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## IV. Thematic Policies on welfare services

### 1. The treatment of private institutions

Public welfare institutions are not the sole providers of social services. These are also provided through local authorities, private companies and voluntary institutions, with the exception of cases described in the statute:

- Private institutions are prohibited to establish Centres and Institutions.
- Local authorities are also prohibited to establish relevant Centres and Institutions.

Private institutions and local authorities are entitled to establish and operate welfare services only under a license issued by the Government according to a precedent opinion of the Ministry of Labour and Social Policy. This is a necessary requirement in order to achieve co-ordination of services in terms of standards. However, the lack of executing administrative decisions covering the function of private companies or welfare NGOs does not guarantee their legal status in practice.

### 2. The treatment of welfare NGOs

Article 20 of FYROM's Constitution guarantees the freedom of association to all citizens. Apart from the right to establish and join political parties, Article 20 covers also the right to establish any other form of association in the economic, social cultural, or any other field of activity. This constitutional norm forms the legal foundation for the establishment and operation of NGOs in FYROM.

The procedures governing the acquisition of legal personality by an NGO, as well as the rights and limitations applied to NGOs are provided for the Law on Citizen Associations and Foundations. The Law was adopted by the parliament of FYROM in 1998 (Official Gazette of the Republic of Macedonia No. 31/98) and it regulates the establishment and operation of any NGO irrespective of the field of activity (cultural, scientific, social, economic etc).

In general, the law on Citizen Associations and Foundations is in line with the principles contained in the legislation on association of many other European countries. It can be stated that, although the Law imposes on NGOs several rules and requirements relating to their function, on the other hand it treats them as an expression of an essential democratic right in the public domain.

The Macedonian Law is of a general nature, covering all types of associations and foundations to the exclusion of those pursuing political or profit-making objectives. Therefore, every NGO with a charitable or social aim should comply with the provisions of this specific legislation.

According to Articles 2 and 7 of the law the NGOs are not allowed to have profit-making ends. Nevertheless, though the interpretation of Articles 2§3 it can be argued that, NGOs may engage in economic activities on the condition that the income should be used to pursue the aims of the association (Articles 7§3 and 64). This is important, since an NGO is authorized to promote fund raising activities ore develop certain services in the social care sector, without its non-profit making nature be called in question. Moreover, Articles 7§3 and 61§3 permit NGOs to set up commercial companies, as long as the profits are used for the NGOs' objectives, which per se should be of common interest and non-profit-making.

Non-governmental organizations have separate legal personality (Article 6), granted by the court of the area in which they have their head office. The registration procedure is compulsory for every NGO and the notification of the existence of an association is published in the Official gazette. Apart from the special public record for associations, which is kept in the first-degree courts of every area of FYROM, the first-degree court No 1 in Skopje keeps a unified record for all the NGOs registered in FYROM (Articles 43 and 51).

The NGOs record must not be confused with other types of registration procedures, which validate the capacity of an organization to conduct certain activities or to deliver services to the public (i.e. registration of institutions providing nursing care to elderly people). The records kept in the court serve the need of publicity and official declaration of all legal entities operating in FYROM and they do not entail the authorization of an NGO to carry out activities associated with the enjoyment of social rights, which are of public interest (e.g. social welfare, health care etc.).

Through the analysis of the respective Articles relating to the duty of registration and to the notification mechanism, it can be argued that the whole procedure is in fact a mere check that the association complies with the law and it does not correspond to prior authorization. The judicial authorities, apart from the typical requirements (statute, founding act etc.) may check over if the NGO in question is engaged in political activities or is opposite to the constitutional order and only in these cases shall refuse to grant legal personality. The same applies in the dissolvent procedure, which is also subject to a court ruling. With respect to the granting of legal capacity to NGOs, the typical system followed in FYROM enhances the status of NGOs, while protecting public interests and should not be seen as an obstacle to their operation.

The Law provides also the possibility for assigning to NGOs public authorizations under certain conditions (Article 12). This favourable treatment is based on general criteria (sector and kind of activity, how essential is the NGO service to the public, experience etc.) and is clear that the assignment of the authorization lies with the total discretion of the administration and its refusal can not be checked by courts. Although the Constitutional rules do not prohibit the assignment must not be discriminatory against other NGOs operating in the same field of activity. Furthermore, considering that in such cases and especially in the social welfare sector, the associations acquire a public utility status, it is important to ensure that the rights of the individual beneficiary would not be violated by the activities of the NGO.

As regards the tax treatment of the NGOs, Article 13 of the Law, provides for the possibility for tax and customs relief in accordance with the relevant legislation. The issues of favourable tax treatment of NGOs apart from being an encouragement and an acknowledgement of NGOs' work may cause problems in distinguishing genuine NGOs from organizations with profit making ends. In a situation like this, profitable organizations may opt for NGO status in order to have the same tax benefits. Therefore, the authorities should be very careful in granting tax exemptions to NGOs relates with the comparative disadvantage that the for-profits firms would have when engaging in social care services delivery. Especially when a firm deliver services to individuals or families under a contract from national or local authorities, the refusal of tax exemptions granted in most European countries, it should be noted that FYROM's legislator must take into account the competitive environment that is often occurring between the non-profit and the for profit organizations in the field of social welfare.

Articles 66-71 of the law on Citizen Associations and Foundations regulate the right of foreigners to establish an NGO in FYROM and the operation of foreign and

international NGOs as to the national ones. However, certain limitations and duties imposed to the aforementioned category of NGOs, could be construed as obstacles to the conduction of their activities in FYROM Macedonia.
Firstly the expansion of the right of association to all residents (and to non-residents if they are living in FYROM for at least one year) and not only to Macedonia citizens shows a liberal approach to the issue. The associations founded by foreigners, as well as the international NGOs have the samerights and duties applied to all other national associations. However, the registration procedure for this kind of NGOs includes also the obligation can be interpreted as a discrimination against foreign and international NGOs. Moreover, the intervention of the executive power in the granting of legal capacity disrupts the typical system, which is introduced by the Law and which leaves the whole procedure to the competent court.
On the other hand, the wording of the relevant Articles of the Macedonian Law (Articles 66§2 and 70) imply that the opinion of the Ministry of foreign Affairs is not a stricto senso administrative act, equivalent to prior authorization and in any case the court is not bound to follow it. The opinion of the Ministry should rather be seen as a procedural norm, which is necessary due to the special nature of this kind of NGOs. Besides, it should be mentioned that in some circumstances the court would need the opinion in order to confirm that the international or the foreign NGO is not involved in political activities, nor is opposing the constitutional order and the national security of FYROM.
According to the Law, the court keeps special for the international NGOs and the NGOs founded by foreigners, but this has no effect at all in the legal capacity and in the operation of these NGOs.
It is worth noting that in case of international NGOs (the Law includes in this term apart from the typical international associations, the NGOs funded in the context of bilateral or multilateral conventions) their legal capacity is not recognized automatically but is subject to the conclusion of the registration procedure. More precisely, it could be stated that the recognition (it must not be confused with the granting of legal personality) of the legal capacity of international NGOs is linked with the notification of the existence of this NGO. The fact that the Macedonian Law requires the application of the special procedures provided for national NGOs to the international ones, does not mean that the latter have a restricted status. On the contrary, it can be argued that in this point the Law is in line with the provisions of the "European Convention on the recognition of the Legal Personality of International Non-Governmental organizations" of the Council of Europe and the Hague Convention on the "Recognition of the Legal personality of Foreign Companies, Associations and Foundations", although FYROM has not ratified any of these international instruments.
The situation is different though, with regard to the international NGOs, which set up ancillary association having its seat in FYROM. In this case the applicant NGO has to submit in addition to the articles of association or documents establishing administrative authorization or any other form of publicity in the country which initially granted the legal personality, all the other documents required by any newly established national NGO. Again this obligation should not be interpreted as a restriction to the operation of international NGOs, but as a special procedure justified by the public interest to apply the same rules to all legal entities having their seat in FYROM.
From the previous analysis it appears, that the Law on Citizen Associations and Foundations is a rather progressive legislation, establishing a typical but at the same

time liberal system for the establishment and operation of NGOs. Considering the economic situation in FYROM and the need to encourage the engagement of NGOs, both national and international, in social care activities, it is important that in general the granting of legal capacity (or the recognition in case of international NGOs) is not complicated and it does not depend on prior authorizations in social missions, by avoiding any discrimination in the granting of tax- and other benefits and by welcoming the operation of humanitarian and philanthropic international NGOs in their country.

### 3. The intervention of local communities in the welfare field

The involvement of local communities in the welfare field is a critical issue both for policy makers and administrators. From a legal point of view, local government authorities are entitled to provide social care services within the scope of their new competencies, as defined in the Law of January 2002 on Local Self Government. Their participation may be active in the following sectors:

- establishment of kindergartens and homes for the elderly;
- provision of social services to disabled persons, children in need, single parent families, social excluded persons and persons with drug and alcohol addiction problems;
- development of services for homeless persons;
- design and implementation of campaign and public awareness activities.

It has to be noted that all relevant activities should follow the general principles and the scope of the National Programme for Development of Social Care.