The Law for the Control, Regularization, Performance, and Financing of Non-Governmental, and Non-Profit Social Organizations.

SCOPE AND ANALYSIS OF A WILFULL MISFEASANCE

Research: Alí Daniels

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Introduction

Generally, an act responds to the obligation to answer society's needs. It is the State's responsibility to set institutional mechanisms that improve situations that are considered to impact the general welfare, thereby enhancing overall societal conditions.

Thus, at the time these lines are being written,[1] if a group of people in Venezuela intends to establish a civil association or a foundation for non-profit activities, the first thing they have to know is that in their act-of-incorporation or bylaws, they cannot include prohibited words such as "human rights" or "vulnerable people," because the corresponding civil registry office will reject the document demanding, evidently never in writing (at least for now), that the founding members shall exclude such words from the incorporation documents.

As dire as it may sound, that is the way how a real ordeal that may last from 8 months to more than one year starts in order to get the civil association or foundation recognized by the civil registry. This task does not end there because, after this achievement, the founding members must complete a series of requirements before the banking entities to open a bank account, many of them are time-consuming tasks uneasy to assess, draft, or prepare, like compliance manuals. However, this is not always the case.[2]

These are just a few of the significant issues that plague these organizations from their inception. Their existence is a constant struggle, and even if they manage to overcome these initial obstacles, they are then faced with the overwhelming demands of the Venezuelan State. These demands, which include tax, accounting, and other declarations, are more than just bureaucratic hurdles. They are a direct threat to the organizations' survival, as they are criminalized[3] by the Government and pointed out as contrary to national interests.

For this reason, the passing of the Law for the Control, Regularization, Performance, and Financing of Non-Governmental Organizations and Non-Profit Social Organizations (LFRAFONG) by the National Assembly (NA) on August 15, 2024, is understood by the civil society within the repressive framework that has followed the presidential elections of July 28, 2024. Therefore, more than the approval of an instrument for the regulation of organizations, we are in the presence of another tool of repression used by the State.

1 Source: testimonies of activists whose identities cannot be disclosed for security reasons.
2 Idem.
3 https://cepaz.org/se-agudiza-la-persecucion-y-criminalizacion-contra-las-organizaciones-de-la-sociedad-civil-venezolana/.

The organizations' defenselessness arises from the absence of the discussion of the bill because the NA never published it on its website. Thus, the Government violated the organizations' right to participate in the prior discussion of the Act without at least providing them with an official text to comment on.[4]

The preceding arises from the need to expose that the Act we are about to analyze does not solve any of the problems indicated but, on the contrary, adds others of even greater importance.

Hence, an exhaustive analysis of this Act is needed to understand its stated and implicit purposes, implementation mechanisms, and foreseeable consequences of its application.

4 For this reason, the analyses had to be made with texts obtained from social networks, with no guarantee that they were the ones finally discussed.

1 Methodology of analysis

To understand the scope of the approved text of the Law for the Control, Regularization, Performance, and Financing of Non-Governmental Organizations and Non-Profit Social Organizations (LFRAFONG), we will first describe its composition and then study the objectives and principles underlying it, those explicitly stated and those derived from its wording, as well as whether or not it is linked to freedom of association.

After that, we will highlight the changes, new obligations, and their impacts on the organizations. We will later analyze LFRAFONG's sanctioning regime, which is the most significant part of the passed Act.

2 Structure of the Act

The Law for the Control, Regularization, Performance and Financing of Non-Governmental Organizations and Non-Profit Social Organizations (LFRAFONG) contains 39 sections distributed in 5 chapters, 2 transitory provisions, a derogatory provision (which includes two regulations) and a final provision.

The five chapters correspond to the following titles:

I. General provisions.

II. The incorporation and registration of non-governmental and social non-profit organizations.

III. The operating regime of non-governmental organizations and non-profit social organizations.

IV. Non-governmental organizations and non-profit social organizations domiciled abroad.

V. On the offenses and penalties.

Despite the above, although the chapters seem to respond to a particular idea of order, their reading exposes that there is no clear separation of topics. An example of this is the last chapter; instead of concentrating solely on the sanctioning rules, they are scattered throughout almost all the chapters. For better comprehension, we will resort to groupings of rules according to the case to understand the logic derived from the text of LFRAFONG rather than the predicate order in the chapters.

3 Aims, objectives, and principles of the Act

a. Objectives

According to its First Section, the Law for the Control, Regularization, Performance and Financing of Non-Governmental Organizations and Non-Profit Social Organizations (LFRAFONG) aims to "establish the regime for the incorporation, registration, operation, and financing of non-governmental organizations, and non-profit social organizations, as associative forms aimed at the co-responsible participation of society," although in reality it only partially does so, since in terms of their constitution it barely indicates the procedure to be followed, but as to the form of the organization (civil association, foundation, etc.) it refers to the Civil Code (Section 10). It is worth noting that the Code is also enshrined as the applicable norm both for the acts of the organization that shall be registered (Section 11) and as the source of the obligation of the books to be kept by the organization (Section 22.2).

Thus, LFRAFONG does not contemplate all the assumptions neither for the constitution nor for the operation of the organizations, but only partially.

All types of non-profit organizations (civil associations, foundations, etc.) fall under the scope of the Act, provided they are not regulated by some other special acts, thus exempting labor unions, political parties, professional associations, universities, and others (Section 5).

However, as will be seen, the unstated but explicit purpose of LFRAFONG is to set new burdens and obligations for existing organizations, on pain of losing their legal status, as well as to impose a model of articles-of-incorporation that imposes a specific type of internal order on the organizations, regardless of the will of their associates.

The significant target of LFRAFONG, although not stated either but deducted from its wording, is to change the legal regime of incorporation of non-profit organizations, which before the passing of the Act relied on notifications made in compliance with the Civil Code, to an authorizing regime[5] that includes a list of sanctions that did not exist before, and also the submission to an annual supervision and review (sections 16 and 26.1). Hence, this Act can be qualified as regressive[6] and repressive.

5 Section 16 of the LFRAFONG is entitled "Approval of registration," which leaves no doubt as to the nature of the procedure for registering an organization.

6 According to the Inter-American Commission on Human Rights (IACHR), "The principle of progressivity is inherent to all human rights instruments as they are elaborated and expanded." Vid. https://www.cidh.oas.org/annualrep/93span/cap.v.htm.

According to Maina Kiai, the Special Rapporteur on the Rights to Freedom, of Peaceful Assembly, and Freedom of Association, regarding the creation of an association, "a notification procedure" is more in line with international human rights standards and should be applied by States instead of the "prior authorization procedure," which implies receiving the approval of the authorities."[7]

Therefore, LFRAFONG would violate Section 19 of the Constitution, which recognizes the principle of progressivity in human rights. Any regressive norm in this matter is, de jure, contrary to the Constitution,[8] and, therefore subject to nullity.

b. Purposes

Concerning the purposes of the Act, we find that Section 3 mentions the following as such:

1. Facilitating the exercise of the right of association
2. Legal certainty and security regarding on the procedures applicable to the organizations.
3. Contribute to the fight against money laundering, organized crime, and the financing of terrorism.

In this regard, just as general comments, we must mention that about facilitating the right of association, we refer to the situations raised in the introduction to which LFRAFONG does not provide any solution and that, on the contrary, increasing the requirements for both the incorporation and maintenance of an organization does not facilitate the exercise of freedom of association. Moreover, de facto associations were excluded from participation in public affairs by recognizing this right only for organizations with legal capacities (Section 21.1).

Concerning legal certainty, it should be noted that the law has deep contradictions since it imposes peremptory and mandatory compliance deadlines for the organizations under penalty of serious consequences, but except in only one case (the incorporation, Section 16), it does not impose deadlines or any consequence for the obligations of the State; it is not understood how such lack of imposition of deadlines can be considered as legal certainty.

7 Vid. Maina Kiai (2012). *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, paragraph 58. http://www.civilisac.org/civilis/wp-content/uploads/primer-informe-temc3a1tico-relator-1.pdf.

8 Section 19 of the Constitution: "The State shall guarantee to every person, in accordance with the principle of progressiveness and without any discrimination whatsoever, the enjoyment and exercise of human rights, which cannot be waived, indivisible and interdependent."

In the case of assumptions related to money laundering, fight against organized crime and financing of terrorism, such commitment, in the eyes of the Act, is limited to indicate that organizations shall comply with the rules issued in this regard (Section 22.1), but stands mute regarding those rules that require the State to protect organizations such as the case of Recommendation No. 8 of the Financial Action Task Force (FATF), whose non-compliance was declared by that Organization in the most recent evaluation of the country.[9]

c. Principles

Although on many occasions, the Principles of Law are sometimes seen as a simple statement of concepts without greater significance, the truth is that legally, they serve two purposes: First, as instruments of application of the Act in cases of doubt or when interpreting a rule, and second, because they allow evaluating the coherence of the Act itself, since there may be a rule whose structure is contrary to the principles it claims to serve, occurring that in reality, it serves some others different, and generally contrary to justice.

Thus, analyzing the principles of a given act is not an hollow exercise.

According to Section 6, the principles of LFRAFONG are "human rights, equality, participation, co-responsibility, solidarity, honesty, transparency, accountability, sovereignty, and national self-determination," but they are not the only ones, as public order, the principle of interpretation of what is most favorable to the exercise of the right (Section 7) and non-discrimination (Section 8) shall be added to the wording of those sections.

These declared principles predominate in the obligations imposed by the Act and relate to co-responsibility, accountability, transparency, sovereignty, national self-determination, and public order. Still, in a unidirectional manner, that is, in the exclusive sense of the obligations of the organizations to the State, which are sanctioned if they do not comply with them, without any indication whatsoever in the case of non-compliance by the State in reverse. Although responsibilities are set, neither time limits nor consequences are imposed for failing non-compliance.

9 Caribbean Financial Action Task Force (CFATF) (2023). Anti-Money Laundering and Counter-Terrorist Financing Measures - Bolivarian Republic of Venezuela, Mutual Evaluation Report, p. 76. Available at: https://www.cfatf-gafic.org/home-test/english-documents/4th-round-meval-reports/20172-venezuela-4th-round-mer-1/file.

The preceding reveals an evident asymmetrical application of LFRAFONG principles, which contradicts the first of those enunciated, i.e., human rights, to the extent that the State is the obligated party concerning them. Therefore, it is incongruous that they are mentioned as principles, but no obligations that correspond to the predicated primacy are imposed.

Thus, the lawmaker repeatedly invokes human rights throughout the Act but without indicating what this implies for the State in terms of peremptory or timely compliance or guarantees that would allow citizens real protection in cases of misfeasance.

On the contrary, the latter that we have mentioned is evidenced as something concrete in a principle of Law that is not mentioned but is explicitly found in the act when it indicates that, for the processes of exercising freedom of association, ordinary procedures shall be resorted to, the same for the case of claims for possible abuses: but on the contrary, if an organization incurs in a sanction assumption, The State in administrative proceedings shall resort to the summary procedure (Section 38) and to the brief in case of dissolution by judicial proceedings (Section 29).

Thus, the wording of LFRAFONG clearly states that the expeditious means for sanctioning organizations are privileged, while the ordinary processes are applied to the exercise of the right. In short, the fast track for sanctioning as opposed to the ordinary track for exercising the right.

Therefore, the mere existence of this principle, applied throughout LFRAFONG, demonstrates, without any interpretation other than the literal one, that this legal instrument subordinates the other principles it enunciates to the punitive aspects contemplated therein.

Finally, we cannot fail to mention the principle of public order established in Section 7, which implies that the provisions of the Act cannot be relaxed by the individuals who must comply with them without altering their essence, which clashes with provisions that impose a type of organization, such as when establishing the internal bodies that are to compose them, which require, for example, a disciplinary regime and an accountability regime without taking into account either the particular type of organization or whether or not it manages economic resources.

Thus, understanding organizations' internal organization and functioning as public order violates their autonomy and freedom of association.

4 Changes and new obligations for organizations

a. Change in the legal regime of freedom of association

As mentioned above, the first change in the Law for the Control, Regularization, Performance, and Financing of Non-Governmental Organizations, and Non-Profit Social Organizations (LFRAFONG) is the change from a notification regime to an authorization regime, with the regressive nature that this implies.

It is aggravated by the fact that, by establishing the obligation to submit an annual inventory of assets, the authorization is, in fact, subject to a yearly review.

b. Creation of a national registry of non-governmental organizations and non-profit social organizations

The registry office will be in charge of the ministry whose competence is assigned (Section 18) without indicating whether or not such a situation will generate new obligations to the organizations or if it is simply something that the ministry will do with the information provided by the Autonomous Service of Registries and Notaries (SAREN), the agency in charge of the registries where the civil societies and foundations enter their documentation for becoming incorporated.

c. The supervisory body becomes the Executive Branch

This represents a significant shift as the Civil Code (Section 21) granted the oversight of foundations to the judges of first instance, without any legal development of such functions, a rule that is understood to be repealed by the wording of Section 27, which states that "the National Executive is responsible for the monitoring and control of compliance with the duties and prohibitions set forth in the act."

These powers would be shared between the SAREN, which in charge of the registries, and the Ministry of Justice since the latter can start sanctioning procedures. However, it is understood that both agencies have supervisory powers that sub-legal bylaws will surely delimit.

d. New requirements for the incorporation of organizations and the obligation to update those already registered are imposed

Under Section 19 of the Civil Code, the articles-of-incorporation of an association, corporation, or foundation must indicate the name, domicile, purpose, form of administration, and management.

From now on, to these requirements, the following were added (Section 13):

1. The duration of the organization.
2. Territorial scope of the organization.
3. Identification of the founding and/or associate members.
4. The membership regime and exclusion of members and/or their rights and obligations.
5. The organization, internal structure and attributions.
6. The balance sheet and administration of resources.
7. Inventory of assets at the time of incorporation.
8. The disciplinary regime.
9. The system for amending the articles of incorporation.
10. The regime of extinction, dissolution, and liquidation of the organization.
11. The detail of the assignment of assets in the case of foundations.
12. If its financing is or will be carried out, totally or partially, through foreign natural or juridical persons.

The article above states, "Non-governmental organizations and non-profit social organizations shall establish democratic methods of organization, operation, and management."

We must begin by recognizing that although some of the requirements established may make sense, the truth is that they should have been required for organizations to be incorporated in the future and not mandatory for the existing ones, as provided in the second transitory provision, on pain of having the "nullity of the registration of the organization" declared, since for organizations

already incorporated and operating there is no benefit in having to redo their bylaws; on the contrary, it brings them a burden that jeopardizes their very existence.

It is striking that LFRAFONG states that the consequence of the failure of an organization to file a new article-of-incorporation is the "nullity of the registration," to the extent that the registration that is now declared null and void complied at the time with the requirements that were demanded for the entering of articles-of-incorporation; such nullity would then be retroactive, because subsequent requirements are imposed for previously incorporated registrations before the civil registry offices duly in charge, by then, of these matters.[10] Therefore, the figure of nullity shall not be suitable for the specific factual situation.

On the other hand, the imposition of a series of obligations, such as determining a disciplinary regime violates the normative autonomy of the organizations[11] insofar as its members are the ones who must decide whether or not a disciplinary regime exists in accordance with the purposes and structure they defined to achieve the purposes of the association.

Finally, it is noteworthy that the final part of Section 13 states that the organizations "shall establish democratic methods of organization, operation and management" since, in the particular case of organizations, the predominant will is the one of the founder or founders, so that except in the case of a provision that violates rights, its provisions must be complied with even if others consider better or more beneficial destinations for the assets of the entity.

Consider, for example, the case of a foundation in which the person who contributes the assets is at the same time its president and is in charge of its day-to-day management and appoints his sons as part of the administration and management of the entity, a prevalent situation. In such a case, to say that this foundation is nepotistic or undemocratic makes no sense whatsoever since it deals with assets contributed by a private individual who can, therefore, freely decide how to manage the assets he/she gives to a foundation.

The latter highlights the lack of knowledge of civil society organizations' internal dynamics and how the Act imposes obligations that are not always compatible with their internal structure.

10 Sánchez Covisa, Joaquín (1976). *La vigencia temporal de la ley en el ordenamiento jurídico venezolano*. Ed. CGR. Caracas. pp. 79 and following:

> The principle of non-retroactivity requires that, in application of the "tempus regit actum" rule, the law in force in a given period determines the existence of the factual events "S" verified under its validity and the legal consequences "C" derived from such events.
> (...) the problem of retroactivity involves three clearly differentiable issues, which are, at the same time, the three essential requirements for any application of the law that does not incur the vice of retroactivity.
> 1º The law must not affect the existence of any factual assumptions (facts, acts or legal transactions) prior to its entry into force, i.e., the new law must not assess facts prior to its entry into force.
> **2º) The law must not affect the effects prior to its effectiveness of any of the factual assumptions.**
> 3º) The law must not affect the effects after its effectiveness of the events verified prior to it. (Emphasis added).

11 On normative autonomy, see: Daniels, Alí (2023). *El derecho para otros derechos: la libertad de asociación. Conceptos básicos y su regulación en Venezuela*. Acceso a la Justicia. Caracas. p. 19. Available at: : https://accesoalajusticia.org/derecho-otros-derechos-libertad-asociacion-conceptos-basicos-regulacion-venezuela/.

e. Decrease in the term for appealing an organization's refusal to register

According to Section 42 of the Law of Registries and Notaries, there was a six-month term counting from the notification of the refusal of registration to log an appeal. From now on, according to LFRAFONG, there is only a 30-day term after the notification is served to log an appeal against the refusal of an organization's registration (Section 17).

This shrink is another indicator of the Act's regressivity regarding exercising freedom of association.

It is not only a matter of the time it may take to prepare an appeal before a court but also of the economic resources required to exercise it through legal professionals. Shortening the term to log an appeal impacts the right to effective judicial protection by severely limiting the right to appeal before the courts.

f. The organizations must have tax registration, as well as the records required by labor and civil laws (Section 19)

his obligation shall be considered together with Section 22.2, which establishes the commitment to "Keep and maintain updated the books and records that, under civil and tax legislation," as well as with Section 35.3, which enacts as a formal offense the "failure to keep the books that, per the form adopted by the social organization, it is required to keep and maintain," since, as can be seen, failure to keep the records or books required by civil or tax regulations may be grounds for being fined.

In this case, it should first be within the powers of the public officer assigned with the compliance tasks to request the presentation of the books and records required by the tax regulations. However, it turns out that in the case of the tax regulations, failure to keep such books or records is punishable, so under the excuse of compliance with LFRAFONG, a flaw that would also be punishable by the tax law would be sanctioned twice. Therefore, we would find ourselves in the paradoxical situation that the same flaw could be punished twice, violating the *non bis in idem* principle.[13]

12 Published in Official Gazette No. 6,668 extraordinary of December 16, 2021.

13 Vid. Article 49.7 of the Constitution. This principle is also applicable to the administrative procedure: https://accesoalajusticia.org/principio-non-bis-in-idem/.

g. Comply with regulations against money laundering, terrorism, and organized crime (Section 22.1)

It would require compliance with Ruling No. 002-2021,[14] which requires non-profit organizations (NGOs) to enter registration before the National Office Against Organized Crime and Financing of Terrorism (ONCDOFT).

Acceso a la Justicia has analyzed this ruling and its immediate predecessor.[15]

It contains a series of obligations that violate freedom of association, and numerous civil society organizations have expressed their concern about them through pronouncements.[16]

In this regard, this ruling requires that the organizations be entered into a registry kept by the aforementioned office. This registration was followed by the issuance of a certificate that must be renewed yearly, among other limitations to freedom of association.

We must point out that the registry referred to in the ruling was one of the elements to be considered by the Financial Action Task Force (FATF) in its evaluation of the country where it considered that the Venezuelan state had not complied with the provisions of its Recommendation No. 8 in its obligation to protect non-profit organizations, stating:

> The Bolivarian Republic of Venezuela has not demonstrated that it applies proportionate and risk-based oversight measures to NPOs. In particular, the country created two registries: the Single Registry of Reporting Entities (RUSO) and the Registry of Non-Domiciled NGOs (REGONG), both with the purpose of contributing to the supervision of the NPO sector, of which only the latter is operational. **In any case, the country did not demonstrate that these registries are helpful in preventing abuse of NPOs for FT.**[17] (Emphasis added).[18]

Thus, maintaining this type of regulation as it stands violates FATF provisions and implies a violation of the Venezuelan state's obligations to protect non-profit organizations.

14 Official Gazette No. 42,118 of May 3, 2021.

15 https://accesoalajusticia.org/siguen-bajo-amenaza-las-ong-en-venezuela-con-la-providencia-002-2021/; https://accesoalajusticia.org/nueva-providencia-precalifica-como-terroristas-a-las-ong/.

16 https://accesoalajusticia.org/reiteramos-nuestra-exigencia-de-revocar-la-providencia-administrativa-002-2021-y-cualquier-otra-medida-dirigida-a-criminalizar-y-cerrar-el-espacio-civico-en-venezuela/.

17 FT: financing of terrorism.

18 CFATF (2023). Idem.

h. Notify the State of financing or donations (Section 22.3)

As the rule is written, it would be a simple notification that would not require an action or response from the governmental administration permitting the organization to use the funds. In other words, we would not be in the presence of the initiation of a prior authorization procedure for the use of the resources.

However, after the notification and given that the Section mentions that the notification shall be made "for the purpose of ensuring the legality of the funds," this could indicate that the supervisory body may initiate a procedure after the notification has been made to verify the origin of the funds and give its conformity.

In this context, the rule should be that the organization can use the funds without needing a pronouncement from the administration because this is the criterion that most favors freedom of association; we will have to see what our Administration interprets in this issue.

In addition to the need for the criterion of application, which in any event must be broad in the sense of facilitating freedom of association, as indicated in the Act, it is clear that the ultimate origin of the funds is a sensitive matter for the Government, and that, for the same reason, even if the funds are lawful, there may be objections depending on whether they come from a particular foreign Government or whether they are addressed to tackle matters considered as sensible, either of which is irrelevant for the money laundering purposes because it is not unlawful to receive funds from States for purposes such as documentation or defense of human rights.

Thus, the objection to this type of funds will not be based on their origin but on political considerations unrelated to money laundering or terrorist financing. Under this perspective, the Act could not be used to hinder this type of financing. However, we do not doubt that this will be the case. In short, we must point out the illegality of this section.

It can also lead, for example, to the acceptance of funding by a country for specific issues, such as humanitarian ones, and, on the contrary, to the rejection of funding coming from some others that are considered to be interference, such as human rights.

It is inadmissible insofar as financing human rights education, for example, is neither interference nor a crime and could not be subject to objection and even less to sanction. Unfortunately, this point will be one of the most problematic for organizations that legitimately obtain financing for perfectly legal purposes and could be subject to sanction for it.

i. The income of the organizations shall be "compatible with their nature" (Section 25)

This provision is particularly worrisome because it implies a limitation that violates the financial autonomy of organizations.[19] Since all have the right to obtain income as long as it is by lawful means, the wording of this Section would lead to organizations that obtain their resources from commercial activities (sale of goods) or financial investments being deprived of them.

j. The board of directors of the organizations under the scope of the Act shall render accounts to its own members once a year (Section 22.6)

This obligation is based on the assumption that all organizations manage resources and, consequently, accounting for their use shall be generated, forgetting that many organizations are managed voluntarily or do not need financial resources to achieve their purposes, so accounting in such cases is meaningless.

Another example of the inadequacy of this obligation to civil society's diversity is the case of small organizations in which all their associates share their day-to-day activities. Thus, they are aware of each and every one of the actions they carry out and, therefore, do not need an act of accountability.

k. Organizations already established are required to submit certain documents within 90 days of the Act's coming into effect (Section 26 and the first transitory provision)

Once LFRAFONG is published in the Official Gazette, organizations must submit within the indicated period an inventory of their assets

19 See: Daniels, Alí. Op. cit. p. 20

with determination of their sources or origin, accounting balances, financial statements, a list of donations with identification of the donors, and the names of all their associates, among other things.

A practical problem with this requirement is that it does not indicate, in the case of organizations with decades of history, whether a list of donations from the last fiscal year or from all previous years shall be made, the latter being irrational. Because there is no definition in this regard, it is necessary to wait for the sub-legal regulation that establishes the appropriate limits that these requirements demand.

5 The Act establishes a sanctioning regime

The first thing to point out is that organizations had no sanctioning regime in the previous framework ruled by the Civil Code. The supervision of foundations was the responsibility of the judges of the first instance, without further development of this regulation.

However, this did not imply that the organizations were not subject to sanctions since, as employers, they were subject to labor regulations and their corresponding sanctions, both in the tax area and in the myriad of obligations imposed by the State on legal entities in different areas.

Its sanctioning regime is essential in the tax field because, although the organizations are not for profit, they have formal obligations such as declaring tax withholdings, which may generate sanctions if not complied with.

Thus, it is not true that the organizations were not subject to regulations and sanctions before LFRAFONG's approval; only now, in addition to those described above, there are those established in the provision under analysis.

a. Prohibitions

1. The constitution of fascist associations or associations that promote intolerance or hatred or any other form of incitement to discrimination and violence is prohibited. One of the problems of the draft Law against Fascism, Neo-Fascism and Similar Expressions, which precisely intends to punish such behaviors, is that it considers as such, for example, conservative or neo-liberal ideas, thus making it clear that fascism is whatever the official considers it to be, therefore allowing the illegalization of organizations according to these vague criteria (Sections 15.1 and 23.3).
2. Receiving economic resources for political parties, giving contributions to them, or receiving donations for terrorist purposes (Section 23.1).
3. Carrying out political party activities (Section 23.2).
4. Any other act prohibited or sanctioned in the legal system (Section 23.4) constitutes a blank penal norm, violating the principle of punitive typicity.

b. Types of sanctions

The LFRAFONG's punitive nature derives from the simple enumeration of the sanctions it establishes: fines, registration cancellation, preventive measures of suspension, dissolution, registration prohibition, registration cancellation of non-domiciled organizations, and expulsion from the country of foreign persons who are members of a non-domiciled organization.

It is significant that even the tax regulations do not have such a wide range of penalties.[20]

c. Assumptions to be sanctioned

Considering that the purpose of LFRAFONG law, as has been indicated, is punitive and regressive, the factual assumptions are throughout the legislative text, and are not limited to Article 35, which sets forth the so-called formal offenses, we will now group together all the facts that generate sanctions in accordance with the law. Considering that the purpose of the LFRAFONG act, as has been indicated, is punitive and regressive, the factual assumptions are throughout the legislative text. They are not limited to Section 35, which sets forth the so-called formal offenses. We will now group all the facts that generate sanctions per the Act.

1. Failure to register the acts and facts provided for in the law in a timely manner (punishable by fine, Section 35.1).
2. Failure to comply with the obligation to notify of a donation or financing (punishable by a fine, Section 35.2).
3. Failure to keep the books required to maintain. Understanding how the lawmaker wrote the norm, one may think that it implies all types of books, i.e., accounting and tax books (punishable by fine, Section 35.3).
4. Failure to comply with the obligations to assist the State in its control tasks (punishable by a fine, Section 35.4).
5. Failure to comply with the obligation to submit the documentation established in the article within the 90-day term indicated in the first transitory provision would imply a fine (Section 35.5).

20 Vid: https://www.grantthornton.com.ve/globalassets/1.-member-firms/venezuela/pdf/multas-y-sanciones-codigo-organico-tributario-corregido.pdf

6. Failure to comply with the obligation to update and register new articles-of- incorporation according to the requirements of Section 13 within 180 days of the entry into force of the law, according to the second transitory provision, would lead to the nullity of the organization's registration and a fine (Section 35.5).
7. "In case there are enough grounds to consider that some of the prohibitions outlined in the law have been incurred," an organization may be suspended (Section 30).
8. Receiving economic contributions addressed to political parties (sanctioned with dissolution, Section 23).
9. Making financial contributions to political parties (punishable by dissolution, Section 23).
10. Receiving contributions for financing terrorist acts or committing terrorist acts (punishable by dissolution, Section 23).
11. Carrying out activities of political parties or organizations with political purposes (punishable by dissolution, Section 23).
12. Promoting fascism, intolerance, or hatred or of any other nature that constitutes incitement to discrimination and violence (punishable by dissolution and prohibition of registration, Section 23).
13. Any other act prohibited or sanctioned by law (punishable by dissolution, Section 23).
14. Failure to pay a fine grounds for dissolution (Section 28.4).
15. Recidivism in a formal offense implies the application of an increased fine (Section 36).
16. Non-compliance with the Act, i.e., any section of the Act by a non-domiciled legal organization, entails the nullity of its registration by the Ministry of Foreign Affairs (Section 37).
17. The sanctioning of a non-domiciled legal entity may entail the expulsion from the country of the foreign natural persons working in the organization (Section 37).

d. Comments on some penalties, factual assumptions for penalties and their procedure

1. Blank sanctioning rules

It is not one provision that we could qualify as such. Still, two, since on the one hand, we find the provisions of Section 23.4, which states as prohibited any act "sanctioned in the legal system," and the other is the one established in Section 30 of LFRAFONG, which sanctions with the cancellation of the registration to be kept by the Ministry of Foreign Affairs in the event that a non-domiciled legal person "fails to comply with the provisions of this Act."

Regarding the first point, the fact that it indicates as a punishable offense any act prohibited or sanctioned "in the legal system" is a paradox because if, in any given law, an alleged act is already punishable, it makes no sense to punish it again under LFRAFONG. It would violate the *non bis in idem* principle already mentioned, so it makes no sense at all, in addition to the obvious fact that it is a very generic definition prohibited in our law and that case law has interpreted that it applies both in the criminal and administrative spheres.[21]

In addition, the fact that the execution of certain acts is prohibited in a regulation or a sub-legal legal bylaw, a statement derived from the expression "legal framework" cannot be the basis for a sanction since Section 49.6 of the Constitution requires that the events sanctioned as crimes or misdemeanors shall be incriminated in a regulation of legal rank. Therefore, this provision violates several essential principles of the Rule of Law and the protection of human rights.

The second assumption, related to non-domiciled legal entities, makes a gross violation of the aforementioned constitutional norm.

2. Suspension of an organization

Under the concept of "preventive measure" of suspension, it is nothing more than a covert closure without any time limit decreed by the public administration without prior procedure or right to defense and which will be sustained on hold until a court decides its legality - in Venezuela can last for several years - (Section 30).

21 Decision of the Constitutional Chamber No. 2338 of November 21, 2001. Vid: http://historico.tsj.gob.ve/decisiones/scon/noviembre/2338-211101-00-1455.HTM.

> The application of the principle of legality of crimes, misdemeanors and penalties is not exclusive to Criminal Law, **but has been extended to the various branches of Law, with greater roots in administrative offenses and penalties**, so that currently we speak of postulates of Sanction Law; Therefore, **it is necessary the prior legal typification of** the facts qualified as crimes or misdemeanors and the anticipated consecration of the corresponding sanctioning measure, and therefore, **a law could not contain generic formulations in sanctioning matters** and leave in the hands of the Executive the determination of the facts or unlawful conducts, because this opens the possibility that, to the extent that new legal assumptions are presented, subsequent facts may be established that give rise to criminal offenses, in which case the law would be delegating the normative power regarding the classification of crimes to future acts of a normative content but of a sublegal nature. (Emphasis added).

This "preventive measure" infringes adequate judicial protection because it states that the administration may notify a court within 15 days, thus exempting this administrative action from any judicial control while awaiting such notification (Section 30.1).

3. Fines

Fines are established for non-compliance with "formal offenses," which in the case of a first offense range from US$100 to US$1,000 (that would mean an average of around US$500), and in the case of repeated offenses, from US$500 to US$10,000, without establishing a statute of limitations for these offenses, that would mean that a single sanction would result in the imposition of continuous fines, nevertheless confiscatory in nature (Section 36). In the event that the offense is due to the lack of notification of a contribution or donation, the fine will be double the amount received, and the corresponding civil and criminal liabilities will also be pending (Section 36, part in fine). In addition to the fine for not registering the acts-of-incorporations of the organizations, the "nullity of the registration" is added-on, violating the *non bis in idem* principle, i.e. the prohibition of sanctioning twice the same act. (Second Transitory Provision).

4. Dissolution

Organizations may be dissolved "for incurring in the prohibitions established by law" whenever declared by a court or for the "failure to pay any fine" imposed in application of this law (Section 28). The judicial dissolution will be processed through the brief procedure (Section 29). At the same time, the appeals attempted by the organizations in claim of their rights will be carried out through the ordinary procedure, in open contradiction with the principle proclaimed by the same Act that the exercise of freedom of association is privileged, when in reality, the imposing of sanctions has primacy.

Finally, the fact that an organization is dissolved for non-payment of a fine is not only disproportionate but also in collision with labor regulations that prohibit the closing of an employer, except with the express authorization of the competent labor authorities and after following a due process.[22]

22 Article 149 and following of the Organic Law of Labor and Workers.

It is so out of place and context that, in the tax field, which is very punitive in Venezuela, dissolution is not contemplated as a sanction. Moreover, the closureof organizations is established on a temporary

In Venezuela, sanctions in tax matters are very punitive. Failure to comply with tax matters may be sanctioned with a temporary basis,[23] which is the genuine intention of the lawmaker. The dissolution of organization is not listed as a santion in the legal tax framework.

5. Sanctioning procedure

Sanctions shall be imposed through the brief procedure established in the Organic Law of Administrative Procedures (Section 38), which contrasts with the ordinary procedure to which the law subjects organizations when they consider that their freedom of association is violated. Thus, it is evident that the sanction is privileged over exercising the right.

Finally, as in the case of a refusal to register an organization, in the case of sanctions, there are only 30 days to file the corresponding appeal, when the general rule established in Section 32 of the Organic Law of the Contentious Administrative Jurisdiction[24] is 180 days. As mentioned in the case above, the problems that such a short period of time would generate for the organizations cannot be overlooked.

23 Vid: https://www.grantthornton.com.ve/globalassets/1.-member-firms/venezuela/pdf/multas-y-sanciones-codigo-organico-tributario-corregido.pdf.

24 Published in Official Gazette No. 39,451 of June 22, 2010.

6 Conclusions

- The Law for the Control, Regularization, Performance, and Financing of Non-Governmental Organizations and Non-Profit Social Organizations (LFRAFONG) does not solve the current problems of civil society organizations; on the contrary, it adds new ones.
- LFRAFONG establishes new burdens and obligations for organizations in addition to those already existing.
- It changes the notification regime for the constitution of an organization to that of authorization, which makes the LFRAFONG regressive in terms of human rights and, therefore, in violation of Section 19 of the Constitution.
- There is an inconsistency between some of the purposes of the LFRAFONG, such as facilitating the exercise of freedom of association and generating legal accuracy with the provisions of the law that are manifestly contrary to such purposes.
- It is not understood how the lack of imposition of time limits or consequences for non-compliance by the State can generate legal accuracy or security.
- There is an open contradiction between some principles of the law, such as human rights, and the fact that punishment is privileged over exercising the right to freedom of association.
- The fact that it is established as a rule that the exercise of the right of association is channeled through ordinary channels while the sanction procedures will be executed through summary or brief channels contradicts the principles of the law; therefore, it is regressive.
- Some of the new requirements for the incorporation of organizations violate the regulatory autonomy of the organizations, which is also regressive.
- The fact that the lack or failure to update the articles-of-incorporation of established organizations is the nullity of the registration is retroactive because it creates a condition of nullity subsequent to a constitutive fact that can only be governed by the rules reigning at the time the organizations were incorporated in the civil registries.
- The shortening of the period for appealing an organization's refusal to register is another regressive aspect.

- The requirement to keep records and books required and sanctioned by other laws means that organizations can be punished twice for the same act, violating the *non bis in idem* principle.
- Demanding compliance with Order 002-2021 violates Financial Action Task Force (FATF) Recommendation No. 8.
- The consequences of reporting on funding or donations can have severe implications for organizations to the extent that LFRAFONG does not establish clear and objective criteria to prevent abuses.
- The requirement that the income of the organizations be compatible with their nature is regressive since what is essential in this case is that such income be lawful, thus imposing an unjustified limitation on the freedom of association.
- The sanctioning regime, with seven different types of sanctions and 17 cases of punishable acts, shows a law that is eminently punitive and contrary to the principles and purposes it claims to follow.
- The existence of at least two blank criminal law provisions confirms the above assertion.
- The suspension of organizations without prior procedure, without the right to defense, and without a time limit is a disguised closure and, therefore, contrary to freedom of association.
- The fines listed in LFRAFONG are confiscatory and impossible for most organizations to pay.
- The dissolution of organizations for failure to pay fines is a disproportionate sanction with no parallel in regulations considered very punitive in Venezuelan law, such as tax laws.
- The establishment of 30 days to challenge sanctions, in contrast to the general rule of 180 days, highlights the repressive nature of LFRAFONG.
- Finally, the Act is a tool of repression. It is not an instrument for ensuring the exercise of freedom of association.