



# *The interaction of local authorities and non-profit organizations in Belarus: legal regulation and practice*

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The study "Interaction of local authorities and non-profit organizations in Belarus: legal regulation and practice"<sup>1</sup> was conducted by leading experts on non-profit organisation law in Belarus – Olga Smolianko (Centre for Legal Transformation) and Yury Chavusau (Assembly of Belarusian Non-Government Democratic Organizations). These experts are the authors of annual reviews of the state of freedom of association and legal conditions for the activities of non-profit organisations in the Republic of Belarus<sup>2</sup>; periodic alternative reports to international human rights bodies, which touch on the conditions for the realization of the right of citizens to participate in governing their country in the context of freedom of association<sup>3</sup>; proposals for legislative reforms in the sphere of legal regulation of non-profit organisations in the framework of the project "Through the modernization of Belarus to a competitive society (REFORUM)"<sup>4</sup>; as well as many other publications on similar issues.



<sup>1</sup> The study was carried out within the framework of the regional programme "Razam da spravy", implemented jointly by the public campaign "Budzma Belarusam!" and the Centre for the Study of Public Administration "SYMPA" in 2016-2019. In addition to this study, the programme included dozens of discussion and dialogue events on topical issues for local communities, project fairs, meetings of local initiative clubs, educational seminars, etc. The full text of the results of the research may be found in Russian at the following URL: <http://budzma.by/wp-content/uploads/2019/03/book-rds-2019.pdf>

<sup>2</sup> Reviews for the past ten years can be found on the website of the Assembly of Non-Government Democratic Organizations <http://belngo.info/2017.ahlad-svabody-asacyjacyau-2017.html>

<sup>3</sup> See, for example, the section on freedom of association in the alternative report of the national coalition of twelve civil society organizations on the implementation of the International Covenant on Civil and Political Rights by the Republic of Belarus, submitted to the UN Committee on Human Rights in 2018. Source: [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/BLR/INT\\_CCPR\\_CSS/BLR\\_31288\\_R.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/BLR/INT_CCPR_CSS/BLR_31288_R.pdf)

<sup>4</sup> Lukyanova I., Smolianko O., Chavusau Y., "Mery po uluchsheniyu usloviy dla funktsionirovaniya NKO v Belarusi" [“Measures to improve the conditions for the functioning of non-profit organisations in Belarus”], 2017. Source: <https://belinstitute.com/ru/node/3385>

## *Summary*

Recently, many active participants in the public sector in Belarus have noted a greater openness of authorities to considering the opinions of and suggestions from the public. In several areas, this openness is considered significant and indicates a certain desire by authorities to consider the entire spectrum of diverse positions of interest groups (as, for example, in the development of conditions for entrepreneurship). In other areas (for example, respect for human rights), this openness, although it exists, is considered perfunctory, procedural, and discussion-oriented, but not connected to real consideration of the public interest.

These changes can be traced both at the national and local levels. In addition, at the local level, the interaction of state and non-profit organizations<sup>5</sup> in different regions takes place with varying intensity and effectiveness. And where this interaction is becoming stronger, it has a positive effect on local development. Everyone benefits – local authorities<sup>6</sup> and residents. Unfortunately, these changes are non-systemic. It can be said that at the local level public access to participation in decision-making has increased somewhat and to consolidate and develop constructive interaction there must be changes in regulatory documents and law-enforcement practice.

It is obvious that the work of public initiatives contributes to solving many problems and tasks in very different areas, which, in turn, leads to improvement in society. However, for existing positive changes to become sustainable, government institutions must take into account the opinions of citizens and, crucially, to see civil society as a direct partner.

In Belarus, elements of possible forms of interaction between non-profit organisations and state bodies are prescribed in dozens of different non-systematized regulations. But so far there are no concepts of interaction between government bodies and non-profit organisations or a programme of state non-profit partnership approved at the level of legislation.

However, in the current legal context there are several windows of opportunity that explain the positive changes that have begun and that highlight the relevance of advocating for systemic changes in the existing legal framework for the interaction of non-profit organisations and authorities.

The National Strategy for Sustainable Social and Economic Development of the Republic of Belarus through 2030, adopted in 2015, pays special attention to civil society institutions, emphasizing the need to ensure a favourable legal environment for civil society, clarifying the mechanisms for systematic cooperation between civil society organisations and government, and the creation of the necessary infrastructure and support mechanisms for volunteers and community initiatives.

<sup>5</sup> For the purposes of this work, in accordance with the norms of the Civil Code of the Republic of Belarus, NGOs are understood as organisations that do not have profit as the main goal of their activities and do not distribute any profit earned among participants (members). Unless the context indicates otherwise, in this paper only non-government non-profit organizations are understood as non-profit organizations.

<sup>6</sup> Local authorities are local councils of deputies and local executive and administrative bodies.

The Law of the Republic of Belarus "On regulatory legal acts", which came into effect in February 2019, also provides certain opportunities from the point of view of the legal environment. Several concepts and processes related to public participation in the process of adopting legislative decisions are enshrined in it and its related acts, including public discussions of regulatory legal acts, forecasting the consequences of adopting regulatory legal acts, and legal monitoring.

At the international level, the development of the UN framework document on public participation entered its final stage in 2018<sup>7</sup>. The document focuses on the implementation of Goal 16 within the framework of the UN Sustainable Development Goals, in particular on creating effective, accountable, and participatory institutions at all levels. The UN guidelines as a tool of "soft law" will be a set of measures and approaches by which states can implement the approaches outlined in the document within their jurisdiction. This makes it possible to count on their effective implementation, perhaps even more effective than in the case of an appeal directly to the international obligations of Belarus, in particular to the International Covenant on Civil and Political Rights.

The conditions above set the context for conducting research and analysing the relationship between legal circumstances and the practice of interaction between local authorities and non-profit organizations in Belarus. Based on the results of the study, the recommendations that were formulated for state bodies contain proposals for the improvement of legislative regulation and law enforcement practice in order to implement the UN recommendations in the framework of the national legal system of the Republic of Belarus at their fullest and most beneficial for society.

Considering that for the analysis of the legal conditions for the interaction of non-profit organisations and local authorities in this study only a narrow part of the legislation was chosen, it is important to consider the broader regulatory context when analysing practice. It is impossible to talk about the real participation of local non-profit organisations in the decision-making process at the local level without addressing more general issues of freedom of association; financial conditions for non-profit organisation activities; freedom of speech and access to information; protection of personal data; freedom of assembly; non-discrimination and inclusiveness; and political participation (elections and local referendums). These and other aspects of the existence of non-profit organisations in our country not only affect the level of public participation, but also determine the actual working conditions of the mechanisms of interaction between non-profit organisations and local authorities that were the subject of research in this work.

Our recommendations to national and local authorities, civil society organizations, and international organizations were developed with the participation of representatives of a wide range of non-profit organisations and are aimed at improving interaction between the state and civil society in Belarus at the local level.

<sup>7</sup> Draft guidelines for states on the effective implementation of the right to participate in the conduct of public affairs – Report of the Office of the United Nations High Commissioner for Human Rights [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/39/28](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/39/28)



## Recommendations

### I) Recommendations for national authorities

1. Facilitate the development of civil society and bring legislation on non-profit organisations in line with international standards of freedom of association. Legislation governing the creation and operation of non-profit organisations should be developed in close consultation with non-governmental non-profit organisation stakeholders. Allow recommendations of the analytical report on the development of proposals for reforms, aimed at the modernization of legislation in the field of legal regulation of non-profit organisations,<sup>8</sup> to serve as a guide in working on legislation.
2. At the level of legislation and practice, provide relevant stakeholders and the general public with free access to the reference database of texts of regulatory legal acts in electronic form, including databases of legal acts of local government and self-government bodies.
3. Eliminate the practice of refusals to provide information in connection with its unsupported assignment to information of limited access. Create effective mechanisms for monitoring compliance with laws on access to information, including identifying the facts of its unreasonable restrictions and holding them accountable.
4. Secure legislatively the order of required publication of information on draft legislative acts planned for development, as well as concepts, justifications, and draft legislative acts developed.
5. Amend the legislation on information that would guarantee, among other things, the possibility of requesting information for all individuals and organisations in accordance with international standards. Return to the consideration of the need to adopt a law "On Access to Information" in the Republic of Belarus.
6. Develop and adopt a law in the Republic of Belarus "On participation in decision-making", based on an analysis of international experience in consultation with the public concerned, focused on expanding opportunities for their participation and not on imposing restrictions.
7. Develop, with the participation of interested non-profit organisations, a concept for a law and adopt a law on the interaction of state bodies and non-state non-profit organisations.
8. Secure legislatively provisions on a non-discriminatory and open system of financing for non-state non-profit organisations from the state budget on a competitive basis, which would provide for the publication of and reporting on data by recipient organisations on the amount of state support allocated to non-profit organisations. Introduce into practice an approach to financing non-profit organisations from national and local budgets on the basis of open competitions, which would eliminate corruption and inefficient, inappropriate, uncontrolled public use of budget funds allocated to non-profit organisations.

<sup>8</sup> As part of a package of proposals for reforms aimed at modernizing legislation in the sphere of legal regulation of NGOs within the framework of the project "Towards a competitive society in Belarus through modernization" (REFORUM). URL: [http://belinstitute.eu/sites/biss.newmediahost.info/files/attached-files/BISS\\_SA13\\_2016ru\\_part\\_1.pdf](http://belinstitute.eu/sites/biss.newmediahost.info/files/attached-files/BISS_SA13_2016ru_part_1.pdf)

9. Secure legislatively the concept of the “public council”, separating it functionally from other forms of cooperative work of advisory structures under state bodies, setting out a quota for representatives of non-profit organisations in the composition of councils in 2/3 of the total number of members. Include in legislation the possibility of non-profit organisations initiating procedures for establishing public councils (submitting proposals to state bodies on the creation of public councils).
10. Secure public councils’ ability to initiate and/or conduct public discussions on specific issues within the scope of activity of the public council. Assign to state bodies the responsibility for informational and organisational assistance to conduct such events (by sending official representatives to these events, among others).
11. Taking into account recommendations 7 and 8, develop a normative act (make an corresponding section when drafting a law on participation in decision-making), which establishes the following:
  - procedure for electing members of public councils from non-profit organisations;
  - criteria for determining the range of non-profit organisations whose representatives can participate in the work of the council;
  - possibility of non-profit organisation representatives’ participation in public councils, determined by the organisations themselves;
  - procedure for changing the composition of public councils and member rotation and the procedure for dissolution of public councils;
  - delineation of the rights of public councils and the duties of state bodies in relation to them;
  - parameters of participation of the public council in the development of drafts of regulatory legal acts, including access to drafts, concepts, and other state body documents under which the council is established;
  - procedure for maintaining and publishing the minutes of public council meetings and public discussions and the process and procedure for issuing their decisions and other results;
  - public monitoring procedure by public councils and the state bodies under which they are created over the implementation of decisions taken with the participation of the public council submitted for public discussion.
12. At the level of civil procedural legislation, expand the possibilities of non-profit organisations, regardless of their purpose, to use judicial means to protect the rights and legitimate interests of citizens and public interest in court, including the right to file lawsuits in the public interest.
13. Report to the public on the consultation process on changes in legislation as well as on the results of the participation of non-profit organisations in the decision-making process at the state level.
14. Create a system for monitoring and reporting on compliance with mandatory standards of civic participation.
15. When drafting legislation that regulates government programmes, national plans, and legislative acts that regulate civic participation, to



use the concept of “non-profit organisations” or “non-government non-profit organisations”, and not just the concept of “public associations”.

16. Study the practice of public (participatory, initiative) budgeting (budget for civic participation) and to consider the possibility of its implementation at the level of the respective administrative-territorial units in the Republic of Belarus.
17. Systematically carry out awareness-raising events (including within the framework of specific information days) with the involvement of non-profit experts on the importance of civic participation and interaction of local authorities with non-profit organisations.

## **II) Recommendations for local authorities**

1. Bring the practice of publishing information by local authorities, including on the issue of holding public discussions and meetings, in line with legislation.
2. Involve non-state non-profit organisations in the decision-making process as soon as possible and give them enough time to prepare, discuss, and provide recommendations related to the drafting of normative acts.
3. Include representatives of non-profit organisations of various types in the compositions of public councils established under executive authorities, including in the composition of the coordination councils of public associations, depending on their interest in participating in the public council.
4. Disseminate information publicly and on websites of local authorities in Belarusian and Russian languages on public councils, including information on the creation, composition, and activities of the public councils.
5. Hold public discussions on important issues of regional development, including socio-economic development programmes, and publish information on the results of public discussion, including public opinion data.
6. Analyse the effectiveness of interaction of local authorities with non-state non-profit organisations and publish results according to predetermined and publicized criteria.
7. Include representatives of a wide range of non-state non-profit organisations as co-implementers in plans, programmes, and concepts at the local level.
8. Ensure openness in meetings of local Councils of Deputies and executive committees for all non-profit organisations concerned.
9. Involve non-state non-profit organisations in a wide range of activities in the development of decisions, programmes, and concepts at the local level. Develop annual action plans with the involvement of non-state non-profit organisations of various kinds in activities aimed at the sustainable regional development.
10. Involve representatives of non-state non-profit organisations in the work of standing committees of local Councils of Deputies.

11. Analyse and publish information on the results of public discussion of draft decisions, concepts, and the review of information received within the framework of public monitoring.
12. Disseminate information as widely as possible about the decision-making process at the local level in order to timely and fully inform the public using various means, including electronic.

### **III) Recommendations for civil society organisations (non-profit organisations)**

1. Formulate a common position in relationships with local authorities, through the creation of networks, coalitions, and associations of non-state non-profit organisations (with and without state registration).
2. Include the following in all possible forms of interaction with local authorities:
  - participating in meetings of local Councils of Deputies;
  - delegating and sending representatives to participate in the work of standing and temporary committees of local Councils of Deputies;
  - sending to local authorities proposals, applications, and requests necessary to resolve important issues at the local level;
  - developing proposals and participating in public discussions and insisting on feedback on proposals submitted to local authorities;
  - initiating the creation of public councils under local authorities and to draft proposals on the organisation of their work; nominating their representatives to public councils and to public monitoring bodies.
3. Send proposals on the inclusion of non-profit organisations in the implementation of state programmes at the local level to local authorities. Prepare recommendations for draft decisions of local authorities.
4. Initiate the development of annual action plans with the involvement of non-profit organisations concerned aimed at the development of the region.
5. Conduct independent public monitoring of decision-making by local authorities and public participation in the decision-making process.
6. Study forms of public interaction with local authorities and make recommendations on positive and negative practices.
7. Request information on the results of the activities of public councils and their composition, including the coordinating councils of public associations.
8. Report to the public on the progress of consultations on issues of legislation and practice, as well as on the results of non-profit organisations' participation.
9. Monitor local authorities' progress on implementation of standards for interaction with NGOs, public participation in decision-making, and access to information. Send to local authorities information on violations of the law and cases of deviations from the principles of civic participation, as well as proposals for resolving issues.



10. Publish information on violations by local authorities of legislation on public participation in decision-making and on positive and negative experiences of interacting with local authorities.
11. Analyse the effectiveness of interaction of non-state non-profit organisations with local authorities, including on the implementation of socio-economic development programmes at the local level and the participation of those organisations in decision-making.
12. Develop their own expert potential and level of competency, including through the strengthening of coalitions among organisations representing the public concerned and research centres ("think tanks").

#### **IV) Recommendations for international organisations**

1. Include on the agenda of their interaction with Belarusian authorities questions about the need to create conditions for real dialogue between Belarusian non-state non-profit organisations and government authorities, as well as improving the situation for the freedom of association, including simplifying the procedure for registering public associations and foundations, lifting the ban on activities of unregistered organisations, eliminating discriminatory norms and practices in relation to state policy on non-profit organisations, and improving legislation on access to funding. Involve non-state Belarusian non-profit organisations in consultations on the promotion of this agenda.
2. Insist on the importance of the participation of non-profit organisations in the decision-making process in negotiations with Belarusian authorities.
3. When developing new programmes and priorities, involve more non-state non-profit organisations and experts inside the country.
4. Consider Belarusian non-state non-profit organisations as civil society actors and as priority partners in those areas where they are qualified when providing financial assistance and supporting the practice of their involvement in projects and programmes implemented by government bodies and organisations.
5. Serve as a platform for interaction (dialogue) for public authorities (including local authorities) and non-profit organisations as civil society actors.
6. Discontinue the practice of obligating local authorities to serve as co-implementers on projects realized by non-state non-profit organisations financed through foreign and international technical assistance.
7. Within the framework of state-public partnership support mechanisms in Belarus, define criteria for evaluating the effectiveness of partnerships and regularly publish objective information materials about programmes, events, and the results of such partnerships.
8. Include representatives of Belarusian non-state non-profit organisations in the monitoring and evaluation of projects implemented through foreign funding and international technical assistance.

