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Summary of Moldovan Laws on Public Associations

Country Report

1. 1. Formation, registration and dissolution of NGO's in Moldova

The very first thing to be underlined is the flaw in mechanism of legal regulation of the social relations which appears during the process of formation, registration and dissolution of NGO's. Presently the main regulation act in this field remains to be the Government Decision NR 593 from 08.09.1992 "On approbation the Regulation on Public Associations", with amendments introduced by the Government Decision NR 747 from 06.10.1994 (in order to simplify the citing, the Regulation on Public Association will be named further on **the Regulation**). In addition an important document in this area is the Moldovan Law "On Philanthropy and Sponsorship" NR 521-XIII from 07.07.1995.

General provisions

Item 1 of the Regulation defines a Public Association (further called PA) as a "voluntary and independent citizen's association, formed on the grounds of a community of professional, cultural and other interests of its members. Public associations cannot pretend to participate to the formation of state bodies." Under this Regulation mass movements, professional unions, women's and veteran's organisations etc. are acknowledged as PAs.

The PA's elements are:

- PAs are created on a voluntary basis with equal rights for all members, which includes self-management, legality and publicity;
- PAs must operate outside of the work-time of its members and on its own expenses;
- PA's statutory purposes must be dedicated to religion, charity, science, testing for public safety, literacy or education, as well as protection of the citizen's rights and freedoms, development of their creation, protection of the public health or of the historic and natural monuments etc.

Item 6 of the Regulation classify the PAs in international, national and local PAs, depending on their geographical area of activity.

Formation of the PAs

According to the part 2 of the Regulation, PAs are formed through their registration at:

- the Ministry of Justice, Department of PA's registration - in the case of international and national PAs;
- the local public administration officials - in the case of local PAs.

PAs registering require the following documentation:

1. Two copies of the PA's Statute;
2. The document confirming the existence of an office for the PA's activity;
3. A copy of a Report of the constitution congress (conference) or general meeting which approved the Statute of PA;
4. A bank receipt to confirm the payment of the tax for registration;
5. Demand for registration.

The demand for registration is examined and decided within a one month period from the day of its presentation. The decision or a motivation to refuse to register the PA is in written form sent to its President. The refusal to register a PA can be disputed in court under the civil procedure laws.

Any amendments or additions to a Statute are registered in the same way.

Legal Principles of PAs Regulation

Chapter 3 of the Regulation contains an overview of the PA's basic rights and duties under Moldovan Law, and particularly:

- to realise a legislative initiative through its republican authorities. But it is a "nudum jus" because this stipulation collides with Art. 73 of the Constitution, which was approved by the Parliament at 29.07.1994 (and published in the Official Monitor of the Republic of Moldova, NR 1, August 1994). The above article stipulates precisely the right to legislative initiative belongs to

Parliament deputies, the President of the Republic and the Government. Thus, the only method for PAs to benefit from their right to legislative initiative is to have as a member a deputy of Parliament.

- to represent and protect the interests and rights of its members. The implementation of this is guaranteed by Issue 3 Article 48 of the Civil Procedure Code of Moldova, as well as by Part 1 Article 50 of the Penal Procedure Code of the Republic.
- to have their own information agencies and to practice publishing activities corresponding with the existing legislation. The term of “ existing legislation “ used in this item signifies the legislation on entrepreneurship (see chapter 3 below) and the Moldovan Law “ On press “ NR 243-XIII from 26.10.1994 (published in the Official Monitor of Moldova “, NR 22 (23) from 21.01.1994, Art. 12).
- to exercise other rights, provided by the Regulation and another legislative acts. Issue 17 of the Regulation shortly describes the meaning of “ other rights “ of PAs: particularly to exert the commercial activity, to found independent enterprises. The incomes which rises from commercial activity cannot be distributed among the PA’s members, and must be used only for PA’s statutory activities.

PAs with separate juridical statute

According to the paragraph 3, Issue 1 of the Regulation, stipulations do not refer to religious organisations, public organisation for local administration, which are regulated by the separate laws.

Foundations

Legal statutes of foundations in Moldova are scheduled for now by the Moldovan Law “On Philanthropy and Sponsorship“ NR 521- XIII from 07.07.1995. Article 5 of this law define the foundation as a “ philanthropic organisation, whose patrimony is formed by material and/or financial resources of the founders “. Foundations may be corporate (founded by enterprises), private (founded on the basis of a private

person and/or his (her) family’s means) or public (founded by several enterprises and/or private persons). The law was enforced beginning 01.01.1996. All existing foundations have to be re-registered under the new regulations, established by the law above. The same regulations govern the registration of the newly formed foundations.

1. 2. Taxation of the PAs

The fundamentals of a PA’s taxation are given in the Law of the Republic of Moldova “ On the grounds of the fiscal system “ NR 1198-XII from 17.11.1992, taking into account the facilities provided by the Regulation and the Moldovan Law “ On Philanthropy and Sponsorship “. Particularly (although the Regulation includes a modest indication to the fact “ the PAs make budget payments in proportion and terms stipulated by legislation) the Law on Philanthropy and Sponsorship is more “ generous “. It decrees for philanthropic foundations, recognised as such corresponding to legislation, a complete discharge of any tax or fiscal duties.

The Law on the grounds of the fiscal system categorise the PA’s taxes as follow:

1. Republican (state) taxes:
 - Value Added Tax (VAT);
 - Income Tax;
 - Excise;
 - State Tax and Stamp Tax;
 - Custom Tax.
2. Local taxes:
 - Tax on Real Estate;
 - Road Tax;
 - Land Tax;
 - Employees’ Income Tax.

Below we will analyse the main of them.

Value Added Tax (VAT)

It is reckoned and paid according to the Moldovan Law “ On Value Added Tax “ NR 264-XIII from 08.11.1993 (published in the Official Monitor of Moldova NR 10 (31) from 17.02.1995, Article 96) and the Instruction of the Ministry of Finance of the Republic “ On the Order of Reckoning and

Payment of the VAT “, NR 10 from 10.03.1995 (published in the Official Monitor of Moldova NR 20-30 (50-51) from 01.06.1995, Article 7) .

The VAT's proportion is 20 % of the amount subject to taxation.

From VAT payments are exempt the PAs when acquiring or offering:

- raw materials, technological and other equipment, imported vehicles (except cars);
- educational services;
- scientific researches and blueprint services;
- services in the field of culture, arts, medicine and sport;
- goods produced by the workshop of the child philanthropic foundation and the public associations of cripples;
- goods which are acknowledged as humanitarian or technical aid, corresponding to the existing legislation.

Income Tax

The legal fundamentals for this is the Moldovan Law “ On the Enterprises' Income Tax “ NR 1214 - XII from 02.12.1992 (published in the Official Monitor of Moldova NR 1 from 1993) and the instruction of the Ministry of Finance of the Republic “ On the Modulus of Reckoning and Payment of the Enterprises' Income Tax “ NR 4-02 from 02.09.1993, as well as by the instruction of the Ministry of Finance of the Republic “ On the Modulus of Reckoning and Payment of the Foreign Investment Enterprises' and Foreign Citizen's Income Tax “ NR 9-02 from 31.12.1993.

The Income rate is 32% of the incomes subject to taxation.

The PAs generally exempt from paying Income Tax include:

- Private and public philanthropic organisations, legally registered, and their enterprises. These gains must be devoted to the statutory purposes of the organisation;

- The enterprises of the societies of deaf-mutes, blinds and cripples which correspond to the legal requirement of having no less than 50 % of these people in the staff;

PA's Employee Income Tax

The legal fundamentals for this is the Moldovan Law “ On the Natural Persons' Income Tax “ NR 1218 - XII from 03.12.1992 (published in the Official Monitor of Moldova NR 12 from 1992) and the instruction of the Ministry of Finance of the Republic “ On the Modulus of Reckoning and Payment of the Natural Persons' Income Tax “ NR 3 from 03.06.1993.

The tax rate depends on the proportion of the salary, and is reckoned on the basis of a table of taxes for the rate of salary, which is in the Appendix NR 12 to the Law “ On the State Budget for the 1996 year “.

1. 3. Commercial activity of the PAs

The commercial side of PA's activity is subject to many regulations, which form a separate field of entrepreneurship law. The first being the Civil Code of the Republic of Moldova, approved by the Law of the Republic from 26.12.1964 (published in the M.S.S.R. Supreme Council Tidings, NR 36, 1964). The field of entrepreneurship law also includes the Moldovan Law “ On Entrepreneurship and Enterprises “, NR 845 - XII from 03.01.1992 (published in the Parliament Monitor of Moldova, NR 2, 1994), Moldovan Law “ On Supporting and Protecting of Small Business “ NR 112-XIII from 20.05.1994 (published in the Official Monitor of Moldova NR 2 from 25.08.1994), the Government Decision “ On the Fund for Supporting Entrepreneurship and Development of Small Business “ NR 659 from 21.10.1993, the Government Decision “ On Approbation of the Regulation on the Conditions of Granting and Reimbursement of the Fiscal Credit for the Small Business Enterprises “ NR 783 from 26.10.1994 (published in the Official Monitor of Moldova NR 15 from 01.12.1994) etc.

The most favourable choice in juridical terms for registering a newly created

enterprise is as an affiliated enterprise with a PA, or a joint-venture in common with another enterprise, organisation or institution, in order to minimise the taxes on statutory capital or on part of the statutory capital.

It is noteworthy that new enterprises benefit from a fiscal credit in the form of an exemption from the payment of the Income Tax for a period which depends on the : (1) number of small business enterprise employees, (2) type of business which the enterprise conduct (preferential or not). According to the above-mentioned, the term of this credit lasts from 1 to 5 years.

1. 4. Conclusion

The NGO legislation of the Republic of Moldova needs improvement, because of its confusing and incomplete scheme. Moldovan Law does not make any distinction between the two world-wide recognised types of NGOs: associations and foundations. Even more, the foundations do not have any regulation of its activity under the present legislation. The drafters need to make a lot of efforts in order to bring the Republic's laws on NGOs to the standards practiced internationally.

References:

1. Government Decision NR 593 from 08.09.1992 " On Approbation of the Regulation on Public Associations ", with amendments introduced by the Government Decision NR 747 from 06.10.1994
2. Moldovan Law " On Philanthropy and Sponsorship " NR 521-XJII from 07.07.1995
3. Moldovan Law " On Press " NR 243-XIII from 26.10.1994 (published in the Official Monitor of Moldova ", NR 22 (23) from 21.01.1994, art. 12)
4. Law of the Republic of Moldova " On the Grounds of the Fiscal System " NR 1198-XII from 17.11.1992
5. Moldovan Law " On Value Added Tax " NR 264-XIII from 08.11.1993 (published in the Official Monitor of Moldova NR 10 (31) from 17.02.1995, article 96)
6. instruction of the Ministry of Finance "On the Order of Reckoning and Payment of the VAT " NR 10 from 10.03.1995 (published in the Official Monitor of Moldova NR 20-30 (50-51) from 01.06.1995, article 7)
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9. instruction of the Ministry of Finance "On the Modulus of Reckoning and Payment of the Foreign Investment Enterprises' and Foreign Citizen's Income Tax " NR 9-02 from 31.12.1993
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11. instruction of the Ministry of Finance " On the Modulus of Reckoning and Payment of the Natural Persons' Income Tax " NR 3 from 03.06.1993
12. Civil Code of the Republic of Moldova, approved by the Law of the Republic from 26.12.1964 (published in the M.S.S.R. Supreme Council Tidings, NR 36, 1964
13. Moldovan Law " On Entrepreneurship and Enterprises " NR 845 - XII from 03.01.1992 (published in the Parliament Monitor of Moldova, NR 2, 1994)
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16. Government Decision " On approbation of the Regulation on Conditions of Granting and Reimbursement of the Fiscal Credit for the Small Business Enterprises " NR 783 from 26.10.1994 (published in the Official Monitor of Moldova NR 15 from 01.12.1994)