

**Analysis of the amendment by member of the National Assembly of the Slovak Republic, Adam Lučanský, to the bill submitted by members of the National Assembly of the Slovak Republic, Rudolf HULIAK, Dagmar KRAMPLOVA, Milan GARAJ, and Adam LUČANSKÝ, on the enactment of a law amending and supplementing act no. 213/1997 Coll. on non-profit organizations providing services of general public interest, as amended, and amending other laws (print 245)**

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**Summary:**

This legal analysis evaluates the amendment proposed by MP Lučanský to the law governing non-profit organizations. The proposal is problematic and potentially unconstitutional, as well as in conflict with the legal norms of the EU and the Council of Europe. It was submitted without consultation with civil society and fundamentally changed the original bill. Key problems are: (1) disproportionate administrative burden for non-profit organizations, (2) unclear and broad control powers of registration authorities with the risk of abuse, (3) violation of fundamental rights, including freedom of association, the right to privacy, and the prohibition of discrimination, (4) stigmatization and repressive effects on civil society. The analysis states that the proposal violates constitutional and international law, has no legitimate aim, and is likely to suppress civic engagement and democratic participation in Slovakia. The consequences of the proposal are viewed as detrimental to Slovak civil society, potentially leading to repressive practices and undermining democratic principles.

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## Problematic issues:

### 1) The Legislative Process excluded the participation of the public and civil society organizations

The amendment proposed in committees between the first and second reading of the bill amending Act No. 213/1997 Coll. on non-profit organizations providing services of general public interest, as amended, and amending certain other acts (print 245), fundamentally changes the entire originally proposed bill. Besides some original amending points concerning the removal of donor anonymity in specific laws, it alters almost all the content, focus, and originally declared objectives of the proposal. It was submitted without any consultation with representatives of the civic sector or public comment, and its substance remains unconstitutional, as with the original bill.

It is essential to note that the Slovak government has an advisory body, the Government Council for non-governmental non-profit organizations, with which this amendment was not consulted. Given that this is a bill submitted by the MP, the public can't comment on it, even though this bill restricts fundamental constitutional rights.

The Government Office avoided the legal requirements for the legislative process by submitting the proposal as a parliamentary one. The proposer of the bill, MP Adam Lučanský, claims that he collaborated with the Government Office on the bill and that this proposal is based on the government's policy statement. However, if the Government Office were to submit this bill, the government would have to present it to Parliament. It would need to include it in the legislative task plan at the beginning of the year, show the legislative intent, assess its compliance with EU law, publish preliminary information, and conduct both internal and public consultations. Only after evaluating the comments and resolving disputes could the government approve the proposal and submit it to the National Council.

All these safeguards against the adoption of bad laws were removed by the fact that the Government Office created the bill in cooperation with Adam Lučanský, and he submitted it as a parliamentary proposal, two hours before the meeting of the Constitutional Law Committee, which, thanks to the newly acquired coalition majority, approved it without discussion.

The Government Office and the proposer, MP Lučanský, used a proven scenario; the Hungarian law on foreign agents, which was eventually struck down by the Court of Justice of the European Union in 2017, was also submitted in the same manner from a government initiative but through MPs.<sup>1</sup>

### 2) "Transparency Report"

The amendment includes the introduction of a so-called transparency report, the aim of which is for all types of CSOs (non-profit organizations, foundations, non-investment funds, organizations with an international element, and civic associations) to prepare a report on the organization's income and expenses by June 30 of the relevant calendar year, according to the guidelines of the Ministry of Finance (the requirements and content of which we do not know yet), and to publish the

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<sup>1</sup> Decision of the CJEU, C-78/18.

names of the members of boards of the relevant organization, provided that the organization's income exceeded 35,000 EUR in the preceding calendar year. In this report, all organizations will have to publish:

a. the name of an individual (entrepreneur or private individual) if the income for the organization from that person exceeded 5,000 EUR in the calendar year.

b. data on a legal entity if the organization received even one cent from it.

An exception to the publication will be made for individuals who pay for social or health services (i.e., if a son or daughter contributes to a social service provided to a parent in a facility, then their name will not be included on the list of supporters).

Registration authorities, including district offices or the Ministry of the Interior, will have the power to evaluate the content of these reports and request further information and data from organizations if they suspect any irregularities. It is not clear from the proposal what exactly is to be the subject of control by the registration authorities in the reports. However, the office will be able to handle personal data it learns from the organization without restriction.

Similarly, strict sanctions are introduced for failure to publish this report, with penalties ranging from 1,000 EUR (in the first breach) to 10,000 EUR (in the subsequent breach), which can be imposed up to two years after the office learns of the violation and up to three years after the violation occurred. The ultimate sanction is a proposal to abolish the non-profit organization, foundation, non-investment fund, suspend the activities of an organization with an international element, and dissolve the civic association directly by a decision of the Ministry of the Interior if the organization fails to fulfill its obligation to submit the report to the public part of the register of financial statements or does not correct irregularities in the report identified by the office.

It is very dangerous as any failure to register or fulfill the publication obligations arising from the bill can be considered a serious breach of duty. According to the case law of the ECtHR, "the mere failure to comply with certain legal requirements or internal management of non-governmental organizations cannot be considered such a serious error as to justify complete dissolution."<sup>2</sup>

Uncontrolled ministerial freedom to dictate the criteria, methods, and conditions for registering non-governmental organizations may lead to discriminatory and disproportionate targeting of these organizations and human rights defenders, especially those who hold critical or dissenting views on politically sensitive issues.<sup>3</sup>

Excessively burdensome or costly reporting obligations could create an environment of excessive state monitoring, which would likely hinder the effective exercise of freedom of association. To assess the proportionality of the proposed new reporting requirements, it is also essential to examine the overlap with existing additional reporting obligations.<sup>4</sup>

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<sup>2</sup> ECtHR, 8 October 2009, *Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan*, Application no. 37083/03; ECtHR, 14 February 2006, *Christian Democratic People's Party v. Moldova* (appl. no. 28793/02), paras. 72,73. , Recommendation CM/Rec(2007)14, para. 72.

<sup>3</sup> UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Letter OL RUS 16/2022 dated 30 November 2022 addressed to the Russian Federation relating to the Federal Law No. 121-FZ dated 20 July 2012,p. 6.

<sup>4</sup> Venice Commission, *Report on Funding of Associations*, CDL-AD(2019)002, para. 111.

In addition, the proposer falsely argues that the abolition or dissolution of organizations will reduce the administrative burden on public authorities, as it will allow for the dissolution of inactive organizations. This is an incorrect statement because non-profit organizations, foundations, and non-investment funds are already required to submit annual reports. If they fail to submit them, the registry office can initiate their dissolution in court. In the case of inactive civic associations, they will not incur an annual income of 35,000 EUR due to their inactivity; therefore, they will not be required to submit a report and will continue to be inactive without the Ministry of the Interior being able to dissolve them under this proposal.

### 3) Vague and unclear control powers of registration authorities

The proposal states that registration authorities will be able to evaluate the content of the transparency report. For this purpose, the organization is obliged to provide additional documents, information, explanations, or other data. Broad control powers can create room for the wide application of the registration authority's discretion regarding what it can and cannot control in the income and expenditure reports of each organization. This can create room for unwarranted interference in the organization's activities and administrative harassment and may ultimately lead to the imposition of sanctions ranging from fines to dissolution. Such a provision creates legal uncertainty for organizations, as it is unclear from the wording of the bill what obligations organizations will have and when a violation of the law will occur. This contradicts the fundamental principle of legal certainty outlined in Article 2(2) of the Constitution of the Slovak Republic. Non-governmental, non-profit organizations are subjects of private law, similar to business entities; moreover, they exercise the constitutional right to association, so any disproportionate interference with fundamental freedoms is inadmissible in a democratic society and a state governed by the rule of law.

### 4) Dissolution of civic association by the Ministry of the Interior

The most common legal form of a non-governmental, non-profit organization is a civic association. The bill allows the Ministry of the Interior to dissolve a civic association for non-payment of a fine for administrative errors or for failure to comply with lobbying obligations. In our opinion, this provision constitutes a direct interference with the freedom of association of citizens, as protected by the Constitution of the Slovak Republic. Until now, it was possible to dissolve an association by a decision of the Ministry of the Interior only if the association violated the legally defined, but only specified by the constitution, restrictions on the right of association - i.e., when it carried out the activities of political parties, forced people to associate, or the activities of the CA were aimed at suppressing the rights of others. Extending the power to dissolve an association by a decision of the Ministry for failure to fulfill administrative obligations is an interference with the freedom of association guaranteed by the Constitution of the Slovak Republic. Overall, the possibility of proposing the abolition of a non-profit organization, foundation, or non-investment fund for violating an administrative obligation or failing to pay a fine is a disproportionate sanction. Dissolving an association for failure to fulfill administrative obligations directly by a decision of the Ministry of the Interior can be considered an unconstitutional interference and restriction of the freedom of association of citizens, which is enshrined in the Constitution, in international conventions, as well as in the Charter of Fundamental Rights of the EU, by which the Slovak Republic is bound and forms one

of the fundamental pillars of the democratic functioning of society in Slovakia. The Law on Association of Citizens, numbered 83, is from 1990, not by chance, but forms the skeleton of fundamental political rights, which were restored and guaranteed to a vast extent after 1989 and the fall of the totalitarian regime.

## 5) Unclear definition of lobbying

The bill refers to "direct or indirect influencing of decision-making" by public officials, senior civil servants, and other individuals, including those who provide advisory services or process expert documents for these officials. In essence, however, it does not define what types of activities of organizations will be considered as influencing decision-making, for example, whether these activities are or are not lobbying:

- Publication of the organization's opinion on a legislative proposal and with a call for MPs to reject it, for example, on its own website or social network.
- Public call signed by citizens for (non-)adoption of a draft law or a public policy.
- Send a letter to MPs to vote for or against something.
- Petition for/against a draft law/bill.
- Submission of comments in the inter-ministerial comment procedure.
- Draft resolution at the Government Council for Non-Governmental Non-Profit Organizations.
- Protest in front of the National Assembly of the Slovak Republic/Government Office... against a law or resolution.
- Press conference presenting proposals for improving social services, for example.
- Participate in a working group in the preparation of a draft law at the invitation of the Minister and presentation of the opinion on behalf of an organization.
- Expert conference with the participation of the State Secretary of the Ministry of Transport on construction legislation.

All these civil rights—the right to freedom of expression, the right to assembly, the right to petition, the right to freely associate, and the right to information—are exercised with the aim of directly or indirectly influencing the decision-making of public officials, which is their basic purpose and goal. After all, our Constitution says that citizens have the right to participate in the administration of public affairs. All these instruments are precisely for that purpose, and it is not clear which of them will fall under the term "lobbying." As the bill is currently drafted, almost all activities carried out by active citizens and their organizations can potentially be labeled as lobbying. Again, we get into legal uncertainty, when civil society organizations will not be able to assess whether their actions are or are not lobbying, whether they should register or not, and whether they are obliged to publish lobbying reports or not, which is contrary to the principle of legal certainty in Article 2(2) of the Constitution.

## 6) High Administrative Burden for Organizations

Civil society organizations often do not have employees and operate on a volunteer basis, carrying out activities at the local level alongside schools, churches, sports clubs, and similar organizations. However, organizations already have obligations regarding transparency. Suppose such organizations receive income from public sources or are assigned 2% of taxes. In that case, they are already required to publish their financial statements, as well as the purpose and manner of use of the income from 2% of taxes if it exceeds 3,300 EUR. Similarly, all legal regulations relating to the fight against money laundering or the prohibition of cash handling apply to them. The additional administrative burden should be proportionate to the objective pursued, and the income threshold of 35,000 EUR per year is low; it will often be tiny civic organizations. The scope of obligations, such as the registration and publication of lobbying reports in a very detailed form once every 3 months, which the bill sets for lobbying organizations, is disproportionate to the objective pursued, represents an administrative burden, and the terms used are equally vague and unclear. Again, legal uncertainty arises for the subject in determining when it can unintentionally violate legal obligations. The sanction for violating obligations is the repeated imposition of a fine. It is enough for the organization to receive fines 3 times in a calendar year, even for stating incomplete data in the lobbying report (which is a likely error). It may even lead to its abolition or dissolution directly by the Ministry of the Interior in the case of a civic association.

## 7) Civil society organizations will become obligated persons for providing information upon request

The bill retroactively imposes on civil society organizations the obligation to provide information as an obligated person under Act No. 211/2000 Coll. on free access to information. Civic associations, foundations, non-investment funds, organizations with an international element, and non-profit organizations are subjects of private law; therefore, subjecting them to the regime of obliged persons, which includes state bodies, local government bodies, or legal entities with state property participation, is inappropriate.

Civil society organizations, under the FOIA law, do not have the authority to issue a decision regarding the non-disclosure of information. Therefore, for such decisions in each case that do not concern a public subsidy, they will have to submit a qualified motion to the public authority that granted them the subsidy. This legislative change will create an administrative burden not only for the organizations themselves, which are unable to address this agenda, but also for certain public authorities, such as small municipalities, which lack the resources to fulfill these obligations. It is also unclear to whom such an initiative should be submitted by civic organizations if, for example, the question under the FOIA does not concern the handling of public funds, and therefore a decision on non-disclosure of information should be made; it is not clear which body would issue such a decision if, for example, the organization has no money from public sources at all.

In addition, the proposer of the law proposes to apply this obligation retroactively, i.e., with effects in the past, and thus for all organizations that have received funds from public sources in the past.

## 8) Creating a Deterrent Effect - Stigmatization

When restricting fundamental rights, it is necessary to comply with the standards of the European Convention and other international legal regulations. Legitimate goals should not be used as a pretext to control non-governmental organizations or restrict their ability to carry out their work. They should not lead to the stigmatization and ostracism of some civil society organizations. The designation "lobbyist" should not be used to label non-governmental organizations active in public discussion as those who deviate from proper norms. Failure to comply with these standards would affect the way publicly active civil society organizations are perceived in society and may trigger a deterrent reaction, discouraging cooperation with these organizations.

## The Draft Legislation interferes with several fundamental rights:

### A) Violation of the prohibition of discrimination

This proposal conflicts with Article 13(3) of the Constitution of the Slovak Republic, Article 21 of the EU Charter, and Article 14 of the ECHR.

The proposal outlines legal regulations governing lobbying activities carried out exclusively by non-governmental organizations. The proposer completely omitted the entities from which influence on political decisions most often originates. The proposal does not regulate business groups, including consulting companies, law firms, and financial groups. It explicitly excludes from regulation the most prominent players among non-business interest groups, such as trade unions, employers' associations, and sports associations.

The issue of discriminatory treatment of specific categories of organizations also needs to be analyzed from the perspective of sectoral justice, which means that measures applied to associations should not be stricter than those generally applicable to businesses or commercial entities.<sup>5</sup> Civil society organizations must not be required to submit more reports and information than other legal entities, such as businesses; equality between different sectors should be applied.<sup>6</sup> The oversight of civil society organizations should not be more intrusive than that used for business entities.<sup>7</sup>

Non-discrimination, along with equality before the law and equal protection of the law without any discrimination, forms a fundamental and general principle that concerns the protection of human rights.<sup>8</sup> The proposed regulation does not state fundamentally different factual circumstances, justified by the public interest, or the creation of a fair balance between the protection of the community and respect for rights and freedoms.<sup>9</sup> The ECHR prohibits all forms of discrimination

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<sup>5</sup> UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, 2013 Report, A/HRC/23/39, para. 24.

<sup>6</sup> ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association* (2015), paras. 156 and 225.

<sup>7</sup> National Association of Teachers in Further and Higher Education v. United Kingdom (dec.), no. 28910/95, 16 April 1998.

<sup>8</sup> UNHRC, General Comment No. 18: Non-Discrimination, 10 November 1989, par. 1.

<sup>9</sup> ECtHR, 28 November 1984, Rasmussen v. Denmark, application no. 8777/79, paras. 37 et seq.



understood as different treatment without objective and reasonable justification, i.e., those that lack a legitimate aim, necessity, and proportionality.<sup>10</sup>

Slovak legislation currently has no legal regulation of lobbying. This activity is unregulated, and there are no other legal regulations beyond the requirement for public officials to transparently disclose conflicts of interest, which would necessitate them to inform the public about whom they meet with or what activities they undertake.

The proposed regulation establishes obligations exclusively and only for civil society organizations if they carry out activities that may "directly or indirectly influence the decision-making of a public official, a senior civil servant in the service office, which is the Office of the President of the Slovak Republic, a ministry or other central body of state administration, or a person who provides advisory services or processes expert documents for the President of the Slovak Republic, a member of the government, a state secretary or the head of another central body of state administration, in the performance of his/her function, if it is carried out more than once in a calendar quarter; the activity of trade union organizations, employers' organizations and sports organizations registered in the register of legal entities in sport according to a special regulation is not considered lobbying."

The obligation of an organization that carries out such activities will be to report to the register of non-governmental non-profit organizations that it is carrying out lobbying and to publish very detailed information about the lobbying activities it has carried out once a quarter.

The proposed legal regulation of lobbying and registration exclusively of civic organizations as organizations carrying out lobbying is, in essence, merely another label, rather than "organization with foreign support." In some ways, it is even worse than the original labeling of organizations receiving funding from abroad.

## B) Violation of the right to privacy and the right to protection of personal data of donors

The publication of donors - individuals - conflicts with the protection of their privacy. Donated or borrowed money is a private, taxed source that ordinary citizens can dispose of at their discretion, and the state has no reason to control or record how they spend their money, provided they do not violate the laws in doing so. Disclosure of the donor's identity may endanger their safety or expose them to harassment. Again, all laws already apply to all organizations. Therefore, if there is a suspicion that illegal activity is occurring against a specific organization, the state has options - the police, the financial administration - to take action against it without interfering with the privacy (the constitutional right to privacy) of an individual who decides to support the activities of a non-governmental non-profit organization.

The right to privacy is guaranteed in Article 19(2) of the Constitution of the Slovak Republic, Article 8 of the Convention, and Article 7 of the EU Charter and is guaranteed to both legal and natural persons - "the right to privacy applies to an association" and "legislation should include guarantees

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<sup>10</sup> ODIHR Note on the Anti-Discrimination Legislation and Good Practices in the OSCE Region (2019), para. 56. European Court of Human Rights, *Zhdanov and Others v. Russia*, no. 12200/08, 16 July 2019, para. 178. *Commission v. Hungary Case C-78/18*, ., Venice Commission, Hungary - Opinion on Draft Law on the Transparency of Organisations Receiving Support from Abroad, CDL-AD(2017)015, paras. 33-34.

that ensure respect for the right to privacy of clients, members and founders of associations, as well as the provision of redress for any violation in this regard."<sup>11</sup> The Court of Justice of the EU stated that provisions that impose or permit the disclosure of personal data, such as the name, place of residence or financial resources of natural persons to a public authority, must be characterized as an interference with their private life and therefore constitute a restriction of the right guaranteed in Article 7 of the Charter. The same applies to provisions that provide for the publication of such data to the public.<sup>12</sup> The Venice Commission states in its recommendation that all administrative obligations should be subject to the obligation to respect the rights of donors, recipients, and employees, as well as the right to protect legitimate trade secrets.<sup>13</sup> In particular, disclosure of the donor's identity may endanger their safety or expose them to harassment.<sup>14</sup> Disclosing the identities of all sponsors, including minors, is excessive and unnecessary.<sup>15</sup>

The right to the protection of personal data is enshrined in Article 8(1) of the Charter, which is closely linked to the right to respect for private and family life guaranteed by Article 7 of the Charter.<sup>16</sup> This right prevents the dissemination of information relating to identified or identifiable natural persons to third parties, whether public authorities or the general public.<sup>17</sup> The proposed dissemination, which constitutes the processing of personal data, must be considered a restriction of the right to the protection of personal data guaranteed in Article 8(1) of the Charter.<sup>18</sup> In addition, the Court of Justice held that making personal data available to the general public in a manner that makes such data accessible to an unlimited number of persons constitutes a serious interference with the fundamental rights enshrined in Articles 7 and 8 of the Charter.<sup>19</sup>

## C) The bill violates the right to freedom of association

The proposal contravenes the fundamental right to freedom of association as enshrined in Article 29 of the Constitution of the Slovak Republic, Article 12 of the EU Charter, and Article 11 of the ECHR.

The right to form a legal entity to collaborate in an area of common interest is one of the most important aspects of the right to freedom of association. The way national legislation lays out this

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<sup>11</sup> Joint Guidelines on Freedom of Association

<sup>12</sup> Judgment of Court of Justice from 20. May 2003, Österreichischer Rundfunk a iní, C-465/00, C-138/01 a C-139/01, EU:C:2003:294, points 73 to 75 and points 87 to 89.

<sup>13</sup> Committee of Ministers' Recommendations (2007)14,

<sup>14</sup> CDL-AD(2018)006-e Ukraine - Joint Opinion on Draft Law No. 6674 "On Introducing Changes to Some Legislative Acts to Ensure Public Transparency of Information on Finance Activity of Public Associations and of the Use of International Technical Assistance" and on Draft Law No. 6675 "On Introducing Changes to the Tax Code of Ukraine to Ensure Public Transparency of the Financing of Public Associations and of the Use of International Technical Assistance" adopted by the Commission at its 114th Plenary Session (Venice, 16-17 March 2018), para 47.

<sup>15</sup> CM/Rec(2007)14, para. 64. In the Opinion CDL-AD(2017)015 on the Draft Law on Transparency of Organisations receiving support from Abroad (paras. 52-53.

<sup>16</sup> judgments from 9. November 2010, Volker und Markus Schecke a Eifert, C-92/09 a C-93/09, EU:C:2010:662, point 47, from 24. November 2011, Asociación Nacional de Establecimientos Financieros de Crédito, C-468/10 a C-469/10, EU:C:2011:777, point 41),

<sup>17</sup> judgments from 9. November 2010, Volker und Markus Schecke a Eifert, C-92/09 a C-93/09, EU:C:2010:662, point 49.

<sup>18</sup> judgment from 2. October 2018, Ministerio Fiscal, C-207/16, EU:C:2018:788, point 51).

<sup>19</sup> judgment from z 22. November 2022, Luxembourg Business Registers, joint cases C-37/20 and C-601/20, EU:C:2022:912, points 42 to 44.

freedom and its practical application by the authorities is a key indicator of the state of democracy in the country.<sup>20</sup> The Human Rights Committee has similarly recognized that the existence and functioning of a plurality of associations, including those that peacefully promote ideas that may not be favorably received by the government or the majority of the population, is a cornerstone of a democratic society.<sup>21</sup> Freedom of association is one of the fundamental pillars of a democratic and pluralistic society, as it enables citizens to collaborate in areas of common interest and thereby contribute to the proper functioning of public life.<sup>22</sup> The Court of Justice stated that legislation that significantly hinders the activities or functioning of associations, whether by strengthening the requirements relating to their registration, restricting their ability to obtain financial resources, imposing a declaration obligation and a disclosure obligation that may create a negative image of them, or exposing them to the risk of sanctions, in particular their dissolution, constitutes a restriction of freedom of association.<sup>23</sup>

Any restrictions on the right to freedom of association must also be proportionate to the aim. For example, the Court of Justice and the ECtHR consider failure to register an association or involuntary dissolution of an association to be too harsh a measure with significant consequences.<sup>24</sup>

## D) Violation of the right to participate in the administration of public affairs and the role of civil society

The role of public oversight that non-governmental organizations perform is essential for a democratic society and is of similar importance to the role of the press.<sup>25</sup>

Mechanisms at all levels should ensure the effective participation of civil society organizations without discrimination in dialogue and consultations on public policy objectives and decisions. Non-governmental organizations involved in defending human rights are traditionally considered particularly vulnerable. At both the international and regional levels, special instruments have been adopted in recent decades to codify the norms applicable to human rights defenders. The UN Declaration on the Rights and Responsibilities of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms affirms that "everyone has the right, individually and in association with others, to promote and strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and provides that states must take measures to ensure this right.<sup>26</sup> States must

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<sup>20</sup> Sidiropoulos and others v Greece (57/1997/841/1047) judgment from 10.7.1998.

<sup>21</sup> Human Rights Committee, Mikhailovskaya and Volchek v. Belarus, CCPR/C/111/D/1993/2010 (2014), para. 7.3; Lee v. Republic of Korea, CCPR/C/84/D/1119/2002 (2005), para. 7.2; Communication No. 2001/2010, Q v. Denmark, Views adopted on 1 April 2015, para. 7.3.

<sup>22</sup> judgment from 18. June 2020, Commission/Hungary, C-78/18, EU:C:2020:476, point 112.

<sup>23</sup> judgment from 18. June 2020, Commission/Hungary, C-78/18, EU:C:2020:476, point 114.

<sup>24</sup> Costel Popa v Romania Appl no. 47558/10, 26 April 2016, Adana Tayad v Turkey: Association Rhino and Others v Switzerland Appl no.48848/07, 11 October 2011.

<sup>25</sup> ECtHR, case of Vides Aizsardzības Klubs v. Latvia, Application No. 57829/00, Judgment of 27 May 2004, par. 42; Case Animal Defenders International v. The United Kingdom, Application No. 48876/08, Judgment of 22 April 2013, par.103.

<sup>26</sup> UN Declaration on Human Rights Defenders), adopted by the General Assembly resolution 53/144 (A/RES/53/144) on 8 March 1999.

ensure that reporting requirements "do not restrict the functional autonomy of [associations]" and "do not discriminatorily impose restrictions."<sup>27</sup>

## E) Violation of the retroactivity of the law

Another issue is the retroactive application of the law. Retroactivity is a fundamental feature that distinguishes law from arbitrariness. The proposal retroactively imposes obligations on organizations that have previously received a contribution from the state. This is a violation of Article 1 of the Constitution of the Slovak Republic, as it is a gross violation of the principles of the rule of law.

## F) Violation of the right to freedom of expression and the right to petition

The regulation of lobbying should in no way interfere with the rights of any citizen, as an individual or a collective, to express their views and petition public officials, bodies, or institutions. Such a right also includes the right to campaign for or against changes in legislation, policy, or practice. If this principle were violated, people might be discouraged from exercising their right to express their views and participate in political affairs, as well as express themselves on the activities of state bodies, for fear that lobbying regulations prohibit it.<sup>28</sup>

## G) The bill does not meet the requirements set by national or international law.

The conditions for restricting fundamental rights can only be:

- according to the Constitution of the Slovak Republic: the security of the state, the protection of public order, the prevention of crime or the protection of the rights and freedoms of others.
- according to the European Convention on Human Rights: national security, public safety, prevention of disorder or crime, protection of health or morals, or protection of the rights and freedoms of others.

None of these legitimate reasons are mentioned in the explanatory report, and the explanation of the reasons given does not even come close to the essence of legitimate reasons.

Restrictions on the right to freedom of association must pass a strict test<sup>29</sup> so that any limitation is:

- i) prescribed by law, which means clear, precise, and predictable;
- ii) in pursuit of one of the legitimate aims exhaustively listed in the treaty/convention;
- iii) necessary in a democratic society, which presupposes the existence of an "urgent social need" and respect for the principle of proportionality;

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<sup>27</sup> *The UN Human Rights Council's Resolution 22/6 on protecting human rights defenders* A/HRC/RES/22/6, 21 March 2013, paras. 5 and 9.

<sup>28</sup> *Compendium Of Council Of Europe Practice Relating To The Right To Freedom Of Association And The Position Of Non-Governmental Organisations*, principle 4, point 30.

<sup>29</sup> Art. 22 par. 2 ICCPR and art 11 par. 2 ECHR-

- iv) In addition, the restriction must be non-discriminatory (Article 26 of the ICCPR and Article 14 of the ECHR, as well as Protocol 12 to the ECHR).

The state must prove that the restriction of the exercise of the right to freedom of association is necessary to avert a real and not merely hypothetical threat to national security or democratic order, that less intrusive measures would not be sufficient to achieve the same purpose, and that the restriction is proportionate to the interest to be protected.<sup>30</sup>

These legitimate goals should "never be used as an excuse to undermine the credibility of the association concerned, nor to unduly hinder its legitimate work."<sup>31</sup>

Without a precise determination of the reasons and an explanation of why the proposal needs to be adopted, the proposers must not hide behind slogans and assumptions.<sup>32</sup>

Given the above, the extensive registration and disclosure obligations that the proposal envisages, in addition to not pursuing a legitimate aim or evidencing a necessity, are disproportionate and may also disproportionately affect the rights to privacy of donors and recipients.

## Consequences of the amendment:

- **Stigmatizing and Repressive Effects:** Labeling organizations that carry out lobbying is just another example of similar labeling and stigmatization of civic organizations that exercise their constitutional rights to participate in public life.
- **Repressive Mechanisms:** Excessive and vague powers are granted to the Ministry of the Interior and registration authorities, which may lead to abuse.
- **Disproportionate Fines and Indirect Liquidation:** Given the limited budgets of civil society organizations, these are extremely high fines imposed for non-compliance with the rules, which may be aimed at forcing organizations to cease their activities.
- **Discriminatory Effects:** The bill discriminates against organizations that exercise their constitutional rights compared to other private entities (trade unions, chambers, entrepreneurs) because it labels them as lobbyists and imposes disproportionate obligations on them under threat of sanctions.
- **Violation of Fundamental Rights:** Violation of constitutional rights to freedom of association, the right to privacy of personal data protection, freedom of expression, prohibition of discrimination, and, secondly, the right to petition and the right to participate in the administration of public affairs.
- **Retroactivity of the Law:** Given the retroactive effect of the obligations relating to the obliged person under Act No. 211/2000 Coll. on Free Access to Information.

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<sup>30</sup> Human Rights Committee, *Mikhailovskaya and Volchek v. Belarus*, CCPR/C/111/D/1993/2010 (July 2014), para. 7.3. See also Communication No. 2001/2010, *Q v. Denmark*, Views adopted on 1 April 2015, para. 7.

<sup>31</sup> U.N. Human Rights Council, *A/HRC/20/27*, 21 May 2012, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association.

<sup>32</sup> European Court of Human Rights, *Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania*, no. 46626/99, 3 February 2005, para. 48; and *Gorzelik and Others v. Poland*, no. 44158/98, 17 February 2004, paras. 95-96, *Commission v. Hungary Case C-78/18*, 18 June 2020, para. 91.