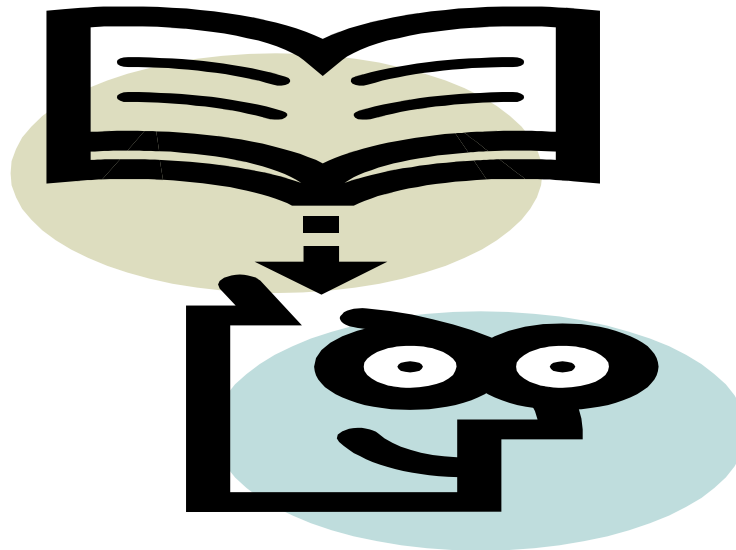


# AN ENABLING ENVIRONMENT FOR CIVIL SOCIETY ORGANIZATIONS

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# WHAT IS A CIVIL SOCIETY ORGANIZATION (CSO)?



# WHAT IS CSO? – DISTINCTIVE FEATURES

- ANY ORGANIZATION THAT MEETS THE FOLLOWING CRITERIA:
- ESTABLISHED BY PRIVATE AGREEMENT OR OTHER PRIVATE INSTRUMENT, RATHER THAN BY LAW.
- ESTABLISHED VOLUNTARILY.
- MAY OR MAY NOT HAVE THE LEGAL ENTITY STATUS.
- IS NOT PART OF A GOVERNMENT'S STRUCTURE.
- ESTABLISHED TO PURSUE LEGITIMATE NOT-FOR-PROFIT GOALS (RATHER THAN GENERATE PROFIT).
- MAY BE MEMBERSHIP OR NON-MEMBERSHIP ORGANIZATION.

# WHAT IS CSO? – DISTINCTIVE FEATURES

- **CSOs:**
- **MEMBERSHIP ORGANIZATION: ASSOCIATIONS.**
- **NON-MEMBERSHIP ORGANIZATION: FOUNDATIONS, FUNDS, TRUST, NOT-FOR-PROFIT CORPORATIONS, PRIVATE INSTITUTIONS, ETC.**
- **TERMS CSOs and NGOs USED INTERCHANGEABLE, AS SYNONIMS!**

# INTERNATIONAL INSTRUMENTS PROTECTING CSOs

- **EUROPEAN CONVENTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS 1953 (ECHR): ADOPTED BY THE COUNCIL OF EUROPE**
- **THE FIRST COMPREHENSIVE INTERNATIONAL TREATY IN THE FIELD OF HUMAN RIGHTS.**
- **THE FIRST TO ESTABLISH A COMPLAINT PROCEDURE AND AN INTERNATIONAL COURT FOR THE RESOLUTION OF HUMAN RIGHTS DISPUTES (EUROPEAN COURT OF HUMAN RIGHTS).**
- **CONVENTION A SUPPLEMENTARY INSTRUMENT OF PROTECTION: PROCEEDINGS BEFORE ECHR MAY BE INSTIGATED ONLY IF ALL DOMESTIC REMEDIES ARE EXHAUSTED.**
- **SIGNATORIES: ALL COUNCIL OF EUROPE MEMBERS (EUROPEAN COUNTRIES, WEST NIS and CAUCUS COUNTRIES (excluding Belarus)).**

# **DISTINCTIVE FEATURES OF ECHR AS IT IMPACTS ON CSOs**

- **DOMESTIC LAW MUST GIVE FULL EFFECT TO THE RIGHTS GUARANTEED BY ECHR (METHODS TO IMPLEMENT GUARANTEES MAY VARY, BUT THE SCOPE OF THE RIGHTS AS GUARANTEED BY ECHR MUST BE PRESERVED).**
- **ECHR DIRECTLY PROTECTS ASSOCIATIONS (MEMBERSHIP ORGANIZATIONS):**
- **ARTICLE 11 OF THE CONVENTION GUARANTEES FREEDOM OF ASSOCIATION.**
- **FREEDOM OF ASSOCIATION – QUALIFIED RIGHT (SUBJECT TO EXCEPTIONS AS SET FORTH BY ARTICLE 11).**

# ARTICLE 11 ECHR: CASE LAW

## FREEDOM OF ASSOCIATION INCLUDES:

- The right to establish an association to pursue any legitimate (public or mutual benefit) goals.
- The right to form a legally recognized association; and that such an association, once formed, enjoys the full protection in the exercise of the freedom of association that an individual has.
- The right to decide who will be a member of an association.
- The right not to join an association (negative freedom of association).

# THE RIGHTS OF CSOs UNDER ECHR

Once formed any CSOs (membership or otherwise) enjoy the following rights as protected by ECHR and five additional Protocols:

- **Right to make opinions known and to join public debate / freedom of speech (Article 10) / particularly strong connection between Article 10 and 11 ECHR.**
- **Right to privacy (Article 8):** The terms “private life” and “home” have been extended to cover business (private) premises, to protect individuals against arbitrary interference by the public authorities.
- **Right to use and dispose of property without undue restrictions/Article Protocol 1 of ECHR, Art. 1 (non-distribution constrain).**

## HOW EFFECTIVE ECHR IS?

- IN 1998 ECHR HAD 7,000 PENDING CASIS;
- IN 2008 ECHR HAD 123,000 PEDNING CASIS;
- APROXIMATELY 50% OF ALL CASES CAME FROM FOUR COUNTRIES:
- RUSSIA – 25,000 CASES.
- ROMANIA – 10,500 CASES.
- TURKEY – 10, 000 CASES.
- UKRAINE – 8,000 CASES.
- IN 2008 THE COURT RESOLVED 32,000 CASES (ONLY 47 JUDGES); 80% OF THE CASES WERE FOUND INADMISSABLE.

# EXAMPLES OF VIOLATION OF ECHR IN DOMESTIC LAWS

- **MANDATORY REGISTRATION FOR ASSOCIATIONS.**
- **BROAD GROUNDS FOR DENIAL OF REGISTRATION/AND TERMINATION.**
- **LIMITATION OF PERMISSIBLE PURPOSES.**
- **EXCESSIVE GOVERNMENT AUTHORITY TO INTERVENE IN CSOs INTERNAL AFFAIRS.**
- **EXCESSIVE GOVERNMENT AUTHORITY TO SUPERVISE CSOs.**
- **BROAD RESTRICTIONS ON USE OF PROPERTY.**
- **RESTRICTIONS ON ADVOCACY ACTIVITIES.**

# REGULATING CSOs: BEST PRACTICES

- **BOTH MEMBERSHIP AND NON-MEMBERSHIP ORGANIZATIONS ALLOWED TO OPERATE (ASSOCIATIONS AND FOUNDATIONS MOST COMMON FORMS OF CSOS)**
- **MINIMUM NUMBER OF FOUNDERS FOR ASSOCIATIONS BETWEEN 2 AND 10.**
- **NON-REGISTERED (INFORMAL) ASSOCIATIONS ALSO PERMIT TO OPERATE.**
- **LEGAL ENTITIES PERMITTED TO BE FOUNDERS OR MEMBERS OF AN ASSOCIATION – BUT ALSO FOUNDERS OF NON-MEMBERSHIP CSOs (FOUNDATIONS, NOT-FOR-PROFIT CORPORATIONS).**

# REGULATING CSOs: BEST PRACTICES

- **EFFICIENT PROCEDURE FOR REGISTRATION (15-30 DAYS)**
- **EFFICIENT PROCEDURE FOR APPEAL IN CASE OF DENIAL OF REGISTRATION OR DISSOLUTION (15-30 DAYS).**
- **CSOs ALLOWED TO GENERATE INCOME FROM VARIOUS SOURCES (GRANTS, GIFTS, PASSIVE INCOME, ETC)**
- **CSOs ALLOWED TO ENGAGE DIRECTLY IN ECONOMIC ACTIVITIES (TO SOME EXTENT).**

# THANK YOU!



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