Kosovo

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QUICK FACTS

Legal forms of philanthropic organizations included in the law: Association, Foundation

Five main social issues addressed by these organizations: Human rights, Arts and Culture, Environment, Other(s): Economic Development, Development of Democratic Principles

Average time established by law to register a philanthropic organization: 31-60 days

Average cost for registering a philanthropic organization: US $0

There are no financial requirements for POs to register.

Government levels primarily regulating the incorporation of philanthropic organizations: Central/Federal

Registration is done online via the Ministry of Public Administration website.

Philanthropic Environment Scores:

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<td>4.1</td>
<td>3.0</td>
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I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.

Question 1: To what extent can individuals form and incorporate the organizations defined?

Score: 4.2

The legal framework guarantees the fundamental freedoms of expression, association, and peaceful assembly. However, in order to obtain legal status, organizations are required to register at the Office for Non-Governmental Organizations in the Ministry of Public Administration. An NGO is defined in Law no.03/L-134 on Freedom of Association in Non-governmental Organizations as a domestic association or foundation established in Kosovo that seeks to accomplish a purpose based on the law, either for public benefit or for mutual interest. NGOs can choose to register as one of the two legal forms of domestic NGOs: association or foundations. The registration process in Kosovo, as stipulated by Law no.03/L-134, may take up to sixty (60) days. Article 9.9 of this Law states that the competent body shall issue to an NGO a registration certificate or a written decision denying registration within sixty (60) days of receiving an application to register, unless the competent body requests in writing further information or clarification within this same time period. If registration is denied, the competent body shall include an explanation of the grounds for denying registration.

The registration process is clear and there are simple procedures in place. An association can be registered by at least three or more individuals, and at least one of them has to be a permanent resident of Kosovo. A foundation may be established by one or more persons, at least one of them with residence in Kosovo (Article 5). The law requires a clear list of documents needed for registration, such as the statutes and programming of the organization, the founding statement, the list of members (for associations), or the list of board members (for foundations), as well as a copy of ID cards for each of the founding members.

Question 2: To what extent are POs free to operate without excessive government interference?

Score: 4.0

The law gives full discretion to POs, and there are no government rules that constrain the discretion or freedom to run the internal affairs of an organization. POs are free to communicate and cooperate with other colleagues in the civil society sector or elsewhere in the business and government sectors. There are no restrictions that could stop or disrupt the work of the organizations, and organizations are entitled to use their own means of communication, such as traditional media, social media, internet, etc. However, Article 15 of LAW No.03/L134 on Freedom of Association in Nongovernmental Organizations establishes that NGOs may not engage in fundraising or campaigning in order to support political parties or candidates for political office, nor may they propose, register, or endorse candidates in any way for public office.
Reporting requirements are clear and they are applicable to all. Every organization that has been granted public beneficiary status is obliged to provide annual reports of their activities. Domestic NGOs with beneficiary status and an annual income or expenditures in excess of one hundred thousand (100,000) €, as well as international NGOs with an annual income or expenditures, in connection with their operations and activities within Kosovo, in excess of one hundred thousand (100,000) € shall include an opinion, signed by an independent auditor in addition to their financial statements (Law No. 03/L-134 on Freedom of Association in NGOs, Article 18.9).

**Question 3: To what extent is there government discretion in shutting down POs?**

**Score: 4.0**

The highest governing body of an organization is able to voluntarily terminate a PO (Article 20). The law provides that a PO has to file a statement of their decision to terminate their work. The involuntary termination of the PO by the Office for Non-Government Organization can be done only in the case of flagrant violations, yet even in those cases the decision of the Office can be appealed in the Ministry.

Associations and foundations can also be suspended and terminated by the competent body. Suspension occurs when an NGO fails to complete the annual report, or if the competent body determines that the NGO no longer meets the requirements for public benefit status (Article 19). Involuntary termination may occur if the organization becomes insolvent or the stated time limit expires. An organization may be removed from the register based on the decision of the competent body when it has failed to file the tax declaration, does not fulfil the necessary obligations or the removal is on a legal decision (Article 21).

**II. Domestic Tax and Fiscal Issues**

*The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.*

**Question 4: To what extent is the tax system favorable to making charitable donations?**

**Score: 3.0**

Corporations can receive a tax deduction of up to 10 percent of their taxable income for humanitarian, health, education, religious, scientific, and cultural donations, as well as, donations for the protection of environment, or sports (Law No. 05/L-029 On Corporate Income Tax, Article 10.2). The recipient of these donations has to be an organization with public beneficiary status. The law does not specify if corporations are exempt from taxes in the case of in-kind donations. Moreover, in regard to donations from corporations, the law is not clear when it comes to moving the expenditure in the following fiscal years.

Law No. 03/L-115 on Personal Income Tax states that individual charitable contributions are allowed a deduction up to a maximum of five percent (5%) of taxable income computed before the charitable contribution is deducted (Article 16).
Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?

All NGOs that are registered under the Law on Freedom of Association in Non-governmental Organizations may apply for public beneficiary status as long as the PO undertakes activities such as humanitarian assistance and relief, support for persons with disabilities, charity activities, education, health, and cultural programming, environmental conservation or protection, economic reconstruction and development, the promotion of human rights, the promotion of democratic practices and civil society, or any other activity that serves the public. Any commercial activity conducted by an NGO not exclusively related to its public purpose shall be charged income tax at the rate of ten percent (10%) on income derived from such unrelated business activity (Article 34).

NGOs registered with such status are eligible to receive tax exemptions from the corporate income tax, public funds, and free of charge usage of public space, as long as the income is used exclusively to further the organization’s public purpose. The process of receiving public beneficiary status is clear, however, until now the amount of donations received from private donors or public grants is very small, if any. NGOs without public benefit status are taxed on their profits in the same manner as other legal entities—10 percent on taxable profit (Council on Foundations, 2016).

However, organizations have to ask for special permission to accept any contribution in excess of €1,000 from a single source in a single day, or disburse currency in excess of €5,000 in a single day to any single recipient, according to the Law 03/L-196 on the Prevention of Money Laundering and Financing of Terrorism (Article 24). Article 24.3 establishes that to make or receive payments that exceed the amounts specified above, the NGO must request exemption from the Financial Intelligence Unit of Kosovo (FIU-K). The FIU shall respond to the request in writing within thirty (30) days, and may decide to grant, conditionally grant, or deny the exemption. These requirements, according to the Kosovar Civil Society Foundation (2014), “are cumbersome to the CSOs since they may create problems for the reception of funds from donors or for the payment of funds from local grant donors” (p.13).

According to Law No. 05/L-037 on Value Added Tax, several public service goods and activities are exempt from Value Added Tax (VAT), including areas of service covered by public benefit organizations (Article 27).

III. Cross-Border Philanthropic Flows

The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.
Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?

Bearing in mind that Kosovo is still a relatively new country, and is considered to be one of the poorest countries in Europe, there is no practice of sending charitable donations abroad. Law No. 05/L -037 on Value Added Tax exempts from VAT all charitable and philanthropic organizations that send goods outside Kosovo, as long as there is no commercial intent and the goods will be used exclusively for charitable work and activities of the PO (Article 30). The exemption applies only to organizations that keep appropriate accounts and allow competent bodies to supervise their operations.

Additionally, in regard to the established limits on receiving and sending currency, Law 03/L-196 on the Prevention of Money Laundering and Financing of Terrorism states that NGOs must annually report contributions greater than €5,000 received during the year from a particular source, or any disbursement in currency during the year to a particular recipient greater than €10,000.

Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?

The procedures for international charitable donations are similar to the procedures for domestic donations. The same tax incentives apply, and foreign grants and donations are also tax exempt (Law on Corporate Income Tax). The process is clear and consistent, and it requires a reasonable amount of resources and time. Law No. 05/L -037 on Value Added Tax, Article 30, states that goods imported free of charge by charitable and philanthropic organizations intended for free distribution to persons in need of assistance, or goods sent free of charge and without any commercial intent, are exempt from VAT.

IV. Political and Governance Environment

*The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.*

Question 8: To what extent is the political and governance environment favorable for philanthropy?

Philanthropy has had a key role in helping to develop Kosovo's nascent economy, and to date there are no political tensions between the government and the philanthropic sector. On the contrary, there is a constructive collaboration between the two sectors, and the government understands and promotes the role of philanthropic organizations as effective agents of change. The monitoring report form CiviKos Platform (2016), an organization created to formalize the relationships between
government and the civil society, accounts the adoption of a Government Strategy and the establishment of the Council as the first steps in the formalization of this cooperation since the declaration of independence of Republic of Kosovo. The recently published report of the implementation of the government strategy for cooperation with civil society (CiviKos, 2017) shows that the implementation level of the strategies to ensure strong participation of civil society in drafting and implementation of policies and legislation is low (70.8%). Levels of implementation of strategies establish a criteria to financially support CSO’s (41.1%) and promoting an integrated approach to volunteering development (33%) is also low in both cases.

The POs are free to advocate and implement public programs. While there is a good level of political stability for the success of philanthropy, there is no economic stability, which mainly explains why there are limited or no public grants available for POs. Moreover, private donations are small, if non-existent, and “civil society in Kosovo remains financially dependent on foreign donors, especially those organizations that have a larger number of funds in circulation” (Kosovar Civil Society Foundation, 2014, p.5). The monitoring report of CiviKos (2016) gathers that, according to the civil society index for 2014, 74.0 percent of civil society organizations in Kosovo are financially supported by foreign donors.

**Question 9: To what extent are public policies and practices favorable for philanthropy?**

Score: 4.0

The government actively and strategically promotes philanthropic values, and facilitates equal access to national and international resources and opportunities, and donors are free to support any cause without government pressure. The Office for Non-Governmental Organizations demonstrates good capacities to support and oversee POs.

However, the European Commission Country Report for Kosovo (2016) highlights that although some progress has been made in improving cooperation between government and civil society, the participation of civil society in policy-making remains uneven and there is lack of transparency in public funding for civil society remains a concern.

**V. Socio-Cultural Environment**

**Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?**

Score: 3.5

Kosovo has philanthropic traditions and societal values that encourage giving supported by values of generosity and solidarity. Even though Kosovo ranks among the countries with the lowest levels of civic engagement—measured by people’s inclination to give their money, time, or assistance to others in need—Kosovars demonstrate generosity in helping others, though not necessarily through institutionalized forms of philanthropy. In her article published in the Catalyst Blog, Spahija (2012) explains that, despite these philanthropic traditions and continuous work in philanthropy, findings from an analysis by the Forum for Civic Initiatives suggest that companies do not give to their full
capacity and individual giving is not yet fully developed. While the author believes that this is due to the financial crises, low socio-economic development in the country, and endemic poverty, we also believe that Kosovo people tend to distrust POs mainly because there is a public perception of POs lacking transparency and are inefficient.

In terms of equal opportunities, there are few social and cultural restrictions, and the social and human capitals of the country provide the necessary conditions for the development of the sector. However, there still exists the need to work on building public trust of POs. The participation of women in philanthropic activities occurs in conditions of equality, and there are no social barriers when it comes to ethnicity, culture, or age.

**VI. Future of Philanthropy**

*These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.*

**Current state of the philanthropic sector**

In general, philanthropy is not yet a well-organized and institutionalized sector in Kosovo. The private sector is still not engaged enough in supporting philanthropy; moreover, society still has reservations about trusting philanthropic organizations. The sector is not fully professionalized, and there is a need to further build and develop POs, and, at the same time, it is necessary to work on raising public awareness regarding the importance of philanthropy.

**Three major recent events affecting the philanthropic landscape between January 2014 and December 2016**

- Philanthropy Forum organized by The Forum for Civic Initiatives on November 18th, 2015; and
- FIDES award to individuals or companies supporting philanthropic activities and projects.

**Future development trends in the philanthropic landscape**

On one hand, future development trends are mainly linked to the further improvement of the current legal framework. On the other hand, positive economic trends in the country will have a positive impact in the process of developing and enhancing the philanthropic landscape in the country. Moreover, the increased awareness of the private sector in Kosovo would also help philanthropic initiatives in the near future.

**Three key recommendations to improve the environment for philanthropy**

- The law should be more specific and should regulate separately the status of NGOs and POs. The current law regulates all NGOs as one category, yet it is apparent there are certain issues with this treatment, which requires further clarification and regulation in order to remove any uncertainty.
• Greater awareness of philanthropy in Kosovo is required. The key actors should do more in promoting their work, as well as trying to attract and engage other stakeholders.

• POs should be more transparent in offering information regarding their funds.