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Moldovan Certification Commission

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Overview

1.1 Consciously modeled on the Charity Commission of England and Wales, the Certification Commission in Moldova is the sole example of a public benefit commission in continental Europe. It is responsible for certifying not-for-profit organizations – including both associations and foundations – as “public benefit” organizations. Conceived as an independent decision-making entity, it has met with mixed results. On the one hand, the creation of the Certification Commission demonstrated the willingness of Moldovan authorities to modernize their relations with the “third sector” by delegating a portion of regulatory responsibility to a partially independent body. The Commission’s measure of independence, made possible through its mix of state and NGO representatives, is its greatest strength. On the other hand, the reform process did not go far enough to create a fully coherent public benefit system; in particular, the legal system does not provide appropriate benefits and preferences for public benefit organizations.

1.2 Non-governmental, not-for-profit organizations (NGOs) in Moldova can assume three forms: associations, foundations, and institutes. The governing legislation includes the Law on Associations (1996), the Law on Foundations (1999), and the Civil Code (2002). There are about 4,500 NGOs in Moldova, of which approximately 3,500 are registered at the national level. All NGOs at the local level and most of the national and international NGOs are registered as associations, with institutions and foundations less common, as shown below. Generally, the Moldovan legal framework is supportive of not-for-profit forms and does not restrict the ability to establish and manage an NGO independently.

Registration of National and International NGOs in Moldova (2000-2004)

NGO Form	2000	2001	2002	2003	2004
Association	320	340	329	324	285
Institution	24	13	26	26	24
Foundation	28	45	36	27	16

1.3 The Law on Charity and Sponsorship (1995) establishes a kind of “charity organization.” There is no connection, however, between the “charity organization” and the certification

procedure of the Commission. The Law on Charity and Sponsorship provides that charity organizations can be established in the form of an association, foundation, institution, or other form. In practice, the Ministry of Justice largely ignores this Law and instead recommends that NGOs register in accordance with the Laws on Associations and on Foundations.

2. Origins of the Commission

2.1 Like nearly all of the former Soviet republics, Moldova underwent tremendous change in the 1990s as the not-for-profit sector emerged and became an active part of society. Initially, however, NGOs suffered from a poor public image. The receipt of foreign funding and the nature of not-for-profits as non-taxpayers were much misunderstood and led to great distrust of the sector. The lack of clear financial management rules, further, led to several well-known cases of money laundering within the not-for-profit sector. In addition, politicians were discovered to have used humanitarian aid for their own campaigns for public office. Aggravating the problem was the lack of a sound legal framework governing NGOs; the organizations were regulated only by government decree (1992).

2.2 With the adoption of a new Constitution in 1994 came the obligation to improve the regulation of NGOs. Local NGOs in Moldova, working with select Members of Parliament, led efforts to draft a Law on Associations, based in part on comparative international experience. The result of the cooperative effort was the enactment of a new Law on Associations (1996).

2.3 To improve the public image and accountability of NGOs, the Law envisioned a separate “public benefit” status for NGOs pursuing certain public benefit purposes. The primary authors of the law (Valerii Lebedev, PhD in Law, and Ilya Trombitsky, MP) were particularly concerned with identifying a suitably professional decision-making authority for public benefit certification, ensuring that the decision-maker was sufficiently independent from political influence, and allowing for NGOs to participate in the decision-making body. Recognizing that few civil servants in Moldova are familiar with the NGO sector and that courts lack the capacity, the drafters looked to the Charity Commission of England and Wales. Based on this model, the law drafters proposed the establishment of a Certification Commission under the Ministry of Justice as an independent body to certify “public benefit” associations.

3. Legal Basis for the Commission

3.1 Moldovan legislation establishes the Commission and details the certification procedures for public benefit organizations in Chapter V (Article 35) of the Law on Associations. Public benefit status was thus initially limited to associations and public institutions.² The authority of the Commission was subsequently expanded to include the certification of foundations under the Law on Foundations (1999). Article 19 of the Law on Foundations states that “(1) For the purpose of receiving partial or full exemptions from specified taxes, dues and other payments for the benefit of the State as well as privileges provided in conformity with this Law and other legislation, foundations – in order to confirm the public benefit character of their activities – shall have the right to the certification according to Articles 34-37 of the Law on Associations. ” Thus, all legal forms of NGOs are eligible to seek public benefit status.

3.2 As mentioned above, the 1995 Law on Charity and Sponsorship established a kind of “charity organization,” in no way connected with the certification process of the Commission. The Law provides that a charity organization can be established as an association, foundation, institution, or other form. In practice, however, the Ministry of Justice makes little effort to apply this Law.

4. Composition of Commission

4.1 The Commission consists of nine members, of whom three are appointed by the President, three by Parliament, and three by the Government. To guarantee NGO participation in the Commission, the Law requires that one of each group of three should represent a public association and not be a civil servant. The law does not provide additional criteria for Commission members or further guidance on selecting the NGO representatives.

4.2 Each body (President, Parliament, and Government) uses its own well-established legal procedure to nominate Commissioners. The President issues a decree, while the Parliament and the Government adopt Regulations. Each of these three public bodies independently determines on what basis to appoint Commissioners; the only common limitation is that at least one of each three nominees must be a public association representative and not a civil servant.

4.3 In practice, the President usually nominates either his own councilors or other presidential staff members; the Government appoints representatives from the Ministry of Justice and Ministry of Finance; and the Parliament usually names MPs, though MPs are often too busy to attend Commission meetings, and their mandate as Commissioners extends beyond their mandate as MPs.

4.4 Commission members are not paid or otherwise financially supported, including reimbursement for expenses incurred as a result of their service on the Commission.

4.5 Conflict of interest in the Certification Commission is not addressed in the law. It is common Commission practice, however, that an NGO representative cannot evaluate or vote on an issue concerning the NGO to which he or she belongs. The mixed composition of the Commission did much to guarantee its independent decision-making until 2001, at which time the Communist Party gained control of all three branches of government; since that time, the composition of the Commission has been less diverse.

4.6 Serving the Commission are a Chair and Secretary, each elected by simple majority through an open or secret ballot at the first session of the newly appointed Commission. The Chair convenes and leads meetings, coordinates Commission activity, and represents the Commission to third parties. Meetings are valid where there is a quorum of two-thirds of all Commissioners (six Commissioners); decisions are adopted by simple majority of those present. The Ministry of Justice provides the necessary equipment and premises for the Commission meetings. Commission sessions are open to the public and organized as necessary.

5. Strategy and Objectives of the Commission

5.1 The main objective of the Certification Commission is to review and evaluate NGO applications for public benefit status. During nine years of existence, the Commission has reviewed approximately 500 certification applications. There are currently about 250 NGOs recognized as public benefit organizations (PBOs) (i.e., about 5% of the entire NGO sector in Moldova). Interestingly, a significant number of NGOs certified as PBOs between 1997 and 2002 did not reapply with the Commission to renew their status.

6. Functions and Powers of the Commission

6.1 The Commission is empowered to engage in the following activities:

- To certify NGOs as public benefit organizations;
- To issue the official State Certificate recognizing public benefit status, or to decline the application for such a Certificate;
- To maintain the Register of Public Benefit Organizations;
- To receive and examine petitions from natural persons and legal entities related to the competence of the Commission.

6.2 The Commission's scope of work is based on provisions of the Law on Associations (1996) (Articles 34-37) and its activity is governed by Regulations approved by the Minister of Justice (Order of the Minister of Justice Nr. 276, October 3, 1997).

Registration/Certification

6.3 To apply to the Certification Commission, the NGO voluntarily submits a written, signed request. In support of its request, the applicant must also submit (1) a completed application form, (2) copies of its Certificate of Registration as an NGO, (3) information on its activities, (4) a certificate from the Tax Inspectorate reflecting no tax violations, (5) its own declaration of nonparticipation in any electoral campaign in favor of or against any candidate for public office, and (6) a copy of the decision of the NGO's governing body on the appointment of a representative to present the application to the Commission.

6.4 To conduct application reviews, the Commission normally meets on a monthly basis – or as determined by the Chair. One of the Commission members (depending on professional interests and knowledge) is primarily responsible for each application. He or she examines the documentation presented to the Commission, visits the applicant if necessary, and then presents the case to the Commission. The presence of an authorized representative of the applicant is obligatory during the Commission meeting. Representatives of ministries related to the applicant's areas of activity might also be invited to attend.

6.5 Under the Law on Associations (Article 2), an organization is certified as a PBO if it engages in one of several spheres of public benefit activity:

- Protection of human rights;
- Promotion of education, training, skills development, knowledge dissemination;

- Health care;
- Social care;
- Promotion of culture;
- Support of art;
- Promotion of amateur sports;
- Provision of relief from natural disasters;
- Protection of the environment; and
- Other public benefit activities.

6.6 The list of public benefit activities provided by the law is open-ended. Other activities may be recognized as public benefit at the discretion of the Certification Commission. An organization will be recognized as a PBO if it is engaged predominantly in one or more of the listed or recognized activities. This does not prevent the organization from carrying out other activities, including entrepreneurial activities. Although a PBO is free to engage in public advocacy on issues of public interest, it must not use any assets to support or oppose any candidate for public office or to finance any political party (Article 52 of the Tax Code (1997)).

6.7 Moldovan legislation does not clearly address those organizations whose members are the primary beneficiaries of the organization's activities, such as organizations of disabled and other vulnerable groups. The Commission will normally extend public benefit certification to membership organizations whose activities relate to state social protection or to purposes listed in the Tax Code.

6.8 The Commission makes its decision by simple majority of those present; in case of a tie, the vote of the Chair is decisive. Where an application is successful, the Commission must issue an official State Certificate, signed by the Chair and sealed with a Ministerial stamp. The Commission typically makes a decision within a month of receiving the application and issues a Certificate within three days of the review meeting. Minutes are prepared within three days of the meeting and signed by the Chair and Secretary.

Supervision

6.9 The Commission maintains a Register of Public Benefit Organizations, which is supposed to be made available to the public (although not yet accessible via the Internet).

6.10 The Commission does not have any ongoing supervisory role over PBOs. Where necessary during the application process, the responsible Commissioner can visit the applicant to verify the data presented. But it is not clear from the Law or from the Ministerial Order that the Commission has the authority to suspend the public benefit status of an NGO that violates the law.

7. Accountability of the Commission

7.1 The Commission is conceived of as an independent body, and it has no external reporting obligation. The actual independence of Commission decision-making, however, is questionable. All nine Commissioners are appointed by the State (President, Parliament, and Government) and

can be expected to reflect an official point of view. The requirement that three of the nine Commissioners represent public associations is critical to ensuring that the voices of civil society are heard. Even so, two-thirds of the Commissioners have proved in practice to be State officials, and the three NGO representatives are selected by State officials.

7.2 In accordance with the Law and Ministerial Order, an NGO has the right to a judicial appeal of any adverse Commission decision, such as the rejection of its application for certification. To date, interestingly, no such appeal has ever been filed.

8. Conclusion

8.1 In following the model of the Charity Commission of England and Wales, the Moldovan Certification Commission was designed as an independent – or partially independent – decision-making body on questions of public benefit status. It remains the only such body in Europe or the transitioning states of the former Soviet Union.³ For that reason alone, it merits study.

8.2 As we have seen, however, the true independence of the Certification Commission has been frustrated by several problems. Government agencies have demonstrated an indifference and lack of understanding toward the role of the Commission. The President, Parliament, and Government, as nominating bodies, have selected Commission representatives without sufficient thought and vision. To date, the Commission has not prepared any detailed procedural regulations or launched a website. Even the register of public benefit organizations is not yet accessible to the public in practical terms. Perhaps most important, lawmakers have not amended the legal framework to provide sufficient privileges and incentives for public benefit organizations. Public benefit status, fundamentally, is an issue of fiscal regulation. Without corresponding state benefits, public benefit status is largely an empty concept.

Notes

1 Ilya Trombitsky is Executive Director of Eco-TIRAS International Environmental Association, www.eco-tiras.org. A former Member of Parliament of the Republic of Moldova, he was a principal author of the Moldovan Law on Associations (1996) and other non-profit legislation.

2 The Law on Associations covers both associations and institutions. Article 8 defines the public institution as “a union of citizens that does not have a fixed membership, whose objective is to perform certain services, fulfillment of works in the interest of its participants and in order to achieve the Charter goals.”

3 The Armenian Governmental Commission, as an overtly government body that certifies projects rather than organizations, falls into its own unique category.