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NGO LAW REPORTS – BOSNIA AND HERZEGOVINA

INTRODUCTION

Legal and constitutional structure of Bosnia and Herzegovina (BiH) is complex. Laws are passed not only at the state level, but also at the entity levels (since BiH consists of two entities; The Federation of BiH and The Republic Srpska), and at the cantonal levels (there are 10 cantons in the Federation of BiH).

This report is to take into account the legislation regulating the issues related to non-profit and non-governmental organizations of both entities. Terminology of the current BiH legislation has not been tailored to fit both entities. NGO term in the Federation of BiH includes "associations of citizens" based upon the Law on Citizens' Associating ("Official Gazette of the BiH Federation " No. 6/1995) and "humanitarian organizations" based upon the Law on Humanitarian Activities and Humanitarian Organizations ("Official Gazette of The BiH Federation" No. 35/1998). In the Republic Srpska (RS), a term NGO stands for "public organizations", "associations of citizens", and "movements" based upon the Law on Citizens' Associating of the pre-war Socialist Republic (SR) BiH ("Official Gazette of SR BiH" No. 5/1990 and 21/1990), which is still applied in this entity. We will discuss uniform legal regulations only on one occasion, whereas our focus will be the actual differences between legal regulations of the two entities.

The objective of this report is to identify legal regulations and practice that are not acceptable, or at least are not optimal with respect to desired standards. This activity will also include the author's opinions and recommendations regarding these issues.

This report does not treat regulations regarding the work of syndicates, religious organizations, and political parties in BiH.

The BiH Constitution explicitly guarantees freedom of association with others" (based on Item I, Paragraph 3, Article II of the BiH Constitution). At the same time, the Constitution of the BiH Federation guarantees "…freedom of association" which also implies "…freedom of non-associating" (Article 1.2., Paragraph 2., Item L.). Although the RS Constitution has a special chapter on human rights and freedoms, it directly guarantees only "... the freedom of political organizing and acting" (Article l. 31. Paragraph 1.), which does not explicitly guarantee the freedom of association without a political motivation.

In principle, institutions of central authority in BiH have no competence to pass legal and other acts regulating the issues of establishing an NGO and its respective activities. The exceptions are only customs regulations passed for the whole BiH territory by central BiH authorities. The BiH Constitution (Article l. III Paragraph 3., Item a) asserts the presumption of competence in favor of an entity, since it stipulates that "all governmental functions and powers which are not by this Constitution explicitly

given to BiH institutions should belong to the entities". Still, since "the freedom to associate with others", is to be guaranteed to "all people" in BiH without discrimination, there is a tendency to resolve the issues of establishing and operating in an NGO at the level of central BiH authorities. This particularly applies to the NGOs which would be active in the whole country. Legal and constitutional framework for such a legislative activity is a possibility for BiH to have jurisdiction over all other affairs with the entities' consent (so-called "additional jurisdiction", BiH Constitution, Paragraph 5. Article l. III)[1] . Although those initiatives have been supported by the Office of the High Representative in BiH (OHR), such an overall law has not been passed yet.

The legislation of BiH entities does not offer a uniform legal frame for NGO activities.

In BiH Federation, we have two already mentioned regulations in force: Law on Citizens' Associating (LOCA FBiH further in the text) and Law on Humanitarian Activities and Humanitarian Organizations (LOHA... FBiH). These laws are not mutually consistent since this is a wrong way to differentiate between an NGO serving a public benefit interest (public benefit organization, PBO further in the text), and an NGO serving the interests of its founder members. The idea to provide a legal basis for LOHA... FBiH, which would secure work of "humanitarian organizations" as PBOs according to usual PBO standards in comparative law, has assumed a very limited and unusual form in this law. Pursuant to LOHA... a humanitarian activity involves a"... direct or indirect humanitarian aid such as money, goods, and services to BiH citizens in social need..." (Article l. 2. Paragraph 1.), but we need to define what a "social need" is (article l. 2. Paragraph 2). At first glance we can notice this is a too incomplete approach to PBO issue. Besides, there is a solid legal treatment of PBO issues within the selfsame LOCA FBiH (Article 5.). Many relations, however, are parallely regulated by the aforementioned two laws, which is not contributive to legal security. Since LOCA FBiH is more general than LOHA... FBiH, which is a lex specialis, we could and should try to avoid repetitions of similar issues.

In the RS, we have the pre-war Socialist Republic BiH Law on Citizens' Associating (LOCA RS further in the text) in force. Although it offers some liberal regulations with respect to the period and system it was created in, this law has a very restrictive approach to the freedom of associating in its elements.

The application of the aforementioned legal acts in BiH is not consistent. Regarding the immediate post-war period (1996-1997)[2] , however, NGOs today have fewer problems when it comes to registration. What concerns us is an unusually great number of bodies in charge of registration in BiH Federation. NGOs have more problems regarding fiscal (tax and customs) aspects of their work. In many instances, a general fiscal system is applied to NGO activities, even if those organizations are PBOs by their nature. There is also a conspicuous requirement that no fewer than 30 people can establish an NGO {which means that an NGO cannot be established by 29 people or

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fewer). This condition, per se, significantly reduces the freedom of association in BiH independently from other issues. Up to this day, we haven't solved the issue of local NGOs' work on the whole BiH territory. It is still questionable whether a NGO registered in the RS can work in the BiH Federation and vice versa. Although the BiH Constitution guarantees the continuity of BiH citizenship (which means that people who had the citizenship of prewar SR BiH automatically have the citizenship of the actual BiH) citizens of one entity, who are at the same time citizens of BiH have difficulties to establish an NGO in another entity. We are concerned there are no legislative provisions meant to prohibit conflicts of interests and distribution of assets for private purposes. There are not any legal criteria for an NGO property allocation once the NGO cease to operate. Legislative provisions stating the need to abide by the "non pro profit" principle are inappropriate and confusing. There is no clear difference between so called bound and unbound NGO economic activities, as well as fiscal repercussions related to it. Besides, there is no uniform register of all NGOs both at the BiH and entity levels.

In the end, the situation with NGO regulations speaks for itself. BiH Federation, with the total of 102 Articles (Paragraphs) in the aforementioned two laws, continues to further "elaborate" freedoms of association. Here we have a bureaucratic approach, which is waylaying to freedom of association. The way it is regulated is accordant to the former system, which is declaratively no longer in existence. New laws are a step backward and not forward in encouraging freedom `of association. Moreover, the RS, without excuse, has a totally ignorant approach to the NGO sector, since the law being applied in this field is a pre-war one with 30 Articles. As far as the legal framework for NGO operations is concerned, we are in the same situation as we were during the socialist era some 10 years ago.

1. The Legal Existence of Civic Organizations

1.1. Creation

Entity laws on association proclaim principles of benevolence and freedom when establishing an association (Article l. 2. Paragraph 1. LOCA FBiH, and Article l. 2. Paragraph 1. and Article l. 3. Paragraph 3. LOCA RS).

As far as the number of founder members is concerned, both entity laws (Article l. 9. Paragraph 1. LOCA FBiH, and Article l. 12. Paragraph 2. LOCA RS) quote the number of 30 founder members as a minimal condition. It is obviously a superfluous number that is given as a condition to establish an NGO. It seriously endangers the principle of freedom of association proclaimed in the entities' legislative provisions. It means that a group of 29 or fewer citizens is not legally entitled to establish a civic organization. This is discouraging to freedom of association, since sometimes it is difficult to find 30 like-minded people for one idea.

There is no entity law on civic associations allowing the possibility not only for natural persons, but also for legal persons, to act as founder members of an association. Instead of the term "person" they use the term "citizen" which excludes legal entities/persons as possible NGO founder members. LOHA... in the BiH Federation, however, offers a possibility that founder members of a "humanitarian organization", aside from citizens can be associations of citizens, religious communities, and other legal entities (Article l. 5. Paragraph 2.).

LOCA FBiH states additional conditions for founder members. Citizens must have a "business competence" and must be "of legal age (over 18)" (Article l. 9. Paragraph 1.). Pursuant to the entities' civil laws, natural persons gain business competence once they reach the legal age (18 years). Therefore, the underaged cannot be potential founder members of an NGO. The limit stating a legal age as a condition for potential founder members creates an absurd legal situation. That means that not even the people over 16, who can get married before they reach the legal age, become fully emancipated including the total business competence, and have the right to undertake all legal actions (such as appearing in a court of law, concluding an agreement..etc) on behalf of themselves, cannot be founder members of an NGO. Besides, we can conceive a certain category of people over 18 who are partly or fully deprived of the business competence for medical reasons. Still, they shouldn't be deprived of the possibility to be at least co-founder members of associations dealing with their problems. At the same time, pursuant to the general provisions on labor, a labor contract can be concluded by a 15-year-old person, by which he or she gains a partial business competence. Still, due to the "legal age" requirement, which is also required by LOCA FBiH, such a person could not be a founder member of a civic association (this is not acceptable).

LOCA RS does not contain limits regarding legal age and business competence of founder members who are "citizens". According to the municipal courts' practice, underaged persons (under 18) cannot be founder members of an organization.

We mention here an extra detail, which is more applicable to members but indirectly to founders of an NGO. NGO. Pursuant to the LOCA FBiH "every citizen of the BiH Federation can become a member of an association under the same conditions stipulated by the statute" (Article l. 2. Paragraph 2). Such a requirement imposed by a lawmaker seems to be incompatible with the principle of freedom of association. It assumes that somebody could become a member (founder) of an association without the volition of the existing founder members. Somebody could become an association member based upon his or her own declaration only. There is a similar provision in the LOCA RS (Article l. 5. Paragraph 2.).

1.2. Registration

Pursuant to the current legislation in BiH entities, an NGO cannot exist if it is not registered. It means the current legal framework for operations in the NGO sector excludes the existence of non-formal orgaznizations or groups.

Registration of an NGO is mandatory, not only for obtaining a legal entity status, but also for being able to legally operate in general. This is regulated by three explicit legislative provisions. Pursuant to the LOCA " unregistered associations cannot operate on the BiH Federation territory..." (Article l. 24.), and LOHA... FBiH states that "...a humanitarian organization can start operating after it has obtained a document on registration ...". Pursuant to the LOCA RS "an association can start operating after it has been registered" (Article 1. 12.).

NGO registration activities are performed by administrative organs and judicial courts. In the BiH Federation, if an association is active in two or more cantons, it is registered by the BiH Federation Ministry of Justice (Article l. 23. Paragraph 3. LOCA FBiH). If an NGO is active only in one canton, it is registered by the appropriate cantonal ministry. This is not a good solution since it creates a diverse practice, since registration is done by different administrative bodies (there are 10 cantons in the BiH Federation). This is specially conspicuous with associations whose activities are territorially related to one canton, since it also violates their legal security.

The registration of NGOs in the RS has not been regulated by the LOCA but by the Law on Judicial Courts ("RS Official Gazette" No. 22/1996 and 25/1996). The issue of the body in charge of registering an NGO is important, and it would be better if it were regulated by LOCA since it defines an NGO in the first place. Pursuant to the aforementioned law, NGO registration courts in the RS are judicial courts seated in the same place (city or town) where five district courts are (Article l.20. of the Law on Judicial Courts). Division of a court consisting of three judges is to make a decision about the registration claim.

Entity laws do not accept the so-called system of registration; the decision on registering an NGO is of a constitutive and not declaratory character. It is a condition that needs to be fulfilled if an NGO wants to begin operating.

Still, some legal provisions on registration are more favorable in LOCA RS than in LOCA FBiH. There is a more favorable deadline (15 days after the claim has been submitted) during which a registration court is to make a decision on registration. In the BiH Federation, that deadline is 30 days. If a registration court does not make a decision during the deadline period (15 days), pursuant with the LOCA RS (Article l. 13. Paragraph 6.) it is presumed that the decision is positive (presumed approval). Still, this legislative provision is incomplete for it does not bind a registration body to issue a receipt to the claimant upon the expiry of the deadline period (15 days). This creates further problems in practice, since the registration body can claim that the submitted claim was not orderly and that it needs amendments upon the expiry of the deadline period. There are no provisions on presumed registration approval in the LOCA FBiH. Finally, according to the LOCA FBiH (Article l. 30.) although it is not allowed to appeal once the first-instance decision on (non)registration has been made in a regular contentious administrative matter, a procedure regarding such matters can commence in a court. This is insufficient since a procedure in contentious administrative matters lasts

much longer than a regular procedure after an appeal. On the other hand , pursuant with the LOHA... FBiH, one can appeal after a first-instance decision has been made, as a regular legal remedy, the deadline period for which is 8 days (Article l. 20. Paragraph 2.). It seems that the deadline period needs extension. LOCA RS contains an explicit provision implying the right to lodge a complaint to a court of second instance, upon the expiry of a 15 day deadline period from the day the first decision was received (Article l. 14. Paragraph 2.). Besides, according to the RS general regulations, a special legal remedy against the second decision can be taken if needed.

All in all, the entities' laws stipulate a very bureaucratized procedure and a relatively great number of documents to register an association.

According to LOCA of FBiH, apart from applications for registration, another five documents are submitted: decision on establishment, minutes on the work of establishment assembly, list of the establishers and members of executive bodies, statute, and names and surnames of persons authorized for representation and presentation (art. 25). LOCA of FBiH however, apart from the said documentation, requests one other additional condition: consent for registration, which is issued by the municipality or city body of management, responsible for the affairs of social protection and humanitarian activities in the headquarters of the humanitarian organization (art. 18).

In RS, a lesser number of documents are necessary for registration. Apart from the application for registration, another three documents are submitted: statute, the association's program and the list of the citizens founders of the association (the regulation on uniform register of political organizations and associations, published in: Official Gazette of RS, No. 16/1996, art. 6).

It is interesting that LOCA of RS comprises a provision, which asserts that a court decision on an application for registration is also forwarded to the responsible public prosecutor, as well as to the association that submitted the application (art. 14 par. 1). It is concerning, that a similar provision exists in LOHA of FBiH (art. 20 par. 1). Since the prime duty of a public prosecutor is to undertake prosecution of perpetrators of criminal acts before the courts, such a provision might be an indicator of how big the legislator's or the environment's hostility towards the NGO sector is. If the concept of compulsory registration of NGOs is already accepted, the state body having the final decision, than it is unnecessary to forward the decision on registration to any other state body, if it is already delivered to the applicator, especially not to the public prosecutor. This highlights one prior intention of the state ("premeditation"), what it "thinks" about NGO sector, already in the moment when a newly established organization obtains legal subjectivity. This may be interpreted as a kind of a "warning".

In order to consider the work of an NGO legal, the condition for registration, not withstanding obtaining of a legal entity status, there is no justification, taking into account the current Bosnian reality. Therefore there are no sound reasons for disabling the activities of so called informal NGOs, which would make utilization of freedom to associate in BiH fuller. Hence, the new legal framework should anticipate this issue.

1.3. The Responsible Organ of the State

Court and executive bodies make decisions on registration of NGOs.

In the Federation of BiH, NGOs are registered by executive bodies, but also by courts. Apart from the Ministry of Justice of FBiH, which registers NGOs, operating in the territory of at least two cantons, the registration is done by at least two relevant Ministers in the cantons. The matter of concern is that it is a huge number of Ministries, so it is difficult to secure a uniform administration of the law. Namely, the registering into the register is done by "Ministry whose jurisdiction includes surveying conditions in the field that is relevant to the activity of the association". The problem for possible foundation refers to the issue of deciding which Ministry is relevant when there is more than one activity of an NGO, which do not fall into the same field. This causes "sending" citizens from one cantonal administration to another, so, it does not encourage the freedom of associating. Humanitarian organizations are registered at cantonal courts. There are ten of them.

Registering bodies in RS are basic courts in the headquarters of regional courts. There are five of them. Even though it would appear that the court administration is more consistent in practicing law than the executive administration, whence, it should take less uncertainty for an NGO when it comes to courts as registering bodies, in reality it is not so. Excessive bureaucracy is ever present, as well as lack of uniform criteria for assessing viability of the contents of the documentation submitted for registration, and the similar. The rule on presumed (supposed) approval after the expiry of 15 days time frame is not obeyed.

1.4. Amendments to Registration

Laws on NGOs in BiH allow possibility to amend registration of an NGO. Admittedly, it is regulated by an explicit norm, but such a conclusion can be made on the bases of the provisions, which stipulate compulsion of reporting changes of data important for registration to the registering body.

In this respect LOCA FBiH is more concrete because it specifically obliges the registering body to obtain information on amending statute, name, location, activity, names and surnames of the persons authorized for presentation and representation, members of executive bodies and termination of association (art. 31 par. 1). The law foresees possibility to administer penalties to associations for an incurred violation, by a fiscal penalty of DM 200 – 800, for disobeying the said compulsion of reporting changes of data (art. 45 par. 1). LOHA of FBiH asserts that a humanitarian organization is obliged to inform the registration body about "... all changes important for registering into the register..." (Art. 22). This is a rather unspecified request, which may be ill used in practice. Namely, for disobeying this legal compulsion a humanitarian organization may be punished for a violation with fiscal penalty of DM 500 – 1000 (art. 49 par. 1 item 3). The body, most usually a state's body, which eventually makes charges for violation,

may claim that every change of data, even a most trifle one, is “of importance”. Hence, such a rather “expandable” formulation may be interpreted to NGOs detriment. The provisioned penalty for such a violation is not small, given the local conditions.

LOCA RS comprises a general and basically stricter provision according to which the registration body is to be informed about “...every change of the documentation that served for the associations foundation...” (Art. 15 par. 3). Still, this law does not comprise any sanction for situations when an NGO disobeys the said rule.

All three mentioned legal regulations define a deadline for reporting changes of data, which is 15 days, starting from the day of the incursion of the changes reported to the registration body. This deadline can be said to be relatively brief, considering the nature of the work to be done in sense of new registration. In many instances this time frame will not be short, which might not be the case when changes of data are excessive and refer to genuine documentation of the NGO, when preparation of documentation and submission of the changed data take more time.

1.5. Amendment in the Event of Impossibility or Deadlock

The laws are consistent in regulating the issues of kinds of NGOs considering the possibility of using different incentives or breaks in paying various duties to the state, entities, cantons.

It is probably the reason why none of the entity laws regulates the important question of possible change of status of an existing organization from one organizational form to another. Therein, we think about possibility for new registration of an association of public benefit (PBO) into an association of mutual benefit for members (establishers) or vice versa. The laws do not resolve the issue of possible transformation of one specific type of association into a foundation, or a foundation into an association. These questions are important not only because of implications on fiscal issues (taxes, customs, fees), but they can also have impact on the destiny of the whole property of an NGO in situations when the NGO ceases to work. So, lack of legal solutions in the mentioned direction can be misused in practice by the state to NGOs detriment. Misuse in the NGO sector itself is also possible including a change in status of the NGO’s property into a private use.

1.6. Public Registry

BiH does not have a central register of all NGOs, nor is there any regulation to provide for such a possibility and obligation. There is diversity of opinions about this issue in the country because there are at least 26 places where NGO registries are kept, out of which at least 21 registries are in the Federation BiH, and least 5 in RS. Actually there are no other registries in BiH except those maintained by the bodies concurrently responsible for registration of NGOs.

Registration of NGO into public registries at different levels is a condition for an NGO to start its activity.

In the Federation of BiH, the Ministry of Justice of the Federation of BiH keeps the registry of NGOs conducting activities at the territories of two or more cantons. For associations, which according to statute operate at the territory of one canton, the registry is kept by the relevant cantonal Ministry, meaning that for these NGOs there are 10 public registers (art. 23 par. 3 LOCA FBiH). In the Federation of BiH the registry of humanitarian organizations is kept by the cantonal courts according to LOHA FBiH (art. 17 par. 1). There are also 10 of them.

As already mentioned, in RS the registries are kept by basic courts in headquarters of regional courts, meaning that in this entity too, there are five places where registries are maintained. There is not a central registry at the level of this entity, regardless of the territory where NGO operates.

Laws in the Federation BiH comprise provisions that registers are public (art. 23 par. 5 LOCA FBiH and art. 21 LOHA FBiH). LOCA of RS has no such provision. However, in RS, according to already mentioned regulations on uniform register of political organizations and associations (The Regulation ... RS), issuing extract from the register is conditioned by "justifiable interest" of the person who seeks such an extract. There is no apparent reason for making such a condition, because "justifiable interest" can be reduced only to stating the reason for asking for such an extract from the register.

The issue of public registers in the future should be regulated so that there should exist a central national register of NGOs in BiH. It would not overrule the possibility of existence of public registers at the level of entities, cantons or local communities.

1.7. Mergers and Divisions

One of the more important faults of the legislation on NGO in BiH refers to non-existence of regulations to regulate questions of mergers and divisions of NGOs. These questions are not regulated by any of the mentioned entity laws.

Apart from this, the question of merger of two or more organizations or possible division of one organization into two or more other organizations is not foreseen, even as a necessary or facultative element of statute, act on establishment or other document in the organization.

Having on mind one of the most basic rules of legal order, according to which everything is allowed unless specifically prohibited, it appears that NGOs should be allowed to merge or divide. Unfortunately, the legal conscience in BiH, including the state officials who administer laws too, is not such that it could construe that possible activities of NGO aimed to divide organizations or merge them would go without impediments.

1.8. Termination, Dissolution, and Liquidation

Laws on NGO in BiH have many provisions for terminations of organizations. Many provisions are worrying because they allow possibility to terminate an organization for inadequate motives.

Basic ways of terminating NGO are voluntary and involuntary (forceful). Involuntary way of terminating work of an organization includes possibility to prohibit its work by a decision of the relevant court.

It appears that only possibility of terminating work of an organization on the bases of a decision of a relevant body of the organization itself is not disputable. Such a voluntary way of termination is taken into account by all three said entity laws, with generally the same formulations (LOCA FBiH art. 35 par. 1 item 1, than LOHA FBiH art. 36 par. 1 item 2 and LOCA RS art. 17, par. 1). However, not even the legal provisions on termination on the bases of a decision of its executive body are complete, because they do not include provisions on the fate of the association's property in event of such a way of termination. In the Federation BiH, the laws do not even foresee an obligation to have this issue arranged at least by the statute of the organization. Nevertheless, LOCA of RS (art. 11 par. 2) obliges NGO to include clauses in its statute, which regulate the issue of "...purpose of the property in event of termination of association". This legal provision is confirmed in another paragraph which asserts that the property of association after its termination goes over into possession of the municipality wherein the association is located, but only if "...the responsible body of the association does not decide otherwise" (LOCA RS, art. 19).

LOCA FBiH specifies another three special reasons for involuntary termination of an association. The first of these reasons is "if it is found that the association has ceased to work" (art. 35 par. 1 item 2). The law does not stipulate a single criterion when it should be decided that the association has ceased to work. Also, it does not include a time component of "inactivity", so this reason can be interpreted very free-willingly. This criterion is especially confusing if we have on mind the following reason for termination, being "if twice as much time has lapsed from the time specified by the statute for holding annual assembles and no assembly has been held" (art. 35 par. 1 item 3). It is not clear why the legislator mentions the annual assembly, if this body is not said to be necessary in the remaining provisions. On the contrary, regulating elements of a statute of an association LOCA BiH mention only "executive bodies" of an organization, but not its annual assembly. So, the legal nonsense is strictly sanctioning something for which there is no legal or statutory provision. Furthermore, if termination of an association is provisioned due to not gathering a specific body in a specific period, than the law should always relate to "justifiability" of why "the session" of the body has not taken place, rather than providing automatism and declaring termination regardless of the reason for not having sessions. Hence, the above-mentioned reason (termination of activity) is stricter, and does not assume only "not gathering" of the management body in a specific period. Termination of association is also possible if the number of its members decreases below the legal minimum necessary for establishment of an association (art. 35 par. 1

item 3 LOCA FBiH). As the minimum number of establishers is 30, NGOs are in position to have establishers "only on paper" in order to meet the formal condition. Request for this number of establishers has no connection with animating the freedom of associating, but is directly contrary to it. It is obvious that for such an idea it is easier to find two than thirty persons. It is more a matter of a socialistic dogma about significance of big numbers for every community, which exists even today, rather than "a democratic principle", declared through such a number of persons (30).

In all said cases, the decision on termination of an association's activity is made by "the relevant Ministry" (art. 35, par. 2 LOCA FBiH). The low does not name it so it can only be guessed that it is the Ministry responsible for registration. Also, it is worrying that there can be no appeal to the decision on termination of the NGO, but only a contentious administrative matter (art. 30 LOCA FBiH). LOCA RS and LOHA... FBiH do not make the said classification of the reasons for involuntary termination of NGO. Still, provisions of LOCA FBiH also refer to humanitarian organizations in the Federation BiH (subsidiary application according to art. 52 LOHA... FBiH).

All three analyzed laws regulate termination of NGO operation. It can be concluded that legal provisions on termination are more concerning than the practice itself. Fortunately, there are no instances of prohibition of NGO work. However, it is not certain that it will remain so in the future. Legal provisions on prohibition of activities are imposed imperatively, not facultatively. So, the provisions are not conditional and they do not leave possibility for courts assessment, because the used formulation is "the work shall be prohibited", not "the work can be prohibited".

It appears that the provisions are stricter in LOCA FBiH. The listed reasons for prohibition of activity are (1) association's activity contrary to provisions of LOCA FBiH and statute of the organization (art. 36 par. 1 item 1), and (2) if the association becomes a member of a foreign organization or association, or if it cooperates with a foreign association whose work is conducting some of the activities which are not in conformity with the agreement or law (art. 36 par. 1 item 2). Objection in relation to the first reason has to do with generalization, which can give way to free-willing construing and interpreting of the provision, to association's detriment. The law comprises penalty provisions for violation of some of the articles. Does that mean that violation of any of the legal provisions may lead to prohibition of the association's work? Or even worse: does that mean that activity of an association can be prohibited due to violation of some legal provision for which no violation is foreseen! According to art. 31 par. 2 LOCA FBiH the associations are obliged to submit application for associating in unions and international associations, but for violation of this compulsion the law does not foresee a sanction, or in the same law there are no sanctions for not displaying statutory title of association on the association's headquarters' building, which is a compulsion defined in art. 19 par. 1. By the letter of the same law, however, court could prohibit activity of the association due to that. The need for legal security and order in any country is not disputable, but sanctions must be appropriate, which is not the case in the mentioned instance. For these reasons provision on possibility of prohibiting activity of an association, which violates some of its statutory provisions, is even stricter. Generally

speaking, it is not clear which social (state's) interest is jeopardized, if any of the statute's provisions are not obeyed, which at the same time does not mean violation of the law too, so that it would be a sole reason for prohibiting the association's work. The second mentioned reason for prohibiting association's work is even more radical, but to the detriment of the association. It introduces possibility to prohibit activity of a domestic association even if it conducts an activity that is not in conformity with agreement for cooperation with an international association. This is no longer a matter of conformity with statutory activity, but conformity with agreement, which is an inappropriate sanction.

Provisions of LOHA... FBiH on prohibition of activity of humanitarian organizations are nothing more liberal. It is symptomatic that provision on prohibition is posed as the first in the classification of the ways of terminating organizations (art. 36 par. 1). Apart from repeating a part of already commented reasons from LOCA FBiH for termination of activities, LOHA... FBiH adds, as a reason, situations when an organization, in conducting its activity, works contrary, not only to that law or some other law, but also to "other regulations". Since in BiH laws are passed, not only by the state (central authorities), entities and cantons, but also by local bodies, and that, in sense of the number of the regulations, there is real "legal turmoil", this needs no further comment.

LOCA RS relates reasons for prohibition of activity to limited freedom of associating in general (art. 18 par. 1 in connection with art. 4). If we exclude the reason related to prohibition of associating in order to crash the social system, (which does not exist in reality any more), reasons for prohibition of association's activity, according to this law, exist if the association conducts activities directed against independency of the country, its territorial integrity, constitutional freedoms and rights of men and citizens, intimidation of peace and equal international cooperation, public morals, furthermore if it is directed to spreading national, racial and religious hatred or loathing, or conducting criminal activities. Possibility to prohibit activity of an association according to this law also exists if the association conducts works or performs activities, which are not in line with tasks defined by the statute. This reason is not acceptable due to already said things, especially because it is stricter in legal and technical sense than in the laws of the Federation of BiH. LOCA RS uses the notion of a higher hierarchical degree: it requests that activity be "in conformity" with the statute, whereas the laws in the Federation of BiH request that the activity of the association is "not contrary" to the statute.

A question of special importance in connection to termination of NGO, including prohibition of NGO's activity, is the question of the destiny the association's property. The laws in the Federation of BiH (LOCA and LOHA...) do not even render a general, left alone precise, instruction to the court, which make decision on prohibition of activity about the destiny of the property. Only the purpose of the property of the association whose work is prohibited is regulated so that it is a necessary component of the court's decision, which declares prohibition of work (art. 38 par. 1 LOCA, and art. 38 par. 1 LOHA...). LOCA RS is more concrete in relation to this question. In event of termination of organization, including prohibition of activity, it is regulated that the decision on

destiny of the property can be made by "the relevant body of the association", and in case of not doing so, the property of the association goes over into possession of the municipality wherein the association is located (art. 19). Obviously, in relation to the issue of purpose of the property, the laws do not render adequate solutions, but they, especially in the Federation of BiH, leave it to a discretionary assessment of the court. There is not only a need for the laws to render criteria to the deciding court, but also to the body of association. It would be best, if, in events of termination of association, including prohibition, the body of the association could make decisions, providing that the property could go over to an association with the same or similar activity, or status (for example. PBO). The same condition would remain for the state's body if the association's body does not use the possibility to decide about the purpose of the property.

Any solution that would foresee that the property of the association should remain in the state's ownership is even more unacceptable, because it could instigate procedures of terminations of associations' work, including prohibitions, derived from inadequate reasons. The legal instruction could include possible territorial restraints, in making decisions on purpose of the property of the organization, which is being terminated (for example, to make it an NGO from the same town, municipality, region and the similar).

Registration bodies make decisions on termination of an NGO. Only courts decide about prohibition of activity. The laws on NGO in the Federation BiH, in respect to procedure, decisively point to application of provisions of the law on criminal procedure (art. 37 par. 2 LOCA and art. 37 par. 3 LOHA...). LOCA RS does not consist a similar provision, but it does stipulate direct authorization of the public prosecutor to initiate the proceedings, which, as rule, operates according to the rules of criminal procedure (art. 17 par. 2). Address to provisions of the law on criminal procedure is not an optimal thing. However, provisions of the local laws on criminal proceedings offer most legal remedies (regular and extra ordinary), which can secure correctness of the procedure.

2. Structure and Governance

2.1. Mandatory Provisions for Organizational Documents

The laws have provisions on necessary components of organizational documentation. All three laws regulate contents of the statute (LOCA FBiH art. 11, and LOHA... FBiH, art. 15 par. 2, and LOCA RS art. 11 par. 2). Apart from that, LOCA FBiH (art. 10) and LOHA... FBiH (art. 14) contain necessary elements about the act of foundation of an NGO. LOCA RS does not require establishment act, as a separate document. However, it does request "program of the association", but it does not determine its elements, neither obligatory nor facultative.

Method of regulating necessary components of organizational documentation of NGO's is acceptable. The laws render instruction for listing questions, which must be regarded in NGO's documentation, but they do not restrain strictly to them. Legal provisions on necessary elements of the statute and other documents are at the same time

the criterion for the assessment of their acceptability to the registration body. In the practical procedure of the registration bodies, in regard to this question there are no impediments, except for unnecessary bureaucratization in some cases.

LOCA FBiH requests, as necessary elements of the establishment act, to which it refers as decision, the names and surnames of the establishers, name and location of the association, main purposes for foundation and the name and surname of the person authorized to undertake registration of the association into the register (art. 10). Apart from these elements LOHA... FBiH also requests that the decision of the establishment contain the amount of the foundation investment and the way of financing the activity (art. 14).

Necessary elements of the statute, according to the LOCA FBiH are: title, location, territory whereat the association operates; activity; purpose and programmed goals; conditions and the way of investing, and termination of membership, as well as rights, duties and responsibilities of the members; executive bodies, the way of their nomination, condition and ways of revoking, mandate duration, ways of making decisions and responsibility; ways of acquisition, utilization and disposition of funds; ways of making decisions on termination of the association; publicity of work; ways of adopting statute and its amends and additions; seal and presentation and representation of the association (art. 11). Even though this listing seems rather comprehensive, still some important provisions on the conflict of interest of the establishers, members and members of the association's body on one side, and the association itself on the other, are left out. Also, there are no provisions on the purpose of the property, or on the ways of making decisions in events on termination of the association. The same gap exists in LOHA... FBiH (art. 15 par. 2), but this law does not define another two important things as necessary elements of statute: management bodies of humanitarian organizations (election, revoke, mandate duration, means of making decisions) and publicity of work, due to much greater transparency of humanitarian organizations (like PBO), rather than "ordinary" associations (for mutual benefit of the members). Admittedly, it can be said that humanitarian organizations are subsidiary covered by LOCA FBiH (in accordance with art. 52 LOHA...), but if the legislator has already indulged into parallel regulation of the issue of the contents of statute of humanitarian organizations, than he should have also regulated the two mentioned important elements of statute. Obviously, a more fortunate or more legally consistent solution would have been achieved had he not done so.

LOCA RS does not contain provisions on management bodies (election, revoke, mandate duration, quorum for making decisions) and provisions on conflict of interests, as necessary elements of statute. This law also foresees a statutory provision on "legal status of the association", as a necessary element. Obviously, it is motivated by the fact that this law foresees existence of several "types" of associations: social organizations, citizens associations and "other forms of associating and organizing" (art. 2). In any case, such a solution is more liberal than restrictive to the freedom of associating regardless of the fact that LOCA RS does not define, in any of the later provisions, what should be assumed by those "other forms of associating and organizing".

Apart from the said, other additional necessary elements of the internal acts should be regulated, such as questions about the employed, relations between managing and executive staff, duties of loyalty and secrecy, prohibition of distribution of the property in private use and possible economic (related and unrelated) activities.

2.2. Optional Provisions for Organizational Documents

None of the mentioned laws contains provisions on facultative elements of organizational documentation of NGO, in direction of listing them by the method of exempli causae.

All laws have provisions, according to which NGOs can regulate "other affairs". Still, this does not refer to the decision on establishment of an NGO, whose elements, determined by the law, are final.

In practice, NGOs put time component, which takes into account weather the association is established only for a specific period of time, or that period is not defined in advance, as facultative elements, which is almost a rule without exception. Facultative elements of organizational documentation are provisions on abbreviated title of NGO, provisions on emblem, logo and means of publishing NGO's acts and their coming into force, functional organization (number of filials, offices, ways of their establishment), the employed (full time and freelance, ways of recruiting), volunteers.

2.3. Liabilities for Officers, Board Members, and Employees

The question of personnel's responsibility, management board and the employed, has an internal and external dimension. The first one refers to acceptable division of work (jurisdictions) so that NGO should efficiently function at all. External dimension refers to reasonable claim, which is not only relevant for transparency, but also for legality of overall activities of NGO.

A smaller number of NGOs are in the mature phase of internal institutional development, so they have Rules on the work of the executive board, Manual for the personnel, precise organizational structure, clear descriptions of working positions including authorization and responsibility, legally regulated relations between the bodies, which clearly distinguish their internal responsibilities. A very small number of organizations, however, have consistently separated function of management of the assembly, executive board from the functions maintained by the executive staff (director with the employees and freelance associates).

Laws on NGO, analyzed in the previous elaboration, are silent about questions of responsibility of the officials, executive board and the staff. There is not much use of the general regulations in this field.

The general regulations are most specific when it comes to the question of obligations, responsibility and of the employees' rights, which are liable to the regulations from the field of employment (working legislation). In this field there are no striking problems whenever we consider typical relations between an NGO (the employer) and the employed. However, there are many people working "illegally" in NGO sector.

The idea of volunteerism of the members of executive boards only partly exists in documentation of a number of NGOs, whereas in practice that number is even lesser. Due to the general social conditions (poverty), the necessary motivation for real voluntary engagement in executive boards is missing. Therefore practice, according to which a number of the members of executive board are involved in concrete NGO projects, is predominant, for which reason, confusion between the offices of management (executive board) and executive functions (the manager, most usually the executive director, together with the staff) occurs. Even when the internal organizational documents about division of the office of management and the executive office are correct, there is no guarantee that it is obeyed in practice. This is, probably, a 'cancer wound' of the non-government and non-profitable sector in BiH.

Generally speaking, authorization and responsibility of the executive personnel are much bigger than what is supposed to be acceptable. It is partly a consequence of the fact that NGOs were more often created by individuals with a vision and a little bit of courage, than by more individuals together (notwithstanding the formal condition of 30 establishers). Time passed, and insufficient attention was paid to the development of management inside NGOs. No doubt, it was largely contributed by the existing (obviously inappropriate) legal framework for operations of NGOs in BiH, which imposes no obligations in this direction.

Domination of the executive function is largely enhanced by standards from the other (industrial) sector, which are relatively better developed in BiH than those applicable in NGO sector. According to them, the person authorized for presentation and representation is responsible for legality of the activity of legal entity (including NGO), which transferred to NGO sector, is director (executive director) or the president of the organization. It is, actually, the legal representative of NGO, who is registered at the body responsible for registration of NGO. It is difficult to imagine a situation (except for some typical misuse) where a member of the executive board or the management board in general, would be held responsible for a decision that he makes. This is also a consequence of the rules according to which director (or the relevant executive body), who presents and represents the organization to the third persons, can cancel execution of a specific act of the management board, which he finds illegitimate. Nevertheless, not even a general legal frame for these issues has been adopted, because transition of the legal order is ongoing, and generally speaking, there is a fallback in many laws due to overall relations at the political scene in BiH.

2.4. Duties of Loyalty, Diligence, and Confidentiality

The questions of duty, loyalty and confidentiality in NGO are outside of the legislator's interest.

However, this important, and relatively 'autonomous' area of every NGO in internal organizational documents is mentioned only sporadically (intermittently). Formulations taken over from the other (industrial) sector are applied. Effectiveness of such provisions, though, is not only minimal, but there isn't any.

In case of breach of the loyalty duty, consistency and confidentiality, and possible detriment inflected to NGO, or detriment inflected to an other NGO, general instruments of common civic delinquency law , which are basically ineffective in BiH due to the conditions of the judicial system, are applied. Still, the basic problem with this issue relates to circumstances of the lack of clear standards that is assumed under the questions of loyalty, consistency and confidentiality. We are not talking only about the laws or the judicial practice. They do not exist even as contents framed by subjects concerned by these standards.

The current condition is also a consequence of the initial relative chaos in NGO sector where the 'prime accumulation' of NGO in BiH takes place. Something that every country has to go through. Even though the involvement of the foreign and international NGOs undoubtedly gave energetic and positive contribution to development of the third sector in BiH, still, even these organizations, at least partly, "are responsible" for the current situation in connection to non-existence of standards discussed herein. This is mentioned because of the special role of the representatives of the international community in BiH, whose role has a legal framework in the General Framework Agreement on Peace in BiH.

2.5. Prohibition on Conflicts of Interest

There are no clear legal provisions on the issue of protection from the conflict of interests. They are specially lacking in the analyzed entity laws that directly regulate NGO sector in BiH.

But even when there is automatic regulation in NGO internal acts, there are no guarantees that these provisions are correctly utilized.

Thus in practice, there can be a case where appropriate contractual arrangements are made between NGO, on one side, and the members of the executive board or the employed, on the other, which secure non-market incentives. There are also rare, but not impossible, instances of direct trade arrangements. More usual are the cases of making arrangements on performing specific services for NGO, or entrusting certain jobs that NGO needs to realize within its assignment (for example reconstruction of certain number of houses for the returnees), to a person that has certain family or some other ties to the NGO staff, or the members of the NGO executive board. In such arrangements it is not only a case of privileged transactions, but it can also be a case of corruptive elements. The corruption is wider, however, and often outside of the conflict of interests itself.

There are also instances of "twofold arrangements" of a single person; in the NGO and the company (firm). Obviously, this need not be suspect if there are no inner ties between the activity of NGO and the activity of the company. It is not always so in the practice and there are engagements of NGO's derived from inadequate instigations, in order to secure jobs for the company on exclusive basis.

3. Prohibition on Direct or Indirect Private Benefit

3.1. Prohibition on the Distribution of Profits

Generally speaking, in the mental conscience in BiH, including the people involved in the NGO sector, the idea of "non-government" component is much more integrated, than the idea of "non-profitability" of the third sector. Such conclusions, however, which are difficult to evaluate, would be dangerous if generalized.

If the above conclusion is at least partly true, one of the basic reasons for such situation is the absence of adequate legal regulations for the issue of prohibition of profit distribution.

The guideline for foundation of NGO is condensed in the formulation "non profit". Therefore, laws on NGO would have to comprise this rule, already in their first provisions, when they define an NGO. That is not the case at presently.

Regarding the issue of prohibition of profit distribution, the most worrying is LOCA RS, which literally regulates that "associations can conduct industrial and service activities... in accordance with the law and their programmed goals" (Art. 7). This rule has been confirmed also in the legal provision on associations' financing (Art. 21 LOCA RS). The law does not provide any common limitations to refer to financing of the associations' activities on the basis of distribution of profit from its own activities, neither in a fixed amount (for example up to 10.000 DEM per year), in percentage in relation to the whole annual budget, nor by other means. Practically speaking, this law does not distinguish between the status (activity) of an association, and activity of a company, so it does not raise only the question related to the general idea of non-profitability of the NGO sector, but also the question of (unfair) competition.

LOHA...FBiH is exclusive when it comes to the question of prohibition of profit distribution: "in conducting industrial or other activities for humanitarian purposes from article 3 of this law, humanitarian organization cannot realize profit" (Art. 9). This rule, however, is softened by the possibility for humanitarian organizations to found an enterprise or activity, and use the profit derived thereof, to finance their activity (Art. 42, item 5, LOHA... in connection to Art. 4 LOHA FBiH).

LOCA FBiH does not consist neither a direct or indirect provision on prohibition of profit distribution. In article 4, associations are given option to establish their own

subjects for industrial activity "... within the activity and programmed goals of the association". The provision on prohibition of profit distribution from LOHA FBiH, could not be applied even in a subsidiary manner, to associations established according to LOCA FBiH, because this law is more general than LOHA... FBiH.

No doubt, than, there are serious flaws in regulations about the issue of profit distributions, which need to be taken into account in new legislation.

3.2. Private Injurement

Private use and limitations connected to it are not precisely and clearly regulated in entity laws on NGO. Thus, there is no unambiguous prohibition of private use for founders, members of NGO, responsible persons, donors or any other persons, in the laws. They also do not contain provisions to regulate permitted exemptions referring to appropriate fees (salaries) for the staff, covering of expenses of coming to meetings of the executive personnel and other common expenditures connected to execution of statutory goals and activities of NGO.

If this term means violation of law due to personal (private) use and consequences (responsibilities) related to it, the entity laws on NGO do not consist appropriate bans. Prohibitions of that kind are, also, not regulated in internal NGO acts.

This does not mean, however, that it cannot come to responsibility according to general regulations, in such situations. Responsibility can be criminal, disciplinary and civic, as it has been said before.

3.3. Prohibition on Self - Dealing

The laws in BiH entities do not consist provisions on prohibition of acquisition of direct or indirect private use, in cases of NGO employment.

Thus, there is no legal restrain for distribution of means to the establisher's benefit, benefit of NGO members, and members of executive board. Also, appropriate exemptions, which would assume reasonable compensation for salaries of the employed, adjusted to the local situation, fees to external associates, reimbursement for official trips' costs, have not been listed.

Another worrying fact is that internal acts of the majority of NGOs, also, do not regulate this issue.

3.4. Prohibition on the Reversion of Assets

Protection from putting property (assets) back in the initial condition is far too subtle a question for the third sector in BiH.

Anything of the kind is comprised neither in laws nor in organizational NGO acts.

This question ought to be regulated by the future legislation.

4. Activities of Civic Organizations

4.1. Public Benefit Activities

Publicly beneficial NGO activities were not given an adequate legal framework.

As it has already been said, in Federation of BiH, apart from LOCA, LOHA has been passed... This law, along with "citizens' associations" from LOCA FBiH, introduces the category of "humanitarian activity" and "humanitarian organizations". However, LOHA... interprets the notion of publicly beneficial activities (interests) very restrictively, reducing them to "direct or indirect humanitarian aid to the BiH population in need, through the means of money, goods and free services...". The law properly regulates utilization of such aid and has no territorially, nationally, religiously or politically motivated limitations (Art. 2). LOHA... FBiH comprehensively defines what is covered by "condition of social need". This category covers "permanent or temporary conditions of the citizens whereat they can not secure basic life needs for food, clothing, lodging and the similar, without help of a second person, and this condition exists independently of their will, and as a consequence of (1) reduced psycho-physical abilities or disability to lead independent life and work, of individuals and groups of citizens (the old, children and invalids), (2) general disadvantageous conditions for life due to war events (flight, refuge and displacement), (3) natural catastrophes (earthquakes, floods) or (4) general disturbances (such as unemployment)".

At the very first looking at LOHA... FBiH it is clear that the term humanitarian activity assumes only help to people, in different ways (materials and services), in situations when their existence is threatened. Admittedly, in the following provision of LOHA... (Art. 3.), in the total of 13 items, by the method of exemli causae, it is said which are the ways to conduct "humanitarian activity". By analyzing this provision it can be concluded that the legislator partly expands humanitarian activity, besides the quoted general clause, which defines "humanitarian activity" (Art. 2.). Other than that, the field of work of a humanitarian organization can also expand by "examining implementation of public authorizations"□, whereby those authorizations are listed with examples (Art. 8 LOHA).

Still, in spite of the utterly extensive interpretation of provisions of LOHA... FBiH, this law does not include certain activities and fields of NGO work, which are usually considered to be publicly beneficial. There, we have on mind, first of all, activities from the field of upgrading the civil society, culture, art, human rights, and ecology...

Also, LOHA..., legally and systematically viewed, is not consistent with LOCA FBiH, which is "main" law for NGO in Federation of BiH. Namely, LOCA FBiH also leaves possibility for other civil associations, not only "humanitarian organizations" from LOHA..., to be trusted with maintaining "public authorizations". In any case, option of transferring "public authorizations" from the side of the state, entity, canton or municipality to citizens' associations, including humanitarian organizations is a positive orientation. However, the parallel legal regulations of the same questions, is confusing, which gives way to legal insecurity.

In RS LOCA, apart from "citizens' associations", regulates other "civic organizations" (Art. 2., par. 2). This model was appropriate for the time of its creation, and exemplifies an attempt to separate PBO, as associations conducting publicly beneficial affairs, and "ordinary" citizens associations, conducting activities beneficial for their members only. LOCA even offers definitions of "society associations" and "civic associations". "Society associations" are considered to be free and voluntary associations of citizens founded in order to meet "mutual interests and conducting specific social affairs (Art. 3., par. 2). However, it is confusing that definition of "citizens' association" also mentions meeting "mutual interests" (Art. 3., par. 3). It is true, however, that definition of "citizens' association" takes into account also realization of "private interests". Still, neither of the definitions make it clear if it is a matter of mutual interests of the establishers and members, or of mutual interests that exceed interests of founders and members only. So, the only real difference in the legal determination of the nature of "society organizations" and "citizens' associations" refers to possibility for "society organizations" to conduct "certain social affairs", which is not comprised in the legal definition of "citizens' associations". Still, such differentiation was not consistently obeyed by the prewar legislator in further legal provisions, because it is regulated that conducting of already said "public authorizations", can be entrusted to any association, not only to "society organization" (Art. 7). Thus, LOCA RS makes a functional equation between "citizens' associations" and "society organizations", notwithstanding the attempt to make difference between them in legal definitions. This attitude has been confirmed also by the fact that the legislator does not regulate the question of acquisition of "society organization" status, which should be different in comparison to foundation and registration of "citizens' associations", in further provisions. This conclusion does not change the circumstance that the legislator has given the status of "social – legal entity" to "society organizations" whereas "citizens' associations" have been given the status of "civic – legal entity" (Art 6, LOCA RS) . This differentiation refers to the nature of the property and, today it can influence questions of needs and ways (models) of possible privatization of "society organizations", and it does not influence legal subjectivity of the one or the other form of associating. Thus, the described difference does not render PBO character to a "society organization".

Therefore, in BiH, conducting publicly beneficial activities, as one of the most important questions for NGO operation, has not been legally regulated.

4.2. Public Policy Activities

BiH NGO legislation, as well as other regulations, does not consist provisions according to which it is not allowed to NGOs to conduct political activities. Therefore, there is an omission of prohibitions, which are otherwise common in the rest of the world, according to which NGOs cannot obtain funds for legal campaigns of certain political parties or individuals, or activities which might be qualified as "party – like", "political" and the similar.

If we consider the characteristics of political – legal environment in BiH, however, we cannot claim with much certainty that it would be useful to legally regulate that NGOs should refrain from any actions of political nature or politically motivated activities. Such provision could serve for assaults on NGO sector in BiH, which would not be fair. Namely, many NGO actions could be qualified as having political background, even though it is not so in reality.

4.3. Economic Activities

Generally speaking, NGOs in BiH, according to precise legal provisions, can deal with economic activities (LOCA FBiH, Art. 4; LOCA RS, Art. 7 and LOHA FBiH, Art. 42. alinea 5. implicit). Laws, in the same provisions, make it possible that NGO can found a special legal entity (enterprise, activity and the similar) for conducting economic activities.

What is worrying is the fact that there are no precise provisions on conducting similar (related) or different (unrelated) economic activities, specially when it comes to conducting economic activities for which no specific legal entity has been registered.

Two basic dilemmas emerge from analyzing provision of Art. 4 LOCA FBiH. The first one being – can citizens' associations conduct economic activity without establishing a special legal entity? It appears that they cannot. This is partly covered by the provision on funds for associations' operation (Art. 32), which mentions only "profit of the company whose owners" are associations. LOHA FBiH is absolutely explicit and it does not allow economic activities of "humanitarian organizations" without establishment of a special legal entity (Art. 9). There are no reasons that the law does not enable conducting economic activities of associations even without establishment of special legal entity. Of course, with common limitations, which can be tied to an absolute annual fiscal limit, percentage of overall annual budget of the association and similar. The second dilemma refers to formulation, according to which the special legal entity, supposed to maintain economic activity, can be established only "within the activity and programmed goals" of the association (Art 4, LOCA FBiH). It should be possible to establish a special legal entity for economic activities, which need not be related (tied) to statutory goals of the association. Restrictions that refer to distribution of profit of such a legal entity in favor of realization of association's statutory goals is absolutely another common obligation, which is not questioned. Therefore, the legislator wants to achieve protection of one idea ("non pro profit") by wrong nomotechnical method.

On the issue of economic activities LOCA RS consists one utterly liberal provision, which can give way to issue of unfair competition to companies outside of NGO sector. According to Art. 7 of this law the companies are given unambiguous possibility to conduct industrial and service activities independently or by establishing a special legal entity.

Thus, the main problem in Federation BiH is inappropriate legislation on the questions of NGO's economic activities without establishment of a special legal entity. Contrary to that, in RS there is a legal framework for NGO economic activities, independently, without establishment of a special legal entity, but the law does not consist common restrictions relevant to this question. Apart from that, the issue of maintaining unrelated (unconnected) activities of NGO, without establishment of a special legal entity, has not been resolved in neither of the entities.

4.4. Licenses and Permits

In Federation BiH, in order to make it possible for a humanitarian organization to register at all, it is necessary to have approval for registering into the registry issued by the city or municipality management body relevant for social affairs and affairs of humanitarian work, wherein the humanitarian organization is located (LOHA..., Art 18). Considering that by the very foundation of a humanitarian organization it is deemed a PBO, conducting activities of public benefit, and that the court reaches such a decision, than the issue is raised whether it is necessary to obtain additional approvals of a management body of a lower rank. Apart from that, there are no deadlines for giving approval nor are there provisions on presumed giving of approval in cases of "administration's silence".

In order to perform "public authorizations", it is necessary for NGO to be directly authorized for that, by a legal provision or to have it decided by entity, canton, city or municipality's assembly (LOCA FBiH, Art. 5; LOHA...FBiH Art. 8 and LOCA RS Art. 7). Maintaining "public authorizations" by an NGO is only facultative.

Registration for conducting economic activities through establishment of a special legal entity, is done in accordance to special laws, so registration of companies (association of persons or association of capital) is done by cantonal courts in Federation BiH or by basic courts at regional courts headquarters in RS. In practice, it takes 30 days to register. NGO can found a trade or housing communal. If NGO plans to open a shop, approval is given by management of administration of the municipality wherein the location of the shop is envisaged. It is possible to found a mixed company by capital investments from outside of BiH, whereat it is necessary to obtain approvals from the Ministry of economic relations with foreign countries before the court registration. Possible objections to this legislation are outside of the field of NGO sector.

5. Fundraising

5.1. Permissible Fundraising Activities

The legislation lists approved activities on collection of funds for NGO work. Those are membership fees, donations, presents and profit of companies founded by NGO (Art. 32, LOHA FBiH).Apart from the mentioned activities on collecting funds, LOHA... FBiH also adds foundation initial capital, donations of local and foreign persons and Republic and municipality's budgets (Art. 42). Similar sources and activities are mentioned in LOCA RS (Art. 21). It is important that all the laws mention "other sources", with restriction that they be "in conformity with law".

Nevertheless, it would not be surfeiting if the laws also directly regulated sources of passive revenues, sponsorship and arrangements with physical and legal entities.

5.2. Fundraising Activities - Limitations, Standards, and Remedies

The biggest limitation for activities on collection of funds is comprised in tax regulations. As a matter of fact, it is less a matter of some direct or indirect prohibitions, but more of an imprecise and ambiguous legislation or absence of any regulations for certain issues. Thus, LOCA FBiH, even though only exempli causae, lists the bases of collecting funds (mentioned Art. 32), and foresees, as a violation, only acquisition of funds contrary to provisions of Art. 32 of this law, threatening by penalty of DEM 1000, which is relatively big, given the local conditions. So, if possibilities for funds collection are listed only as examples, and the law itself foresees "other sources", than it is inconsistent to cast a penalty for collection of funds contrary to the said provision, if the collection of funds from "other sources" is legitimate.

NGO in BiH still rely on foreign donations. If we exclude former customs of donating sports associations, which last to date, examples of partners' relations between NGO and domestic physical or legal entities are rare.

Degree of fiscal self-sustainability of local NGOs is very unfavorable. The exception is a very small number of NGOs dealing with micro crediting.

It is especially worrying that, probably due to difficult post-war economic situations, there are almost no NGOs that are the government's partners and whose activity also is financed partly from local budgets. Contrary to that, some political parties, all parliamentarian without exception, are users of the entity, canton, city and municipality budgets.

Generally speaking, activities on collecting funds, especially from local sources, are insufficiently developed. It is more a matter of passiveness of local NGOs than of a lack of information about different fund raising possibilities. Still, restrictions imposed by the difficult economic situation, are of great importance.

After adoption of the new NGO legislation in BiH, it is more than necessary also to amend and make compatible tax legal framework for NGO. The current tax laws are impediment to many activities on fund collection.

6. Reporting, Supervision, and Enforcement

6.1. Internal Reporting and Supervision

The laws do not list compulsory internal (inner) bodies of NGO and, consequently, do not regulate jurisdictions, or their internal relations. On this issue, however, the most specific is LOCA FBiH, which lists management bodies of association, ways of their election, conditions and ways of revoking, mandate duration, ways of making decisions and sharing responsibilities, as necessary elements of statute. Unfortunately, LOCA RS does not consist a similar provision.

Nevertheless, internal acts of NGOs, especially statutes, deal with this question. Most usually there is assembly, as the supreme body of association, management board, as executive body and the president or director of the association, who directly manages work of the employed. A number of associations in their statute foresee a supervising board, with authorities to control finance dealing and NGO's funds disposing.

It can be concluded that regulations in acts, even though it is not optimal, are still much more concrete than the practice itself. Influence of assembly, is, most usually, marginalized in practice. Actually, many establishers of NGO (minimum 30) are only formal establishers, and, perhaps, there are some who are not even aware of being establishers or members of an association. Rare are the assemblies that play a significant role in adopting decisions or in the work of NGO, notwithstanding the obligation to get in annual reports on work and fiscal dealings. The role of the executive boards (from 3 to 7 members) is, again, significant in practice, only in a minor number of associations. There are instances when executive boards really decide about all major questions in NGO. Finally, in one, not a small number of NGOs, no bodies function, but decisions are made by one or two individuals, who are real authority and do not submit any internal reports on work, nor do they have any inner supervisors. Supervision boards, which, according to the acts, have big independency and authorizations in sense of finance dealing and association's funds disposing, have usually never been constituted, and where they have been constituted, they do not operate in practice yet. Still, there is, a smaller number though, of positive examples.

6.2. Reporting to and Audit by Responsible Supervisory Authority

Supervision of legality of NGO work is mainly in jurisdiction of management body of a certain level of authority. That depends on geographical area of NGO operation. So, supervision can be done by an entity, canton, city, or municipality's management body (LOCA FBiH, Art. 40, LOHA... FBiH, Art. 45 and LOCA RS, Art. 24). Also, supervision jurisdiction can depend on the type of questions that are being

controlled. Entity or cantonal body for activities on work inspection, is responsible for labour relations, and the finance police are responsible for taxes.

Generally speaking, NGO do not have a legal obligation to submit any reports on their work relevant to realization of association's statutory goals to any body of the state of BiH, entity, canton or municipality, in specific timeframes. On the other hand, NGOs can be subject to control of legality of work, including not only fiscal aspects, in any time. In this case, they have the same treatment as any other legal entity.

In practice, however, there are no worrying actions of the audit bodies with tendency to make NGO work impossible.

6.3. Reporting to and Audit by Tax Authorities

In BIH, according to special entity laws, all legal entities have obligation to submit semi-annual and annual reports on fiscal dealings (so called periodical and final accounts). NGOs are also included therein. These reports ought to comprise complete financial (fiscal) dealings (cash and non-cash), including tax issues.

In order to have the mentioned reports take into account all relevant data, associations are obliged to maintain business books throughout the year, according to prescribed methodology (LOCA FBiH, Art. 33: LOHA... FBiH, Art. 43 and LOCA RS, Art. 23, par. 3). This methodology was uniform for all legal entities (companies, NGO...) till 1999, but after implementation of the uniform international accounting standards in both BiH entities, which is already ongoing, methodology and standards for NGO will differ from those foreseen for profitable legal entities. This does not refer to accounting of legal entities established by NGO, which are subject to general regulations.

In practice, a big number of NGOs do not make such periodic and final reports. It is also contributed by the fact that a large number of donations, specially in immediate post-war period was in cash, and not through NGO accounts. However, much bigger impediment was the inadequate legal tax framework for NGO in BiH, so that this practice continues even today. With majority of NGOs, these compulsory semi-annual and annual financial reports cover only a part of fiscal dealing. This does not mean that NGOs do not have internal documentation on complete money dealings, independent of the part of business covered by the official report submitted to the state (entity) audit bodies.

6.4. Reporting to and Audit by Licensing Authorities

NGOs trusted with maintaining "public authorizations" have legal obligation to submit a report on conducting the trusted public authorizations at least once in a year, to the management body conducting supervision of their work (LOCA FBiH, Art. 42, LOHA... FBiH, Art. 47).

In event that it appears from the report or from facts determined by other ways, that association does not maintain trusted public authorizations in accordance with the

taken obligation, the relevant ministry that conducts supervision is obliged to warn in writing the association's management body, and it can also propose measures for removing misdoings (Art. 43, LOCA FBiH). Apart from that, other appropriate measures can also be taken, including deprivation of maintenance of the trusted authorizations.

Even though it is necessary to obtain approval of the municipality or city body responsible for social affairs and affairs of humanitarian work to register a humanitarian organization in FBiH (LOHA... FBiH, Art. 18) this law does not define obligation to submit any report on the work of humanitarian organization, that is, realization of its statutory goals.

Profitable legal entities established by NGO, and NGOs themselves, have the mentioned compulsion to submit semi-annual and annual accounts of financial dealings.

6.5. Reporting to Donors

Legislation in BiH regulating NGO sector does not establish a legal obligation to report to donors on realization of activities (projects) financed by a specific donation. Thus, there are no implicitly foreseen consequences in event of not submitting reports, except for the general request that the law on legality of NGO work be obeyed.

Generally speaking, submitting reports to donors by NGO, is, first of all, a contractual obligation. NGOs regularly report to the donors on realization of the project activities in accordance to the specified (contracted) time dynamics. In practice of NGO sector in BiH, cases of not submitting or untimely submitting reports to the donor are rare. Evaluation of project activities by the donor is another issue, and it is difficult to cast any assessment there.

However, obligation to submit reports to the donor, apart from the agreed, can also have delict consequences. In event of proved misuse of donation, under certain conditions there can be criminal and civil charges.

6.6. Disclosure or Availability of Information to the Public

All three analyzed entity laws consist provisions according to which the work of NGO is public and the publicity of work is regulated by the association's statute (LOCA FBiH, Art. 7; LOHA... FBiH, Art. 10 and LOCA RS, Art. 5, par. 5).

The transparency of NGO work is a very important question, especially as a hindrance to possible misuse of financial funds, including the possibility of corruption.

However, it seems that unconditional principal of publicity of NGO work, as it is determined by the said laws, does not go without objection. It is possible to conceive situations whereat the principle of publicity of NGO work established in such a manner could pose obstacles in their work, and it can also be contrary to some other important principles (such as privacy in case of association of people sick with difficult diseases,

principle of respecting professional secrecy of religious officials, lawyers etc.). Therefore it would be more purposeful to regulate that the work of NGO is public only if it is provisioned so by the NGO statute.

Impediments to greater publicity of NGO work, especially to accessibility of fiscal dealings reports, are already mentioned inadequate tax regulations for the work of NGO sector. It is probably due to that, that in BiH there are few NGOs that disseminate or are willing to disseminate complete reports on financial dealings (like OSF SOROS does it, for example).

Obviously, NGOs in BiH today, mainly have total transparency only to the donors, but not to the domestic publicity too.

6.7. Special Sanctions

The entity laws on NGOs consist special penalty provisions for their disobeying. LOCA FBiH comprises the total of four violations, for which fiscal penalties up to DEM 1000 can be applied (Art. 44 and 45). These violations refer to (1) conducting activities or works not in line with the statutory goals; (2) acquisition of funds contrary to law; (3) not maintaining business books and not making financial reports and (4) not submitting applications about statutory changes of the association to the registry body. LOHA...FBiH is more precise when it comes to prescribing penalties for violations (Art. 48 and 49). It foresees the total of 9 violations. The dispositions of some of them are worrying because they relate penalties to disobedience of not only the law, but also of any other regulation. The amounts of the penalties for violations are inadequately high, because it foresees penalties in range of at least DEM 1000 to maximum of DEM 5000. Apart from that, why should disrespecting of some legal provisions (for example breaking of a deadline for giving notice to registry body about some statutory changes in association) be so "socially dangerous" that a high fiscal penalty is provided, bearing on mind the local circumstances. It is particularly worrying that this law foresees penalties for certain kinds of behaviour, even though it does not consist specific descriptions to point out sanctionable kinds of behaviour. Thus, it foresees a penalty if an association "does not inform the relevant bodies about its activity in the specified timeframe" (Art. 49, item 4, LOHA... FBiH), even though such informing and deadlines are not at all regulated as a legal obligation. The most of the described violations (7 out of 9) are incomplete because they do not rely on specifically defined dispositions (article of law, paragraph or item) whose violation is an offence.

LOCA RS has a total of three violations for disrespecting its provisions (Art. 25 and 26). None of them refers to violation of rules that regulate the field of finance, because, in RS, it is regulated by special legislation. Out of the mentioned violations from LOCA RS, one refers to sanctioning of association's (local and foreign) operation prior to registration; one violation refers to the work of association directed to prohibited activities from Art. 4 of this law (crashing legal order, jeopardising independency etc.). It is interesting, however, that those are only dispositions because fiscal penalties provided by the law on the mentioned violations are not applicable because of the multiple

depreciation of the former YU dinar, in comparison to the time when the law was passed (1990).

Nevertheless, according to entity laws on NGO, potentially the most dangerous "sanctions" are those which are not embedded into penalty provisions, and which refer to the possibility of prohibiting the work of association "if it conducts works or activities which are not in line with the goals and tasks determined by statute" (Art. 18, par 1, LOCA RS). Similar provisions, including expanded reasons, also exist in laws of Federation of BiH (LOCA FBiH, Art. 36, LOHA... FBiH Art. 36, par. 2). Thus, according to the letter of law, association is in much greater peril if it does not operate in accordance with the statutory goals, then if it operates without registration. This is a common nomotechnical approach of the pre-war legislator, where the real traps were rather placed into a dull (chameleon-like) context, than in penalty provisions, where they would be reasonably expected. It is obvious that this "legal school" is still cherished. Fortunately, not all mentioned possibilities are utilized, or there are rare attempts to use them in practice.

7. Tax Preferences

7.1. Income of Profits Tax Exemption for Civic Organizations

There are no explicit provisions in the entity laws to be a valid legal basis for exempting NGO from paying profit taxes, regardless of its conducting a related (connected) or non-related (unconnected) industrial activity (economical activity). Also, it has no bearing whether the NGO conducts a "mutually advantageous" activity, for members (establishers) or publicly beneficial activities (PBO).

Laws on profit tax of companies in the entities (in Federation BiH from 1997, and in RS from 1992, with later changes and additions) do not put NGOs directly as liable profit tax payers, but only companies, banks and other financial organizations, companies for insurance and reassurance of property and persons, communals and communal organizations and "institutions trading with goods and services and making profit at market". Obviously, the last qualification marked with quotation marks could refer to NGO because it is set generally.

The profit tax rate in Federation BiH is proportional and uniform and it is 30%. In RS it is digressive and it is 10, 12, 15 and 20%, depending on the tax basis, wherein a lower rate stimulates a bigger basis.

At one part of the territory of Federation of BiH , the Provision on direct taxes is applied (from 1994, with later changes and additions). It says that liable profit taxpayers are all "legal and physical entities who make profit at the territory of H-B by conducting activities". This regulation does not mention direct tax exemptions for NGO anywhere, except that it regulates that the tax on profit of physical and legal entities "is not paid for the part of the profit that those persons invest in repairing damages inflicted by war activities at the territory of H-B, invested above the amount of amortization, and

maximally up to the amount of the assessed war damage". This is a general tax relief, which can apply to NGO too.

In entity laws there are no specific provisions to serve as legal basis for exempting NGO from paying profit taxes, notwithstanding their conducting related or non-related industrial activity (economic activity) . Also, it has no bearing whether NGOs possibly conduct "mutually advantageous activities" for the members (establishers) or publicly beneficial activities (PBO).

According to the Law on tax on profit of companies in Federation BiH (1997) and RS (1992 and others), obligation to have a prior decision of a tax body for utilizing relieves in connection to this tax is not foreseen. Also, at a part of the territory of Federation BiH, which formerly belonged to HR H-B, no approval from the tax body (as is the case with other – general relieves and exemptions when approval is issued by the Ministry of finance by its decision) is foreseen for relief from profit tax (repairing war damages).

Questions related to passive profit (investing funds in trade bills, real estates, banks) are not regulated exclusively for associations. On this matter, there are only provisions referring to the status of all taxpayers, and not only of NGOs when they make this kind of profit. Foundations and trusts are exceptions, though.

The Law on tax on profit of companies in RS (1992 and oth.) foresees "investing in basic tools for personal activity or activity of an other tax payer, in buying shares or part in the capital" as tax incentives, by decreasing tax basis by the height of the investment, but not by more than 30% of the taxable profit. In the case of investing in basic tools they cannot be deprived during the following 5 (five) years. In the Federation BiH, according to the Law on tax on profit of companies (1997) there is a similar provision on tax incentives. It is more favourable in sense that it can assume decrease of tax liability by the amount of overall investment in "personal productive activity", which also includes possible passive profit. Similar, general possibility is also foreseen by Provision on direct taxes (1994), which is applied at a part of the territory of Federation BiH (formerly known as HR H-B).

In Republika Srpska, there are no special rules for taxing NGO dividends. According to general rules dividends are taxed in accordance to the base and rate just like any other profit (Art. 20 in connection to Art. 31 of the Law on tax on profit of companies).

Tax incentives in BiH are also general and refer to all taxpayers, not to NGO exclusively.

The Law on tax on companies' income in the Federation BiH does not recognize a similar tax incentive referring to buying and selling stocks (as Art. 24 and 38 of the Law on profit tax in RS).

In entities and at the level of the state of BiH there are no provisions that limit NGO in investing its assets in order to get passive profit. According to that, individual specific forms of investments, connected to acquisition of passive profit, are also not explicitly prohibited. Foundations and charitable trusts are explicitly allowed to do so.

There are no limitations (upper limit, percentage etc.) for accumulating revenues and profit. The mentioned general compulsions on utilizing property in statutory purposes also have no specific penalty in case of their disrespect. In case of misuse, the issue of responsibility can be raised only in accordance to the general regulations.

This could be recapitulated by conclusion that NGOs are in the same position as enterprises (companies) in respect to tax on profit.

7.2. Income Tax Deductions or Credits for Donations

Laws on tax on profit of companies in Federation BiH and RS comprise one general provision which refers to all payers of this tax, according to which "expenditures for humanitarian, cultural, educational, scientific and sports purposes (except for professional sport) are accepted as expenditures in the maximum amount of 0.5% of the total revenue".

Also, "membership fees and donations to chambers or political organizations are accepted as expenditures in the maximum amount of 0.1% of the total revenue". In RS "expenditures for scientific purposes are accepted as expenditures in the maximum amount of 5% of the total revenue providing that membership in political parties is not recognized as an expenditure, but membership not only in chambers but also in "other professional organizations" is acceptable, also in the maximum amount of 0.1% of the total revenue. In other words, all said costs recognized as expenditures are not taxed.

According to the Law on taxes of the citizens in Federation of BiH (1991 and others), tax is not paid on donations of physical persons given, among others, to "humanitarian organizations", and "foundations and charitable trusts". According to the Law on income tax in RS, also, (1998) tax is not paid on "charity donations in cash or in goods to humanitarian, health, cultural, educational, religious, scientific and sport purposes", membership fee paid to various chambers and other professional associations, and investments (and establishment) in charitable funds, funds and foundations. At last, according Provision on direct taxes in HR H-B (1994), the citizen does not pay tax on the amount of aid given, among other, to "humanitarian organizations".

Regulations do not have rules on transfer of unconsumed funds of donations into the following year, which is specific for NGOs. There are only general rules on legality of financial dealings, which presume obligation of bookkeeping and legitimate consumption of funds transferred from one year into the next.

In Republika Srpska there is a limit up to which citizens' income allocated to donations and memberships is not taxed. That is up to 10% of the income to be taxed.

However, the Law on income tax in RS (Art. 14), actually, talks about so-called non-standard forms (it defines them as "relieves appropriate to expenditures that the tax payer had") and they do not refer only to memberships and donations to humanitarian organizations and foundations, but also to 11 different expenditures, wherein memberships and citizens' donations are mentioned. All these expenditures cannot be higher than 10% of the taxed income of the citizen (physical entity).

Also, in Republika Srpska there are regulations for questions of typical presents of citizens (so, it is not about income that the citizen gained by conducting a specific activity, part of which is given as a donation), and it is comprised in the Law on property tax in RS. In this case the citizen as a present giver is not a taxpayer. The taxpayer is the legal entity accepting the gift (present receiver). The said Law (Art. 18, par. 1, item 5) regulates that tax on inheritance and presents is not paid by "the legal entity on the presented property that serves exclusively for purposes determined by the funds or foundations, if the Law does not specify it otherwise". This is a very vague provision because it is difficult to identify all subjects that it could refer to. Still, there is an ample circle of legal entities. Foundations are not debatable. They can be companies (for example, fund for staff education), but also associations (funds for various projects). However, one should bear on mind that tax legislation is always interpreted restrictively when tax incentives are the issue and extensively when taxpayers are the issue. Hence, in the future this legal solution should be formulated in a much clearer way.

In Federation of BiH, Law on tax on income of the citizens of SR BiH (from 1991 with later changes) is also used for these questions. For NGO, the most important is exemption from tax on total income of the citizen that is present's subject (Art. 105, first alinea). The legislator does not restrict the amount of the present, that is, he does not impose a limit.

7.3. Taxation of Economic Activities

In entity laws, there are no specific provisions to directly regulate that certain types of revenue or income of non-government organizations are tax-free. Admittedly, LOHA... FBiH, which is not a tax regulation, consists only an appeal that the entity, cantons or municipalities render various breaks and incentives to humanitarian activities (Art. 14).

It is specified, what are the conditions under which related (connected) economic activities can be conducted by NGO, without establishment of a special legal entity. In both entities, profit of non-government organization, notwithstanding whether it is realized through direct maintaining of related industrial activities (so, not through a specially established legal entity) or through specially established legal entity, and notwithstanding if it is used for conducting basic statutory activities of the organization or for new investments, is taxed as profit of any other profitable (industrial) subject.

7.4. VAT and Custom Duties

A) VAT

When we talk about trade tax, entity laws directly regulate tax exemptions for "Red Cross and other humanitarian organizations" (Federation of BiH), and "Red Cross and other humanitarian agencies and organizations" (RS), for goods which they get without compensation as humanitarian aid.

Nevertheless, tax exemptions for services are not uniformly regulated. Law on tax on trade with goods and services in Federation BiH (1995 and oth.) unambiguously regulates that trade tax is not paid on "services maintained by humanitarian organizations when accomplishing goals for which they have been established".

Law on excise and trade tax in RS (1998 and oth.) is more restrictive because it regulates that trade tax is not paid "on services provided by the Red Cross in realizing goals for which it has been established" and "services maintained by religious organizations". Thus, in RS, other humanitarian organizations are not covered by tax incentive for trade with services which they conduct in order to accomplish goals that they have been established for.

Laws on basic provisions accept the widest concept of the circle of taxpayers, so that outside of that circle there are no other subjects to law, or possible taxpayers, including NGOs. Thus, law in Federation of BiH assumes "companies and other legal entities having that status in accordance with law" as liable tax payers, with the fact that "physical entities conducting activity in accordance to law, as well as civic legal entities" are equalled to them. Apart from "legal entity" as a taxpayer, "citizen" is also mentioned. RS law defines "legal entities and entrepreneurs" as liable excise payers and it uses only a generated term "entity" as payers of tax on trade with goods and services. This includes all law subjects – physical and legal persons. Thus, NGOs too.

According to that, NGOs in BiH are included in this tax system.

Entity legislators regulate that NGOs are generally exempted from tax on trade with goods received by the Red Cross or other humanitarian organizations without compensation and used for purposes that they were established for. Law in RS, apart from the term "products" also uses the term "goods". The law in Federation of BiH explicitly regulates products that are not included in exempting, being: oil, oil derivates, tobacco and tobacco products, alcohol, alcohol drinks, beer and coffee. On the other hand, RS law regulates that food, clothing, hygiene products and drugs are assumed to be products and goods exempted from tax on trade.

Apart from that, in both entities, NGOs can procure equipment and spare parts without paying trade tax. This incentive, however, is aimed for all legal entities, not only NGOs. None the less, this exemption does not include possibility of procuring cars, except for special purposes (hospital needs, utility, rent a car, etc.).

As for the services, the legislator in Federation of BiH includes all kinds of services of humanitarian organizations related to accomplishing the organization's goals, whereas in RS tax exemption covers only services of Red Cross and religious organizations, not of other NGOs.

The provided tax exemptions on trading with goods and services are complete (zero rate). There are no incentives for NGO that would assume a lower rate.

In Federation of BiH, tax on trade with goods and services is paid in accordance with proportional and uniform rate, which is paid in percentage on tax basis.

In RS, trade tax is paid by proportional rates. Tax on services in RS is also paid by proportional rates. In RS, besides tax that is paid according to general regulations, there is additional 2% tax on trade with goods and services paid in accordance with Law on securing funds for regular and safe maintenance of railway traffic (1996).

B) Customs

The only legal regulation at the level of BiH, that is applied throughout the territory of the state, and regulating fiscal incentives, is the Law on customs policy in Bosnia and Herzegovina (1998). It regulates the questions of importing goods for charity or humanitarian organizations without paying customs duties. The general condition is "that it can not lead to misuse or major disturbances in competition". Customs-free goods cover "basic consumables" imported by charity organizations "authorized by relevant bodies for their distribution in humanitarian purposes". Goods sent without compensation by a person or an organization registered abroad, and without any commercial intention of the sender, to charity or humanitarian organizations approved by the relevant bodies for collection of donations at charitable manifestations in favour of the poor, are included therein. Customs duties are also not paid for equipment and office materials which persons or organizations registered out of the customs territory of BiH, send without any commercial intention of the sender, without compensation, to charity or humanitarian organizations approved by the relevant bodies, and exclusively for satisfying operative needs or for accomplishing their charity or humanitarian goals.

Under "basic consumables", the law assumes those goods that are necessary to satisfy immediate needs of the people (food, medicines, clothing, linen). Thus, alcohol, tobacco, coffee and motorcars, except for ambulance and special vehicles for transport of invalids, cannot be covered by any tax incentive.

It is interesting that a tax incentive can be approved only to an organization whose accounting procedure enables the relevant bodies to have proper control of the NGO affairs.

7.5. Other Taxes

Taxes on presents, inheritance and property

According to the Law on Property in RS (1994), tax on inheritance and presents is not paid by "the legal entity for presented property which serves exclusively for purposes for which funds or foundations are established, unless law specifies it otherwise". Thus, exemption refers to all legal entities, not only to NGO. Apart from that, the formulation is not a clearest one, especially when we bear on mind that association has no compulsory funds, as companies do. In practice, there are very few of these cases, and even at such situations, the procedure of the tax bodies is not uniform, and often a lot of effort has to be made in order to utilize these exemptions for associations.

In Federation of BiH, this matter is still regulated by the pre-war Law on citizens' taxes in SR BiH (from 1991, with later changes and additions). According to this law tax on inheritance and presents is not paid for inherited or presented property that the taxpayer yields without compensation to "social-political society, organizations of associated labour and other organizations". In tax bodies practice, the term "other organization" also includes associations. According to the same regulation there is a possibility of tax exemption directly on the basis of the Government's decision in cases when local "civil-legal entity receives a money present from abroad". This option is used in practice, especially when NGOs are concerned.

Also, according to the explicit provision of Decision on direct taxes (1994, with later changes and additions), at the part of the Federation covering the area of former HR Herceg-Bosna, tax on inheritance and presents is not paid by "Red Cross organization, organizations for society activities and social protection and other humanitarian organizations and associations".

There are no restrictions to tie the exemptions on presented or inherited property to a specific fiscal limit. Also, there are no limitations according to which this tax relief should refer only to certain kinds of inherited or presented property.

In RS, though, according to the general regulation referring to all, not only to NGOs, tax on inherited or presented property which consists only of money or immovable things, is paid only if its value is over 5 (five) average wages (salaries) in Republic, according to the most recently published data from the Republic Statistics Institute. This general limitation also exists in Federation of BiH, and the amount is determined by Government's decision, at the Ministry of Finance's proposal, by 31. December of the current year at latest.

Taxes on real estates

Law on taxes on real estates in Federation of BiH (1995), or Law on taxes on property in RS (1994), do not recognize any tax exemptions for NGOs that, possibly, buy or sell real estates. The tax rate in Federation of BiH is proportional and it is determined by decision of municipality assembly, with limitation that it cannot be bigger than 15%. Thus, in practice, total discrepancy of height of this tax is both possible and present. In RS, this tax rate is proportional and it is 3%, except when the transferor of the property

rights has been its owner for less than 5 (five) years, when the interest rate for trading with real estates is 6%.

According to Provision on tax on trade with real estates (1994), used at the part of the territory of Federation of BiH (HR H-B), tax on trade with real estates is not paid for trade with real estates among "municipalities, diocese and Republic, state bodies, Red Cross organization and other humanitarian organizations and associations". When there is tax obligation, tax on trading with real estates is paid by 5% rate.

According to the Law on tax on property in RS (1994), apart from buildings and land of religious organizations, property tax is not paid on "buildings and land declared as a cultural value and buildings and land used for educational, cultural, scientific, social, health, humanitarian and sports purposes". Still, this exemption is not realized if the buildings and land are used directly for making profit. If the tax is paid, the rate is 0,25% on property (market value), for land it is 3% of the annual cadastral revenue, with the fact that municipalities can proscribe additional 1% of cadastral revenue.

Law on taxes of citizens of SR BiH (1991 and oth.), which is used in Federation of BiH, does not recognize exemptions from tax on revenue from real estates for NGO. As for the tax on real estates, the law regulates that sales tax is not paid on "business premises that the owner uses for conducting activities". This is a general exemption, which also includes NGOs, which possibly have business premises in ownership, and use them for accomplishing their statutory goals and activities.

According to Provision on direct taxes in HR H-B (1994), no incentives are foreseen for NGO in sense of paying taxes on income from real estates and taxes on real estates.

Tax exemptions on real estates owned by NGOs in BiH are not complete, and there are places where they do not exist at all. There is a great territorial discrepancy of solutions. Special difficulties are authorizations of local bodies (municipality assembly) to determine local tax obligations for real estates in some regions in BiH.

NGO staff wages

As for taxing wages of NGO staff, there are no special tax exemptions or incentives. Their position is equal to companies, state and public institutions and oth. Generally speaking, a very small number of the people employed in the NGO sector have signed working contracts and consequently do not pay any tax liabilities on salaries or fees (it is, practically, "black market labour").

Tax on utilizing (displaying) trademarks

These are local regulations (adopted by municipal assemblies). Decisions on introduction of these taxes do not foresee incentives or exemptions for NGOs.

8. Foreign Civic Organizations and Foreign Sources of Funds

8.1. Establishment and Supervision of Foreign Civic Organizations

When we talk about legal framework for activities of foreign (international) NGOs in BiH, provisions of entity laws on associating, cause much less concern than legal solutions contained in LOHA...FBiH.

Basically, LOCA of Federation of BiH (Art. 20 and 21) and LOCA RS (Art. 9 and 10) distinguish between activities of the persons who do not have BiH citizenship (activities of foreigners) and activities of international associations. Still, the said laws do not comprise specific provisions to define which association is considered "foreigner's association", and which "international association". In practice, the notion "international association" assumes every form of associating registered outside of the BiH territory. Actually, they do not have to be registered organisations, but it is sufficient that they are associations of different organisational forms established and operating outside of the territory of BiH, in compliance to their national (domestic) regulations.

Two provisions from LOCA FBiH cause caution, one of which has to do with foreigners' associations, and the other with international association. First legal provision (Art. 20) refers to the condition requesting that the foreigner has to live at least one year at the territory of Federation of BiH in order to be a founder of an association located at the territory of Federation BiH. We do not see which, if any, entity interest or value is protected with this legal provision? It is reasonable to request that the foreigner has a registered living place at the territory of BiH (therefore, not exclusively at the territory of Federation of BiH), without the additional condition related to the minimum period of living. It is positive, however, that the condition of living at least one year is not requested if the foreigner has permanent address in Federation BiH and that foreigners can be founders of association both alone or together with local citizens. This is particularly important since a large number of establishers are necessary for foundation, in BiH now. The second legal provision (Art. 21and 22) refers to the ways of registering headquarters of international associations or their different organisational forms as a condition for operating at the territory of Federation of BiH. Apart form registering into the register of international associations maintained by the Ministry of justice in Federation of BiH, prior approval from the Government of Federation of BiH is an additional conditional. In order to obtain approval the law demands that the activity of international association is not contrary to "Constitution, law and international agreement accepted by the Government of Federation). If it is already regulated that international organisations should register at the Ministry of justice, there is no need for the additional condition of obtaining the approval from the Government of Federation of BiH. We are free to conclude that legislation like this is not only not protecting the interests of this entity, but it is jeopardising them. Why should approval be requested at all, leave alone from such a high rank? Other than that, in Federation of BiH, along with Constitution of the state of BiH and Constitution of Federation of BiH, another 10 cantonal Constitutions and over one thousand cantonal and entity laws are in force, so it is not only possible but also very feasible to find many inconsistent laws. Therefore the conditionality that the

activity of international associations is not contrary to (any) law is over strict, and therefore unacceptable. International NGOs rendered huge contribution to many elements of development in BiH and they do not "deserve" twofold bureaucratic procedure and additional "conditions" to operate at all. Even without that, there are no reasons that principle of "national treatment" is not applied to registration of international NGOs in BiH (the same or similar procedure, as it is for local NGOs, always when it is possible by "the nature of the matter"). Thereat, possible limitations of activities of international NGO can be consistent only with the limitations from Art. 11 of European convention on protection of human rights and basic freedoms, and not with numerous, not seldom inconsistent, domestic legislation.

It is positive that LOCA of FBiH, along with request for registration of the international association, also demands a minimal number of documents: list of the members of the relevant organisational form that is registering and the statute (or other appropriate act). Apart from the name of the person for presentation and representation of the organisational form in BiH, we do not see why it is, already at this phase, necessary to have the list of the members (personnel) of the office. This circumstance might, because of the technical reasons, disencourage foundation of a resident office of an international NGO. Anyhow, this could be only one person, even though the said law unnecessarily presumes "plural", because it talks about "members" of the office.

LOCA RS is far more restrictive when it comes to establishing associations of foreigners, than international associations. Furthermore, international associations are regulated by only one legal provision, and it appears to be very liberal.

LOCA RS (Art. 9) regulates basic possibility of founding foreigners associations. This law, however, does not address to provisions of the Law on movement and dwelling of foreigners ("Official Gazette of RS", No. 20/1992), which consists additional conditionality. Nevertheless, these are not the only limitations. It is worrying that LOCA RS limits foundation of foreigners' associations to cultural, scientific, technical and other similar goals. There are no reasons for excluding fields like certain educational activities, human rights and ecology.

International associations, according to LOCA RS (Art. 10), in sense of possible location and operation at the territory of RS, are totally equal to local NGOs, including the procedure, conditions for registration and other issues. The registering body is, also, the same. This has also been confirmed in practice. It is interesting that, in some situations in RS, under the same conditionality, international NGOs have fewer problems than local NGOs. It appears that imposed conditionality for international NGOs' operations in RS is not worrying. LOCA RS requests that their activity be "in compliance with Constitution and international agreement" and that it is "not directed to jeopardising peace and equal international cooperation".

LOHA...FBiH consists many provisions difficult to be legally justified, and which directly discourage activities of international NGO in Federation of BiH. The very fact that this law dedicates 14 rather comprehensive provisions (from Art. 23 to 35 and Art.

51) and partially several others, is an indicator of the initial intention of the legislator to "regulate the life" of these associations in detail. It is simply unbelievable that the law foresees at least four administrational steps, at four or five different local bodies, that international organisation has to undertake in order to operate in FBiH. These steps are "approval", "opinion", "registration" and "licence". Therefore, the first step is application for conducting humanitarian activities at the territory of FBiH, submitted to the Ministry of refugees and social policy on "a prescribed form" (Art. 24, par 1). However, not directly but indirectly, through the Ministry of foreign affairs. This application is supported by six different documents (Art. 24, par. 2). In order to have the Ministry issue approval, it is not sufficient that it surveys the submitted documents, but also to have "direct contact" with the representatives of the foreign humanitarian organisation (Art. 25, par 1). Since this is a contentious administrative matter, it is obvious that it is "an interrogation" as a means of evidence, with the fact that the legislator uses more diplomatic than official vocabulary. If the activity is from the health protection sector, education, industry or other sectors, in order to get approval from the Ministry for refugees and social policy, apart from the listed, they have to obtain "opinion of the relevant ministry" (Art. 25, par 2, LOHA... FBiH). When they get approval from the relevant ministry, foreign humanitarian organisations need to register at the cantonal court in Sarajevo. However, not even the registration is sufficient for commencement of work, because the foreign humanitarian organisation can begin with its activity "only upon procuring the licence" (Art. 30 LOHA... FBiH). This licence, after the court registration, is issued by the already mentioned Ministry for refugees and social policy (Art. 29, LOHA...). Also, apart from the activity licence, the representatives of the foreign humanitarian organisations and the recruited staff, are obliged by the same ministry to obtain letter of credit, which they have to wear and display at request of any administrative body in Federation of BiH (Art. 31). Decision on registering into the registry is forwarded not only to humanitarian organisation and the said ministry, but also to the relevant public prosecutor (Art. 28). This is an indicator, just like it was for local NGO, that the authority, thereby, "warns" the humanitarian organisation to refrain from possible subversive activity directed against the state or the entities. Since the prime duty of the public prosecutor is prosecuting perpetrators of criminal acts, we are not convinced that such a legal solution is needed at all.

Provisions of LOHA... FBiH do not refer to official missions of OUN and government agencies of other states (Art. 23). Apart from that, foreign humanitarian organisations, which conduct their activities in health, education, or conduct researches or educational works for humanitarian purposes, do not have to register into the registry of humanitarian organisations (Art. 35), but they are covered by the remaining provisions of LOHA...FBiH (approval, opinion, licence).

Besides the said, during the activity itself, foreign humanitarian organisations have additional obligations, which are not imposed to local NGOs. That is the obligation to submit their plans and activity programmes for reviewing and obtaining opinion, to the ministry that gave them the approval (Art. 34, LOHA...FBiH). The same provision stipulates obligation for foreign humanitarian organisations to submit information abut execution of the plan and programme at least once in a three months period. This seems

to be too strict. Possibility of having insight into work of NGO, specially due to more efficient solving certain needs of the community (repairing houses, building of accommodation fund and oth.) is not disputable, but maybe it would be more appropriate to work in cooperation with foreign NGO on partner (contractual) basis, rather than on relations regulated by legal norms, which are unambiguously of imperative character. Such conclusion emerges from analyses of penalty provisions "earmarked" for foreign organisations in events of law disobedience (Art. 48, item 2 and Art. 49, item 4, LOHA... FBiH, foresees rather big penalties for violations, even up to DEM 5000).

There are no reasons that foreign humanitarian organisations, prior to commencement, but also during work, should subject to the described rigid administrative procedure. They should, without any dilemmas, be provided with the same status as local humanitarian organisations. Thereat, all formerly said reserves referring to narrow qualification of the notion "humanitarian" remain, according to LOHA... FBIH, in regards to what it should include in comparison to usual standards in the world (when "public benefit" is concerned, and in connection to that, activities of PBO). Current legislation is, surely, not stimulating for activities of international NGO in Federation of BiH, no matter how the entity administration might be efficient and flexible in practice. It is worrying that "administrating" without any real connection to protection of an interest, is often unknown to those who are the first to prevent it or reduce it to a reasonable measure. With the current legal framework, it is not possible even if there were willingness to do it.

In practice, a number of international civic organisations having worked or working in BiH, have not completed all necessary activities on registration, required by the local legislation. However, they are not having difficulties in their work due to that, nor do they suffer any sanctions.

8.2. Foreign Funding

Entity laws on citizens' associating do not consist prohibitions or limitations in sense of foreign funding. Actually, LOCA FBiH and LOCA RS, do not consist any provisions for this issue. In chapters on associations' financing, these laws, among other, stipulate "contributions of physical and legal entities" (LOCA RS, Art. 21) and "membership fees, presents and donations" (Art. 32), regardless of territorial or other origin of NGO's funds. Since one of the basic legal principles is that everything is allowed that is not specifically prohibited, than local laws do not limit foreign sources of NGO financing.

LOHA... FBiH, as lex specialis, directly mentions foreign sources of financing, regulating that humanitarian organisation acquires funds for conducting the activities from "donations of local and foreign physical and legal entities" (Art. 42).

In practice of NGO in BiH, funds for NGO activity of foreign origin still make incomparably biggest percentage of overall funds. If we excluded sports associations, as well as a minor number of NGOs managing to deal with micro crediting successfully, we

would not be wrong to conclude that it is almost a sole source of funds for activities of local NGO.

In the immediate post-war period, predominant part of foreign donations was in cash. It is not the case today, which is good, because it contributes to greater transparency of NGOs' work. Still, taxation aspects are not definitely resolved. There are no requests for compulsory conversion of grants into the local currency with unreasonable commission. Due to stability of exchange rate of the local currency (KM) in the recent 1,5 year, conversion is not a problem really.

9. Other Government Relations

9.1. QUANGOs and GONGOs

In BiH, in both entities, there are also quasi – NGOs and NGOs founded or controlled by the authority (GONGO).

Initially, NGOs were confused by the fact that governing bodies of a certain level of authority can be founders of organisations, qualified as NGOs, at all. Still, it happened. It seems that the prevailing motive was the assessment that it would be an easier way of securing foreign donations for realisation of certain projects (mainly reconstruction of infrastructure, objects, micro crediting and oth.). Regardless of objections, it can be concluded that some of organisations established in such a way, were useful for community and they solved some concrete needs of citizens, especially of those effected by the war (refugees and displaced persons).

Other than that, in BiH, even from the pre – war socialistic periods, there are institutions specially from the field of culture and education, for which there are no barriers to function as NGO by many elements, today. Nevertheless, no activities have been undertaken to make them procure funds like NGO, which would unburden certain budgets that finance them. Also, there are no legal guarantees to preserve the non – profit character of these institutions. Also, the authorities have not undertaken other actions to make the described happen, because it used to be more important for them , just as it is today, to appoint the director or executive board, rather than securing long term fate of such institutions.

Also, there are NGOs whose founders are persons who are, at the same time, involved in full time work for state institutions. There are also situations where establishers are the state officials of the highest rank. Formally and legally, these are not GONGOs, but motives for their foundation vary. Sometimes it is the assessment that there is a greater possibility to procure funds for different activities. In other cases, loyal individuals, in this way, protect "the higher (state's) interest" the way they construe it from inside, offering lectures on "real patriotism and patriots" and "keeping an eye" on the liberals and "all other" in NGO sector. Some of these NGOs directly and unscrupulously promote certain political (mainly "patriotic") option.

Thus, the option for NGOs to be an alternative service for performing services otherwise maintained by expensive public or state administration is not utilised.

There are, also, professional associations working under special laws. Thus, the lawyers are organised in bar associations, which have their own acts and operate in accordance with entity laws on bar council. Admittedly, those are copied pre-war socialistic laws that insufficiently view needs of the community in new environment, and they also contain limitations which hamper expansion of bar council. This is, mainly, a consequence of earlier mental consciousness of "controlled" expansion of private sector, hence, the bar council too.

9.2. State Grants and Contracts

In the field of state donations and contracts in BiH, there are basically, still unbridgeable barriers for possible participation of registered local NGOs. This field is dominated by monopoly cherished by state executives of different rank, and by non - transparency.

Entity governments, including the whole administration, even that at the local level, have "forgotten" the meaning of tender or public gathering of bids. Unfortunately, this is not a handicap of NGOs only, but the situation is similar in all sectors . Obviously, direct negotiations in arranging certain works, which exclude the directly interested parties and publicity in general, give ample space to corruption of state officials.

Therefore, it is not a matter whether in some cases NGOs could have even a prerogative position in procuring goods or conducting services for the state, but the matter is that NGOs do not even have possibility of participation on fair basis.

It seems that some, very rare, cases evidencing a practice different to the described one, are not result of existence of wanted standards, but of connection of state officials and representatives from NGO sector, sometimes for inadequate motives, too.

9.3. Privatisation

Generally speaking, in BiH, privatisation process is considerably behind in comparison to other countries in the region (with exception of FR Yugoslavia). Admittedly, privatisation in Federation of BiH is insignificantly more advanced than privatisation in RS.

However, privatisation of state owned companies and banks is ongoing. The process is not even close to the end.

For possible "privatisation" of services that are still mainly reserved for state (public) institutions (health, culture, education) there is not even a complete legal framework. Surely, there is a space here for reducing expenditures of the state budget and

inclusion of NGO, which has not been utilised so far. It is true that one number of NGOs maintains some of these services (for example: psycho – social protection, education in the field of legal assistance), but only from one project to another. Therefore, we cannot talk about "letting" these areas to NGO in a longer period in a more specific form. By NGO access to the sector of public services, so far reserved for the state (public administration), new possibility for sound (needed) competition, and thereby unburdening citizens (tax payers) would be opened.

Currently an issue in BiH is privatisation of so – called society organisations, as a special means of citizens' associating, which existed in the pre – war (socialistic) system. Some of these associations have valuable property, including real estates (land and buildings). These organisations are, in some elements, similar to PBO, according to common standards. Anyhow, even if it is not a typical privatisation of so – called society organisations, in any case, their status in sense of property has to be defined, whether by a special law or new legislation on NGO (in provisional provisions).

10. Methods of Voluntary Regulation

10.1. Methods and Subjects of Voluntary Regulation

Experiences from other sectors say that the method of voluntary regulation (autonomous norms), is often more efficient than regulations coming from the state (heteronymous norms).

The "third sector" in BiH, certainly, does not sufficiently use these possibilities. Admittedly, not even the entity laws on NGO give necessary "impulses" in this direction. It would be useful for the current level of development of NGO sector in BiH if laws prescribed a general obligation regulating certain questions (presents, honorarium, conflict of interests on different basis, internal organisations), providing that material – legal norms regulating certain relationships be original regulation of NGOs themselves.

In practice, rare are NGOs that have developed voluntary (autonomous) regulations, even though they have a formal (legal) possibility for that. Even those organisations that have solidly developed regulations for some of the more important issues, do not apply those provisions sufficiently in practice. This was discussed in chapter 2.2.

10.2. Umbrella Organizations

Entity legislation on NGO in BiH does not forbid possibility of creating "umbrella organisations", but they do not facilitate it sufficiently, either. LOHA...FBiH is silent about this possibility. LOCA FBiH contains direct provisions according to which associations can "gather into alliances or other forms of associating" (Art. 12), or "become members or associate with international associations" (Art. 13). This law also contains one provision that indirectly (implicitly) hints possibility of associating into "alliances, international associations or other forms of associating" (Art. 31, par. 2).

LOCA RS stipulates only about "other forms of associating and organising (Art. 2, par 2), so that this formulation can also refer to possibility of making alliances or other roof organisations.

In practice there would be no difficulties if there was an intention to organise an association comprised of more NGOs. Apart from formal (registered) alliances there are also roof organisations which are not registered. Those are, mainly, so – called NGO forums. In BiH there are around ten regional NGO forums, but there is also NGO forum for BiH. Some of them are registered. There are different NGO networks, mainly established on contractual and voluntary rather than institutional basis.

Organising roof organisations in BiH is often given a political dimension. Currently, it is the case with sports associations. There are conflicted conceptions, some of which propose single BiH club alliances (basketball or handball or football or oth.), and some propose alliances only of the existing entity sports alliances (so – called alliance of alliances).

It is regrettable that roof organisations are not sufficiently used for promoting and strengthening NGO sector itself in BiH. Also, roof organisations are insufficiently used for preparation of models and adoption of NGO codex. Codex is surely missing in NGO sector in BiH. However, the main objection to this issue cannot be addressed to state bodies but to predominantly passive NGO sector.

There are still no "watch dog" organisations to conduct monitoring, promotion and preservation of the basic idea of NGO sector.

Greater promotion of roof organisations in BiH was impeded by the still current failure in adopting a consistent and acceptable legislation on associations and foundations, expected even in 1998.

FOOTNOTE

1) About versions of regulations from this field in BiH, from constitutional –legal aspect, see: Analyses of legal treatment of non – governmental organisations in BiH, first part, author Dr Nedjo Milicevic. The analyses is done within LEA – LINK project, and has not been officially published.

2) An extreme case was when one court in BiH declined registration of a citizens' association which, in its statute provisioned activities of legal assistance in human rights protection, with explanation that "...human rights protection falls into the area of activities from exclusive jurisdiction of certain state's bodies, as well as government's and international organisations, not of citizens' associations (court decision in B.L., No. Rg-152/97). In this construing, the fact that European convention on protection of human rights and basic freedom is a corporate part of legal order in BiH, with priority right and force "over all other laws" (Art. 2, par. 2 of Constitution of BiH). Apart from that,

obligation from Annex VI of General Framework Agreement on Peace (Agreement on human rights), was violated. According to it, all parties obliged themselves to “upgrade and instigate activities of non – government and international organisations for protection and improvement of human rights” (Art. 13, item 1).

3) Contrary to this, in 1996 the Law on Political Organizations was passed ("RS Official Gazzete" No 15/1996). Although the aforementioned SR BiH Law on Citizens' Associating regulated issues of political parties and associations, entity lawmakers were only interested in the field of political organizing and acting.

4) We should mention that entity laws on foundations regulated questions on merger of foundations. Admittedly, these regulations are not complete, but still they exist. Compare art. 22 par. 2 and art. 28 par. 1 of the Law on foundations and funds (“Official gazette RS” No. 14/1994), and art. 36 item 2 or art. 41 of the Law on foundations (“Official gazette Federation BiH” No. 16/1998).

5) Some things that have been said here are present in European convention on protection of human rights and freedoms (art. 11 par. 2). Therefore this provision may be a better starting base for concrete regulations of acceptable freedoms’ limitations for associating in BiH, rather than provisions in later adopted laws. Maybe, it would be more consistent if the possible prohibition of an association activity were related to reasons due to which registration of an association cannot be approved, rather than forcing completely new conditions for prohibition of work. Therefore, it would be more acceptable to relate possibility of prohibition of work in LOCA FBiH to conditions from art. 29 of the law. In a more refined and concrete way, of course.

6) In BiH there exist, a smaller number though, of NGOs founded in the last 7-8 years (not including earlier, so called, social organizations, some of which are relatively wealthy, in sense of local criteria), which, apart from considerable equipment, also have real estates.

7) Apart from the regulations from the employment field (Labour Law in the Federation of BiH, published in “Official Gazette of Federation of BiH” No 43/1999; Law on working relations in RS, published in the "Official Gazette of RS” No 25/1993, 4/94, 14/94, 15/96, 21/96, 3/97, 26/97), the matter, first of all, refers to three groups of laws: (1) industrial legislation (the two entity laws on enterprises are basic), civic laws (the basic is the Law on obligation relations in SFRY from 1978 which is used in both entities) and the criminal legislation (the basic are the criminal laws in both entities). As NGO sector has the specific position in the overall legal order, especially because of it’s idea of non-profitability, it is obvious that the predominant part of those instruments, of the “remnant law” is inadequate. Applying analogy in law has only a limited range, and in many situations analogy is out of question. Anyhow, when it comes to the question of responsibility of the management board, the executive board and the executive personnel in NGO sector in BiH, there are no cases with a court epilogue, so that in the biggest number of issues we cannot talk, not only about the existing law, but of the existing standards in practice neither.

8) “Whoever brings detriment, material or non-material, to another person, is obliged to compensate it " (art. 154. of the Law on obligation relations published in "Official Gazette of SFRY" No 29/1978, 39/85, 45/89, 57/89, which is, as a remnant law from the previous state, used in both entities in BiH).

9) Exceptions are ten NGOs from BiH, which, through DEMNET programme, which refers to aid to development of inner capacities of NGO, adopt internal organizational documents by international standards. The programme commenced in the last quarter of the year 1999, and is implemented by USAID-ORT.

10) So-called “public authorizations” were, during the socialism, maintained by special public institutions – self-government interest societies (SIZ) – which were dissolved immediately before the war. There were special laws for that (federal and republic). SIZ existed in the field of culture, science, education, health, housing... and their affairs were taken over by former Federal Republic and municipal management bodies, which can transfer the said “public authorizations’’ to humanitarian organizations, too.

11) The currently valid legal order does not make division between “social – legal entities” and “civic – legal entities”. Generally speaking, along with physical entities, there are “legal entities” as a generated notion for all subjects to law, save physical persons.

12) In RS, according to Law on refugees and displaced persons (“Official Gazette of RS” No. 26/1995) there was a provision (Art. 39, par. 1) according to which an association conducting activities on collecting and distributing humanitarian aid to refugees and displaced persons, was obliged to obtain permission from Commissariat for refugees and humanitarian aid in RS. This provision, however, ceased to be valid from 04. December 1999, when the new Law on displaced persons and refugees and returnees in RS came into force (“Official Gazette of RS”, No 33/1999), which does not foresee the said obligation of obtaining the permission.

13) Law on charitable trusts, foundations and funds of RS (1994) consists explicit provision according to which foundations and charitable trusts can acquire revenues and collect fruits in accordance with legal ways of rent, interests, dividends, fruits from agricultural land, author’s rights, patents. Apart from that, revenues can be obtained in accordance with other regulations (that is, Law on enterprises and similar), but also through presents, legates, etc. This law comprises an explicit provision that “funds given to trusts, foundations and funds are not taxed”. According to the Law on foundations and trusts of FBiH (1998), apart from “aid programme”, “investments”, “donations”, “other sources of financing” are included into foundation’s revenues. As for acquisition of property of foundation (charitable trust), according to the same law, rent, fee, profit, interest, dividend, revenues from author’s rights, patents, licences, agricultural, forest and other land, donation are explicitly listed. It is legal to organize various additional activities.

14) Those are reports submitted for a calendar year and referring to the period from 01. January to 31. December.

15) For this part of the report, material called “TAX SURVEY – Bosnia and Herzegovina” was mainly used. The author designed it for ICNL, in February 2000.

16) At the part of the territory of the Federation BiH covering the area formerly known as Croatian Republic Herceg-Bosna (HR H-B), tax regulations of that establishment are still applied. Hence, they are also accounted in this material.

17) Activities related or unrelated to statutory goals of NGO.

18) So, the National Assembly of RS, at the proposal of Government of RS, in 1999, by abridged procedure (without public dispute over the proposed law) adopted changes of the Law on forign investments and concessions (“Official Gazette of RS”, No. 5/1999). By the changed law (Art. 26), there is an extra ordinary possibility of giving concessions “on exclusive basis, without conducting tender”. Ever since, there was not a single foreign investment, or public work of big scope (reconstruction of infrastructure, building traffic routes and oth.) with the procedure of public gathering of bids or tender. Leave alone, affairs of procurement or rendering services of relativelly smaller scope, wherein NGOs could participate. The legal exception was turned into a rule.

19) Something similar, but wirh much narrower contence, is “main monitor” among several organisations in BiH that are financially sustained by UNHCR. Still, observations and recomendations of “monitor” organisation are not known even to NGO sector, leave alone general piblicity.

Banja Luka, April 2001