

SECTION 4: ARTICLES

LAW ON VOLUNTEERS AND VOLUNTEERING IN CENTRAL AND EASTERN EUROPE AND EURASIA

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INTRODUCTION

Volunteering is considered a key component of NGO sustainability. As one study has noted,

A dependable workforce of volunteers ensures the long-term sustainability of civil society groups. The level of skill and commitment in the voluntary sector can boost the maturation of the civil society sector that has been stifled in many countries during eras of dictatorship. Volunteers' contributions can make these organizations more professional and efficient. . . . A virtuous circle can be created whereas civil society growth contributes to increased volunteer activity and vice versa.²

The NGO Sustainability Index has recognized the importance of volunteerism in promoting sustainability of NGO sectors since its inception; both the organizational capacity and financial viability dimensions of the Index include specific components assessing the ability of NGOs to recruit and engage volunteers. As is the case with many aspects of the Index, this year's reports reflect a divide among the countries of the Northern Tier of Central and Eastern Europe ("CEE"), the Southern Tier, and Eurasia with respect to the sophistication of NGO efforts to engage volunteers in their activities. While some countries report that there is need for improvement in, e.g., NGOs' ability to manage their volunteers, nonetheless, NGO sectors in the Northern Tier have for some years had infrastructure in place to encourage the participation of volunteers in NGO work. In these countries NGOs have come to rely substantially on volunteers; according to the Johns Hopkins Center for Civil Society Studies, volunteers constitute 35.5 percent of the civil society workforce in the Czech Republic, 29.7 percent in Slovakia, 20.8 percent in Poland, and 18 percent in Hungary.³ NGOs in the Southern Tier countries report varying levels of progress with respect to their ability to engage volunteers; Bulgaria and Croatia, respectively, report increasingly successful work with volunteers and the use of volunteer centers to promote volunteerism, while Bosnia, Montenegro, and Serbia report weaknesses in the ability of NGOs to use volunteers. In Eurasia, many countries report that NGOs are stymied in recruiting volunteers by their financial instability, limited number or quality of volunteers, or government intervention, among other factors.

As the reports make clear, the ability of NGOs to engage volunteers as a means of improving their organizational capacities and financial viability is affected by a number of factors, including the state of

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² Taryn Nelson, A Comparative Look at National Volunteerism Legislation, (Inter-American Development Bank 2005), p.3.

³ Lester M. Salamon, S. Wojciech Sokolowski, and Regina List, Global Civil Society: An Overview, John Hopkins Comparative Nonprofit Sector Project (2003), <http://www.jhu.edu/~ccss/publications/pdf/globalciv.pdf>, 15.

the economy, the labor market, cultural attitudes towards volunteering, government support or interference, and the ability of NGOs to use volunteers effectively. One factor affecting NGO success in using volunteers that has received increased attention in recent years is the extent to which a country's laws encourage or hinder volunteerism. A country's laws – those governing NGOs, as well as those governing employment, taxes, liability, and visas – can have a profound effect on the ability and willingness of individuals to volunteer, as well as on the ability of NGOs to recruit and manage volunteers. In many cases the laws in CEE and Eurasia have posed obstacles that make volunteering less attractive, thus limiting the pool of qualified and willing volunteers available to NGOs, or have inhibited NGOs from accepting volunteers. To address this issue, a number of countries in the region have moved to enact “Laws on Volunteers” that specifically define who is a volunteer and outline a volunteer's rights and responsibilities, as well as address a number of other issues critical to providing an enabling environment for volunteerism.

This year's Sustainability Index reports reflect at least nine new laws, draft laws, and drafting initiatives to improve the legal environment for volunteerism in the region.⁴ This paper will explore recent initiatives to establish laws governing volunteers in CEE and Eurasia, examine the legal issues that have historically created obstacles to volunteering in the region, report on both new and existing “Laws on Volunteers,” and analyze key issues that arise in the development of these laws.

LEGAL OBSTACLES TO VOLUNTEERISM

The flurry of initiatives to improve the legal environment for volunteering reflected in the 2007 Sustainability Index reports follows a trend, particularly evident in CEE since approximately 2001, in which countries enact laws specifically designed to recognize volunteers and provide for their rights and obligations. This trend tracks global and regional efforts to recognize volunteers, and the legal framework that supports their activities. For example, the *Resolution Adopted by the General Assembly of the UN: 56/38* recommends that states create:

“[e]nabling fiscal, legislative and other frameworks, including for community-based organizations and not-for-profit organizations engaged in volunteering [though the following means:]

- (i) Introduce enabling legislation. The goal is to encourage or inspire citizens to volunteer but allow the choice to rest with the individual or organization; it can also facilitate employee volunteering. It can provide tax incentives and subsidies for organizations, as well as coverage and protection against risks, in a way fitting the particular society. ...”⁵*

Similarly, the Council of Europe's General Assembly in a 2001 recommendation asks the Committee of Ministers to call on member states to seek to “*identify and eliminate, in their laws and practice, any obstacles which directly or indirectly prevent people from engaging in voluntary action, and to reduce tax pressure which penalizes voluntary action*” and “*give voluntary workers legal status and adequate social protection, while respecting their independence, and removing financial obstacles to volunteering.*”⁶

However, the increased interest in the laws governing volunteers and volunteerism in the region also reflects the historical reality that in many countries in CEE and Eurasia, the laws pose obstacles to

⁴ See the reports for Azerbaijan, Armenia, Bosnia and Herzegovina, Croatia, Macedonia, Moldova, Serbia, Slovakia, and Ukraine.

⁵ <http://www.unv.org/fileadmin/docdb/pdf/2007/N0147881.pdf>, 4.

⁶ Council of Europe Recommendation No. R (94)4 of the Committee of Ministers of Member States on the Promotion of Voluntary Service (1994).

volunteering. A number of countries have begun to recognize that their laws are not conducive to volunteering, and, among other issues, have identified the following:

- *Definition.* The **absence of a legal definition of “volunteer”** may result in the treatment of volunteers as paid employees. Consequently, any payment may be considered “compensation” and NGOs may be treated as running afoul of the labor law and the requirements to pay minimum wage. For example, in Latvia, CSOs were not able to reimburse volunteers’ expenses, as that would have required signing a labor contract, which in turn would have subjected the volunteers to employment laws and minimum wage rules.⁷ In Croatia and Macedonia, state inspectorates could, prior to this year, temporarily prohibit work if employment was not commenced in compliance with the law (e.g., the parties did not sign an employment agreement).
- *Rights and benefits.* In a related problem, unemployed persons who are treated as employees on account of their volunteer service may **lose the unemployment and health benefits** to which they are entitled under national law. In the Czech Republic, labor officers have eliminated unemployment benefits to unemployed individuals acting as volunteers, because these efforts have been deemed illegal work, although the volunteers receive no payments or in-kind benefits.⁸ During the drafting of the law on volunteering, a Croatian ministry opined that if unemployed individuals want to volunteer, then the unemployment benefits should be suspended for the time of their volunteer engagement.⁹
- *Taxation.* **Taxation of reimbursement** of reasonable expenses incurred in the course of volunteering poses serious obstacles to recruiting and mobilizing volunteers. For example, in Estonia, if a CSO wishes to cover the volunteer’s costs, it must do so through a labor contract or some civil contract, and all payments are subject to taxation.¹⁰ In Macedonia prior to recent reforms, as well as Montenegro, reimbursement of expenses to volunteers was taxed; only reimbursement to employees was exempted. Treatment of **voluntary labor as taxable** can also hinder volunteering; this year’s report from Latvia suggests that some government authorities have sought under the Labor Law to tax voluntary work.
- *Liability.* Volunteers and CSOs may not be aware of **liability rules** that apply if a volunteer harms a third party or was harmed during the course of service.
- *International volunteering:* **Visa and other immigration rules** may limit foreigners from volunteering in another country and thus discourage cross-country volunteering.

LAWS ON VOLUNTEERISM

To address these issues, beginning in 2001, countries in the region, and particularly in the Northern Tier of CEE, began to develop laws and regulations to remove legal impediments to volunteering. Typically, these laws have included a number of common elements, including

- the definition of a volunteer,
- the definition of what types of organizations qualify as hosts (sometimes referred to as an organizer or beneficiary) under the law,
- what types of volunteerism are subject to regulation, and
- the apportionment of rights and responsibilities between the volunteer and host.

⁷ Raymond Stephens, “Latvian Volunteerism: In Search of a Favorable Environment,” SEAL, Autumn 2001.

⁸ Vojtech Tutr, “A draft Law for Czech Volunteers,” SEAL, Autumn 2001.

⁹ Katerina Hadzi-Miceva, Comparative Analysis of European Legal Systems and Practices Regarding Volunteering, International Journal for Not-for-Profit Law, Vol. 9, Iss. 3 (2007).

¹⁰ Association of Voluntary Service Organizations and European Volunteer Centre, “Country Report on the Legal Status of Volunteers in Estonia” (2005), <http://www.avso.org/activities/countryreports/Estonia.pdf>.

In some cases, these issues were addressed in new “Laws on Volunteers,” specifically designed to address a range of legal issues related to volunteers and volunteerism. In others, provisions related to volunteers were included in laws on associations and foundations or on public benefit status.

The drafters of these initial laws faced a number of novel questions, and few models existed that would help in resolving them. At the outset, it was necessary to determine to what extent to regulate, given that volunteerism can take many forms. While there was a clear need to remove legal impediments to volunteerism, by introducing administrative barriers, regulation of ad hoc or short term volunteer initiatives could have the unintended consequences of discouraging volunteers and their hosts. Another significant issue concerned how to define volunteers as opposed to employees. As discussed above, existing laws that treated volunteers as employees for purposes of the labor laws in some cases essentially outlawed volunteerism. However, there was some danger that by removing volunteers from the scope of the labor laws, unscrupulous employers would treat legitimate employees as volunteers to avoid legal obligations such as the minimum wage, social insurance payments, and mandatory leave requirements and other benefits. On a related point, while it was important to ensure that volunteers were not subject to the labor laws for purposes of, e.g., the minimum wage, drafters of early volunteerism laws sought to preserve some workplace rights and protections for volunteers during their service – e.g., a safe working environment.

There has been little study of the impact of these laws to date, and it is therefore difficult to say with certainty how effective they have been in removing obstacles to volunteering. On one hand, these laws contain provisions that appear to remove obvious barriers to volunteerism, e.g., defining volunteer in such a way as to ensure that volunteers are not treated as employees under the labor codes. On the other, some of the laws include provisions that could be seen as erecting new barriers to volunteerism. Laws that extend rights and protections only where volunteers serve with hosts engaged in a limited set of public benefit activities may discourage volunteers from serving with other types of NGOs, however worthy. Requirements that volunteer contracts be concluded for all volunteers may discourage short term volunteers. Those laws that require maintenance of a volunteer registry create administrative burdens that may cause hosts to be unwilling to accept volunteers.

EARLY LAWS GOVERNING VOLUNTEERISM

Six laws affecting volunteers were enacted between 2001 and 2005 -- a synopsis of their provisions follows.

ROMANIA

The first regional initiative was Romania’s Law on Volunteerism (2001 and amendments of 2002), which was intended to promote volunteering by Romanian citizens and foreigners. Under this initial law, both public and private registered nonprofit entities were able to serve as hosts. The law also encouraged the participation of youth in international volunteer programs. Volunteer activities were required to be performed under a written contract, burdening short term or ad hoc volunteering. The contract was required to include provisions that address the rights of the volunteer, including among others:

- the volunteer’s right to participate in determining the program of volunteer activities,
- provision of casualty, health, and other risk insurance,
- reimbursement of costs relating to volunteering, and
- working hours that do not adversely affect the health and mental and physical well-being of the volunteer.

The contract also was required to state the volunteer’s obligation to perform the tasks required by the host, to keep confidential the host’s information, to participate in lectures organized by the host, and to

protect assets used during volunteer service. The Romanian government is considering amendments to this law which are anticipated before the end of 2008.

LITHUANIA

Lithuania in 2002 adopted the Regulation on the Organization of Volunteers. The regulation required any volunteer who worked for two consecutive days or on an event that takes more than one week to fill out information in a register, which includes his or her name, birth date, volunteer activity, the beginning and end dates of such activity, and “other information needed for the organizer” of the volunteer activities. The regulation allows for a contract on volunteering at the request of either the volunteer or the organizer, and requires the organizer to give instructions to any volunteer about the work process and any safety and health issues. A separate regulation addresses reimbursement of a volunteer’s expenses, and states the types of expenses for which volunteers are entitled to compensation.

The Regulation on Volunteerism was repealed in 2007. According to this year’s Sustainability Report from Lithuania, NGOs initially reacted to the repeal with concern that volunteering would once again become illegal. Once it became clear that the government had repealed the law because it believed the law outdated and unnecessary, and NGOs had received assurance that volunteering would not be prohibited or restricted, the sectors’ anxiety was lessened.

CZECH REPUBLIC

The Volunteer Services Act (2002) defines only some forms of voluntary activity and specifies the conditions under which the Czech State will support them. The law envisions a distinct system, and only those volunteers who work within it can receive direct government support and protection. Under this law, the state accredits certain organizations (called “delegating organizations”), on the basis of which the organizations can select and train volunteers in certain areas, sign contracts with them, and assign them to “receiving organizations.” State authorities, organizational units of the State, and authorities and administrative bodies of territorial self-governing units may use volunteer services within the purposes stipulated in the Act, in which case they will have the status of receiving organizations. Thousands of volunteers who work in different organizations or outside the framework of such organized activities are not recognized or protected by the law.

LATVIA

Volunteering in Latvia is regulated under the Law on Associations and Foundations (2003). Article 8 establishes the right of associations and foundations to engage volunteers in order to achieve their statutory objectives, defines volunteering, and prescribes general rules regarding contracts, liability, and reimbursement of expenses. For example, the law allows a volunteer to request compensation for expenses incurred during volunteer work, provided that the host organization’s governing documents or board resolutions so provide. The law also establishes liability by host organizations to volunteers injured during the course of their service if the host was either at fault or took on such liability.

POLAND

The Law on Public Benefit Activity and Volunteerism (2003) regulates volunteering for non-profit entities, non-governmental organizations, associations of units of local government, public administration bodies, and other legal entities subject to this law. The law also applies to those Polish volunteers who perform services for international organizations. The law creates an obligation on the part of the host to provide “safe and hygienic” conditions for volunteer service, including any “relevant medical examination, means of personal protection and training in the issues of safety and hygiene.” The law also requires that the host cover travel expenses and per diems imposed upon the volunteer in the course of service, and gives volunteers the right to healthcare benefits under the country’s insurance law. Further, the law obliges the organization to provide accident insurance to a volunteer who provides services for a period of not more than thirty days.

HUNGARY

The Law on Public Interest Volunteer Activities (2005) also takes a relatively narrow regulatory approach. The law regulates the provision of “public interest voluntary activities” under the umbrella of certain types of legal entities or “host organizations,” such as public benefit organizations, governmental institutions, and public or private service providers in the social, health, educational, cultural, and minority fields. The law explicitly states that it leaves intact volunteering in other types of organizations or fields of activities. However, this also implies that the extensive benefits and protections conferred through this law do not extend to other types of volunteering. Because over half of registered CSOs do not have public benefit status, this law does not cover the majority of CSOs and their volunteers. In addition, the law requires those organizations that work with volunteers to register with the competent Ministry; and it outlines a detailed and bureaucratic procedure of registration as well as conditions under which registration might be refused. An organization must keep a registry of all volunteers, and maintain the data for five years after the volunteer relationship ends. These requirements seem to place unduly high administrative burdens on volunteering. The Hungarian law is perhaps unique in regulating the volunteering relationship in such detail.

NEW LAWS

As reflected in the 2007 Sustainability Index reports, nine countries have reported in the past year on initiatives to reform the laws governing volunteerism. These laws, draft laws, and drafting initiatives have a number of similarities to the early laws on volunteering. They have built on the earlier initiatives, to some degree regulating in greater detail the allocation of rights and obligations between the host and volunteer. Below we consider the two laws – from Croatia and Macedonia – that were enacted in the past year, as well as one of the draft laws that was considered and is expected to be adopted soon, from Azerbaijan.

CROATIA

Croatia’s new Law on Volunteerism regulates “organized or formal volunteering based on a volunteering contract” between a volunteer and a host. The Law recognizes as volunteer hosts NGOs registered under the Law on Associations, the Law on Foundations, the labor law, other types of non-profit legal entities, as well as the Republic of Croatia and local and regional government bodies. The law explicitly prohibits exploitation of volunteering, and specifies that volunteering must not replace work carried out by employees. It prohibits use of volunteers in order to gain or increase profits. The law also prohibits uninterrupted volunteering lasting more than 40 hours per week for a period of six months.

The Law accords volunteers the rights, among others, to a volunteering certificate, adequate training, expert assistance and support during the volunteer work, reimbursement of agreed expenses, safe working conditions, familiarity with any dangers associated with the work, and protective equipment needed for particular work.

A volunteer is obliged to carry out his or her work consistent with the instructions of the host, to maintain the confidentiality of the host’s information, and to refuse any volunteer work that is not in accordance with the law. Volunteers also have an obligation to warn the host if carrying out an instruction that may cause damage to the volunteer, host, or any beneficiary of the work, and cannot be held liable for any resulting damage if such warning was provided.

The Law includes two features not commonly found in other volunteer laws. The Law establishes a National Board for Development of Volunteering, an advisory body, to promote volunteering. The Board is charged with suggesting means to improve the position of volunteers in society and recommending regulations governing volunteers, among other activities. The Law also contemplates a Code of Ethics for Volunteering, which is to be adopted by the Board. The Code is intended to regulate the conduct of volunteers, hosts, and beneficiaries.

MACEDONIA

Macedonia's new Law on Volunteering, enacted in July 2007, allows natural persons to serve as volunteers. The law recognizes as hosts only associations and foundations, religious communities or groups, public institutions, and state entities. The law provides that the organizer should determine the need to engage volunteers, the types of services, and the manner and procedures for providing the services in a program for volunteering. The law provides explicitly that it is illegal for a host to conclude a volunteering contract in order to evade entering into an employment contract.

The law provides in detail for the rights and protections of volunteers. Among these are the rights to:

- a written description of the work to be performed;
- be trained if needed in order to provide the requested services;
- protection and privacy of personal information;
- daily rest;
- leave of absence if justified; and
- compensation for agreed upon expenses related to the volunteer service, including a food allowance, transport expenses, expenses for official travel, and training (these expenses must be paid in the same amount as the host pays its employees.)

Foreign volunteers are in addition entitled to expenses for their stays, health insurance and travel expenses for their return trips. Host organizations must also provide conditions for volunteer work that are in accordance with the law and with any contract for the volunteer service, provide material and assets for the volunteer work, and provide workplace accident insurance, if so agreed. The host must also issue to the volunteer a volunteer booklet that contains information about the volunteering activity.

Volunteers also have obligations, including the obligation to inform the host of illnesses or other obstacles to providing service, to provide the services agreed to, to participate in training, to keep the host's information confidential, and to inform the host of any harmful consequences that he or she knows about and that may damage the host, volunteer, or third parties.

The Law exempts from the personal income tax expenses related to volunteering. It provides that by entering into a volunteer contract, an unemployed volunteer does not lose the rights associated with unemployed status.

DRAFT LAWS

AZERBAIJAN

In Azerbaijan, the Milli Majlis (Parliament of Azerbaijan) included on its work plan for the 2008 spring session a draft Law on Volunteers, and it appears likely that the law will be adopted during this session. It has been reported that this is the first time that the parliament has included in its agenda legislation expressly supported by NGOs. The law was designed to address multiple problems currently faced by volunteers and NGOs that host them, from prohibition of unpaid labor to possible harassment from tax and labor department inspectors.

The draft that was submitted to the Parliament,¹¹ much like the Croatian and Macedonian laws, defines basic concepts such as volunteer and host, explains the types of activities to which the law applies, and outlines the rights and obligations of hosts and volunteers. It allows both Azerbaijan's citizen and foreigners to volunteer. Hosts are those non-commercial organizations that carry out certain public benefit activities, which include assistance to invalids, the indigent, the elderly, refugees, and displaced persons;

¹¹ The current draft including the revisions made by the Parliament is not yet publicly available.

assistance to youth; cultural preservation; protection of the environment; and advocacy for human rights and freedoms, the rule of law, and peace and tolerance. The law includes detailed provisions allocating the rights and responsibilities of volunteers and hosts.

Notably, the draft provides for tax benefits, as yet unspecified, for the expenses involved in organizing volunteer activities. The law mandates social insurance for volunteers to be calculated based on a conditional salary determined by the organizer. In addition, for those voluntary activities requiring additional indemnification, volunteers are to receive unspecified privileges under the labor law. The state undertakes to compensate damages to health or death cause by industrial harm or professional disease.

LESSONS LEARNED

Initiatives in the CEE and Eurasia regions to enact laws that promote volunteerism, and to remove legal obstacles to volunteering, have yielded a number of lessons that can inform future reform efforts in the region and elsewhere. Below we identify the key issues raised by the laws on volunteers and drafts discussed above.

DEFINITION OF A VOLUNTEER

All of the laws and draft laws discussed above define the term “volunteer.” For the most part, these laws reflect a growing consensus on how the term should be defined. The new Macedonian law is illustrative. It defines a “volunteer” as a

- A natural person
- Who provides services, skills, or knowledge
- For the benefit of other people, bodies, organizations and other institutions
- On a voluntary basis
- Without financial or other personal gain.

Similarly, in Croatia, volunteering is considered to be “a voluntary investment of personal time, effort, knowledge and skill by which services or activities for the benefit of another person or the common good are performed . . .” without compensation or gain.

Several issues with respect to the definition of “volunteer” are worth noting. First, international experts agree that “it is of paramount importance that a framework-law on volunteerism provide the most comprehensive and flexible definitions possible for volunteers and voluntary activity.”¹² Second, definitions of volunteer generally refer to the element of voluntariness or free choice. This element distinguishes volunteering from other types of service that are provided for the public good without compensation. Generally, apprenticeship and alternative military service should not be considered volunteering, even though the service is uncompensated. The Czech law, for example, stipulates that the performance of military service or alternative civil service is not volunteering as defined by the law. Third, volunteering is considered a donation of time and effort, and volunteer services should therefore be performed without compensation. The Hungarian law provides that any financial gain by the volunteer or a close relative as a result of the volunteering will be considered remuneration. The new Croatian law states that a volunteer may not require in return for services rendered any “assets, pecuniary payment or gain” from either the host or beneficiary of the service.

One issue frequently raised in these laws is whether minors can be volunteers. Most commonly, countries prescribe age limits to volunteer engagements. These requirements are of course intended to protect

¹² Inter-Parliamentary Union, International Federation of Red Cross and Red Crescent Societies, and UN Volunteers, “Volunteerism and Legislation: A Guidance Note.”

young volunteers, but by the same token need to be flexible enough to allow young people to enjoy the benefits of volunteering. The laws discussed above have addressed this issue in different ways. According to the Czech law, a volunteer can be a natural person over 15 if volunteer services are performed on the territory of the Czech Republic, or over 18 if the services are performed abroad. The new law in Macedonia allows minors to volunteer only with the consent of their parents or guardians. The new law in Croatia regulates this issue extensively, establishing additional rules and protections for “minor volunteers” between 15 and 18 years of age, requiring written consent by a parent or guardian for such volunteers, and prohibiting them from volunteering abroad or long-term. The law permits volunteering by minors under age 15 only for the purpose of “upbringing and education” where such volunteering contributes to the minor’s development and socialization and is organized by an educational or social welfare institution.

In Hungary the law addresses volunteering not only by minors but also by people with limited legal capacity. Thus, a person with limited legal capacity and a minor above 10 years of age can perform volunteer activities, subject to the following additional protections:

- “(1) A person under 18 years of age, or an adult with limited legal capacity may pursue public interest volunteer activities that correspond to his/her age, physical, mental and moral development and abilities, and do not constitute a risk to his/her health, development and performance of school attendance obligations.
- “(2) A volunteer under 16 years of age, or an adult volunteer with limited legal capacity may not pursue public interest volunteer activities abroad.
- “(3) A volunteer under 18 years of age may not pursue public interest volunteer activities between 8 pm and 6 am.”

DEFINITION OF HOST

The laws have taken different approaches to the definition of “host” organization. Unlike some other countries, (e.g., the United States, where it would not be unusual for a person to volunteer for a private hospital), the laws from the region do not recognize as hosts private businesses – they uniformly require a host to be some type of nonprofit or government entity. In some countries, all public and private not-for-profit entities are considered hosts, and therefore have obligations towards volunteers under the law (e.g., Romania.) In others, a more limited class of organizations are considered hosts, for example, public benefit organizations (those that carry out activities for the public benefit and as a result are entitled to tax and other government benefits) (e.g., Hungary), or organizations accredited by the state (e.g., Czech Republic).

VOLUNTEERS VS. EMPLOYEEES

Some of the region’s laws have also sought explicitly to distinguish volunteering from employment. For example, the Romanian law stipulates that the volunteer activities are “other than labor relationships and the relationship arising between employer and remunerated employees.” It further prohibits volunteering contracts designed to avoid a labor agreement, and treats and such contracts as void. Macedonia’s new law explicitly prohibits a host from entering into a volunteering contract in order to avoid concluding an employment contract.

In Croatia, drafters considered the issue of how to find an appropriate balance between promotion of volunteering and protecting the rights of workers. In a preamble to an earlier draft of the law, the drafters explained that they had decided not to allow natural persons and businesses to be hosts covered by the law’s provisions. The drafters believed that “the probability that these provisions [of the Labour Law]

will be misused gets higher with legal persons which have profit-making as their primary goal.” The law ultimately enacted in addition explicitly prohibits exploitation of volunteering, and specifies that volunteering must not replace work carried out by employees. Perhaps more controversially, the law also prohibits uninterrupted volunteering lasting more than 40 hours per week for a period of six months. On one hand, this provision could be seen as a means of ensuring that employers do not evade their obligations under the labor laws by engaging a worker for full-time work absent the labor law’s protections. On the other, the provision restricts a person who wishes to be a full-time volunteer from doing so.

CONTRACTS

The region’s laws take three distinct approaches to the issue of a “volunteer contract” establishing the rights and responsibilities of host and volunteer. In some countries, a written contract is mandatory. In a variation on this approach, contracts may be mandatory for certain types of volunteering arrangements; in Macedonia, a volunteer who works more than 40 hours per month, or is a foreigner, is required to have a written volunteering contract.

In the Czech Republic, volunteer services by definition are rendered pursuant to a contract between a volunteer and host, and this contract must be written in cases of long-term service or service abroad. Similarly, in Croatia, the law regulates only those volunteering arrangements subject to a contract. While it does not bar volunteering without a contract, such arrangements are not subject to the law.

In other countries, (e.g., Latvia) the laws permit volunteer contracts to be instituted at the option of one of the parties.

In terms of what must be included in the volunteering contract, the laws have taken different approaches. Hungarian law for example, provides that a contract should include: the nature and place of the activity, the length of time assigned for the work, the rest and allowances provided to the volunteer, and the results of terminating the contract. According to the Polish law, volunteer services are performed in the scope, range, and time specified in an agreement, which should also contain a provision for its dissolution. Upon the request of a volunteer, the host is obliged to provide a written contract and issue written confirmation about the volunteer’s services.

RIGHTS AND OBLIGATIONS

The region’s volunteering laws have sought either to define the rights and obligations created by the volunteering relationship, or require that such rights and obligations be regulated by agreement. Indeed, the most recent laws and drafts reviewed here, from Croatia, Macedonia, and Azerbaijan, regulate this issue in great detail.

The Guide to the Macedonian Law on Volunteering explains that “having in mind that one of the aims of the Law was to promote volunteerism as an activity useful for the society, the results of which are beneficial for the broader community, the following principles were respected while defining the organizer of the volunteering activity: the principle of non-profitability i.e. not distributing profit and the public interest. . . . the Law also stipulates tax benefits for part of the expenditures related to volunteering, which are usually introduced as a support to the activities that are not generating profit and are of public interest. It was considered that volunteering . . . should not contribute towards the increase of the profit and the benefits of the business entities, getting some kind of value without investing any effort i.e. getting paid. Volunteering should be an activity of interest for the citizens and the state; it should contribute towards the increase of the quality of live with active participation of the people in the social life. Those are the reasons why the Law restricts the possibility for volunteering in businesses that conduct business activities and generate profit and benefit.”

Guide for Application of the Macedonian Law on Volunteering, by Mirjanka Aleksevaska, published by European Center for Not-for-Profit Law, 2008 (www.ecnl.org)

The most common rights and protections for volunteers include the rights to:

- disclosure of key terms of the volunteer arrangements, such as rights, obligations, and known dangers (e.g. Azerbaijan draft, Macedonia),
- receive reimbursement of certain expenses, such as travel expenses or a food allowance, or those that have been agreed to by the parties, associated with volunteer service (e.g., Azerbaijan draft, Croatia, Latvia, Poland, Romania),
- be trained where necessary (e.g., Croatia, Macedonia),
- expert assistance or support in the work (e.g., Croatia),
- work in a safe environment (e.g., Azerbaijan draft, Croatia, Hungary, Poland, Macedonia),
- retain unemployment benefits (e.g., Macedonia),
- receive other social benefits, in order to create incentives for volunteering or to incorporate volunteers in the state-funded social security systems (see, e.g., Poland (health care benefits)),
- provision of indemnification or insurance for workplace related diseases or injuries (e.g., Azerbaijan draft, Macedonia, Poland, Romania)
- provision of medical examinations where necessary to carry out the volunteer service (e.g., Azerbaijan draft, Poland),
- protection of private information (e.g., Macedonia), and
- leaves of absence, daily breaks, etc. (e.g., Hungary, Macedonia).

In addition to rights, volunteers have certain obligations. This is especially relevant in the cases of formal, long-term volunteer relationships, as it helps ensure the provision of the services with due diligence. Generally, laws need not explicitly regulate all duties and obligations of volunteering and can leave the particulars to be regulated in the volunteer contract. Depending on the specific type of volunteering, laws may enumerate minimum obligations or provide a general framework. Examples of volunteer obligations provided for in the region's law include the obligations to:

- perform their activities in person and obey relevant legal rules, professional and ethical requirements, and the instructions of the host organization (e.g., Croatia, Hungary, Macedonia, Romania),
- comply with rules for workplace safety and security (e.g., Azerbaijan draft),
- observe the host's internal policies (e.g., Azerbaijan draft),
- provide to the host requested information about the volunteer's service (e.g., Azerbaijan draft),
- inform the host of any harmful conditions that could cause damage to the host, volunteer, or third parties (e.g., Croatia, Macedonia)
- protect any personal data, trade secrets, or other confidential information acquired during service (e.g., Croatia, Hungary, Macedonia, Romania),
- participate in the lectures or trainings organized, initiated, or proposed by the organization (e.g., Macedonia, Romania),
- protect the assets of the hosts that they use during service (e.g., Romania), and
- inform the host of illnesses or other conditions that prevent the volunteer from giving service (e.g., Macedonia).

LIABILITY

The issue of liability is also important, because the legal framework can protect not only third parties from intentional or unintentional damage but also volunteers from damages or injuries they may cause or sustain. Generally, liability in instances of volunteering should fall under the scope of the civil law

(contracts, torts) liability. As a matter of good practice, the organizations should include volunteers under their insurance liability policies and possibly cover any forms of negligence committed by volunteers.¹³

The Hungarian law contains detailed provisions regarding liability. Specifically, volunteers must tell the organization if the activity they were instructed to perform might cause damage. Volunteers who provide such notification are not liable for resultant damages. Host organizations are required to secure liability insurance to compensate for damages that occur while providing services, and they may use a volunteer only if the liability insurance also covers damages caused by the volunteer. Host organizations are liable for damages to a third party, however, if the damage was caused by the “imputable conduct of the volunteer”; the organization may in turn demand damages from the volunteer unless otherwise stipulated in the volunteer contract and is not obliged to pay compensation. Host organizations can be exempt from liability only if they can prove that the damage resulted from an unavoidable outside event or exclusively from the unavoidable conduct of the volunteer. Finally, volunteers’ close relatives may seek compensation for damages due to a volunteer’s death.

In Romania, liability issues arising from volunteer relationship are subject to the Civil Code. In Latvia, an association or foundation is liable for harm caused during volunteering if the harm is the organization’s fault or if the organization has assumed such responsibility. The Czech law obliges the delegating organization to insure against material damage or medical harm suffered by the volunteer, whether caused by the volunteer or by a third party. Further, the volunteer is responsible only for intentionally caused harm. In Macedonia, volunteers who purposely or negligently cause damage to the host during service are liable to compensate the host under the country’s Law on Obligatory Relations; volunteers can also be held liable for the harm they cause to third parties. Hosts in turn are liable for damages to volunteers.

INTERNATIONAL VOLUNTEERING

National legal frameworks should aim to foster volunteering by their own citizens abroad as well as expand the legal protection to foreign volunteers serving in their countries. In fact, international agreements have been adopted to promote this type of cross-national volunteering, recognizing its value in promoting solidarity and collaboration and contributing to the education of young people.¹⁴

The laws from the region generally specify that both citizens and foreigners may serve as volunteers. Generally, reimbursement of the costs related to volunteering abroad (travel, accommodation, daily allowance) should not be taxable in the country of origin or in the host country.¹⁵ Under the Hungarian law, for example, per diem paid to Hungarians volunteering abroad, or to foreigners volunteering in Hungary, is not considered remuneration, provided that the allowance does not exceed 20 percent of the prevailing mandatory minimum wage.

Several of the region’s laws address the ability of foreign volunteers to obtain entry to the country and reside there during the term of volunteering. For example, a foreigner can volunteer in Macedonia if the Ministry of Labor and Social Politics grants its consent. The host must inform the Ministry that the foreigner’s volunteer service has commenced within 60 days of the Ministry’s consent.

¹³ See Legal Issues Affecting Volunteers and Volunteering in Europe, Warsaw, Poland January 23-26, 2002; and Inter-Parliamentary Union, International Federation of Red Cross and Red Crescent Societies, and UN Volunteers, “Volunteerism and Legislation: A Guidance Note.”

¹⁴ See, for example, the Council of Europe, Recommendation of the Committee of Ministers of Member States on the Promotion of Voluntary Service (1994).

¹⁵ Legal Issues Affecting Volunteers and Volunteering in Europe, Warsaw, Poland January 23-26, 2002.

CONCLUSION

The countries of the CEE and Eurasia region have made significant progress in reforming their legal environments for volunteering, revising or enacting laws to promote volunteerism, protect volunteers, and remove legal impediments to volunteer service. Among other things, these laws have undertaken one of more of the following goals:

- Distinguished volunteering from other types of legally recognized or regulated relationships;
- Clarified that volunteer services should be performed without compensation, as volunteering is understood as a donation of time and effort;
- Entitled volunteers to reimbursement of certain expenses, with such reimbursements exempt from taxation;
- Stated the rights and duties of volunteers;
- Sought to protect volunteers while they are performing voluntary activity;
- Guaranteed that volunteering will not affect the volunteer's right to unemployment benefits;
- Introduced rules to protect host, volunteers, and third parties against any damage incurred due to volunteering; and
- Enabled international volunteering.

In order to ensure that the legislative initiatives address real needs of the volunteer community, governments should make certain that all stakeholders are properly consulted and their comments are regarded in the formulation of laws on volunteering. These consultations should take into consideration clear policies and goals for regulating volunteering, as well as local traditions of volunteering. Otherwise, laws might discourage spontaneous initiatives, burden small organizations, and have a deterrent effect on the general culture of volunteering by giving advantages to one form of volunteering over others. As the examples discussed above show, progressive laws governing volunteers can be a key tool in cultivating and facilitating both formal and informal volunteer initiatives that can contribute to the achievement of social and humanitarian goals.