

TÜSEV ATÖLYE

VOLUNTEERISM: LEGISLATION AND PRACTICES

This Info Note analyzes the legislative framework on volunteerism and the key principles developed by international organizations to guide all lawmaking efforts on volunteerism. The text also discusses the current legal situation and new developments with regards to volunteering in Turkey and the Western Balkans.

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THE LAWS ON AND THE PRACTICES OF VOLUNTEERING

Until the Year of Volunteering in 2011, there was very limited legal work done on volunteerism in most states around the world. In 2001, United Nations General Assembly addressed the issue of legislation on volunteerism by passing the UN Resolution 56/38.

Inter-Parliamentary Union, the International Federation of Red Cross and Red Crescent Societies and the United Nations Volunteers released *Volunteerism and Legislation: A Guidance Note*¹, the outcome of a joint project carried out by the three organizations listed above. The Guidance Note argues that the national laws on volunteering should take into account socio-cultural factors and lawmaking should be transparent, thorough and inclusive. During the preparation of the draft law, lawmakers should involve all civil society actors to guarantee that the outcome will be a legislation that responds to everyone's needs and provides opportunities for all.

In countries without a national legislation on volunteerism, volunteering activities are regulated according to labour laws or other secondary legislation. The absence of laws addressing volunteerism hinders the development of volunteering practices and thus states are advised to develop and enact volunteering laws. United Nations (UN) advises nation states to align their national legislation on volunteerism with the Resolution 56/38.

In some developing and developed countries, volunteering is regulated according to laws, bylaws or policy documents. Although UN supports countries that have taken the initiative to develop a range of different legal mechanisms to address volunteerism, it also highlights the importance for all nation states to adopt a holistic and comprehensive legal framework that will create an enabling environment for volunteering.

A holistic legislative framework on volunteerism should include:

- *The definition of volunteerism,*
- *Its general principles,*
- *The responsibilities of volunteers,*
- *The responsibilities of organizations working with volunteers,*
- *Provisions that will protect volunteers against harm,*
- *Provisions that will recognize all forms of voluntary contribution and labor and*
- *Responsibilities of governments and parliaments within the scope of volunteerism.*

Additionally, a holistic approach to national lawmaking on volunteerism takes into account:

- *Basic rights and liberties,*
- *International law,*
- *Labour laws,*
- *Social policies and welfare laws,*
- *Laws on taxation,*
- *Laws on Immigration and*
- *Legislation on civil society organizations.*

¹ Volunteerism and Legislation: A Guidance Note is available at http://www.ipu.org/PDF/publications/volunteer_en.pdf

ASSESSING THE LAWS AND PRACTICES OF VOLUNTEERISM IN THE WESTERN BALKANS AND TURKEY²

Civil society is an area where most of the projects and activities are realized with the help of volunteers. To develop civil society, public policies and laws should foster a sustainable pool of skilled workers and volunteers that CSOs will employ.

Experts from the BCSDN members including TÜSEV and other partners worked together to develop the Monitoring Matrix on Enabling Environment for Civil Society Development. Through this matrix, the project established many different indicators to monitor civil society activities. One of these indicators is volunteerism. The monitoring mechanism offers the following general principles, standards and indicators to monitor and track civil society development within the scope of volunteering:

LEGISLATION

1. Legislation stimulates volunteering and incorporates best regulatory practices, while at the same time allowing for spontaneous volunteering practices.

The legislation contains minimum provisions necessary to protect volunteers and their organizations (definitions, rights and obligations, contractual provisions, tax and other types of benefits, liability rules) and leaves the rest to be defined by the parties. The law does not prevent spontaneous volunteering (for example by requiring a contract for every type of volunteering). Where a group of friends decide to clean their neighborhood, the law should not impose any burden on them such as preliminary registration, the need to have a contract with a hosting organization or the need to report. As a good regulatory practice, provisions which require registering volunteers with state authorities should not exist; it is enough if organizations keep records of volunteers and the time that they have spent on volunteering.

2. There are incentives and state supported programs for the development and promotion of volunteering.

The government can adopt policies and programs through which they promote volunteerism or provide special support and training for volunteers. Additionally, two types of incentives may be offered to volunteers and organizations that host volunteers:

- **Incentives for volunteers may include extending them certain benefits (i.e. healthcare insurance and social security) and paying them per diems (for travel, accommodation and other daily expenses) that will be tax exempt.**
- **Incentives for organizations employing volunteers may involve funding programs that support such organizations by offering them in-kind donations to help them finance their volunteer workforce.**

² The information provided in this section of the Info Note are derived from the Monitoring Enabling Environment for Civil Society Development Project. To access more detailed information about this project, please visit: <http://www.tusev.org.tr/en/civil-society-law-reform/monitoring-enabling-environment-for-civil-society-development-project>

The legislation prescribe that volunteers will receive a volunteering booklet or other type of record for the hours they have performed and types of services they engaged in, which could be used as a reference for future engagements.

3. There are clearly defined contractual relationships and protections covering organized volunteering.

The legislation provides the basic regulation on what the responsibilities of volunteers and of organizations hosting volunteers are, e.g. volunteers whose involvement exceeds a certain number of hours or is continuous over a certain period of time. It defines what types of organizations can host organized

volunteers. It stipulates where there needs to be a contract between the volunteer and the organization, but it leaves it to the organization and the volunteer to agree on the specific conditions of the volunteering engagement. For example, contracts should be required only for volunteering above certain hours a month (e.g., 20 hours) and not in cases where volunteering is spontaneous. However, the law should guarantee that volunteers are informed about the conditions, rights, obligations and benefits before the start volunteering so that they are aware of all the circumstances and particulars of the engagement. Mandatory insurance may be required for volunteering in places where certain injuries are more likely to occur, e.g. construction areas.

PRACTICE

1. Incentives and programs are transparent and easily available to CSOs and the policy/strategic document/ law is fully implemented, monitored and evaluated periodically in a participatory manner.

Volunteers can use the existing incentives without the need to go through a complicated procedure. There are real incentives for supporting volunteerism which work in practice e.g. grants programs. The incentives for volunteering and for organizations hosting volunteers are provided in a transparent way and the selection of the recipients of support is based on objective criteria. There is a state agency/ministry with a mandate to monitor and evaluate the implementation of the legislation and the different programs and incentives related to volunteering.

2. Administrative procedures for organizers of volunteer activities or volunteers are not complicated and are without any unnecessary costs.

Becoming a volunteer is neither cumbersome nor bureaucratically challenging. Organizations are able to trust volunteers without needing to officially register them. Registering volunteers is not a legal requirement.

3. Volunteering can take place in any form; there are no cases of complaints of restrictions on volunteering.

Spontaneous volunteering can take place and there are no examples of state authorities prohibiting it because of a lack of registration or approval. There are no examples of state labour authorities requiring volunteers to have labour agreements or sanctioning organizations for the illegal use of a labour force.

THE LAWS AND PRACTICES OF VOLUNTEERISM IN THE WESTERN BALKANS AND TURKEY

In this section of the Info Note the findings of an assessment on volunteerism laws and practices in seven countries in the Western Balkans and Turkey in 2013 are discussed.³

Five countries in the Western Balkans (Croatia, Bosnia-Herzegovina, Macedonia, Serbia and Montenegro) passed national laws on volunteerism in order to promote volunteering in their respective communities. The most advanced pieces of legislation among the five countries were adopted in Macedonia and Serbia. Although positive steps were taken in adopting legislation on volunteerism in the Western Balkans, in some cases volunteering laws either fell short of encouraging volunteer work or introduced cumbersome bureaucratic procedures that discouraged volunteers.

Despite the progress that Turkey and the Western Balkan countries recorded in developing volunteering laws, volunteer work is often carried out informally and the contractual relationships that seek to protect volunteers' rights are usually not established.

The 2013 *World Giving Index* figures indicate that seven countries in the Western Balkans and Turkey together rank significantly below the EU average in terms of time spent for volunteering:

World Giving Index ⁴	Volunteerism	
	Rankings (135 countries)	Score (%)
Average for Western Balkans and Turkey	58	19.7
EU average	60	18.9
Kosovo	113	8
Bosnia-Herzegovina	131	4
Macedonia	121	7
Serbia	121	7
Montenegro	113	8
Turkey	130	5
Albania	107	10
Croatia	127	6

In **Bosnia-Herzegovina** the administrative framework for volunteerism is addressed by two different legislations. The *Republika Srpska Law on Volunteerism* and the *Bosnia-Herzegovina Federation Volunteerism Law* outline the definitions, principles and contracts for volunteering and roles and responsibilities of volunteers and employers. It is observed that these two laws are not very well known publicly and therefore their provisions do not translate into practice. CSOs report that they find volunteering procedures very difficult to follow.

Croatia passed the *Volunteerism Law* in 2007. This law was later amended in 2013 in order to create a more enabling social and legal environment for the development of volunteerism. The 2013 amendments to the law recognized short and long-term volunteer work, and volunteering in times of crisis and introduced a broader definition of volunteering. The amendments also incorporated into the law the principles for participatory volunteer work, the roles and responsibilities of volunteers and organizations employing volunteers and the basic set of skills that volunteers should have. In addition to amending the Volunteerism Law, Croatia also established a National Committee to advise the government on issues related to volunteering. The National

³ Please see the 2014 Regional Report for developments undertaken in the 2014 period. http://monitoringmatrix.net/wp-content/uploads/2015/06/MM-Regional-Report-2014-final_web.pdf

⁴ World Giving Index 2013. Charities Aid Foundation. www.cafonline.org/publications/2013-publications/world-givingindex-2013.aspx

Committee brings together representatives of ministries, representatives from the public body governing state-civil society relations, CSO representatives and academics.

Montenegro passed the *Volunteerism Law* in 2010. This law is considered to fall short of responding to the needs of the civil society and volunteers in Montenegro. In the legislation, volunteer work is defined as “performing organized voluntary labour according to the labour laws”. As such, volunteerism is not encouraged because there are strict legal procedures surrounding volunteer work. Even the type of volunteering that involves working to educate children under 15 is legally sanctioned. As part of its EU accession process and according to the set of compulsory Basic Rights and Liberties Reforms to be passed within the scope of Chapter 23 of the EU Accession Protocol, Montenegro committed to passing a new volunteering legislation in 2014 to enable voluntary work.

In **Macedonia**, the *Volunteerism Law* was passed in 2007. The law promotes volunteerism as it includes provisions on the regulation of relationship between volunteers and employers, necessary skills and

experience of volunteers and the periods of their employment. A new strategy document, the *2010-2015 Protecting and Promoting Volunteering Strategy*, was released in 2010 to accelerate the creation of an enabling environment for volunteerism. Subsequently, the National Committee to Promote Volunteering was established (with 4 seats reserved for civil society representatives). On the other hand, CSOs report that the legislation on volunteerism is not very well known and that the bureaucratic procedures to employ volunteers are complex. The bureaucratic procedures are particularly cumbersome when recruiting non-nationals as volunteers.

Serbia passed the *Volunteering Law* in 2010. This piece of legislation includes provisions on the definition of volunteering, the principles of volunteerism, the contractual relationship that binds volunteers and the rights and responsibilities of organizations employing volunteers. The law, however, introduces many cumbersome bureaucratic procedures with regards to volunteering; offers complicated distinctions between short-term, long-term and temporary volunteering; and discourages CSOs from recruiting volunteers.

In Turkey there is no specific legislation for regulating volunteerism and the relationship between CSOs and volunteers. Some CSOs have developed

their own internal policies to govern their volunteering programs. A CSO working with volunteers was fined for employing “uninsured workers”.