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Bosnia Briefing Paper

NEW LAW ON ASSOCIATIONS AND FOUNDATIONS (WITHIN THE LEA-LINK PROJECT)

The current legal framework for the functioning of the non-governmental and non-profit sector in Bosnia and Herzegovina has already been identified as limiting for the development of the sector itself. However, a new law was passed in the Federation of BH, while in the RS, the Law on Association inherited from the pre-war SRBH is still being applied. Although newly implemented, the law in the FBH is essence reflects the previous legal provisions with very few novelties introduced. Thus, practically, for the activities of the NGO sector in BH we are still applying the laws corresponding to the system that has ceased to exist.

That is why one of the crucial tasks, within the LEA-LINK projects is to prepare a draft of a new law on associations and foundations, simultaneously providing the conditions for its adoption. This implies different actions, particularly those conducted through public and educational campaigns.

The following notes contain short review of the final draft of the Law on Associations and Foundations (hereinafter: The Law) prepared within the LEA-LINK project, dating 25 November 1998.

The basic and guiding idea when drafting the new law was the need to ensure the maximum flexibility in providing the legal framework for the functioning of the NGO sector in BH. The government sector is hardly integrated, the integration occurs only in the instances when legal security needs to be ensured as the fundamental principle of every legal order. On the other hand, we have tried to maintain the idea and philosophy of the third sector following the models found in the countries in transition that have made more progress in this field than BH and whose experience could be useful.

The Law has the total of 49 articles structured in eight segments. The first, entitled "General Provisions", consists of eight articles. The second, entitled "Associations" comprises three chapters: "Founding", "Membership" and "Organs", and covers the articles from 9 to 18. The third segment, entitled "Foundations", has two chapters: "Founding" and "Organs" and cover articles from 19 to 24. The Fourth segment is entitled

“Registration of Associations and Foundations” consists of articles from 25 to 35. The fifth segment, entitled “The Property of Associations and Foundations” encompasses articles from 36 to 39. The sixth segment is entitled “The Cessation of Associations and Foundations” consists of articles 40 to 43. The “Penal Provisions” are the seventh segment and comprise of only one article 44, while the last, eighth segment has the usual title “Interim and Closing provisions” and contains the provisions of articles 45 to 49.

WHAT DOES THE NEW OFFER COMPARED TO THE PRESENT SITUATION?

The new Law, compared to the current legal framework, offers several novelties of which some are radical. They are presented here, not in the order of their significance but following the logic of the structure of the Law itself.

- The Law offers the possibility of establishing an association without the obligation of entering it into the court registry. These are the so-called “informal forms of association that have not been envisaged by the present legal regulations. It is only if the associations wants to have the status of legal entity, with all the consequences arising from such the status, that the registration is binding.
- The limitations to the establishment of associations and foundations regarding the condition of entity citizenship are annulled. Thus the founders of an association may be the citizens of BH, regardless of the entity in which the association or a foundation is being established.
- The association or foundations are free to act in the entire territory of BH, regardless of whether they have been founded in the RS or the FBH. There is the possibility of establishing the office of an already registered association or foundation in the other entity with the minimum formalities requested (e.g., for the purpose of opening appropriate bank account, etc.)
- In order to maintain the idea of non-profitability of the NGO sector, the Law makes clear distinction regarding the condition under which an association or a foundation may start business (profitable) activities. These activities may be performed without the establishment of a separate legal entity (company, shop, etc.) under the condition that the revenue gained through such the activity can not represent the prevailing part

of annual budget. The establishment of a separate legal entity for realization of various business activities (industrial production or the services in general) by associations or foundations is always possible if the profit is used for the funding of the objectives as determined by their statute.

- The classification of associations has been made to those of public interest and others (abroad, it is usual to call the former “the associations of mutual interest”, but our legal system does not recognize such the terminology”). The associations of public interest are those that, in realization of heir objective, exceed the interest of their individual members, act in appropriate domains enumerated in the Law and have specific obligations towards public in general, particularly in terms of making their annual report, the financial reports included, public, The association of public interest need to enjoy special customs, tax and other benefits. The status of an association of public interest is acquired in a separate procedure that is in the jurisdiction of the authorized court.
- The issue related to the name of association and foundation are defined specifically, particularly when it come to the legal interactions. The third responsible parties are protected by a separate provision.
- Due to the post-war situation of BH and the great role played by various international missions, a liberal approach has been taken in terms of establishment of associations and foundations by foreign physical and legal entities. The similar approach is applied regarding the possibility of opening affiliate office for foreign and international organizations in BH.
- The number of founders is reduced to three to simplify maximally both substantive and the legal elements of the registration. The founders can be both physical and legal entities, the only restriction being that it could not be the state, the entities and other entities that have direct state competencies.
- The registration procedure for associations and foundations before the court of registry is regulated precisely, so that the potential abuses are reduced to minimum (they can never be excluded fully even if the legal provisions are right). In the case the court is silent in the period of 15 days period after the application for registration is

submitted, the Law prescribes that the registration has been conducted automatically, thus the efficiency of the courts of registry is improved.

- Underage persons and foreigners may be the members of associations.
- The Law defines precisely the documents to be submitted with the request for registration.
- The Law defines precisely what is considered to be the property of an association or a foundation.
- The issue of the so-called conflict of interest in the instances of decisions for which a member of association may be economically interest are defined specifically. For the purpose of protection of association or foundation, Law does impose reasonable limitation.
- The Law defines clearly the notion of association or foundation. The issues of competence and authority of the association's and foundation's organs are regulated precisely.
- In order to eliminate potential abuse, the Law specifically and precisely regulates the issue of the cessation of association or foundation. Two manners are envisaged for the association or foundation to cease their activities: voluntary and involuntary. The voluntary should not be disputable is it is the result of the free decision of association or foundation. The involuntary can be conducted in two ways: if the activity of association or foundation is contrary to the legal order, aimed at forceful subversive actions, if it incites ethnic, racial and religious hatred and intolerance or is discriminative in an unlawful manner. The second option for the involuntary cessation is viable is an association is not active for longer than two years without any justified reasons.
- In the case of involuntary cessation, the procedure is initiated by the public prosecutor. This provision is envisaged not for the sake of the public prosecutor but to provide guaranties offered by the provisions of the Law on Criminal Procedure to ensure that the proceedings would not be initiated on the basis of inadequate motives.
- To prevent potential abuse, the Law clearly envisages the provisions relating the property issues in the case of cessation of association or foundation. In the case of

cessation of and association of public interest or a foundation, the remaining property is assigned to the other association of public interest or a foundation with identical or similar objectives, in accordance with the Statute. If there is no such provision in the Statute, the remaining property is allocated by the competent court to any other association of public interest or any other foundation. Other associations (those that are not of public interest) decide freely, based on their statute, on the remaining property in the case of cessation of association.

- This Law, based on legal system, represents a novelty due to the fact that, besides regulating the matters relating to association it regulates the issues of foundations, while until now these two segments were regulated by two separate laws. It is still acceptable when it comes to its length because it contains less than 50 articles.

WHAT ARE THE ISSUES OF IMPORTANCE FOR THE NGO SECTOR THAT THIS LAW FAILS TO REGULATE?

The fiscal issues are the weak point of the NGO and non-profit sector in BH. Unfortunately, they are not resolved by the proposed Law due to the fact the fiscal aspects of the NGOs (the case also with other entities) is regulated by separate laws that regulate specific issues (customs, turnover taxation, taxes and contributions on salaries, contracted jobs, etc.).

The Law does tackle the fiscal issues though. Two provisions do assume that the separate law will resolve the issue of customs and taxation exemptions and benefits.

It would be of great help for the NGO sector in BH to offer, simultaneously with the Law on Associations and Foundations, the annexes to the respective fiscal laws.

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