

Romania's New Law on Associations and Foundations

by Iulia Raileanu

A New Law for New Realities

The changes that took place in the legal framework after 1989 called for a thorough review of the regulations on associations and foundations. The 1997 National Forum of Non-Governmental Organisations of Romania created a task force made up of legal advisors and representatives from the Third Sector whose main duty was to draw up a text to change the legal treatment applicable to NGOs. Until now, associations and foundations in Romania have been constituted according to a law dating back to 1924. This law was a very well-structured and modern normative act for its time, but it no longer provides adequate support for the new realities.

It was obvious that the adoption of a new Constitution in 1991 would create new requirements regarding the legal and regulatory environment. On the basis of the draft law drawn up by the task force, at the beginning of 2000 the Government of Romania promulgated Ordinance 26 regarding associations and foundations. The Ordinance, and the way it was promulgated by the Government, was conceived taking into account models of European countries with a tradition in this field. The text is to be discussed and submitted for approval to Parliament. Romanian legislation allows that the text may be amended and then adopted in a new form during the parliamentary discussions.

Without analysing in detail the two normative acts, one can notice major differences based on the desire to harmonise Romanian legislation with existent legislation in Europe.

A More Liberal Framework

In drawing up the text of the ordinance, the drafters took into account the necessity of ensuring a wide framework for associative life by establishing a set of provisions that apply the Constitution in a liberal manner.

This was made possible by indicating recommended norms throughout the text rather than imperative ones and by modifying existing institutions and procedures. The aim was to simplify and eliminate certain inconsistencies created by the existence of Law 21/1924, given that the current constitutional framework has requirements different from those of the period when the law was promulgated.

Associations and Foundations Defined

Before presenting the modifications of the legal treatment applicable to associations and foundations in Romania, one must specify the terms with which the two laws operate. It was deemed appropriate to replace the former definition of associations and foundations as being “legal persons without a lucrative or patrimonial aim” by “legal persons without a patrimonial aim”. Also, instead of the notions of “public interest, general interest of the collectivity, or of a single social category”, the formulation “general, community, or personal interest, according to the case” was introduced. The problems eliminated by the new regulation also had to do with the application of Law 21/1924. Thus, many times it was not possible to clearly differentiate between associations and foundations, and so the two categories of legal persons overlapped. The new ordinance establishes the fact that an association is an agreement between three or more persons whereas a foundation is a fund.

Asset Requirements

Unlike Law 21/1924 which made no reference to a minimum sum for the initial assets, only setting the condition that associations must have “social assets that enable them to at least partially achieve the goal they have been constituted for”, Ordinance 26/2000 stipulates obligatory assets of at least double the minimum monthly salary in the case of associations and at least one hundred times the minimum monthly salary in the case of foundations. Thus, the drafters of the new law aimed to make a clear differentiation between the two legal forms – associations and foundations – and to establish a basis for the creation of associations and foundations that would have sufficient resources to properly conduct their activities.

Registration

The ordinance transfers jurisdiction over the registration of newly created associations and foundations from tribunals to ordinary courts of law. In order to respect freedom of association, the new law eliminates the need to obtain: a) the approval of the ministry responsible for the area that includes the statutory goals pursued by an association or foundation, and b) the written conclusions of the Public Ministry, which previously checked the constitutive acts and governing bodies of NGOs. Both steps were necessary for the registering court to be able to issue a ruling enabling the registration of an organisation. The control exercised in accordance with Ordinance 26/2000 is only a judicial one.

The desire to simplify the procedure even more and to have a clear record of the existing organisations has led to the creation of a national registry of legal persons without patrimonial aim, located at the Ministry of Justice and filled

in on the basis of decisions handed down by law courts.

Economic Activities

Another innovation is the opportunity given both to associations and foundations to carry out direct economic activities if they are closely connected with the primary aim of the foundation or association. The previous law stipulated only the possibility of associations undertaking economic activities if these were related to their statutory goals.

This modification was considered appropriate in order to create a source of income for associations and foundations. The difference between these types of activities and those carried out by commercial enterprises is that in the case of NGOs income earned is redistributed by the organisation and used to carry out its programmes.

Dissolution and Liquidation

Another important chapter which was modified is that of the dissolution and liquidation of associations and foundations. Compared to the previous law, Ordinance 26/2000 simplifies the procedure considerably by eliminating certain activities that were heavily bureaucratic and makes another transfer of jurisdiction from tribunals to law courts.

The transfer of jurisdiction to a lower authority means more possibilities for associations and foundations to appeal unfavourable decisions.

Public Utility Status

The most important innovation introduced by Ordinance 26/2000 is a chapter referring to associations and foundations recognised as having public utility, a category that exists in the legislation of other countries and has now been introduced in Romanian legislation. This new provision creates the possibility for those foundations and associations that carry out activities in the public interest to gain access to grants given by the state and to benefit from certain legal rights.

Gaining public utility status entails not only rights but also certain duties: to maintain at least the same level of proficiency in carrying out public benefit activities that was the original basis for being granted this status; to communicate any modifications of the constitutive act to the relevant administrative authority; and to publish extracts from annual activity and financial reports in the Official Gazette.

Cooperation with NGOs

The Ordinance includes a chapter on relations between NGOs and public authorities, something which was absent in the old law. It establishes the

obligation of administrative authorities to cooperate with NGOs in their activities and to provide them with any information of a public character that they require.

In addition, state authorities are required to create structures for relations with NGOs in order to maintain direct contact with civil society and to register them according to the field they work in. Compared to the previous law, there is greater transparency and tolerance with regard to NGO-government relations. The new law creates a stronger basis for good cooperation between NGOs and the public authorities.

Iulia Raileanu is Director of the Centre for Legal Resources (of the Open Society Network) and is the coordinator of the drafting process of the new law on associations and foundations on behalf of the Romanian Helsinki Committee.

Tel: (40 1) 335-2814
Fax: (40 1) 335-0809
E-mail: crj@mail.dnt.ro



