable to pay the fee due to lack of funds.
- That the registration fees be lowered to reasonable amounts, possibly taking into consideration monthly minimum salaries and national economic conditions.
- That de novo administrative appeals be limited and simple, legal appeals to independent courts be encouraged.
- That unregistered associations be allowed to participate in public life by eliminating any requirement that they must be registered.
- That the role of the public prosecutor in participating in and holding hearings during the registration process be eliminated.
- That any undue discretionary power of registration authorities be abolished.
- That ample and sufficient time for associations to apply for registration be allowed and/or to appeal rejection decisions.
- That the time for registration authorities to process registration applications be reasonably short.
- That associations be given fair and timely notice to correct any deficiencies in their applications before an ultimate decision to reject registration is given.
- That the number of documents necessary to submit to the registration authorities be kept to a minimum.

FOOTNOTES (HINT: Use the back button on your browser to return to the text after reading the footnote)

1. This paper was originally written for the Organization of Security and Cooperation in Europe (OSCE) and presented at the OSCE Implementation Meeting in Warsaw, Poland, October 26-November 2, 1998. The original text has been slightly altered to accommodate the International Journal of Not-for-Profit Law.

2. The full decision of the European Court of Human Rights in Sidiropoulos and Communist Party can be found on the website of the International Center for Not-for-Profit Law at http://www.icnl.org.

3. This section only deals with international law protection for the freedom of associations. Many countries also protect the freedom of associations in their constitutions.

4. See Handbook on Good Practices for Laws Relating to Non-Governmental Organizations, prepared for the World Bank by the International Center for Not-for-Profit Law, p. 20.

5. In the United Kingdom, "friendly societies" have been granted some attributes of legal entities while still remaining unincorporated organizations.

6. For more information on public benefit organizations, see ICNL's paper on Public Benefit Status and Not-for-Profit Organizations.

7. Generally, the associations submit for registration an application, and copies of their statute and founding act.

8. Also, in Bosnia, the name of the association must be in Bosnian or Croat in Latin alphabet.

9. In the Republika Srpska, the courts retain jurisdiction over the registration of associations.

10. Organizations that were registered by default in Croatia have encountered problems in getting documentation of their registration so that they can open bank accounts, sign leases and so forth.

Revised: .