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Country Report: Moldova

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The legal environment for civil society organizations (CSOs) and civil society in the Republic of Moldova has considerably improved in the past year. After the political change that followed the parliamentary elections of July 2009, the new government proved to be more open and consistent in carrying out a number of legal reforms contributing to an enabling environment for CSOs. At the same time the political and social events of 2008-2009 resulted in stronger voices of CSOs being heard and recognized by the Government and the Parliament. This article provides a short overview of the most significant developments in the legal field affecting nongovernmental organizations today.

As stated on the webpage of the Ministry of Justice, some 5,314 CSOs are currently included in the Ministry's online registry of nongovernmental organizations.^[2] The actual number is higher, around 8,000 CSOs.^[3] Such a difference is due to fact that organizations can also be registered at the local level with municipalities and the data is not always submitted to the central registry. However, according to ADEPT think tank, only some 25% of the 8,000 CSOs are currently active.^[4]

The current legal framework provides for a basic enabling environment for CSOs to freely establish and operate, as well as engage with government and other stakeholders to achieve their goals. The Civil Society Development Strategy and the National Participation Council should be mentioned among recent initiatives to support CSOs and to establish better relationships between the Government and the nongovernmental sector. In addition, several other laws affecting CSOs were adopted in Moldova in 2010: amendments to the Law on Public Associations, including amendments relating to the public benefit status; the Law on Volunteering; and the Law on Social Services. While more work is ahead in order to ensure successful implementation of the laws, these initiatives are generally supportive of CSOs and contribute to creating a better legal environment. Other initiatives are also under discussion: accounting standards for CSOs, Law on Accreditation, and possibly percentage legislation.

Institutional Framework for Government–CSO Relationships in Moldova: Civil Society Development Strategy, National Participation Council

The grounds for legal reform were laid even before the changes of 2009 and with significant political support of members of the current democratic leadership who used to be part of the old Parliament. Back in December 2008 the Parliament passed the *Civil Society Development Strategy for 2008-2011*.^[5] This document can be considered a major breakthrough in the field of state-civil society relationships in the Republic of Moldova. The Strategy identifies a number of priorities for the government that are pivotal for the

development of civil society in Moldova and establishes principles and values for cooperation and relations between public authorities and civil society. Strategic priorities include i) better institutionalization of the consultation, monitoring and evaluation of public policy processes; ii) developing an enabling legal and fiscal framework for CSOs; and iii) contributing to civic activism and volunteering. As stated in the Strategy, it is based on the principles of civil society's active involvement, public participation in policy-making, mutual respect, partnership between government and nongovernmental sector, obligation, and responsibility. It also calls for political autonomy of civic initiatives. The document promotes sustainable and balanced development of the CSO sector, both on regional and local level, and their equal treatment. Initially, the Strategy was supposed to be supported by an Action Plan as well. However, the prior vision of introducing the Action Plan within four months upon the adoption of the Strategy fell short due to the political turmoil. At present, the Action Plan exists only in a draft form that was prepared by the State Chancellery and has been circulated among the corresponding ministries. The draft Action Plan includes tangible goals and a timeline for achieving the objectives outlined in the Strategy for Civil Society Development. Despite the fact that the Action Plan has not been officially approved, its priorities and corresponding activities are part of some Ministries' internal planning and are being followed as outlined in the draft version of the Action Plan.

Another recent initiative to establish better cooperating links between the civil society sector and the Government is the National Participation Council. The Council was established in February 2010 as an advisory body and a liaison between the government, civil society, and the private sector. The Council consists of thirty members representing CSOs from various fields whose primary task is i) to participate in policy-making through providing expert opinions on draft policies and strategic documents, as well as conducting and presenting independent assessments of policies' impacts; and ii) to contribute to establishing the institutional framework for consultation that includes among others monitoring implementation of the Law on Transparency in Decision-Making and capacity-building for stakeholders. As such the objectives set up for the Council are quite ambitious. [\[6\]](#)

The National Participation Council recently developed and approved the strategy for its activities in 2010 - 2012 (the duration of the current mandate) and introduced some changes into the rules of operation. According to the strategy, the Council identified as its priorities i) to offer expertise in drafting, monitoring, and evaluating public policies; and ii) to facilitate involvement of private actors and civil society in decision-making process through establishing four working groups, focusing on justice and human rights; economic development; foreign policy, security, and defense; and social policy, education, and youth.

Recent Developments in the Legal Framework for CSOs: PBO Amendments, Law on Social Services, Law on Volunteering

Several laws affecting CSOs were adopted in 2010 in Moldova. While further work is needed to ensure successful implementation, these initiatives are generally supportive of CSOs and contribute to creating a more enabling environment:

- The Amendments on Public Benefit status

The amendments regarding public benefit status, which were passed among amendments to the Law on Public Associations, are an important step forward in the legal framework for CSOs in Moldova. The law aims to give practical meaning to the status of public benefit, which has already been in existence for almost ten years but recently without much significance for public benefit organizations (PBOs). According to the study carried out by the local think tank CREDO, some fifty to seventy organizations per year apply for PBO

status. The number of organizations applying for the status or renewing it after three years (the status has to be reconfirmed every three years) has been steadily declining in recent years.^[7] One of the main reasons for the lack of interest in acquiring the status is lack of tangible fiscal incentives for organizations to hold PBO status, which is supposed to change with the new amendments in force.

The new law provides a definition of public benefit activities that is generally in line with other European laws; it establishes obligations concerning reporting and transparency and assigns a range of potential direct and indirect benefits to the PBOs. Both obligations and benefits are greater than the previous legislation provided for. However, the implementation of the benefits and their real scope still remains to be seen after the secondary legislation is developed. Finally, the law provides for a new composition of the Certification Commission (CC), ensuring that the majority of the CC will consist of CSO representatives.

- The Law on Volunteering

As the result of four years of active advocacy for adopting a legal framework for volunteering, the Law on Volunteering was adopted on June 18, 2010. The law regulates formal volunteering relations between host organizations (public and private entities) and volunteers. The law also introduces conceptual elements of volunteering which are in line with international and European practices: it prescribes that volunteers are individuals who undertake activities based on their own initiative and with free consent, for public benefit purposes and without remuneration. The law outlines the rights and responsibilities of the parties, addresses issues of liability, prescribes certain incentives for volunteers, and deals with international volunteering.

The Law enlists next steps needed for its successful implementation, such as preparing a standard contract for volunteers, volunteer's card, and certificate, and more generally speaks of measures to encourage volunteering and ensure minimum standards for volunteering activities.

- The Law on Social Services

This law is the first of a set of legal documents, to be followed by the Law on Accreditation as well as amendments to the Law on Public Acquisitions, which will together set the framework for public procurement of social services by non-state providers, including CSOs. These documents are tentatively to be enforced in mid-2011. The new Law on Social Services establishes an important milestone in that it explicitly allows for the first time to contract out social services to non-state actors, including CSOs.

The law specifically enlists the currently available legal forms of CSOs (associations, foundations, and institutions) as possible providers of social services; and it devotes a whole article to lay out the rights of such providers under this law, including their participation in determining the needs for services and access to government funding tenders. The law also sets out a new paradigm in thinking about social services by categorizing them at three levels, as basic, specialized, and highly specialized services.

Pending Legal Initiatives: Accounting Standards, Law on Accreditation, Percentage Legislation, Accounting Standards

- Accounting Standards for CSOs

To assist with reporting for CSOs and to ensure proper accountability, a working group under the aegis of the Ministry of Finance has prepared draft Methodological Recommendations for CSO accounting. The document includes suggestions for nonprofit financial reporting that can be applied by CSOs and respective authorities, as well as practical examples. The draft document is available at the Ministry of Finance webpage.^[8] It is supposed to be adopted by the end of 2010 and come into force in January 2011.

- The Law on Accreditation

According to the new Law on Social Services, all social services regardless of the actor that provides them, public or private, will need to be accredited. The Law on Accreditation will provide a more detailed definition of social services at all three levels, as basic, specialized, and highly specialized services. This arrangement gives rise to some practical questions, such as what will happen to those services that CSOs propose to start up as an innovation—that is, services that do not currently exist. Will they need to be accredited before the CSO can even run them? This and other questions will need to be discussed by the stakeholders in the development of the Law on Accreditation.

- Percentage Legislation

In Moldova where government funding to CSOs is sporadic, there have been discussions about introducing a so-called percentage law^[9] to ensure better financial viability of the non-profit sector. Several years ago a draft Law on 2%, primarily based on the Romanian example, was prepared by a group of lawyers. According to this draft Law, individual and corporate donors were allowed to designate 2% of their income tax to CSOs holding public benefit status. The draft law has been abandoned for some time and recently discussions started about possibly revisiting the idea. Local stakeholders realize that all risks and opportunities in connection to such a law need to be closely examined and calculated. Central to this assessment are estimating the amount of tax designations and the cost of introducing the system, the challenges of administration, and the running costs. Among criteria to be considered are the level of taxation, the overall number of taxpayers, the likely percentage of those who would take advantage of such a mechanism, and the number and types of CSOs likely to benefit. Recently the Ministry of Finance started an assessment of taxpayers' data in the recent years to do preparatory work for the feasibility of such legislation to be applied in Moldova.

Conclusion

This article did not attempt to describe in great detail all legal initiatives that affect the CSO sector in Moldova, but sought to give an overview of a few important ones that have a direct impact on the establishment and daily operation of CSOs.

Having achieved laudable results in the area of legal reform that affects CSOs in Moldova within a short period of time, more work needs to be done to ensure successful implementation of the laws already passed; and proper policy and legal analysis needs to be conducted for upcoming legal initiatives. Further cross-sectoral dialogue between the Moldovan government and CSOs is of utmost importance to ensure proper implementation of the National Civil Society Development Strategy and to contribute to establishing an enabling legal environment for Moldovan CSOs.

Notes

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[2] See the Ministry of Justice's Registry of Nongovernmental Organizations, accessed at: <http://rson.justice.md/organizations>

[3] See USAID NGO Sustainability Index 2009, Moldova: http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/2009/moldova.pdf

[4] Good Governance and the Role of Civil Society: Moldova's case, accessed at: <http://www.development-network.eu/file/157>

[5] All legal documents mentioned in this country note can be found at ICNL's Online Library under heading "Moldova": <http://icnl.org/knowledge/library/index.php>

[6] See Moldova's Government's Decision No.11 of January 2010 on Establishing the National Participation Council.

[7] CREDO's study on Legal Reform Impact Assessment on Public Benefit Organizations (under publication, 2010).

[8] Draft Methodological Recommendations for CSO Accounting: <http://minfin.md/ro/TranspDeciz/ProiecDeciz/19noiembrie/>.

[9] Percentage mechanism is a form of indirect government support to CSOs, when the taxpayer decides whether to designate a portion of the annual income tax, usually 1% or 2%, to the entitled organization. The first percentage law was introduced in Hungary in 1997 and since then such laws have been enacted in a number of countries in CEE, such as Slovakia, Poland, and Romania.

http://www.icnl.org/knowledge/ijnl/vol12iss4/art_6.htm

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