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RESEARCH ON VOLUNTEERISM IN CROATIA

by Zvonimir Mataga

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INTRODUCTION

Volunteering, as understood in this paper is providing services by an individual to or for the benefit of another person by free choice and without compensation. Understood as such "Volunteers and volunteerism constitute an essential part of modern societies. By volunteering, citizens can combine the twofold contributions to their nation's welfare and their neighbor's well-being with the opportunity to become a key player in societal developments, which positively affects the professional evolution of volunteers." [1] Moreover, it has been pointed out that "Volunteers and volunteering lie in at the heart of the Third Sector" and that "...volunteering may be the most distinctive characteristic of

[1] Christian Meyn, Monika Kopcheva: 'Legal Issues Affecting Volunteers and Volunteering in Europe. Final Report on Meeting of International Experts', Warsaw, January 23-26 2002 (unpublished paper)

the Sector."[2] "As the level of civic engagement increases, volunteering requires more and more attention to be paid by national legislators in order to remove obstacles and to create an enabling legal environment."[3] However, "Strangely...,virtually no attention has been paid to the legal issues affecting volunteers." and "...the laws of virtually no country have given more than partial attention to these problems."[4]

These considerations apply as well to volunteering and legal framework for it in Croatia. Tradition of volunteering in Croatia is very old and widespread. For the purposes of this paper there is no need in to enter into inquiry about history of volunteering in Croatia. It is enough to mention voluntary firemen and their contribution to the well-being of Croatia, especially in last ten years when big summer forest fires were posing serious threat to many towns and villages in coastal region of Croatia. It is also worth to remember the great contribution that citizens gave to the city of Zagreb in 1987 responding on calls for volunteers issued by Organizing Committee for students sports games (Univerzijada '87) that were held in Zagreb in 1987. Also, Croatia owes a great gratitude to its citizens-volunteers that were providing a wide range of humanitarian activities during the war years. Finally, it is important to emphasize citizens' contribution in building democratic and civil society in Croatia through volunteering for monitoring elections in Croatia via association GONG – Citizens Organized to Monitor Elections. The role of volunteers that were monitoring elections has been emphasized as important factor that contributed to fairness of elections and, eventually, led to change of government in Croatia in 2000. During her visit to Croatia in the beginning of 2000 U.S. Secretary of State Madeleine Albright wanted to thank Croatian citizens for their contribution to democracy in Croatia. Not by chance she chose to meet with GONG representatives, stressing indirectly the contribution of citizens-volunteers.

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[2] Leon Irish and Karla Simon: "Legal Issues Affecting Volunteers" (unpublished paper presented on 5th International ISTR Conference, July 2002, Cape Town, South Africa)
[3] Christian Meyn, Monika Kopcheva: 'Legal Issues Affecting Volunteers and Volunteering in Europe. Final Report on Meeting of International Experts', Warsaw, January 23-26 2002 (unpublished paper)
[4] Leon Irish and Karla Simon: "Legal Issues Affecting Volunteers" (unpublished paper presented on 5th International ISTR Conference, July 2002, Cape Town, South Africa)

However, these social developments were not followed by legal regulations, which should provide an enabling legal environment for volunteering. The issue of volunteering was regulated only partially. Labor codes were almost always providing the possibility of some form of unpaid traineeship/internship. Status of voluntary firemen was also partially regulated. Beside that freedom of contract, guaranteed in the laws regulating obligations, provided for limited possibility of volunteering. This is also the present situation. However, the law in action was a bit different from the law in books. Although formally partly prohibited volunteering was tolerated.

New developments pose more serious threat to volunteering. It seems that legal system and law enforcement agencies in Croatia are not willing to tolerate it any more in a degree that was tolerated before. In order to end this possible negative trends legislative intervention into legal issues affecting volunteers seems necessary. However, before legislating on the issue thorough legal analysis of present laws and practices should be provided. This will help to identify and better understand the problems, and, eventually, give a meaningful and useful guidelines which problems should be addressed and how, in the context of Croatian legal system, by future law.

This research paper analyzes current legal framework for volunteering in Croatia. The analysis is comprehensive and covers many issues of volunteers legal status such as: definition of a volunteer, contractual relations, compensation constraints, tax benefits, social security benefits, liability, and status of international volunteers. Alternatives how to improve the unsatisfactory legal framework in respect of volunteers in Croatia are also provided. One of them is legislative intervention. In this respect some recommendations how to draft possible future Law on Volunteering are provided as well.

PART ONE: ANALYSIS OF CURRENT LEGAL FRAMEWORK FOR VOLUNTEERING IN CROATIA

1. INTRODUCTION (DEFINITION AND LEGAL STATUS)

1.1. Bilateral (contractual) volunteering

1.1.1. Contractual volunteering according to the Labor Code

Article 29 of the Labor Code. Croatian legal system does not give a definition of a volunteer in wide sense. Volunteer as an individual who provides services to or for the benefit of another person by free choice and without compensation is, as such, unknown to Croatian legal system. However, it would be incorrect to say that some definition does not exist.

Croatian Labor Code (Official Gazette No.38/95, 54/95, 65/95, 17/01)[5] in Article 29 provides:

Volunteer work

(1) If the professional exam or working experience is established by law or other regulation as the prerequisite for the performance of jobs within a certain occupation [profession], the employer may admit the person who completed schools [education] for such an occupation [profession] to professional training without employing him or her (volunteer work)

(2) The period of the volunteer work from paragraph 1 of this Article shall be counted into the apprenticeship [traineeship] and working experience established as a prerequisite for the work in certain occupation [profession].

(3) The volunteer work from paragraph 1 of this Article may not last longer than the apprenticeship [traineeship].

(4) If this or another law does not provide otherwise, the provisions on employment relations in this and other laws shall be applied to a volunteer except for the provision on formation of employment contract, salary and the compensation of salary and the termination of employment contract..

(5) The contract on volunteer work shall be in writing.

[5] Zakon o radu (Narodne novine br. 38/95, 54/95, 65/95, 17/01)

From this Article a few elements for definition of a volunteer can be deducted. Volunteer, according to the Labor Code is a:

- (natural) person (-individual)
- who works for employer,
- without entering into employment relationship[6],
- with an aim to acquire qualifications required by law,
- through working experience (professional training),
- for the performance of jobs within a certain occupation [profession].

Social policy considerations. This provision is motivated by social policy considerations. The provision seeks to implement social policy goal of reducing unemployment rate of young people. It aims to make young people more competitive in labor market. Labor market prefers young people with a certain experience. In many cases professional experience (mandatory training period) is required by law as a prerequisite for the performance of jobs within a certain occupation or profession. However, young people usually do not have such experience after they finish school. Because of lack of professional training and experience they cannot enter labor market. The provision aims to break this vicious circle. Therefore, the ultimate goal of this provision is to promote full employment. Potential employee who completed training in his profession has more chances to achieve full employment than one who did not complete such training. Ultimately this should decrease the unemployment rate.

However, reading the provisions of the Labor Code regarding the volunteer work one can easily recognize that these provisions are motivated by some additional and, in comparison with the goal of reducing the unemployment rate, competing social policy considerations. Namely, the competing social policy goal is to make sure that provisions

[6] Employment relationship is legal relationship between employer and employee. It is different from the employment contract because employment relationship can rise out of employment contract and decision of public authority (in case of civil servants) or even both (some lower categories of civil servants). Moreover, employment relationship is not regulated only by employment contract. Rights and obligations for both sides arise both from contract (or decision of a public authority) and law.

on volunteer work will not be abused in a way to evade minimum wage provisions. There is a threat that employers will seek to employ only volunteers even in cases in which they have enough funds to employ them as employees. For instance, some practitioners expressed concern that Art. 29 as drafted (still) pose a serious problem in this respect. In my opinion, application of the Labor Code during last six years has shown that such threat is not serious. However, without these checks the provisions on volunteer work would cause, in their application, the opposite effect - instead of (ultimately) promoting full employment it would, ultimately, create more workers that are not receiving at least a minimum wage.

Terminology. Literal translation of title of Article 29 is "volunteer work" (in Croatian: *volonterski rad*) although more meaningful translation would be "internship work". Term "volunteer" can be translated as "intern" or more accurately as "unpaid trainee". In German: *volontär*.

Volunteering or not? In my opinion, this narrow concept of volunteer work provided in Art. 29 of the Labor Code still falls under definition of a volunteer set in Recommendations and Conclusions on Legal Issues Affecting Volunteers (Recommendations) which define volunteer as an individual who provides services to or for the benefit of another person by free choice and without compensation[7].

[7] One can, however, argue that, especially because of specific compensation that volunteer receives, or because of significant influence on his free will, Art. 29's volunteering is not volunteering as defined in Recommendations. In my opinion, compensation given to a volunteer in a form of pension and health insurance funds contributions (fees) cannot be considered as compensation that would deprive him of a volunteer status. It needs to be mentioned that one can easily consider volunteering (in a widest possible sense) as providing services beyond their market value. If we use this wide concept of volunteering any compensation given to a volunteer, which is beyond the market value of the service, would not deprive him of a volunteer status. More moderate concept would allow compensation to a volunteer, which goes beyond minimum wage. However, this concept is not acceptable because it would enable employers to evade minimum wage provisions.

However, this is only one way how to conceptualize the problem. From different angle things look a bit different. Different legal systems conceptualize employment relationship differently. Employment relationship can be understood as a contractual relationship or a matter of status. Scholars usually tend to say that contractual concept is concept adopted in Western capitalist countries and concept of an employment relationship as status is adopted in (former) socialist countries. In my opinion this distinction does not exist in reality in its pure form. Every employment relationship has, more or less, elements of both concepts. Some rights arise from employment contract itself, for example: right to compensation (salary, remuneration). Some rights are not arising from employment contract but from special laws that

Therefore, volunteer work according to the Art. 29 of the Labor Code is still a category that should be taken into consideration and analyzed here.

Employee vs. volunteer. Volunteer, according to Labor Code has a different legal status from a regular trainee. Regular trainee is person in employment relationship, volunteer is not[8]. Volunteer does not have a right to salary but all other provisions of Labor Code that aim to protect employee are applicable except provisions on formation of employment contract, salary and the compensation of salary and termination of employment relationship.

It needs to be emphasized here (and it is going to be presented bellow in detail) that provisions of the Labor Code and all other laws applicable to employee will be applicable to volunteer too if the Labor Code or other laws do not provide otherwise. In this respect it is worth of noting that both employee and volunteer are entitled to pension and health insurance, although, not on the same grounds.

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recognize employment contract as legal ground for those additional rights, for example: right to pension and health insurance or unemployment benefits. These rights are called "work related rights" and they form a kind of penumbra around employment contract creating a special status for employed persons. This status contains a whole set of rights around the core which is, usually, an employment contract. In other words being an employed person is a status comprised of whole set of rights. In order to illustrate this I will use the similar example - citizenship. Once you become a citizen a whole set of rights has been automatically attached to you.

The same line of reasoning can be applied to volunteer work. Once you conclude a contract on volunteer work you gain a status of volunteer. Right to pension and health insurance is not compensation because it does not follow directly from the contract on volunteer work but from other laws (laws on pension and health insurance) which attach this right to you as being a volunteer. "The experts are convinced that although such benefits could prima facie be seen as a form of compensation, they do not substantially affect the nature of volunteer activities" (Christian Meyn, Monika Kopcheva: 'Legal Issues Affecting Volunteers and Volunteering in Europe. Final Report on Meeting of International Experts', Warsaw, January 23-26 2002, unpublished)

As regards free will one can easily claim that there is no free will on the volunteer's side if there is no other way for him to get necessary training. In my opinion it is impossible to make such abstract conclusion without inquiry into facts of each particular case. If social situation is that there is no other way that young person can find a paid traineeship that would certainly amount to coercion, which can so seriously impair free will that would strip a person from his/her volunteer status. In my opinion the social situation in Croatia is not that serious that could impair free will in this manner.

[8] Professor Željko Potočnjak in: Vilim Gorenc *(editor): Rječnik trgovačkog prava* (Dictionary of Commercial Law*)*, Zagreb, 1997, page 589 (under "*volonter*").

Limitation. "In Croatia employer may admit volunteer to work **only** if the professional exam or working experience is established by law or other regulation as the prerequisite for the performance of jobs within a certain occupation [profession]."[9] (emphasis added)
It seems that this opinion is accepted without exceptions among legal scholars and practitioners[10].

1.1.2. Contractual volunteering according to the Law on Obligations

Introduction. According to my best knowledge besides Article 29 of Labor Code there are no attempts in Croatian legal system to give a definition of a volunteer. This, however, does not mean that legal framework that regulates such activities does not exist. It remains to be inquired whether other laws in Croatia are giving the opportunity to an individual who wants to provide services to or for the benefit of another person by free choice and without compensation. This possibility exists and it is regulated in the Law on Obligations.

Following chapter describe differences between employment contract and contract of work. These differences are important because they explain what type of contract is allowed for providing volunteering services in Croatian legal system and why is it so. It also sets guidelines how volunteering contracts in Croatia should be drafted in order to escape legal sanction of invalidity. Contract of volunteering should be drafted similar to a contract of work. This will not be a contract of work but a contract similar to it. However,

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[9] Professor Željko Potočnjak in: Vilim Gorenc *(editor): Rječnik trgovačkog prava* (Dictionary of Commercial Law), Zagreb, 1997, page 589 (under "*volonter*").
[10] See, for example,
Darko Terek: "*Volonterski rad*" (Volunteer Work) in: Ivica Crnić, Dušanka Marinković-Drača, Marijan Ruždjak, Darko Terek, Marija Zuber: *Primjena propisa radnog prava* (Application of Labor Law Rules). Zagreb, 1998, page 35
or
Vera Babić: "Obrazovanje i osposobljavanje za rad" (Education and Training for Work) in Ivica Crnić (editor): *Zakon o radu; s objašnjenjima i primjerima* (The Labor Code; with explanations and examples), page 154

serious concerns will be raised whether such type of contract satisfies needs of volunteering in Croatia.

Civil Law in Croatia. Croatian civil law is not codified in a comprehensive civil code. Instead civil law is codified in form of special laws regulating property (Law on Ownership and other Real Property Rights [Official Gazette No. 91/96, 68/98, 22/00, 73/00][11]), contracts and torts (Law on Obligations [Official Gazette No. 53/91, 73/91, 3/94, 7/96, 112/99][12]), succession (Law on Inheritance [Official Gazette No. 52/71, 47/78][13]) and family (Family Law [Official Gazette No. 162/98][14]). General part of civil law is insufficiently codified partly in the Law on Obligations and partly in the Law on Ownership and other Real Property Rights.

Freedom of contract and its limits. Article 10 of the Law on Obligations provides for, what can be called freedom of contract and sets the limits of that freedom. It reads: "Participants in a transaction are free to regulate their rights and obligations, but they cannot do it contrary to the Constitution of the Republic of Croatia, *ius cogens*[15] or public morals."

As it was already mentioned above, in Croatia employer may admit volunteer to work **only** if the professional exam or working experience is established by law or other regulation as the prerequisite for the performance of jobs within a certain occupation or profession. Although the language of Art. 29 is more open ended (it does not use the word "only") its interpretation that excludes all other forms of voluntary work seems to be the law in Croatia right now.

Contract of work. The Law on Obligations provides for the most significant form of performing a work besides employment contract. Articles 600 – 629 regulate, so called,

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[11] Zakon o vlasništvu i drugim stvarnim pravima (Narodne novine br. 91/96, 68/98, 22/00, 73/00)
[12] Zakon o obveznim odnosima (Narodne novine br. 53/91, 73/91, 3/94, 7/96, 112/99)
[13] Zakon o nasljeđivanju (Narodne novine br. 52/71, 47/78)
[14] Obiteljski zakon (Narodne novine br. 162/98)
[15] Provisions of the law(s) that parties cannot alter by their stipulations. Provisions that are always applicable, mandatory provisions, public policy. In German: *Zwangvorschriften*.

contract of work. In contract of work one side (performer of a contract) obligates that he/she will do certain job (for instance to fix, build, construct or write something) and the other side (person who ordered) the job will pay compensation.

The main difference between employment contract (in Croatian: *ugovor o radu*; in German: *Arbeitsvertrag*, in Latin: *locatio conduction operarum*) and contract of work (in Croatian: *ugovor o djelu*; in German: *Werksvertrag*, in Latin: *locatio conduction operis*) is the object of the contract. In employment contract the object is work force of particular individual and in contract of work the object is certain thing that has been stipulated as an object of that contract. Or to put it differently it is a contract which aims to perform a specific work task. The party accepting an order commits to produce a specific work. "In the doctrine it is stressed that as such a contract has the nature of agreement on the expected result. The party accepting an the order ought to produce the respective work. It is not sufficient that he undertakes specific actions in order to perform it."[16]

Examples. For instance, if one has obliged himself to work as an attorney's trainee that will be an employment contract. If one has obliged himself to make (sew) a suit this is going to be a contract of work.

If a person works as a university professor he/she will be working on the basis of an employment contract. He/she will be delivering lectures, work with students etc. on a permanent basis, as a continuous work. The object of the employment contract is work of this particular university professor as university professor. This job includes different tasks from delivering lectures to participating in examination of students. However, if another university asks the same professor to deliver a lecture at this university the object of that contract will be that particular lecture. His/her obligation is to deliver that particular lecture. After he delivers that lecture contract and university pays him/her a compensation for that contract will be performed. This contract would be a contract of work.

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[16] Dr. Marcin Krajewski: "Voluntary Work – Legal Barriers" (unpublished paper)

The consequences of this difference are very significant. For example, in contract of work the performer can confine the work to somebody else (if not stipulated otherwise); employee in employment contract is not allowed to confine the work to somebody else because employment contract is concluded in respect of work abilities (work force) of a concrete (particular) person (employee). In employment contract employee is subordinated to an employer which means that he/she should obey instructions given by the employer. In contract of work positions of the contracting parties are coordinated; obeying certain instructions constitutes only small and relatively insignificant part of the obligations of a performer. While employee must conduct its work in a workplace designated for him by the employer, performer in a contract of work can do it wherever he pleases. Finally, the most significant difference is that in employment contract employer and employee are obliged to pay monthly contributions (fees) to pension and health insurance funds plus contribution (fee) for unemployment while in contract of work parties are not obliged to do that.

Distinction blurred. However, it needs to be emphasized that, from the moment of conception of differences mentioned above between employment contract and contract of work, this distinction has been severely criticized. Critique was usually pointing at the cases which cannot be clearly subsumed under any of these contracts. For example, if a salary in employment contract is calculated not on the basis of working hours but on the basis of products actually manufactured or services provided, is it an employment contract or series of successive contracts of work?

Abuses of contract of work. Because of this last difference contract of work is often abused in a way that employer concludes a work contract with an employee instead of employment contract even though the employee continuously works under employers supervision in a designated place in employers office. This way of obtaining a labor force is, of course, cheaper for the employer.

Sanctions for abuses. Croatian law prohibits conclusion of contract of work for jobs for which employment contract should be concluded. Law also provides serious sanctions for

such abuses. Article 62 of Law on State Inspectorate (Official Gazette No. 76/99)[17] empowers labor inspector to order temporary stoppage of employers activities (operation) in case it finds that employer has been concluded contract of work **or some other contract** instead of employment contract in case in which, according to the law, he/she should have been concluded an employment contract. The same measure can be ordered if employer did not register an employee to pension and health insurance funds.

Moreover, Criminal Code (Official Gazette No. 110/97, 27/98, 129/00, 51/01)[18] in Art. 114 provides for special criminal offence called "violation of right to work and other rights on basis of work". Provision is, so-called, blank provision which means that its content is determined by other laws (in this case the Labor Code and the Law on State Inspectorate). More serious violations of Art. 62 of the Law on State Inspectorate can be also qualified as criminal offence according to Art. 114 of the Criminal Code.

Why is this important for volunteering? It is, therefore, obvious that Art. 29 of the Labor Code red in conjunction with Art. 62 constitutes *ius cogens* which means that, according to Art. 10 of the Law of Obligations, parties in contract cannot alter that provision by their own stipulations. Consequently, that means that an individual who wishes to provide services to or for the benefit of another person, by free choice and without compensation, cannot conclude contract which will enable him to do that if the services he wishes to provide are performed as continuous work (job).

For instance, person who wishes to offer legal services to a NGO on a daily or even monthly basis will not be allowed, according to the law, to conclude a contract in that respect. NGO that concludes such contract will be fined or, ultimately, its operation will be temporarily prohibited (stopped). However, if a lawyer offers service to NGO in respect of a certain lawsuit or in respect of drafting a contract or series of contracts of the same type without compensation such kind of work will be allowed. This will not be a

[17] Zakon o državnom inspektoratu (Narodne novine br. 76/99)
[18] Kazneni zakon (Narodne novine br. 110/97, 27/98, 129/00, 51/01)

contract of work because he/she is not receiving any compensation (and compensation is essential element of contract of work).

1.1.3. Note about tax laws

Tax laws and social security laws also recognize the difference between work performed on the basis of the employment contract and the contract of work. This means that difference between employment contract and contract of work has effects in tax and social security law too. This is again important for volunteering, because providing services on the basis of Art. 29 of the Labor Code or on the basis of the contract similar to the contract of work will have different effects from the point of tax and social security laws.

Persons working on a basis of contract of work are usually considered as a persons "performing the work of their own" (in Croatian: *osobe koje obavljaju djelatnost osobnim radom*) for the purposes of social security regulations (laws). The purpose of this category is to distinguish it from "employed persons" (persons in employment relationship). Similar distinction exists in tax regulations (laws) which distinguish between, so-called, "dependent labor (work)" (in Croatian: *nesamostalni rad*) and "independent labor (work)" (in Croatian: *samostalni rad*). More accurate translation would be "self-employment" and "employment".

Art. 9/1 of Regulation on Personal Income Tax (Official Gazette No. 54/2001)[19] provides clear definition of an "employment": "Employment is every relationship between employer and employee in which employee is obliged to work according to the employer's instructions." The Regulation provides additional explanation in the same Article by saying that "type of contract is not so relevant" and that we should rather look at "a whole relationship". In this respect the Regulation provides some additional criteria like: the risk is not on an employee, employee invests only his work (physical and intellectual), employer determines working hours and place of work, compensation is regularly calculated according to working hours, contract is usually concluded for

[19] Pravilnik o porezu na dohodak (Narodne novine br. 54/2001)

indefinite period, employer bears costs and expenses, provides necessary means (tools, working space etc.).

1.1.4. Conclusions and recommendations about contractual volunteering

There are two possibilities in respect of contractual volunteering for person who wishes to provide services to or for the benefit of another person by free choice and without compensation in Croatia:

a) if it constitutes a continuous work (the one that is similar to employment contract) an individual is allowed to conclude volunteer contract, according to the Art. 29 of the Labor Code, if, and only if: i) the professional exam or working experience is established by law or other regulation as the prerequisite for the performance of jobs within a certain occupation [profession]; ii) person offering services without compensation completed schools [education] for such an occupation [profession]; and iii) services that he/she will provide constitute a professional training.

b) if it constitutes of providing a single service (the one that is similar to contract of work) an individual is allowed to conclude specific inominative contract[20] according to the Art. 10 of the Law on Obligations.

This dichotomy is very important and my further analysis will rely on it.

How to draft a contract on volunteer work in order to avoid sanctions? What can be recommended to the organizers of volunteer services in Croatia, is that they should draft their contracts with volunteers for every single service that a volunteer is providing. Contracts should be concluded for performance of a specific work task. In other words, for a specific service. In any way they are not allowed to conclude a contract similar to employment contract, except in the cases provided in the Art. 29 of the Labor Code).

[20] There is no special form of contract designated for such relationship and that is why that contract as well as all contracts, which are not enumerated in the Law of Obligations is called inominative contract(s).

Volunteer contract stipulating a continuous work (volunteering) is absolutely prohibited out of the cases provided in Art. 29 of the Labor Code.

However, stipulating for a specific service in a contract on volunteer work similar to contract of work will **not** absolutely save organizer of volunteer services from legal sanctions. The labor inspectors can easily establish that organization has been concluding "other contracts" (Article 62 of the Law on State Inspectorate) instead of employment contracts and fine it for a regulatory offence. Stipulating specific service only reduces possibility that organizer of volunteer services will be sanctioned.

Is this satisfactory? Unfortunately, it seems that volunteering on the basis similar to contract of work is either not significant for volunteering as much as volunteering on the basis similar to employment contract, or, it is, at least, equally significant. "The relationship between a volunteer and the party, on behalf of which he performs his services, as a rule, does not foresee the necessity to arrive at specified result. For the volunteer to meet his obligations it is usually enough that he has just undertaken certain actions."[21] This is, probably, the reason why Portuguese law provides that volunteer services should be substantial and **performed on regular basis**. However, "...one cannot completely rule out the situation when the volunteer should accomplish a specific result and that that result could be regarded as a work task in the meaning described above."[22]

This is why, in my opinion, legal framework for volunteering in Croatia is not satisfactory. It simply rules out one important legal form for rendering volunteer services - volunteering contracts which stipulate for providing volunteer services on a regular basis (except in case of Art. 29 of the Labor Code).

1.2. Unilateral volunteering

[21] Dr. Marcin Krajewski: "Voluntary Work – Legal Barriers" (unpublished paper)
[22] Dr. Marcin Krajewski: "Voluntary Work – Legal Barriers" (unpublished paper)

Introduction. "As the name suggests, a 'unilateral volunteering relationship exists when the recipient of the volunteer services is unaware of them. For example, a parishioner may spontaneously decide to weed the garden of her church. If and when the pastor or other leaders of the church learn of these volunteering services (and either consent to them or ask that they desist – not all of us are good gardeners!), the volunteering relationship becomes bilateral. Virtually all the legal issues that arise, except of the issues of liability, do so in the context of bilateral volunteering relationships."[23]
In the context of Croatian legal system it needs to be added, as we will see, that legal issues arising from unilateral volunteering are not only limited to liability but extend also to compensation of the expenses.

Negotiorum gestio. Unilateral volunteering is, principally, not prohibited. Although Croatian legal system does not recognize unilateral volunteering as such, that conduct may be subsumed under provisions of the Law on Obligations (Art. 220 – 228) which regulate extra-contractual obligations. Namely, the legal concept applicable here is, so called, management of affairs (in Latin: *negotiorum gestio*, in German: *Geschäftsführung ohne Auftrag*)[24]. Management of affairs exists when a person, the manager, acts without authority to protect the interests of another, the owner, in the reasonable belief that the owner would approve of the action if made aware of the circumstances. The manager is bound, when the circumstances so warrant, to give notice to the owner that he has undertaken the management and to wait for the directions of the owner, unless there is immediate danger. The manager must exercise the care of a prudent administrator and is answerable for any loss that results from his failure to do so. The owner whose affair has been managed is bound to fulfill the obligations that the manager has undertaken as a prudent administrator and to reimburse the manager for all necessary and useful expenses. However, the court, considering the circumstances, may reduce the amount due on account of the manager's failure to act as a prudent administrator.

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[23] Leon Irish and Karla Simon: "Legal Issues Affecting Volunteers" (unpublished paper presented on 5th International ISTR Conference, July 2002, Cape Town, South Africa)
[24] For English legal terminology and explanation of this institute see Art. 2292-2293 of the Louisiana Civil Code.

Cases in which *negotiorum gestio* is not applicable. Article 224 of the Law on Obligations is even more interesting because it refers to the cases when *negotiorum gestio* is not applicable. It regulates the cases when person is managing the affairs of another in order to help him/her and prerequisites for *negotiourum gestio* do not exist. That person, nevertheless, has a right to be compensated for the expenses. Amount of compensation is limited by the benefit that another person (beneficiary) actually acquired. It seems that this provision fully covers all cases of unilateral volunteering.

Interfering with another's affairs. According to Art. 226 of Law on Obligations person who is managing affairs of another contrary to the explicit prohibition of that person, does not have any right that arise from *negotiorum gestio* (no right to compensation). However, if another person afterwards approves managing (*ratihabitatio*) the relationship transforms into *negotiorum gestio*.

1.3. Other laws

Law on Fire-Brigades (Official Gazette No.106/99, 117/01)[25] regulates status of voluntary firemen (Art. 25 – 28).

2. CONTRACTUAL RELATIONS

2.1. Contractual volunteering according to the Labor Code

Form of a contract. According to Art. 29/5 of the Labor Code contract on volunteer work must be concluded in a written form.

When a law requires a written form this can have two effects. Firstly, contract which is not concluded in a written form will be invalid (*forma ad solemnitatem*) or, secondly, contract is valid but its existence and validity can be proven only by presenting a written document/contract (*forma ad probationem*). However, it is not clear what the

[25] Zakon o vatrogastvu (Narodne novine br. 106/99, 117/01)

consequences of this requirement are for the contract on volunteer work. Art. 29/3 excludes application of the provisions of the Labor Code on formation of an employment contract to contract on volunteer work.

In respect of employment contract requirement of written form (Art. 11/1) is only instructive (neither *forma ad probationem* nor *ad solemnitatem*). Art. 11/2 of the Labor Code reads: "The failure of the contracting parties to make a contract of employment in writing shall not influence the existence and validity of this contract." While it is clear that these provisions do **not** apply to a contract on volunteer work, I was unable to find a good reason why is it so.

Legal status of contract on volunteer work is even more blurred by Art. 6 of the Labor Code which reads: "The general provisions of the Law on Obligations shall be applied to the formation, legal validity, termination and other issues not regulated by this or another law related to the employment contract in accordance with the nature of this contract." This means that the Labor Code provides for applicability of the Law on Obligations only to an employment contract but not on contract on volunteer work. Without this provision the Law on Obligations would be applicable because it is a general law that regulates contracts. The right question to ask then is: What law is applicable to formation of contract on volunteering? There are two interpretations:

a) The Labor Code (its provisions on formation of employment contract) is applicable despite Art. 29/4. Or to put it correctly: Principles behind those provisions are applicable. The court solving a concrete case must find applicable law. Rule *iura novit curia* (court knows the law) is very strict in Croatia. Even when there are no laws that regulate certain relationship court should find it and apply it to solve the case. This means that the court will not apply the provisions of the Labor Code on formation of employment contract but will apply principles behind these provisions. Consequence of this interpretation would be that written form does not affect existence and validity of contract on volunteering.

b) The Law on Obligations is applicable despite Art. 6 of the Labor Code. This interpretation is based on a narrow reading of Art. 6, which regulates applicability of the Law on Obligations only to employment contract. However, application of the Law on Obligations to contract of volunteer work is not affected by this provision. This means that provisions of the Law on Obligations are still applicable because they regulate contracts in general. Consequence of this interpretation is that contract on volunteer work which has not been concluded in writings will be without legal effects. Art. 70 of the Law on Obligations provides that contract which is not concluded in writings will be without legal effects unless, from the purpose of the law which provides for a written form, otherwise does not follow.

In my opinion, second interpretation is more likely to be adopted by courts. However, there is no case law that can support any of these two interpretations or some other interpretation. The same is with writings of legal scholars.

It is worth to note that offer for conclusion of a contract for which law requires special form must be made in that form and only in that form it can oblige an offeror. This means that the party who initiates negotiations for conclusion of a contract on volunteer work needs to make an offer in writing in order to be obliged and in order other party can rely on it (this, of course, if we accept interpretation under b)).

Disclosure requirements. The Labor Code only provides that an employer must inform an employee of the dangers of the job which is being carried out by the employee (Art. 21/2). This provision is via Art. 29/4 applicable to contract on volunteer work too.

Principle of good faith applies here as well (see the following chapter - 2.2.). Art. 21/2 of the Labor Code is just another, and more concrete, expression of this principle.

2.2. Contractual volunteering according to the Law on Obligations

Form of contract. To the extent that Croatian law permits conclusion of volunteer contract (contract that is similar to contract of work, see 1.1.2. above) Art. 67 of the Law on Obligations sets a general principle in respect of form of contracts by providing that no special form is required unless law provides otherwise. This means that for contract on volunteering (similar to contract of work) written form is not required. Oral agreement will be sufficient.

Disclosure requirements. Although the Law on Obligations does not explicitly provide for disclosure of the legal rights, risks, burdens, options and benefits of the relationship the Law on Obligations provides that parties of every contract during its conclusion and performance must obey the principle of good faith (Art. 12). Article 268 (right to be informed) is expression of this principle. It provides that one side in contract has a duty to inform the other side about all facts that can affect their contractual relationship. If it fails to do that, or the information is not provided in time, it will be responsible for damage caused to the other side.

However, the question remains how much is type of contract similar to contract of work important for volunteering. Moreover, place of work in a contract of work depends on performer (there is no permanent work place like in employment contract). I would say that it depends what was stipulated. If beneficiary provides the work place then disclosure requirements (following from the good faith principle) apply. However, the question remains, if there is a permanent work place, how a labor inspector will qualify such contract. Labor inspector can easily consider this element as a proof that there is a "need for an employee" and that Labor Code requires conclusion of an employment contract.

3. VOLUNTEER WORK OF MINORS

3.1. Bilateral (contractual) volunteering

3.1.1. Contractual volunteering according to the Labor Code

In Croatian law minor is a person under age of eighteen (*argumento a contrario* from Family Law, Art. 121/2 which provides that adult person is person over eighteen years of age.).

According to Art. 29/4 of the Labor Code provisions of the Labor Code that regulate employment of minors (Articles 14, 15, 16, 17) are **not** applicable to volunteer work performed by minors. This is so because these provisions fall under chapter that regulates formation of an employment contract. Art. 29/4 explicitly excludes applicability of provisions that regulate formation of an employment contract to a contract on volunteer work. Problems with this exclusion were already discussed above (under 2.1.). Same considerations are applicable (valid) here. While it is clear that these provisions do not apply to a minor who concludes a contract on volunteer work, I was, again, unable to find a good reason why is it so.

While cases of volunteering by minors may be rare the possibility still exists (especially craftsmen' trainees doing their training in a form of volunteer work).

In order to better understand this problem in respect of contracts on volunteer work I quote provisions of the Labor Code that regulate employment of minors.
Article 14 provides for minimum employment age and read as follows:

(1) A person under fifteen years of age cannot be employed.
(2) A person under fifteen years of age can exceptionally upon previously obtained approval by a labor inspector and for compensation participate in filming of a movie [film], the preparation and performance of artistic, theatrical and other similar performances in a way and within a scope and in jobs which do not threaten his or her health, morals, education or development.

(3) Permission from paragraph 2 of this Article shall be issued by a labor inspector on the basis of a petition [request] filed by a legal guardian.

Article 15 regulates legal capacity of a minor for making a contract of employment and reads as follows:

(1) If a legal guardian authorizes a minor over fifteen years of age to make a specific employment contract, this minor shall be legally capable to make and terminate this contract and to undertake all legal actions in regard of performance of obligations and the enforcement of rights from that contract or related to that contract.
(2) The authorization from paragraph 1 of this Article shall not apply to legal affairs the performance of which requires the legal guardian to obtain permission from a social work authority.
(3) The social work authority shall decide on a dispute between legal guardians or one or more legal guardians and a minor over granting authorization to make an employment contract taking into account the minor's best interests.
(4) The legal guardian may withdraw or limit the authorization from paragraph 1 of this Article or terminate employment on the minor's behalf.
(5) The person who has custodianship may give authorization from paragraph 1 of this Article only on the basis of previous permission given by the social work authority.
(6) The authorization from paragraph 1 of this Article shall be given in writing.

Articles 16 and 17 regulate prohibition of employment of minors and powers of labor inspector to prohibit employment of a minor in certain jobs. A minor shall not be employed in jobs, which may threaten his or her health, morals or development. Determination of the jobs that may threaten minor's health, morals or development, are in discretion of the minister for work and social affairs who issues a regulation in that respect.

In absence of applicability of provisions of the Labor Code to minors working on a basis of a contract on volunteering general rules apply. These rules are contained in the Law on Obligations. Art. 56/1 of Law on Obligations provides that contracts concluded by persons without legal capacity are void. However, legal guardian of such person may authorize it to conclude a contract. Moreover, contract concluded by minor without authorization of his/her legal guardian is valid if the legal guardian subsequently

authorizes that contract. The same rule applies to conclusion of a contract on volunteer work.

3.1.2. Contractual volunteering according to the Law on Obligations

Rule set out in Art. 56/1 of the Law on Obligations, as described above (3.1.1.) is applicable here too on volunteering on the basis of contract similar to contract of work. Contracts concluded by persons without legal capacity (minors) are void if they do not have an authorization from their legal guardian.

3.2. Unilateral volunteering

Art. 222/4 of the Law on Obligations provides that to liability of manager (*negotiorum gestor*) without legal capacity general rules on contractual and extra-contractual liability are apply. This means that minor will be liable for possible damage caused if he is over fourteen years of age. Minors between seven and fourteen years of age will be liable if they were able to understand their own acts. Minors under age of seven are not liable.

In general liability for minors lies on their parents (legal guardians). If beneficiary benefited from minor's management of affairs (*negotiorum gestio*) the legal relationship will be established and minor will have the right to compensation for costs only if he/she acquires an authorization from his/her legal guardian.

4. BENEFICIARY/RECEPIENT OF VOLUNTEER SERVICES

4.1. Bilateral (contractual) volunteering

4.1.1. Contractual volunteering according to the Labor Code

Beneficiary of volunteer work as defined in Art. 29, according to the Labor Code can be any natural person or legal entity for which the volunteer carries out certain jobs according to the volunteer contract (contextual reading of Article 4/2 of the Labor Code which defines the term "employer", in conjunction with Art. 29/4).

Basically, volunteers can offer their services to any employer be it NGO, public body or any other natural person or legal entity as far as the activity of those employers complies with Art. 29 and that is to say that their activity requires jobs that can be performed only by persons of a certain occupation/profession and for performance of jobs in that occupation or profession law or other regulation requires professional exam or working experience.

4.1.2. Contractual volunteering according to the Law on Obligations

Beneficiary of volunteer services based on volunteer contract similar to contract of work can be any natural person (except minors) or legal entity. The Law on Obligations does not set limits in this respect.

4.2. Unilateral volunteering

Recipient of volunteer services based on unilateral volunteering (recognized by the Law on Obligations as *negotiorum gestio*) can be any natural person (except minors) or legal entity. The Law on Obligations does not set limits in this respect.

5. COMPENSATION CONSTRAINTS AND TAX BENEFITS

5.1. Bilateral (contractual) volunteering

5.1.1. Contractual volunteering according to the Labor Code

Compensation of the expenses. An employer is allowed to pay or reimburse volunteer for the expenses related to performance of his/her work like: traveling, meals, accommodation and use of personal equipment. Even though this is not especially provided in the Labor Code the ancient legal justifies this conclusion rule (right to liberty or general freedom of action) that what is not prohibited is allowed. Moreover, tax laws mention these expenses as non-taxable income and, therefore, indirectly recognizing that an employer is allowed to reimburse them to a volunteer. Finally, if the employer has a legal obligation to pay social security contributions (fees) for a volunteer it would be unreasonable to prohibit him to reimburse volunteer for the expenses enumerated above. More important question is: Is an employer obliged to reimburse a volunteer for such expenses? In the absence of (mandatory) provisions in the Labor Code regulating this issue the answer is: No. It depends on what the parties were stipulated in their contract.

Taxation of an employer for the compensation paid to a volunteer. For the purposes of taxation the reimbursement or compensation of these expenses paid to a volunteer (as defined in Art. 29 of the Labor Code) by an employer, does not constitute income (tax base) according to the Law on Corporate Income Tax (Official Gazette No. 127/00)[26]. Provision applicable here is either Art. 5/2/5 (reimbursement for expenses to employees), by analogy (Art. 29/4 of the Labor Code), or Art. 5/2/10, which speaks about "other business expenses".

Taxation of an employer for social security contributions paid for a volunteer. Social security contributions/fees (and possible compensation that would correspond to salary in employment relationship) are also not taxable. Provision applicable is either Art. 5/2/4 (social security contributions paid to employees), by analogy (Art. 29/4 of the Labor code), or, again, as more general provision, Art. 5/2/10.

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[26] Zakon o porezu na dobit (Narodne novine br. 127/00)

Taxation of an employer for value of services received from a volunteer. The value of services received from a volunteer is, however, taxable (in absence of a provision to the contrary). This is so because the Law on Corporate Income Tax provides for taxation of (every) corporate income and than provides exceptions from this, basic rule. Income is defined as difference between revenues and costs (expenses) (Art. 3/2 of the Law on Corporate Income Tax). Revenue received from services is defined as "brutto increase of economic benefits" (Art. 4/5 of the Law on Corporate Income Tax). The value of volunteer services indisputably constitutes "an increase of economic benefits" for the employer. It is a rule in civil law systems that exceptions should be interpreted narrowly. In the absence of exception strictly mentioning value of services received from a volunteer, this value constitutes an income and, therefore, is taxable.

Taxation of a volunteer for the compensation paid by an employer. Volunteer is tax exempted for receiving all the benefits that can currently be received by ordinary employees without any tax consequences (drinks and meals, benefits granted by employer to improve vocational qualifications etc.). Provision applicable is Art. 7/1/9 on the Law on Personal Income Tax (Official Gazette No. 127/00)[27]. However, upper limit for reimbursement of such expenses exists. This limit is not set using the abstract criteria of "reasonable expenses" but in absolute terms ("up to the prescribed amount").

Taxation of a volunteer for value of services rendered as a volunteer. A volunteer (an individual) is not entitled to a deduction under the Law on Personal Income Tax for the value of services rendered as a volunteer (in absence of a provision to the contrary). This is so because the Law on Personal Income Tax provides for taxation of (every) personal income and than provides exceptions from this, basic rule. It is a rule in civil law systems that exceptions should be interpreted narrowly. In the absence of exception strictly mentioning value of services rendered as a volunteer (for example, similar to the one provided for donations in Art. 9/7), this value constitutes an income and, therefore, is taxable.

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[27] Zakon o porezu na dohodak (Narodne novine br. 127/00)

Tax incentives. It is worth to note that tax base can be reduced even more for employers that employ new employees (Art. 17). The value that can be deducted from tax base is the value of salary and social security contributions paid for a new employee (in a case of a volunteer the value deducted is only the value of social security contributions). This right lasts one year. The goal of this provision is to reduce unemployment rate by giving an incentive to employers to employ more employees. Even though the Law does not mention volunteers expressly the provision is still applicable via Art. 29/4 of the Labor Code. Moreover, it mentions trainees and, according to Art. 29 of the Labor Code, all volunteers are trainees. The same provision is contained in the Law on Personal Income Tax (Art. 43) for individual employers (natural persons).

VAT. Value added tax (VAT) applies to services provided by a volunteer (in absence of provisions to the contrary) according to the Law on Value Added Tax (Official Gazette No. 47/95, 164/98, 105/99, 54/00, 73/00)[28]. This is so because the Law on VAT provides for taxation of (every) value added to a product or service and than provides exceptions from this, basic rule. It is a rule in civil law systems that exceptions should be interpreted narrowly. In the absence of exception strictly mentioning added value resulting from services rendered by volunteer work, this value constitutes an added value and, therefore, is taxable.

However, it needs to be mentioned that not-for-profit organizations are not tax payers of the VAT. Therefore, this issue is relevant only for those employers who are conducting economic (entrepreneurial) activity.

5.1.2. Contractual volunteering according to the Law on Obligations

Volunteering on the basis of contract similar to contract of work does not constitute special category for the purposes of tax laws. General rules apply.

[28] Zakon o porezu na dodanu vrijednost (Narodne novine br. 47/95, 164/98, 105/99, 54/00, 73/00)

6. BENEFITS

6.1. Bilateral (contractual) volunteering

6.1.1. Contractual volunteering according to the Labor Code

Pension insurance. The Law on Pension Insurance (Official Gazette No. 102/98, 127/00)[29] provides in Art. 10 paragraph 1 section 3 that volunteers (as defined in Art. 29 of the Labor Code) who perform a full time job fall under the same category ("employed persons") of mandatory pension insurance as employees who perform their work on the basis of employment contract.

However, it needs to be emphasized that the Law expressly mentions volunteers (as defined in Art. 29 of the Labor Code). This means that they form a special subcategory of "employed persons" and are treated in certain respects differently from employed persons. For instance, the basis for calculating contributions to Pension Fund in a case of volunteers is not a salary like in case of employees (for obvious reason that volunteers are not receiving salary) but insurance basis that is determined in the special Pension Fund regulation. Moreover, duty to pay contributions for pension insurance fund lies, in a case of volunteers, solely on employer/beneficiary (Art. 145/1/1 of Law on Pension Insurance).

Unemployment benefits. The status of volunteer is not recognized as a special category for the purpose of providing unemployment benefits. Law on Agency in Employment and Rights during Unemployment (Official Gazette No. 32/02)[30] enumerates in Article 7 persons who are considered unemployed for purposes of this Law. Among others, unemployed is a person who is not in employment relationship. Volunteer is not a person in employment relationship and therefore is entitled to rights during unemployment as

[29] Zakon o mirovinskom osiguranju (Narodne novine br. 102/98, 127/00)
[30] Zakon o posredovanju pri zapošljavanju i pravima za vrijeme nezaposlenosti (Narodne novine br. 32/02)

provided in the Law. However, it is highly unlikely that volunteer will qualify for monetary compensation provided in Art. 30 of the Law which requires that a person should be employed for nine months in last twenty four months to qualify for the compensation. In most of the cases volunteers are persons who are for the first time entering labor market and therefore it is highly unlikely that they were in employment relationship before they start to work in jobs for which they were trained.

Health Insurance. Art. 5/1/8 of the Law on Health Insurance (Official Gazette No. 94/01)[31] provides that volunteers are insured persons under this Law. Voluntary firemen (even though Art. 29 of the Labor Code is not applicable on services they are providing) are also insured persons under the Law on Health Insurance (Art. 13/1/3)

Benefits in the case of accident in the work place. Although the Law on Pension Insurance provides for benefits in the case of accident in the work place this institute is applicable only to a very limited category of persons (like pupils and students during practical exercises in the course of their education).

The same risk for all other categories of insured persons under the Law on Pension Insurance is covered by the institute of disability pension (invalidity benefit, invalidity pension). However, the requirements for disability pension are different from requirements for benefits in the case of accident in the work place. In order to obtain disability pension the insured person must have certain number of years contributing to the pension fund. There is no such requirement for persons protected from accident in the work place.

However, the Law expressly mentions one category of volunteers, not regulated by the Art. 29 of the Labor Code, that have right to benefits in the case of accident in the work place – voluntary firemen (Art. 19/1/2).

[31] Zakon o zdravstvenom osiguranju (Narodne novine br. 94/01)

Work Safety. Law on Work Safety (Official Gazette No. 59/96, 94/96)[32] in Art. 5/1/2 especially mentions volunteers as "persons on work". This means that volunteers have all rights under work safety regulations of that Law as employees.

Taxation of Benefits. Law does not distinguish between employees and volunteers in this respect. Provisions of tax laws applicable to employees are applicable to volunteers too via Art. 29/4 of the Labor Code.

Unemployment benefits are not taxable (Art. 7/1/3 of the Law on Personal Income Tax). Pensions are taxable (Art. 12/1/2 of the Law on Personal Income Tax). Mandatory contributions for pension, health and unemployment funds are not considered as income (Art. 13/1/1,2 1and 3 of the Law on Personal Income Tax) and therefore are not taxable. However, "insurance premiums that the employers pay for their employees and other persons for life insurance, additional (supplementary) health insurance, voluntary retirement insurance..." (Art. 12/2/1 of the Law on Personal Income Tax) are taxable.

6.1.2. Contractual volunteering according to the Law on Obligations

Pension insurance. General rules apply. A person providing volunteer services on the basis of a volunteer contract similar to the contract of work does not form a special category of insured persons under the Law on Pension Insurance. For example, an attorney providing volunteer services is considered "self-employed person" according to the Art. 11 of the Law on Pension Insurance. A lawyer employed by a company, who provides volunteer services, is considered an "employed person" according to Art. 10 of the Law on Pension Insurance. Volunteering on the basis of contract similar to the contract of work does not form special ground for pension insurance.

[32] Zakon o zaštiti na radu (Narodne novine br. 59/96, 94/96)

There is no possibility for the beneficiary of the volunteer services to pay contributions for pension insurance for the volunteer who provides service(s) for him/her a based on a contract similar to the contract of work.

Health insurance. The same rules apply to health insurance. Volunteering on the basis of contract similar to the contract of work does not form special ground for health insurance. Person who is not employed or self-employed has nevertheless right to health care (it is considered insured person under the Law on Health Insurance).

Unemployment benefits. Unemployment benefits (monetary compensation during unemployment) cannot be received on the basis of volunteering on the basis of contract similar to the contract of work

Work safety. Provisions of the Law on Work Safety are applicable. If a volunteer providing services on the basis of the contract similar to the contract of work works in beneficiary's premises (work place) Art. 5/2 applies (the Law speaks of "another persons present in employer's premises"). If a volunteer providing services on the basis of the contract similar to the contract of work does not work in beneficiary's premises provisions of the Law on Work Safety are still applicable (in this case Art. 5/1/5 will be applicable). Moreover, Art. 4/2 provides that: "Provisions of this Law are also applicable to…legal entities when they use **the labor (work) of other persons**." (emphasis added)

6.2. Unilateral volunteering

The same as under *6.1.2.*

7. LIABILITY

7.1. Bilateral (contractual) volunteering

7.1.1. Contractual volunteering according to the Labor Code

Liability for damage caused by a volunteer to an employer. Volunteer who causes damage in the course of work or work related damage to the employer will be liable if he caused the damage intentionally (*dolus*) or with gross negligence (*culpa lata*) (Art. 98/1 via Art. 29/4 of the Labor Code). This means that volunteers are not liable for negligence (*culpa levis*). Burden of proof in respect of degree of liability (intent or gross negligence) lies on employer.

Liability for damage caused by an employer to a volunteer. Employer who causes damage to the volunteer will be liable according to the general rules of the Law on Obligations (Art. 102/1 via Art. 29/4 of the Labor Code). This means that employer will be liable even for negligence. Because the lowest degree of culpability (negligence) is presumed (*praesumptio*) the burden of proof lies on employer. For proving gross negligence or intent the burden of proof is on employee. This liability includes all forms of damage including damage caused by violation of the employer's obligations towards volunteer arising both from contract on volunteer work and the Labor Code.

Liability for physical injury of a volunteer in a work place. This is, however, a general rule. Exception is provided in Art. 15 of the Law on Work Safety for (physical) injuries in a work place, occupational diseases and work related diseases. In these cases employer will be liable according to the principle of strict (objective) liability. This means that degree of culpability is irrelevant. Employer will be liable even if he is not guilty. Employer will not be held liable only if he proves that (physical) injury, occupational disease or work related disease is caused by the employee, third person or by *force majeure* (*vis maior*, Act of God).

Liability for damage caused by volunteer to third persons. For damage caused in the course of work or work related damage caused by the volunteer to a third person employer will be liable unless he proves that volunteer acted correctly (Art. 170/1 of the Law on Obligations). If damage was caused intentionally the third person can obtain damages from employer or directly from the volunteer (Art. 170/2 of the Law on Obligations). Volunteer who caused damage to a third person by intent or gross negligence has an obligation to reimburse the employer for the amount of damages that the employer paid to a third person (Art. 100 of the Labor Code). This means that volunteer will never be liable for damage negligently caused to a third person. Solely an employer will compensate this damage.

Misrepresentation. As regards misrepresentation the general rule is that organization (employer) will not be bound by a contract purportedly made on its behalf by a volunteer with apparent authority to do so (*falsus procurator*, Art. 88 of the Law on Obligations). However, if volunteer's name is registered in a public register (i.e. business register, register of associations, etc.) as a legal representative (i.e. procurator) contract will oblige employer (organization) but the employer will have right to obtain damages from the volunteer.

7.1.2. Contractual volunteering according to the Law on Obligations

There are no special rules on liability caused by a volunteer who renders services based on a contract similar to a contract of work. General rules apply. One who caused damage will be liable and will be responsible for negligence, gross negligence or intent. Negligence is presumed and any higher degree of culpability has to be proved by the plaintiff.

7.2. Unilateral volunteering

General rules apply (see above 7.1.2.). However, the court can, taking into consideration all circumstances, diminish *negotiorum gestor*'s liability or completely abolish him for liability for damage caused by negligence (Art. 222/3 of the Law on Obligations).

8. INTERNATIONAL VOLUNTEERS

8.1. Bilateral (contractual) volunteering

Art. 2/2 of Law on Employment of Foreigners (Official Gazette No. 19/92, 33/92, 89/92, 52/94)[33] provides that employer is prohibited to conclude an employment contract or conclude "a contract on performance of a job" (in Croatian: *ugovor o izvršenju posla*) with a foreigner without work permit.

It seems that provision refers both to employment contract and contract of work (Art. 1/1 sets the scope of a Law by saying that: "This Law establishes prerequisites under which foreign citizen and person without citizenship may **work** in the Republic of Croatia."). Accordingly, it prohibits any form of volunteer work performed by foreigners without work permit.

Croatian law does not provide for any legal conditions or consequences (benefits or subsidies) for a Croatian citizen undertaking volunteer work in a foreign country.

8.2. Unilateral volunteering

Law does not set any limits in this respect. *Negotiorum gestio* is not considered as "work" for the purposes of Law on Employment of Foreigners.

PART TWO: ALTERNATIVES AND RECOMMENDATIONS FOR CREATING SATISFACORY LEGAL FRAMEWORK FOR VOLUNTEERING IN CROATIA

[33] Zakon o zapošljavanju stranaca (Narodne novine br. 19/92, 33/92, 89/92, 52/94)

1. INTRODUCTION

From the analysis presented above conclusion may be drawn that Croatian legal system in respect of volunteer work[34] either impedes volunteer work or, at least, is not satisfactory. Volunteering on the basis similar to contract of work (which, as we have seen, is partly allowed) is either not that much important as volunteering on the basis similar to employment contract, or, it is, at least, equally important. Croatian legal system prohibits important legal form for rendering volunteer services - volunteering contracts, which stipulate for providing volunteer services on a regular basis (except in case of Art. 29 of the Labor Code).

There are two ways how to improve present legal framework that affects volunteers in Croatia. First is interpretation of present Constitution and laws in a way favorable for volunteering. Second is legislative intervention.

2. INTERPRETATION OF EXISTING LAWS IN A MANNER MORE FAVOURABLE FOR VOLUNTEERING

As I already emphasized above *(1.1.1.)* in Croatia employer may admit volunteer to work **only** if the professional exam or working experience is established by law or other regulation as the prerequisite for the performance of jobs within a certain occupation [profession]. However, I also mentioned that the wording of Art. 29 of the Labor Code (even if red in conjunction with Art. 62 of the Law on State Inspectorate) is more open-ended (it does not use the word "only") and leaves enough space for different interpretations.

Firstly, teleological interpretation could easily lead to a conclusion that volunteer work is not prohibited. The goal of Article 29 of the Labor Code and Art. 62 of the Law on State Inspectorate is to prevent and sanction abuses. By concluding a contract on volunteer work organizer of volunteer services (usually not-for-profit organization [NPO]) does not

[34] The term (notion) "volunteer" will be, in the second part of this paper, understood as "an individual who provides services to or for the benefit of another person by free choice and without compensation." and "volunteer work"

usually aim to avoid obligations resulting from employment relationship. Courts in Croatia (and administrative bodies, like labor inspectors) can easily adopt presumption that employers who are not NPO's are violating the law unless they do not prove otherwise. For NPO's the opposite presumption should be formed. Concluding volunteer contract by NPO is in accordance with the law unless proven otherwise (that NPO aims to avoid applicability of rules regulating employment relationship).

Secondly, volunteering according to the Art. 29 of the Labor Code should be considered as labor. This means that Art. 29 does not cover cases of work that is not labor and, therefore, Art. 29 is not applicable on contracts on volunteer work not regulated by the Labor Code. If this is so general rules of contract law contained in the Law on Obligations should apply.

Thirdly, first and second interpretation can be supported by the constitutional law considerations. Right to engage in volunteer activities can be easily regarded as an integral part constitutionally protected right to: freedom of expression or/and freedom of assembly and association.[35]

However, in my opinion, it is highly unlikely that any constitutional court in a civil law system will adopt such a broad understanding of freedom of expression and/or freedom of assembly and association.[36] This is so, especially, in absence of relevant jurisprudence of the European Court of Human Rights that would support such understanding. What is more likely is that volunteering will be protected within the scope of some more general constitutional provisions like right to free development of personality (Art. 2/1 of the German Basic Law which understood as a more general right to liberty or general freedom of action; and corresponding Art. 22 of the Croatian Constitution[37]). Corresponding provision in the US constitutional law would be liberty clause contained

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[35] For example, see Monika Kopcheva: "Comparative Study of laws affecting Volunteering and Volunterism", August 2001 (unpublished paper)

[36] Such broad understanding is more likely to be adopted in the USA. For instance volunteering can be understood as a symbolic speech (for mixture of speech and conduct see *O'Brien v. U.S.* and for symbolic speech see and *Texas v. Johnson*). For a broad understanding of freedom of assembly and association in the US it is enough to mention that right to marry is considered as integral part of freedom of association.

[37] Art. 22 reads as follows: "Human freedom [liberty] and personality is inviolable."

in due process clause of XIV Amendment[38]. Or it is more likely that more specific Art 54 of the Croatian Constitution, which provides for right to work and freedom of work, will protect volunteering.

In Croatia constitutionally guaranteed rights may be limited (except the absolute ones like freedom from torture, inhuman and degrading procedure, freedom of conscience etc.) only by law in order to protect rights and freedoms of others, legal order, public morality and health. All limitations include balancing of competing rights and interests during the proportionality test (every limitation must be in proportion with a nature of the need to limitation; Art. 16/1,2 of the Croatian Constitution). There is a possibility that the Constitutional Court of Croatia come to a conclusion and render a decision that limitations set in Art. 29 of the Labor Code (in conjunction with Art. 62 of the Law on State Inspectorate) for the volunteer work impede right(s) to freedom or/and personality contained in Art. 22 or right to work contained in Art. 54 of the Croatian Constitution, in disproportional way[39].

The other possibility is that courts and/or the Constitutional court simply interpret Art. 29 of the Labor Code in accordance with the Constitution (presumption of constitutionality). Statutes (laws) that leave the possibility for various interpretations should be interpreted in a way that would not give rise to constitutional concerns. The right interpretation is the one, which is in accordance with the Constitution. Reasoning would be the following: "Art. 29 does not refer (regulate) volunteering. Its scope is limited to unpaid trainees (which are by unfortunate use of terminology called volunteers). This interpretation is correct because the interpretation that Art. 29 prohibits all forms of unpaid work (including volunteering) would be disproportional, and therefore unnecessary, impediment of the constitutional rights to freedom [liberty] and personality. It cannot be

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[38] For example in *Lochner v. New York* the U.S. Supreme court "red out" freedom of contract from due process' liberty clause. For latest understanding of due process and liberty clause see *Washington v. Glucksberg*.

[39] Or, to use the U.S. constitutional terminology, the Art. 29 of the Labor Code is impermissibly overinclusive. Use of the U.S. Constitution equal protection clause (XIV Amendment) terminology gives us reason to believe that similar provision (Art. 14 of the Croatian Constitution provides for right to equality) can be used to invalidate Art. 29 of the Labor Code in the context of Croatian constitutional law.

assumed for a legislator that he wanted to enact unconstitutional law. Therefore, the only possible interpretation would be the one in accordance with it."

In my opinion, invalidation of Art. 29 of the Labor Code by the Constitutional Court, or, even better, providing the right interpretation either by the Constitutional Court or ordinary courts would be the ideal solution. This is so because legislative intervention in this field necessary bears certain risks. Namely, in order to define the scope of its application possible Law on Volunteering should give a definition of a "volunteer" and/or "volunteering". "Such step is always accompanied by very serious risks....The definition adopted in an act of law would either have to be too broad or, too narrow. The first solution would in consequence led to the regulation embracing a number of different phenomena, which according to common sense have nothing in common with voluntary work (e.g. all kinds of traineeships with commercial entities in the hope of gaining employment there). In connection with the probability of privileges being granted to voluntary work in a future regulation, this would be likely to create a filed for all sorts of abuses. Such a situation implies the distortion of the idea of voluntary work and the deterioration of its evaluation by the general public, which could in consequence lead to the decline of interest in that kind of activity in the situations, in which voluntary work does indeed play its definitely authentic and positive role "[40] In other words: *Omnis definitio periculosa est!*

However, all the above considerations are merely speculative. In the present moment it is impossible to speculate in which way case law of Croatian courts will develop. No matter in which way the case law will develop in a present situation Croatia needs a legislative intervention in this field. In balancing the risks of overregulation and underregulation I think that *summum ius* (more law, legislative intervention) will not bring *summa injuria* (more violation and less justice). Present legal framework impedes volunteering in such degree that it is highly unlikely that legislative intervention of volunteering will make things worst. It will make situation more clear by, at least, expressly providing that volunteering is allowed out of the cases regulated in Art. 29 of the Labor Code. In my

[40] Dr. Marcin Krajewski: "Voluntary Work – Legal Barriers" (unpublished paper)

opinion, this is the best solution in a given circumstances (circumstances presented above).

3. LEGISLATIVE INTERVENTION – LAW ON VOLUNTEERING (RECOMMENDATIONS FOR LEGAL FRAMEWORK ON VOLUNTEERING IN CROATIA)

3.1. Introduction

Possible Law on Volunteering would at least clear the situation whether volunteering is allowed in Croatia or not. At least it can set that volunteering is, as a basic rule or a matter of principle allowed, and then provide for exceptions when conclusion of a contract on volunteering is not allowed (because of possible abuses).

As the basis for recommendations for possible legislative intervention in the field of volunteering I will use Recommendations and Conclusions on Legal Issues Affecting Volunteers (Recommendations) drafted by international group of experts gathered at the Stefan Batory Foundation in Warsaw from 23 -26 January 2002 to discuss and debate the legal rules and best practices relating to volunteers and volunteering in Europe. The recommendations will be modified in order to comply with existing legal rules in Croatian legal system and social setting.

3.2. Definition(s)

The law should regulate only bilateral volunteering. Rules on *negotiorum gestio* as analyzed above constitute, in my opinion, satisfactory legal framework for unilateral volunteering.

Moreover, "Virtually all of the legal issues that arise, except for the issues of liability, do so in the context of bilateral volunteering relationships."[41]

First the Law on volunteering should provide for a definition of terms such as: "volunteering", "volunteer", "volunteer services", "beneficiary" and "organizer of volunteer services". Recommendations are providing a very useful guidance in this respect:

A ***volunteering*** can be defined as "activity of providing services to or for the benefit of another person by free choice and without compensation".

Accordingly, ***volunteer services*** can be defined as "services, provision of which is permitted by law, provided to or for the benefit of another person by free choice and without compensation. Volunteer services can be provided only by natural persons".

The Law should provided that "volunteer services are not those services rendering of which is required by law or to which person is coerced or compelled to render". What amounts to coercion is regulated in law on obligations.

The Law should also provide that "the payment or reimbursement of expenses should not be regarded as compensation if this payment or reimbursement constitutes a receipt on which corporate income tax shall not be paid by employers or personal income tax paid by employees in employment relationship". We already explained above (see *5.1.1.*) and that this is the way how Croatian tax laws are determining what constitutes a reasonable reimbursement and what does not.

A ***volunteer*** can be defined as "a natural person who provides volunteer services" or as "a natural person who provides services to or for the benefit of another by free choice and without compensation".

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[41] Leon Irish and Karla Simon: "Legal Issues Affecting Volunteers" (unpublished paper presented on 5th International ISTR Conference, July 2002, Cape Town, South Africa)

The Law should make clear that "an individual who renders services to a member of his family or to another member of an association to which he belongs is not a volunteer in accordance with this Law". However, the Law should also provide that: "the status of a natural person as a volunteer will not be affected by the fact that he/she provides services to a group of natural persons that includes one or more members of his family or to an associations to which he/she belongs, so long as he does not discriminate in their favor." Moreover, the Law should provide that: "The fact that a person is providing extensive assistance or care to a member of his family, and therefore is not a volunteer according to this Law, does not affect his/her rights and benefits in respect to such services provided in another laws."

A ***beneficiary*** of volunteer services can be defined as "a natural person or legal entity that receives benefit from volunteer services".

An ***organizer of volunteer services*** can be defined as "not-for-profit legal entity (association, institution, not-for-profit company, etc.) or public body who organizes volunteer services in accordance with the aim and activities of the entity or public body as provided in law on organizers' bylaws (statutes)". Law should provide that an organizer of volunteer services could be only legal entity or public body (in Croatian legal terminology: *tijelo državne vlasti*). In present situation this is, in my opinion, the best solution. It is also more likely that the legislators will adopt this definition than allow to commercial legal entities to be organizers of volunteer services. The reason for adopting this definition is prevention of abuse of provisions of the Labor Code. It is more likely that these provisions will be abused by entities whose main goal is to make profit than by not-for-profit organizations. Although this is not the rule in every case, in balancing competing interests of enabling and encouraging volunteering and prevention of abuses of labor laws, and taking into consideration current legal and social setting in Croatia, this is, in my opinion, moderate and reasonable solution.

Law should also provide that this "Law shall not be applicable to unpaid trainees - volunteers already regulated by the Labor Code (Art. 29)". This means that unpaid

trainee – volunteers as regulated in the Art. 29 of the Labor Code will preserve their present legal status and will not be at all affected by provisions of the Law on Volunteering.

However, this does not mean that the Art. 62 of the Law on State Inspectorate will not be applicable to attempts of not-for-profit organizations or public bodies to abuse the provisions of the Law on Volunteering. If NPO or public body concludes a contract of volunteering according to the Law on Volunteering and it should have been concluded the employment contract, it is going to be fined by labor inspector. It is impossible to draft the law that will prevent all abuses. It is more reasonable, taking into consideration all competing interests, to sanction the abuses on a case-by-case basis. However, the Law on Volunteering will create a positive presumption (or remove initial suspicion) in respect of volunteering for NPO's and public bodies and raise the awareness of importance of volunteering both among general public and law enforcement instances (here labor inspectors and courts).

A ***contract on volunteer work*** should be defined as "any contract concluded between organizer or beneficiary of volunteer services and volunteer in which volunteer obliges himself/herself to provide a volunteer services." or "any contract concluded between organizer or beneficiary of volunteer services and volunteer in which volunteer obliges himself/herself to provide a services to or for the benefit of another person without compensation". This definition is broad enough to cover both contracts on volunteering similar to employment contracts (continuous volunteering) and contracts on volunteering similar to contract of work (contracts on volunteering for specific service).

The Law should also provide that "by concluding an employment contract parties are not entering employment relationship and do not have rights and obligations provided by law for employment relationship, if this Law does not provide otherwise. The Labor Code does not apply on rights and obligations arising from contract on volunteering regulated by this Law, if this Law does not provide otherwise".

The Law should also provide that, in the absence to the provisions to the contrary in this Law, the general rules of law of obligations apply. Law should especially define unilateral volunteering as "relationship when the recipient of the volunteer services is unaware of them". The Law should provide that "in respect of unilateral volunteering general rules of law on obligations are applicable". This formulation is broad enough to cover both cases of *negotiorum gestio* and the cases where *negotiorum gestio* is not applicable to unilateral volunteering.

3.3. Contractual relations

Form of contract. Law should provide the similar rule for contract of volunteering in respect of the form of the contract as provided in the Labor Code for employment contract. This means that contract should be in writing but the absence of the written form required by the Law does not affect its existence and validity. Sanction provided in the Labor Code for lack of a required form for an employment contract is fine imposed by the labor inspector to an employer. Similar provision should be inserted in the Law on Volunteering for omission of the organizer of volunteer services to conclude a contract on volunteering in a written form.

Disclosure requirements. In this respect the Law should say that the provisions of the Labor Code (Art. 21, see above *2.1.*) should be applied accordingly (*mutatis mutandis*) on the contract of volunteer work (obligation to disclose dangers of the job would lie on the on the other contracting party – organizer of volunteer services or beneficiary). The same effect can be achieved by simply copying the provision of Art. 21 of the Labor Code (of course, appropriately modified) and inserting it into the Law.

However, the Law can provide that the obligation of the organizer or beneficiary is not only limited to disclosure of dangers (risks and burdens) of the job which the volunteer will carry out but also to legal rights, options and benefits. Additionally, the Law can provide that the disclosure should be made in writing. The Law can also require from

volunteer, as Labor Code requires for an employee (Art. 19), to disclose some information[42] to the other contracting party.

It has been already stated that the Law should provide for applicability of the provisions of the Law on Obligations if not otherwise provided by this Law. This also makes applicable the provisions of the Law on Obligations that provide for applicability of the principle of good faith. This means that, in addition to disclosure requirements expressly provided in the Law on volunteering additional disclosure requirements may arise form the more general obligation to obey the principle of good faith.

Freedom of contract. General rules of law on obligations should apply (even without express provision in this respect). The volunteer and the organizer of volunteer services are free to stipulate any terms and conditions for the volunteering relationship if these terms and conditions are not contrary to the Constitution of the Republic of Croatia, mandatory provisions (*ius cogens*) or public morality (Art. 10 of the Law on Obligations). This provision also prohibits discrimination because such prohibition is contained in Art. 14 of the Constitution of the Republic of Croatia. In Croatia principle of *drittwirkung* (third party effect) applies[43]. Constitutional provisions are applicable to private law relationships too (Art. 20 of the Constitution provides that: "One who violates provisions of the Constitution on human rights and fundamental freedoms shall be held personally responsible and cannot justify its acts by a higher order." Every person has a duty to obey to the Constitution and laws and respect the legal order of the Republic." However, it also possible that the Law provide that the anti-discrimination provisions of the Labor Code (Art. 2) shall be applied accordingly (*mutatis mutandis*) on the contract of volunteer work. The same effect can be achieved by simply copying the provision of Articles 2 of the Labor Code (of course, appropriately modified) and inserting it into the Law.

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[42] For example, "illness or other circumstances which disable him or her from or essentially interferes with his or her performance of the obligations in the contract...or which endangers the life or health of the persons with whom...comes into contact during the performance of the contract..." (excerpts from the Art. 19 of the Labor Code)

[43] There is no need to construct ways of indirect application (or exceptions from a state action rule) like it was done in Germany (*Lüth case*) or in a single case in the U.S. (*Shelly v. Kraemer* or in a more sophisticated manner in *New York Times Co. v. Sullivan*)

3.4. Volunteer work of minors

In this respect the Law should say that the provisions of the Labor Code (Articles 14, 15, 16 and 17, see above *2.1.*) shall be applied accordingly (*mutatis mutandis*) on the contract of volunteer work concluded by minors.
The same effect can be achieved by simply copying the provisions (Articles 14, 15, 16 and 17) of the Labor Code (of course, appropriately modified) and inserting them into the Law.

3.5. Liability

In respect **liability for damage caused by a volunteer to an organizer of volunteer services** the Law should provide that the provision of the Art. 98/1 of the Labor Code (see above *7.1.1.*) shall apply accordingly (*mutatis mutandis*). The same effect can be achieved by simply copying the provision of the (Art. 98/1) of the Labor Code (of course, appropriately modified) and inserting it into the Law.

In respect **liability for damage caused by an organizer of volunteer services to a volunteer** the Law should provide that the rules of the Law on Obligations for liability for damage caused by an employer to a volunteer (Art. 102/1, see above *7.1.1.*) shall apply accordingly (*mutatis mutandis*). The same effect can be achieved by simply copying the provision of the Art. 102/1 of the Law on Obligations (of course, appropriately modified) and inserting it into the Law.

In respect **liability for physical injury of a volunteer in a work place** the Law should provide that the provision of the Art. 15 of the Law on Work Safety for liability for physical injury of an employee in a work place (see above *7.1.1.*) shall apply accordingly (*mutatis mutandis*). The same effect can be achieved by simply copying the provision of

the Art. 15 of the Law on Work Safety (of course, appropriately modified) and inserting it into the Law.

In respect of **liability for damage caused by a volunteer to a third person (including beneficiary!)** the Law should provide that the provision of the Art. 170/1 of the Law on Obligations and Art. 100 of the Labor Code for liability for damage caused by an employee to a third person (see above *7.1.1.*) shall apply accordingly (*mutatis mutandis*). The same effect can be achieved by simply copying these provisions (Art. 170/1 of the Law on Obligations and Art. 100 of the Labor Code), of course, appropriately modified, and inserting them into the Law.

3.6. Compensation constraints

Even though the Labor Code does not provide for a duty of employer to pay or reimburse employee for reasonable expenses this does not mean that the Law on Volunteering cannot impose such duty to organizer of volunteer services in respect of costs incurred by a volunteer. It is matter of policy whether the Law should provide for such duty or leave it to the contracting parties to stipulate freely in this respect.

What the Law should provide is that such payment or reimbursement does not constitute compensation. The rules contained in tax laws are appropriate guidelines for determination what constitutes a reasonable expense and what does not.

The payment or reimbursement of expenses should not be regarded as compensation if this payment or reimbursement constitutes a receipt on which corporate income tax shall not be paid by employers or personal income tax paid by employees in employment relationship.

Volunteer should be tax exempted such payment or reimbursement in the same way that are employees tax exempted for such payment or reimbursements of costs that they have

received from an employer "up to prescribed amount" (according to the Law on Personal Income Tax).

In respect of possible taxation of organizer of volunteer services for such payments or reimbursements to a volunteer it needs to be emphasized that not-for-profit organizations are exempted from corporate income tax. As organizer of volunteer services can be only a not-for-profit organization (legal entity) or public body (public bodies do not pay taxes) the issue is not relevant here.

3.7. Benefits

Pension insurance. As a matter of principle the Law should provide that volunteers do not have a right to pension insurance.

It is a matter of policy decision whether the legislators should include in this Law or in amendments to the Law on Pension Insurance the provision that the "long-term full time volunteers" are entitled to pension insurance. It is also a matter of policy decision how to define a notion of a "long-term full time volunteer" (4, 5, 6 or more years of full time volunteering) and on what type of pension insurance they will be entitled (just enabling an organizer of volunteer services to pay a voluntary pension insurance premium/fee to private pension insurance funds for these volunteers and providing that such type of insurance premiums/fees are not taxable; or including them into state funded pension fund system). In my opinion, the best solution would be that the Law does not regulate this issue at all. Providing "long-term full time volunteer" with pension insurance should be an option for the organizer of volunteer services. The Law should not prohibit that but should not, also, oblige organizers to pay for it. It is up to decision of organizer of volunteer services whether it is going to provide this benefit and how it will define the notion of "long-time volunteer". To achieve this special legislative intervention in pension laws is not necessary. The same effects can be achieved by providing "long-term full time volunteer" with one of various forms of (regular) rent insurance, premiums for which are paid by organizer of volunteer services. This can be done without special

legislative intervention. Organizers are allowed to do that according to general rules of insurance law. The only problem is that such insurance premiums will be taxable. For the purposes of personal income tax they constitute an income and, for purposes of corporate income tax, they cannot be considered as reasonable expenses and therefore will constitute an income too. In other words providing "long-term volunteer" with ("pension") insurance is a matter of good practice guideline and not recommendation for legislative intervention in this respect.

What the Law should provide expressly is, at least, that volunteers should have the same right to be insured from the risk of **accident in a work place** as voluntary firemen have according to the Art. 19/1/2 of the Law on Pension Insurance and that this provisions of the Law on Pension Insurance on voluntary firemen shall apply accordingly to volunteers. To this risk (accident in a work place) insurance for risk of professional disease/illness should be added.

Health Insurance. The Law should expressly provide that volunteers have a right to health insurance in accordance with general rules (Law on Health Insurance). Although they would nevertheless have this right according to general rules either as unemployed persons or on any other ground, it is important to mention this in order to avoid possible problems in interpretation. Therefore, the Law should provide that volunteers have a right to health insurance in accordance with general rules.

It could me even more recommendable to create a special category ("volunteers") of insured persons in the Law on Health Insurance (like voluntary firemen are) or to provide in the Law that volunteers have a right to health insurance as voluntary firemen and that provisions of the Law on Health Insurance on voluntary firemen shall apply accordingly to volunteers.

Unemployment Benefits. The Law should provide that volunteering does not disqualify an individual from receiving unemployment benefits. This should be expressly provided, even though the Law on Agency in Employment and Rights during Unemployment,

when enumerating in Article 7 persons who are considered unemployed for purposes of this Law, among others, provides that unemployed is a person who is not in employment relationship (and the Law on Volunteering will have a provision emphasizing that volunteer is not a person in employment relationship) in order to avoid any possible problems in interpretation.

Work Safety. There is no need for a legislative intervention in this field. The Law on Work Safety (Art. 5/2) speaks of "another persons present in employer's premises". Moreover, Art. 4/2 provides that: "Provisions of this Law are also applicable to...legal entities when they use **the labor (work) of other persons.**" (emphasis added) This means that volunteers are entitled to full protection of the Law on Work Safety.

3.8. Taxation

If the Law will define an organizer of volunteer services as "not-for-profit legal entity (association, institution, not-for-profit company, etc.) or public body who organizes volunteer services in accordance with the aim and activities of the entity or public body as provided in law on organizers' bylaws (statutes)" then many tax issues in respect of volunteering will not arise at all or will arise very rarely. This is because not-for-profit organizations are exempted both from corporate income tax (Articles 2 and 5 of the Law on Corporate Income Tax) and VAT. As organizer of volunteer services can be only a not-for-profit organization (legal entity) or public body (public bodies do not pay taxes) the corporate tax and VAT issues in respect of volunteering are not relevant here.

Tax issue in respect of social security benefits and compensation of reasonable expenses were already discussed above (see 3.6. and 3.7.)

The only remaining issue to be discussed here is taxation of a volunteer for value of services rendered as a volunteer. "In many jurisdictions, the law provides for tax benefits for donations in kind or in cash to certain public benefit organizations. The expert group has discussed intensively the question whether donations in time and effort, i.e. volunteering, should entitle the volunteer to tax benefits...The expert group unanimously

agreed that this is generally neither necessary nor desirable. *First*, there is the practical problem of measuring the value of the services provided by a volunteer. As volunteers do not receive compensation, there is no 'market price' for the services rendered. On the other hand, the same kind of volunteer activity should not be valued differently based on the qualification or usual remuneration of the volunteer...Any such stipulation is...necessarily arbitrary. Moreover, tax benefits for donations in time imply extensive documentation obligations for Organizations, which may finally be held liable for any fraud committed on the part of the volunteer. Second, the concept of volunteering as donation in time and effort is not easily reconciled with tax benefits. In the view of most members of the expert group voluntary services are 'invaluable' in the strict sense of the word."[44] I have nothing to add to these considerations and conclusion. I fully agree with them. Croatian law should not provide tax benefits for voluntary services.

3.9. International volunteers

For Croatian citizens volunteering abroad the Law should provide a higher degree of reasonableness of their costs. Volunteering abroad usually implies extra costs for living, travel and accommodation. The Law should recognize specific nature of these costs in a way that reimbursement of these costs should not be taxable. It is a matter of policy decision whether foreign volunteers should still be obliged to acquire work permit before they start to volunteer in Croatia or not.

CONCLUSION

Croatian legal system does not provide satisfactory legal framework for volunteering.

Article 29 of the Labor Code provides for a limited opportunity of volunteer work. This provision has been interpreted as exclusive. All other forms of volunteer work outside of

[44] Christian Meyn, Monika Kopcheva: 'Legal Issues Affecting Volunteers and Volunteering in Europe. Final Report on Meeting of International Experts', Warsaw, January 23-26 2002 (unpublished paper)

Art. 29 are considered prohibited. Law on Obligations provides, within general freedom of contract, possibility of volunteering on the basis of contract similar to the contract of work. This form of volunteering is limited to specific work task. It is not satisfactory because majority of volunteers carry out their job in a form of continuous work.

There are two ways how to improve this situation. First is judicial intervention, which should give different interpretation to Art. 29 of the Labor Code, more favorable for volunteering. Second is legislative intervention. In a given circumstances legislative intervention seem to be the best solution.

The potential Law on Volunteering should, at first, provide clearly that volunteering is allowed, define the notions of "volunteering", "volunteer", "organizer of volunteer services", "beneficiary" etc. and then regulate the most important issues affecting volunteers and volunteering, such as: definition of a volunteer, contractual relations, volunteering of minors, compensation constraints, tax benefits, liability, and status of international volunteers.