

**Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity**

REFERENCE:  
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; and Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, pursuant to Human Rights Council resolutions 41/12, 43/16 and 41/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the recently introduced draft law on amendments to the Law on Non-Profit Legal Persons/Entities (the bill), submitted by a group of members of the Bulgarian Parliament on 1 July 2020. If adopted into law, the bill may hamper the work of independent non-profit organizations (NGOs), including those that promote and protect human rights and stigmatize those that receive funding from abroad.

Under the provisions of the proposed bill:

Every non-profit organization carrying out activities "in the public benefit" shall submit a declaration to the Ministry of Justice for each donation that is over 1,000 Bulgarian Lev (BGN, approximately 600 US Dollars). This provision would only apply to funding from a foreign state or a foreign natural or legal person and it must be declared within seven days to the Ministry of Finance along with "written evidence about the source of funding" (Article 40a). The only exception provided is for funds from the institutions of the European Union.

The NGOs receiving foreign funding are then recorded in a special public registry which is maintained by the Ministry of Finance. According to the bill, failure to declare such funding or a late declaration entail a fine of 200 to 1,000 BGN (120 to 600 USD) or 200 to 300 BGN (120 to 180 USD) respectively. Furthermore, if the violation has been committed repeatedly, the NGO may be dissolved (article 40b (4)).

The draft bill inserts an obligation for directors and members of the governing bodies of the NGOs receiving more than 1,000 BGN (600 USD) from abroad to file a personal statement with the Anti-Corruption Agency on their personal financial situation, irrespective of whether they receive remuneration from the NGO (Transitional and Concluding Provisions §7). Therefore, they are subject to the same responsibilities as high-ranking state officials pursuant to the Counter-Corruption and Unlawfully Acquired Assets Forfeiture Act.

In case of a violation of the above mentioned obligations, the Minister of Finance may ask the Registration Agency to “temporarily suspended [the] status in public benefit”, or terminate the NGO in case of a second violation, in addition to the financial sanctions mentioned above (articles 40b (3) and 40b (4)).

No such obligation is envisaged for NGOs that receive funding from public or private sources within Bulgaria nor for persons linked to NGOs that are funded from public or private sources inside Bulgaria.

We are very concerned that the bill would create a hostile environment for civil society organisations with public benefit status that receive foreign funding, including human rights defenders that work in such organisations. It may also create a discriminatory treatment of NGOs and human rights defenders by requiring them to declare income from foreign sources while there is no similar requirement for private companies. An enabling environment for civil society and a vibrant civil society are indispensable for the enjoyment of the rights to freedom of association. Therefore, the ability to access resources is inherent to the right to freedom of association, and any restrictions imposed must be necessary and proportionate.

We would like to remind your Excellency’s Government that the Special Rapporteur on the rights to freedom of peaceful assembly and association has stated in several of his reports that general restrictions on foreign funding do not comply with article 22, paragraph 2, of the International Covenant on Civil and Political Rights (ICCPR), ratified by Bulgaria on 21 September 1970. Said article states that “no restrictions may be placed on the exercise of [the right to freedom of association] 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.” Furthermore, Human Rights Council resolution 22/6 calls upon States to ensure that “no law should criminalize or delegitimize activities in defence of human rights on account of the origin of funding thereto.”

We are concerned that the sanctions imposed by the bill are disproportionate, since they would give the authorities the possibility to impose two sanctions for the same violation (failing to submit a declaration for receipt of foreign funding). In fact, the Bill would introduce new grounds for dissolution by administrative authority as a sanction for non-compliance with administrative obligations, which would constitute a restriction of the right to freedom of association, especially stated in the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)(art.3 and 4), ratified by Bulgaria on 8 June 1959. The right to associate is also part of the fundamental rights as enshrined in the Bulgarian Constitution (art.44).

Moreover, the draft bill imposes additional burdensome requirements to the existing ones as reportedly NGOs already have broad obligations to declare their income and transactions before the tax authorities, National Statistical Institute and the Ministry of Justice’s Registry Agency. Additionally, some NGOs already report the funds received from abroad on a quarterly basis to the Bulgarian National Bank upon request from the Bank.

We would like to recall that the Court of Justice of the European Union (CJEU) stated in *Commission vs. Hungary* (June 2020), that imposing obligations of registration, declaration and publication on certain categories of civil society organizations directly or indirectly receiving support from abroad, and providing for the possibility of applying penalties to organizations that do not comply with those obligations, is a discriminatory and unjustified restriction for both the organizations and the persons granting them support.

According to the CJEU, those restrictions run contrary to the obligations on Member States in respect of Articles 7, 8 and 12 of the Charter of Fundamental Rights of the European Union, on the right to respect for private and family life, the right to the protection of personal data and the right to freedom of association.

Another concern is that the bill uses the term foreign funding ambiguously because of the lack of definition of a “foreign individual” or a “foreign company”. It would open the possibility for the Government to impose additional barriers because the decision if an individual or a company is “foreign” seems to be at the discretion of the Ministry of Finance, which creates legal uncertainty.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all situations brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned information.
2. Please provide a specific definition of the wording “is a foreign state and foreign natural or legal person”. We strongly encourage you to involve a clear definition of these terms in the bill.
3. Please explain how the bill would supplement meaningfully the already existing laws and obligations for the NGOs to declare their income and transactions before the tax authorities, National Statistical Institute and the Ministry of Justice’s Registry Agency, in particularly how it would make the civil society sector more transparent.
4. Please provide further information on the legal consequences for organizations that have been accorded “temporarily suspended status in public benefit”.
5. Please provide information on how civil society organizations were consulted in the drafting of this bill and how the feedback from these organizations was integrated into the bill.

Lastly, we encourage that Bulgaria ensures that the draft law is in accordance with its obligations under international law regarding the right to freedom of association under article 22 ICCPR. To achieve this, the draft should be reviewed and all broad and vague limitations should be removed, to ensure that the draft aims at guaranteeing transparency rather than restricting civil society activities. This should

be done through a consultation process with civil society organizations, which are the main concerned parties in this draft bill.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

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