

REMARKS TO THE DRAFT LAW ON ASSOCIATIONS AND FOUNDATIONS

Time framework for the organisation's activities and exemptions:

Article 7

(1) If the founding act, i.e. the Statute establishes a time framework for the organisation's activities, after the end of that time for which it was established the organisation will be erased from the Register.

(2) The organisations with a public interest status have tax and customs exemptions in accordance to the law.

Paragraph 2, apart from the fact that it needs to apply to all the organisations, it should also be amended and clarified on the type of the tax and customs exemptions and the deadline and the laws in which these exemptions will be regulated.

Initiatives in the public life.

Article 14

The organisations can freely express and promote their positions and opinions about issues they are interested in, they can have initiatives and participate in the public opinion building.

This Article needs to be amended in the sense that the organisations can ACTIVELY participate and not only in the public opinion building, but also in the process of creating policies by the government and the adoption of laws. It should be amended with an obligation for involvement of the associations and the foundations in the institutional decision-making on a central level and creating of policies by utilising their experiences in the decision-making process.

Founders

Article 15

(1) The associations could be founded by natural persons or legal entities.

(2) The associations could be founded by at least five founders out of whom three must have a regulated residence or stay i.e. headquarters on the territory of the Republic of Macedonia.

(3) The associations could also be founded by minors at the age of 15 with a notarised statement issued by a notary that their legal guardian agrees with foundation of the association for the purposes for which the association is founded in compliance with the law.

The provision in Paragraph 3 that for minors to found an association they need a notarised statement issued by a notary that their legal guardian approves the foundation of the association along with the objectives of that association in accordance with the law is unnecessary and contrary to the Convention on the Rights of the Child where Article 15 provisions the right of the child to freedom of association. Given that Article 19 provisions that the founders are members of the association with equal rights and responsibilities as all the other members of the association, they do not have additional rights or responsibilities and there is no need to burden the procedure if a minor is the founder.

Association's membership

Article 19

- (1) Membership in associations is on voluntary bases.
- (2) The founders are members of the association with equal rights and responsibilities as all the other members of the association.
- (3) A natural person could be a member of an association regardless of his/her age in compliance with the statute.
- (4) **A minor at the age of 14 and not at the age of 18 becomes a member of the association by providing a notarised statement by his/her legal guardian issued by a notary for the membership in the organisation in compliance with the law.**
- (5) Persons with limited working capability or persons whose working capability has been taken away can be members of an association with a notarised statement by their legal guardian issued by a notary in compliance with the law.

This represents a regression in the rights of children who based on the old Law on Citizens' Associations and Foundations used to have a right to be members of citizens' associations without additional documents or notarised statements issued by a notary. Article 21 in the old law envisages: A member of an association of citizens could be any citizen with Republic of Macedonia's citizenship who on voluntary bases joins the association in a way regulated by the statute.

We believe that Paragraph 3 sufficiently covers the persons that could be members of the association and consequently paragraph 4 should be deleted.

Budget funds

Article 49

- (1) The organisations could receive money from the Budget of the Republic of Macedonia, the budgets of the municipalities, the City of Skopje municipalities and the city of Skopje.
- (2) The Government of the Republic of Macedonia and the municipal councils, the councils of the city of Skopje municipalities and the council of the city of Skopje in details regulate the conditions for the allocation and the utilisation of funds from Paragraph 1 of this article.
- (3) The Government of the Republic of Macedonia, i.e. the competent bodies of the public administration and the municipalities, the city of Skopje municipalities and the city of Skopje adopt annual plans and programmes for the allocation of funds from Paragraph (1) of this Article.
- (4) The public administration bodies, the municipalities, the city of Skopje municipalities and the city of Skopje on their web sites publish the list of organisations that

received funds in compliance with Paragraph 1 of this article as well as the objectives of the organisations that got those funds.

The provision from Paragraph 4 even though is a positive change, an article in the Misdemeanour provisions is lacking that would impose sanctions if someone from the public administration bodies, the municipalities, the city of Skopje municipalities and the city of Skopje on their web site fail to publish (completely or partially) the provisioned information.

Use of funds

Article 50

(1) The financial means of the organisations are used for achieving the objectives of the organisation as established with the statute and the programme.

(2) The members of the organisation's bodies and their representatives are obligated by law to manage and work with caution and in compliance with the principles of good governance, in the interest of the organisation, and act regardless of one's personal interests, but in the interest of achieving the objectives, in compliance with the law and the statute.

(3) The organisation's funds cannot be paid out to the members, the founders, the members of the bodies, the representatives, the employees or persons related to them except in cases when a member of the organisation is a beneficiary of the organisation's services in compliance with the goals established with the statute and the programme of the organisation.

(4) The work of the organisation's bodies as a rule is voluntary, and the members of the organisation's bodies could receive compensation for travel expenses and per diem as well as compensation for performing jobs in the organisation's bodies in compliance with the law.

(5) The employees have a right to a salary and compensations in compliance with the law and the collective agreement.

Paragraph 3 should be erased because the employees' salaries are paid from the organisation's funds. It is another thing if the organisation made profit and it should not be allocated to the employees, but with a position formulated in this way it is in collision with paragraphs 4 and 5.

Performance reports

Article 53

(1) The organisations are obligated to make their annual performance reports public on their web sites or in another way.

(2) The organisations are obligated to prepare annual financial statements to submit to the competent body in compliance with the law and to publish them on their web site or in another proper way to make it accessible to the public.

(3) The organisations are obligated to make the reports from Paragraph 1 and Paragraph 2 public by 31 March at the latest for the previous year.

This article we believe needs to be completely erased because the reports are public in any case and anyone can submit a request to the Central Register to get a copy. That is why we believe that this is only unnecessary burdening of the law and the organisations.

Prohibition for the organisation to operate

Article 65

The organisation is forbidden to operate if:

- its actions are aimed at violent overthrowing of the constitutional order of the Republic of Macedonia;
- It incites and calls for military aggression and it stirs up national, racial or religious hatred or intolerance;
- it undertakes activities that are contrary to the Constitution or the law; and
- the freedoms and the rights of other persons are violated.

Initiating a procedure for prohibition for the organisation to operate

Article 66

(1) Anybody could submit an initiative for prohibition for the organisation to operate to the competent public prosecutor.

(2) If the competent public prosecutor based on the organisation's headquarters ex officio or upon a submitted initiative establishes that there are grounds for this organisation to be forbidden to operate in compliance with this law, s/he will submit a proposal to the competent court.

(3) The procedure for prohibition is urgent.

Articles 65 and 66 should be completely erased because the procedure for prohibiting organisations (legal entities) to operate is already fully regulated with the Law on Criminal Procedure and the Criminal Code. Article 96-a (from the Criminal Code which is currently effective) provisions sanctions for a legal entity that committed a crime and as part of the sanctions temporary ban to perform certain activity, permanent ban to perform certain activity and termination of the legal entity are already regulated.

Even more these sanctions are elaborated in the 2009 amendments, which will become effective in March 2010 and it is pointless to duplicate these legal provisions in the Law on Associations and Foundations.

LAW AMENDING

THE CRIMINAL CODE (Official Gazette of the Republic of Macedonia No. 114/09 from 14 September 2009)

Secondary sanctions

Article 96-b

Under the conditions established by this law, the competent court, in case it determines that the legal entity abused its work and there is a threat of repeating the crime in future, the Court may impose one or more of the following secondary sanctions:

...

- 6. temporary ban to perform certain activity;
- 7. permanent ban to perform certain activity;
- 8. termination of the legal entity.

Terms of imposing secondary sanctions

Article 96-c

...

4) The court shall impose a temporary ban to perform certain activity for a period of one to three years coupled by a fine, if in the course of performing the activity by the legal entity a crime is committed for which for a natural person a fine or a sentence of imprisonment of up to three years is provisioned and based on the way the crime is committed there is a possibility of repetition of the same or a similar crime.

5) The court shall impose a permanent ban to perform certain activity in the course of the operating of the legal entity coupled by a fine, if a crime is committed for which for a natural person a sentence of imprisonment of at least three years is provisioned and based on the way the crime is committed there is a possibility of repetition of the same or a similar crime.

6) The Court will impose the sanction from Paragraph 5 of this Article also when a crime is committed after a previous effective verdict according to which the legal entity got a temporary ban to operate.

7) The court shall impose a sanction of termination of the legal entity coupled by a fine, if a crime is committed for which for a natural person a sentence of imprisonment of at least five years is provisioned, and if based on the way the crime is committed there is a possibility of repetition of the same or a similar crime.

...

Auditing

Article 86

(1) An association or a foundation with a status of public interest which annual budget is above 10,000 Euros in Denar counter-value based to the medium exchange rate of the National Bank of the Republic of Macedonia is obligated to have an independent annual audit of its financial activities, and if it has a budget above 100,000 Euros in Denar counter-value according to the medium exchange rate of the National Bank of the Republic of Macedonia it is obligated to have an audit in compliance with the international accounting standards.

(2) The audit report from Paragraph 1 of this article is submitted together with the report from Article 77 Paragraph 2 Indent 4 from this law, at least once a year.

Increased transparency is a positive achievement, but one needs to think about the financial aspect i.e. who will pay for the audit. The association is financed from projects, but the finances are strictly allocated and cannot be reallocated.

Reports

Article 85

(1) The organisation with a status of public interest is obligated once a year to submit a business and financial report on its performance approved by a body provisioned in its statute to the Government of the Republic of Macedonia to be adopted, and it should be done by 31 March at the latest of the current year for the previous year.

(2) The form about the type and the content of the reports from Paragraph 1 of this article are prescribed by the Ministry of Finance.

Reports' publicity

Article 87

The reports from Articles 85 and 86 of this law are public and published on the web site of the organisation with a status of public interest by 31 March of the current year for the previous year.

Articles 85 and 87 envisage increased transparency and even though we agree with that, we still have to ask ourselves what will be the benefit for the organisations from all these additional activities.

Exemptions

Article 88

The organisations with a status of public interest apart from the tax and customs exemptions established in Article 7 Paragraph 2 of this law, they also have additional tax and customs exemptions in accordance with a law.

Just like Article 7 Paragraph 7 this article also needs to be clarified on the type of the tax and customs exemptions and the deadline and the laws in which these exemptions will be regulated.

(18.2.2010)