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ANALYSIS OF THE MACEDONIAN LEGAL FRAMEWORK FOR VOLUNTEERISM¹

I. Introduction²

In common usage, a “volunteer” is a person who provides services for the benefit of others without compensation. Just as some individuals donate money to organizations, projects, and causes, others donate their time, energy and talents. In countries where volunteering is permitted and encouraged, volunteers can significantly expand the reach, influence and capacity of civil society organizations while those organizations can provide important opportunities for volunteers to engage in community services and develop their own capabilities.

Volunteers and their organizations may be affected by a variety of laws, both directly and inadvertently. Some countries in CEE have drafted or adopted statutes that specifically define and regulate volunteer activities. In many countries, however, volunteers and the organizations that use them may unknowingly be subject to laws not specifically directed to volunteers – such as labor laws, contract laws, and insurance benefits laws – to their detriment.

As discussed more fully below, Macedonia falls into this latter category: it has no laws specifically regulating or governing volunteering, resulting in potential misapplication of other laws to volunteer situations. Moreover, our research exposed explicit examples of confusion over a fundamental aspect of volunteering – whether volunteers should be compensated – within both the governmental and NGO sectors. This confusion, coupled with the lack of a legal definition or understanding of the concept, stands to hamper efforts to encourage development of civil society through engagement of volunteers.³ Introduction of amendments to current legislation or adoption of a new law addressing volunteers is a critical first step in any such efforts.

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² ICNL would like to thank the following persons for providing their valuable input on the research: Dr. Natasha Gaber-Damjanovska (Institute for Sociological, Political, and Juridical Research and ICNL Local Partner), and Mitko Gjorgiev, Snezana Janevska, Milica Paneva, Luiza Isailovska and Vaska Murceva (First Children Embassy–Megjashi and the MakAction team).

³ ICNL recently sponsored a gathering in Warsaw of international experts from nine countries to discuss legal issues affecting volunteers and volunteering in Europe. The discussion reflected the increasing

II. Volunteers and Volunteering in Macedonia

A. General Usage and Understanding of Volunteering.

Two Macedonian words – “dobrovolec” and “volonter” – translate into the English term “volunteer.” Dobrovolec more precisely means “person acting out of free (good) will.” “Volonter” is taken directly from English, and is more often used by the NGO community. Both words can be used to refer to individuals who do work or provide services by free choice and without pay. Common usage of the words demonstrates cultural familiarity with, and norms that embrace the concept of volunteering as understood internationally.

With a few notable exceptions, Macedonian NGOs do not routinely recruit volunteers in a formal, organized way. However, many do utilize volunteer in their everyday work, and some are addressing the potential resource of volunteer help by drafting principles and guidelines for working with volunteers.

A prominent example of this is the Code of the Association of Children’s Organizations in the Republic of Macedonia,⁴ a document of principles and values that was adopted by a group of organizations engaged in activities related to children rights. The Code addresses the issue of volunteers in a separate section entitled “NGO’s Standpoint on Volunteers,” which underlines the notion that “*the sustainable development of NGOs is facilitated by the voluntary approach in their operations.*” The Code embraces a palette of principles that should guide the work of NGOs leaders with volunteers. These provisions mirror the traditional concept of volunteers’ engagement - by free choice and without payment - and incorporate some of the internationally accepted norms regarding volunteers’ work (anti-discrimination clauses, good work conditions, trainings for volunteers).

Another illustration of how organizations perceive the role of volunteers is the draft Code for Protection of Children,⁵ which is currently being developed by the First Children Embassy-Megjashi. Megjashi’s Code sets forth basic principles of work with children for both employees and volunteers and, by this, it acknowledges and furthers the volunteer’s engagement in the organization.

importance for NGOs in the CEE region to find ways to encourage and utilize volunteer service and highlighted the issues that arise as the practice of volunteering grows. The workshop produced a set of recommendations for legislators, as well as guidelines for the institutions providing opportunities for volunteering. These Recommendations and Conclusions on Legal Issues Affecting Volunteers are tailored specifically to meet the needs of Central and Eastern European countries, recognizing that during the communist period, people in some countries were forced to perform “voluntary work,” which partially discredited volunteering as such. ICNL would be happy to provide a copy of these recommendations upon request.

⁴ Document on file with ICNL.

⁵ On file with the First Children Embassy –Megjashi and ICNL.

While Macedonian NGOs do rely upon and take into account the invaluable help from volunteers in their traditional concept, a certain misperception over whether NGOs should be paid is evident among NGOs.

For example, a group of 12 NGOs recently drafted and issued “Guidelines for Developing Programs for Volunteers.” This booklet addresses a variety of volunteer issues such as recruitment, training, motivation, supervision and evaluation of volunteers, and includes a chapter about the rights and obligations of volunteers. Significantly, however, the Volunteer Guidelines contain vague and confusing statements regarding the fundamental characteristic of volunteers as individuals who provide services without payment. Hence, while it speaks about volunteering as “the most precious ‘non-paid labor,’ at the same time it notes that volunteers do expect certain types of “compensation”, which may have the form of “economic benefits (monetary reward, or honoraria).”⁶ In addition, the Guidelines⁷ contain a model volunteer contract that recommends that, if an NGO has financial means, it should insert a provision in the contract that gives the volunteer the right to compensation, which may be paid in a lump sum, or periodically.⁸

B. Volunteering as a Legal Concept

No law in Macedonia specifically governs or regulates volunteering in a comprehensive manner. Several laws, however, make reference to volunteers or volunteer work. *The Law on Social Protection*, the legal framework for provision of certain social benefits to protect vulnerable populations (e.g., the poor, the elderly, the disabled) includes volunteer work as one means of a program to address social problems.⁹ The Law on Social Protection understands volunteer work as that which is provided “with personal engagement and without compensation.” Although the law, in this short reference to volunteering, emphasizes the three main elements of volunteering (personal engagement, for the benefit of another and without compensation), it does not mention the concept in the remaining articles of the law, nor include any provisions regarding the rights, obligations, benefits, or limitations on volunteers.¹⁰

In addition, “collective agreements,” which are essentially labor contracts governing the employment relationship in particular trades or fields, refer to the term “volunteer-apprentice.” As explained below, the use of the word “volunteer” in

⁶ Guidelines for Developing Programs for Volunteers,” 2002, page 22.

⁷ Id. at page 40.

⁸ A similar misperception about whether volunteers are paid for their work was reflected in a recent informal conversation with a government official. He stated that volunteers, while not employees and therefore not legally entitled to compensation, should in fact be paid because otherwise “non-paid” volunteering would result in a misuse of labor.

⁹ Article 9, Art. 57 and Art. 63(1)(5), Official Gazette of RM no. 50/97, and 16/2000. Along with volunteering, the Law enumerates other social prevention measures such as: education, counseling work, and development of self-help forms.

¹⁰ In an informal discussion on this matter, an official at the Institute of Social Activities, Skopje, agreed that it is unfortunate that the Law does not develop further the concept of volunteering. In the opinion of Ms. Milica Paneva (Megjashi), the Law implies the need for involving volunteers, but does not oblige the responsible institutions to utilize volunteer activities in their work, thus leaving this provision ineffective in practice.

conjunction with “apprentice” in these agreements may be the source of at least some of the confusion noted above regarding compensation for volunteers.

In certain professional fields, such as law and medicine, graduates in Macedonia are required to work as “apprentices” or “trainees” for the purpose of vocational training and independent work in the professions prior to taking their professional exam. The Labor Law¹¹ and several collective agreements¹² provide that an apprentice may form a permanent or temporary employment relationship with the employer (to be governed by an employment contract or the applicable collective agreement). The collective agreements entitle apprentices to 70-80% of the lowest salary for the field. Some collective agreements, however, introduced the category of volunteer-apprentices, explaining that where there is no employment position available, the apprentice may “volunteer” in order to get the requisite experience. Even an apprentice who “volunteered”, however, was entitled to compensation, with details of the working relationship to be worked out in an agreement between the apprentice and employer. The distinction between an apprentice and a volunteer-apprentice, then, turned more on whether the apprentice would become an employee rather than on whether the apprentice was paid for his/her work.¹³

Labor law experts, referring to these collective agreements, also use the term “apprentice” to mean an individual in mandatory professional training at a hospital, law firm, or court, and “volunteer-apprentice” to mean apprentices who will not become employees. They agree that these “volunteer-apprentices” are entitled to compensation.¹⁴

The tradition of paid apprenticeships and use of the term “volunteer-apprentice” in the Collective Agreements and by labor lawyers is probably one source of confusion, at least in the context of labor law, over the role of volunteers. The relative rarity of formal volunteering in Macedonia, where unemployment is high, may be another. Whatever the source of the confusion, the lack of legal clarity about volunteering could be extremely detrimental to efforts to strengthen civil society through encouraging volunteerism. The absence of laws or regulations directly addressing volunteering means that volunteers and the organizations that use them may be subject inadvertently to laws that constrain, penalize, or discourage volunteering. We turn now to an analysis of the laws that could negatively impact volunteering in Macedonia.

¹¹ Art. 25-26, Labor Relations Law, Official Gazette of Macedonia, no. 80/93.

¹² I.e., 1994 General Collective Agreement on Public Services, Public Organizations, Organs of Local Self-government, and other legal entities that conduct non-commercial activity; 1993 Collective Agreement for Social Organizations and Citizens’ Associations.

¹³ The 1995 Collective Agreement for Social Organizations and Citizens’ Association (apparently the current one) differs from the earlier 1993 Agreement in that it speaks only of “apprentices” and does not make mention of volunteer-apprentices. In addition, rather than regulate the apprentice relationship in detail, it simply notes that it will be regulated by internal agreement between the employer and apprentice, and provides for compensation up to 70% of the salary in the field.

¹⁴ See Belicanec T., Starova G., “Labor Law”, Faculty of Law press, Skopje, 1996, pg.149.

1. The Labor Laws

Volunteering, in theory, does not create an employment relationship; therefore, volunteers, and the organizations they work for, are not subject to the labor law. In Macedonia, however, formal volunteering is not the norm, nor is there a clear understanding of the term as meaning one who is not compensated for their work. In addition, the employment relationship is highly regulated. In such an environment, it is quite possible that labor officials would view any volunteer arrangement as subject to the labor code, leading organizations to be reluctant to use volunteers for fear of running afoul of the labor code.

The labor laws in Macedonia are largely protective of employees, dictating with specificity their right to salaries, limited working hours, annual leave, health benefits, and procedures to secure their rights through appeal to labor inspectors.¹⁵ Many, if not most of the labor law provisions are inconsistent with a desirable volunteer arrangement. For example:

- The most obvious provision that runs counter to a volunteer situation requires payment of a salary, which for full-time working hours cannot be lower than the minimum wage determined for particular field of work.¹⁶ Employers may be fined for failing to pay adequate salaries.¹⁷ Thus, the state inspector may treat a volunteer situation as misuse of labor and abuse of labor law provisions.
- In addition, employment commences with a conclusion of an employment agreement.¹⁸ The law prescribes fines for those employers who have not signed and verified written contracts of employment and where employment has commenced prior to concluding and verifying the contract.¹⁹ Moreover, state inspectorates are empowered to prohibit the work on the premises of any employer if they come across individuals who have not commenced employment in compliance with the law (e.g. have not signed an employment agreement).²⁰

Virtually any agreement between the organization and volunteer that diverged from the labor laws or collective agreements – work without compensation, as the most notable example, could subject the organization to penalties for violation of the labor code. Such “violation” could come to light through regular inspections, the report of a disgruntled third party, or even as a result of a volunteer-relationship turned sour.

Of course some of the provisions of the labor relations law, and other related laws that impact employees, would be protective of volunteers in ways that would be desirable – provisions, for example, that permit certain benefits or require full disclosure to employees

¹⁵ See Labor Relations Law.

¹⁶ Art. 69-75, Labor Relations Law.

¹⁷ Art. 145, Labor Relations Law.

¹⁸ Art. 14-15, Labor Relations Law.

¹⁹ Art. 145, Labor Relations Law.

²⁰ Art. 143, Labor Relations Law.

of hazardous conditions. Amendments or laws specifically written to address the volunteer situation could adopt those provisions from the labor code. Wholesale application of the law to volunteers, however, not only puts employers and volunteers at risk for violations of the Labor Relations Law, but undermines one of the major advantages of using or being a volunteer: the flexibility of the volunteer arrangements. Thus, to protect both organizations and volunteers from labor law violations and to maximize the potential of volunteering, volunteers should not be governed by the labor code, but, rather, under the general laws of contracting.

2. Contract Law

Macedonia's Law on Obligations regulates contractual relationships. It does not recognize a contract of volunteering as a separate category of contract, but is applicable to all forms of contracts, unless otherwise provided.²¹ Generally, the law secures the right of private parties to conclude contracts according to their wishes ("participants in a transaction are free to regulate their rights and obligations") so long as the contract is not contrary to "the constitution, the laws, and the customs"²² – which would include, of course, the Labor Relations Law. Accordingly, while volunteers and organizations are theoretically permitted to regulate their relationship by a contract pursuant to the Law on Obligations, the Labor Relations law could trump a contract's provisions and the Law on Obligations if a court or labor inspector decided that the relationship was in reality an employment relationship.

Assuming, however, that a volunteer contract would not be found to be "contrary" to law, the provisions of the Law on Obligations would likely apply to any arrangement made between a volunteer and an organization. Application of the Obligations Law to volunteering is clearly preferable to application of the Labor Relations Law, as it would recognize that volunteers are distinct from employees and allow volunteers and organizations to decide the terms of their agreement pursuant to the same rules that govern other agreements freely entered into by individuals and legal entities.²³ Still, in the current climate, application of the Obligations Law, rather than a law specifically written to address the unique aspects of the volunteer situation, could pose some problems for volunteers and organizations.

A recent discussion with one government official demonstrates one shortcoming of using the Law on Obligations for a volunteer situation – that it does not necessarily clarify the definition of volunteers as unpaid individuals. Generally, there is an opinion that volunteers should enter into service provider contracts, so as to take them outside the purview of the labor law and under the umbrella of contracts law. However, a service provider contract presupposes compensation in exchange for services – a factor that is at odds with the most fundamental characteristic of volunteering.

²¹ Art. 17, Law on Obligations.

²² Art. 3, Law on Obligations.

²³ This would be consistent with the internationally accepted notion that volunteering is not unpaid labor, but should come under the general umbrella of the provisions governing contracts. See Recommendations and Conclusions on Legal Issues Affecting Volunteers, *supra* fn.1.

More broadly, application of contract law to volunteers is problematic because that law does not contemplate provisions that are peculiar to a volunteer arrangement. The Law on Obligations sets forth general precepts for contracting, including the notion that a contract need not be formal (i.e., written) to be binding, but is entered into upon agreement of the parties to essential features of the contract.²⁴ It also provides that parties may regulate their agreements in a manner that diverges from the Law on Obligations unless a provision indicates otherwise.²⁵

Issues left unaddressed by the parties, of course, are regulated by reference to the Law on Obligations. Thus, problems will arise in situations where a volunteer arrangement has not been clearly articulated and agreed upon between the parties and/or has not been put in writing – which is likely to be the majority of cases. Organizations and volunteers alike may be disinclined to memorialize a volunteer arrangement by reducing it to writing, fearing that the formalization of the arrangement might bring it within purview of the labor laws, as it would resemble an employment contract. Putting a volunteer agreement in writing may also be viewed by some as too restricting and inconsistent with the “voluntary” and flexible nature of the situation. When unarticulated expectations of one party or the other are not met or full information regarding the arrangement is not discussed, the solutions dictated by the Law on Obligations may not be those the parties would have chosen had they discussed the arrangement thoroughly. For example:

- A Macedonian volunteer might have an expectation of pay, for the same reasons that the Guidelines for volunteers perceive pay appropriate for volunteers. The organization, on the other hand, may be operating under the international definition of volunteer. The “mistake” of the volunteer – to assume she would be paid – may be “material” under the Law on Obligations, and therefore may be a potential basis for a claim that the volunteer should be paid for work already undertaken.²⁶
- Organizations should be required by law to inform volunteers about the legal rights, risks, burdens, options, and benefits of the relationship, including those borne or provided by the Organization.²⁷ The Obligations Law, however, does not contain a provision requiring full disclosure of these rights. A volunteers’ contract with a disclosure requirement would provide the volunteer with an option to make an informed decision and make appropriate insurance arrangements.²⁸
- Volunteers and organizations may not be aware of the liability rules that would come into play under the Law on Obligations if the volunteer harmed a third party

²⁴ Arts. 18 and 59, Law on Obligations.

²⁵ Art. 14, Law on Obligations.

²⁶ Art. 54, Law on Obligations.

²⁷ See Recommendations and Conclusions on Legal Issues Affecting Volunteers drafted in by a group of international experts gathered by ICNL in Warsaw, Poland, January 2002.

²⁸ Ms. Snezana Janevska, who was a volunteer herself before being employed in Megjashi, confirmed this is an important issue that should be legislated because volunteers are rarely informed about the specifics of their engagement, their rights, and especially whether they are going perform in field related to their skills and interest.

or was harmed, and those rules may not be appropriate in a volunteer situation. The Law imposes an obligation for indemnification only in cases where damage was the fault of the individual, in this case, the volunteer. But in a situation where the volunteer was not adequately trained by the organization, or acted without the organization's full knowledge of her skills, or exceeded the directions and permission of the organization, the unique circumstances of the volunteer relationship with the organization and of the organization with the population it services, may call for a different result.

In sum, the Law on Obligations does not provide a particularly safe-haven for volunteer agreements, unless the parties to those agreements are relatively sophisticated, have clearly articulated their expectations, and reduced those expectations to writing. That is unlikely to be the case in Macedonia today, given the relative rarity of the practice of volunteering and the confusion surrounding the concept.

3. Other Laws Affecting Volunteers

If volunteers are understood, as they should be, to be distinct from employees, then they are not entitled to employee benefits such as private or public social security. A few laws in Macedonia do, however, provide room for some benefits to volunteers. For example, the *Law on Safety at Work*²⁹ explicitly enumerates the individuals who have the right to work in a safe environment and fall within the scope of this law, and includes “participants in a voluntary or compulsory work, which is in the public interest.”

Similarly, the *Law on Health Insurance*³⁰ and the *Law on Employment and Insurance in Case of Unemployment*³¹ allow unemployed individuals who are registered with the Institute for Unemployment to receive health and unemployment benefits. These laws should allow an individual who was unemployed to receive these benefits while still engaging in volunteer work – work that not only serves a social benefit, but also could help develop the volunteer's skills so as make him a more attractive employee in the future.

However, without laws explicitly addressing volunteers, and in a climate of confusion over volunteering, volunteers may be mistakenly treated as employees, to their detriment, for some purposes, and at the same time be penalized for not being employees in other contexts. For example, the Unemployment Law permits deletion from the unemployment registration of anyone found, through a financial inspection, to be working contrary to the law, i.e., without benefit of an employment contract.³² Consequently, an unemployed person working as a volunteer risks loss of these benefits. This may be a problem in particular if the individual is a full-time volunteer, because it may be hard to convince the state inspectorate that an individual is volunteering his time and not working for the NGO.

²⁹ Art. 5(3), Official Gazette of RM, No. 13/1998.

³⁰ Art. 5, Official Gazette of RM, No. 25/2000.

³¹ Official gazette of RM, 37/97.

³² Art. 59, Law on Unemployment.

In addition, under the *Law on Personal Income Tax*,³³ only employees are entitled to deduct as expenditures contributions made for pension, health and disability insurance; and only employees do not pay income tax on allowances received to offset or reimburse work-related travel costs. This provision discourages volunteer's engagement in the NGOs, and is frequently criticized for that reason.³⁴ In the same way, the *Law on Profits Tax* allows employers to deduct as expenditures certain travel-related costs paid only to employees.³⁵ Because these laws do not recognize volunteers, they do not explicitly provide for similar deductions for them or for expenditures paid to them, nor even recognize that volunteers may receive reimbursement for reasonable expenses incurred in the course of the work. An organization that takes a profits tax deduction for expenses paid to volunteers puts the organization in the position of treating an individual as an employee for some purposes, and a volunteer for other purposes. If the NGO does not take the deduction, it is faced with the additional financial burden of reallocating funds raised for the activities to taxes, which is why some become reluctant to engage volunteers in their organizations.

III. Conclusion and Recommendations

The Macedonian legal system does not specifically address volunteering and creates confusion through references to “volunteer-apprentices.” Potential misapplication of the labor laws to volunteers chills organizational efforts to recruit and use volunteers and could be applied to the detriment of individuals who nevertheless choose to volunteer. Contracting law does not provide a safe-haven for most volunteers and organizations, because the provisions of the Law of Obligations are not written with the unique situation of the volunteer in mind. Rather, an initiative to specifically recognize, permit, encourage, and regulate volunteers either by amending the existing laws or by adopting a separate one is critical to any effort designed to strengthen civil society by drawing upon the good will of volunteers. At the same time, amendments to the tax and social benefits laws are needed to ensure that they cover the situation of volunteering and are harmonized with other legal provisions that regulate the field.

The amendments or new law, at a minimum, should include:

- Recognition of legal status of volunteers, an explicit provision to allow volunteering, and a formal legal definition of volunteers along the following lines: “an individual who provides services to or for the benefit of another person by free choice and without compensation.”³⁶

³³Art. 6, Personal Income Tax, Official Gazette, 80/93, 70/94, 71/96, 28/97, 8/2001, 50/2001, 52/2001, 2/2002 и 44/2002.

³⁴ See: Ilieva Dusanka “Restrictive Tax Policy Towards NGOs”, *Gragjanski Svet (Civic World)*, no.25, 2003 The MacAction team also agreed that this is one of the most problematic provisions and needs to be amended.

³⁵Art. 17, Law on Profits Tax, Official Gazette, 33/95, 43/95, 71/96, 5/97, 28/98, 11/2001, 2/2002 и 44/2002.

³⁶ Adopted from the Recommendations and Conclusions on Legal Issues Affecting Volunteers drafted in by a group of international experts gathered by ICNL in Warsaw, Poland, January 2002.

- Introduction of a formal legal instrument – a contract on volunteering – specifying minimum rights and duties, providing general guidelines as to appropriate provisions for a volunteer contract, and permitting volunteers and organizations to define clearly their relationship.
- Protection of unemployment benefits for volunteers.
- Revision of the tax laws to enable organizations to deduct expenses associated with volunteers.