

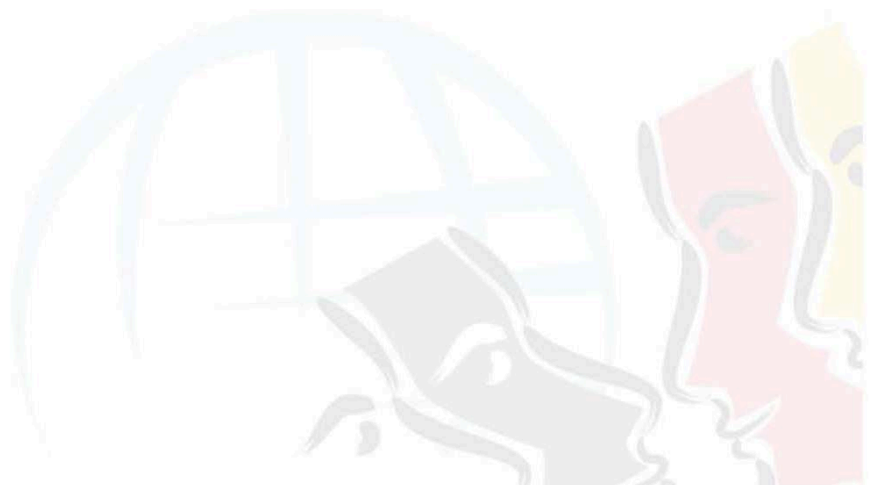
kisa

Ισότητα, Στήριξη, Αντιρατσισμός
Equality, Support, Antiracism



KISA's comments on the response of the Cyprus Government to the Communication from the [OHCHR](#)

Nicosia, 30 May 2021



On 31/03/2021, five UN Special Rapporteurs¹ send a joint [Communication to the Cyprus Government regarding the deteriorating environment for civil society organizations in Cyprus](#) and the deregistration of KISA from the Register of Associations and Foundations (REFERENCE: AL CYP 1/2021).

On 05/05/2021, [the Government of Cyprus replied with an Information Note](#).

Below you can find KISA's response/comments to the above Information Note of the Government of Cyprus (The numbered paragraphs of the text below in italic are those in the government's reply. KISA's response/comments are placed immediately after each of the government's notes.)

CY-Gov:

1. *The Societies and Institutions and other related Matters Law of 2017, that has been enacted in 2017, deals with the allocation of legal personality to groups of at least 20 persons for the attainment of a certain non-profitable object. Individuals who make up a group but do not choose to establish a legal person to cover their action could still exercise all their human rights for peaceful assembly or freedom of expression. The decision of a group of people to become a society (NPO), i.e a legal person, is a right and not an obligation. On the contrary, the Societies and Institutions and other related matters law, provides for the granting of additional rights to groups, so that they can, in addition to freedom of expression and peaceful assembly, have access to the banking system, or trade and negotiate as an entity, something that would be difficult to happen in groups of individuals who are not under the cloak of a legal entity. This additional right given to groups wishing to register is accompanied by obligations aimed at ensuring conditions of internal legitimacy and transparency. It is worth mentioning at this point the provisions of article 3 of the law:*

Right to establish and participate in a society or institution or federation and/or association

Subject to the provision of this Law, and in particular to the provisions of article 4 thereof, everyone shall have the right to establish a society or institution or federation and/or association and participate therein.

KISA

We do not question this position of the government. However, the government fails to acknowledge that in order for NGOs to be in a position to achieve their aims and mandate they need access to funding, which can only be accessed once they are legally registered. The key question for KISA is whether the provisions of the law, and in particular the transitional provisions of article 56 as amended in July 2020, comply with the international human rights instruments safeguarding the right to peaceful assembly, the right to association and the freedom of expression and whether the limitations imposed are proportional to the aims pursued by the law.

¹ The Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the human rights of migrants; and the Special Rapporteur on trafficking in persons, especially women and children.

CY-Gov:

2. In 2017, the House of Representatives unanimously enacted the new legislation regulating the operation of Non-Profit, non-Governmental Organisations in Cyprus (i.e. societies, institutions and other entities), hereinafter referred to as the NPOs (NGOs). The new Legislation is titled the Societies and Institutions and other Related Matters Law of 2017 and has replaced a previous and anachronistic legislation titled the Societies and Institutions Law of 1972. The basic changes introduced by the new Legislation was the obligation imposed to NPOs for transparent and democratic operation and financial accountancy. It is interesting to mention that the Law of 1972 requested no further actions following registration of an NPO in the Republic. The situation created due to the gaps in the 1972 legislation was particularly problematic, since NPOs had an unhindered access to the banking system in Cyprus and to sponsorships granted by government departments, Ministries and through European funds, as well as the possibility to carry out fundraising campaigns and obtain other economic resources without monitoring the internal legitimation of the administration members of societies and institutions. Today, there are many cases investigated for misappropriation of funds by the Boards of NPOs registered under the Law of 1972. Moreover, this and the toughening of internal regulations governing the operation of banking institutions after the economic crisis of 2013, gradually led to the discrediting of NPOs on behalf of the banks, which ceased to be considered as a credible client and this has been recorded in the Moneyval report for Cyprus issued in December 2019 (reference is made below).

KISA

The government's statement that there are "**many cases investigated for misappropriation of funds by the Boards of NPOs**" is intentionally general and misleading. Instead of naming the specific NPOs concerned or at least the type of NPOs it refers to, the statement makes a blank generalisation that defames and attacks all NPOs.

The statement pointedly fails to inform the Special Rapporteurs that these cases refer mostly, if not totally, to football and other sports clubs, which have been involved in [corruption, money laundering, match fixing and links with criminal networks](#). As a result, they are under investigation in Cyprus and abroad, including by [Europol, Spain's Civil Guardia and the Spanish tax authorities](#).

The reference to "**the discrediting of NPOs**" by the [Moneyval report on Cyprus](#), follows the same line of thinking. Any references, therefore, to this issue further down in the government's reply (such as "restoring and securing their credibility") should be seen in the above light.

At the same time, the government, instead of actually monitoring and further investigating those sports associations, only recently (and a few days before the parliamentary elections on 30/05/2021), decided to sponsor these sports clubs through the [write off of €13.5 million owed to the state for taxes, etc.](#) This is a recurrent practice of the government, which in November 2017 (again before the Presidential elections of February 2018) [also wrote off €19.5 million of debts to the state by sports clubs](#).

In addition, in the context of the preparation of KISA's court case, KISA requested to check the files of various sports associations as well as associations related to the Church of Cyprus and others. We found out that many of them had never submitted audited accounts under the new legal framework of 2017, as provided by the law but, unlike KISA, no measures were taken for their deregistration.

Under the previous legislation, associations had an obligation to inform the Registrar of Associations of their Boards and the elected members and KISA complied with that.

The monitoring of the internal legitimization of associations cannot be done by state authorities but by their members or the courts. Under both the previous and the new legislation, in circumstances where an association does not function democratically or does not abide by its obligations under its constitution, its members can apply to the court to decide on the legitimacy of its management and administration. This is in accordance with the case law of ECtHR.

In any event, no investigation has ever been taken against KISA for any misappropriation or other malpractice, whilst KISA is one of the few NGOs that under its constitution was under the obligation to have audited annual accounts to be submitted for approval by its general assembly. There was never any questioning of the legitimacy of the administration and management of the association before any court.

CY-Gov.:

3. It is of worth to mention that NPOS and UNDP participated in the consultations during the drafting of the said basic law, taking the point that one year would be enough for NPOs to make necessary amendments to comply with the new obligations, since restoring and securing their credibility was of paramount importance, in their perspective. The new obligations were namely to introduce bare minimum provisions in their statute provisions for (a) transparency (to convene their general assembly once a year) and (b) accountability ("to submit audited accounts annually").

KISA

We do not disagree with the need for a new legal framework and we do not disagree with a transitional period for adjustment of the previous associations. What we disagree with is the way this was done with the insertion of the new provisions of article 56, which gave the power to the Minister to remove from the Register within a period of 2 months 2860 associations, including active associations, for failure to comply timely with formal requirements.

CY-Gov:

4. The law entered into force in June 2017, was giving to NPOs a year to comply, i.e. by June 2018. Then, the House of Representatives extended twice this deadline, i.e. up to June 2019 and December 2019. NPOs to be considered that they comply to the new law, were obliged to submit to the Registrar their revised statutory documents. The statutory documents should be the result of a legal decision taken in Statutory General Meeting of NPOs.

Therefore, the first paragraph of the second page of your letter stating that after the 31st of December 2019 deadline the NPOs were only required to submit the information within the first quarter of every year is not quite correct.

Provision 55(3) of the law states that:

«In cases that, in compliance with the provision of this Law, the existing societies, institutions or clubs, shall be required to amend their articles of

association or take any other action, they have until the 31thn of December to do so».

And provision 56(1) states:

*«Any societies, institutions and clubs established and registered under the law repealed by this Law, **shall be deemed to have been approved** under the provisions of this Law, provided that they make the necessary adjustments and amendments to their articles of association, within the limit set in subsection (3) of Article 55?».*

KISA

The way this is presented by the government is misleading. What the SRs' communication is saying is correct in the sense that all NPOs registered under the previous legal framework had an obligation to fulfill the requirements of the new law initially until December 2019 and then the first quarter of every year as regards their general assembly and within the first seven months of every year for the audited account.

Article 56 here is the one in place **before the July 2020 amendment and it is obvious that** failure to fulfill these obligations on time did not have any consequences and that in such a case the provisions of article 24 of the Law could potentially apply. This article provides for a process of individualized examination of each association, proper notification of the intention to dissolve it and justified decisions to that effect and **which do not provide for an intermediary procedure according to which the Minister could unilaterally deregister NGOs from the Register of NGOs before the Court decision for the dissolution of the association.** Article 24 provides for judicial procedure for the deregistration of associations and includes all relevant safeguards.

CY-Gov:

5. In order to understand the size of the problem, please take into consideration that under the Law of 1972, approximately 6,000 NPOs were registered and the majority of them was practically unknown to the Ministry of Interior, since the records of the Ministry contained only the initial application and the initial Board. Despite this, for those NPOs that the Ministry had some contact details (KISA was one of them), the Registrar right after the enactment of the Law sent a letter informing the NPOs of the amendment of the legislation and inviting them to comply. The letter to KISA was sent on 15/12/2017 guiding the society through the actions to be taken.

KISA

We do not disagree and this proves that the Ministry knew very well that KISA was an active association and complied with its obligation under the previous legal framework and was in touch with the authorities. The failure of KISA to comply with formal requirements within the time limits was explained to the authorities and it could be punished by a fine and not by deregistering it since it was and continues to be an active association.

CY-Gov:

6. *Despite the time allotted to NPOs since 2017, by the end of 2019 when Cyprus was evaluated by Moneyval, approximately 2,860 out of the 6,000 societies/institutions failed to take any measures to comply by the final date, i.e. by 31/12/2019. According to the Moneyval evaluation for Cyprus which was completed at the end of 2019 and recorded in the report titled "Anti-money laundering and counter- terrorist financing measures- Cyprus- Fifth Round Mutual Evaluation Report", Cyprus was rated Partially Compliant for the NPO sector which is a very low score. The score was something expected since with the continuous extensions allotted to NPOs by the House of Representatives, the Ministry of Interior was unable to proceed to the next step required by the FATF guidelines, i.e. identify high-risk NPOs and methodically proceed to further evaluation based on a risk based approach. On the contrary, at the end of 2019 even the so-called first evaluation of NPOs that replied to this call had just been partially completed, i.e. the evaluation of compliance of statutory documents with the new Legislation, which was considered as an important but insufficient first step.*

KISA

As we informed the SR on the rights to freedom of peaceful assembly and of association in our email of 8/12/2020, when we first requested his intervention, the Moneyval Report was repeatedly distorted and manipulated by the Minister of Interior and others in order to attack and defame KISA and other NGOs. As noted by the Civil Society Advocates, ["The Moneyval report points out what we have also observed many times ourselves, i.e. that the government emphasises the need to scrutinize all organisations, as if they are of bad practices and without recognising their considerable contribution to society"](#).

In addition, the reason why Moneyval rated Cyprus as partially compliant for the NPO sector was because the government was not in a position to monitor NPOs on the basis of a risk assessment and in an individualized manner.

CY-Gov:

7. *Please take into consideration that the legislation in force -before the latest amendment- provided that, after the expiration of the deadline, i.e. 31 December 2019, non-complying NPOs would be deleted from the register and therefore, would be deprived of their legal capacity upon the conclusion of the dissolution process (see paragraph 4 above). Therefore, in December 2019, KISA would have lost the possibility to operate as a legal person, despite the repeated at the time announcements of both the Ministry of Interior and the Commissioner for Volunteerism and Non-governmental Organizations inviting NPOs to comply.*

KISA

This is a blatant lie. It is proved by the text of articles 55 and 56 which are set out in the Governments' reply. The legislation before the latest 2020 amendment did not provide that at the expiration of the deadline of 31/12/2019 non-complying associations would be deleted from the Register. On the contrary, what was provided was the above mentioned article 24 provisions, according to which there was a process to be followed and deregistration and dissolution would be the result of a court decision.

It is noted that the Commissioner for Volunteerism and Non-Governmental Organisations, a position created by the present government and the governmental party, has recently resigned after a scandal

was revealed by the Auditor General that he had been appointed on the basis of [forged school leaving certificate and fake university degree](#).

CY-Gov:

8. *However, a new amendment of the basic law passed in 2020 providing for an additional grace period for the NPOs that failed to comply by 31/12/2019. Furthermore, when the final deadline was expired in October 2020 non-complying NPOs were subject to dissolution -which will take place before a Court of law-, and upon that will be deleted from the Registry and deprived of their legal capacity - when dissolution is completed. Therefore, in December 2020 KISA was included in the Notification which listed the NPOs to be **subject to dissolution**, because of their failure to comply with the minimum requirements prescribed in law. The inclusion in the Notification is, consequently, limiting their ability to proceed in a number of legal acts. The Notification included other 2,200 -approximately- NPOs which despite the repeated announcements failed to comply. Please note that between this last grace period 600 approx complied. Currently, out of these 2200 NPOs, KISA's administrative recourse is the only one pending before Cyprus Courts challenging the aforementioned Notification.*

KISA

The way the 2020 amendment is presented is misleading and contrary to the provisions of the law and its implementation in practice. The latest amendment did not provide a new grace period for NPOs to comply with their obligations. On the contrary, it facilitated the Ministry of Interior in deregistering 2680 NPOs within a period of 2 months without following the provisions of Article 24 of the Law, which provided all the safeguards and required a court decision for the deregistration and dissolution of associations.

In this statement, the government admits that the dissolution process, which involves the freezing of the bank accounts of affected NGOs, can only proceed after a court ruling. However, the government fails to report that the Minister has illegally proceeded to the dissolution process without a court ruling, by issuing an order/decreed to the banks to freeze the bank accounts of KISA and the other associations concerned. The government also fails to report that the Minister of Interior proceeded to issue a second order to the banks to unfreeze the bank accounts of some organisations, mainly sports clubs. The same organisations that is that are involved in corruption, money laundering, etc, and under investigation.

CY-Gov:

9. *Please also note that among those NPOs that complied before 31st of December 2020 or between 27/08/2020 and 26/10/2020 and therefore remained in the register are NPOs with exact the same activities as KISA (supporting of migrants and combatting racial discrimination and xenophobia). On the other hand, there was not a single NPO that did not submit amended articles of association as a result of a legal decision taken in Statutory General Meeting of NPOs and was not removed from the register. Therefore, the paragraphs 2 and 3 of the fourth page of your letter do not reflect the decisions of the Ministry. KISA during examination of its case before Administrative Court exercised its right to confirm the above allegations by inspecting physically the files of NPOs that their lawyer had chosen to inspect and no cases of unfair treatment were identified.*

KISA

Again the position of the government is misleading. One needs first to explain what were the requirements expected to be complied with by the Ministry of Interior. According to their reply to KISA's letter and their decision on its hierarchical recourse, but also according to their own announcement on their website, the requirements were the submission of a new constitution which would comply with the new legal requirements approved by a general assembly **and the audited accounts of the association (which was the financial part the government was allegedly most worried about because of Moneyval)**. Many NPOs did not comply with neither of the two requirements but were not deregistered.

Contrary to the government's claim that "no cases of unfair treatment were identified", on the basis of the indicative research we conducted of the Register of Associations and Foundations, in the context of KISA's court case, we found out the following:

A foundation concerned with Church – state relations did not submit any audited accounts as from its establishment, despite the fact that foundations had already an obligation to submit audited accounts every year on the basis of the previous law in force. 2 football/sports clubs/ associations never submitted audited accounts, whilst they had just sent a letter stating that their constitution was compliant with the new legislation and did not need an amendment. And this, despite the fact that their constitution includes discriminative provisions such as that only Greeks or Greek Cypriots can be members, something that is prohibited by the Article 4 of the new law.

These continue to be registered in the Register of Associations and Foundations, although they have never as from their establishment submitted audited accounts (such as ANORTHOSI, AM {Registration No.) 1078), Caritas Society, AM 517, and Cyprus Stop Trafficking, AM 3535), or have just sent a letter that their constitution complied with the new law but it had not yet been examined by the Registrar (such as Cyprus Stop Trafficking). These organisations have not complied with their obligations as per the notification of the Registrar, dated 14/12/2020, according to which "A grounded claim is considered to be submission of the constitution that will be the outcome of established procedures, depending on their status as association/ foundation or club, and data of complying with their obligations as per articles 10 and 49 of the Law on Associations and Foundations and Other Related Issues", which include the submission of audited accounts.

Also, in view of the very negative environment and attacks against NGOs, it is very rare for the majority of these organisations active in migration and asylum and combating discrimination and racism to raise their voices against the government's policies and practices, at the most limiting their criticism "within boundaries". In any way, most of these organisations are Non-Profit Companies², which are regulated by the Companies Law of the Ministry of Energy, Commerce and Industry and not by the Associations and Foundations Law of the Ministry of Interior. Along with KISA, the Ministry of Interior has deregistered a number of organisations active in migration and asylum and against discrimination and racism which are key to the empowerment and active participation of vulnerable groups and minorities. Among these are the only Cyprus Roma Association in the country and the Nepal Cyprus Association, a Community Association.

² These Non-Profit Companies include the following: Cyprus Refugee Council CY.R.C., Refugee Support Cyprus – Dignity Center, Hope for Children CRC Policy Center, MIGS, CARDET, CSI Center for Social Innovation, CODECA, Symfiliosi, Opinion & Action LTD – Cyprus Aware Team, Institutouto Ergasias Kiprou (Cyprus Labour Institute) – INEK

It is important to note that, contrary to the government's rejection of KISA's hierarchical recourse by the General Registrar allegedly on the basis of equal treatment, they actually did exactly the opposite in the case of the Cyprus Olympic Committee (COC) and the Cyprus Paralympic Committee (CPC), both of which had been deregistered. Instead of treating all deregistered NGOs equally and giving them the opportunity to have their registration reinstated, on 01/03/2021 the government rushed a questionable law bill through Parliament, which through the urgency procedure passed the [Amendment of the Cyprus Sports Organisation Law 015\(I\)/2021](#). Articles 23A and 23B of this law stipulate that the COC and CPC, which "have been recognised by the International Olympic Committee according to the Olympic Charter and operate in accordance with its provisions, with this recognition [they] acquire legal personality in the legal order of the Republic of Cyprus, irrespective of their deregistration as associations". In effect, with this law, these Committees are no longer under any control about compliance with the Associations and Foundations Law, which was purported to, among others, guarantee transparency and combat potential money laundering, especially among sports organisations that Cyprus has been plagued with for some time now, as mentioned above. The law is also indicative of the intentions of the government towards organisations like KISA as well as a proof that there are ways of resolving the issue if there is a will to do so.

CY-Gov:

10. Specifically, for KISA the following is noted:

- i. *During this period, i.e. from June 2017 to 26/10/2020, KISA failed to submit its updated statutes adopted in a legal statutory general meeting of its members;*

KISA

This is a blatant lie. KISA informed them in 2018 about the newly elected board in their 2017 general assembly for a period of 2 years. KISA had an elected board fully legitimate until June 2019 and authorities were informed.

CY-Gov.:

- ii. *Instead of that, on 26/08/2020, the Nicosia Registrar received a letter by fax sent by a citizen who claimed to be the President of the KISA Board, stating that a statutory general meeting had been scheduled for 10/12/2020, i.e. after the final date of 26/10/2020. The association has invoked the pandemic, even though the Law expressly gives the right to pass a decision in a statutory general meeting by obtaining the signed consent of the members and also despite all that time allotted to comply since 2017.*

KISA

KISA's letter was sent to the Nicosia Registrar on 26/10/2020, one day before the end of the two-month period provided to NGOs for applying for annulling their inclusion in the list of organisations for deregistration and dissolution. The Registrar rejected KISA's application.

The person referred to is Anthoula Papadopoulou, Chair of KISA's Steering Committee (KISA's board). It is obvious that the government's claim ("a citizen who claimed to be the President of the KISA Board") is

quite different to that of the Registrar, whose reply to our above letter was to “The President of KISA association” (“Πρόεδρο Σωματείου ΚΙΣΑ”).

CY-Gov:

iii. Moreover, the term of office of the KISA Board expired on 18/06/2019, without having in the meantime another electoral meeting and the Board failed to perform its duties since 2017. That is to say that as of June 2019, KISA was not operating even under its very own internal legitimation rules, according to its statutes, although it was continuing its action and obtaining from time to time, as it appears to be, European funds.

KISA

In KISA’s above letter, we explained that due to various difficulties, KISA had not managed to have its general assembly in 2019 and, due to the Covid-19, in 2020. We also requested an extension up to December 2020 for our general assembly, which would approve the amendments to the statutes and financial accounts for 2019 and elect a new Steering Committee. The amended statutes, as approved by the outgoing Steering Committee were submitted to the Registrar.

It is clear that the reference “since 2017” in the government’s reply is either a mistake and should read “2019” or deliberate misinformation

iv. Namely, since 2017 KISA had an accumulated pathogen behaviour such as: (a) failure to convene a general meeting since 2017 when the Law entered into force, as requested by article 10 of the Law of 2017, (b) failure to submit to the Registrar a proof of the legal appointment of its administration - and therefore of the association's action, (c) failure to submit audited accounts to the Registrar proving that the association operated on terms of transparency and protection of public interest and (d) it was not operating under revised statutory documents that could ensure transparency, accountancy, democracy and internal legitimation of its bodies which is also the most important.

KISA

This is misleading. As per what is mentioned above, KISA had an elected board until 18/06/2019 as accepted also by the government.

KISA had annual audited accounts until 2015, approved by its annual general assemblies but it had delays in preparing the audited accounts of 2016–2019 because of lack of financial resources. The authorities were informed about this with our letter of 26/10/2020, in which we explained that the 2019 audited accounts would soon be ready and put to the general assembly for approval, as required by our constitution. However, we did send the audited accounts for 2016–2018 to the Ministry after the deadline of 27/10/2020 (on 25/11/2020). But these were not accepted and the Ministry decided to include KISA in the list of associations to be deregistered and subjected to dissolution. Neither did they accept our request for an extension for our GA. Despite the fact that we did not have a GA in 2019, there was no question of the legitimacy of the board in place and no members initiated procedures before the court to question the legitimacy of the board, which was only trying to ensure that everything would be done in accordance with the law. KISA had its general assembly on 10/01/2021, after which it submitted to the Registrar all the relevant documents and audited accounts as per the requirements of the law. We just did it late.