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COMPARATIVE ANALYSIS OF THE EUROPEAN LEGAL SYSTEMS AND PRACTICES REGARDING VOLUNTEERING*

I. INTRODUCTION

Volunteering is an essential part of every contemporary society. Through volunteering citizens significantly contribute to the social and economic development of their local communities. In addition, they expand the influence and capacity of civil society organizations (CSOs) and in the same time volunteers have an opportunity to develop their own skills. This contribution has been repeatedly recognized through various initiatives that have aimed to promote volunteering internationally and in countries throughout Europe.¹

In addition, there is an increased awareness among governments and CSO about the importance of the legal framework in promoting and enabling volunteering, as a factor which impacts volunteering. Therefore, some of the European countries have launched legislative reform initiatives to create an environment that would encourage volunteering.

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¹ United Nations International Year of Volunteering (2001), International Volunteer Day (December 5), European Workshop on Volunteer Action (VoluntEurope), National Conference on Volunteering - Croatia, 2005 Volunteer Year- UK, etc. Council of Europe: Recommendation of the Committee of Ministers of Member States on the Promotion of Voluntary Service (1994), Recommendation Improving the Status and Role of Volunteers as a Contribution by the Parliamentary Assembly to the IYV 2001.

This paper will look at the rationale for regulating volunteering and it will provide an overview of principles underpinning any legal reform initiative that aims to create a framework for volunteer initiatives. In addition, it will discuss the legal issues that affect volunteering, highlight recommendations developed by international experts and provide examples of how certain country specific laws have defined and regulated volunteer activities. Through the research analysis the paper will aim to aid national governments and policy makers in considering local reforms and to help them adopt the most appropriate policies which would enable and maximize the full potential of volunteering.

II. VOLUNTEERING AND THE LAW

The legal framework is only one part of the larger social and institutional context that determines the proliferation of volunteering in one country. The level of volunteering depends on many other factors such as the economic and political situation, image and stage of development of the third sector, culture of volunteering, labor markets. The experience of the countries around Europe shows that the legal framework becomes an important factor when the various legal provisions or the lack of legal protection create obstacles and impede volunteering. Therefore, the recent trend in especially countries of Central and Eastern Europe (CEE) has moved beyond public recognition of volunteering, to creating a legal environment which will promote volunteering. Several European countries have already adopted a law or legal provisions governing volunteerism, such as Czech Republic, Hungary, Italy, Latvia, Lithuania, Luxemburg, Poland, Portugal, Romania and Spain. Other countries, including Croatia and Bosnia and Herzegovina are drafting such legislation.²

International organizations have also recognized the importance of the legal framework and consequently they are encouraging states to regulate and promote volunteering. For example, the Resolution adopted by the General Assembly of the UN: 6/38³ recommends that states should create “enabling fiscal, legislative and other frameworks, including for community-based organizations and not-for-profit organizations engaged in volunteering through 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;

² For in-depth analysis of country specific legal systems and legal reform initiatives see www.icnl.org and www.ecnl.org

³ http://www.worldvolunteerweb.org/policy/international/resolutions/2002GA_A_RES_56-38/

- (ii) Facilitate partnership-building around volunteer-based activities of civil society, including arrangements for joint planning, implementation and monitoring. This could incorporate employee volunteer activities of the private sector.”

The Council of Europe Recommendation No.R (94) 4⁴ also recommends that states should define voluntary service at national level, emphasizing its educational aspects and its importance for society.

The General Assembly through the Recommendation 1496 (2001) on Improving the Status and Role of Volunteers in Society: A contribution by the Parliamentary Assembly to the International year of Volunteers 2001⁵ 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 penalises voluntary action” and “give voluntary workers legal status and adequate social protection, while respecting their independence, and removing financial obstacles to volunteering”.

In the process of launching legal reforms several preliminary questions are being asked regarding the relationship between the legal framework and volunteering, such as why should volunteering be regulated, to what extent should we regulate volunteering, does volunteering needs to be regulated through a separate law? There is no one answer to these questions, but the experience of the countries who have undertaken reforms to protect and regulate volunteering can provide helpful guidance to those who aim to launch similar initiatives.

1. Why should volunteering be promoted and regulated?

There are many benefits that volunteering brings to the society at large and civil society organizations specifically. The most important ones can be summarized as follows:

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

⁵ www.assembly.coe.int

Volunteering as social phenomenon contributes to increased citizen participation in social life, helps build local networks and creates a sense of responsibility for resolving problems that exist in the communities. Recent research in the UK acknowledged that volunteering may “boost community happiness” and give greater life satisfaction.⁶

Volunteering is a fundamental and indispensable part of civil society initiatives. Primarily, volunteers are an important human resource for third sector organizations. According to the John Hopkins Comparative Research Project volunteers represent approximately 43% of civil society workers in 35 surveyed countries⁷. In Poland alone, 87% of the CSOs depend on volunteers.⁸ Further, if the contribution in time by volunteers is calculated based on average salary for fields where volunteers are engaged, it outweighs the contributions by donations in cash. A research study of 24 countries has shown that on average the financial value of volunteering represents 65% of the nonprofit philanthropic income opposed to the 35% of monetary donations.⁹

In UK, the contribution to the economy made by people volunteering formally and informally in the community has been estimated to £42.6bn in 2003.¹⁰ These indicators show that volunteering, as direct citizens’ engagement, does not only bring social but also economic benefits.¹¹

⁶ <http://society.guardian.co.uk/volunteering/story/0,8150,1308716,00.html>

⁷ See “Global Civil Society: An Overview,” Lester M. Salamon, the John Hopkins Comparative Nonprofit Sector Project, 2003 (www.jhu.edu/~ccss).

⁸ A Comparative Look at National Volunteerism Legislation, Taryn Nelson, The Inter-American Initiative for Social Capital, Ethics and Development, Inter-American Development Bank, June 2005

⁹ “Volunteering in Cross-National Perspective: Evidence From 24 Countries,” Salamon, Lester M. and Wojciech Sokolowski, Working Papers of the Johns Hopkins Comparative Nonprofit Sector Project, no. 40. Baltimore: The Johns Hopkins Center for Civil Society Studies, 2001 (www.jhu.edu/~ccss)

¹⁰ <http://society.guardian.co.uk/volunteering/story/0,8150,1308716,00.html>

¹¹ The economic contribution made to society by voluntary activity is estimated at 8% of gross domestic product and may even reach 14% of GDP, depending on the country concerned. - Study of the extent and role of volunteering – 1997 – National Centre for Volunteering, Dr Gaskin and Davis Smith, as cited in the Report: Social, Health and Family Affairs Committee, Improving the Status and Role of Volunteers as a Contribution by the Parliamentary Assembly to the International Year of Volunteers 2001, Doc. 8917 / 22 December 2000

Volunteering also provides opportunities, especially for the young or unemployed people to develop or further refine certain skills, gain confidence and self-esteem so that they become trained and prepared to respond to various employment opportunities. In addition, elderly people through volunteering are able to remain engaged, contribute to the common good and feel their skills are still valuable. This is important for keeping their moral high and in the same time contributes towards maintaining intergenerational cooperation and solidarity.

4. How do laws affect volunteering?

Country specific analyses have shown that the unfavorable legal frameworks could pose serious obstacles to volunteering, as many of national laws either impede volunteering or fail to support it. This is especially true for those CEE countries where volunteering is not an intrinsic part of the societal culture. On the contrary in countries where the tradition of volunteering is high, such as the United Kingdom or Germany, volunteering and volunteers are implicitly protected and integrated in various pieces of the laws.

The legal framework issues become especially important for those volunteer arrangements which require an engagement on a daily bases for a longer period of time. In the course of their volunteering, long-term volunteers are affected by a variety of laws, such as labor laws, tax laws and liability laws, both directly and indirectly. Possible problems that have occurred as a result of lack of legal protection range from the misapplication of labor laws, to the taxation of volunteer time, to the loss of unemployment benefits, to liability issues, to volunteers performing under dangerous conditions and being unaware of their rights and obligations. In Croatia, some organizations have even raised concerns that they had difficulties registering “providing volunteer services” among their statutory activities, as due to the lack of legal definition the registration authorities were not clear what ‘volunteer services’ would mean.

Primarily, national legislation should define and regulate volunteering in order to recognize volunteering, to provide a framework for various volunteer arrangements and to clearly distinguish it from the employment relationship. The absence of a legal definition of “volunteer” and the lack of recognized features of a “volunteer agreement” may result in the treatment of volunteers as paid employees. Consequently, any payment may be considered as “compensation” and CSOs 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 expenses to volunteers, as that would have required signing of a labor contract. But the labor contract would subject volunteers to employment laws and minimum wage rules.¹² In Croatia and Macedonia, state inspectorates are empowered to temporarily prohibit work on the premises of employers, where employment was not commenced in compliance with the law (e.g. the parties have not signed an employment agreement).

Further, the lack of legal status might also result in loss of unemployment benefits. In the Czech Republic, labor officers have eliminated unemployment benefits to unemployed individuals acting as volunteers, because these volunteer efforts have been deemed to be illegal work (although they have not received any payment or in-kind benefit).¹³ During the drafting of the law on volunteering, a Croatian ministry opinionated that in case unemployed individuals want to volunteer, then the unemployment benefits should be suspended for the time of their volunteer engagement.

Another significant obstacle to volunteering is the tax treatment of reimbursement of expenses. International experts¹⁴ agree that volunteers should have a right to be reimbursed for all reasonable expenses that have been incurred in the course of volunteering. However, in some countries (e.g., Switzerland, Belgium, Macedonia) reimbursement of expenses to

¹² Latvian Volunteerism: In Search of a Favorable Environment, by Raymond Stephens, SEAL, Autumn 2001

¹³ A draft Law for Czech Volunteers, by Vojtech Tutr, SEAL, Autumn 2001

¹⁴ See: Legal Issues Affecting Volunteers and Volunteering in Europe, Warsaw, Poland January 23-26, 2002. ICNL convened a group of international experts to conduct a comprehensive assessment of the legal issues affecting volunteering in Europe, discuss and prepare best practice *Recommendations and Conclusions on Legal Issues Affecting Volunteers* (www.icnl.org). The Recommendations were taken and adapted for use in the legislation in the Czech Republic and Lithuania (first countries in the CEE region to adopt a law or regulation in this field), Croatia, Bosnia and Hungary. www.icnl.org

volunteers is subject to taxation, as only reimbursement to employees is exempted. This is a serious obstacle in recruiting and mobilizing volunteers as the organizations almost always lack financial resources. Similarly in Estonia, if CSO wishes to cover the volunteer's costs, it has to be done through a labour contract or some civil contract and all payments are subject to taxation.¹⁵

In sum, the legal recognition of volunteering is important because it ensures that volunteers are protected in the course of providing volunteer services and they are distinguished from employees. The legal provisions should aim to remove the impediments that obstruct or deter volunteering, and create incentives, which would promote and encourage volunteering.

5. How much regulation is necessary?

Regulating volunteering however has not proven to be an easy task, and lessons from countries around the region can be summarized in the following non-exclusive points.

First, it is important to recognize that volunteering can take many forms, from spontaneous, ad-hoc neighborhood initiatives to organized, formal, and even contract-based engagement on a regular and on ongoing basis. In addition, volunteers can act in groups, within the framework of international programs, on their own initiative, or upon request by others. Consequently, it may be difficult or even dangerous to legally regulate all conceivable forms of volunteering. Experts agree that legislators should “ensure that laws with specific purposes do not restrict opportunities for the enhancement of an enabling volunteer environment.”¹⁶ Otherwise the whole concept will be distorted.

¹⁵ See: Country Report on the Legal Status of Volunteers in Estonia, AVSO & CEV Project: Legal Status of Volunteers, www.avso.org

¹⁶ “A Volunteerism and Legislation: A Guidance Note,” prepared by the Inter-Parliamentary Union, International Federation of Red Cross and Red Crescent Societies and UN Volunteers.

Therefore, governments and CSOs should set clear policy goals and objectives that they want to achieve through regulating volunteering, and ensure that even if they regulate one aspect of volunteering that should not prohibit the existence of other forms (especially informal or ad-hoc volunteering initiatives).

Second, the legal framework should facilitate rather than control volunteering. The law should ensure that volunteering is protected and promoted and that the legal requirements do not create burdens and discourage volunteering. To over-regulate volunteerism would be problematic, as it may discourage spontaneous initiatives, create a burden on small CSOs, and have a deterrent-effect on the volunteer spirit.

Third, every country should decide on whether and how to regulate volunteering based on the social, cultural and economic local conditions. It is essential that, at the outset, governments, in partnership with CSOs and other stakeholders, undertake comprehensive analysis of their legal systems and identify how local laws affect volunteering so to determine how those can be revised based on local needs. If the legal framework discourages or inhibits volunteering, then the next step is deciding whether there should be a separate law (e.g., the case of Hungary), integrated component of another law (e.g., Latvia, Poland) or amendments to current legislation (e.g., Lithuania) so as to remove the obstacles.

Finally, draft laws should be developed in close cooperation among governments, CSOs, experts and other stakeholders. Multi-stakeholder' participation will ensure that the legislative initiative addresses real needs of the volunteer community.

III. EXISTING LEGAL FRAMEWORKS AND SCOPE OF REGULATION

There is no uniform way of regulating volunteering, primarily due to the nature of the voluntary initiatives but also because of the various goals that countries have set to achieve through the legislation. This should be an important consideration when one is analyzing different approaches. The goals of the state policy towards volunteering determines the scope of regulation, the specific form of volunteering it will regulate and consequently the various aspects of the volunteer relationship, benefits, incentives and protection that the legal system will prescribe to that form.

Consequently, the laws that have been adopted so far by the countries throughout Europe differ widely in terms of the goals and objectives they want to achieve, the types of volunteering they regulate and the extent to which they want to regulate the relationship between volunteers and their organizations.

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 foresees the existence of a distinct system and only the volunteers that fall within the framework of this system will receive direct government support and protection. Under this law the state gives accreditation to certain organizations (called “delegating organization”), on the basis of which these organizations select and train volunteers in certain areas, sign contracts with them, and assign them to “receiving organizations”. State authorities, organizational units of the State, authorities and administrative bodies of territorial self-governing units may use volunteer services within for the purposes stipulated in the Act, in which case they will have a status of receiving organization. Unfortunately, thousands of volunteers who help in different organizations or outside the framework of such organized activities are not recognized nor protected by law.

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 stipulates that it will leave intact volunteering in other types of organizations or persons, or fields of activities outside the scope of this law. However, this also implies that the extensive list of benefits and protection that are conferred through this law do not extend to other types of volunteering. Since over half of the registered CSOs do not have public benefit status this law in practice does not cover the majority of CSOs and their volunteers. In addition, the law introduces an obligation for those organizations that work with volunteers to register with the competent Ministry; it outlines a detailed and bureaucratic procedure of registration and the conditions under which registration might be refused. The organizations must keep a registry of all volunteers, and they have to keep the data for 5 years after expiry of the volunteer legal relationship. These requirements seem to place unduly high administrative burden on volunteering. The Hungarian law is perhaps the only one that regulates the volunteering relationship in plentiful details.

Italy

The General Policy Law on Volunteerism (1991) prescribes the principles and criteria that regulate the relationship between public agencies and volunteer organizations¹⁷. The different regions and autonomous provinces must follow these principles when they regulate such relationships on their respective territories. The regional authorities have basically

¹⁷ The law defines volunteer organizations as those who are formed freely to carry out activities defined by law and which predominantly or significantly use personal, voluntary and unpaid services of its members.

established similar regulations following the national law.¹⁸ The law does not directly focus on the individual as a volunteer. It essentially addresses volunteering through the definition of volunteer activities and through specific provisions governing the work of volunteer organizations and their relationship with the national and local governments. The law extends certain protection and rights to volunteers by prescribing obligations for the volunteer organizations, e.g., duty to insure members against illness and third party liability and distinguishes volunteering from employment relationships.

Latvia

Volunteering in Latvia is regulated under the Law on Associations and Foundations (2003). Article 8 of this law establishes the right of associations and foundations to engage volunteers in order to achieve their statutory objectives, it provides a definition of volunteering and prescribes general rules regarding contract, liability and reimbursement of expenses.

Lithuania

The resolution N°1511 of 2001 regulates volunteering for the purposes established by the Law on Charity and Sponsorship within the framework of non-profit organizations, public institutions, and other legal entities which are entitled to receive charity and sponsorship under the above-mentioned law. The resolution also applies to volunteering in political parties and trade unions. In addition to this resolution, the Law on Employment Contract specifically outlines that volunteering will not be considered as illegal work.¹⁹

Luxemburg²⁰

¹⁸ See: Country Report on the Legal Status of Volunteers in Italy, AVSO & CEV Project: Legal Status of Volunteers, www.avso.org

¹⁹ Article 17 of the Law on Employment Contract defines illegal work as work performed or being performed without an employment contract in accordance with the procedure established by the law, regardless of the presence of the specific features of an employment contract, as well as the work by foreign nationals or stateless persons, failing to comply with the procedure of their employment stipulated by legal acts.

The Law on Youth Voluntary Service (1999) establishes the legal framework applicable to young volunteers performing activities of general interest within non-profit and non-governmental organizations. The aim of the law is to promote social engagement of young people, by facilitating the exercise of activities of general interest that may be for their own benefit, the benefit of others as well as constitute an educational experience. In order to benefit from this law, non-profit organizations must receive an accreditation by the Ministry of Youth. The engagement in the voluntary service is limited between 6-12 months, and this period may be shortened or extended only with permission of the Ministry. Other types of volunteer activities are not legally regulated.

Poland

The Law on Public Benefit Activity and Volunteerism (2003) regulates volunteering in non-profit entities, non-governmental organizations, associations of units of local government, public administration bodies, and other legal entities subject to this law within the scope of their public benefit activities. The law also applies to those Polish volunteers who are performing services for international organizations. Volunteers engaged in organizations who have not received public benefit status are outside of the scope of this law.

Portugal

The Volunteer Act 71/1998 regulates volunteer activities that are of social and community benefit within projects and programs developed by promoting organizations for the benefit of individuals, families and the community. Promoting organizations are non-profit public or private entities that have satisfied the criteria to recruit volunteers and coordinate their activities. In addition, the volunteer activity must be of social and community benefit and can be developed in the fields of civic life, social action, health, education, science and culture, heritage and environment protection, consumer protection, cooperation for

²⁰ The information on the Luxemburg Law is based on the Country Report on the Legal Status of Volunteers in Luxemburg, AVSO & CEV Project: Legal Status of Volunteers, www.avso.org

development, employment and professional training, social reintegration, civil protection, development of associative life and social economy, promotion of volunteering and social solidarity, and other similar fields. The law also establishes the principles of volunteering, enumerates the rights and duties of volunteers and regulates the relationship with the promoting organizations.

Romania

The Law on Volunteerism (2001, and amendments of 2002) promotes and facilitates volunteering by foreigners and Romanian citizens organized by public and private registered non-profit entities, as well as the participation of youth in international volunteer programs, as implemented by decentralized structures in close cooperation with the national authorities involved in matters regarding youth. Volunteer activities must always be performed under a written contract, which burdens short term or ad-hoc volunteering. The Romanian law also contains separate provisions regarding volunteering under the community action program “Youth”.

Spain

The Spanish Act on Voluntary Work from 1996 provides that volunteering should be performed within the framework of a concrete project or program developed by public or private non-profit organizations. The activities need to be of general interest in the following fields: social welfare, civic affairs, education, culture, science, sports, health care, as well as economic development, environmental protection, and the promotion of civil society and volunteerism.²¹ In addition to the Spanish Act, various Autonomous Communities have also developed separate regulations on volunteering. Therefore, this law is applicable only to national or cross-regional programs and volunteers who work in areas that fall under the exclusive jurisdiction of the State.²²

²¹ The Regulation and Development of Voluntary Work in Spain, Miguel Angel Cabra de Luna, SEAL, Autumn 2001

IV. LEGAL ISSUES AFFECTING VOLUNTEERING

The discussion on the different legal issues which affect volunteering will be guided by the recommendations adopted by international experts and experience from working with various policy-makers in CEE on developing legal framework for volunteering. When the country specific laws are going to be raised, it is important to consider those examples in light of the general context and goals under which they have been regulated as described under section III.

1. Legal status and definition of volunteering

Few international treaties or documents provide guidance as to the basic features that should be contained in a legal definition of volunteering. The Communication from the European Commission to the Council²³ recognizes that there are varieties of traditions and practices of voluntary activities and those should be regarded when regulating volunteering. They define volunteering as all kinds of volunteer engagements which have the following characteristics: “open to all, unpaid, undertaken by own free will, educational (non-formal learning aspect) and added social value.” In addition, they define voluntary service as “part of voluntary activities and characterized by the following additional aspects: fixed period; clear objectives, contents, tasks, structure and framework; appropriate support and legal and social protection.”

²² Country Report on the Legal Status of Volunteers in Spain, AVSO & CEV Project: Legal Status of Volunteers, www.avso.org

²³ Communication from the Commission to the Council - Follow-up to the White Paper on a New Impetus for European Youth - Proposed common objectives for voluntary activities among young people in response to the Council Resolution of 27 June 2002 regarding the framework of European cooperation in the youth field COM/2004/0337

<http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:52004DC0337:EN:HTML>

The Convention on the Promotion of a Transnational Long-term Voluntary Service for Young People²⁴ regulates volunteering of individuals in another country and consequently defines the volunteer as a "person legally residing in one Party who is legally present in the territory of another Party for a continuous period of time, not less than three months and not longer than twelve months, to perform full-time voluntary service activities." The Convention also emphasizes the basic features of any volunteer relationship by providing that the volunteer activity is non-remunerated and is based on a free personal decision of the volunteer. In addition, the volunteer activity cannot replace the compulsory national service or remunerated employment.

The Guidance Note developed by the Red Cross offer the following two definitions that could guide national legislators:

- "Volunteerism is the group of activities carried out by individuals, associations or legal entities, for the common good, by free choice and without intention for financial gain, outside the framework of any employment, mercantile or civil service relationship", or
- "A volunteer is an individual who, by free choice, offers his or her time, work and skills, occasionally or on a regular basis, without expectation of compensation, other than reimbursement of reasonable expenses and subsistence allowance necessary for the accomplishment of his or her assignments as a volunteer, for the public benefit, individually or within the framework of informal or officially registered non-governmental non-profit organizations or public entities, at the national and trans-national levels".²⁵

All country specific laws generally define volunteering as activities performed by individuals, based on their free will, for the benefit of another and without compensation. Further, some of the national laws also make a specific mention of volunteering being

²⁴ Convention on the Promotion of a Transnational Long-term Voluntary Service for Young People (2000) <http://conventions.coe.int/Treaty/EN/Treaties/Html/175.htm>

²⁵ "A Volunteerism and Legislation: A Guidance Note," prepared by the Inter-Parliamentary Union, International Federation of Red Cross and Red Crescent Societies and UN Volunteers.

separate 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”. The Italian law provides that the role of a volunteer is incompatible with every kind of employer-employee relationship in which income is received from the organization to which the person belongs. The Hungarian law introduces amendment to the Act LXXV of 1996 on the Supervision of Labor to distinguish volunteering activities based on volunteer contract from employment relationship. Similarly, as noted above Lithuania introduced amendments to the Law on Employment Contract to discern volunteering from illegal work. The Portuguese law establishes the principle of complementary character of the volunteering among the basic principle that govern volunteering which presupposes that volunteers should not substitute the human resources deemed necessary to pursue the organizations’ activities.

The Romanian law contains further provisions to distinguish employment from volunteering and ensure that there is no misuse of the concept by stipulating that:

“1. The conclusion of volunteer contracts in view of avoiding the conclusion of an individual labor, or as applicable, piece-work or other onerous contract is hereby forbidden;

2. Any contract concluded in infringement of the present law by the legal entities mentioned herein above, under art. 1, for the purpose of avoiding the conclusion of a labor, piece-work or other onerous contract, shall be legally null and void;

3. Participation in volunteer activities shall not be for military service or other, alternative, service substituting military service, and cannot represent the equivalent of a remunerated job.” ...

From the above-mentioned definitions it is important to highlight the following features of volunteering:

i. Who is a volunteer?

- The volunteer is an individual, a ‘natural person’. Volunteers are not excluded from acting together in groups or within the context of an organized venture like an association. However, the group, association, or the legal entity itself should not be regarded as a “volunteer”.²⁶
- The volunteer can be a citizen and a foreigner who volunteers in that country. In Lithuania, the law specifically provides that volunteering can be performed by citizens of Lithuania, by foreign citizens who are in Lithuania and people without citizenship.
- Any person can be a volunteer. The report by the Social, Health and Family Affairs Committee concludes that the Council of Europe member states should adopt policies which would “encourage, by various measures, involvement in voluntary service by everyone, including disadvantaged minorities in traditionally excluded groups: unemployed persons, migrants and the disabled or elderly”.²⁷ However, some countries provide certain limits as to who can volunteer. Most commonly, countries prescribe age limit to volunteer engagements mainly to protect them but also as a response to the specific type of volunteer relationship that the respective laws regulate. According to the Czech law, volunteer can be a natural person over 15 years of age if volunteer services are performed on the territory of the Czech Republic or over 18 years of age if volunteer services are performed abroad. In Lithuania persons under 16 can perform volunteering activities only with parental or guardianship consent. This law further defines fields and types of activities, which minors of various age limits cannot engage in.

In Hungary the law not only addresses volunteering 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. The law prescribes the following additional protection:

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

²⁷ Report: Social, Health and Family Affairs Committee, Improving the Status and Role of Volunteers as a Contribution by the Parliamentary Assembly to the International Year of Volunteers 2001, Doc. 8917 / 22 December 2000

“(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.”

ii. Type of activities

Volunteer activity is considered as contribution in-kind (i.e., time or services) and not goods, cash or other valuable assets. Further, volunteers should be allowed to provide any service permitted by law. In some countries, there are restrictions on certain services, which cannot be provided below a fixed minimum rate (e.g., legal counsel, or medical services). When legislators aim to regulate volunteering they should take care not to disregard the potential benefits of all possible existing kinds of volunteer activity. International experts agree “it is of paramount importance that a framework-law on volunteerism provide the most comprehensive and flexible definitions possible for volunteers and voluntary activity”.²⁸

Almost all laws recognize that volunteering should be conducted for the benefit of the public, but some laws, such as the Portuguese law also specifically define the publicly beneficial fields of activities (see above section III). Similarly, the Romanian law defines as publicly beneficial the following activities: social work, social care, human rights protection, health and health care, cultural, educational, tuition, scientific, humanitarian, religious, philanthropic, sports, environment and social and community activities.

iii. Recipient of volunteer services

²⁸ “A Volunteerism and Legislation: A Guidance Note” Legal Issues Affecting Volunteers and Volunteering in Europe, Warsaw, Poland January 23-26, 2002.

Generally, volunteers are providing their services for the benefit of another person, who is not related to them or for a larger community, an organization, a legal entity, a public body, or even the common interest (e.g. the protection of the environment). For example, the Romanian law provides that the beneficiary of the volunteer activities can be a natural or legal entity for the benefit of which such activities are performed and highlights that the host organization may be also a beneficiary of the volunteer activities.

The Spanish law for example excludes voluntary actions performed outside public or private non-profit organizations, for family reasons or by virtue of friendship or neighborliness.²⁹ Similarly, the Romanian law makes reference that “self sufficient and sporadic volunteer activities, except for those performed within the framework of the relationships with the legal entities, attributed to family, friendship or neighborhood relationships shall not constitute a voluntary activity, and therefore, fall outside the scope of this law.”³⁰

iv. *By free choice*

“Free choice” means (1) personal liberty of any individual to decide whether to volunteer and (2) the extent to which one is willing to engage in voluntary activity without having been compelled or coerced by authorities or by law. The question whether a specific activity or situation qualifies as volunteering should be determined by making an assessment of whether the refusal to perform such activity would lead to certain consequences for the individual, and thus influence his/her choice of whether to perform the activity or not.

This element of “free choice” is an important feature that distinguishes volunteering from other types of activities, which in some situations might also be refereed to as “volunteering”. For example, some countries around the region have qualified the civilian service or apprenticeship as volunteering. Civilian service is the alternative to the

²⁹ The Regulation and Development of Voluntary Work in Spain, Miguel Angel Cabra de Luna, SEAL, Autumn 2001

³⁰ Country Report on the Legal Status of Volunteers in Romania, AVSO & CEV Project: Legal Status of Volunteers, www.avso.org

compulsory military service, and the apprenticeship is a type of vocational training required by certain professions before taking the professional exams (e.g., legal, medical). Other countries debate whether these two can fall under the traditional definition of volunteering. The decisive factor which prompts this debate is the fact that the civilian service and sometimes the apprenticeship are performed without remuneration.

Generally, apprenticeship and alternative military service should not be considered as volunteering even though there is not compensation provided for the service. If “free choice” means a liberty to decide whether and how much one wants to volunteer, then any penalty or disadvantage for not performing the service will be one of the indicators that the service is not performed “by free choice”. Behind the volunteer-apprentices and alternative military service there is a state obligation or a requirement by an educational institution or professional chamber that is driving these activities. The existence of such requirement makes it hard to consider them as traditional form of volunteering. The element of free choice, which is affected in this case, overrides the aspect that these activities are performed with no remuneration. Freedom of choice also implies that a volunteer may terminate his engagement at any time, or under the conditions specified in a contract or other form of agreement with the hosting organization. There are consequences for the civil servants and apprentices if they do not fulfill the required tasks.

In this line, the Spanish Act provides that volunteering should be done in altruism, solidarity, and freely, not deriving from personal obligation or legal duty. The Hungarian Act provides that the activity will not be considered as a public interest volunteering if it is performed for benefit of the person, or close relative, if such activity is stipulated by law, it is based on decision of court or prescribed by other authorities, and if the parties have agreed upon such activity under different legal relationship. The law even further defines the details of such non-volunteer agreements in separate articles.

The Communication from the European Commission to the Council³¹ also emphasizes that civilian service is not a voluntary activity. The Czech law stipulates that the performance of military service or alternative civil service constitutes an obstacle to rendering volunteer services.

v. Without compensation

Since volunteering is understood as a donation in time and effort, volunteer services should be performed without compensation. The Polish law even specifically prescribes that “the value of services provided by volunteers does not constitute a donation to a beneficiary under the regulations of the Civil Code and tax regulations.” The Italian law makes an explicit reference that the volunteer may not be paid in any way, not even by the beneficiary. The Hungarian law stipulates that any financial gain by the volunteer and/or a close relative as a result of the volunteering will be considered as remuneration. The Portuguese law recognizes the principle of gratuitousness among the key principles governing volunteering. This principle essentially means that volunteers cannot be remunerated nor receive grants or donations while volunteering.

The incompatibility of the financial remuneration for the performed activity with volunteering does not mean that the volunteer cannot receive any reimbursement for expenses that will arise during the volunteering time. The reimbursements of reasonable expenses related to the provision of services (e.g. travel, accommodation, food) that are agreed upon in advance and the volunteer requests to be reimbursed should be permitted. All laws provide that volunteers can be reimbursed for expenses that have been incurred in course of service provision.

³¹ Communication from the Commission to the Council - Follow-up to the White Paper on a New Impetus for European Youth - Proposed common objectives for voluntary activities among young people in response to the Council Resolution of 27 June 2002 regarding the framework of European cooperation in the youth field COM/2004/0337

<http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:52004DC0337:EN:HTML>

The dividing line between compensation and reimbursement of expenses is very fine. Therefore, laws should clarify that reimbursement is made only for actual expenses, which have been incurred. If volunteers are paid a fixed rate (even if it is lower than market value for that service), problems can arise with labor laws as they may be indistinguishable from compensation and give rise to taxation, welfare benefits, and minimum wage issues.³²

In addition, the value that volunteers bring to the community has become more recognizable and largely appreciated in recent years. Therefore, some legislators have also been debating whether to create incentives for volunteering and rewards. The experts agree that as long as such rewards are neither agreed upon nor to be expected under the given circumstances they should be allowed and should not affect the legal status of a volunteer.³³ The Romanian law provides that volunteers have the right to receive honorary titles, medals and bonuses, subject to the conditions stipulated by the law. The Hungarian law allows for volunteers to receive a bonus provided that the annual amount of such allowance does not exceed 20% of the prevailing mandatory monthly minimum wage. Generally, however, organizations should avoid offering financial gifts as they might be considered payments. This is important not only for purposes of distinguishing them from paid individuals, but also because it directly contradicts the true nature of volunteering which essentially distinguishes this activity from the others because it is based on the good will and not on any expectation for financial gain. If one volunteer is to receive compensation this can raise expectation among peers and also on a larger scale in the society. Such practice can easily blur the concept and eventually end in stricter scrutiny by the labour inspectors who will want to ensure that volunteering does not result in a misuse of labour or evasion of tax obligations.

2. Volunteer agreement

Volunteers and organizations should be free to regulate the specifics of their relationship. The legal framework should allow for volunteers and organizations to define

³² Volunteering - The Long Arm Of The Law, Debra Morris www.icnl.org/journal/vol2iss4/ar_morris1.htm

³³ Legal Issues Affecting Volunteers and Volunteering in Europe, Warsaw, Poland January 23-26, 2002

their relationship through formal agreements and it should provide general principles to guide them in this process. However, laws should not aim to regulate the content of such agreement in detail because of the various forms of volunteering that may exist in practice and also because of the different circumstances under which they are performed. In addition, the recognition of volunteer agreements can help distinguish volunteering from an employment relationship. This is especially useful in cases where state authorities may tend to misinterpret a volunteering relationship as unpaid labor. It should be emphasized that the possibility to conclude an agreement on volunteering should not prevent volunteers from providing voluntary services without any explicit or written agreement.³⁴ The latter is true especially for short term volunteer engagements.

The country specific laws, especially of the CEE region are keen to regulate the details of a volunteer agreement. Volunteering under the law in Romania is of contractual nature, and the written form is mandatory. According to the Czech law a volunteer renders volunteer services on the basis of a contract concluded with a delegating organization which must have a written form in case of a long-term volunteer service or in case of a short-term volunteer service abroad.

The Hungarian law provides only general guidance as to what a volunteer contract should contain: description (content) and place of public interest volunteer activity, length of time assigned for work and rest and allowances provided to the volunteer and their treatment in case of termination of the volunteer contract. In addition, it defines that the volunteer contract must be in writing in cases when it volunteering is performed for at least 10 days (volunteers under 18 years of age or adults with a restricted legal capacity, for at least two days), when the volunteer is provided allowances, the volunteer is engaged in construction activities requiring a building permit, the activity is performed abroad, when the right of either parties to immediate termination is restricted, when this is requested by the volunteer, if it is required by other laws etc.

³⁴ Legal Issues Affecting Volunteers and Volunteering in Europe, Warsaw, Poland January 23-26, 2002.

In Lithuania, if a volunteer provides services for more than two days in a row or in case of an event which lasts more than one week, the organization must fill in the information in a register which will contain the volunteer name, date of birth, types of activities, timeframe and other information. In addition, at the request of one of the sides a written contract can also be signed. The regulation also provides a model form of the registry and 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 that allows for its dissolution. Upon the request of a volunteer, the beneficiary is obliged to provide a written contract and also issue a written confirmation about the services delivered by the volunteer.

The Portuguese law determines that the relationship between the volunteers and organizations should be guided by a volunteer program which defines: the scope of voluntary activities, criteria for participating in the activities, duration and forms of termination; places where volunteering will take place, internal systems of information and guidance volunteers; regular assessment of the results, development of training activities, risk coverage and liability issues, procedure for dispute resolution and volunteer identification and certification.

Some laws also determine the general conditions under which volunteer engagement can be terminated (e.g., Portugal, Hungary) while others leave this to be defined in the contract (e.g., Poland).

3. Rights and obligations

The legal framework should contain provisions which either define the specific rights and obligations of a volunteering relationship, or which require that such rights and obligations should be regulated with an agreement. The type of rights and level of regulation will depend on the type of volunteering that the law is regulating.

i. Rights of volunteers

All laws should adopt provisions which guarantee the minimum rights to volunteers, such as the right to be informed about the volunteer arrangement, right to receive reimbursement of expenses, right to perform the activities in safe environments, guarantee to retain unemployment benefits. In addition, the legal system may prescribe other rights and obligations related to social benefits, to create incentives for volunteering or incorporate volunteers in the state-funded social security systems. In practice, these additional benefits would correspond to the general objectives that the state wants to promote through volunteering arrangements. In addition, higher level of rights would ultimately result in higher accountability and reporting requirements on the side of the organizations and volunteers.

- Disclosure requirement

Volunteers must be informed about the rights, obligations, and specifics of volunteer engagement prior to its commencement to help the volunteer make an informed decision about the particulars of the volunteering and whether to join the volunteering relationship. The requirement for disclosure of information pertinent to the volunteer engagement is important as it ensures that (1) the volunteer is engaged in activities she/he expected or which were the motive for her/his engagement, (2) that volunteers understand what rights they are entitled to and the circumstances that define those rights and (3) that they are informed of the possible dangers that might arise from the volunteering activity. The disclosure requirement helps minimize any potential misunderstandings that might occur regarding the benefits that volunteers or organizations could expect to gain from the relationship (e.g., volunteers expecting trainings, organizations expecting full time commitment when volunteers are assigned to assist with implementation of an event). It also ensures that the expectations of volunteers regarding the volunteer tasks that they are assigned to perform are met (i.e., whether they will be engaged in the field related to their skills and interest or required to perform administrative tasks in the office). If the volunteer assignment does not meet the

expectation of volunteers it can easily result in loss of enthusiasm and can discourage volunteering. In addition, this requirement helps clarify the financial arrangements, especially regarding the reimbursement of reasonable expenses (see below). The disclosure requirement can be part of written contract or can be communicated to the volunteer prior the commencement of the activity. International experts recommend that in cases when there is no written contract the information should be in text form and it should either be handed out to the volunteer or posted on a visible place.³⁵

The obligation on the side of the organization to inform volunteers is enumerated as an explicit right under several laws. The Polish law prescribes an obligation on the side of the organizations to inform the volunteer about the rights and responsibilities and to provide access to such information. Similarly, the Hungarian law provides that the organizations are obliged to provide information and guidance regarding the activity, and inform volunteers about any opportunity to acquire skills and knowledge. In Lithuania the organizations must instruct volunteers about the process, safety and health issues related to the performance of activities prior their commencement. Under the Czech law the voluntary contract must contain an agreement about the preparatory training organized by the delegating organization, which must also provide the volunteer with information about the possible risks connected with rendering the volunteer services which could present a life or health threat.

- Reimbursement of expenses

The law should provide the right to volunteers to request reimbursements for expenses incurred in relation with the provision of their voluntary services. In addition, such reimbursement should be exempted from taxation. This exemption could be restricted to the level of reasonable expenses with regard to the extent and intensity of their services.³⁶ Further, while the law should grant the right to volunteers to receive reimbursement it should also allow them to waive this right as some volunteers may decide not to request

³⁵ Legal Issues Affecting Volunteers and Volunteering in Europe, Warsaw, Poland January 23-26, 2002

³⁶ Legal Issues Affecting Volunteers and Volunteering in Europe, Warsaw, Poland January 23-26, 2002.

reimbursement and because they not only want to donate their time, but also to financially support the implementation of the activity.

Some laws provide general guidance in terms of which costs can be considered as reimbursement while others detail those expenses. For example, the Portuguese Act provides that volunteers should be reimbursed for any sums spent in the exercise of activities if duly justified, within the limits eventually established by the respective entity. Similarly, the Italian law provides that volunteers may be reimbursed for expenses that have resulted from the activity, within the limits set by the organizations to which volunteers belong. The Latvian law also provides that volunteers may be reimbursed for expenses that have been incurred during volunteering, if those are set out in the articles of association or board decisions of the association or foundation.

According the Polish law, the organizations are obliged to cover travel expenses and per diems related to performance of the activities, according to the rules applying to employees as defined in respective regulations. The organizations may cover other indispensable costs undertaken by a volunteer that are related to the services provided by him or her for the sake of the beneficiary according to regulations described in separate provisions that apply to employers. Further, the law allows volunteers to exempt the organization entirely or partially from the obligations to reimburse expenses, however this must be done through a compulsory written form. The Lithuanian regulation specifically enumerates the costs that can be reimbursed for example, travel, food expenses if volunteering lasts more than 4 hours during one day, accommodation, expenses of mail, phone done outside of the organizations' offices. The Hungarian law also enumerates specifically all costs which will not be regarded as reimbursement, such as work clothing, protective equipment or material, transportation, accommodation or food provided to the volunteer or their reimbursement, the amount paid to the volunteer with respect to the use of personal vehicle for the benefit of the host organization, vaccination, screening examination and other disease prevention services, cost of training, provision or reimbursement of food, care and training to the volunteer's animal. The law also details the conditions upon which

volunteers may be issued with a per diem. For example, the law provides that individuals who volunteer with more than one organization may receive per diem from only one organization at a time and the volunteer must notify the other the organizations of such arrangements.

- Social benefits, Insurance, Safety at Work

Social benefits, such as health insurance, retirement and accident insurance are within the scope of labor relationships, as they are directly related to the salaries or other forms of remuneration that individuals receive. Volunteering is an activity that does not require remuneration and therefore it is usually not covered by these systems. The social benefits are not an issue to be addressed in the cases of occasional, short term volunteering or volunteering by employed people or students. Countries, however, could consider extending social benefits to those volunteers who are providing their services for a longer term and full time. Generally, the legislation should provide an option for the organizations to offer private social security benefits at their own cost and those benefits should not be subject to taxation. In addition, these benefits should not be considered as remuneration and should not affect the status of volunteers.³⁷ The Hungarian law specifically stipulates that life, health, accident or liability insurance will not be considered as remuneration.

Depending on the aim of the law and type of volunteering to be regulated, countries could even consider including volunteers in the state-funded social security systems, which could be restricted and conditioned to volunteering for specific publicly beneficial purposes.

Country laws should ensure that unemployed individuals do not lose the benefits they are entitled to as a result of their engagement in volunteer activities. As noted above, this is important because unemployed individuals through volunteer activities are able to build their skills and become more prepared to respond to the needs of the labor market once they get employed. Volunteering also enables them to gain more confidence and enthusiasm

³⁷ For more on the relationship between social benefits and compensation see: Legal Issues Affecting Volunteers and Volunteering in Europe, Warsaw, Poland January 23-26, 2002.

about their abilities to undertake future jobs. Finally, volunteers should also be protected in terms of the place and conditions under which they provide their services. They should be subjected to same safety standards as employees, and organizations should ensure that the conditions are not hazardous to their health and the possibilities of incidents are minimized. When volunteering might expose volunteers to dangerous conditions, they should be explicitly informed about this prior to commencement of the activity.

The law in Portugal stipulates that volunteers have the right to be integrated into the volunteering social insurance regime, in case they are not under a compulsory social security regime; to receive compensation, subsidies, pensions and other benefits defined by law, in the event of accident or disease developed when volunteering, and to perform the voluntary service under hygienic and safe conditions. The Polish law entitles the volunteer to healthcare benefits based on the regulations concerning common health insurance and to compensation in case of an accident. Further the law obliges the beneficiary to provide accident insurance to those volunteer who provide their services for not more than thirty days. In addition, the beneficiary is obliged to inform the volunteer about any health and safety risks that are connected with the services provided and about the rules for protection against risks; and provide the volunteer, based on the rules applying to employees that are defined in separate regulations, safe and hygienic circumstances, including relevant medical examinations, personal protection, and training in the issues of safety and hygiene at work. The law also gives the right to the volunteer to exempt the beneficiary from these obligations; however such exemption must be done through a compulsory written notice. In Hungary, organizations must provide for safe and non-hazardous conditions and might sign insurance contract and volunteers may refuse to undertake an activity if it constitutes a direct threat to the volunteer's life, health or physical integrity. The conclusion and maintenance of casualty, health and other risks insurance is listed among the minimum rights that volunteer contract in Romania should contain. The Italian law provides that volunteer organizations must insure their members carrying out volunteering activities against accidents and illness, among the minimum provisions which directly address the volunteers. In cases of long-term volunteering in Czech Republic, the contracts may include a provision stipulating that volunteers should register for pension insurance if they meet the legal requirements and that

the delegating organization shall pay for at least minimum pension insurance, if such services are performed in average minimum 20 hours per week.

- Other rights

Some laws also prescribe other rights to volunteers, which recognize that volunteers can and should benefit from the engagement. This is especially important for youth volunteers who can develop certain skills and get trained for prospective jobs. For example, the Portuguese law provides that volunteers should have access to initial and ongoing training programs so as to improve the provision of volunteer services or to have a volunteer identification card, to be heard in bringing decisions which affect the development of volunteering. The Romanian law also prescribes among the minimum rights, the volunteers' active participation in the elaboration and performance of the program for which the contract was concluded and the right to be assigned for activities in accordance with their professional training. The Polish law also prescribes that the beneficiary organization may cover training costs for volunteers.

Several laws, such as the Czech and Romanian, also ensure that volunteers have a right of equal opportunities and treatment in the provision of services. The Hungarian law also contains rules regarding data protection, by prescribing that the organization may not disclose information concerning the volunteer to third parties, unless it is stipulated by law or such disclosure is required for the purposes of this law.

ii. Obligations

In addition to rights, volunteers also have certain obligations that arise from the relationship. The fact that they are providing services on voluntary basis by free will does not release them from certain duties that may arise from the volunteer relationship that they have committed to. This is especially relevant in the cases of formal, long-term volunteer relationships, as it helps ensure that the organization and its final beneficiaries ultimately receive the service and guarantees good diligence in performance of the activities. To this

end the Portuguese act recognizes the responsibility of volunteers to exercise the activities they undertook to perform, given the expectations raised in recipients of the service as a core principle of volunteering. Generally, laws do not need to explicitly regulate all duties and obligations of volunteering and can leave for the particulars to be regulated in the volunteer contract. Depending on the specific type of volunteering they aim to regulate, laws may enumerate minimum obligations or provide a general framework.

In Hungary volunteers are obliged to perform their activities in person, and in accordance with relevant legal rules, professional and ethical requirements and the instruction of the host organization. They must protect any personal data, trade or other secret that they might have acquired while performing the activity. In Romania, volunteers are obliged to perform the tasks entrusted by the host organization; to keep confidentiality regarding the information to which the volunteer has access due to or during the performance of the volunteer activities, to participate in the lectures organized, initiated or proposed by the organization and to protect the goods they use.

The Portuguese law stipulates the following duties of volunteers: Volunteers shall have the following duties: to observe the rules of professional ethics governing the activity they exercise, namely the respect for the private life of all beneficiaries; to observe the norms which regulate the functioning of the entity they collaborate with; to act in a diligent, impartial and solidary way; to participate in training programs aimed at developing capacities related to their activity; to provide for the best use of material resources and goods, equipment and devices put at their disposal; to collaborate with the organizations' staff; to refrain from acting as representatives of the organization unless they have received such authorization; to guarantee that they will perform their activities in accordance with the program agreed upon and to duly use their identification as volunteers in the exercise of their activity.

4. Liability

The issue of liability is also important to be addressed by the legal framework as it protects not only third parties from (un)intentional damage but also volunteers from damages or injuries they may cause. Generally, the issue of liability in case of volunteering should fall under the scope of the civil law (contracts, torts) liability. As a matter of good practice, the organizations should subscribe volunteers to insurance liability policies and possibly cover any forms of negligence committed by volunteers.³⁸

The Hungarian law contains detailed provisions regarding liability issues. Specifically, volunteers are obliged to advise the organization if the activity they were instructed to perform might cause damage. Volunteers who have provided such notification are not liable for damages caused. Host organizations are required to conclude a liability insurance contract to compensate for damages that may occur while providing services and may use a volunteer only if such liability insurance also covers damages caused by the volunteer. Host organizations are liable for damages caused by the volunteer to a third party, however if the damage was caused by the “imputable conduct of the volunteer”, the organization may 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 was caused by an unavoidable reason outside the range of their operations, or exclusively by the unavoidable conduct of the volunteer. Finally, volunteers’ close relatives may enforce their claim for compensation for damage due to death of the volunteer.

In Romania, the liability issues arising from volunteer relationship are subject to the provisions of the Civil Code. In Latvia an association or foundation is liable for harm caused to a person during the volunteering, if the organization has taken on such a responsibility or if the harm has been caused due to the fault of the organization. The Portuguese law provides that the volunteer agreement must contain provisions outlining the coverage of risks the volunteers are subject to and damages they may cause to third parties in the exercise of his or

³⁸ See: Legal Issues Affecting Volunteers and Volunteering in Europe, Warsaw, Poland January 23-26, 2002 and “A Volunteerism and Legislation: A Guidance Note,” prepared by the Inter-Parliamentary Union, International Federation of Red Cross and Red Crescent Societies and UN Volunteers.

her activity, taking into consideration the applicable norms on civil liability. The Italian law also creates an obligation for the organizations to insure volunteers against third-party liability related to the performance of their activities. The Czech law obliges the delegating organization to conclude an insurance contract for material damage or medical harm suffered by the volunteer (caused either by himself/herself or by another agent). Further, the volunteer is responsible only for harm caused intentionally.

5. Incentives

Some laws also create additional incentives that aim to promote and encourage wider volunteer engagement. In Portugal volunteers may benefit from a special regime in using public transportation, as specified in applicable legislation. In Czech Republic, the state may give subsidy to the delegating organization covering: insurance payments; part of expenses related to the record-keeping on volunteers, their preparation for rendering volunteer services and organization of the performance of the volunteer services, insurance payments for pension insurance for a volunteer derived from a minimum basis in cases of long-term volunteer services that exceed in average 20 hours per week. The Romanian law obliges local authorities to provide support in carrying out volunteer assignments and to give priority to the activities for the benefit of the youth belonging to underprivileged categories or areas.

In addition, laws should generally ensure that they support employee-volunteering schemes, which are more increasingly incorporated in the overall social responsibility programs of corporations. This would ensure that there are no legal uncertainties, which would discourage employers to allow employees to volunteer. Experts recommend that the time employees spend volunteering during working hours should be considered as “hours worked” under labor laws. In such cases, the employer should be bound to pay the minimum wage, overtime premiums and other related provisions ensuring protection for employees.³⁹

³⁹ See: “A Volunteerism and Legislation: A Guidance Note,” prepared by the Inter-Parliamentary Union, International Federation of Red Cross and Red Crescent Societies and UN Volunteers.

6. International volunteering

National legal frameworks should aim to foster volunteering of their own citizens abroad as well as expand the legal protection also to foreign volunteers providing services in their countries. In fact, the international treaties mentioned in the preceding sections, have primarily been adopted to promote this specific type of cross-national volunteering recognizing its value in promoting solidarity and collaboration and contributing to the education of young people.⁴⁰

The Hungarian law extends the provisions to Hungarian citizens volunteering abroad, and such volunteering is organized by the host organizations in Hungary. It also provides that: “A citizen of a state which is not a state party of the Agreement on the European Economic Area (except for persons recognized as refugees or persons in a refugee-like situation, immigrants or permanent residents, and direct line relatives or spouses of citizens of a state party of the Agreement on the European Economic Area) may pursue public interest volunteer activity if:

- a) the host organization has concluded a liability insurance covering damages caused by the volunteer;
- b) meals, accommodation and return transportation of volunteer is provided for; and
- c) the volunteer is eligible to healthcare services or has an insurance covering the costs of healthcare services.

Generally, the costs related to volunteering abroad (travel, accommodation, daily allowance) should not be allowed and should not be taxable neither in the country of origin or in the host country.⁴¹ Under the Hungarian law for example, per diem paid to individuals who volunteer abroad, or to foreign volunteers who do not have residence in Hungary is not considered as remuneration, provided that the monthly amount of such allowance does not exceed 20% of the prevailing mandatory monthly minimum wage.

⁴⁰ See for example the Council of Europe: Recommendation of the Committee of Ministers of Member States on the Promotion of Voluntary Service (1994)

⁴¹ Legal Issues Affecting Volunteers and Volunteering in Europe, Warsaw, Poland January 23-26, 2002

Some countries may extend additional benefits, depending on the type of volunteering they promote. For example, the Czech law guarantees the right of the volunteer to be provided with a medical insurance according to the nature of the volunteer services to be rendered and according to the conditions in the state or on the territory where the volunteer services are to be carried out. In addition, volunteers have the right to a health-risks-free housing in case they provide services outside of their residence.

Another impediment that discourages organizations to recruit foreign volunteers is the issue of volunteer visa. Due to the lack of legal status of volunteering, these volunteers are unable to obtain visa according to the volunteering purposes for which they visit the country. Usually, they have to visit the country based on tourist visa, which is of limited period and does not provide the legal basis for extended rights that such volunteers might be entitled to. Therefore, countries should revise their laws to enable foreigners to provide volunteer services based on a legally recognized visa regime. For example, the Romanian law provides the right to foreign volunteers to be granted a residence permit for the entire duration of their volunteer activities.

CONCLUSION

From the analysis provided through this research it can be concluded that the key reasons why countries should revise laws or enact separate legislation is to: promote volunteerism, protect volunteers and remove legal impediments. The legal regulations could and should:

- Distinguish volunteers from other types of legally recognized or regulated relationships;
- Clarify that volunteer services should be performed without compensation, as volunteering is understood as a donation in time and effort;
- Entitle volunteers to receive reimbursement of expenses and exempt such reimbursements from taxation;

- Determine the rights and duties of volunteers;
- Protect volunteers while they are performing voluntary activity;
- Guarantee right to unemployment benefits;
- Introduce rules to protect third parties against any damage incurred due to volunteering;
- Provide optional benefits to volunteers;
- Enable international volunteering.

In regulating volunteering, governments must set clear policies and goals they want to achieve and accordingly determine the type of volunteering they want to regulate. Local traditions of volunteering must be considered in determining the appropriate approach. Otherwise, laws might discourage spontaneous initiatives, create a burden on small organizations and have a deterrent-effect on the general culture of volunteering by giving advantages to one over another form of volunteering. Before launching a legal reform, it is also essential that every country undertakes comprehensive analysis of their legal systems. In order to ensure that the legislative initiatives addresses real needs of the volunteer community, governments should make certain that all stakeholders are properly consulted in the process and their comments are regarded in the draft provisions.

Finally, all governments should respect the fact that volunteering is an initiative of citizens who based on their free will want to become an active part in the community in order to alleviate local problems and contribute to the achievement of various social and humanitarian goals. This activism should be appreciated, cultivated and facilitated through the state policies in order both informal and formal volunteer initiatives to flourish and help create a better society for all.