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Poland

Panel 3: Facilitate voluntary activities – exploring the obstacles to young people’s participation in voluntary activities (mobility / visa issues, gender stereotypes or young / single families, economic conditions).

It is no exaggeration to affirm that volunteers are one of the most valuable assets of any country. There is ample evidence that volunteering builds social and human capital, it enhances social inclusion, it is a proven source of reconciliation and reconstruction in divided societies and a means of life – long learning. It constitutes an enormous reservoir of skills, energy and local knowledge, an important wealth of human experience and social ties. And beyond these qualitative examples, volunteering makes fundamental contributions in economic terms.¹ Despite this evidence, it is unusual for governments to recognize volunteering as a strategic resource that can be positively influenced by public policy. If volunteerism is to cement societies together, if it is to be an “engine of renewal”, it needs to figure more prominently in public policy and gain as a valuable form of activity.²

It can be stated that the legal situation of young volunteers is quite precarious, as most countries do not have, or only rarely have, laws regulating status of volunteerism, and sometimes only covering its certain aspects. At international level some States refer to the Convention on the Promotion of Transnational Long – term Voluntary Service for Young People of the Council of Europe.³ At the European level a very limited number of States refer to the European Parliament and Council Recommendation of 10 July 2001 on mobility⁴ within the Community for students, persons, undergoing training, volunteers, teachers and trainers which contains

¹ Lorenz W., „Social work in changing Europe”, New York 1994, p. 141,

² McKinstry Micou A., Lindsnaes B., „The role of voluntary organizations In emerging democracies. Experience and strategies in Eastern and Central Europe and in South Africa”, The Danish Centre for Human Rights, Denmark 1993, p. 187,

³ Council of Europe, ETS no. 175, to be found on <http://conventions.coe.int>,

⁴ Recommendation of the European Parliament and the Council of 10 July 2001 on mobility within the Community for students, persons undergoing training, volunteers, teachers and trainers (2001/613/CE),

measures that specifically concern volunteers. At national level States rarely have a specific legal basis for voluntary activities of young people. Generally volunteering is based on individual agreements and contracts, written and even oral, and is therefore subjected to general provisions of law and jurisprudence. That is why young people who want to engage in voluntary activities meet a number of difficulties. These difficulties usually concern: social protection, taxation of pocket money, refusal of visa and residence permits and they represent real obstacles to the exercise of voluntary activities of young people and limit the access to them of greater number of young Europeans.

I would like to indicate these obstacles which may discourage young Polish people from taking part in voluntary activities both in Poland and abroad. I want to concentrate especially on the legal aspects of voluntary work as my PhD studies concern the legal status of people working without being paid for it. My intention is not only to show the problems but also to propose the possible solutions to them. I can put forward the main thesis that without defining clear and precise regulations concerning the general procedures and especially the legal consequences of voluntary work abroad it would be impossible to facilitate voluntary activities.⁵ My country is the best example for it.

Poland has undergone grave political and economical changes over the last 15 years. The government continues to liberalize its trade, foreign exchange and investment policies. There can be also observed administrative and social reforms undertaken widespreadly, including healthcare, social security and educational system. Political freedom permits us now to establish parties and associations, vote in elections, open personal bank accounts and plug into Internet. Poland is becoming a consumer – oriented society with all the good and bad consequences of that change. A good result of that change is the appearance of non - governmental organizations that use volunteers. More than half of all NGO's (55%) do not employ full – time paid personnel and 47% work with volunteers. There are estimated to be around 1.6 million volunteers in total, who invest on average 18 hours per month. The majority of volunteers are employed (61%), school pupils (42%) or students (40%).⁶

⁵ Halba B., "Benevolat et volontariat en France et dans la monde", Paris 2003, p. 145,

⁶ Ochman M., Jordan P., „Volunteers: a valuable resource”, John Hopkins University 1993, p. 6,

The Polish term WOLONTARIUSZ (volunteer) has been used historically to describe either a person who has unpaid apprenticeship or someone who offers to join the army. For long time we have been interested in broader meaning of the term and its social context, which is well – known in countries with long tradition of volunteerism, but was new for us in Poland. Before the Law on Public Benefit Activity and Volunteerism⁷ there was no legal definition of voluntary activity. By volunteering we understood activities which were unpaid, conscious, free – will for the benefit of others. Everyone might become a volunteer, in every field of social life, wherever there was a need, but not every volunteer could perform every type of work. The term “volunteer” was firstly used for people who carried out humanitarian aid in third countries after 1989. Now we have in our system of law a definition of volunteer. However, we must remember that in Polish meaning the term “voluntary activities” defines broadly all types of voluntary engagement without remuneration.

The final adoption of the Law on Public Benefit Activity and Volunteerism followed some six years of discussion and preparation of drafts by NGOs and different governments. The international Year of Volunteers in 2001 served to highlight the need for political recognition of volunteers and its social importance. The Minister of Labour submitted the draft law to the government on 5th of December 2001 (International Volunteer Day). After a series of amendments this law came into force on 29th of June 2003. The new law does not change existing laws on associations and foundations. Nonetheless it is very important for the future development of the third sector as it defines the criteria for public benefit status of Polish NGOs. The law also provides a definition of NGO and procedural framework for cooperation between local governments and NGOs.

A “volunteer” is defined as a person who voluntarily and with no remuneration provides services based on regulations specified in the law. The law ensures the protection of volunteers working with accredited organizations regarding health and social security. Volunteers are entitled to receive reimbursement of expenditure for costs like travel and training, as well as daily allowance exempt from taxes. The law contains provisions for international voluntary services programs sending Poles

⁷ Law on Public Benefit Activity and Volunteerism, dated 24th of April 2003 - volunteer service act,

abroad and receiving foreign volunteers from other countries. Volunteers are also entitled to benefits and reimbursements of the costs “generally acknowledged for the situation” (for example, board and lodging).

The law represents an important change for volunteers working in Poland with accredited organizations. However, we must realize that the provisions of the law are not sufficient for people working as volunteers. And there are many problems as a result of a very modest and inaccurate legal regulation. I would like to concentrate on some of these problematical issues from Polish point of view:

- 1) the lack of synchronization (specific legal connection) between EVS and Polish law (the lack of proper (convenient) standards as well as of provisions on social protection)
- 2) the problem of replacing full – time workers by volunteers,
- 3) work which is necessary in vocational training (apprenticeship) is performed in Poland without any remuneration, even without reimbursement of costs and these people learning defined skills are called volunteers,
- 4) the lack of the clear structures concerning voluntary organizations and also the lack of information about voluntary activities.

1. The Law about Public Benefit Activity and Volunteerism surely helped to regulate a set of basic and grave issues.⁸ This law (as it can be noticed) has encouraged even more people to participate in the voluntary actions. Now the volunteers know their legal situation and all legal consequences of their work. In the past they were very often discouraged from taking part in voluntary work just because they did not know their legal status. However, there are still many doubts concerning voluntary work in Poland. A very problematic issue concerns the term of a volunteer which is not officially recognized. The lack of recognition means that volunteers have to accept financial disadvantages compared to other low – income groups: they do not get any reductions on tickets for public transport, cultural events, etc. because they are not

⁸ Musiała A., “The legal aspects of voluntary work” , Warsaw 2003 - The legal situation of volunteers in Poland is analyzed there with an indication that Polish non – governmental sector needs some clear regulations concerning its activity (especially volunteers’ work). The book was written at the beginning of the year 2003, just before the Law about Public Benefit Activity and Volunteerism came into force,

part of an institutionalized framework as it is for students, unemployed people or pensioners.

It must be also remembered that the Law about Public Benefit Activity and Volunteerism of 23rd April 2003 does not refer to the voluntary work in the frame of EVS. Therefore, I can point out some problematical issues concerning European Voluntary Service in the context Polish law.⁹ There are many volunteers who could possibly take part in EVS but the lack of legal regulations make them sceptical and discouraged. Also The National Agency in Warsaw sometimes encounter problems concerning legal position which results in uneasiness in their undertakings.

There are few general regulations concerning EVS in the Polish legal system.¹⁰ We are not ready to comprehend a lot of fundamental issues invoked by volunteers' undertakings, such as:

- 1) the issue of the social insurance; can the period of the voluntary work (which is unpaid) be treated like a period of the normal work for which we get paid? In both contexts: of the future pension and the unemployment allowance it is a crucial problem¹¹,
- 2) should the unemployed be deprived of their rights to the unemployment allowance if they want to participate in EVS?¹²

The European law does not cope with such questions. The Polish law does not solve the problems either. What are we to do than ? When people willing to do the voluntary work abroad encounter such problems and nobody can help them, they simply resign.

A very common issue that appears dealing with voluntary activities concerns the duty of military service. There is not any regulation in the Polish legal system for people who have just finished school and want to participate in EVS but they should perform an obligation of military service and go to the army. Is it possible to postpone this duty for one year?

⁹ Sieveking K., „European Voluntary Service for Young People. Questions of status and problems of legal policy”, Berlin 2001, p. 176,

¹⁰ <http://www.youth.org.pl> – 10-02-2004,

¹¹ Supiot A., “Beyond Employment. Changes in work and the future of labour law in Europe”, Oxford 2001, p. 82,

¹² Sieveking K., „European Voluntary Service for Young People. Questions of status and problems of legal policy”, Berlin 2001, p. 172,

Moreover, young people with an unemployed or student status may lose their health insurance, if they go abroad for a longer period. If a young unemployed chooses to volunteer abroad, he/she loses access to benefits and needs to register after his/her return. Concerning family allowances, volunteers going abroad longer than three months also lose their right to receive family allowances. To restart the payment, a new application must be submitted to a parent's employer when the volunteer has returned. Young people, whose parents are divorced, are entitled to a special allowance until they have finished studying. In case of volunteering abroad, they lose the allowance. Young people entitled to receive orphans pension until the start of their studies also lose the benefits if they go abroad as a volunteer for three months or more. Basic criteria for the end of payments is the fact that volunteerism is not recognized on the same level as school or university and that young people leave the country.

These examples give an idea of restrictions for organizations and volunteers. They do not encourage participation in the programme. This means that official recognition will encourage an enormous potential of young transnational mobility. More young people would be willing to practice European citizenship if legal obstacles were removed.

2. There is an understandable concern that the growth of the voluntary sector and temporary employment schemes will be used to substitute for properly paid permanent employment. As a result there has been a strong resistance in some Polish areas of the highest unemployment to the involvement of voluntary organizations. People in Poland do not understand that voluntary service is no remedy for unemployment. What is more, it must be remembered that volunteering should never replace paid work but should be seen as a natural adjunct to the well-being of the community – legislation should protect the rights and responsibilities of both paid employees and volunteers. Voluntary service can provide an important and worthwhile solution to the problem of unemployment but it can not be used by governments as a means of manipulating employment statistics and creating a “second labour market” with second class jobs for second – class citizens. Neither should it be regarded as a cheap way for society to delegate public responsibilities to

non – governmental organizations handling voluntary service. It is true that voluntary service schemes are generally less costly, leading some to feel they could be alternatives to more costly retraining schemes, but this reasoning is false. Voluntary service has its own value to young people and to society and has always been regarded not only as an activity of public benefit and service rendered to society but also as an alternative means of access to working life enabling young people to develop new skills that will help them gain a foothold in society and find a job. It forms an integral part of the concept and structures of adult education, implying active involvement in a long and wide – ranging process of learning all facet of life – it is not just a continuation of vocational training. It is a social learning process in the broadest sense, which cannot be achieved without educational support at the group or individual level. I am afraid that if Polish people do not realize what is the sense of voluntary activities, than very soon the Polish voluntary service can resemble certain alternatives forms of national service designed for conscientious objectors, the unemployed, social welfare beneficiares, as far as the organization of the work and the form of payment goes.¹³ However, these types of service will be rarely voluntary and often imposed or demanded by the authorities. It is for this reason that voluntary service worthy of the name must stem from carefully considered personal decision. Clearly there is a need on the Polish legal system level to distinguish a volunteer from a worker or an employee by stressing the educational character of transnational voluntary service. The European Court of Justice defined the conception of employees and workers¹⁴. The court stated that the employee is any person getting salary or wages in exchange for full or part time work. This definition is explicitly only used for the realm of economical life. A volunteer is not active in economical life but participates in project of mobility in the realm of youth or adult education. The amounts of money are not given to the volunteer for his /her work, but to provide for basic living. This allows him/her to contribute to the common good and learn for his/her own social and personal maturity.

3. In Poland a person who has finished a medical academy and wants to stay a specialist for example in heart diseases (a heart specialist) must perform a period of special training which lasts about 4 years. Because of the lack of places in hospitals

¹³ Street L., "Volunteering for work experience", Ottawa 1994, p. 21,

¹⁴ Decision D.M. Levin from 23rd March 1982 - 53/81,

for everybody, some of the future doctors perform this period of necessary special training for free and do not get any money for this kind of work. In Poland they are called volunteers.

The same thing concern people who have finished a faculty of law and want to be for example a judge. In this situation they work in a court of justice performing this necessary special training, but they do not have any money for that. We also call them volunteers. Is this is typical only for Poland or maybe in other countries we can also find such practices?

4. A crucial problem for further development of voluntary service is the lack of cooperation between Polish associations in order to tackle common issues. We can indicate for example on “Centrum Wolontariatu” in Warsaw which is acting as coordination organization for network of the 16 regional centers and organizations working with EVS. The idea of a common platform for youth voluntary organizations for voluntary service is not discussed. Polish people do not know what is the structure of Polish voluntary organizations, what kind of problems they deal with and how they fulfill their tasks.

In my opinion there is a need to create a **special universal status of a volunteer**, because of unusual nature of voluntary service which tends not to fall within the framework of existing practices or legislations on youth mobility, education, the labour market, social protection, etc. The specific characteristics of voluntary service could, for instance, be recognised:

- by issuing volunteers with student visas and regarding them as non – wage earners, without any formal connections with the labour market therefore not requiring a work permit. This approach might be considered if the definition of the voluntary service placed on its educational value;
- by imposing the organizations to guarantee a status and a voluntary service contract providing for free board and lodging; appropriate health, accident insurance, pocket money, preparation, support and post – service evaluation.¹⁵

¹⁵ „The situation of an international volunteer” <http://www.prawo.ngo.pl> – 10-12-01,

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