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## **Not-For-Profit Sector Legal Framework - the Macedonian Case**

If we would like to have a general overview of the not-for-profit possibilities in the Republic of Macedonia, we should always bear in mind the specific social and political circumstances that were left from the previous political milieu. Conditions that have raised the idea of existence of various and specialized interests and needs "peep" out from some of the political ideas that were raised during the period of self-management in former Yugoslavia. Of course, those ideas were meant to fit in a different political surrounding and to serve as a sort of "depolitization" of interests in order to perhaps prevent their appearance in a form of priorities in the frames of different political parties. Nevertheless, these ideas were a broad base that would later on facilitate people in better and easier articulation of their interests.

The main law that refers to this kind of organization dates from 1990, but it is important to mention that it was voted and passed by the Macedonian Assembly that was still not a multiparty one by that time. It is called Law for Social Organizations and Associations of Citizens<sup>1</sup> and makes an effort to shape to some extent the basic provisions that would define this issue. From the very start one must say that the law itself is lacking many elements, that would bring more precision and secure better practical organization's functioning. Very wide and broad normative framework in this case introduces confusion~~MESS~~ about rights and duties in the sector, as well as inconsistencies and insecurities in the principles the law is trying to regulate. Also, there is no law in the Republic of Macedonia that would regulate and refer to the term "foundation", fact that makes the work of some

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<sup>1</sup> Journal of Socialist Republic of Macedonia, Saturday, 21 April, 1990 Skopje, number 13. This law was valid on the whole territory of former Yugoslavia, having all former Republics accept it separately.

organizations very difficult in some circumstances, although there is in practice confirmed help and great level of acceptance of organization's activities within the country<sup>2</sup>.

There have already been some attempts to bring some new changes in the sector. Namely, Macedonia had great interest of giving more flexible provisions for allowing the registration of foreign humanitarian organizations, that did not have to fulfill some requirements even according to their domestic law, that on the other hand were required by Macedonian law<sup>3</sup>. Initiatives and amendments for solving this question are already done, especially in the frames of the Ministry of Labor and Social Policy, but objectively speaking much more than that is needed. There is no clear notion among people about wide sector possibilities, having in mind only the existing NGOs in the country.

The law does not clearly make the distinction about relation between collective and individual membership, and whether it is allowed in a combination of both in one NFPO. It should also be taken under consideration the question of associating different organizations all together or only one type of organizations together<sup>4</sup>. The question of being linked and organized in a wider form of association, by this law is imagined to have the nature of promoting job activities (having in mind syndicate associating, which lately has been changed), or other types of "special and common interests in the field they are established". The reason for associating in social organizations (as they are named by law<sup>5</sup>) is seen as realization of wider social interests. Associations of citizens are imagined to satisfy personal and common interests of the associated citizens. So far, members in these organizations are allowed to be only citizens of the Republic of Macedonia. Independence in

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<sup>2</sup>Typical example of this kind is the Soros foundation in Macedonia, which was not able to be customs exempt for the goods that were meant to be imported in the country. The question was about medical equipment, computers and other goods that were supposed to be given to schools as teaching materials.

<sup>3</sup>For example, the humanitarian organization CRIC from Reggio Calabria, under Italian law does not need to be registered at the courts where the organization's seat is. This formal question did not allow the organization to be formally registered in the Republic for quite a while, although it was performing its activities freely during that time. The humanitarian nature of their work was never put into question, the problem was solely formal.

<sup>4</sup>The term "organization" used in this text is referring both to social organizations and associations of citizens, as determined in the current law

<sup>5</sup>Maybe they were imagined to be as a sort of hybrid for foundations

their work and aim's realization are stressed and guaranteed, and at the same time requested to function in accordance with law and the Constitution. It is not clarified if in an organization are allowed to join individuals as well as entire organizations that would find the Statute principles acceptable. The only anticipated issue is joining other, international organizations, having the only condition not to be opposed to country's interests (a very broad and blurred condition) and to be mentioned in the Statute<sup>6</sup>. Naturally, they are defined to have the status of legal persons, from the moment of their inscription in the Register.

The economic side of the problem is of great importance, and unfortunately is not carefully regulated, so because of that at the same time does not yet exist enough awareness about what this sector can offer in that respect. Much of the burden and obligation that state structure has to be put to, through this sector may be relieved by giving the responsibility to more specialized or interested segments of population, that would try to handle their priority problems the best they can. Maybe this may also prove to be a better and more efficient way to attract fundraising.

Free associating is already endorsed in the Constitution of the Republic of Macedonia (Article 20<sup>7</sup>), and connected with this, the law determines "freely and voluntarily associating of citizens", where taxatively are enumerated various "economic, political, cultural, scientific, socio- humanitarian, sport, professional and other interests". This law used to serve for registering different types of organizations in the past, but practice has shown that there is a necessity of creating distinctions when in question is a political party<sup>8</sup>, or a new syndicate association, or a religious organization<sup>9</sup>. It was also the basic one

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<sup>6</sup>For this the state organ should be especially informed, in 30 day from the day of joining

<sup>7</sup>The article is as follows: "Citizens are guaranteed freedom of association to exercise and protect their political, economic, social, cultural and other rights and convictions. Citizens may freely establish associations of citizens and political parties, join them or resign from them. The programs and activities of political parties and other associations of citizens may not be directed at the violent destruction of the constitutional order of the Republic, or at encouragement or incitement to military aggression or ethnic, racial or religious hatred or intolerance. Military or paramilitary associations that do not belong to the Armed Forces of the Republic of Macedonia are prohibited.

<sup>8</sup>Political parties are at present registered by other, special law that is in effect starting from this year

for registering political parties at the beginning of the multiparty system. Recently was put into power a new law that determined new conditions, necessary to re-register a political party. One of the new elements was the number of party members (the law creator wanted to stimulate political parties' enlargement) that was determined to at least five hundred. Considering the present situation a transitional period, it is necessary for the law to make clear distinction on what authority are regulated syndicates and religious organizations, which in fact should be under the provisions of a different law. There is also an initiative from the Ministry of Labor and social policy to have a separate law for international humanitarian organizations. The same Ministry has to give additional opinion about registration of a new syndicate organization. That's why there is a present dualism, for the reason that a Syndicate can be registered, only if it is a majority organization at Republic's level.

The Statute is the main act that has to be submitted to the administrative organ (who in this case is the Ministry of Internal Affairs) that does the inscription, and has to fulfill several taxatively numbered criteria. It must specifically address issues such as: goals and tasks of associating and the manner of their achieving; form of associating and internal organization (internal organs and their rights and duties); organization's name and headquarters location; conditions that have to be fulfilled in order to allow interested persons to join as members (also their right and duties, as well as membership cessation); representing the organization; the way funds are going to be used; the possibility of joining other organizations domestic or international; the way of amending the Statute; organization's cessation and handling of the remaining property.

Supervision over the legality of organization's work is done by the Ministry of internal affairs, at the place where the headquarters are.

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<sup>9</sup> In order to register a religious organization, the request is given to the Government, which decides after previously having the opinion of the Commission for Religious Questions. Some regulations referring to this question exist in a special law from 1977

In order to establish an organization 10 adult citizens are sufficient to give their signatures as founders. The conditions for them are to be permanent residents in Macedonia and not to be convicted for felony against social order and security; against the armed forces; against humanity and international law and against the liberties and rights of persons and citizen.

Legitimate founding is considered the one that is made on a special assembly for that purpose. A founding decision must be forwarded, in which should be mentioned: the names of founders, the organization's title, seat, goals and tasks, and also the personal name of the individual authorized to take care of the registration procedure. New members should join by signing an application form for admission in the organization.

Basic data about the profile, interests and field of activities are summarized and kept at the administrative organ where the Register number is given. In order to prevent delay during registration time limits, it is anticipated in article 16 if there is no negative decision (registration rejection), or registration approved decision from the adequate organ, by the time determined for it (30 days), it is considered that the organization is registered "the next day after the time limit expiring". Otherwise, founders are obliged to submit a registration request in 15 days after the actual official founding. It is compulsory to give together with the request also the special founding decision and the record of the founder's assembly, as well as two copies of the Statute. One of the main tasks of the organ in charge is to find out whether general ideas and goals of the organization comprise activities of article 23 of the same law. Namely, this article taxatively enumerates the cases when an organization is denied its registration, or ceases to exist; if their activity is used for: destruction of the state structure and citizen's freedoms and rights guaranteed by the Constitution; endangering country's independence and peace and international cooperation;

stirring up national, racial or religious hatred<sup>10</sup>; enhancing crime or offending public morality. The decision is made by the district court in charge according to where the organization's headquarters are. The initiating legal action is done by the public prosecutor in charge. Working prohibition by law is urgent, regardless if at the hearing invited parties did not show up, although officially are warned about the necessity of their presence in the invitation.

When there are changes or amendments in the Statute, they have to be announced in 15 days after their adoption, together with the meeting's record and two copies of the Statute's new version, asking implementation of novelties (changes). If this request is rejected by the community organ in charge, a complaint may be submitted to the republic's organ in charge for those matters. If the answer is negative again, the final instance is the Supreme Court of Macedonia in 8 days from the day of the verdict. Although organization's work is being stopped immediately, before bringing the Supreme Court's decision, still the court's obligation to decide is limited in three days. In this way, it is secured the continuum of the activities in a more reasonable way, in order to diminish the eventual negative consequences.

For organization's cessation the organ in charge must be informed within 15 days after the actual cessation. There are several taxatively mentioned conditions in which an organization ceases to exist: if members decide it; if the number of members becomes lesser than 10 persons, (which is the minimum legally determined number necessary for founding); if reasons from article 23 appear or if it is noticed that the organization actually ceased working. The decision in effect is brought by the organ in charge for the register. According to article 5, all organizations have to publicly exercise their work, and it is

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<sup>10</sup> Under this provision two religious humanitarian organizations were forbidden to exercise their activities after providing that their work was mainly orientated towards religious propaganda purposes and direct involvement into country's internal political affairs.

demanding that the dimension of communicating with the public should be described in more details in the Statute.

NFPOs are obliged to dispose their funds in accordance with their purpose of obtaining them. They are allowed to have economic activities in accordance with law (article 7), but referring to this dimension in such a general manner, makes the description very unprecise and clumsy. It is only mentioned that organizations may take part in revenues that are accomplished by having economic and other activity organized by themselves. Economic activities that are made by the organizations, are obliged to fulfill the conditions issued by law for performing that activity. The court register has to contain all the data linked with this activity, in order to provide legal turnover. This activity is said that is directly done by the organization, as well as by the workers that are employed there.

Funds are expected to be acquired from membership fees, contributions, gifts and through other ways and to handle them in accordance with the Statute and law.

Organizations may acquire things, money and material rights for achieving their goals.

Control over the legality of fund acquiring is done by the Government Auditing Service in the Republic of Macedonia.

Members and persons in charge in the organization are held responsible about the legality in funds handling. Members may also make control over fund's operating in a way determined by the Statute. They may also demand from the organization's organs to enable inspection over the fund's usage. In case of cessation, after paying all the existing debts, remaining funds have to be transferred to a "social" legal person, in a previously determined statutory way. If no such provisions are found in the Statute, remaining funds are transferred to the community where the organization seat is.

Several articles of this law are dedicated to foreigner's associations that are active on Macedonian territory. Approvals of this kind are given by the Republic Secretariat for Interiors, in a special Register. If to an organization is denied registration, the complaint



may be submitted to the Executive Committee of the Assembly of Macedonia, excluding in this way the administrative procedure.

Taking under consideration the penal norms, we could see that fines are to be paid for not informing the organ in charge for joining an international organization and for changes in the Statute. Also fines are provided for activities before registering or for not informing about organization's cessation. If public order and peace are violated, 60 days of imprisonment are anticipated. Individual responsibility is given to the persons in charge for organization's operating and for those that take part in activities that are forbidden.

Referring to tax issues, it must be mentioned that NFPOs are not especially addressed or foreseen, but some elements of their activities may be mentioned in different laws because of the equal treatment with other for profit entities. These laws are the Law for Profit Taxes<sup>11</sup>, the Law for Payments Turnover<sup>12</sup>, the Law for Property Taxation<sup>13</sup>, and Customs Law<sup>14</sup>. The Law for profit taxes provides, as well as for the other organizations that have economic activities, 3% of the total revenue as tax balance expenditure (in order to get the final amount that is to be taxed), for the expenses for promotion, propaganda, advertisement and representation. Payments that are made for social funds (usually it is meant for humanitarian reasons) are the only ones that are considered as tax balance expenditures. The only additional exemption are stipends that are given to top athletes of the country<sup>15</sup>. Taxes are also deductible for the amounts of money invested in backward or underdeveloped or mountainous regions in the country. Also, tax deduction is getting the amount of money invested for human environment and nature protection, as well as international sport that is of significance for the Republic.

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<sup>11</sup> 24 December, 1993 Number 80, Page 1967

<sup>12</sup> 24 December, 1993, Number 80, Page 1971

<sup>13</sup> 24 December 1993, Number 80, Page 1976

<sup>14</sup> 2 April, 1993, Number 20, Page 401

<sup>15</sup> Profit tax rate is 30%.

The real tax exemption is provided only in the case of organizations for professional rehabilitation and employment of disabled persons from the domain of production and service activities, which activities are completely produced or performed in special (protective) workshops. In order to obtain this kind of status, a written application must be submitted to the organ for public revenues on the basis of adequate documentation. Products that are exclusively produced in this kind of workshops or firms that have at least 20 employees out of which 40% with psycho-physical defects. They are also obliged to sell to final consumers directly through selling places of their own (stores, warehouses, storehouses) and to be marked with uniform trademark. This trademark is to be determined by the Government.

NFPOs like all the other legal and economic entities have to open an account (giro account for regular operating) at the Bureau for Payment's Turnover, on the basis of legally obtained registration number at the Ministry of Internal Affairs. There are penal norms for economic violations in account handling, especially about the account non-placement of the money accepted in cash within one day, or about not informing the organ in charge for changes in the organization's status, or if payments are not executed through the account. At the same time, the responsible persons in the organizations, may be individually found responsible about this matters, economically as well as by prohibiting to deal with these kinds of activities for a certain period of time.

The Law for Property taxation provides tax exemption for buildings and land that are used for educational, cultural, scientific, social, health, humanitarian and sport aims. The exemption of this rule is being made about buildings that are in economic exploitation or are rented. Under this article exempt are also the properties of religious communities and the ones that are used for performing religious ceremonies, as well as buildings that are used as residence of their officials (except the ones that are used for economic aims). Here are

mentioned buildings that serve as places for qualification, professional rehabilitation and employment of disabled persons.

Heritage and gift tax exemption is being made for taxatively enumerated humanitarian and social institutions, Red Cross organizations, scientific, educational, cultural institutions and religious communities for the gift that have accepted as real estate or mobile property, funds etc. (article 17)

Customs law has provided several cases that are not subjected under the obligation to pay customs. Here are mentioned all types of printed or copied (recorded) materials from the field of culture, education and science. In the same group are listed all types of materials that are received for free from abroad, and which are intended exclusively for participants in international symposiums, conferences and similar meetings that are held in Macedonia. Except individuals like scientists, writers and artists for their personal work, as well as disabled persons for orthopedic and other appliances that are directly customs exempt, under this regulation are enumerated other type of organizations too. Speaking about scientific, educational, cultural, sport, humanitarian health, social and religious aims for protection of human living and working environment and for professional qualification of temporarily unemployed workers, customs are not paid by state organs, enterprises and other legal persons and entrepreneurs.

Same treatment is given to the goods that are not produced in Macedonia for enterprises, artist's associations and other organizations that are occupied with scientific, research, educational, cultural activity and technical culture, with cultural- artistic activity, with activities of protection of objects of cultural value, with news and editing activity or with activities on radio, TV or cinematography, as well as activities linked with sports and physical culture. The Red Cross of Macedonia is especially mentioned to be customs exempt for the goods that are imported from abroad to serve humanitarian aims. Enterprises and other legal persons are exempt for the free goods accepted from abroad, or currency too, if

they are intended for eliminating consequences from elemental catastrophes (earthquakes, floods and wars), with the condition those goods to be imported during the time limit determined by the Government. The field of health is mentioned separately, having enterprises and other legal persons customs exempt for import of specific equipment, devices and instruments for health and for spare parts and consumable material for using that equipment that are not produced in Macedonia. Also, enterprises that employ disabled persons are exempt for specific equipment, spare parts and consumable material that is going to be used for rehabilitation, employment and learning a new skill by them.