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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

INTERIM OPINION
ON THE DRAFT LAW ON CIVIC WORK ORGANISATIONS
OF EGYPT

Adopted by the Venice Commission
at its 95th Plenary Session
(Venice, 14-15 June 2013)

on the basis of comments by

Mr Jan HELGESEN (Member, Norway)
Mr Peter PACZOLAY (Member, Hungary)

I. Introduction

1. On 11-12 March 2013, Mr Peter Paczolay (member, Hungary) and Ms Simona Granata-Menghini, Deputy Secretary of the Venice Commission, travelled to Cairo upon the invitation of the then Minister of Justice Mr Ahmed Mekki and following contacts with Mr Stavros Lambrinidis, EU Special Representative on Human Rights, in order to hold exchanges of views with the Minister and the working group within his Ministry on the international standards on freedom of association in the context of the preparation of a new law on NGOs.
2. On 28 March 2013, the report on “Standards and legislation relating to Freedom of Association and Non-Governmental Organisations” (CDL(2013)017) drawn up by Mr Paczolay following this visit and a Selection of legislative provisions on freedom of association (CDL(2013)018) were transmitted to the Minister of Justice of Egypt.
3. On 8 May 2013, Mr Stavros Lambrinidis informed the Venice Commission that the Presidency of Egypt would welcome the Commission’s comments on the draft law on Civic Work Entities, which was being prepared by the Presidency (herein after “the Draft Law”).
4. Preliminary comments, prepared by Mr Peter Paczolay and Mr Jan Helgesen (member, Norway), were sent to the Presidency on 23 May 2013. On 29 May, a representative of the Presidency informed the Commission that these preliminary comments had been examined and further amendments had been made to the draft law; she provided certain explanations and arguments, and she requested the Commission’s opinion on the draft law as finalised on 28 May 2013 and as submitted to the Egyptian Shura Council. The text of the draft law was received in Arabic on 1 June 2013 and was promptly translated into English (CDL-REF(2013)030).
5. This interim opinion examines the Draft Law against the background of the international standards and national legislation related to freedom of association and NGOs, as referred to by the Venice Commission in its previous opinions and as summed up in document CDL (2013)017. The main sources of standards on freedom of associations and NGOs are several international instruments, including: the Universal Declaration of Human Rights (Article 20); the International Covenant on Civil and Political Rights (Article 22); the International Covenant on Economic, Social and Cultural Rights (Article 8 recognizes the right to form and join trade unions); the Convention on the Elimination of All forms of Discrimination against Women (Article 7); the Convention No. 87 on Freedom of Association and Protection of the Right to organise of the International Labour Organisation (Article 2); the European Convention on Human Rights (Article 11); the African Charter on Human and Peoples’ Rights (Article 10); the American Convention on Human Rights (Article 16); the Arab Charter on Human Rights (Article 28). The standards on freedom of association have been developed in particular by the United Nations Human Rights Committee and by the European Court of Human Rights. Specific standards on the legal status of non-governmental organisations have further been set out in Recommendation CM/Rec(2007)14 of the Committee of Ministers of the Council of Europe to member States on the legal status of non-governmental organisations in Europe¹ and further clarified by the Council of Europe’s Expert Council on NGO law of the International Conference of NGOs². Standards applicable to associations active as human rights defenders are also set

¹ Recommendation CM/Rec(2007)14 of the Committee of ministers to member States on the legal status of non-governmental organisations in Europe,

<https://wcd.coe.int/ViewDoc.jsp?id=1194609&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>

² See the First, Second and Third Annual reports of the Expert Council on NGO law at http://www.coe.int/t/ngo/Source/Expert_Council_NGO_Law_report_2008_en.pdf.

out in the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Human Rights Defenders) and clarified in its Commentary.³

6. Due to the limited time available and the limited knowledge which the Venice Commission has of the Egyptian legal system and practice, this opinion is only an interim one and does not purport to be exhaustive. The Venice Commission welcomes the interest expressed by the Egyptian authorities in the continuation of the dialogue on the preparation of this law and intends to deepen its understanding and continue its analysis of the Draft law on Civic Work Entities.

7. The present interim opinion was adopted by the Venice Commission at its 95th Plenary Session (Venice, 14-15 June 2013), following an exchange of views with Mr Khaled Al-Qazzaz, Secretary on Foreign Affairs to the President of Egypt.

II. Analysis

A. Approach

8. When regulating the legal status of associations/NGOs, two options are – seen from a normative, theoretical perspective – technically possible. The legislation could either describe the rights and duties of such entities, or it could describe the competences of public authorities, administrative and judicial, controlling the associations/NGOs. The first approach might best ensure that the international human rights norms are effectively protected and implemented. The Draft Law has, basically, chosen the latter. It is essential that the Draft Law should not give wide discretionary power to the administrative and judicial authorities to curb or prevent the activities carried out by the associations/NGOs.

B. Definitions

9. A wide range of associations and organisations pertain to the so-called “non-governmental organisations”. The Draft Law aims at regulating basically all kinds of activities by civil society, except commercial activities. While there do exist certain basic features which may apply to most, if not all, civic work entities, it should be stressed that this approach is not the only one possible.

10. The Draft Law in its General Provisions (Article 1) differentiates among eight different types of NGOs, and defines the basic forms of federations and associations.

11. The different types of NGOs in the Draft are the following:

- Civic work organisation is any non-governmental entity established on a voluntary basis by a group of natural or legal persons, or both together, having legal personality, undertaking civic work with the purpose of achieving humanitarian and developmental goals in the context of the values and standards of respect, mutual consent, and tolerance of diversity and difference.

³ United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (A/RES/53/144); Commentary on the UN Resolution on Human Rights Defenders, July 2011

<http://www.ohchr.org/Documents/Issues/Defenders/CommentarytoDeclarationondefendersJuly2011.pdf>

Report submitted by the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, 4 August 2009 <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/64/226&Lang=E>

- Association is any group comprising natural or legal persons, or both together, who shall be no fewer than ten in number, for a purpose that does not involve making a financial profit for its members.
- Public benefit association: any association that seeks to achieve a public benefit, whose activity is aimed at serving the community.
- Civic Foundation: a legal entity established by allocating funds of no less than fifty thousand Egyptian pounds upon establishment for the achievement of a non-profit purpose.
- Central association: any association working in various civic work fields and activities, such as a community body, and whose number of founders upon registration is no fewer than one hundred.
- An aid agency is a body consisting of natural or legal persons, or both together, working primarily on humanitarian aid work in times of disasters, wars, and armed conflicts, both domestic and foreign, and on programmes and projects subject to this law.
- Foreign non-governmental organisation: a foreign non-profit legal entity whose main administrative office is located in the Arab Republic of Egypt or abroad, licensed to engage in one or more activities of organisations subject to the provisions of the Draft Law
- Initiative or Campaign is a voluntary affiliation of a group of natural or legal persons or entities subject to this law with the purpose of promoting, encouraging, assisting and advancing the performance of a project through which the capabilities and potential of the entities carrying it out are turned to account.

12. The Draft Law recognises different forms of federations as the regional federation, the specialised federation, and the general federation of civic work entities. Furthermore, it makes possible the voluntary affiliation of different entities (non-governmental - governmental - private - foreign organisations - donors) with the purpose of planning for joint co-operation under the names of network, alliance or coalition. The Egyptian authorities have explained that all civic work entities, irrespective of their actual form, are entitled to pursue all the aims of civic work, notably participation in public life. The Egyptian authorities, for example, have clarified that the fact that the definition of “central association” explicitly mentions participation in public life as one of its aims does not exclude that any other form of civic work entities, notably associations, may well pursue participation in public life (see Article 10 of the Draft Law). This is an important clarification in order to assess whether the regulation of the forms of civic work entities and the minimum numbers of members required for setting up an entity (one hundred members from five districts are required for a central association) are proportionate requirements for the exercise of freedom of association. In this respect, the Venice Commission recalls that “Two or more persons should be able to establish a membership-based NGO but a higher number can be required where legal personality is to be acquired, so long as this number is not set at a level that discourages establishment”.⁴ The Venice Commission further stresses that it must be possible to exercise the freedom of association without having to acquire legal personality (see below).

13. The variety of the different forms of associations is a natural and wide-spread phenomenon, which may only be considered to be in conformity with the international standards provided that the free exercise of freedom of association does not depend and is not impaired by the need to acquire a specific form of association.

⁴ Recommendation CM/Rec(2007)14, § 17.

C. Relations with international law

14. The Draft Law is unclear as to the relationship with international law. It is repeatedly stated that the activities conducted by the civic work entities must be carried out according to “*the Constitution* [freedom of assembly is guaranteed in Article 50 of the Constitution, freedom of assembly in Article 51 of the Constitution and Freedom to form trade unions in Article 52 of the Constitution] *and the law*”. In this context it should be recalled that the Egyptian state is bound by its international commitments. Different international conventions ratified by Egypt establish rights for individuals and groups to carry out human rights activities and are part of Egyptian law (Article 145 of the Constitution).

15. In the UN Declaration on Human Rights Defenders of 1998 this relationship is formulated in article 3 as follows: “*Domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which all activities referred to in the present Declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted.*”

16. Consequently, the Draft Law on Civic Work Entities itself, as well as the whole domestic legal regime – at the constitutional as well as at the statutory level - regulating such activities, must be in conformity with international commitments.

17. Article 2 of the Draft Law provides that Civic Work entities “shall be bound in their statutes by the constitution, the law, rules on transparency *and human rights* (emphasis added)”. Articles 55 and 56 also refer to international treaties. However, these provisions seem to aim more at restricting the activities of NGOs than at providing them with the necessary guarantees that their fundamental rights will be protected in accordance with domestic and international human rights norms.

D. Interpretation

18. In order to ensure that the interpretation of this Draft Law be in conformity with its legitimate aims, the Egyptian authorities have expressed their intention to state explicitly in the Preamble that the intent of the law is to protect freedom of association. This is to be welcomed, provided that the definition of freedom of association and of the possibility to interfere with it be in keeping with the international standards, which provide the following:

19. Any interference by the State with the right to freedom of association must fulfil three main conditions:

- It must be prescribed by law: there must be some basis in domestic law; and the law must be adequately accessible, i.e. the individual must have an indication that is adequate in the circumstances of the legal rules applicable to a given case and foreseeable, i.e. it must be formulated with sufficient precision to enable the individual to foresee with a reasonable degree of certainty the consequences of his or her action or the conditions on which the authorities may take certain steps;

- It must pursue a legitimate aim: the interests of national security or public safety, the prevention of disorder or crime, the protection of health or morals or the protection of the rights and freedom of others;

- It must be “necessary in a democratic society”: the interference must correspond to a pressing social need and must be proportionate to the legitimate aim pursued. Proportionality means that the interference must not place an excessive burden on the

NGO, also considering the right balance which must be found between the NGO's interest and those of the public. The reasons for the interference must be relevant and sufficient. States have a margin of appreciation in assessing whether the interference responds to a pressing social need, but this margin of appreciation is not an unlimited one.

20. In addition, in order to avoid any misunderstanding in the interpretation of this Draft Law, important concepts and limitations to the powers of the state authorities should be explicitly indicated, and if need be repeated, where relevant in the text of the law.

E. Legal personality

21. The regulation provides for different forms of civic work entities. But it provides that all non-governmental organisations can only be established as entities with legal personality – this derives from para 1 of Article 1 stating that civic work organisations have legal personality.

22. In accordance with Paragraph 3 of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe, acquisition of legal personality is required in order to enjoy particular benefits.

23. The Draft Law is still silent about possible forms of association with no legal personality. In their exchanges with the Venice Commission, the Egyptian authorities stressed that there are no consequences for carrying out activities in community without legal personality, but in that case it is not possible to benefit from the advantages the law offers to registered associations. The Egyptian authorities further expressed their intention to add a provision explicitly recognising the possibility to exercise the rights regulated in this Draft Law without acquiring legal personality.

24. The Venice Commission welcomes this clarification and this intention; indeed, the Commission considers that the possibility to pursue the right to freedom of association through the establishment of associations without legal personality should be mentioned expressly in a specific provision of the Draft Law.

F. Registration

25. All forms of NGOs regulated in the Draft Law are subject to a registration process, which derives from the fact that they gain legal personality through it. The most general requirement for all kinds of NGOs is the adoption of a written statute. The content of the statute is defined by the law with detailed content. These provisions follow those in Recommendation CM/Rec (2007)14, art.18-20.

26. The statute of the association is recorded in the Register of Associations kept by the administrative authority that is the Ministry of Insurance and Social Affairs. The procedure appears reasonable both in terms of timing and in substance.

27. The legal personality of the association during the process of establishment is acquired simply by notification accompanied by the necessary documents (Article 6 of the Draft Law). The administrative authority gives the association a certificate with its registration number.

28. Registration of the association may not be refused in any regard, except in a few cases that are determined by the Law. It is a guarantee to avoid a lengthy registration procedure that where there is no objection from the administrative authority, the association is considered automatically registered thirty days after the submission of the notification. This is a very positive provision which deserves to be commended.

29. The Egyptian authorities have explained that registration may only be refused (Articles 6 and 7 of the Draft Law) “if it becomes apparent to the administrative authority within thirty days from the date of notification that one of the purposes of the association is an activity prohibited under Article 10”. Article 10 in turn provides that associations shall be prohibited from having the following aims or engaging in the following activities: 1) the establishment of military formations, units or organisations; 2) seeking to make profit for the members of the association or its board of directors or pursuing an activity for that purpose (...). Pursuant to Article 7, in this case, “the administrative authority must notify the association in writing to remove the conflicting activity within fifteen days. If the association fails to respond, an objection to the establishment of the association shall be brought before the competent court.”

30. On the basis of the above, it should be concluded and welcomed that the only possible obstacle to the registration of an association is 1) a statutory conflict with Article 10 of the Law; followed by 2) the refusal of the association to remedy this conflict by amending its statute, followed by 3) a judgment by the competent court. No other hurdle to the operation of an association is therefore established by the Draft Law, notably by its Article 10. This means that the role of the competent administrative authority is limited – and must be seen as limited – to the verification of the formal compliance of the association’s statute and other accompanying documents with Articles 4, 5 and 6 of the Draft Law.

31. It is an important guarantee that if the association fails to respond to the invitation to redress the statutory issue, the case should be brought before the competent court, and the administrative authority cannot refuse the registration on its own. It is, however, of the utmost importance that the courts act in an independent and impartial manner.

32. In general, it is an important guarantee that all decisions of the authorities should provide reasons, and there is the possibility, or even the necessity of judicial review.

33. For the registration a fee should be paid for the Civic Work Entities Support Fund. The amount of this fee should not exceed 200 Egyptian pounds (approximately 20 euros). According to Recommendation CM/Rec (2007)14 “Fees can be charged for an application of legal personality but they should not be set at a level that discourages applications” (Article 33). This does not seem to be the case.

34. The Civic Work Entities Support Fund according to the Draft Law will function in the framework of the General Civic Work Federation. This is an improvement compared to the present regulation where a similar fund is set up in the Ministry of Social Insurance and Social Affairs. Although the representatives of three relevant ministries are members of the Board of directors of the Fund, it appears to function basically under civil control (Article 65).

35. Special rules apply for certain type of associations. For example, in the case of the public benefit association a further requirement is an application to the competent minister. In the case of the civic foundations the allocation of at least 50,000 Egyptian pounds is necessary. The statute may be substituted by an official deed, a notarised bequest or an endowment (a special legal tool in the Egyptian legal system).

G. Financial Supports

36. According to Article 6 of Recommendation CM/Rec (2007)14 “NGOs should not be subject to direction by public authorities”.

37. Article 11 of the Draft Law defines the privileges that NGOs enjoy under this Law by nine specific provisions that include a wide range of exemptions from fees, duties, taxes, customs duties as well as special tariffs and discount on transport costs. This is positive and should be welcomed.

38. There is an unrestricted⁵ possibility under Article 13 of the Draft Law of receiving funds and in-kind donations from Egyptian natural and legal persons, residing within Egypt or abroad, from resident foreigners, or foreign non-governmental organisations licensed to work in the Arab Republic of Egypt. This is positive and should be welcomed.

39. However, the Draft Law imposes severe restrictions in respect of funds and in-kind donations from foreign NGOs not licensed to work in Egypt or foreigners not residing in Egypt.

40. Foreign funding of NGOs is at times viewed as problematic by States. The Venice Commission acknowledges that there may be various reasons for a State to restrict foreign funding, including the prevention of money-laundering and terrorist financing. However, these legitimate aims should not be used as a pretext to control NGOs or to restrict their ability to carry out their legitimate work, notably in defence of human rights. The prevention of money-laundering or terrorist financing does not require nor justify the prohibition or a system of prior authorisation by the government of foreign funding of NGOs.

41. None of the Member States of the Venice Commission which have been examined has prohibited foreign funding of NGOs.⁶

42. The problem to be solved is – and Egypt tries to comply with international requirements in the fight against terrorism – to avoid any possibility of laundering terrorist money in form of foreign funding for NGOs. This is an acceptable justification for the stricter control of funding from foreign donors. Such control, however, should not be excessive or too burdensome so as to turn into a disproportionate interference to the right to freedom of association guaranteed by the Egyptian Constitution as well as by international standards.

43. The Venice Commission believes that it is justified to require the utmost transparency in matters pertaining to foreign funding. An administrative authority may be entrusted with the competence to review the legality (not the expediency) of foreign funding, using a simple system of notification – not one of prior authorisation. The procedure should be clear and straightforward, with an implicit approval mechanism. The administrative authority should not have the decision-making power in such matters. This should be left to the courts.

44. Two different provisions of the Egyptian Draft Law deal with this matter and the Egyptian authorities have clarified their respective scope of application. Under Article 13 paragraph 2 of the Draft Law, associations which receive “donations” (payments in support of the association not destined to a specified activity) from “foreign non-governmental organisations not licensed to work in Egypt or foreigners not resident in Egypt” must notify the Co-ordination Committee set up under Article 53 (see below) about the identity, nationality and place of residence of the donor. The Co-ordination Committee may object and ask the association to stop the relevant activity; if the association fails to comply, the Committee may ask the competent court to decide on the matter. According to the Egyptian authorities, the objection may only be based on Article 10 of the Draft Law (i.e. in case of 1. the establishment of military formations, units or organisations; 2. seeking to make profit for the members of the association or its board of directors or pursuing an activity for that purpose). Under Article 63 § 1, Egyptian NGOs wishing to apply for “foreign funding” (that is, a “project”) by “a foreign Non-governmental organisation

⁵ See however paras. 39 and following.

⁶ see Selection of legislative provisions on freedom of association, CDL(2013)018.

which does not have branches in the Arab Republic of Egypt⁷ must apply to the Co-ordination Committee for the authorisation to receive such funding, providing information on the programmes, projects and activities scheduled to be carried out with it. The Coordination Committee has to decide within thirty days. Negative decisions may be appealed to the competent court (Article 63 of the Draft Law).

45. According to the Egyptian authorities, the difference between “donations” and “funding” – difference which exists already under the Egyptian legislation – resides in the organisational links that are established through participation in the foreign project and which do not come to existence in the case of simple donations. The Egyptian authorities have also explained that the authorisation is given on the basis of compliance with Article 59 of the Draft Law.

46. The Egyptian authorities have further explained that Article 63 only applies to foreign NGOs which have not obtained a licence in Egypt; indeed, once NGOs are registered or receive the general approval to receive funding, they operate freely and receive funding provided they notify the Coordination Committee without requiring or waiting for any other approval.

47. The Venice Commission notes that the competences of the Co-ordination Committee are not sufficiently and clearly defined. Under Article 13 of the Draft Law, the Committee may object to the donation, but the legal basis of the objection is not specifically defined, even if Article 57 para. 4 refers to the need for foreign NGOs to respect “the constitution and the law”. In the absence of such legal basis, the objection may be based on discretionary and even arbitrary grounds, and there is no guarantee of sufficient protection for the association, as even judicial review would not be effective in these circumstances. **Article 13 of the Draft Law should therefore be amended to specify that the Co-ordination Committee may object to a donation only on the basis of Article 10 of the Draft Law. The same clarification should be added in Article 53 paragraph 2 of the Draft Law.**

48. Article 63 provides for a system of prior authorisation for an Egyptian NGO to receive foreign funding and carry out the related activities, which as such is not in line with international standards. In addition, it fails to provide a clear legal basis for refusing the authorisation to receive the funding. **This system should be replaced by a system of mere notification with the possibility for the Co-ordination Committee to object on the basis of Article 59 of the Draft Law only.**

49. According to Article 14 of the Draft Law, for any type of fund-raising (television campaigns, charity benefits and postal correspondence), prior notification to the administrative authority (the Ministry) is required and the authority may object.

50. The Venice Commission wishes to refer in this respect to the document “Some preliminary reflections on standards and legislation relating to freedom of association and non-governmental organisations (NGOs)” (para 28)⁸ and stress that no prior authorisation should be required for fund-raising activities.

51. The UN Declaration on Human Rights Defenders provides specifically that “everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means in accordance with Article 3 of the present Declaration”. The right of access to funding is to be exercised within the juridical framework of domestic legislation – **provided that such legislation is consistent with international human rights standards.**

⁷ The possibility of foreign governmental and inter-governmental funding is not explicitly regulated.

⁸ CDL(2013)017

This implies *inter alia* that there can be no discrimination among NGOs, notably on the basis of the nature of the activities which they carry out.

52. Funds raised by the NGO as gifts, donations or voluntary contributions are therefore part of the legitimate resources of the NGO

53. The Egyptian authorities state that this prior authorisation is an administrative/organisational requirement because the government authority cannot refuse an event according to the law unless it is illegal.

54. The Venice Commission accepts that for some fund raising activities which involve for example public meetings or television campaigns certain administrative regulations, including prior notification, may be legitimately required under Egyptian Law. However, these requirements are certainly provided in the applicable legislation and are not superseded by this Draft Law. In addition, there exist in any case the financial reporting obligations and the publicity and transparency requirements which are imposed on associations under Articles 17 and 18 of the Draft Law. Sanctions are provided for breaches of the law. This means that the Egyptian authorities have every means to put an end to possibly illegal activities. Article 14 therefore adds an additional administrative burden for the NGOs, which is not justified. In addition and importantly, the legal basis for the objection to the fund raising is not explicitly provided in the law. In these conditions, the objection may be based on discretionary and even arbitrary grounds, and even court review would not be effective. This represents a disproportionate interference with the right to freedom of association guaranteed by the Egyptian constitution and by international standards. The Egyptian authorities have explained that the possibility to object is limited to the cases which are covered by other laws which are in force in Egypt, such as the prohibition to fund-raise in schools or in mosques. The need to notify fund-raising activities should in any case be limited to these cases, which should be explicitly listed in the Draft Law with the references to the relevant Laws in force in Egypt.

55. The Venice Commission therefore recommends removing the restriction contained in Article 14.

H. Special rules on Foreign NGOs

56. Specific restrictions are established for foreign NGOs and foreigners not resident or licensed in Egypt. For them, a "Co-ordination Committee" is set up by Article 53 that is formed by decision of the Prime Minister. It is composed of four representatives of relevant ministries and authorities chosen by the relevant ministers and of four representatives of civic work entities chosen by the General Civic Work Entities Federation.

57. According to the Egyptian authorities, the aim of the Co-ordination Committee is to consolidate all government entities which the international associations deal with into a single one, in order to facilitate all administration and registration matters. They underline that the law does not confer on the Co-ordination Committee the power of control over the associations. The Committee is basically responsible for registering NGOs that receive foreign funding. The Draft Law puts a limitation to government authority over the NGOs and removes any intervention power from the government authority. It also creates a clear reference point with regards to denying registration or objecting to activities, i.e. the constitution and legal framework of Egypt. The Coordinating Committee does not have the authority to stop or intervene in illegal activities or funding without a court order. Once NGOs are registered or are given the general approval to receive funds (in case of the local NGOs receiving foreign funding), they operate freely and receive funding provided they notify the Co-ordination Committee without requiring or waiting for any other approval.

58. NGOs which are established in accordance with an international agreement or treaty have to apply for a licence. The Coordination Committee controls that their activity does not conflict with the text of the treaty or agreement (Article 56).

59. For foreign NGOs that are not established under international treaties, the regulation is especially severe (Article 57). Any activity of such organisations may be carried out only after obtaining a licence from the Co-ordination Committee or by a court ruling or as a result of the silence of the administration. The exact procedure for the licence by the Committee and for the fees should be specified in the implementing regulations. The licence for the foreign funds is valid for a renewable five years. The main point in the regulation is to exclude any party political activity from the potential funding (Article 59). Activities are not permitted if they “violate national sovereignty”; the Egyptian authorities have explained that these terms should be taken to mean “separatism”. The Venice Commission recommends to delete in Article 59 the words “which violate national sovereignty” and replace them with “which promote separatism”.

60. Foreign NGOs licensed to operate in Egypt are subject to “monitoring” by the Coordination Committee (Article 62). They have to submit bi-annual performance reports, an annual financial accounts report and any information requested by the Committee on the organisation of their activities. The Co-ordination Committee may object to any activity or method of funding and ask the relevant NGO to stop the activity. If the NGO does not comply, a special committee is set up to carry out a financial and administrative inspection on the basis of the objection and of the NGO’s reasons to persist. If the special committee corroborates the objection, the Co-ordination Committee instructs the NGO to “address the reasons for the objection” within fifteen days, failing which the Co-ordination Committee may seek that the court suspend the activity pending its final decision on the objection.

61. The Venice Commission recalls that under international standards, a system of prior authorization of some or all of the activities of an association is incompatible with the freedom of association. In addition, the Commission finds such a system would almost inevitably be impracticable, inefficient and costly, as well as likely to generate a significant number of applications to courts, with a consequent unwarranted transfer of workload (and danger of clogging up) to the judiciary.⁹

62. The Venice Commission has explained above, in connection with the procedure of prior authorisation of fund-raising activities, that the applicable Egyptian legislation on specific forms of activities (demonstrations, public events, television campaigns and so on), coupled with the financial reporting obligations and the publicity and transparency requirements which are imposed on associations suffice to enable the Egyptian authorities to put an end to illegal activities. Sanctions may be applied. For foreign NGOs, the procedure of licensing provides an additional possibility for the Egyptian authorities to make sure that the legal requirements of Articles 56 and 57 should be met. **The Venice Commission therefore finds that there is no justification for closely monitoring foreign NGOs.**

63. In addition and importantly, the Draft Law fails to provide the legal basis against which such monitoring should be done. The grounds on which the Coordination Committee may object to activities or fund-raising are not specified (respect for the Constitution and the law of Egypt is too broad a yardstick), which results in too broad discretionary powers in the hands of the Co-ordination Committee, hence a lack of protection, including through courts, of foreign NGOs from arbitrary decisions.

64. The Venice Commission therefore recommends amending Article 62 of the Draft Law.

⁹ CDL (2013)017, para 21.

65. Finally, as concerns the composition of the Co-ordination Committee (four representatives of relevant ministries and authorities chosen by the relevant ministers; four representatives of civic work entities chosen by the General Civic Work Entities Federation; the minister as Chair of the committee), the Venice Commission finds that even though it appears to be balanced on paper, in practice it might enable the government, notably through the security services, to exercise a very tight control over civic work entities, which would be unwarranted. A transparent mechanism of appointment of the members of the Co-ordination Committee should be designed and introduced in the law. The four representatives of the civic work entities should be genuinely representative of all the Egyptian civil society; Article 53 of the Draft law should provide that they will be elected by the General Civic Work Entities Federation (which the Egyptian authorities have explained to be a body elected by all the civic work entities).

I. Financial transparency

66. The Draft Law contains detailed rules for the monitoring of the financial activity of the NGOs. Thus the regulation tries to comply with the requirements of the fight against terrorist activities, and especially the cautious control of money transfers. Obviously, the strict regulation and control of all financial manoeuvres puts a burden on the every-day operation of the NGOs but all in all there is a delicate balance between the requirements of financial transparency and the appropriate functioning of the civil associations. This has to be appreciated compared to the previous drafts that wanted to consider the funds of the NGOs as public funds allowing direct state control over the financial activities of these organisations.

J. Sanctions

67. Article 70 provides for sanctions “without prejudice to any greater penalty stipulated in the Criminal Code or any other law”. The Venice Commission has been informed that there exist very restrictive provisions in the Egyptian criminal code which severely punish NGOs which carry out activities without having been specifically authorised to do so. The Venice Commission urges the Egyptian authorities to proceed with the abrogation of the existing restrictive criminal provisions by way of urgency, either through this Draft Law or otherwise.

68. The Venice Commission finds that it is very positive that the principle of proportionality is explicitly provided in the application of penalties by courts (article 72).

K. Transitional provisions

69. The transitional provisions allow one year for the adaptation of the NGOs to the new regulation. This is a reasonable and acceptable time limit. Nevertheless, the immediate entry into force of the new Law (the next day following its adoption) is exaggerated: more time should be allowed in order to get acquainted with the new Law.

III. Conclusions

70. Due to the limited time available and the limited knowledge which the Venice Commission has of the Egyptian legal system and practice, this opinion is only an interim one and does not purport to be exhaustive. The Venice Commission welcomes the interest expressed by the Egyptian authorities in the continuation of the dialogue on the preparation of this law and intends to deepen its understanding and continue its analysis of the Draft Law on Civic Work Entities.

71. The new Draft Law is definitely an improvement compared to previous draft laws on Civic Work Entities. Indeed, it contains considerable positive features, such as: registration of NGOs is obtained through simple notification accompanied by the necessary documents, in a

procedure which appears reasonable both in terms of timing and in substance; refusal to register appears to be limited to very specific circumstances (article 10 of the Draft Law) and must be decided by a court, the administrative authority not having this power; in general, all decisions of the authorities should provide reasons, and there is the possibility, or even the necessity of judicial review; NGOs are given an extensive list of privileges and enjoy an unrestricted possibility of receiving funds and in-kind donations from Egyptian natural and legal persons, residing within Egypt or abroad, from resident foreigners, or foreign non-governmental organisations licensed to work in the Arab Republic of Egypt; the principle of proportionality is explicitly provided in the application of penalties by courts (article 72).

72. The Draft Law however still contains certain problematic provisions.

73. It takes too severe a standpoint in respect of foreign NGOs, and the operation of the Coordination Committee – although four of its members represent civil organisations – might lead to the control and even direction of the operation of foreign NGOs by public authorities, which would be contrary to international standards. A transparent mechanism of appointment of the members of the Co-ordination Committee, including of election of representatives of the Civic Work Entities, should be designed and introduced in the law.

74. In no instance should monitoring of and prior authorisation for activities of foreign NGOs which have obtained a license to operate in the country be required, as this would be in breach of international standards. The relevant provisions should be amended.

75. The need for prior authorisation for fund-raising should be removed.

76. In no instance should prior authorisation for receiving foreign funds be required.

77. The Draft Law should also make provision explicitly for the possibility to exercise the rights regulated in the Draft Law without acquiring legal personality.

78. The Venice Commission urges the Egyptian authorities to proceed with the abrogation of the existing restrictive provisions on the criminalisation of unauthorised activities of NGOs by way of urgency, either through this Draft Law or otherwise.

79. The Venice Commission is ready to provide further assistance to the Presidency of Egypt in order to improve this Draft Law and to bring it fully in line with international standards.