

Analysis of the Legislation on Public Associations in effect in the Left Bank Region of the Republic of Moldova

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This project is funded by the European Union

Delegation of the European Union to Moldova

Telephone: 00 373 22 505210

Fax: 00 373 22 272622



A project implemented by the Resource Center for Human Rights (CReDO)

Address: 95A, Al. Hâjd u Street, Chi in u, Republic of Moldova

Telephone: 00 373 22 212816

Fax: 00 373 22 225257

E-mail: credo@credo.md

www.credo.md

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Analysis of the Legislation on Public Associations in effect in the Left Bank Region of the Republic of Moldova¹

Introduction

1. This study contains an analysis of the compliance of certain provisions of the Left Bank region's of the Republic of Moldova legislation² on the freedom of association with the standards (norms) of the international human rights law. The legal provisions covered by this study concern the establishment, registration, re-registration and liquidation of public associations.
2. Other issues related to the legislation concerning public associations, as well as the issues of practical implementation of this legislation are not within the scope of this study.
3. As far as it is known, studies of this kind have not previously been published, therefore this work is the first study presenting a detailed and comprehensive analysis of the aforementioned aspects of the Left Bank region's legislation.
4. This study does not claim to be an exhaustive analysis of the examined legislation. Other studies may raise other issues as well as extend the analysis of the issues raised in this work. It would be useful to study the practice of the authorities' implementation of the legislation analysed in this work.
5. The Left Bank region's normative acts contained in publicly available sources were used in order to run the study. A comparative analysis of the Left Bank's normative acts with the standards of the international human rights law was the main method of study. The sources of international law used in the study included international treaties on human rights applied in Europe, general principles of human rights, the documents of intergovernmental organisations and of their bodies, as well as the works of the most qualified specialists in international human rights law.

¹ Research was drafted by Mr. Evghenii Goloşceapov (reads as [yevgheniy goloshcheapov]), LL.M. in International Human Rights Law (University of Essex, UK), lawyer, independent expert in human rights.

² The study is devoted to the analysis of legislation in the sphere of the freedom of association that is in force on the territory of the left bank of the river Dniester, also known as "Transdnistrian Moldavian Republic", "TMR", "self-proclaimed Transdnistrian Moldavian Republic" and "Transdnistria" ["Pridnestrovskaya Moldavskaya Respublica" or "Pridnestrovie" in Russian]. However, no territorial disputes or questions about the status of this territory are within the scope of this study, since it is focused on the analysis of the legal issues regarding the freedom of association only. For this very reason, in order to distance ourselves from political aspects, the term used in this study is the maximally neutral of all possible – "Left Bank region". While quoting normative acts the terms used there were either left unchanged or omitted without prejudice to the meaning.

The study analyses the legislation that *de facto* exists and is applied in the Left Bank region and is different from the legislation that is in force in the Right Bank region.

Nothing in this study should be understood or interpreted as recognition or non-recognition of any status of the Left Bank region, or challenging of the territorial integrity of the Republic of Moldova.

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6. The first part of the study provides an overview and description of international standards in the field of freedom of association. The key international standards for this study are the provisions of Article 22 of the International Covenant on Civil and Political Rights (ICCPR) and of Article 11 of the European Convention on Human Rights and Fundamental Freedoms (ECHR). These standards also contain criteria for justified interference (*restrictions*) on the freedom of association.
 7. The second part of the study is the most voluminous and substantial in terms of comparative analysis. It analyses in detail the provisions of the Constitution and of other normative acts of the Left Bank region concerning the establishment, registration, re-registration and liquidation of public associations in terms of compliance with international standards. Thus, the following provisions are analysed:
 1. On the founding and selection of the formal or informal legal status for the PA;
 2. On the possibility to become founder, member and participant of a PA and restrictions in this sphere;
 3. On the necessary number of founders of a PA and their types;
 4. On the goals behind establishment and operation of PAs, especially in connection with the fight against extremism;
 5. On the State registration procedures for different types of PAs in order to attain legal personality, as well as registration of their branches, subsidiaries and representative offices; these procedures are also analysed in terms of the provisions of the Law on the State Registration of Legal Entities;
 6. On the payment of the State duty for various registration actions in terms of their accessibility, understandability and realisability; payment of the State duty is a part of registration, but this aspect required a special attention, because its analysis required us to study a large number of normative acts and to take into consideration other details;
 7. On the cases of re-registration of PAs – this procedure is similar to the registration of a PA; more attention is given to the analysis of mandatory re-registration of PAs in order to bring their Statutes into compliance with the amendments of the Law on Public Associations, and to the analysis of time limits for such mandatory re-registration;
 8. On the possibility of legal action and appeal in case of refusal to register and re-register;
 9. On the liquidation of PAs on the grounds specified in the Law on Public Associations and in the Law on Counteraction to Extremist Activities.
 8. The third part of the study opens with general conclusions and recommendations regarding the analysed legislation. Further, it contains a summary of the main conclusions, which were made in the course of study concerning certain provisions of the legislation regulating the issues of establishment, registration, re-registration and liquidation of PAs. For a correct and complete understanding of the main conclusions they should be read and examined together with the arguments presented in the second part of the study.
 9. This study is primarily intended for persons engaged into the lawmaking in the Left Bank region and into the work with the Left Bank region in the field of legislation. The study can also be of interest for founders, members and participants of public associations, employees of international and intergovernmental organisations, researchers, students, teachers and other persons interested in the standards of international human rights law and legislation in the field of freedom of association.

1. Brief Overview of International Standards of the Freedom of Association

1) Key International Standards

10. The right to freedom of association is a cornerstone political human right along with the freedom of expression and freedom of assembly. The main international standards (norms) of human rights relating to this right are contained in key international and regional human rights instruments, such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (commonly known as the European Convention on Human Rights (ECHR)).
11. Thus, Article 20 of the UDHR³ states that:
- “1. Everyone has the right to freedom of peaceful assembly and association.
 - 2. No one may be compelled to belong to an association.”
12. The provisions of the ICCPR⁴ further developed and refined the norms of the UDHR. In particular, Article 22 of the ICCPR states the following:
- “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.”
13. The ICCPR provisions are interpreted and developed in the decisions of the UN Human Rights Committee (UN HRC or HRC) and the General Comments adopted by the HRC. However, at

³ The Universal Declaration of Human Rights, adopted by resolution 217 A (III) of the UN General Assembly on 10 December 1948, <<http://www.un.org/en/documents/udhr/>>, <http://www.un.org/ru/documents/decl_conv/declarations/declhr.shtml>.

⁴ International Covenant on Civil and Political Rights, adopted by General Assembly resolution 2200A (XXI) on 16 December 1966, entered into force 23 March 1976, <<http://www2.ohchr.org/english/law/ccpr.htm>>, <http://www.un.org/ru/documents/decl_conv/conventions/pactpol.shtml>.

present the HRC practice on the freedom of association is just beginning to develop, and the Committee has not yet made General Comments on Article 22 of the ICCPR.

14. Article 11 of the ECHR, “Freedom of Assembly and Association”, also contains provisions on the freedom of associations:⁵

“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.”

15. The European Court of Human Rights (ECtHR or the Court) has the authority to interpret and develop the provisions of the ECHR, which it makes in its judgments on applications sent to the ECtHR. The Court’s jurisprudence on the freedom of association is well developed as the Court examined a large number of applications under Article 11 and issued judgments on them.

16. Also, several other UN treaties and documents issued by the institutions of the Council of Europe (Committee of Ministers, PACE) and the OSCE clarify the standards of the right to freedom of association as a whole or the standards applicable to certain types of associations. References to these documents will be made below, if necessary.

2) Brief Description of International Standards

17. It should be noticed that Article 22 of the ICCPR and Article 11 of the ECHR do not stipulate the *goals behind establishment* of associations, therefore the provisions of these articles apply to the associations created for various purposes,⁶ including social, political, and religious.

18. The word “*freedom*” in the right to freedom of association indicates that individuals are able to exercise this freedom themselves without any actions from the part of authorities. Accordingly, this human right is primarily a *negative right* and the authorities have a *negative obligation* – not to interfere into the exercise of this freedom. However, as we know from the theory of human rights, the authorities have three types of obligations in respect of each human right, whether it is

⁵ European Convention for the Protection of Human Rights and Fundamental Freedoms (as amended by Protocols No.11 and No.14) on 04 November 1950, entered into force on 3 September 1953, (commonly known as the European Convention on Human Rights (ECHR)), <<http://conventions.coe.int/treaty/en/treaties/html/005.htm>>, <<http://coe.ru/main/echr/>>.

⁶ M. Nowak, UN Covenant on Civil and Political Rights: CCPR Commentary (Kehl, N.P. Engel, 1993), p. 386.

negative or positive: *to respect, to protect, to fulfil*.⁷ With regard to the freedom of association, these obligations will, above all, mean the following:

- To respect, i.e. the authorities themselves must not interfere into the exercise of this freedom;
- To protect this freedom from the interference of third parties;
- To fulfil, i.e. to develop and adopt the minimum of legal norms necessary for the establishment and operation of various associations.⁸

19. However, freedom of association is not an absolute right. Article 22 of the ICCPR and Article 11 of the ECHR are providing for essentially identical grounds for the *restriction* of this freedom under certain conditions. In accordance with these provisions, any interference is justified if it meets the following criteria:

- It is prescribed by law;
- It should serve the protection of one of the legitimate aims listed in Article 22 (2) of the ICCPR or Article 11 (2) of the ECHR:

ICCPR, Article 22 (2)	ECHR, Article 11 (2)
<ul style="list-style-type: none">▪ in the interests of national security or public safety,▪ public order (ordre public),▪ the protection of public health or morals or▪ protection of the rights and freedoms of others	<ul style="list-style-type: none">▪ 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

- It is necessary in a democratic society: the word “necessary” requires that the intervention be consistent with a “pressing social need” and “proportionate to the legitimate aim pursued”.⁹

⁷ P. Hunt, *Reclaiming Social Rights: International and Comparative Perspectives* (Dartmouth, Ashgate, 1996), pp. 31-34.

⁸ See above, M. Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary*, p. 387.

⁹ *Freedom and Democracy Party (Özdep) v. Turkey*, Application no. 23885/94, ECHR judgment of 08 December 1999, para. 43.

2. The Analysis of the Left Bank's Legislation on the Establishment, Registration, Re-registration and Liquidation of Public Associations regarding its Compliance with International Standards

2. Constitutional Norms and Field-Specific Legislation

20. Article 33 of the Constitution¹⁰ is devoted to the freedom of associations:
“The citizens of the Transdnistrian Moldavian Republic have the right to associate in trade unions, political parties and other associations, to participate in mass movements, not prohibited by law.”
21. Thus, the Constitution directly lists the associations that can be established to pursue professional and political goals. Furthermore, the phrase “and other associations” refers to an open list of associations that can be established for a variety of other goals. In addition, other articles of the Constitution refer to, albeit in a different context, the associations established for social (public) and religious goals: “public organisations” in Article 8 and “religious associations” in Article 9.
22. In Article 33 attention is drawn to several provisions relating to restrictions on the freedom of association.
23. Firstly, it is the word “*citizens*”. It can be concluded that the Constitution guarantees freedom of association only for citizens, but not for others, such as foreigners, stateless persons or refugees. It is contrary to international standards (norms) in the field of freedom of association. Thus, Article 22 of the ICCPR and Article 11 of the ECHR use the word “everyone”¹¹, and so guarantee the possibility to associate for all, regardless of nationality.
24. Restriction of the freedom of association is possible, but any interference must meet three criteria (three-step test) as listed above: 1) it should be prescribed by law, 2) it should serve the protection of one of the listed legitimate aims, and 3) it should be necessary in a democratic society.. Restriction of the possibility to form associations for all those who are not citizens of the Left Bank region is definitely not compatible with this three-step test.

¹⁰ The Constitution of the Transdnistrian Moldavian Republic was adopted in a national referendum of 24 December 1995, signed by the President on 17 January 1996, as amended in accordance with the changes introduced by Constitutional Law 310-КЗИД of 30 June 2000.

¹¹ In the Russian text of Article 11 of the ECHR the word “каждый” (“everyone”) is used, and in the Russian text of Article 22 of the ICCPR the phrase “каждый человек” (“every individual”) is used. When comparing with the English versions of these documents, one can see that they both use the word “everyone”, which is translated as “каждый”. So, the text of Article 22 of the ICCPR in Russian narrows down unjustifiably the scope of the freedom of association and recognises it only for people, i.e. individuals. However, it contradicts the English text, in which the freedom of association is guaranteed to all persons, not only individuals, but also legal entities.

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25. However, international standards on the freedom of association themselves sometimes set certain restrictions to the range of persons. For example, Article 16 of the ECHR allows the restriction of the “political activity of aliens”, but does not provide for such restrictions for social or religious activities. Article 15 of the UN Convention Relating to the Status of Refugees¹² restricts the refugees’ right to association into political organisations, but requires providing refugees with the right to form non-political and non-profit-making associations on equal terms with foreigners.
26. Secondly, the phrase “*not prohibited by law*”. It can be concluded that the Constitution provides for the possibility to restrict the freedom of association according to a single criterion – that the possibility of restriction can be prescribed by law, i.e. introduced by a wilful decision of the legislator. However, as it was already shown above, restrictions must correspond to the three-step test, therefore such single-step restriction does not fully meet international standards.
27. Thirdly, the provision that “citizens ... have the right to associate ... and ... participate in mass movements, not prohibited by law”. The issue of prohibition of associations is examined in greater detail further in sections “Establishment and Activity Goals” and “Liquidation”. The Constitution itself details the list of prohibited goals of operation in Article 8:
“It is prohibited for public organisations, their bodies and representatives to carry out activities directed against the sovereignty of the Republic, at a violent change of the constitutional system, at disruption of national security, at the creation of illegal armed groups, at incitement of racial, ethnic and religious animosity.”
28. Article 18 of the Constitution is devoted to the possibility of restricting human rights, which is “allowed only in cases prescribed by law, in the interests of State security, public order, protection of morals, health, rights and freedoms of others”.
29. Such wording relating to restrictions is inconsistent with international standards. Firstly, in contradiction to Article 22 of the ICCPR and Article 11 of the ECHR, Article 18 of the Constitution contains only a two-step test and does not include the element requiring restrictions to be “necessary in a democratic society”. Secondly, Article 18 of the Constitution extends the possibility to impose restrictions on all human rights enshrined in the Constitution. However, different human rights have different grounds for their limitation. For example, the right to liberty and security of person is subjected to other limitations. Moreover, for a number of human rights no limitations are allowed, for example, freedom from torture, prohibition of holding a person in slavery or servitude, the right to a fair trial.
30. Thus, the Constitution enshrines the right to the freedom of association. However, it restricts the freedom of association to a range of persons in violation of international standards, and the restrictions of this freedom do not fully meet international standards.

¹² Convention Relating to the Status of Refugees, adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950, entered into force on 22 April 1954, <
<http://www2.ohchr.org/english/law/refugees.htm> >

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31. Besides the Constitution, general and specialised laws were adopted and are functioning in the Left Bank region regulating the issues of establishment, registration, re-registration and liquidation of public associations, political parties and religious organisations:
- 1) Law on Public Associations (hereinafter the Law on PAs);¹³
 - 2) Law on Political Parties (hereinafter the Law on PPs);¹⁴
 - 3) Law on the Freedom of Conscience and Religious Organisations (hereinafter the Law on ROs);¹⁵
 - 4) Law on the State Registration of Legal Entities and Individual Entrepreneurs in the Transdnistrian Moldavian Republic” (hereinafter the Law on the State Registration of Legal Entities”).¹⁶
32. The norms of these and other laws will be analysed below regarding their compliance with international standards on human rights related to the establishment, registration, re-registration and liquidation of associations.

3. Founding and Selection of the Legal Status

33. The freedom of association includes the freedom to found or not found associations, as well as the possibility to select their legal form and to found both formal (registered) and informal (unregistered) associations. In this sense, Article 22 of the ICCPR and Article 11 of the ECHR do not provide for restrictions on the selection of the legal form and the provisions of these articles protect both types of associations. Also, authorities have a *positive duty* to develop the legal framework for the possibility to found associations with formal legal personality.¹⁷
34. The law provides that NGOs can be founded “without prior permission from governmental agencies and local self-government” (Article 3 (3)), as well as “to register ... and to acquire legal personality or to operate without State registration or acquisition of legal personality” (Article 3 (4)). These norms are in accordance with international standards.
35. At the same time, Article 19 (3) of the Law on PAs stipulates that the foundation of a PA requires for a congress (conference) or general meeting to be held, which would pass resolutions on “the founding of the public association, approval of its Statute and formation of its governing and control and revision bodies ... after which the public association shall be considered founded”. Thus, the law sets formal requirements that must be met in order to establish a PA. However, the Law on PAs does not prescribe any requirements for authorities to control that such requirements be met, a fact that raises the question of their feasibility.

¹³ Law on Public Associations of 4 August 2008, no. 528-3-IV (CA3 08-31), with amendments and additions as of 05 June 2009, 30 December 2009, 22 July 2010 and 11 May 2011.

¹⁴ Law on Political Parties of 28 January 2000, no. 239-3 (C3MP 00-1), with amendments and additions as of 30 May 2006, 22 November 2006, 12 June 2007 and 09 June 2009.

¹⁵ Law on the Freedom of Conscience and Religious Organisations of 19 February 2009, no. 668-3-IV (CA3 09-8), with amendments and additions of 30 December 2009 and 22 July 2010.

¹⁶ Law on the State Registration of Legal Entities and Individual Entrepreneurs in the Transdnistrian Moldavian Republic of 11 June 2007, no. 222-3-IV (CA3 07-25), with amendments and additions of 08 January 2009, 05 August 2009, 23 September 2009, 11 December 2009 and 08 December 2010.

¹⁷ See above, M. Nowak, UN Covenant on Civil and Political Rights: CCPR Commentary, p. 386-387.

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36. In the studied international standards the issue of founding of informal organisations is still insufficiently developed, though there are certain starting points. For example, the standards provide that the requirement to have a Statute shall be imposed upon the PAs with the status of a legal person,¹⁸ so the existence of a Statute is not a must for an informal PA.
37. Also, it should be taken into account that the European Court of Human Rights independently interprets the term “association”, i.e. the Court at its own discretion determines whether a certain organisation is association for the purposes of Article 11 of the ECHR or not. To do so, certain fact-based criteria are important for the Court, such as a common goal for all members of the group, a certain degree of stability and an organisational structure, even if informal, so that the persons joining it to be considered as belonging to this association. The Court can also consider unacceptable the conditions prescribed by national law that must be met so that a unit be recognised an association.^{19, 20, 21} Accordingly, to recognize an informal group as association, the Court shall not necessarily require formal decisions of this group on adoption of its Statute and formation of its governing and audit bodies.
38. The Law on PAs lists a number of rights of informal PAs. The only right for which such a PA might need documents confirming its establishment is “to represent and defend their rights, legitimate interests of their members and participants in government agencies, local self-government and public associations”.²² All other rights of informal PAs, prescribed by the law (to disseminate information about their activity, hold public meetings, launch initiatives, make proposals to government agencies and local self-government),²³ can be exercised by individual persons. Accordingly, the exercise of these rights should not be denied to a group of persons acting together, which is expressed in the following rule: if one person is not forbidden to pursue certain goals and carry out certain activities, so a group of persons or an association should not be forbidden to pursue them or to carry them out.²⁴
39. Thus, the requirements regarding the establishment of informal PAs may be potentially inconsistent with international standards. But these requirements are likely to comply with them, if a PA intends to use the rights, which are specially prescribed for such PAs and not enjoyed by individual persons.

¹⁸ Council of Europe, Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe, para. 18, <https://wcd.coe.int/ViewDoc.jsp?id=1194609>

¹⁹ Джереми Макбрайд, «Международное право и судебная практика в поддержку гражданского общества» в «Свобода объединения: правовые и практические аспекты. Сборник материалов», - Алматы, Казахстан, Инициатива «Право общественных интересов» (PILI), БДИПЧ/ОБСЕ, 2007 (русское издание), - стр. 17-18. // Jeremy McBride “International Law and Legal Practice in Support of the Civil Society” in “Freedom of Association: Legal and Practical Aspects. Collection of materials”, - Almaty, Kazakhstan, Public Interest Law Institute (PILI), ODIHR/OSCE, 2007 (Russian edition), - pp. 17-18.

²⁰ D. Harris, M. O’Boyle, C. Warbrick, Law of the European Convention on Human Rights, 2nd edition (New-York, Oxford University Press, 2009), p. 526.

²¹ CoE Expert Council on NGO Law, First Annual Report, Conditions of Establishment of Non-Governmental Organisations, January 2009, OING Conf/Exp (2009) 1, para. 15.

²² See above, Law on PAs, Article 30 (2) letter c).

²³ See above, Law on PAs, Article 30 (2) letters a), b) and e).

²⁴ See above, CoE Expert Council on NGO Law, para. 33.

4. *Founders, Members and Participants*

40. Article 22 of the ICCPR and Article 11 of the ECHR guarantee the freedom of association for “everyone”.²⁵ Thus, these international treaties guarantee the freedom of association to all persons, including not only natural persons, regardless of citizenship, but legal persons as well.
41. The Law on PAs, like the Constitution, guarantees the freedom of association to “citizens” (Article 33), but as it has already been shown above in the analysis of constitutional provisions, the freedom of association is guaranteed for all individuals, regardless of their citizenship. To a certain extent this provision is corrected in Article 1, stating that “Foreign citizens and stateless persons have equal rights with the citizens of the Transdniestrian Moldavian Republic in the field of relations governed by this Law, except in cases prescribed by the legislation in force ... or by international treaties ...”
42. Starting with Article 6 the Law on PAs uses a different wording. Thus, according to Article 6 (1), (3) and (6), founders, members and participants of public associations can be “natural and legal persons – public associations”. This wording significantly extends the term “citizens” used earlier, since it includes all individuals regardless of their citizenship, and from this point of view it is becoming more compatible to the international standards. As for legal persons, this wording seemingly maintains inconsistency with international standards, since it guarantees the possibility to establish public associations, to be a member of and participate in them only for those legal persons which are public associations themselves. This conclusion is confirmed by Article 19 (2) of the Law on PAs, which stipulates that “the body of founders along with natural persons can be composed of legal persons – public associations”. Thus, all other legal entities are deprived of the possibility to enjoy the freedom of association in contradiction with international standards, which guarantee this freedom to “everyone”.
43. Consideration should be given to Article 20 of the Law on PAs, which contains special provisions about the founding of a public association, membership and participation in it for several categories of individuals.
44. Thus, Article 20 (1), (5) and (6) of the Law on PAs sets **age restrictions** for individuals:
1. Only persons older than 18 can be founders, members and participants of a PA (paragraph 1);
 2. Persons aged 14 to 18 can be members and participants of only youth PAs, but can not be their founders (paragraph 5);
 3. Persons aged 10 to 18 can be members and participants of only children’s PAs, but can not be their founders (paragraph 6);
 4. Persons younger than 10 cannot be neither founders, nor members or participants of PAs.

²⁵ In the Russian text of the Article 11 of the ECHR the word “каждый” (“everyone”) is used, and in the Russian text of the Article 22 of the ICCPR the phrase “каждый человек” (“every individual”) is used. When comparing with the English versions of these documents, one can see that they both use the word “everyone”, which is translated as “каждый”. So, the text of Article 22 of the ICCPR in Russian narrows down unjustifiably the scope of the freedom of association and recognises it only for people, i.e. individuals. However, it contradicts the English text, in which the freedom of association is guaranteed to all persons, not only individuals, but also legal entities.

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45. These provisions do not fully comply with Article 22 of the ICCPR and Article 11 of the ECHR, which do not prescribe any age restrictions. Accordingly, minors should be able to enjoy the freedom of association to the same extent as adults. This requirement was also set forth in Article 15 of the Convention on the Rights of the Child,²⁶ and it must include both the possibility to establish PAs,²⁷ and to be their members and participants. These provisions do not forbid countries to introduce measures aimed at protecting children from certain dangers. However, such measures should not lead to the complete deprivation of children of the possibility to associate. These protective measures will restrict the freedom of association, and so they must also comply with the criteria for the justified interference (three-step test).²⁸
46. Article 20 (2) of the Law on PAs mentions that only **“foreign citizens and stateless persons lawfully staying”** on the territory of the Left Bank region can be founders, members and participants of public associations, except in cases established by international treaties and legislative acts of the Left Bank region.
47. Accordingly, paragraph (2) contains double restriction of the freedom of association: on the criterion of citizenship (for foreigners and stateless persons) in conjunction with the criterion of location (**“legally staying”**²⁹) on the territory of the Left Bank region. In addition, there may be further restrictions on the basis of domestic laws and international treaties.
48. It seems that it is necessary for the foreigners and stateless persons to be physically present on the territory of the Left Bank region in order to exercise their freedom of association. The restriction of physical presence on the territory of the Left Bank region may be considered acceptable if the authorities show (explain) that it is in accordance with the criteria for the justified interference (three-step test). However, at present this restriction appears to be inconsistent with these criteria, since it is impossible to understand the **“necessity”** of such restriction **“in a democratic society”**.
49. Article 20 (4) of the Law on PAs introduces **restrictions for certain natural and legal persons**, who cannot be founders, members and participants of PAs.³⁰ As before, the general rule regarding restrictions is that they should comply with the criteria for the justified interference to the freedom of association (three-step test). Accordingly, authorities will have to demonstrate why

²⁶ Convention on the Rights of the Child, adopted by UN General Assembly Resolution 44/25 of 20 November 1989, entered into force on 2 September 1990, <http://www.un.org/documents/ga/res/44/a44r025.htm>

²⁷ Council of Europe, Explanatory Memorandum to Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe, para. 45.

²⁸ See above, CoE Expert Council on NGO Law, para. 21.

²⁹ The question that arises does not refer to the term **“legally”**, but to the term **“staying”**. Does it mean that foreigners and stateless persons must permanently stay on the territory of the Left Bank region during the establishment and registration of the PA? Do these persons lose their status of member and participant in the PA at the moment when they leave the territory of the Left Bank region?

³⁰ Provisions of Article 20 (7) of the Law on PAs about mandatory suspension by certain persons of their membership in public associations pursuing political goals are examined within the analysis of the Left Bank’s legislation on political parties.

the restriction of the freedom of association of specifically these persons is necessary in a democratic society and how it will contribute to the protection of one of the legitimate aims listed in Article 22 of the ICCPR and Article 11 of the ECHR.

50. According to Article 20 (4) of the Law on PAs, the following persons cannot be founders, members and participants of public associations:

“a) A foreign citizen or stateless person, whose stay (residence) in the Transdnistrian Moldavian Republic was recognised undesirable according to the current legislation of the Transdnistrian Moldavian Republic;

b) A public association, whose activity has been suspended in accordance with the legislation of the Transdnistrian Moldavian Republic in the field of counteraction of extremist activity;

c) A person, in whose respect a court decision that entered into force established that his actions contain signs of extremist activity;

d) A person contained in places of detention according to a court sentence.”

51. It appears that the provisions of item a) do not comply with international standards. Thus, the decision about the recognition of a foreigner or stateless person as “undesirable” (*persona non grata*) can be adopted by a number of State authorities, for example, by the State Service of Financial Monitoring.³¹ This fact raises the question about the judicial review of such decisions of executive authorities; in particular the question is whether such persons have the possibility to challenge these decisions in court. In the absence of these possibilities authorities receive unduly broad discretionary power, which may lead not only to the violation of freedom of association, but also to the violation of the right to fair trial and the right to effective remedy. This measure also appears disproportionate, because the time-limit of such restrictions is unclear and it seems to be indefinite.

52. The restriction set in item b) can be seen acceptable if this measure corresponds to the criteria for the justified interference to this freedom in the presence of conclusive evidence of the fact that it is really necessary to suspend the operation of a PA. An important condition is that in this case the operation of the PA is not suspended automatically, and that a court “may” suspend its operation.³² As it takes place, it is important to guarantee the fairness of trial, and also, if the operation of the PA has been suspended, reasonable duration of the trial.

53. It can be said directly that items c) and d) give rise to objections. Thus, according to item c) the person is deprived of the possibility to associate for the term of his life, which can definitely be considered a disproportionate restriction of this person’s right to the freedom of association.³³

³¹ Regulations on the State Service of Financial Monitoring (as of 13 January 2009), approved by Presidential Decree of 27 March 2008, no. 195 (CA3 08-12), Article 8 letter r).

³² Law on Counteraction to Extremist Activities of 27 July 2007, no. 261-3-IV (CA3 07-31), Article 10.

³³ See above, Council of Europe, Recommendation CM/Rec(2007)14 of the Committee of Ministers, para. 30.

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54. Item d) contains a complete prohibition of the freedom of association for all persons held in places of detention under a court sentence. Such a prohibition against an entire category of persons is not only inconsistent with international standards, but also raises the issue of discrimination. International standards allow for the possibility to temporarily restrict convicted persons in their right to establish PAs with legal personality. However, such restriction is allowed only in respect of the persons found guilty of concrete crimes, which demonstrate that these persons are temporarily unable to establish such PAs.³⁴
55. A person's stay in places of detention undoubtedly limits their possibility to fully participate in the activities of public associations. Nevertheless, such persons maintain the possibility to participate distantly in the activities of PAs, for example, by post. Persons should not be limited in the possibility to become founders of PAs only because of the fact that they are held in places of detention.³⁵ Surely the purpose of criminal punishment is to re-educate the convict, and not to deprive him/her of the possibility to communicate and interact with people situated "from the other side of the wall".
56. Also, Article 20 (10) of the Law on PAs stipulates that **"government agencies and local self-government"** cannot be founders, members and participants of public associations". This restriction is consistent with international standards, as they are public bodies (parts of government authorities) which are not subjected to enjoy human rights. Their goal is to guarantee human rights, including the freedom of association, and not to enjoy these rights themselves.³⁶

5. The Number of Founders

57. The very meaning of the word "association" suggests interaction of at least two or more persons. Article 22 of the ICCPR and Article 11 of the ECHR stipulate, that "everyone" (any natural or legal person) has the right to the freedom of association with "others" (natural and / or legal persons), but they do not directly state the minimum number of persons necessary to establish an association.³⁷
58. As for PAs, the practice of the UN Human Rights Committee and the European Court of Human Rights has not yet addressed the question whether it could be justified to set a required minimum

³⁴ See above, Council of Europe, Explanatory Memorandum to Recommendation CM/Rec(2007)14 of the Committee of Ministers, para. 69: "This might be particularly the case where the person concerned has been found guilty of an offence which entailed the pursuit of objectives that are not ones for which an NGO might be formed. Similarly a bankruptcy determination might mean that someone ought not to be allowed to establish an NGO, or at least not ones that can be expected to be in receipt of significant funding. In all cases the scope of such restrictions would need to be clearly connected with the activities concerned and their duration should also not be disproportionate."

³⁵ See above, CoE Expert Council on NGO Law, para. 26.

³⁶ Ibidem, para. 20.

³⁷ On the other hand, based on the lexical analysis of these articles, it can be concluded that an association must be established by at least three persons: "everyone" is a singular word, i.e. it is one person, who has the right to the freedom of association with "others", a plural form, which is at least two other persons, so the total is 1+2=3.

It also seems reasonable that if the law allows for one founder to establish a legal person to operate a business company (Article 53 (1) item 3 of the Civil Code), similar possibilities should be provided for the establishment of other types of legal persons, such as PAs.

number of persons to establish a PA. At the same time, Recommendation CM/Rec(2007)14 of the Council of Europe Committee of Ministers stipulates that “two or more persons should be able to establish a membership-based NGO”.³⁸ The Recommendation further details that where legal personality is to be acquired “a higher number can be required, so long as this number is not set at a level that discourages establishment”.

59. Article 19 (1) of the Law on PAs stipulates that “a PA can be established at the initiative of at least 3 (three) individuals”. Taking into the account the above standards, one can come to the following conclusions. Firstly, the number of persons required to establish a PA without legal personality is inconsistent with international standards. Secondly, the number of persons required for a PA to acquire legal personality is set at a reasonable level (3 persons); it does not discourage the establishment and registration of a PA and is in compliance with international standards. Thirdly, it appears that legal persons are deprived of the possibility to independently establish new public associations without the participation of at least three natural persons. This situation is inconsistent with international standards, which guarantee equal content of the right to the freedom of association to all persons, whether natural or legal. Thus, it can be noted that the requirement of the necessary participation of three individuals in the establishment of a PA is obviously inconsistent with international standards.

6. Establishment and Activity Goals

60. International standards have repeatedly emphasized that “there is no democracy without pluralism”, and therefore “for the proper functioning of democracy” both political and non-political associations, which in their activity may pursue any lawful aims, are equally important.³⁹ In this sense, one can be guided by the following rule: if pursuance of goals and activity is not forbidden to one person, it should not be forbidden to a group of persons or to an association.⁴⁰ Any restrictions of goals and activity should meet the criteria for the justified interference into the freedom of association.
61. The Law on PAs speaks briefly of the PA establishment goals. Thus, Article 26 (2) justly notes that “refusal in State registration for a public association for reasons of inexpediency of its establishment (reorganisation or liquidation) is not allowed”. In addition, Article 17 (1) of the law directly indicates the restriction for the establishment of a PA: “the establishment and operation of the public associations whose goals and activity are aimed at extremist activity shall be forbidden”. A similar restriction is also contained in Article 9 (1) of the Law on Counteraction to Extremist Activities: “the establishment and operation of the public and religious associations and other organisations whose goals and activity are aimed at extremist activity shall be forbidden”. The Law on Counteraction to Extremist Activities also contains the concept of “extremist activity” and “extremism”,⁴¹ which is rather extensive and leads to the possibility of its broad interpretation and, therefore, abuse.⁴²

³⁸ See above, Council of Europe, Recommendation CM/Rec(2007)14 of the Committee of Ministers, para. 17.

³⁹ *Gorzelik & Others v. Poland*, Application no. 44158/98, ECHR Grand Chamber Judgment of 17 February 2004, para. 92.

⁴⁰ See above, CoE Expert Council on NGO Law, para. 33.

⁴¹ See above, Law on Counteraction to Extremist Activities, Article 1 a).

⁴² For more information on anti-extremist legislation and the freedom of association see the section “Dissolution”.

62. The conclusion about the possibility of the broad interpretation of extremism is clearly demonstrated by the legislator. For example, extremism is defined as “incitement ... of social discord and intolerance, associated with violence and calls for violence”, propaganda of “exclusiveness, superiority or inferiority of citizens on the grounds of their ... social ... affiliation”, propaganda of “social hostility and (or) intolerance”.⁴³ At the same time, in the Law on PAs the legislator found it necessary to clarify the following: “Inclusion into the constitutive and policy documents of public associations of provisions on the advocacy of ideas of social justice cannot be regarded as incitement of social discord”.⁴⁴ Without this clarification ideas of social justice could be regarded as extremist ones.

63. Without going into great detail about anti-extremist legislation, it should be noted that when deciding on the legality of a PA’s goals and activity, authorities should proceed from conclusive and sound reasons, and not from “mere suspicion about the true intentions of the founders of the association”.^{45, 46} International standards do not allow for authorities to declare illegal any goal or activity that they dislike.^{47, 48}

7. Registration (acquisition of legal personality)

64. The essence of the freedom of association is the pursuit of common goals of a group of persons. These goals can be achieved through these persons acting in their individual legal capacities. But in practice these interests are easier to achieve by joining forces within a legal entity with its own distinct legal personality. In this sense, the European Court of Human Rights noted the following:

⁴³ See above, Law on Counteraction to Extremist Activities, Article 1 a) item 1.

⁴⁴ See above, the Law on PAs, Article 17 (2).

⁴⁵ *Sidiropoulos and Others v. Greece*, Application no. 57/1997/841/1047, ECHR Decision of 10 July 1998, para 45. In this case the European Court of Human Rights examined a situation when Greek authorities refused to register a public association, which in its memorandum of association indicated that its aim was to preserve and develop traditions and folk culture of the Macedonian minority. The authorities of Greece considered that the true aim of this association was to undermine the territorial integrity of Greece by questioning the Greek identity of Macedonia (North-West part of Greece) and its residents. The Court came to the conclusion that the authorities did not present “conclusive ... evidence” to support the refusal to register this public association, and that the presented evidence was not more than “mere suspicion” about true intentions of the association. Had the results of this association’s activity proved that it really pursued illegal goals, the authorities could have filed an application to a court regarding its dissolution. The Court decided that refusal was disproportionate to the pursued goals and violated the applicants’ freedom of association, as enshrined in Article 11 of the ECHR.

⁴⁶ In some cases the documents of an association may “conceal objectives and intentions different from the ones it proclaims”. To verify that it is not the case, the content of the documents “must be compared with the actions of the party’s leaders and the positions they defend”. For details see case *Refah Partisi (The Welfare Party) and Others v. Turkey*, Applications nos. 41340/98, 41342/98, 41343/98 and 41344/98, judgment of the Grand Chamber of the ECHR of 13 February 2003, para. 101.

⁴⁷ *Zvozskov et al v Belarus*, Communication no. 1039/2001, Views of the UN Human Rights Committee of 17 October 2006, paragraph 7.4. In this case the UN HRC concluded that the authorities of Belarus violated Article 22 of the ICCPR, for they have not advanced “any argument as to why it would be necessary, for purposes of article 22, paragraph 2, to condition the registration of an association on a limitation of the scope of its activities to the exclusive representation and defence of the rights of its own members”.

⁴⁸ See above, CoE Expert Council on NGO Law, para. 35.

“The ability to establish a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of freedom of association, without which that right would be deprived of any meaning.”⁴⁹

65. The establishment of an association with legal personality may require going through a registration process.⁵⁰ The *information about the registration procedure* must be accessible, the *procedure* itself must be easy to understand, and the *formal requirements* must be foreseeable, easy to satisfy, and they must not grant an excessively high margin of discretion to the authorities in deciding on the issue of registration of associations.^{51, 52, 53}
66. The Law on PAs specifies that a public association acquires its rights not immediately after its establishment, but only after it goes through the process of State registration as a legal person.⁵⁴ The same requirement is set for the acquisition of legal personality by the PA’s branches.⁵⁵ Besides that, all changes “introduced into the Statutes of public associations, branches of public associations with legal personality, are subject to State registration ... and acquire legal force from the moment of such registration”.⁵⁶ In certain cases a PA can be refused registration (for more information see section “Refusal to Register”). Below we will examine key elements associated with the PA registration procedure.
67. The *information about the registration procedure* does not appear to be fully accessible. On the one hand, the information about the registration procedure is contained in the Law on PAs (Article 23 and others). On the other hand, the provisions of the Law on PAs related to the issue of PA registration contain reference norms to other laws, such as the Law on the State Registration of Legal Entities and Individual Entrepreneurs, the Law on Counteraction to Extremist Activities and the Law on State Duty. The most indicative example of the complexity of access to information is the issue of paying the State duty for PA registration, which is examined below in the section “State Duty”.
68. Thus, the norms for PA registration are not concentrated in one normative act. Therefore, interested persons should have some knowledge in the field of law so as to independently understand all the subtleties of the information on PA registration. It especially applies to the calculation of the size of the duty to be paid for PA registration. Besides, although the normative acts and amendments to them are published in the Left Bank region in the “Compilations of Legislative Acts” (CLA), it appears that the region has no publicly accessible and reliable electronic database of normative acts, amendments and additions to them.⁵⁷

⁴⁹ See above, *Gorzeliik & Others v. Poland*, para. 88.

⁵⁰ See above, CoE Expert Council on NGO Law, paras. 46-47.

⁵¹ See above, Council of Europe, Recommendation CM/Rec(2007)14 of the Committee of Ministers, para. 29.

⁵² *Koretskyi and Others v Ukraine*, Application no. 40269/02, ECHR judgment of 03 April 2008, para. 47.

⁵³ See above, CoE Expert Council on NGO Law, para. 52.

⁵⁴ See above, Law on PAs, Article 3 (4).

⁵⁵ See above, Law on PAs, Article 23 (6) letter f).

⁵⁶ See above, Law on PAs, Article 24 (1).

⁵⁷ When preparing this study we faced the problem of access to the current normative acts, amendments and additions to them. For example, the existing official legislative databases of authorities

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69. The *registration procedure* is described in Article 23 of the Law on PAs. In particular, the law:
- a) Stipulates that the issues of PA registration are under the jurisdiction of central (Ministry of Justice) and territorial (Departments of Justice) justice authorities;
 - b) Lists the documents required for PA registration;
 - b) Indicates the deadlines for submission of these documents in order to register a PA.
70. Further, Article 23 (7) of the Law on PAs indicates that within 30 days from the moment of submission of documents, judicial authorities adopt one of the following decisions:
- On registration of the PA (herewith, the wording “adopt a decision” leaves unclear the fact whether the document confirming registration is issued within the indicated 30 days or within some other time);
 - On refusal to register the PA, and issues “to applicants a motivated written refusal” (in this case the text of the law makes it clear enough that the motivated refusal must be issued within the indicated 30 days).
71. Thus, the *registration procedure*, as described in Article 23 of the Law on PAs appears to be understandable. The time when the document confirming the registration of the PA is issued is not, however, evident, which introduces an element of uncertainty. Therefore, the registration procedure in the part concerning time cannot be considered foreseeable. Besides, the Law on the State Registration of Legal Entities stipulates, that “the registration of legal persons shall be performed within not later than 10 (ten) working days from the day of submission of documents to the registration authority”.⁵⁸ At the same time, the registration of a PA requires 30 working days, i.e. three times more. Thus, one can raise the question of why it is necessary to set a longer period for PA registration. This factor can be applied in international standards for the examination of the issue of excessive delay in decision-making, and, accordingly, can lead to the recognition of the violation of the freedom of association.⁵⁹
72. As for *formal requirements* for registration, they are confined to two steps: establishment of a PA, and then preparation of documents required for PA registration and their submission to justice authorities.
73. At the first step, according to Article 19 (3) of the Law on PAs, in order to establish a PA it is necessary to hold a congress (conference) or general meeting, which would pass resolutions on “establishment of the public association, approval of its Statute and formation of its governing and revision and control bodies ... after which the public association shall be considered established”. Meanwhile, according to Article 23 (4) of the Law on PAs the documents for PA registration “shall be submitted within 3 (three) months from the day of the constitutive congress (conference) or general meeting which passed the *resolution on establishment* of the public association”.⁶⁰ From this it appears that if an unregistered PA does not submit documents for registration within 3 months after its establishment, it completely loses the possibility to become registered, which evidently violates international standards, since this restriction does not comply

contained the texts of laws that are void, and did not contain the texts of laws that are currently in force or amendments and additions to laws.

⁵⁸ See above, Law on the State Registration of Legal Entities, Article 17 (1).

⁵⁹ See above, Jeremy McBride “International Law and Legal Practice in Support of the Civil Society”

⁶⁰ Italics added.

with the criterion of “necessity in a democratic society”.⁶¹ A PA must seek registration not after passing the resolution “on establishment”, but only after the resolution “on registration”.⁶²

74. Further, at the second step, according to Article 23 (3) of the Law on PAs, the following documents prepared in one of the official languages shall be submitted to the judicial authority:⁶³
- “a) An application, signed by an authorised person (hereinafter – Applicant), indicating their surname, name, patronymic, place of residence and contact telephone number;
 - b) 3 (three) paper and electronic copies of the Statute of the public association;⁶⁴
 - c) Extract from the minutes of the constitutive congress (conference) or general meeting, containing information about establishment of the public association, about adoption of its Statute and formation of its governing and audit bodies; in case of establishment of an international, republican public association – minutes of the constitutive congresses (conferences) or general meetings of their structural subdivisions;
 - d) Information about founders (for an individual: surname, name, date of birth, place of residence, telephone number, citizenship; for legal person: full name of the public association, indicating its legal form of organisation, territory of operation, location, telephone number, when and by what authority it was registered, number and series of the registration certificate);
 - e) Document confirming the payment of the State duty;
 - f) In case the personal name of a citizen, symbols protected by the law ... on the protection of intellectual property or copyright, as well as the full name of another legal person are used as part of the name of the public association – documents confirming the authority for their use.”
75. Thus, the list of documents required for the registration of a PA is exhaustive (closed), which corresponds to the criteria of foreseeability of formal requirements and their clarity. It also appears that the requirement of submitting these very documents is not excessive. Evidently, the persons desiring to register a PA will have to make certain efforts in order to prepare all the necessary documents. These requirements, however, are realisable, and it is unlikely that they would create obstacles for the registration of a PA, except for the document confirming the payment of the State duty because of some problems described below in the section “State Duty”.
76. In addition to the general procedure of PA registration, Article 23 (5) and (6) and Article 25 of the Law on PAs set additional or other formal requirements for the registration of:
- 1) International and republican PAs (Article 23 (3) letter c));

⁶¹ In principle, PAs can overcome this restriction. For this, they will have to repeatedly adopt the decision “on establishment”, in order to initiate the registration procedure. However, this does not eliminate the argument that this restriction does not comply with the criterion of “necessity in a democratic society”.

⁶² See above, Council of Europe, Recommendation CM/Rec(2007)14 of the Committee of Ministers, para. 32.

⁶³ See above, Law on the State Registration of Legal Entities, Article 11 (2).

⁶⁴ Article 21 of the Law on PAs details the requirements for the contents of the PA status, and Article 22 details the requirements for its name and symbols.

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- 2) Youth and children's PAs (Article 23 (5));
 - 3) Branches of PAs (Article 23 (6) letters a) - e));
 - 4) Branches of PAs of foreign countries (Article 23 (6) letter f));
 - 5) Branches of PAs of foreign countries, operating on the basis of the PA Statute (Article 23 (6) letter f) item 3);
 - 6) Subsidiaries and representative offices of PAs (Article 25).

77. As for the requirements for the registration of **international** and **republican PAs**, they are identical to the requirements for the registration of PAs, except for one additional requirement, set in Article 23 (3) letter c) of the Law on PAs. Specifically, for their registration it is necessary to submit "minutes of constitutive congresses (conferences) or general meetings of their structural subdivisions". In the case of international PAs at least one written record must come from the structural subdivision of this PA, created abroad (Article 47 (1) of the Law on PAs). The examined international standards do not touch upon the issues of assigning an international or national status to PAs. Nevertheless, the question arises about the practical need in additional documents for assigning such statuses. According to the Law on PAs, these statuses do not provide PAs with any benefits or privileges, nor do they entail any difference in further relations between authorities and such PAs. For this reason it appears that PA members themselves must decide upon the status of their organisation, and no additional documents must be required for it.

78. Thus, Article 23 (5) stipulates that the registration of **youth** and **children's PAs** "shall be done if the governing bodies of the said associations are formed by electing citizens over 18 (eighteen) years old", i.e. a restriction is introduced for PA registration on the grounds of the age of its governing bodies' members. But this wording of the law leaves unclear the fact whether it will be sufficient to elect one or several persons over the age of 18 into the governing bodies, or it is necessary to elect into these bodies only persons over 18. Accordingly, this situation needs clarification, as it may be differently interpreted and raise problems with PA registration.

79. It should also be noted that this restriction most probably means not so much the age as the full legal capacity⁶⁵ of persons elected into these bodies, the ability to take responsibility for their actions. This restriction can be regarded as relevant, as it can be motivated by the fact that for the purposes of public order a PA must be represented by persons with a full legal capacity. This restriction can also be regarded as a protective measure for minors.^{66, 67} At the same time, a person over the age of 18 may not have, for various reasons, full legal capacity, or they can be limited in their capacity or deprived of it. In this case the very sense of restriction on the grounds of age is being lost.

80. Requirements for the registration of **PA branches**, set out in Article 23 (6) letters a)-e) of the Law on PAs are similar to the requirements for PA registration (the only fundamental difference is the fact that the documents submitted for the registration of the branch must be authenticated by the governing body of the PA), including the necessity to submit the document confirming the payment of the State duty. For this reason the same conclusions are applicable for the registration of PA branches as the conclusions made above for the registration of PAs. After

⁶⁵ According to Article 22 (1) of the Civil Code (Part I of the Civil Code of 2000), full legal capacity of individuals in the Left Bank region starts at the age of 18.

⁶⁶ See above, CoE Expert Council on NGO Law, para. 21.

⁶⁷ It should be noted that the legislation is inconsistent, and after PA registration the law does not require election of persons over 18 y.o. into governing bodies.

registration branches acquire legal personality (Article 23 (1) of the Law on PAs). According to international standards a PA “should not require any authorization to establish” branches in the jurisdictions where it was registered,⁶⁸ as this “should be a matter for its own internal organisation and thus subject only to the requirements of its Statute”.⁶⁹ However, if a PA seeks to establish its branch with a detached legal personality, it is acceptable to require its registration according to the general rules applicable to granting legal personality to PAs.⁷⁰ The Law on PAs does not prohibit the establishment of PA branches without mandatory registration. Therefore it can be concluded that the norms for the registration of PA branches potentially comply with international standards.

81. A separate procedure is provided for the registration of the ***branches of PAs of a foreign country***. It demands compliance with all requirements and submission of all the documents that are necessary for the registration of PAs.⁷¹ But in addition, according to Article 23 (6) letter f) of the Law on PAs, their registration requires “a copy of the Statute, copy of the registration certificate or other official documents and acts confirming the legal personality of the public association of a foreign country, with translation into one of the official languages of the Transdnistrian Moldavian Republic, certified in the manner ... prescribed by law”. The expression “other official documents and acts confirming the legal personality of the public association of a foreign country” indicates the open character of the list of required documents. On the one hand, it is inconsistent with the criteria of foreseeability and clarity and potentially inconsistent with international standards. On the other hand, should there be an exhaustive list of documents required to confirm the legal personality of foreign PAs, such PAs could face the impossibility to meet these requirements. It may be, for example, due to the fact that other jurisdictions may issue other documents confirming legal personality than the ones that might be required by the Law on PAs for the registration of the branches of foreign PAs. Therefore, the phrasing with an open list of documents confirming legal personality can be considered reasonable and admissible. However, in this case the registration authority acquires elements of discretionary power and much will depend on how these provisions will be implemented on practice.
82. Should however ***the branch of a foreign PA operate on the basis of this foreign PA’s Statute***, a simplified procedure is used for the registration of the branch, which requires the following documents to be submitted: “declaration about the State registration of the branch, information about its governing bodies, document confirming the payment of the State duty, and the copy of the Statute, copy of the registration certificate or other official documents and acts confirming the legal personality of the public association of a foreign country, with translation into one of the official languages of the Transdnistrian Moldavian Republic, certified in the manner prescribed by law”.⁷² The comments indicated above for the registration of branches of foreign PAs are applicable to this registration procedure.

⁶⁸ See above, Council of Europe, Recommendation CM/Rec(2007)14 of the Committee of Ministers, para. 42.

⁶⁹ See above, Council of Europe, Explanatory Memorandum to Recommendation CM/Rec(2007)14 of the Committee of Ministers, para. 86.

⁷⁰ Ibidem.

⁷¹ See above, Law on PAs, Article 23 (6) letter f) item 2.

⁷² See above, Law on PAs, Article 23 (6) letter e) item 3.

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83. In addition to the registration of PA branches, the Law on PAs also provides for a special form of registration for the *subsidiaries* and *representative offices of foreign PAs*⁷³ – registration record, requirements for which are set in the Law on the State Registration of Legal Entities. For this, the following documents must be submitted to the judicial authorities:
- 1) Application in the prescribed form;
 - 2) Resolution on the establishment of the subsidiary and (or) representative office of the legal entity;
 - 3) Documents, confirming, in accordance with the Law on the State Registration of Legal Entities, the applicants' authority (originals or their certified copies);
 - 4) Document confirming the payment of the State duty.⁷⁴
84. In addition to these documents it is necessary to submit to justice authorities "a copy of the Statute, copy of the registration certificate or other official documents and acts confirming the legal personality of the public association of a foreign country, with translation into one of the official languages of the Transdnistrian Moldavian Republic, certified in the manner ... prescribed by law".⁷⁵ Accordingly, the comments made above for the registration procedure of branches of foreign PAs are applicable in this case.
85. These procedures for the registration of branches, subsidiaries and representative offices of foreign PAs can be considered potentially complying with the relevant international standards, for they are sufficiently similar to the PA registration procedure, set out in Article 23 (3) of the Law on PAs.⁷⁶

8. State Duty

86. International standards allow fees to be charged for PA registration. The rate of such fees, though, should be reasonable; the size of fees should not be set at a level that is an obstacle for submission of PA registration applications.⁷⁷ The payment of fees is related to the issues of registration, therefore fee issues should comply with the criteria required for registration: *information about the registration procedure* must be accessible, the *procedure* itself must be easy to understand, and the *formal requirements* must be foreseeable, easy to satisfy, and they must not grant an excessively high margin of discretion to the authorities in deciding on the issue of registration of associations.^{78, 79, 80}

⁷³ The question may arise about the difference between a branch, subsidiary and representative office. The Law on PAs says nothing about it and contains no reference norms. However, a person having knowledge in the field of law can find the answer in Article 57 of the Civil Code. According to this article, firstly, subsidiaries and representative offices are not legal persons, and, secondly, they have different levels of authority: representative offices only represent the interests of the legal person and protect them, while subsidiaries perform all the functions of the legal person or a part of them, including the function of representation. In their turn, according to Article 23 (1) of the Law on PAs, branches are legal persons.

⁷⁴ See above, Law on the State Registration of Legal Entities, Article 46 (1).

⁷⁵ See above, the Law on PAs, Article 25 (2) item 2).

⁷⁶ See above, Council of Europe, Recommendation CM/Rec(2007)14 of the Committee of Ministers, para. 45.

⁷⁷ Ibidem, para. 33.

⁷⁸ Ibidem, para. 29.

⁷⁹ See above, *Koretsky and Others v Ukraine*, para. 47.

87. In the Left Bank region such fees are paid in the form of State duty. Article 27 of the Law on PAs indicates that this duty is charged for the “registration of a public association, branch of a public association, modifications introduced in its Statute, performance of registration activities on the registration records of the subsidiary or representative office of the public association”. In addition, the Law on the State Registration of Legal Entities indicates, that the duty must also be paid for the “registration of a legal entity in connection with its liquidation upon the decision” of the entity itself (Article 43 (1)), as well as exclusion of information about the legal entity being in the process of liquidation (Article 44 (4)) from the State register of legal entities. Thus, the formal requirement of payment of State duty is foreseeable for various actions related to PA registration.

88. As for the accessibility of information about the State duty, although the requirement to pay it is contained in the Law on PAs, its amount in this document is not indicated. Article 27 of the Law on PAs contains a reference norm that the State duty is charged “in the manner and amount prescribed by the law of the Transdnistrian Moldavian Republic on the State duty”. The Law on State Duty itself indicates that legal entities are charged with the State duty for the following actions and in the following amounts:

- a) For registration of legal entities ó 40 PMW;
- b) For registration of legal entities in connection with their reorganisation through merger ó 20 PMW;
- c) For the registration of legal entities in connection with their liquidation ó 10 PMW;
- d) For the registration of modifications introduced into the constituent documents of the legal entity ó 15 PMW;
- e) For introduction into the register of legal entities of data about the establishment or termination of operation of a subsidiary or representative office of a legal entity ó 15 PMW.⁸¹

89. Although the abbreviation PMW is not well-known, the law does not explain what exactly PMW is. Also, the law does not indicate the amount of 1 PMW in any currency, so as to make it possible to calculate the amount of the duty for PA registration. Moreover, the law does not contain any reference norms to other normative acts on PMW. Therefore, it is fairly evident that a person without special knowledge in the field of law or finances will most probably be unable to independently determine the amount of the duty that is to be paid for PA registration and other related actions. Accordingly, the information about duty payment is not accessible. Also, the examined laws do not indicate the manner in which the State duty is to be paid, whether at the judicial authority’s office, through the bank or by other means, i.e. the duty payment procedure is unclear. Thus, the legislation on State duty is inconsistent with at least two criteria for registration (information about the duty is inaccessible and the payment procedure is unclear), therefore it is unlikely to be in compliance with international standards.⁸²

⁸⁰ See above, CoE Expert Council on NGO Law, para. 52.

⁸¹ The Law on State Duty of 30 September 2000 (as amended on 10 December 2010), no. 345-ЗІД (СЗМР 00-3), Article 5-1 (1) letters a)-e).

⁸² Most likely, the interested persons are informed by judicial authorities about the size of the state duty to be paid and the payment method. However, the law must be formulated clearly and accessibly, so that anyone could with sufficient ease find in the legislation answers to these questions.

90. The study author's knowledge in the field of law allowed him to learn that the abbreviation PMW is used as a replacement of the expression "points of minimum wage",⁸³ and the PMW is set annually in the yearly budget laws. Article 59 of the Law on the Republican Budget for 2011 sets different sizes of PMW for different purposes, and apparently the rate of 1 PMW for the payment of the State duty for the registration of a legal entity is set at 9.25 roubles.⁸⁴ Accordingly, the size of the State duty, for example for PA registration is 9.25x40=370 roubles, which practically equals EUR 25 or USD 36.⁸⁵ For comparison, the average wage in July 2011 was 2,799 roubles (about EUR 188 or USD 269), and the average cost of living was 1,126.60 roubles (about EUR 76 or USD 108).⁸⁶ In this context, the problem may arise that the size of the State duty may discourage people with low income from registration of PAs.
91. Furthermore, from Article 5-1 of the Law on State Duty it becomes clear that State duties for registration are set at the same level for all legal entities, i.e. for both commercial enterprises and public associations. Thus, when setting duty sizes no differentiation was made so as to take into consideration that PAs are, in essence, non-profit organisations. At the same time, such differentiation was made for individual entrepreneurs and peasant (farming) enterprises, which make profit out of their activity, but pay a registration duty of only 10 PMW,⁸⁷ i.e. four times less than PAs.
92. Generalizing the above information it can be concluded that the issues of State duty are potentially inconsistent with international standards, primarily because of the inaccessibility of information about the State duty and incomprehensibility of the payment procedure.

9. Refusal to Register

93. Refusal to register, which results in refusal to grant legal personality, is an interference with the freedom of association and restricts it. As it was noted above, an interference can be considered as justified only if it complies with the three-step test criteria, contained in Article 22 of the ICCPR and Article 11 of the ECHR. Also, according to international standards refusal to register must be made writing and must include reasons for refusal.⁸⁸
94. According to the Law on PAs, within 30 days from submission of documents justice authorities can refuse to register a PA and "issue to applicants a motivated written refusal",⁸⁹ "indicating exactly the provisions ... of legislative acts ..., whose violation entailed refusal" of registration.⁹⁰ In this

⁸³ Law on the Republican Budget for 2011 as of 08 December 2010, no. 242-3-IV (CA3 10-49), Article 18.

⁸⁴ Ibidem, Article 59 (2) letter e).

⁸⁵ Transnistrian Republican Bank: weighted average exchange rates in 2011, by the month: in June 2011: EUR 1=14.8631; USD 1=10.3871, <<http://www.cbpmr.net/resource/svcmonthoctober2011.pdf>>.

⁸⁶ «А цены растут и растут...», газета «Профсоюзные вести» от 20 августа 2011, <<http://profvesti.org/2011/08/20/6349/>>. // "And the prices keep growing...", newspaper "Profsoyuznye vesti", 20 August 2011.

⁸⁷ See above, the Law on State Duty, Article 5-1 (1) letters h) and j).

⁸⁸ See above, Council of Europe, Recommendation CM/Rec(2007)14 of the Committee of Ministers, para. 38.

⁸⁹ See above, Law on PAs, Article 23 (7).

⁹⁰ See above, Law on PAs, Article 26 (3).

sense the described procedure of refusal to register complies with international standards, because the legislation contains the requirements of written form and motivation.

95. Refusal to register is not an obstacle for submission and examination of a repeated application for PA registration,⁹¹ which is examined according to the standard procedure.⁹² It appears that these norms are also in compliance with international standards, because an automatic and arbitrary refusal to examine a PA registration application, even if only a repeated application, would practically entail an impossibility to establish a legal entity, and therefore would be an evident and unfounded interference with the freedom of association and its restriction.
96. However, the main question is whether the reasons, for which PAs can be refused registration, and, therefore, acquisition of legal personality, could be regarded as justified interference into the freedom of association.
97. Reasons for refusal to register a PA can be found in Article 26 of the Law on PAs. Furthermore, Article 26 (1) of the Law on PAs contains a reference norm regarding the fact that refusal to register a PA is permissible also in cases provided by the Law on the State Registration of Legal Entities, namely Article 62 of the said law. Also, and quite unexpectedly, Article 18 of the Law on the Republican Budget for 2011 contains provisions related to the examined question. We shall consider the most problematic points of restrictions contained in the above-mentioned articles.
98. With regard to Article 26 of the Law on PAs it is necessary to note the following. Firstly, according to Article 26 letter a) PA registration can be refused if “the constituent documents submitted for carrying out the relevant registration procedures are in conflict with the Constitution ..., this Law and other legislative acts...”. In this case it is not specified whether it means the conflict of organisation’s goals and activity with the substantive aspects of the requirements set in legislation or textual inconsistency of the organisation’s documents with other legislative acts as well. Consequently, this requirement of the Law on PAs is not clear (foreseeable) from the point of view of comprehension by applicants, and can enable authorities to adopt arbitrary decisions on refusal to register. In such a situation even the applicants’ appeal to court might not prevent an arbitrary refusal to register a PA.⁹³ Thus, too much depends on how this provision is interpreted and applied, and therefore it is potentially inconsistent with international standards.
99. Secondly, according to Article 26 letter b), PA registration can be refused if the founders of the PA fail to meet the requirements set out in Article 20 of the Law on PAs. These restrictions have been examined above in the section “Founders, Members and Participants” and the conclusions made there are applicable here as well.
100. In addition, attention is drawn by the restrictions on the number of persons for registration of a PA, set out in the Law on the State Registration of Legal Entities. Thus, according to Article 62 (1) letters e) and f) of the Law on the State Registration of Legal Entities, refusal to register is permitted in cases of registration of a legal entity whose founders are:

⁹¹ See above, Law on PAs, Article 26 (4).

⁹² See above, Law on PAs, Article 23 (8) and Article 26 (4).

⁹³ See above, *Koretskyy and Others v Ukraine*, para. 48.

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- “A legal entity with debts to the budget and extrabudgetary funds in amounts exceeding 5,000 (five thousand) PMW”;
 - “An individual who is founder of another legal entity with debts to the budget and extrabudgetary funds in amounts exceeding 5,000 (five thousand) PMW”;
 - “An individual entrepreneur,⁹⁴ in respect of whom proceedings were commenced to recognise him insolvent (bankrupt).”

101. Thus, there are **restrictions on the possibility** of an individual or legal entity **to be founder of a PA depending on fulfilment of their financial obligations** (in case of debts to the budget and extrabudgetary funds) **or on their general financial situation** (in case of the bankruptcy procedure). Firstly, international standards guarantee the freedom of association to all individuals and legal entities without any discrimination, and any restrictions must comply with the criteria for the justified interference to the freedom of association (three-step test), examined in the section “Brief Description of International Standards”. Accordingly, authorities will have to prove why the restriction of the freedom of association of these very persons is necessary in a democratic society, and how it will contribute to protection of one of the legitimate aims set out in Article 22 of the ICCPR and Article 11 of the ECHR. But it is already now evident that the established restrictions are disproportionate to the aim pursued. Thus, these restrictions could be set in the interests of the public order in the form of compliance with the tax legislation and tax collection. This aim, however, can be efficiently achieved by other means, which do not restrict the freedom of association in any way: imposition of penalties, use of other financial sanctions or legal action to recover debts.

102. Secondly, these restrictions are set for all types of legal entities and do not take into consideration the goals and specificity of PA activity. It can be assumed that these restrictions are necessary in order to make it impossible to pursue the goal of deriving profit under a new legal entity – commercial enterprise and not pay the debts of the former legal entity. However, PAs are in essence non-profit organisations, and they do not pursue commercial goals. Thus, when setting these restrictions no differentiation was made between commercial enterprises and PAs so as to take into consideration the non-profit character of the goals and activity of PAs.

103. Thirdly, these restrictions are inconsistent with international standards in connection with an even more fundamental reason. Thus, Article 47 of the Constitution⁹⁵ stipulates the following: “The exercise of rights and freedoms is inseparable from the fulfilment by a citizen and a person of his obligations to society and the State”. Further, Article 52 of the Constitution clarifies that one of every person’s obligations is the obligation to “pay taxes and local fees, established by the law”. Thus, the norms of the Constitution and then the norms of the Law on the State Registration of Legal Entities make the possibility to exercise human rights conditional on the persons’ fulfilment of their obligations, in this case financial, whose non-fulfilment entails restriction of human rights, in this case restriction of the freedom of association. However, neither in the human rights theory nor in international standards persons’ exercise of their human rights is

⁹⁴ According to Article 3 item a) of the Law on the State Registration of Legal Entities, individual entrepreneurs are individuals carrying out business activities without forming a legal entity, i.e. they act as individuals. Accordingly, for the purposes of human rights the fact that they do business activities should not diminish their human rights, like any other individual’s. Among other arguments made further in the text, their limitation in the possibility to be founders of non-profit associations solely by virtue of the fact that they can be recognised financially insolvent, will raise the issue of discrimination against them on the grounds of their financial situation or standing.

⁹⁵ See above, the Constitution of the Transdniestrian Moldavian Republic.

conditional on these persons' fulfilment of their obligations. Therefore, both the above-mentioned norms of Article 62 of the Law on the State Registration of Legal Entities and Article 47 of the Constitution are inconsistent with international standards.

104. Another restriction for the registration of legal entities and, therefore, registration of PAs is contained in Article 18 of the Law on the Republican Budget for 2011. According to this article, the tax authority "does not assign a fiscal code to a newly established legal entity" if:
- A founder (participant) of a newly established legal entity is a founder (participant) of other legal entities with debt to the budgets of various levels and to the State extrabudgetary funds in amounts exceeding 25 points of minimum wage (hereinafter 6 PMWö);
 - Also, if a founder (participant) of a newly established legal entity is a legal entity with debt to the budgets of various levels and to the State extrabudgetary funds in amounts exceeding 25 PMWö.
105. It turns out that a legal entity is registered, but not assigned a fiscal code due to the financial indebtedness of their founders (participants) or legal entities established by them. As is known, the fiscal code is one of the necessary attributes of a legal entity, which is needed, for example, when opening a bank account, performing payments, executing documents, etc. In this regard the existence of the fiscal code is a necessary element for the normal operation of any legal entity. In its turn, the lack of the fiscal code does not cause refusal to register a legal entity, but it entails actual impossibility of normal operation of the established legal entity, which makes the use of legal personality inefficient and the freedom of association – "theoretical or illusory".⁹⁶
106. Also, the provisions of Article 18 of the Law on the Republican Budget for 2011 again make the possibility of using human rights conditional on the persons' fulfilment of their financial obligations. It is inconsistent with international standards, and the conclusions indicated above for Article 62 of the Law on the State Registration of Legal Entities and Article 47 of the Constitution are applicable for this situation as well.

10. Re-registration

107. Protection of standards in the field of the freedom of association lasts for an association's entire life.⁹⁷ Accordingly, the issues of re-registration of associations are included in this field, just like the issues of registration. If registration is connected with acquisition of legal personality, re-registration is connected with the issue of maintaining this personality and the possibility to continue normal operation. Therefore, re-registration must be subject to the same standards as the above-examined standards for the registration of associations.

⁹⁶ According to a known approach of the European Court of Human Rights to the execution of human rights, enshrined into the ECHR, "the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective". See, e.g., ECHR judgment in the case *Artico v. Italy* of 13 May 1980, Application no. 6694/74, para. 33.

⁹⁷ *United Communist Party of Turkey and Others v. Turkey*, Application no. 133/1996/752/951, ECHR judgment of 30 January 1998, para. 33.

108. The Law on PAs prescribes the necessity of the actual re-registration procedure in several cases:

- 1) To introduce modifications in the Statute of a PA (Article 24 (1));
- 2) To reorganise a PA (Article 28 (2));
- 3) To bring Statutes in compliance with the new provisions of the Law on PAs (Article 48 (2)).

109. According to the Law on PAs, introduction of modifications into the Statute of a PA⁹⁸ and the reorganisation of a PA⁹⁹ occur in the same manner and within the same time limits as PA registration, i.e. according to Article 23 of the Law on PAs. In this regard the comments and conclusions made above for the registration procedure apply for these procedures, too. The only addition is that in order to carry out these two procedures justice authorities must not require PAs to repeatedly submit information or documents. Such requests shall be considered unfounded, since the legal authority already has certain information or documents as a result of initial registration of the PA. Thus, it relates to the request of submitting information about founders, as well as the documents confirming the authority to use in its name the personal name of a citizen, symbols protected by the law on the protection of intellectual property and copyright. In this regard one can observe potential inconsistency with international standards.

110. In addition, Article 48 (2) of the Law on PAs contains the requirement of bringing Statutes in compliance with the new provisions of the Law on PAs.¹⁰⁰ This article is of interest due to its two provisions.

111. Firstly, this article sets the time limit for bringing PA Statutes in compliance with the provisions of the modified Law on PAs with exemption from the State duty. And this time limit, after its establishment, has been extended three times:

Date and reasons for establishing the time limit	The time limit and its duration
14 August 2008 (adoption of the new Law on PAs)	1 June 2009 (i.e. 9.5 months)
5 May 2009 (introduction of modifications into the Law on PAs)	1 January 2010 (i.e. extended for 7 more months)
30 December 2009 (introduction of modifications into the Law on PAs)	1 June 2010 (i.e. extended for 5 more months)
22 July 2010 (introduction of modifications into the Law on PAs)	31 December 2010 (i.e. extended for 7 more months)

⁹⁸ See above, Law on PAs, Article 24 (1).

⁹⁹ See above, Law on PAs, Article 28 (2).

¹⁰⁰ This requirement appeared in connection with the adoption of a new active Law on PAs, which replaced the earlier Law on PAs of 28 January 2000, no. 240-3 (C3MP 2000-1).

112. It should be welcomed that authorities granted exemption from the State duty for the PAs which will bring their Statutes in compliance with the provisions of the new law within the set time limit. It is important and correct, as the actual need for re-registration was caused by authorities and not decisions of PAs themselves. However, the established time for these actions was insufficient. Thus, PAs usually hold their congresses, conferences or general meetings where they can adopt resolutions on the modification of their Statutes only once per year. For this reason a time limit of less than one year will most likely be insufficient for many PAs from the organisational point of view. The same conclusion can be reached from the financial point of view, for such annual events in medium and large PAs often require substantial financial expenses and significant work of the PAs full-time staff. It is necessary to note that authorities apparently made a step towards the PAs, as they extended the indicated time limit three times. Thus, these provisions potentially comply with international standards, but they can be inconsistent with the standards if authorities provide an insufficient time for re-registration of PA Statutes with exemption from the State duty.
113. Secondly, this article contains a provision on the liquidation by judicial procedure at the request of judicial authorities of those PAs, whose Statutes are not brought in compliance with the new Law on PAs. The issue of PA liquidation shall be examined below in the section “Liquidation”; here we will only briefly note that such requirement of liquidation is inconsistent with international standards in view of the fact that liquidation is disproportionate to the aim pursued.

11. Appeal against Refusal to Register and Re-register

114. Judicial control is an important guarantee for preventing and combating human rights violations. In particular it applies to unreasonable refusals to register associations and protection against them. International standards stipulate that authorities must ensure “that any person whose rights or freedoms ... are violated shall have an effective remedy”,¹⁰¹ and that “in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal”.¹⁰²
115. According to Article 23 (7) of the Law on PAs refusal to register a PA can be challenged in a judicial procedure. The decision on PA liquidation can also be challenged.¹⁰³ Similarly, Article 64 (4) of the Law on the State Registration of Legal Entities notes that “the decision on refusal to perform registration can be challenged in a judicial procedure”, which clearly demonstrates that it is also possible to appeal against the refusal to re-register a PA. Thus, legal provisions are in compliance with international standards, for they provide applicants with the possibility to challenge in court the refusals to perform various registration procedures. It is also relevant to mention that these potential appeals to court must be easy to perform and they must be examined within a reasonable time. Should these conditions fail to be met, it may lead not only to

¹⁰¹ See above, ICCPR, Article 2 (3).

¹⁰² See above, ECHR, Article 6 (1).

¹⁰³ See above, Law on PAs, Article 45 (1).

a violation of the freedom of association, but also to a violation of the right to fair trial and effective remedy.¹⁰⁴

12. Liquidation

116. Liquidation of an association is an evident interference with the freedom of association and its most severe restriction. It is an extreme and excessive measure leading to complete cessation of activity and the liquidation of the established association. Therefore, authorities should proceed from the principle of proportionality and firstly, if necessary, apply other sanctions provided by the law, which would achieve the aim pursued but at the same time least of all restrict the freedom of association. For example, these could be demands to correct violations, bringing to the administrative or criminal prosecution of the persons who committed violations or of the association itself. As to the liquidation of an association, it should be an exceptional measure, applied in extreme cases only, when the association's activity leaves no other choice.¹⁰⁵ The liquidation must comply with criteria for the justified interference to the freedom of association as set out in Article 22 (2) of the ICCPR and in Article 11 (2) of the ECHR, i.e. it must be prescribed by law, be necessary in a democratic society and be proportionate to the legitimate aim pursued. The reasons for liquidation must be particularly strong, evidently "relevant and sufficient".¹⁰⁶
117. Article 29 (1) of the Law on PAs stipulates that the decision about liquidation can be made either by the PA itself or by court. The legislation also indicates a number of reasons for the liquidation of a registered PA or prohibition of activity of an unregistered PA. According to Article 43 (1) of the Law on PAs, such reasons are:
- Violation by the public association of human rights and freedoms;
 - Repeated or flagrant violations by the public association of the Constitution, the current legislation or systematic performance by the public association of actions contrary to its Statutory goals;¹⁰⁷
 - Failure to correct, within the time limit established by the justice authority or by the General Prosecutor,¹⁰⁸ the deficiencies that served as ground for prescribing a warning (communication) to the public association;
 - Other reasons prescribed by legislative acts.
118. Reason for liquidation was probably formulated incorrectly in item a), and so it does not fully comply with international standards. In the theory and practice of human rights the subjects committing human rights violations are recognised the authorities of countries or territories (regions) which de jure and (or) de facto govern these countries or territories. Also, such subjects can be the persons who substitute power in a certain country or on a certain territory or have exceptionally strong influence on it. For example, it could be international corporations and armed groups. Thus, it appears unlikely that a PA can be recognised as a subject, which can violate

¹⁰⁴ See above, Jeremy McBride "International Law and Legal Practice in Support of the Civil Society", p.

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¹⁰⁵ Ibidem, page 58.

¹⁰⁶ See above, *United Communist Party of Turkey and Others v. Turkey*, para. 47.

¹⁰⁷ A similar requirement is contained in Article 64 (2) letter 6), "Dissolution of a legal entity", of the Civil Code.

¹⁰⁸ Such function, traditional for many jurisdictions, as "General Prosecutor" in the Left Bank region is named "Prosecutor". Here and further, to name the function of this main Prosecutor we shall use the term "General Prosecutor", so as to differentiate this function from other prosecutors.

human rights. It is nevertheless possible for a PA's actions to be directed, for example, to the diminishing of human rights, incitement of discord and hatred towards certain groups of society, dissemination and maintenance of prejudices, to pressure the representatives of these groups in order to discourage them from the enjoyment and protection of their rights. In this case authorities receive a positive obligation to ensure protection of such persons from pressure from the representatives of such a PA. It can firstly be done by means of administrative and criminal prosecution of certain individuals – members of such a PA. At the same time, a PA can be liquidated if authorities prove, given there is relevant evidence, that it is an absolutely necessary and proportionate reaction in order to “protect the rights and freedoms of other persons”.

119. As for items b) and c), they partially comply with international standards. Thus, leading researchers have noted that the circumstances for liquidation of an association are likely to include cases of anti-constitutional activity and continued illegal activity after receipt of a corresponding warning with the possibility to correct irregularities.¹⁰⁹
120. However, it would be inconsistent with international standards to request liquidation of a PA in connection with its activity being systematically conducted contrary to its Statutory goals. This issue must be foremost an internal affair of a PA and a matter of concern for its members and sponsors. In this situation the interference of authorities with a demand to liquidate the PA can be considered justified if the PA conscientiously conducts activities that are inconsistent with the goals of establishment of public associations,¹¹⁰ or if there is a “pressing social need” to protect one of the legitimate aims listed in Article 22 (2) of the ICCPR and Article 11 (2) of the ECHR.
121. As for item d), “other reasons” for the liquidation of PAs, prescribed by law, may include the following four reasons.
122. First reason: upon justice authorities’ appeal such PAs will be subject to liquidation by judicial procedure which repeatedly failed to submit, within the established time, information needed to introduce modifications into the State register of legal entities.¹¹¹
123. This reason is evidently inconsistent with international standards. PAs certainly must fulfil the requirements of the legislation. But in this case PA liquidation is disproportionate to the aim pursued and there is no “pressing social need” to restrict the freedom of association of all members of this PA. A proportionate reaction of authorities would be to institute administrative proceedings against the persons who failed to submit the information that needs to be introduced into the State register of legal entities in due time.
124. Second reason: upon request of the justice authorities such PAs shall be subject to liquidation by judicial procedure whose constitutional documents are not brought in compliance with the Law on PAs by 31 December 2010.¹¹²

¹⁰⁹ See above, Jeremy McBride “International Law and Legal Practice in Support of the Civil Society”, p. 58.

¹¹⁰ See above, Council of Europe, Explanatory Memorandum to Recommendation CM/Rec(2007)14 of the Committee of Ministers, para. 89.

¹¹¹ See above, Law on PAs, Article 31 (2).

¹¹² See above, Law on PAs, Article 48 (2) item 3.

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125. This reason is also evidently inconsistent with international standards. PAs must certainly bring their Statutes in compliance with the requirements of the law. But again, PA liquidation for failure to fulfil this requirement shall be disproportionate to the aim pursued and there is also no “pressing social need” to restrict the freedom of association of all members of this PA. Thus, if a PA fails to introduce modifications in its Statute before the established time, it loses the right to register modifications with exemption from the State duty, which is in itself a loss of the granted benefit and a certain financial sanction. In addition, Article 48 (2) item 2 of the Law on PAs indicates that “the Statutes of public associations, before they are brought in compliance with this Law, shall remain in force in the part that does not contradict this Law”. This provision brings clarity and certainty to what norms should be applied in case Statutes are inconsistent with the law, and thus it is removing all the issues of legal uncertainty. Moreover, neither the Law on the State Registration of Legal Entities nor the Civil Code provide for the possibility to liquidate commercial enterprises if their Statutes are not brought in compliance with the modified legislation. This fact also raises the question of why it is necessary to liquidate PAs while there is no such requirement in a similar situation for commercial enterprises.
126. Third reason: justice authorities must appeal to court with a motion on the liquidation of a PA if the authorised persons fail to take measures to implement the PA’s resolution on its liquidation within the established time.¹¹³
127. This reason appears to be in compliance with international standards, since, firstly, the resolution on liquidation is adopted by the PA itself, and, secondly, authorities must take action to implement this resolution only after this PA’s authorised persons proved their inability and failed to take measures to implement this PA’s resolution on liquidation within the established time.
128. Fourth reason: Article 43 (3) of the Law on PAs contains a reference norm on the possibility to liquidate a PA according to the procedure and reasons prescribed by the Law on Counteraction to Extremist Activities. The latter law itself contains such provisions in Articles 7 and 9.
129. The provisions of these articles can be summed up as follows. Article 7 mentions that in case facts are found, which are indicating the signs of extremism in a PA’s operation, this PA is issued a written communication about the inadmissibility of such activity, indicating specific reasons for this communication, including the committed violations. Such communication is issued by the General Prosecutor or his deputy, and no more than a month is granted for the correction of irregularities. Next, if this communication is not challenged in court or implemented, or if within the next 12 months new signs of extremism are depicted in the operation of the PA, this PA shall be subject to liquidation by judicial procedure, and the activity performed by a PA that is not a legal entity shall be prohibited.
130. As for Article 9, it mentions that in case a PA or its structural subdivision perform extremist activity with a number of qualifying signs,¹¹⁴ such a PA can be liquidated, and the operation of a

¹¹³ See above, Law on PAs, Article 29 (5) item 4, and Law on the State Registration of Legal Entities, Article 45 (3).

¹¹⁴ Article 9 (2) of the Law on Counteraction to Extremist Activities indicates the following qualifying signs: carrying out of extremist activity, which resulted in “violation of human and citizens’ rights and

PA that is not a legal entity can be prohibited by court decision upon a motion of the General Prosecutor or his deputy.

131. Fight against various forms of extremism is a pressing and necessary task in many countries, a fact that has been highlighted, for example, in Resolution 1754 (2010) adopted by the Parliamentary Assembly of the Council of Europe (PACE).¹¹⁵ Such activity is necessary, since many forms of extremism contradict the values of democracy and human rights, and often even admit or directly contribute to violence.

132. Legislative measures for fight against extremism usually imply that certain norms can be included into constitutions, criminal legislation is supplemented and adjusted, and legislation concerning the fight against terrorism is adopted. Specific laws on the fight against extremism are adopted much less frequently. Thus, as far as it is known, as of May 2010 specific laws on fight against extremism existed in only two member States of the Council of Europe: Republic of Moldova and the Russian Federation.¹¹⁶

133. The problem of the examined Law on Counteraction to Extremist Activities consists in the highly extensive definition of extremism, which entails the possibility of a broad interpretation of legal provisions and, therefore, the possibility of abuse and unacceptable restriction of the freedom of association.^{117, 118} The European Court of Human Rights has already examined a case on similar problems, and it considered that there has been a violation of the freedom of association.¹¹⁹

freedoms, causing harm to the person, the health of citizens, the environment, public order, public safety, property, legitimate economic interests of individuals and (or) legal entities, society and the State or poses a real threat of such harm”.

¹¹⁵ PACE Resolution 1754 (2010) Fight against extremism: achievements, deficiencies and failures, 5 October 2010, para. 1,

<<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta10/ERES1754.htm#1>>.

¹¹⁶ “Fight against extremism: achievements, deficiencies and failures”, Report, PACE Political Affairs Committee, Doc. 12265, 19 May 2010, para. 34,

<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc10/EDOC12265.htm#P56_850>.

¹¹⁷ Amnesty International Report «Russian Federation: Freedom limited – the right to freedom of expression in Russia», 26 February 2008, Index: EUR 46/008/2008, pp. 17-26,

<<http://www.amnesty.org/en/library/asset/EUR46/008/2008/en/c9539ec6-3848-4f5e-a07e-89bafac1152c/eur460082008eng.pdf>>.

¹¹⁸ Доклад Хьюман Райтс Вотч «Гражданское общество в антигражданских обстоятельствах: безосновательные ограничения независимой общественной активности», июнь 2009, стр. 48-53, <www.hrw.org/sites/default/files/reports/russia0609ruwebwcover.pdf>. // Human Rights Watch report “An Uncivil Approach to Civil Society: Continuing State Curbs on Independent NGOs and Activists in Russia”, June 2009, Russian edition, pp.48-53

¹¹⁹ *Moscow Branch of the Salvation Army v. Russia*, Application no. 72881/01, ECHR judgment of 5 October 2006, paras. 15, 90 – 92 and 98. In this case the European Court of Human Rights examined a situation when Russian authorities refused re-registration to the religious organisation “Salvation Army” on the grounds that anti-extremist legislation prohibits establishment of paramilitary formations in Russia. One of the immediate reasons for refusal was the authorities’ statement that “Salvation Army” is a “paramilitary organization”, “since its members wore uniform and performed service, and because the use of the word “army” in its name was not legitimate”. In this regard the Court noted that the freedom of religion includes the forms of manifesting religious beliefs. The Court added that “for the members of the applicant branch, using ranks similar to those used in the military and wearing uniforms were particular ways of organising the internal life of their religious community and manifesting The Salvation Army’s religious beliefs. It could not seriously be maintained that the applicant branch advocated a violent change in the State’s constitutional foundations or

134. Besides, the Law on Counteraction to Extremist Activities contains another problematic provision. Thus, Article 9 (2) of the law says that in case at least one structural subdivision of a PA carries out extremist activity, the entire PA is automatically subject to liquidation. This measure is inconsistent with international standards, for it is clearly not necessary and proportionate. If there is no connection between the activities of this subdivision and the organisation as a whole, the structural subdivision of the PA must be solely responsible for its own actions.

thereby undermined the State's integrity or security. No evidence to that effect had been produced before the domestic authorities or by the Government in the Convention proceedings. It follows that the domestic findings on this point were devoid of factual basis." Accordingly, the Court came to the conclusion that "the interference with the applicant's right to freedom of religion and association was not justified" and there has been a violation of Article 11 of the ECHR read in the light of Article 9.

3. Conclusions

1) *General Conclusions and Recommendations*

135. The Constitution and the Civil Code of the Left Bank region contain general norms related to the freedom of association. Also, the region has developed specialised legislation in the form of the Law on Public Associations and other normative acts. These documents, among other issues, regulate the issues of establishment, registration, re-registration and liquidation of public associations.
136. The analysis of this general and special legislation, done within this study, showed that many of its provisions combine both norms consistent with international standards and norms inconsistent with them. The norms that are inconsistent with international standards hinder the realisation of the freedom of association in practice. Authorities should confirm their commitment to the obligation to *ensure* this freedom and eliminate the obstacles contained in the legislation. These steps would considerably increase the possibility of a full and efficient exercise of the freedom of association. For this, it would be necessary to bring the legislation in compliance with international standards, taking into consideration the conclusions of this study.
137. Furthermore, while improving the legislation, differentiation should be made between commercial enterprises and public associations, considering that the latter are in essence non-profit associations. It is especially the case with the need to establish a special reduced State duty for various registration-related actions, and remove the restriction on the possibility of individuals and legal entities to be founders of public associations depending on fulfilment of tax obligations or financial situation.
138. It should also be noted that the legislation regarding the freedom of association should be to the maximum accessible and understandable to a wide range of people: it is being used as a guidance by a lot of people who have no special knowledge in the field of law, who intend to establish, are establishing or have already established registered or unregistered public associations, and who are their members and supporters. However, several factors prevent the legislation from being accessible and understandable.
139. Firstly, the analysed documents contain a large number of reference norms to other documents. This circumstance considerably hinders understanding and performance of registration procedures by persons lacking knowledge in the field of law. This problem can be overcome for example by reducing reference norms to the maximum and transferring into the Law on Public Associations the necessary provisions from other normative acts.
140. Secondly, a systemic problem is the general difficulty to access the texts of the normative acts currently in force in the region. Normative acts are published in printed "Compilations of Legislative Acts" (CLA), but the region has no publicly accessible reliable electronic database of normative acts, amendments and additions to them, placed in the Internet. We are living in the era of information technologies, and life requires a fast access to information, including the socially significant information – the legislation. This problem can be solved by developing and

placing in the Internet a publicly accessible website with permanently updated, systematised database of all normative acts of the region's central authorities.

2) Summary of the Main Conclusions of the Study

141. Article 33 of the Constitution protects the possibility to establish associations for various goals, but restricts the freedom of association to a certain range of people (only for the citizens of the Left Bank region) in violation of international standards.
142. The Law on Public Associations (Law on PAs) rightly provides for the possibility to establish both informal (unregistered) public associations (PAs) and formal PAs (registered, with legal personality). However, formal requirements for the establishment of unregistered PAs are apparently inconsistent with international standards.
143. **Founders, members and participants** of PAs can be individuals and legal entities – public associations. All other legal entities are deprived of the possibility to exercise the freedom of association, which is contrary to international standards, since they guarantee the freedom of association to “everyone”.
144. **Minors** should have the possibility to exercise the freedom of association in the same way as adults, and protective measures for children should not completely deprive them of this freedom. In this regard, Article 20 of the Law on PAs is not fully compatible with international standards, since it prohibits persons aged 10 to 18 to be founders of PAs, and completely deprives persons younger than 10 of the possibility to exercise the freedom of association.
145. **Foreigners and stateless persons** can be founders, members and participants of PAs only if they are legally present on the territory on the Left Bank region (Article 20 (2) of the Law on PAs). It appears that this restriction is inconsistent with the criterion of “necessity in a democratic society”.
146. The **prohibition** for “undesirable persons” (persona non grata) to be founders, members and participants of PAs (Article 20 (4) letter a) of the Law on PAs) appears to be disproportionate, since the timing of this restriction is unclear and it seems indefinite.
147. The prohibition for a PA, whose operation has been suspended by court according to the legislation on countering extremism, to be founder, member and participant of the PA (Article 20 (4) letter b) of the Law on PAs) can be considered acceptable if there is conclusive evidence that suspension of this PA's operation is truly necessary.
148. It is unacceptable to deprive a person, for the time of their life, of the right to be a founder, member and participant of a PA (Article 20 (4) letter c) of the Law on PAs), since it is a disproportionate measure.

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149. Complete prohibition on the freedom of association for all persons held in places of detention under a court sentence (Article 20 (4) letter d) of the Law on PAs) is also unacceptable. Such prohibition for an entire category of persons amounts to discrimination.
150. The fact that **“government agencies and local self-government** cannot be founders, members and participants of public associations” (Article 20 (10) of the Law on PAs) is consistent with international standards, since they are public bodies.
151. The number of persons required to establish (register) a PA does not contradict international standards, but this number is nevertheless high for the founding of a PA. The requirement of participation of three individuals in the process of establishment and, seemingly, registration of a PA (Article 19 (1) and (2) of the Law on PAs) restricts the rights of legal persons and is inconsistent with international standards.
152. PAs may pursue any goals except extremist (Article 17 (1) of the Law on PAs). However, the concept of extremism is quite extensive (Article 1 of the Law on Counteraction to Extremist Activities), which leads to the possibility of its broad interpretation and, therefore, abuse.
153. The **information about the PA registration procedure** (Article 23 of the Law on PAs) appears not fully accessible, since it is concentrated in several laws and persons without special knowledge in the field of law might find it difficult to understand all the subtleties of this information. This circumstance is aggravated by the fact that the Left Bank region has no authentic and publicly accessible reliable electronic database of normative acts, amendments and additions to them.
154. The registration procedure (Article 23 of the Law on PAs) is understandable with the exception of the time when the document confirming the State registration of a PA as a legal entity is issued. Also, the question appears about why the registration of PAs takes three times longer than the registration of commercial legal entities.
155. It is contrary to international standards that a PA loses the possibility to be registered if it fails to submit documents for registration within three months *after its establishment* (Article 19 (3) of the Law on PAs). PAs should apply for registration only after the resolution on *registration* is adopted.
156. The **list of documents** required for PA registration (Article 23 (3) of the Law on PAs) is exhaustive (closed), which corresponds to the criteria of foreseeability of formal requirements and their clarity, and the requirement of submitting these very documents is not excessive.
157. The practical need in additional documents for the registration of **international** and **republican PAs** is unclear, since such statuses do not provide PAs with any benefits or privileges, nor do they entail any difference in further relations between authorities and such PAs.
158. The registration of **youth** and **children’s PAs** is subjected to the condition that their governing bodies must be formed by electing persons over 18 years old. This requirement leaves

it unclear whether one, several or all persons elected into the governing bodies must be over the age of 18. These provisions allow different interpretation, which may raise problems with PA registration. On the whole, however, this restriction can be regarded as a protective measure for minors, who do not have full legal capacity.

159. The requirements for the registration of **PA branches** with legal personality are similar to the requirements for PA registration, and the Law on PAs does not prohibit establishment of a PA branch without compulsory registration. These provisions are potentially in conformity with international standards.
160. In order to register a **branch of a PA of a foreign country**, in addition to the documents required for PA registration it is necessary to submit a number of the PA's documents from the foreign country for confirmation of its legal personality. Although the list of these additional documents is open, it can be considered acceptable and consistent with international standards, since different jurisdictions can issue different documents confirming legal personality than the ones that might be required by a closed list according to the Law on PAs. The same conclusions are applicable for the registration of the **branch of a foreign PA that operates on the basis of the Statute of this foreign PA**, and also for the distinct form of registration of **subsidiaries** and **representative offices of foreign PAs** – registration records.
161. Various types of registration activities in the Left Bank region are charged with a **State duty**, which is allowed by international standards. However, it is inconsistent with international standards that the information about the State duty is not accessible, since the information about State duties and their sizes is contained in several normative acts, and a person without special knowledge in the field of law or finances is unlikely to be able to independently determine the size of the duty. The State duty payment procedure is unclear: whether it should be paid at the justice authorities' offices, through the bank or in some other manner. The State duty in 2011 amounted to 370 roubles (about EUR 25 or USD 36). It can discourage a person with low income from registration of a PA. Also, the rates of State duties for registration activities are the same for all legal entities, i.e. they were set without taking into consideration that PAs are non-profit organisations.
162. The procedure of **refusal to register a PA** (Article 23 (7) and Article 26 (3) of the Law on PAs) is consistent with international standards, since the legislation requires the refusal to be written and motivated. Refusal to register is not an obstacle for submission and examination of a repeated application for PA registration (Article 26 (4), Article 23 (8) of the Law on PAs), which is also in compliance with international standards.
163. However, the main question is whether the **reasons** for which PAs can be refused registration, and, therefore, acquisition of legal personality, could be regarded as justified interference into the freedom of association.
164. Firstly, PA registration can be refused if "the constituent documents ... are in conflict with the Constitution ..., this Law and other legislative acts..." (Article 26 letter a) of the Law on PAs). The law does not specify whether it means the conflict with the substantive aspects of the requirements set in legislation or textual inconsistency of the organisation's documents with other legislative acts. Consequently, this requirement is not clear (foreseeable) from the point of

view of comprehension by applicants; it can enable authorities to adopt arbitrary decisions on refusal to register, and therefore this provision is potentially inconsistent with international standards.

165. Secondly, PA registration can be refused if the founders of the PA fail to meet the requirements set for them (Article 26 letter b) and Article 20 of the Law on PAs). These restrictions have been examined above and the conclusions made there are applicable here as well.
166. In addition to the above-mentioned, there are restrictions for PA registration that are related to the range of persons (Article 62 (1) letters e) and f) of the Law on the State Registration of Legal Entities). Thus, there are **restrictions on the possibility** of an individual or legal entity to **be founder of a PA depending on fulfilment of their financial obligations** (in case of debt to the budget and extrabudgetary funds exceeding 5,000 PMW) or on their **general financial situation** (in case of bankruptcy of an individual entrepreneur). However, the goal of tax collection can be efficiently achieved by means that do not restrict the freedom of association in any way (penalties, legal action, etc.). Moreover, international standards do not make the persons' exercise of their rights conditional on these persons' fulfilment of their obligations. Therefore the above-mentioned restrictions and provisions of the Constitution are not justified and are inconsistent with international standards.
167. The same conclusions are applicable for the provisions of Article 18 of the Law on the Republican Budget for 2011. These provisions allow the tax authority to not assign a **fiscal code** to a newly established legal entity on the grounds of financial indebtedness of their founders (participants) or the legal entities established by them. The lack of the fiscal code entails actual impossibility of normal operation of the established legal entity, which makes the use of legal personality inefficient and the freedom of association – “theoretical or illusory”.
168. The Law on PAs prescribes the need for actual **re-registration** in several cases (Article 24 (1), Article 28 (2), Article 48 (2)), and it occurs in the same manner and within the same time limits as the registration of PAs. Therefore, the comments and conclusions made above for the procedure of PA registration apply for re-registration as well. At that, justice authorities must not require PAs to repeatedly submit information or documents which the justice authorities obtained as a result of initial registration of the PA, since it can be potentially inconsistent with international standards.
169. Actual re-registration also includes the requirement of bringing the PA Statutes into compliance with the new provisions of the Law on PAs (Article 48 (2) of the Law on PAs). For this purpose authorities provided exemption from the payment of the State duty and several times extended the established time, which is potentially in compliance with international standards.
170. **Decisions on refusal** of the registration (Article 23 (7) of the Law on PAs), re-registration (Article 64 (4) of the Law on the State Registration of Legal Entities) and liquidation of PAs (Article 45 (1) of the Law on PAs) can be **challenged** in a judicial procedure, which is in compliance with international standards. As it takes place, it is necessary to ensure that such complaints are examined within a reasonable time so as to respect the right to fair trial and effective remedy.

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171. The Law on PAs indicates a number of reasons for the **liquidation** of PAs (Article 29 (1), Article 43 (1)). Thus, the demand to liquidate a PA for “violation by the public association of human rights and freedoms” (Article 43 (1) letter a)) is stated incorrectly and does not fully comply with international standards, since it is unlikely that a PA can be recognized as a subject, which can violate human rights. It is nevertheless possible for a PA’s actions to be directed to the diminishing of human rights, to the discouragement from their enjoyment and protection.
172. As for items b) and c), they partially comply with international standards. Thus, leading researchers have noted that it would be in compliance with international standards to liquidate a PA in such cases as anti-constitutional activity and continued illegal activity after receipt of a corresponding warning with the possibility to correct irregularities (Article 43 (1) letters b) and c)).
173. However, it would be inconsistent with international standards to request liquidation of a PA in connection with its activity being systematically conducted contrary to its Statutory goals (Article 43 (1) letter b)). The interference of authorities with a demand to liquidate the PA can be considered justified if the PA conscientiously conducts activities that are inconsistent with the goals of establishment of public associations.
174. Also, it is contrary to international standards to demand liquidation of a PA by judicial procedure on the grounds of repeated failure to submit within an established time the information that is needed to introduce modifications into the State register of legal entities (Article 31 (2) of the Law on PAs), since this measure is disproportionate to the aim pursued.
175. Upon request of the justice authorities those PAs are subject to liquidation by judicial procedure whose Statutes are not brought in compliance with the Law on PAs before 31 December 2010 (Article 48 (2) item 3 of the Law on PAs). This requirement is inconsistent with international standards because liquidation is disproportionate to the aim pursued. In addition, the legislation does not provide for the possibility to liquidate commercial enterprises if their Statutes are not brought in compliance with the modified legislation. Therefore a question arises about the reasons behind such a different treatment of PAs and commercial enterprises, which are in a similar situation.
176. Justice authorities must appeal to court with a motion on the liquidation of a PA if the authorised persons do not take steps to implement the decision of the PA on the liquidation of this PA within the established time (Article 29 (5) item 4 of the Law on PAs and Article 45 (3) of the Law on the State Registration of Legal Entities), which is in compliance with international standards, for the authorities implement the decision of the PA if its authorised persons prove their inability to implement this decision.
177. A PA can also be liquidated according to the procedure and reasons prescribed by the Law on Counteraction to Extremist Activities (Article 7 and 9). Fight against various forms of extremism is pressing and necessary, for they are in contradiction with the values of democracy and human rights, and often even admit or directly contribute to violence. However, the problem with the Law on Counteraction to Extremist Activities consists in the highly extensive definition of extremism, which entails the possibility of a broad interpretation of legal provisions and, therefore, the possibility of abuse and unacceptable restriction of the freedom of association.

178. Also, the legislation contains a provision that in case at least one of the structural subdivisions of a PA carries out extremist activity, the entire PA is automatically subject to liquidation (Article 9 (2) of the Law on Counteraction to Extremist Activities). This measure is inconsistent with international standards, since it is evidently not necessary or proportionate. If there is no connection between the activities of this subdivision and the organisation as a whole, the structural subdivision of the PA must be solely responsible for its own actions.