

**kisa**

Ισότητα, Στήριξη, Αντιρατσισμός  
Equality, Support, Antiracism



Tel: +357 - 22878181, Fax: + 357 – 22773039

P.O Box 22113, 1517 Nicosia, Cyprus

Email: [info@kisa.org.cy](mailto:info@kisa.org.cy), website: [www.kisa.org.cy](http://www.kisa.org.cy)

## Memorandum

### The Law on Associations and Foundations and on Other Related Issues of 2017 104(I)2017 and the risk posed by article 56 of outlawing active Civil Society Organizations, such as KISA



*Nicosia, 04.12.2020*

## *A. Introduction*

The establishment and operation of associations constitutes an exercise of the right of freedom to association but also an exercise of the right of freedom to expression as well as the freedom of thought, conscience and religion, which are interrelated rights. The protection of personal beliefs enshrined in Article 9 (freedom of thought, conscience and religion) and Article 10 (freedom of expression) of the European Convention on Human Rights (ECHR) is also one of the purposes of the freedom of association protected by Article 11 of the ECHR.<sup>1</sup>

Article 11 of the ECHR does not prevent states from taking steps to ensure that an organization or association does not pursue aims that run counter to the values of pluralistic democracy and human rights as these are protected by the Convention.<sup>2</sup> The application of the principles of pluralism would be impossible without Non-Governmental Organizations, of any legal form, that have the opportunity to express their views and ideas freely.<sup>3</sup>

The organizational autonomy of associations and organizations is one of the most crucial aspects of the freedom of association as is the right to have their own rules and manage their organization.<sup>4</sup> However, this does not prevent states from regulating the minimum requirements for the establishment and operation of associations, but it is not permitted for states to intervene with controls to ensure that every formal procedure has been carried out in accordance with their statute.<sup>5</sup> Any restrictions on this right should be provided for by law, pursue a legitimate purpose contained in the Convention<sup>6</sup> and be required and necessary in a democratic society. The right protected by Article 11 is not limited to the establishment of organizations or associations but protects them for the entirety of their existence.<sup>7</sup>

Dissolving an association or organization is an extreme measure with significant consequences, which can only be taken in very serious cases.<sup>8</sup> States have an increased duty and obligation to

---

<sup>1</sup> Young, James and Webster v. the United Kingdom, § 57, Vörður Ólafsson v. Iceland, § 46

<sup>2</sup> Zehra Foundation and Others v. Turkey, §§ 55-56

<sup>3</sup> Gorzelik and Others v. Poland [GC], § 91; Zhechev v. Bulgaria, § 36

<sup>4</sup> Lovrić v. Croatia, § 71

<sup>5</sup> Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan, §§ 72 and 78

<sup>6</sup> Protection of public order and security, crime prevention, protection of public health and the rights of others.

<sup>7</sup> United Communist Party of Turkey and Others, § 33

<sup>8</sup> Association Rhino and Others v. Switzerland, § 62, 11 October 2011; Vona v. Hungary, § 58; Les Authentiks and Supras Auteuil 91 v. France, § 84

justify their decision to dissolve such associations.<sup>9</sup> The dissolution of an association or organization that is not based on particularly serious reasons creates conditions that prevent the exercise of the operation of both the association as well as its members but also of human rights organizations in general. The dissolution of an association is only permitted in strictly limited cases.<sup>10</sup> When the dissolution of associations or organizations under national law is the only foreseeable consequence, regardless of the gravity of the infringement, Article 11 is infringed as other more proportionate penalties such as the imposition of a fine or the withdrawal of privileges should have been provided for.<sup>11</sup>

The mere failure to comply with certain legal obligations or in relation to the internal organization of non-governmental organizations (NGOs), cannot be considered a serious violation that leads to the dissolution of the associations.<sup>12</sup>

#### **A. The provisions of the legislation (104 (I) / 2017) of 2017**

1. [The Law on Associations and Foundations and Other Related Issues of 2017 104\(I\)2017](#)<sup>13</sup> (Law 2017) was passed and entered into force on 14/7/2017 and following amendments had 31/12/2019 as the deadline for the submission of data.
2. Pursuant to Law 2017, the registered associations were required for the purposes of compliance with the new provisions of the legislation **and essentially for the purposes of proving that they were active** to file until **31/12/2019** but also every year henceforth (within the first quarter of the new year) the following:
  - i. Amendments to the statutes **if required** for the purposes of complying with the new law.<sup>14</sup>

---

<sup>9</sup> Adana TAYAD v. Turkey, § 35

<sup>10</sup> The United Macedonian Organisation Ilinden – PIRIN and Others v. Bulgaria (no. 2), § 94

<sup>11</sup> Tebieti Mühafize Cemiyeti and Israfilov, § 82; Jehovah's Witnesses of Moscow and Others v. Russia, no. 302/02, § 159

<sup>12</sup> Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan, § 82

<sup>13</sup> [http://www.cylaw.org/nomoi/enop/non-ind/2017\\_1\\_104/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2017_1_104/full.html)

<sup>14</sup> It is noted that KISA's statutes were compatible with the new law since according to Article 8 – The statutes are considered valid and acceptable for registration, provided that they specify or include

(a) The purpose, name and registered office of the association in a municipality or community located in the areas controlled by the Government of the Republic;

- ii. Numerically, any member deletions and new member registrations made during the previous year.
  - iii. In case of changes, the current members of the management of the association, with their respective positions and contact details.
  - iv. Whether the minimum number of annual general meetings set out in the statutes was held in the previous year.
  - v. In case of change of the address of the premises and/or the contact details of the association, the board of directors or its secretary, must announce the new address and/or the new contact details as soon as the change takes place.
  - vi. No later than seven (7) months from the end of the financial year, the accounts and relevant report of the approved auditor for each year. That is, by 31/12/2019 we should have submitted the accounts of 2018 and with the new transitional provisions that were subsequently made we had to submit the accounts of 2019 by 27/10/2020.
3. The Law in question, did not explicitly provide for any consequences of non-compliance with the above-mentioned deadlines, however an administrative fine of EUR 100 could be imposed for non-compliance with these deadlines in accordance with the provisions of Article 48 or in the event where the Registrar considered that failure to comply was because the association had been inactive, and could therefore, according to Article 24 of the Law, initiate a **legal process of dissolution of the association by the Court**, according to the guarantees of the law.

- 
- (b) the conditions of admission, departure and expulsion of its members, as well as their rights and obligations;
  - (c) the financial resources of the association;
  - (d) the manner and / or the body of the judicial and extrajudicial representation of the association ·
  - (e) the governing body of the association, the process of electing the elected members of the board of directors, where this is provided by the statutes, their term of office, the conditions of training, operation, frequency of convening and termination of the governing bodies;
  - (f) the terms under which the meeting of members is convened, meets and decides, including the condition that it is convened and meets at least once a year;
  - (g) (g) the conditions for amending the articles of association.
  - (h) how to control the accounts of the association, respecting the principle of transparency;
  - (i) the terms of dissolution of the association or its merger with another association and the fate of the property of the association in case of its dissolution, which in no case may be distributed among the members.

All these are clearly defined in KISA's statutes. We have deliberately chosen to modernize our statutes in relation to our goals and purposes in the context of which we introduced specific provisions of the law which, however, were not necessary since, in any case, they are valid and prevail as provisions of the law of KISA's statute.

4. On 14/5/2018, KISA informed the Registrar with a letter that its last general meeting took place on 18/6/2017 with the election of a new Board of Directors for two years, i.e., until 18/6/2019. In the letter, we also informed the Registrar about the members of the Board of Directors who had been elected by the General Assembly. Additionally, the Registrar had before him KISA's statutes which were in line with Law 2017. KISA had audited accounts from 2000-2015 without this being required by law but by its statutes. Due to financial difficulties the organization faced there was a delay in preparing and submitting the audited accounts for the years 2016–2018, and as such we were not in a position to submit the accounts in question by the end of 2019 according to Law 2017. Also, in the case of KISA, no amendment of the articles of association was required because the articles of association of the organization were compatible with Law 2017. Any modernization of the articles of association was our choice. We do not consider the delay in the preparation of the audited accounts to be in itself proof that the organization has become inactive or that it constitutes a serious breach of the obligations of an association which justifies its dissolution.

***B. Amending Legislation 118 (I) / 2020 of 2020: 2-months stifling margin and complete circumvention of constitutional rights with the blessings of the House of Representatives in secret and without informing civil society organizations.***

5. In July 2020 the Ministry of Interior submitted a bill and the Parliament, without any consultation with the affected NGOs, proceeded to the Amendment of the Law 2017. With the enactment of the [Law on Associations and Foundations and Other Related Issues \(Amendment\) Law 118 \(I\) / 2020](#) (Amendment Law 2020) and specifically of Article 56, the transitional provisions were amended again, giving a new deadline and **granting powers to the Minister not previously provided in the Law** as follows:

- I. Those unions that had not submitted the required information by 31/12/2019, were included in a list of the Registrar which **constitutes a notification by the Registrar that the dissolution process begins**, since these powers were granted **independently of the provisions of Article 24** which requires – **[(d) court decision after an application by the Registrar, if due to inactivity, for a period exceeding two (2) years** including the non-convening or non-realization of the required

number of general meetings or/and the non-submission of the audited annual accounts, is concluded that the purpose of the association has been abandoned, provided that a written warning has been given prior by the Registrar to the administration of the association, in which the reasons for activating the provisions in questions are recorded, as well as a period of three (3) months for the restoration of the operation of the association.

- II. Based on these provisions no specific or special reasoning was required for each association but their mere inclusion in the list with a deadline of 2 months from the notification made on 27/8/2020 (i.e., until 27/10/2020) to these associations in order to request the annulment of their inclusion in the notification boards, by submitting all necessary information to support their request at the Registrar, in fact following the period of two (2) months the Registrar publishes a new notification, attached to which are the final tables with the names of the associations, foundations and clubs under dissolution that have not submitted a **well-founded annulment request** of their inclusion in the notification.
- III. Nowhere is the meaning of well-founded annulment request defined and nowhere is it specified that for the request to be well-founded it means that the association will have to submit **the necessary information defined by law**. If this was the legislator's wish, it would have been explicitly mentioned that a well-founded request means the submission of the relevant details and not any other reasons which an association could invoke.
- IV. Pursuant to the same Article 56 (3) following the publication of the second notification, the Registrar **automatically deletes from the Register the associations, foundations and clubs specified in that notification and ensures the continuation and completion of the dissolution process before a court:**

It is understood that the deleted associations, foundations and clubs from the Register and which are in the process of dissolution, as defined by Articles 25 and 42, upon penalty of invalidity of their decisions dismiss the right to exercise any activity mentioned in their statutes, including the right to contract and the isolation of any property, with the exception of activities that relate to their liquidation while their boards of directors are obliged to inform any third interested party or/and contracting party about the ongoing dissolution process:

**It if further understood that, for the dissolution purposes of an association, foundation or club all provisions of the present law are complied with, including the liquidation procedure.**

6. According to article 24 of the Law, the dissolution of an association is publicised by the Registrar in two daily newspapers in the Republic of Cyprus. In order for this to be effective, **a court decision is required**, after an application is lodged by the Registrar if, because of inactivity for a time period longer than two (2) years, including holding or not of the required by the Statutes number of general meetings and/or the non-submission of audited annual accounts, it is concluded that the purpose of the association is being abandoned, provided that a written warning is first given by the Registrar to the body managing the association, and which lists the reasons activating the present provisions as well as gives a deadline of three (3) months for the restoration of the association's operation.
7. The above provisions are contradictory with each other, there is no clear procedure and framework to be followed by the Minister of Interior, who has acquired powers to effectively act at will as he has the power to decide whether a request for annulment of inclusion in the list is established or not and he decides the **deletion from the Register without a court decision**, with all the expected consequences and repercussions referred to in article 56(3), thereby dissolving in effect and without serious cause all associations which did not submit the required items until 31/12/2019, regardless of whether they were active or not.
8. These provisions were inserted into article 56 in such a way as to indicate that the only thing the court has to do is to formally follow the dissolution procedure **as the association has already been deleted from the Register and can no longer operate**, which violates the constitutionally guaranteed right to freedom of association, **based on decisions of the Minister**, which are not in fact taken individually and after appropriate warnings as per article 24 but collectively through lists he publishes. This procedure constitutes an arbitrary violation of the right to freedom of association as

safeguarded by the Constitution and the European Convention on Human Rights (ECHR), as already mentioned in the introduction of this Memorandum.

9. On the one hand, he is given the power to automatically delete associations from the Register which he arbitrarily considers that they have not established their request for annulment of their inclusion in lists of associations in dissolution, while on the other hand it is stated that **the provisions of the law are observed during the dissolution procedure, but it is not stated which provisions of the law this refers to.** These provisions do not provide legal certainty and most definitely do not comply with the requirements of the case law of the European Court of Human Rights (ECtHR) that any legislation limiting or abolishing rights must be of the quality and predictability required by the guarantees set by ECHR.
10. To begin with, the Law nowhere does it provide **for the deletion from the Register of Association**, even after its dissolution. According to article 11 of the Law –  
*“11.-(1) The dissolution in any way of an association as well as the names of its liquidators **are noted in the Register next to the registration.***  
*(2) The note for the dissolution is registered by the board of directors of the association or person or body that has caused the dissolution, depending on the case, and it is submitted without undue delay and definitely not later than thirty (30) days from the date of the specific event of the dissolution of the association”*
11. In other words, the Law allows for the dissolution of an association by the Registrar or the state only when it has been rendered inactive. In order to establish whether an association has been rendered “inactive”, it may be taken into consideration, among others, whether the association has held general assemblies or submitted audited accounts, provided that **it is concluded that its purpose has been abandoned.**
12. With the transitional provisions, the above submitted data have been elevated as **the only criterion** of whether an association can continue its operation or not on the basis of the exclusive judgement of the Minister of Interior/General Registrar of Associations



and Foundations. It is noted that, in other respects, the Law provides for a fine of €100 in case of a delay in submitting the said data.

13. The burden of proof that an association has become inactive and has abandoned its mission for it to be the subject of dissolution rests on the shoulders of the Registrar as it is a constitutionally guaranteed right which can be constrained only for reasons and according to the provisions of the Constitution and the ECHR.
14. It is our position that the provisions of Article 56 are both unconstitutional and in blatant violation of the ECHR and the ECtHR case law and must be immediately repealed or amended to ensure that –
  - I. Even in the case where the regime of lists is to be maintained **there should be no right of the Registrar to automatically delete from The Registry of Associations** an association which has not submitted the required data with all the ensuing consequences, but there must be a clear and explicit obligation of the Registrar to register an application with the court **for the court to rule as to whether the purpose of the association has been abandoned and inactivated, because this and only this can be the criterion of dissolution according to Article 24 of the Law itself, provided that such a reason falls within the defined parameters of the limitation of this right stipulated in the Constitution and the ECHR.**
  - II. Without prejudice to point **i (a?)**., if the lists are deemed to substitute the relevant notifications of Article 24, the two months to become retroactively 3 months as stipulated in Article 24 and to cover associations that did not submit the data under Article 56 of the law for a period of one further month from the new amendment of the law and with clear provisions that dissolution is implemented only by a court decision and only after the association has been given the right to be heard in court.
  - III. The notion of the **foundation of a request for cancellation** of being included in the list of associations under dissolution to be clarified, for it cannot be identified and limited simply and only to the submission of the requisite data because then the submission of the data is reduced to the sole condition for preserving the registration of an association, in violation of both Article 24 of the law and of the Constitution, the essence of which is found in whether an association is active and fulfils its objectives and purposes.

***C. The abuse of indiscriminate power by the Ministry of Interior targeting active and vocal NGOs such as KISA***

15. On **27.08.2020**, the **Ministry of Interior with an announcement**, and without providing further information, gave notice of the intention of the Registrar **"to set off the process of the dissolution of associations...**, which are included in the table below**"** on the basis of Amending Law 2020." The table included 2827 associations.
- In this notice, the Ministry informed the associations included in the list that "... **they may submit a request to nullify their inclusion in this list** of the notification, **submitting all relevant information in support of their request** to the responsible Registrar within two months from today ... **After the advent of 2 months**, the Registrars will publish a new, second notification to which attached will be the final list with the names of the associations under dissolution..., which did not take care to submit a founded request to annul their inclusion in the notification. It is understood that, after the publication of the second notification, **the Registrar shall automatically delete from The Register the Associations**, Foundations and Clubs specified in the second notification and **will ensure the continuation and completion of the dissolution proceedings before a court of justice.**
16. On 26.10.2020 KISA sent a letter, within the prescribed period of two months, to the Registrar asking not to be included in the list of non-active / to be dissolved associations. Through this letter it informed the Registrar that KISA continues to be an active association, that it has prepared audited accounts and that all pending data will be sent to him after the general meeting of the Association to be held in December which is expected
- I. to endorse the audited accounts for 2019
  - II. to elect a new Steering Committee to replace the outgoing, whose term of office expired in June 2019; and
  - III. to endorse the statutory changes proposed by the Steering Committee.
17. On 25.11.2020 KISA sent a supplementary letter in which it communicated to the Registrar the audited accounts of 2000-2018 and the details of the current members of the Steering Committee.
18. The Registrar in a letter dated 27.11.2020 rejected KISA's request for non-inclusion in the list of associations under dissolution, citing the non-submission of data substantiating the appeal

for non-inclusion in the list of non-active / to be dissolved associations. It is to be noted once more that neither in the law nor in the announcement of the Ministry dated 27.08.2020 is it established what a founded request for cancellation means.

KISA considers that this legislation departs from the purpose for which it has been introduced and violates basic constitutional rights, international law and is a serious setback in terms of freedom of expression and for this reason it will take all appropriate actions

- ✓ Submission of a request for the immediate amendment of the legislation,
- ✓ Inform the competent institutions for monitoring and evaluating compliance with the obligations of Cyprus,
- ✓ Legal action against the decision of the Ministry of Interior,
- ✓ Inform and mobilise civil society on the Cypriot as well as the European and international plane on the situation that has developed and the dangers that lurk for civil society as a whole,

so as to repel this new assault and protect its legitimacy for it to continue the important work it carries out in society.



KISA Steering Committee

Nicosia 04.12.2020