CIVIL SOCIETY IN EUROPE

The regulation of civil society provides the framework under which those organisations can most effectively provide services in education, health, social services, housing, development aid and so on. Civil Society in Europe identifies common principles of civil society law in two ways. First, the approaches of the Council of Europe and the European Union are explored. Next civil society regulation in twelve domestic legal systems is investigated on a broad range of substantive areas of law, including internal organisation, registration, external supervision, public benefit organisations and international activities. From these, the authors distill a set of minimum norms and optimal conditions under which civil society can deliver its aims most effectively. This book is essential reading for policymakers and legislators across Europe and beyond.

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CIVIL SOCIETY IN EUROPE

Minimum Norms and Optimum Conditions of Its Regulation

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CONTENTS

Tables   page viii
Preface   xi

I  European Law and Policy Pertaining to Civil Society
1 Introduction   3
TYMEN J. VAN DER PLOEG, WINO J.M. VAN Veen AND CORNELIA R.M. VERSTEEGH

2 Civil Society in Europe and the European Convention on Human Rights  8
WINO J.M. VAN Veen

3 Civil Society and Civil Society Organisations in the Institutional and Legal Framework of the European Union  35
CORNELIA R.M. VERSTEEGH

II National Laws Pertaining to Civil Society: A Comparative Overview and Evaluation
4 Thematic Survey of Civil Society Law in Twelve European Countries  75
TYMEN J. VAN DER PLOEG, WINO J.M. VAN Veen AND CORNELIA R.M. VERSTEEGH, IN COOPERATION WITH COUNTRY RAPPORTEURS

5 Minimum and Optimum Norms for Legislation on CSOs in Europe  256
TYMEN J. VAN DER PLOEG, WINO J.M. VAN Veen AND CORNELIA R.M. VERSTEEGH
CONTENTS

III Country Essays on Civil Society Law

Introduction 325

6 The Legal Context for Civil Society Organisations in Belgium 327
   MARLEEN DENEF AND SARAH VERSCHAEVE

7 Legal Framework for Civil Society in the Czech Republic 344
   KATEŘINA RONOVSKÁ AND VLASTIMIL VITOL

8 Civil Society Organisations in England and Wales 363
   MARY SYNGE

9 Legal Aspects of Civil Society Organisations and Their Relation with Government: Germany 384
   THOMAS VON HIPPEL

10 Legal Aspects of Civil Society Organisations and Their Relation with Government: Greece 400
   KALLIROI PANTELIDOU AND DIMITRIOS VOGIATZIS

11 Legal Aspects of Civil Society Organisations and Their Relation with Government: Hungary 418
   ESZTER HARTAY

12 Legal Aspects of Civil Society Organisations and Their Relation with Government: Italy 445
   CHRISTINA VACCARIO AND GIAN PAOLO BARBETTA

13 Legal Aspects of Civil Society Organisations and Their Relation with Government: The Netherlands 466
   HELEN OVERES

14 Law Regarding Civil Society Organisations in Poland 486
   ANNA KRAJEWSKA AND GRZEGORZ MAKOWSKI

15 Legislation on Voluntary Associations in Russia 508
   IRINA NOVICHENKO

16 Spanish Law on Civil Society: Regulation of Associations and Foundations 532
   JOSÉ LUIS PIÑAR MAÑAS AND ISABEL PEÑALOSA ESTEBAN
CONTENTS

17  The Law in Sweden Regarding Civil Society Organisations  551
MAGDALENA GIERTZ

Index  572
# TABLES

| I.1 | Legal Forms of CSOs | page 80 |
| I.3 | Permitted Purposes and Economic Activities | 89 |
| I.4 | Incorporation Procedures | 98 |
| I.5 | Material Requirements for the Establishment of CSOs | 103 |
| I.6 | Destination of Surplus Assets after Dissolution and Liquidation | 109 |
| I.8 | Remuneration of Directors | 115 |
| II.1 | Governance Rules | 120 |
| II.2 | Policy of Promoting Self-regulation | 126 |
| II.4 | Rules on Representation | 131 |
| III | Existence of a Publicly Accessible Register at the Local, Regional or National Level | 144 |
| IV.2 | Type of Supervisory Authority | 149 |
| IV.3 | Supervisory Tasks with Regard to Foundations | 153 |
| IV.5.1 | Publication or Submission of Annual Accounts and Reports (Tax Law Excluded) | 163 |
| IV.5.2 | Investigatory Powers | 167 |
| IV.5.3 | Approval from Supervisory Authority for Certain Transactions | 170 |
| IV.5.4 | Structural Changes to Foundations/Charitable Organisations | 175 |
| IV.5.6 | Enforcement Instruments of Supervisory Authorities | 187 |
| V.2 | Public Benefit Status | 204 |
| V.2.2.3 | Appeals against Loss of Status | 205 |
| V.3 | Tax Exemptions and Preferential Tax Treatment for Public Benefit and Other Organisations (with Business Operations) and Tax Deductibility for Donations | 214 |
| V.4 | Granting of Subsidies | 220 |
| V.5 and V.6 | CSOs Recognised as Consultants and Advisors for the Government and Pluralism | 223 |
| V.7 | Public Services According to Statutory Requirement or Rule of Public Policy | 230 |
| VI.2 | Establishment of CSOs by Foreigners | 234 |
| VI.3 | Membership or Membership of the Board of Directors of Foreigners/Foreign CSO | 239 |
LIST OF TABLES

<table>
<thead>
<tr>
<th>Table</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>VI.4</td>
<td>Recognition of Foreign CSOs</td>
<td>243</td>
</tr>
<tr>
<td>VI.5</td>
<td>Transfer of Office and Seat</td>
<td>246</td>
</tr>
<tr>
<td>VI.6</td>
<td>Equal Treatment Regarding Subsidies, Grants and Contracts for Service</td>
<td>251</td>
</tr>
<tr>
<td></td>
<td>Provision and Table VI.7 Tax Facilities</td>
<td></td>
</tr>
<tr>
<td>VI.8</td>
<td>Donations from Abroad</td>
<td>254</td>
</tr>
</tbody>
</table>
Some time ago, the editors of this volume and some other researchers from Vrije Universiteit Amsterdam and Universiteit van Amsterdam agreed on a common project: to take a closer look at the legal and normative aspects of civil society in Europe that pertain to civil society organisations from the perspective of both the law and practice. We decided to approach this theme by comparing national law and practices across a group of countries with the evidence that is available on the normative approach to civil society organisations (CSOs) from a range of European-level sources. These sources include the case law produced by the European Court of Human Rights in its interpretations of the European Convention on Human Rights and, in particular, concerning the fundamental freedoms enshrined in that convention such as the freedom of expression and the freedom of association, as well as case law of the European Court of Justice, (draft) regulations from the European Union and several documents produced by or under the auspices of the Council of Europe and the European Union.

To acquire data that were representative of Europe as a whole, we selected both larger and smaller countries, older and younger democracies and representatives of the various legal systems involved that stem from the traditions of common law, civil law and Scandinavian law. All the countries selected are members of the Council of Europe and thus subject to the jurisdiction of the European Court of Human Rights.

The experts who took part in this research project and the countries they represent are as follows: Marleen Denef (Belgium), Kateřina Ronovska (Czech Republic), Peter Luxton (England and Wales), Thomas von Hippel (Germany), Kalliopi Pantelidou and Evangelos Karamakis (Greece), Zsolt Aradszky and Nilda Bullain (Hungary), Cristina Vaccario and Gian Paolo Barbetta (Italy), Helen Overes (the Netherlands), Tomasz...
xii PREFACE

Perkowski (Poland), Irina Novichenko (Russia), José-Luis Piñar (Spain) and Magdalena Giertz and Carl Hemström (Sweden).

To obtain the required information from the countries selected, a questionnaire was developed with the aid of national experts, who also took on the task of answering the questionnaire, along with some additional questions that arose later in the process. The country reports written by these experts formed a foundation for a comparative thematic overview that the national experts reviewed and commented on before it was finalised. In addition to their invaluable input for the thematic survey, most of the country experts mentioned, and in some cases other experts, wrote essays on CSO law and how CSOs and the government relate to one another in their respective countries.

Generally speaking, law on CSOs is national law. The practical form and legal status of CSOs vary widely from one European state to another, and the regulations regarding CSOs are just as diverse. These differences are the result of differences in social and legal culture that have strong historical roots. Comparing these differences produces some interesting data. However, we did more than simply compare them. We also analysed the information from the thematic survey in the light of norms that have been developed at the European level, emanating from the Council of Europe, the European Court on Human Rights and the European Union. In Chapter 2, the relevance of the European Convention on Human Rights and the decisions of the European Court on Human Rights for civil society is demonstrated. Chapter 3 looks at the way in which the European Union promotes civil society through the freedoms provided by the Treaty on the Functioning of the European Union, the (draft) Council Regulations on associations and foundations and policy documents. Although not all these documents have legislative authority, they do demonstrate the views of European experts in this field and the relevant European institutions on how CSOs should be regulated. At the European level, we can observe a shared understanding on how we should approach CSOs. These documents are designed to promote civil society and are therefore relevant.

On 22 March 2005, an agreement about the general principles governing the recognition and legal status of such organisations in Europe was adopted by the signatories of the European Convention on the Recognition of the Legal Personality of International Non-governmental organisations (Convention 124). Some of the countries included in this research have already signed and implemented this convention. See C.R.M. Versteegh, Development of the legal Acknowledgment of Civil Society in the European Union in this book.
to this study. At the core of this research project is the aim of comparing national CSO laws and practices with emerging European norms.

This study focuses on how civil society (organisations) are regulated, including a broad spectrum of aspects such as the available legal forms, (freedom of) formation, internal organisation and state supervision. It also concerns the role that government allows them to play in society through subsidies and tax provisions, for example. The approach taken by national systems towards foreign CSOs is also a part of this research.

The areas covered include the following:

I. legal forms: the aims and activities of CSOs and restrictions on the scope of their activities; the rules and procedures for setting up CSOs;

II. governance issues: internal supervision, transparency and liability of board members;

III. registration;

IV. external supervision and sanctions;

V. public benefit CSOs (legal and tax status), governmental approach to these CSOs, contracts, grants and consultation; and

VI. the position of foreign nationals in CSOs and of foreign and international CSOs.

From the perspective of the fundamental freedoms and the effective rule of law, we undertook to specify a set of minimum conditions or norms regarding specific aspects of CSO law and the relationship between government and CSOs. We see wide diversity in many aspects of CSO law, but the different rules mainly meet a common set of minimum standards. Sometimes, however, legislation or practice falls below what we conclude to be the minimum norm. Because both the Council of Europe and the European Union wish to encourage CSO activities and their participation in society, it also seemed appropriate to evaluate what in fact are the optimal conditions and norms for CSO law. We do not believe that the ambition should be to harmonise CSO law across Europe, but we do believe that, materially at least, a set of minimum norms – and preferably optimum conditions as well – would help to promote a healthy and vibrant civil society.

We believe that the results of this research project provide information and insights that could prove useful for policymakers and legislators in Europe, and possibly elsewhere, who wish to promote a healthy civil society, as well as for stakeholders in the third sector and academics carrying out research in this field.