



Address: 1052 Budapest, Apáczai Csere János u. 17, Hungary

Phone: +36 1 318 6923

Web: www.ecnl.org

Fax: +36 1 266 1479

Twitter: @enablingNGOLaw

VOLUNTEERING: EUROPEAN PRACTICE OF REGULATION¹

June 30, 2014

1. INTRODUCTION

Volunteering is an inherent part of thriving civil society, contributing to its development and prosperity. Furthermore, the value of volunteerism could be measured in terms of both social and economic capital. International bodies, such as United Nations General Assembly², European Parliament³ or Parliamentary Assembly of the Council of Europe⁴ encourage governments to recognize the value of volunteering and promote volunteerism. In response to this numerous countries developed comprehensive legal frameworks regulating and protecting volunteerism and persons engaged in volunteering activities.

The present paper will discuss different regulatory approaches towards volunteering. It will present various models of regulation demonstrated on the country examples from Europe. The paper will also touch upon the definition of volunteering and benefits of volunteering engagement for the society. It will explain the necessity of the regulation and promotion of volunteering and will describe common issues included in the volunteering regulations. The paper will describe different models of regulation existing in Europe and demonstrate their characteristic attributes with the country examples. Consequently, it will try to analyze their positive and negative aspects and based on the lessons learned it will provide recommendations for future legislative initiatives.

2. DEFINITION OF VOLUNTEERING

Due to the lack of universal understanding of the term “volunteer” and “volunteering activities”, there is no uniform definition of volunteering. Several international bodies, including

¹ The present paper was prepared by European Center for Not-for-Profit Law (ECNL) on demand of the Legal Transformation Center and Assembly of Pro-Democratic NGOs of Belarus. The European Center for Not-for-Profit Law is a leading European resource and research center in the field of civil society law, based in Budapest. It aims to promote an enabling legal and fiscal environment for civil society in Europe and convey European experiences to other parts of the world.

² For all United Nations resolutions on volunteering please consult: <http://www.unv.org/news-resources/resources/un-resolutions.html>

³ See for example: European Parliament: *Resolution of 12 June 2012 on recognising and promoting cross-border voluntary activities in the EU, 2012*

⁴ See for example: Parliamentary Assembly of the Council of Europe: *Recommendation 1496: Promoting volunteering in Europe, 2001.*



Address: 1052 Budapest, Apáczai Csere János u. 17, Hungary

Phone: +36 1 318 6923

Web: www.ecnl.org

Fax: +36 1 266 1479

Twitter: @enablingNGOLaw

United Nations⁵, International Labor Organization (ILO) and Council of the European Union⁶ tried to define volunteerism. For the purposes of this paper, a definition developed by the International Labor Organization (ILO) for the *Manual on the Measurement of Volunteer Work*⁷ might be the most illustrative:

Volunteer work is: *Unpaid non-compulsory work; that is, time individuals give without pay to activities performed either through an organization or directly for others outside their own household*

Following are the key attributes of the volunteer activity derived from the definition:

1. Volunteering involves an activity or work. Volunteering is an activity that contributes to the production of goods and services, not solely for the benefit of a volunteer. Also, the activity should be performed during certain time period, according to the international standards at least one hour.

2. Volunteering is unpaid. Volunteering is by definition an engagement without pay or compensation. Nevertheless, volunteers may receive stipends or their indispensable costs may be reimbursed (e.g. travel costs, accommodation) without violating the definition of volunteering. These forms of cash or in-kind support, however, cannot constitute a significant compensation with regards to the local standards where the volunteering activity is being performed.

3. Volunteering is done by a free choice. Volunteering shall not be compulsory and must involve an element of choice. Court- mandated unpaid work constituting part of a prison sentence or military services are excluded from the definition. The mandatory unpaid work in the post- soviet countries is not considered as volunteering as well.

4. Volunteering embraces both individual (direct) and organization- based form. Volunteering in general shall embrace both volunteer activities, either those done through or for organization or those conducted directly for other household. However, some countries distinguish between these two forms and regulate only “organization- based” volunteering.

⁵ United Nations Volunteers, 1999: “Volunteering can be defined broadly as the non-profit, non-wage and non-career contributions of individuals for the well-being of their neighbours, community or society at large.”

⁶ Council of the European Union: *Decision on the European Year of Voluntary Activities Promoting Active Citizenship* (2011), p.3

⁷ International Labor Organization, *Manual on the Measurement of Volunteer Work*, 2011.



Address: 1052 Budapest, Apáczai Csere János u. 17, Hungary

Phone: +36 1 318 6923

Web: www.ecnl.org

Fax: +36 1 266 1479

Twitter: @enablingNGOLaw

5. Volunteering is done outside of the volunteer's household and is not limited to a particular beneficiary. Volunteering is done for other persons than those that live with the volunteer and might be conducted for a wider scope of beneficiaries, including also environment or animals etc.

In addition, ILO definition embraces also volunteering done in all types of institutional settings; such as nonprofit organizations, government, private businesses, etc. Many countries, however, allow only nonprofit organizations and state offices to be the host organizations for volunteers.⁸

3. WHY TO REGULATE VOLUNTEERING?

While the economic⁹ and social contribution of volunteering to the society is indisputable and deserves protection, there is no unified way of ensuring volunteers' and host organizations' rights and duties are regulated and protected. The lack of regulation does not have to necessarily constitute a problem; however the complete absence of legal provisions might impede performance of volunteering activities. Problems usually originate in the absence of distinct legal status of volunteers that would distinguish them from employees, set requirements on their activity and provide them with rights and benefits. Following is a deeper analysis of the legal obstacles arising from the unfavorable legal frameworks identified in Europe¹⁰:

- i. The lack of **Legal definition** of "volunteer" might result in the treatment of volunteers as paid employees followed by the application of labor law requirements to them (e.g. compulsory insurance, minimum wage rules etc.). Due to this, CSOs hosting volunteers might be punished for failing to comply with these provisions. For example in **Turkey**, CSOs have been previously fined for having uninsured workers on board as compulsory employee insurance applies indifferently also to volunteers.¹¹ The same problem has been reported in **Albania**, where CSOs have an obligation to declare and register volunteers at the Employment Office and are forced to pay their insurance upon a threat of harsh penalties.¹²

⁸ International Labor Organization, *Manual on the Measurement of Volunteer Work*, 2011.

⁹ See for example recent estimates of the economic value of volunteering by the John Hopkins' Center: <http://ccss.jhu.edu/research-projects/volunteer-measurement/about-volunteer-measurement>

¹⁰ For more examples on legal obstacles to volunteering please consult: Catherine Shea and Katerina Hadzi-Miceva: *Law on volunteers and volunteering in Central and Eastern Europe and Eurasia*, 2007

¹¹ Third Sector Foundation of Turkey (TUSEV): *Monitoring Matrix on Enabling Environment for Civil Society Development, Country report: Turkey*, 2013.

¹² Partners Albania: *Monitoring Matrix on Enabling Environment for Civil Society Development, Country report: Albania*, 2013.



Address: 1052 Budapest, Apáczai Csere János u. 17, Hungary

Phone: +36 1 318 6923

Web: www.ecnl.org

Fax: +36 1 266 1479

Twitter: @enablingNGOLaw

- ii. **Rights and benefits.** As a result of the absence of a distinct status of volunteers the volunteering activities performed outside of the labor law regulation might be considered as illegal work. This might cause a loss of certain benefits for the volunteer, such as social security or unemployment benefits.
- iii. **Taxation** of reimbursement of the costs related to the volunteering activity remains a big problem of unfavorable legal frameworks. Since reimbursement shall cover only indispensable expenses of a volunteer, any amount that is withheld from the total sum has significant value and causes practical impediments to the recruitment of volunteers. Some European organizations (e.g. Robert Schumann Foundation in Poland) identified taxation of the reimbursement as the main obstacle when sending foreign volunteers to **Georgia**. This issue shall be addressed by the new draft Law on Volunteering that indicates the amendments to the Tax Code introducing volunteerism-related tax benefits. In **Estonia**, only non-profit associations and foundations operating in the public interest are allowed to reimburse the expenses of a volunteer without withholding an income tax from the total amount to be paid.
- iv. When **liability rules** are not clearly set for the volunteering activity it might be difficult to figure out who is responsible for the harm caused to the third party by conducting a volunteering activity as well as for the harm caused to the volunteer. Liability regulations are usually different in the civil law and in the labor law and if there is no distinct status of a volunteer it is not clear which law shall be applied in the described situations. The best practice is to regulate this under a separate volunteering regulation in order to protect both volunteers and third parties.
- v. **International volunteering** also deserves special attention of the legislators. In order to support the cross-country cooperation the volunteering regulation shall bring clear rules on the procedures of obtaining the visas and provide protection for foreign volunteers or nationals volunteering abroad. Common challenge remains the determination of which regulation shall prevail in the case of international volunteers, i.e. the one of the country of origin or of country where the volunteering activity is performed.

Countries might decide to further develop their volunteering legal frameworks in order **to achieve certain positive goals**¹³, such as economic development, promotion of national citizenship and civic engagement, reduction of unemployment and others. For example, amendment to the **Czech** Volunteer Services Act from June 2014 introduced evaluation

¹³ UN Volunteers: *Drafting and Implementing Volunteerism Laws and Policies*, 2011



Address: 1052 Budapest, Apáczai Csere János u. 17, Hungary

Phone: +36 1 318 6923

Web: www.ecnl.org

Fax: +36 1 266 1479

Twitter: @enablingNGOLaw

certificates that shall serve as an official attestation of professional training helping unemployed persons to find a job.

Quite new but very important incentive for volunteering regulation is the **establishment of disaster response mechanism**, aiming to manage and improve the efficiency of spontaneous volunteerism during natural disasters. The support for creation of these mechanisms was pronounced in the 2005 World Conference on Disaster Reduction. Governments were encouraged to promote community participation and strategically manage the volunteer resources in emergency situations.¹⁴

4. THE SCOPE OF REGULATION

Since countries aim to pursue different goals by regulating volunteerism, there is no standard for determining the scope of regulation. The whole context of the country, i.e. the political, economical, cultural and social situation in the country, as well as the existing volunteering traditions play very important role here. According to the practices in the European countries following issues are addressed the most frequently:

- Definitions of the volunteer and volunteer activity;
- Definition of a host organization;
- Content of the volunteering contract and conditions upon which it has to be concluded;
- Rights and obligations of a volunteer and of a host organization towards each other;
- Liability provisions applicable to the persons that do not respect the volunteering regulations;
- Taxation of expenses related to the volunteering activity, e.g. travel costs, accommodation for volunteers outside of the location of the activity;
- Incentives for persons to engage in volunteering activities such as social benefits, contribution to the unemployment benefits;
- Conditions for international volunteering, namely volunteering of nationals abroad and foreigners inside the country.

The common challenge of the regulations on volunteering is **not to over regulate** the area. Creation of complicated volunteering systems or introducing too many requirements on the host organizations and volunteers might discourage them from establishing volunteering relationship. For example, the definition of the term “volunteer” shall recognize different forms of volunteering; e.g. one-time volunteering, short term engagement or long-term volunteering; volunteering through organization and individual volunteering; and address them accordingly.

¹⁴ Ibid



Address: 1052 Budapest, Apáczai Csere János u. 17, Hungary

Phone: +36 1 318 6923

Web: www.ecnl.org

Fax: +36 1 266 1479

Twitter: @enablingNGOLaw

Each form should be provided with different conditions and there should be a possibility to engage in spontaneous short-term volunteering activities also outside of the legal framework. For example, in **Czech Republic**, short-term volunteering is easier to establish, but long-term one is given a broader protection; e.g. long-term volunteers (min. 20h per week) have the period of volunteering included in the overall calculation of the unemployment benefits. Also registration and reporting mechanisms might be rather counter-productive. They might cause difficulties to the state authorities regarding their implementation and administration and create additional burden for host organizations.

The recent developments in volunteering practices in Europe show that *international volunteering* has been on a rise and is gaining its importance mostly in the countries with feeble engagement of nationals in volunteerism. Legislators started to address this issue by providing separate conditions for foreign volunteer, such as allowing for higher reimbursement due to the travel costs and accommodation or guaranteeing easier entry and residence conditions, e.g. no visas.

5. MODELS OF REGULATION

The approaches for regulating volunteerism vary from one country to another, depending on the domestic needs and concerns. Besides the countries with absolutely no recognition of volunteers in their legal frameworks, such as Turkey or Albania, we can identify three general models of the regulation of volunteering in Europe. Each model could be established with various modalities depending on several factors such as level of participation in volunteering activities, objective of the law or existing legal framework of the country. Following are the three models of volunteering regulations, characterized by their general attributes, as well as possible advantages and disadvantages of their adoption:

1. Customs, practices, self-regulation and analogy in law as regulatory measures

The characteristic attribute of this model is that there is no national law regulating the distinct legal status of volunteers. All the relevant rules applying to this area are included either in non-written customs and practices, or they are vested in the self-regulation of the volunteer organizations. However, it has to be emphasized that these regulatory measures do not touch upon every issue that is affecting volunteerism and therefore some legal provisions from the general legal framework apply to volunteers; e.g. there cannot be applied any unwritten practice or self-regulation by organization for the conditions on taxation.

- This model is usually existent in the countries with the well-developed tradition of volunteering; e.g. Scandinavian countries or United Kingdom, where the definition of



Address: 1052 Budapest, Apáczai Csere János u. 17, Hungary

Phone: +36 1 318 6923

Web: www.ecnl.org

Fax: +36 1 266 1479

Twitter: @enablingNGOLaw

volunteering engagement and all the relevant provisions could be derived from customs and practices or self-regulated by organizations.

- Positive aspect of this model is that the tradition of volunteering is already popularized within the country and there is no need to introduce any legally binding regulations.
- The challenge of this model consists in the need of existing engrained practices that are actually creating the unwritten legal framework for volunteering. In the countries with less-developed culture of volunteering there are no such customs that would regulate the volunteering engagement and therefore laws could introduce the necessary regulatory tools.

Country examples:

Sweden

Sweden is among best examples of the countries with deeply ingrained tradition of volunteering. The country's priority is to preserve the independence and autonomy of the sector and avoid the adoption of any legal regulation. Therefore all the legal conflicts arising from the volunteerism are solved by the case law. The contracts are concluded according to the agreement between volunteer and host organization. There are no provisions regulating taxation of reimbursement of volunteer's indispensable expenses. Nevertheless, the general provisions of the Tax Code provide that income beneath certain threshold is not taxed. Since the total amount of reimbursement in most of the cases does not exceed this limit, the volunteers usually do not pay any tax.¹⁵

United Kingdom

Situation in UK is also rather specific. There is no national legislation that refers explicitly to volunteers and, therefore, only general laws apply to the individuals performing volunteering activities. Voluntary organizations; i.e. organizations hosting volunteers, are perceived as self-governing bodies and thus they are allowed to regulate their activities and internal affairs themselves. All the conditions of the volunteering engagement are therefore depending on the self-regulation of the organization and agreement between volunteer and organization. Nevertheless, there is a Compact Code of Good Practice on Volunteering in place that recognizes the value of volunteering and identifies the undertakings that should be done in order to remove obstacles to volunteerism. The challenge is however to ensure the

¹⁵ GHK: *Study on volunteering in the European Union, Country Report Sweden*, 2012, available at: http://ec.europa.eu/citizenship/pdf/national_report_se_en.pdf



Address: 1052 Budapest, Apáczai Csere János u. 17, Hungary

Phone: +36 1 318 6923

Fax: +36 1 266 1479

Web: www.ecnl.org

Twitter: @enablingNGOLaw

implementation of the Code, as it still lacks support from the government and is not legally binding.¹⁶

II. Regulation included in various laws affecting volunteerism

This model of regulation addresses the various issues affecting volunteering in the separate laws, according to the nature of the provision. The definition of the term “volunteer” or “volunteering activity” and provisions about rights and benefits of volunteers are usually included in the laws regulating different forms of CSOs, e.g. Latvia; law on public benefit status, e.g. Poland; or other laws, e.g. Code of Obligations in Switzerland. Some countries recognize only young volunteers and the provisions regulating their volunteering activity are included in the laws on youth policies; e.g. Kosovo and Belarus. Consequently, some provisions might be included also in labor laws and tax regulation in the tax laws.

- This model allows for the fast response to the accurate needs for regulation, as it does not involve long- term consultations, analysis and mostly lengthy political agreements.
- The challenge might be to ensure the consolidation of the provisions included in different laws on volunteering, which is needed for their impact in practice. For example if the distinct legal status of a volunteer is established by the law on NGOs it shall be also recognized by the tax laws and provides the conditions on taxation of reimbursement of volunteers.
- At the same time “fast response” regulations might exclude various stakeholders from the consultations (including CSOs) and the adopted provisions might not correspond with the needs of volunteers and host organizations.

Country examples:

Latvia

Despite the legislative initiatives to introduce a separate law on volunteering, there is still no unique law regulating volunteer engagement in Latvia. The definition of the term “volunteer” could be found in the Law on Associations and Foundations from 2003. The Law provides that volunteers may claim the reimbursement of expenses; however the taxation rules applicable on volunteers are not regulated in the entire legal framework. The other issues affecting volunteering, such as health insurance or unemployment benefits are also not specifically regulated and could be therefore derived from the general provisions of the respective laws.

¹⁶ GHK: *Study on volunteering in the European Union, Country Report UK*, 2012, available at: http://ec.europa.eu/citizenship/pdf/national_report_uk_en.pdf



Address: 1052 Budapest, Apáczai Csere János u. 17, Hungary

Phone: +36 1 318 6923

Web: www.ecnl.org

Fax: +36 1 266 1479

Twitter: @enablingNGOLaw

Besides the Law on Associations and Foundations, there is also the Youth Law adopted in 2009. The Law provides definition of youth volunteering and regulates the responsibilities of the host organization towards young volunteers.

Kosovo

Legal framework in Kosovo recognizes only volunteering of youth. The Law on Empowerment and Participation of Youth adopted in 2003 defines the voluntary work of youth and prohibits volunteering for personal or family benefit. Consequently it stipulates that volunteer work of young people is not remunerated, however it does not specify the conditions of reimbursement of expenses.¹⁷ The law stipulates that a contract shall be concluded between volunteer and organizer of volunteering activity and its performance shall be recognized as work experience. Despite the good will of legislator to provide certain benefits to young volunteers the regulation is very scarce and does not provide detailed provisions on rights of volunteers.

Poland

Poland is an example of the country with quite complex regulation of volunteering activities included in one document; however the regulation is an inherent part of other law. The Act from 2003 on Public Benefit and Volunteer Work with the last amendments from 2010 has a separate section regulating volunteerism. According to this law, volunteers shall provide services to support non-governmental organizations, public administration authorities and organizational units reporting to public administration authorities in their activities. This regulation shall apply also to the volunteering activities performed within the international organizations having a branch in Poland. The Law introduces quite a lot of benefits and rights of the volunteers such as coverage of the cost of business travel and per diem as applicable for employees, reimbursement of other indispensable expenses, right to healthcare benefits etc. Furthermore, the Law introduces additional benefits for the volunteers delegated to another country, such as causality and expatriate medical insurance, additional travel costs etc.

Bulgaria

In Bulgaria, there is an initiative to adopt two separate laws on volunteering. The draft Law on volunteering from 2006 and draft Law for Youth Development from 2008 are up till now waiting for their approval by Parliament. The existing legal framework regulating volunteering is divided into separate laws, namely: *Crisis Management Law (2005)*, *Law for the Bulgarian Red Cross*

¹⁷ The difference between reimbursement and remuneration is that reimbursement is the payment for expenses related to the performance of the volunteering activity whereas remuneration is the payment for a requested service representing a reward, therefore it cannot be considered as a “work without compensation” which is an essential attribute of volunteer work



Address: 1052 Budapest, Apáczai Csere János u. 17, Hungary

Phone: +36 1 318 6923

Web: www.ecnl.org

Fax: +36 1 266 1479

Twitter: @enablingNGOLaw

(1995) and *Law for Physical Education and Sport (1996)*. The first one, Crisis Management Law is regulating the emergency volunteering, while considering the individuals engaged in voluntary activities to be in unpaid leave from their occupation. The Law for the Bulgarian Red Cross regulates the activities of the Red Cross and recognizes voluntary service as one of the “fundamental principles of the Red Cross movement”. Interesting is, that the both laws contain separate tax provision related to volunteering engagement. The Law for Physical Education and Sport is regulating non-compulsory sport activities of the students, which are considered as voluntary activities. Additionally, these organizations adopt self-regulations in the forms of “Codes of Conduct”. Such regulations are valid only for the specific organization and usually lay down the core values or quality standards of volunteering activities.¹⁸

France

France recognizes two forms of volunteering engagement: *Bénévolat* and *Volontariat*. “*Bénévoles*” are persons that have legally recognized for-profit or non-profit status, e.g. employee or student with additional rights emerging from their volunteering engagement. This volunteering engagement however does not create any distinct legal status and therefore they are free to conduct additional activities. Contrary to this, “*Volontaires*” are persons that have recognized legal status of volunteers and their volunteering engagement is exclusive. Both forms are regulated under numerous laws. While provisions applying to *Bénévoles* are depending on the regulation of their main status, *Volontariat* is regulated under numerous legal provisions. Those are for example: Volunteering in Associations, Civil volunteering, International volunteering in companies, Voluntary Civil Service and others.

III. Separate comprehensive law on volunteering

This is the most frequently used model of regulation in Europe where all provisions regulating volunteer work are incorporated in one unique document. Coming from one country to another, various modalities of this model could be recognized, e.g. scope of regulation or structure. Sometimes, the law does not include all the provisions, leaving mostly tax conditions applying to volunteers on the regulation of relevant tax laws.

- The positive aspect of the separate law on volunteering is that it brings answers to all the questions related to volunteer engagement in one uniform document, clearly defining the “rules of the game” (example of Macedonia).

¹⁸ GHK: *Study on volunteering in the European Union, Country Report UK*, 2012, available at: http://ec.europa.eu/citizenship/pdf/national_report_bg_en.pdf



Address: 1052 Budapest, Apáczai Csere János u. 17, Hungary

Phone: +36 1 318 6923

Fax: +36 1 266 1479

Web: www.ecnl.org

Twitter: @enablingNGOLaw

- Well designed separate law could be an efficient tool of promotion of volunteering and together with the state policies and strategies it can help in development of volunteering tradition in the country.
- Common challenge of the legislators is to adopt a law that facilitates and not over regulates volunteerism when adopting a separate law, e.g. see the country example of Moldova.
- Another challenge is to ensure participation of various stakeholders during the drafting process in order to develop a law that is responding to the actual needs and concerns of the sector
- A separate law is also more challenging in terms of implementation.

Country examples:

New Laws on volunteering¹⁹:

Lithuania

The Law on Volunteering enacted in June 2011 allows all the citizens and aliens lawfully staying in Lithuania with min. 14 years of age to engage in volunteering activities. The law introduces the principles of volunteering which are benefit to the society and the individual, cooperation and diversity and flexibility. Consequently it provides a list of basic rights and duties of a volunteer and host organization and set the conditions upon which a written contract has to be concluded. Reimbursement of expenses related to volunteering shall not constitute an income and therefore is not taxed. Regulation of international volunteering shall be specified upon the concrete volunteering program, e.g. European Volunteering Service.

Macedonia

Macedonian Law on Volunteering from 2007 is an example of a law that comprises all the legal provisions on volunteering in one unique document. The Law provides detailed description of rights and obligations of volunteers and host organizations, tax conditions applying to reimbursement of volunteers, insurance of volunteers and determines the liability for misdemeanors. Additionally, it describes conditions for international volunteering, allowing the citizens to volunteer abroad and foreign volunteers to volunteer in the country.

¹⁹ For further information on other laws on volunteering please consult previous ICNL/ECNL studies on volunteering, e.g.: Catherine Shea and Katerina Hadzi-Miceva: *Law on volunteers and volunteering in Central and Eastern Europe and Eurasia*, 2007 or Katerina Hadzi- Miceva: *Comparative Analysis of European Legal Systems and Practices Regarding Volunteering*, 2007.



Address: 1052 Budapest, Apáczai Csere János u. 17, Hungary

Phone: +36 1 318 6923

Web: www.ecnl.org

Fax: +36 1 266 1479

Twitter: @enablingNGOLaw

Moldova

The Law on Volunteering was adopted in 2010. It is an example of the good initiative, which is difficult to implement in practice due to wide scope of the law and secondary regulation, i.e. regulation on minimum quality standards for volunteering, regulation on accreditation of host organizations, etc. The law introduces list of definitions, basic principles, provisions regulating relationship between volunteers and host organizations, obligatory registration of volunteers who are engaged in volunteering activities in access of 20 hours a month. Further on, it establishes a generous list of benefits for volunteers, e.g. recognized employment record and pension, academic credits for students. Secondary regulation caused special difficulty in developing and adoption and the entire system is not in place to this date.

Slovakia

The Law on Volunteering from 2011 differs from other volunteering laws mostly with its detailed description of the term “volunteer”, “volunteering activity” and “host organization”. The positive aspect of this law is that it clearly defines the scope of the regulation; however it is lacking the provisions on the liability towards third persons, international volunteering, reimbursement of expenses and others. Therefore this law is not fully comprehensive, depending on the regulation included in other laws.

Serbia

The 2010’s Serbian Law on Volunteering contrary to Slovak Law provides a clear framework regulation for volunteerism. Among the basic definitions, the Law also determines general principles of volunteering, e.g. solidarity and support for volunteering engagement, protection of volunteers, principle of altruism etc. The Law distinguishes between long-term and short term engagement, providing that long-term is engagement for more than 10hours per week continuously during the period of three months. Consequently, there are different rules applying to them, e.g. long-term volunteers have to conclude a written contract but they are entitled to the health insurance. Interesting fact is that engagement in the Red Cross activities is excluded from the scope of regulation of this Law.

Ukraine

Ukrainian Law on Volunteering adopted in 2011 determines the limited scope of activities that are considered as volunteering upon this Law. Consequently, it sets the conditions for receiving a certification of a volunteering organization and removal of this certificate. The Law serves also as a policy regulation and stipulates that state is realizing its policy objectives through the volunteering activities. The Law provides certain rights of the volunteers such as right for being



Address: 1052 Budapest, Apáczai Csere János u. 17, Hungary

Phone: +36 1 318 6923

Web: www.ecnl.org

Fax: +36 1 266 1479

Twitter: @enablingNGOLaw

insured, reimbursement of expenses, health benefits related to the volunteering activity and others. The Law is generally considered as neutral, not efficiently providing incentives for persons to engage in volunteerism.

Georgia

Georgia is on its way to adopting its first law on volunteering. Up till now there is no legally binding definition of volunteers in Georgia that would provide them with distinct status and introduce their rights and obligations. Therefore all the volunteers are treated according to their status upon Labor Code (employed, unemployed, student or pensioner). Consequently, the tax regulations apply to them according to this status as well. These are two main legal obstacles to volunteerism identified in Georgia which are addressed in the Draft Law on Volunteering. The Draft law is on one hand quite liberal towards volunteers and in the definition it sets the minimum age of volunteers to 16 years with a possibility of younger persons to engage in volunteering activities with the consent of their guardians. The written contract is obligatory only upon the request of a volunteer and could be concluded in various languages. On the other hand it introduces quite a lot of duties for the host organizations, such as compulsory reimbursement of the indispensable expenses or compensation of the damages caused to the third persons by unlawful acts of volunteers during the performance of volunteering activities. The Draft law does not include any provisions regulating international volunteering.

Russia

In 2012 Russia's Public Chamber announced the intention to adopt a Bill on volunteering as a reaction to the spontaneous emergency volunteering during the floods in Krymsk. The draft law was prepared unilaterally and did not allow for participatory and open drafting process. Among other provisions, it requires from volunteers to always conclude a contract with the host organization and fails to distinguish between different forms of volunteering. This is considered as a bureaucratic burden mostly with regards to the spontaneous volunteering which is usually taking place in an emergency situation. Furthermore, it introduces a requirement for all volunteers to register with local authorities, which could be perceived as a state's intention to control the volunteering engagement. Especially worrying is the regulation of rights of the state authorities towards volunteers and monitoring of volunteering engagement.



Address: 1052 Budapest, Apáczai Csere János u. 17, Hungary

Phone: +36 1 318 6923

Fax: +36 1 266 1479

Web: www.ecnl.org

Twitter: @enablingNGOLaw

Following table summarizes the situations when a certain model of regulation is recommended:

<u>Models of regulation</u>	<u>Recommended to use when...</u>	<u>Not recommended to use when...</u>
<p>1st model</p> <p>Customs, practices, self-regulation and analogy in law as a regulatory measure</p>	<p>...there is a strong volunteering tradition existent in the country and there are no concrete legal provisions impeding volunteering</p>	<p>...there is a need to promote and support volunteerism and develop the volunteering culture and tradition</p> <p>...there is a legal framework in place that includes provisions creating legal obstacles for volunteering engagement</p>
<p>2nd model</p> <p>Regulation included in various laws affecting volunteerism</p>	<p>...there is an immediate need to remove certain legal obstacle related to volunteering</p> <p>...there is reasonable doubt that the separate law would introduce too many burdensome requirements towards volunteers and host organizations</p>	<p>...there is a complex set of legal obstacles that are hindering volunteering engagement</p> <p>...there is a need to promote volunteerism and create incentives for volunteering engagement</p>
<p>3rd model</p> <p>Separate comprehensive law on volunteering</p>	<p>...there is a need to promote volunteering and enhance the volunteering tradition in the country</p> <p>...there is a complex set of legal obstacles that need to be removed in order to facilitate volunteering engagement</p>	<p>...there is a reasonable doubt that the separate law would over regulate volunteering engagement and introduce burdensome requirements that would discourage volunteers and host organization to establish volunteering relationship</p>



Address: 1052 Budapest, Apáczai Csere János u. 17, Hungary

Phone: +36 1 318 6923

Fax: +36 1 266 1479

Web: www.ecnl.org

Twitter: @enablingNGOLaw

6. PROCESS OF DRAFTING AND ADOPTING REGULATION

Based on review of similar drafting processes in European countries, the following steps are recommended when there is a decision to adopt a volunteering regulation:

- **Determine the aim of regulation.** The stakeholders, such as CSOs, groups of volunteers, academics, government representatives and others should together with the authority responsible for drafting determine the goals of the regulation. The regulation could for example aim to promote volunteering, remove certain legal obstacles or create incentives for volunteers. Consequently, potential challenges to achieve these goals should be determined.
- **Conduct an analysis of the legal framework.** Analysis of the laws having effect on volunteerism should be conducted, together with the needs assessment.
- **Allow for participatory and open drafting process.** The process of drafting should be participatory and open, allowing for public consultations. The authority responsible for the drafting should convene a working group of various stakeholders that would assist during the process of drafting. The law should not be a unilateral decision of the government to regulate volunteering engagement.
- **Consider experiences of other countries.** In order to develop a successful regulation it is recommended to look on the experiences of other countries with adopting the volunteering regulations and learn the lessons from the challenges they faced.
- **Develop an implementation plan.** It is very important not to forget about the implementation of the regulation and to develop a clear and detailed plan during the process of drafting. The regulation should not be creating too complicated mechanisms that are difficult and expensive to implement.²⁰

7. RECOMMENDATIONS AND LESSONS LEARNED

Following are the summarized recommendations and lessons learned based on European practices in regulating volunteerism:

1. Decision about whether and how to regulate volunteering:

- **Determine the aim and scope of regulation.** Before adopting a regulation on volunteering, it is recommended to determine the objective of the regulation, i.e. what

²⁰ For further information on the process of drafting and adoption please consult: UN Volunteers: *Drafting and Implementing Volunteerism Laws and Policies*, 2011, developed by ICNL/ECNL.



Address: 1052 Budapest, Apáczai Csere János u. 17, Hungary

Phone: +36 1 318 6923

Fax: +36 1 266 1479

Web: www.ecnl.org

Twitter: @enablingNGOLaw

is aimed to be achieved by regulating volunteerism. Some of the regulations might mostly introduce incentives for persons to engage in volunteering activities and promoting volunteerism. Others provide complex set of provisions regulating volunteerism, rights and obligations of volunteers and host organizations, etc.

- **Choose a suitable model of regulation.** When choosing the appropriate model of regulation, it is recommended to pay attention to the context of the country and tradition of volunteering and also take into consideration the existing legal framework. The specific volunteering regulation is not always necessary; as it can be seen in various European countries. However, it is recommended to regulate the legal obstacles hindering volunteering engagement.

2. The process of drafting a regulation

- **Participatory process of drafting and adoption.** In order to develop a functional regulation that is responding to the needs of the sector it is important to involve various stakeholders in the process of drafting (CSOs, volunteers, experts etc.).
- **Address the issues that are creating legal obstacles to volunteerism.** In order to enhance volunteering engagement in the country it is important to remove legal impediments that are hindering volunteering, such as taxation of reimbursement, no unemployment benefits and others. It is recommended to introduce a distinct legal status of volunteers that would address these obstacles by distinguish the volunteering relationship from others, mostly employment relationships.
- **Do not over regulate volunteerism.** If the decision is to adopt a separate law on volunteering, it is recommended not to over regulate the volunteering engagement. Also, it is important not to impose too many requirements on volunteers and host organizations that would discourage them from establishing a volunteering relationship.

3. Implementation of the regulation

- **Develop a plan of the implementation.** When developing the volunteering regulation, it is important to always consider how the specific provisions should be implemented into practice. It is recommended to develop an implementation plan during the process of drafting.