

Seminar

Fostering Civil Society in Serbia

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Guidelines on the Management of Juridical and Non-Juridical Ostacles for Civil Society

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CERFE



Project PRAVOK - Pravni Okvir - Assistance to the stabilisation, reconstruction and development of the Balkans by supporting the reform in Serbia of legal frameworks favourable to citizens' participation (L. 84/01 Prot. n. 0402030 - 3/11/2006)

The guidelines

The guidelines are the product of the research activities carried out under the project.

The guidelines are addressed to national and international public, private and non-profit organisations interested in carrying out initiatives aimed at removing the existing obstacles to the activation of civil society organisations.

A tool in three parts

Part One, “Guidelines for the thematisation of the obstacles for civil society” (how to built a “map” of obstacles)

Part Two, “Guidelines for interpretation and for action” (from theory to practice)

Part Three, “Guidelines for training”

PART 1

**“Guidelines for the
thematismation of the obstacles
for civil society”**

PRAVOK research: the approach

Carrying out a **study** in order to draft
a **map of the juridical and
non-juridical obstacles** to the
emergence and operative capacity of
civil society.

Definition of “civil society”

Civil society: a set of actors that actually practice “**social responsibility**”:

a group’s motivation to act in order to take part in the direct or indirect **management** of existing **social and environmental risks**, within a context of **joint governance** of problems.

In relation to this definition of civil society, the **types of actors** that can be taken into consideration include, amongst others, NGOs, mutual-assistance groups, cultural associations, firms, research centres, professional associations, the media, and more besides.

Definition of “obstacle”

The actors of civil society can face specific **obstacles** in their activities.

An “obstacle” may be defined as a **legal structure** in the strictest sense (that is, of a juridical nature) or in a **broader sense** (that is, based on organisational, political, social or cultural rules) which systematically impedes the exercising of social responsibility in the sense mentioned above.

Why drafting a map?

- A **synthetic profile** of the situation helps identifying critical areas for systematic intervention
- Single obstacles included can form the object of immediate and **specific intervention**
- Obstacles **classification** allows to distinguish problems and identify relevant interventions
- It is **easier** to work on than a systematic legal treatise
- It is an ideal instrument for **comparison**, leading to the identification of best practices

An international “virtual” map: making the most of existing knowledge (sociology of knowledge)

- From more than 300 texts and documents consulted
- 215 have mentioned obstacles to civil society that have been registered
- The 215 sources have produced several hundreds of indications of existing obstacles
- Such indications have been analyzed and condensed in:
 - 147 juridical obstacles
 - 65 non-juridical obstacles
- At this stage, they had not been tested yet in Serbian reality (“virtual” and not “real” map)

Some example of the 215 sources

Type:

- Legal sources (constitutions, laws on associations, fiscal laws, international or EU treaties, etc.)
- International and Serbian juridical literature on the matter
- International and Serbian non-juridical scientific literature on CSOs (political sciences, sociology, etc.)
- Documentation on Serbian CSOs (from international organizations, CSOs studies, etc.)
- Media sources
- Previous CERFE research in 5 countries of Latin America

Example:

- CIVICUS
- USAID
- ECNL / ICNL
- JHU
- World Bank
- BID
- FeNS
- CRNPS
- NGO Policy Group
- YUCOM
- DANAS

Juridical and non-juridical obstacles

Some examples

- A **juridical obstacle**: the law foresees that civil society organizations must have at least 5 members to be registered
- A **non-juridical obstacle**: there exists a negative attitude toward non-governmental organizations among public officials

Obstacles categories

Juridical obstacles

- A. Constitutional rights and general issues**
- B. Juridical existence of CSOs**
- C. Public benefit organizations**
- D. Internal governance and structure**
- E. Prohibition of direct or indirect private benefits**
- F. Economic and financial activities**
- G. Political activities**
- H. Economic and financial resources**
- I. Tax benefits**
- J. Obligations toward the public and reporting**
- K. Foreign CSOs**
- L. Partnerships and service provision**
- M. Self-regulation**

Obstacles categories

Non-juridical obstacles

- Cultural obstacles
- Political dynamics and latent functions
- Bureaucratic dysfunctions and the capacity of public administration and judicial bodies
- Relations with the private sector
- CSO capacity and sustainability

From the “virtual” (VM) to the “real map” (RM) of Serbia: a participative approach

- Virtual map submitted to 7 experts
- Virtual map submitted to 53 CSO leaders



- Elimination of obstacles that are not present or relevant in Serbia (X)
- Integration of obstacles specific to the Serbian reality not previously included in the map (Y)

$$RM = VM - X + Y$$

- General assessment and amendment of the map

PRIMER

A.

USTAVNA PRAVA I OPŠTA PITANJA

12. Nesistematična priroda zakonodavstva koje se odnosi na CSO

Nekonzistentnost zakonodavstva u pogledu CSO prisutna je u različitim oblicima: postojanje velikog broja zakona i kao posledica toga disperzija pravnih izvora; nedostatak koordinacije između posebnih zakona o CSO i opšteg zakonodavstva; odredbe o specifičnoj tipologizaciji organizacija u odsustvu referentnog okvira za neprofitni sektor generalno, pravne praznine usled brzog razvoja ove oblasti. Ova situacija može voditi povećanju diskrecionih prava organa nadležnih za sprovođenje zakona.

1. Da li smatrate da je formulacija ove prepreke dovoljno jasna i razumljiva?

Da |__| Ne |X|

(Ako je odgovor na prethodno pitanje 'ne')

1.1. Umesto toga predlažem sledeću formulaciju:

"Nedoslednost zakona koji se primenjuju na organizacije civilnog društva"

2. Koliko mi je poznato, ova prepreka u Srbiji:

Nije prisutna |__| Prisutna je |X|

Prisutna je ali je ne treba smatrati

preprekom |__| Ne znam |__|

(Ako je prepreka prisutna)

2.1. Kako se pravna prepreka manifestuje u Srbiji i koje su njene osnovne karakteristike? (Molim navedite pravne izvore, ako poznati)

U Srbiji, simultano postoje nacionalni zakon (1982) i pređašnji savezni zakon (1990) o neprofitnim organizacijama, a svaki od njih je – sam po sebi – nepotpun. Prvi je inspirisan socijalističkim principima, dok je drugi relativno progresivniji. Već više godina postoji potreba donošenja sistematičnijeg zakona. USAID, *Indeks održivosti NVO, 2005*

3. Što se tiče Srbije, smatram da je ova prepreka:

Veoma značajna |__| Od manjeg ili bez značaja |__|

Prilično značajna |X| Ne znam |__|

4. Administrativna i sudska praksa

Većina organizacija su registrovane po zakonu iz 1990. i dešava se da državni službenici ne poznaju dobro raniji zakon.

5. Praksa CSO

Većina organizacija se registruje po saveznom zakonu, s obzirom da je zakon Republike Srbije restriktivniji; Ovo je paradoks, s obzirom da Savezna država više ne postoji.

6. Socijalna i kulturna realnost

The map of obstacles for civil society in Serbia

The results obtained were processed and interpreted in order to arrive at producing a **map of 120 obstacles** that are specifically found in Serbia.

Distribution of obstacles according to type

■ Juridical obstacles	57
■ Non-juridical obstacles	63
TOTAL	120

Distribution of 57 juridical obstacles according to area

I.	Constitutional rights and general themes	8
II.	Legal existance of the CSOs	4
III.	Public benefit organisations	3
IV.	Internal governance and structure	3
V.	Economic and financial activities	4
VI.	Political activities	3
VII.	Economic and financial resources	9
VIII.	Tax benefits	9
IX.	Foreign CSOs	1
X.	Partnerships and service provision	9
XI.	Self-regulation	4

Distribution of 63 non-juridical obstacles according to section

a.	Cultural and social dynamics	12
b.	Political dynamics and latent functions	16
c.	Bureaucratic dysfunctions and the capacity of public administrations and of judicial bodies	11
d.	Relations with the private sector	4
e.	CSO capacity and sustainability	20

PART 2

**“Guidelines for interpretation
and for action”**

A ranking of the map of obstacles

These obstacles **do not all have the same weight.**

To **measure** this inequality, some **indices** were constructed and applied to each obstacle.

The identification of 5 clusters of obstacles

The information on the map of obstacles and the processing of the relative results do not only have a **technical-juridical type value**.

In fact, the map may provide even further important **social, anthropological and political type knowledge**.

It is possible to identify the **problem aspects** which are often **transverse** with regard to the different legislative sectors.

In this sense, the obstacles or sets of obstacles can be considered symptoms or rather **indicators of deeper problem structures.**

It is possible to **regroup the obstacles**, identifying
5 clusters
corresponding to
5 areas of problems (or risks)
concerning the presence of CSOs
in Serbian society

The 5 clusters

Cluster 1: **Fundamental rights**

Cluster 2: **Sustainability**

Cluster 3: **Autonomy**

Cluster 4: **Capacity and professionalism**

Cluster 5: **Public presence**

Cluster 1:

Fundamental rights

The obstacles concerning the recognition of **human and juridical rights** that are **fundamental** for the life of CSOs.

I.e.: area I (“Constitutional rights and general themes”), some obstacles (not all) belonging to area II (“Juridical existence of CSOs”), area IX (“Foreign CSOs”) and area VI (“Political activities”). Finally, a series of non-juridical obstacles have been added to this cluster since they are referable in some way to the CSOs’ freedom of action (ex. “Limited media freedom”, etc.).

Cluster 2: Sustainability

The obstacles concerning **economic and financial activities and resources**, and **tax benefits**, and which thus concern **CSO sustainability**.

I.e. areas V (“Economic and financial activities”), VII (“Economic and financial resources”) and VIII (“Tax benefits”), and non-juridical obstacles referring to political and cultural aspects of CSO sustainability (ex. “Poor development of individual philanthropy and lack of donations for the CSO sector”).

Cluster 3:

Autonomy

The obstacles concerning **CSO autonomy** in running their own internal affairs. This deals with both the **existence** of this autonomy compared to **external actors** and also to the **practising** of autonomy as regards **internal governance**.

I.e. areas IV (“Internal governance and structure”) and XI (“Self-regulation”) and some non-judicial obstacles concerning the interference of public inspectors, the influence of donors on CSO activities and the codes of conduct inside CSOs.

Cluster 4:

Capacity and professionalism

The obstacles concerning the **knowledge**, the **capabilities**, the introduction of **elements of professionalism** in the staff of the CSOs.

I.e. non-juridical obstacles “Lack of training for officials charged with law administration”, “Existence of a lower professional standard for CSO directors and board members compared to for-profit organisations”, “Lack of financial management skills”, etc.

Cluster 5:

Public presence

The obstacles concerning the public **image** and the public **role** of CSOs.

I.e. areas VI (“Political activities”), X (“Partnerships and service provision”) and some non-juridical obstacles concerning media hostility, public opinion’s negative views of the non-profit sector, lack of voluntary work culture, etc.

The place for CSOs...

The obstacles and clusters can be considered as signs, or indicators, of the fact that CSOs still do not have a **socially and publicly recognised “place”**, so to speak, in the Serbian context.

Hence, there is no full interpretation and adequate legitimisation of their existence, and of their work, that can lay the foundations for drafting legislation, strategies and policies.

A problem for all...

All this constitutes a real problem, not only for CSOs, but for Serbian society as a whole, which thus lacks a fundamental resource for **governance**, that is, to face the **challenges** of social growth and of economic development in Serbia (within the global context), fielding all the existing and available political and social forces.

The clusters as areas of risks

The presence or lack of fundamental rights, sustainability, practising of autonomy, capacities and public presence are all elements that can increase – or decrease – the **likelihood** for Serbian CSOs to have an adequate social space. In that sense, the 5 clusters can constitute **areas of social risks.**

Possible solutions: the “social regimes”

In order to avoid mono-dimensional approaches, policies and actions one may identify 5 complex “social regimes” of risks for building a favourable environment.

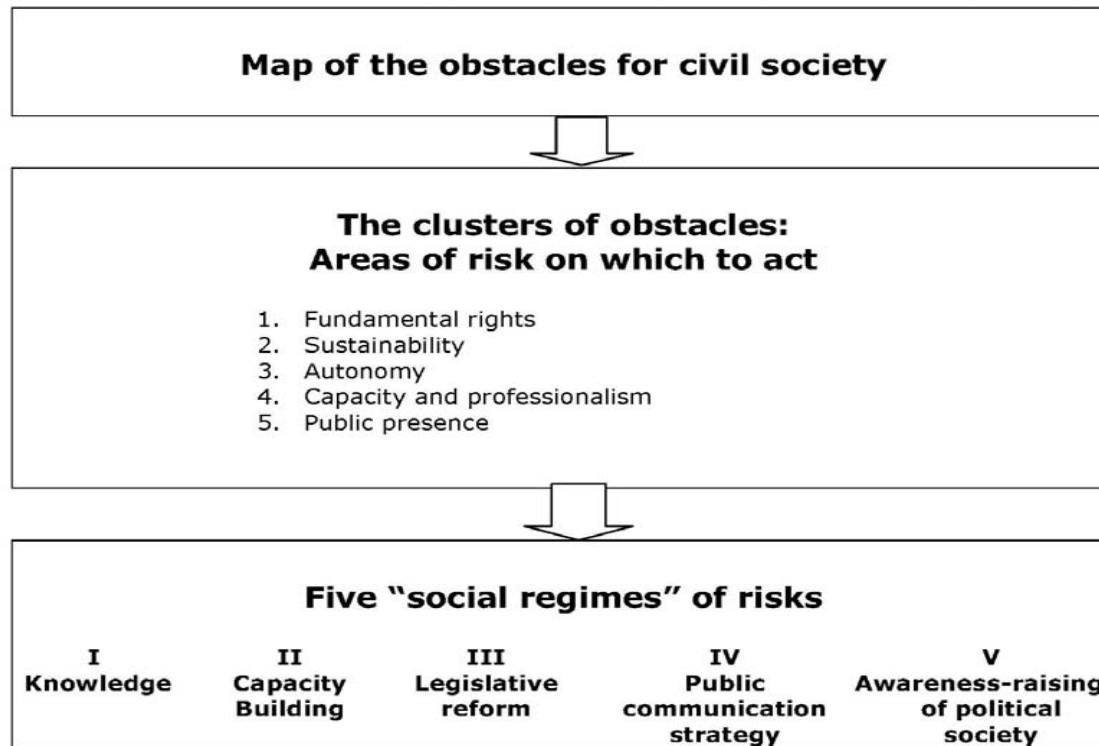
These regimes are at least partially already working.

5 social regimes

and related strategies + 51 operative indications (exemples)

- Knowledge
- Capacity building
- Legislative reform
- Public communication
- Awareness -raising in political society

The path leading to the identification of the 5 “social regimes”



Knowledge

This social regime concerns the increase in knowledge on the set of obstacles (and also on the opportunities) existing for civil society in Serbia. Some strategies:

- **Knowledge production**
- **Knowledge management**
- **Knowledge dissemination**

Knowledge – operative indications

- Creating **transnational partnerships for research** into CSOs in Serbia
- Identifying those aspects of CSOs that are **still little investigated**
- Promoting studies on CSOs **at a local level**
- Creating and supporting **research observatories** on civil society
- Promoting courses on **knowledge management**
- **Mapping** the information sources on CSOs
- Creating a **database** on CSOs accessible online
- Promoting public **meetings and seminars** to present studies and research
- Creating **portals and websites** on CSOs
- Creating **networks** for promoting information exchange on civil society

Capacity building

A second type of regime deals with the set of problems concerning the actors' expertise. Some strategies:

- **Training of CSO staff and public administration actors**
- **Quality of training**
- **Creation of services for empowerment**

Capacity building: operative indications

- Promoting courses on **CSO management and development**
- Organising courses on **Euro-project designing**
- Training CSO executives to **communicate better**
- Intensifying courses on **local development** for CSOs and public administration actors
- Guaranteeing **equal opportunities for access** to training services
- Organising meetings and seminars to spread **adult education** in CSO and public administration training
- Implementing studies and research on **training needs**
- Conducting **seminars for trainers** on the analysis of training needs
- Creating exchange networks on the **quality of training**
- Involving representatives of CSOs and of public administration in **joint courses and seminars**
- Favouring **contacts and international visits** for CSO and public administration actors
- Facilitating CSO and public administration **access to counselling**
- Informing CSOs and public administrations of **networking services**

Legislative reform

This regime focus on creating an overall legal framework within which CSOs must operate. The strategies:

- **Reforms**
- **The application of legislation**

Legislative reform: operative indications

- Promoting a legal framework favourable to **associations**
- Promoting a favourable legal framework for **endowments and foundations**
- Promoting a favourable legal framework for **voluntary organisations**
- Strengthening the NGOs' role at the legal level in providing **social services**
- Broadening the definition of **public benefit activities**
- Creating **incentives for firms** that support CSOs
- Abolishing **taxes** on donations
- Drafting “**codes of consultation**” of CSOs
- Consulting the heads of the offices involved in **implementing** the laws
- **Awareness-raising** of the public actors involved in the application of new laws
- **Monitoring the application** of new laws

Public communication

This social regime deals with the public representation of CSOs. The strategies:

- **Consensus building** around the theme of a new role of CSOs
- **Identifying new public spaces for CSOs**

Public communication: operative indications

- Promoting **public initiatives in the territory** in order to enhance citizens' knowledge of CSOs
- Producing **radio and TV programmes** on the CSO sector
- Promoting **communication campaigns** on CSOs
- Implementing meeting and **exchange programmes between CSOs and media people**
- Organising programmes in the **education field** on the CSO context
- Publicising **CSO success stories**
- Promoting competitions and **prizes** for CSOs
- Disseminating information on relations between CSOs and the **private sector**
- Promoting information channels and awareness-raising on CSOs for **credit sector actors**

Awareness-raising of political society

This social regime concerns raising awareness of political society actors on the problems and opportunities connected with the presence of civil society and its relations with public authorities. The strategies:

- **Optimising the efforts made by Serbian authorities**
- **Promoting some common working methods**

Awareness-raising of political society: operative indications

- Organising **seminars and meetings** on civil society geared to political actors at **national level**
- Promoting seminars and meetings on civil society for **local public administration officials**
- Organising **televised debates** with politicians
- Creating **government interfaces** with CSOs
- Setting up **local interfaces** between local public administrations and CSOs
- Promoting **joint committees** and work groups for designing and implementing **policies**
- Favours the implementation of **local partnerships**
- Drafting and disseminating **codes of intervention and guidelines** on civic participation

PART 3

Guidelines for training

A series of recommendations on the possible ways of setting up and implementing training activities in this regard.

Planning training activities

- Adopting an **integrated approach to the problems** (juridical and non-juridical ones) of civil society by continuously assessing the set of risk factors and the possibilities of coping with them, in the various stages of the activities.
- Identifying the **training needs** for capacity-building in order to come to terms with the problems of civil society and of its relations with public administration.
- Starting up **training processes** within **training cycles** based on the various **social regimes** of risk.
- Using an **experimental approach** in training activities in order to reduce the level of simulation and to increase the contact with reality.
- Adopting an **adult education** perspective in view of the participants' characteristics in a training action on the theme of civil society, as dealt with in the PRAVOK project.

Methodological and technical aspects

- The use of different training methods (integrated-experimental, residential and distance training)
- The use of a plurality of training tools (lessons, case studies, meetings with experts, study visits, practical activities, etc.)
- The use of certain techniques (tutoring, benchmarking, networking)

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