

CIVIL SOCIETY IN BULGARIA

TRENDS AND RISKS



**CENTER FOR
THE STUDY OF
DEMOCRACY**

This paper focuses on the major trends and risks facing the development of civil society in Bulgaria. It identifies three groups of risks – the implementation of public-private partnerships, the takeover of civil society by politicians and senior civil servants at the central and local level, and profit-making by NGOs. A number of legislative changes and measures are recommended to government and municipal authorities, while measures for self-regulation and greater level of transparency are suggested to the third sector itself.

This paper was made possible through the efforts of:

Dr Emil Tzenkov, Senior Fellow, European program, Center for the Study of Democracy

Todor Yalamov, Senior Analyst, Economic Program, Center for the Study of Democracy

Dr Todor Galev, Senior Analyst, Sociological Program, Center for the Study of Democracy

Pavel Antonov, Board Member, BlueLink

Svetla Encheva, Research Analyst, Sociological Program, Center for the Study of Democracy

Boyko Todorov, Senior Fellow, European Program, Center for the Study of Democracy

Yanita Georgieva, Program Assistant, Center for the Study of Democracy

Dr. Teodora Georgieva, Deputy Rector, International Business School, Botevgrad

The Center for the Study of Democracy would like to thank:

Maria Nedelcheva, Member of the European Parliament

Stefka Solovyova, Director, Registry Directorate, Ministry of Justice

Dr Maria Yordanova, Director, Law Program, Center for the Study of Democracy

Dimitar Markov, Senior Analyst and Project Director, Law Program, Center for the Study of Democracy

Krasimira Velichkova, Director, Bulgarian Donors Forum

Iliana Nikolova, Director, Workshop for Civic Initiatives Foundation

Dobrinka Valkova, Communications and Information Manager, Workshop for Civic Initiatives Foundation

Georgi Bogdanov, Executive Director, National Children's Network

Denitza Mantcheva, Policy Analyst, Economic Program, Center for the Study of Democracy

Editorial Board:

Dr Ognian Shentov

Alexander Stoyanov

Dr Maria Yordanova

B | T | D The Balkan Trust for Democracy
A PROJECT OF THE GERMAN MARSHALL FUND

G | M | F

ISBN: 978-954-477-164-5

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Sofia 1113, 5 Alexander Zhendov Str.
rel.: (+359 2) 971 3000, fax: (+359 2) 971 2233
www.csd.bg, csd@online.bg

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FOREWORD

Two decades into the transition to democracy and the stormy debates on the role and usefulness of civil society organizations have blown over. Civic participation in social and political affairs is now a fact of life and the vision of non-governmental organizations as indispensable agents of both reform and stability is widely shared among all social stakeholders. The expectation, on the other hand, that private institutions – both business and non-profit – would fill in a void opened by a shrinking government were proved unfounded. Partnerships between public and private institutions are now increasingly sought as solutions to emerging challenges.

Challenges, as well as threats. Governments and political parties have adopted the if-you-can't-beat-them-join-them approach and no longer see NGOs as adversaries but rather seek to subvert their civic nature by a silent takeover. A major issue of Bulgarian civil society today is the practice of using NGOs as a cover up for illegitimate profits which undermines the civic virtue of the sector by interfering with its role and mission. A series of recent scandals related to the use of EU funds revealed the systematic nature of fraud schemes accomplished with the cooperation of governmental and local officials and corrupt NGO leaders. Just as public opinion at the beginning of the transition equated business with jobbery, it is now about to start perceiving NGOs as vehicles for bypassing the law.

Corruption is, of course, far from being the main characteristic of civic institutions. Still, to understand why and how it emerges this paper will investigate the incentives and factors enabling such fraud, and will suggest solutions that involve all governmental sectors and the civil society's potential to achieve self-regulation and internal control. It will also summarize various quantitative and expert data and evaluations, and examine case studies that illustrate the NGO capture and other risks stemming from the lack of transparency and inadequate accountability. A number of specific recommendations for strategic legislative and institutional reforms will be put forward as a result.

The views in the paper draw on the experience of the Center for the Study of Democracy, as one of the first NGOs in Bulgaria and an active participant in the discussion on the development of the legal and institutional framework of the non-profit sector. For the past two decades, CSD gained significant experience in working with governmental institutions in a constantly changing political and social environment. Like other think tanks, CSD stood up for the principle of public-private partnerships even at times when the estranged institutions of the state saw it as a mere formality to be tolerated at best. This and a considerable track record with analysis and policy design in the field of anti-corruption prompted the Center to carry out the work that underlies this paper.

1. NON-GOVERNMENTAL ORGANIZATIONS AFTER 1989

At the outset of democratic reforms in 1989, there was only one foundation in Bulgaria, while non-profit associations were state-controlled entities serving the ends of the regime.¹ The establishment of new non-governmental organizations (NGOs)² in Bulgaria at the beginning of the 1990s and their characteristics reflected the spirit of transition, with its peculiarities and political vicissitudes, as well as the mixing of national legal and political traditions with various foreign models. They followed standards **that had long been recognized in countries of established civil society traditions**. Unlike the former rather limited remit of NGOs, today's organizations have evolved into a "mechanism for guaranteeing the rights and freedoms of citizens, ... a major employer, occupying a significant sector of national economies".³

1.1. THE REGULATORY FRAMEWORK

The 1991 *Constitution of Bulgaria* proclaimed the freedom of association as a fundamental civil right to be exercised by citizens by establishing associations to safeguard their interests. Civil associations may pursue different goals related to education, human rights, trade unions, and others, but are not allowed to pursue political goals or engage in political activities, as the latter are the domain of political parties. The Constitution also prohibits the establishment of organizations whose activities are directed against the sovereignty and territorial integrity of the country and the unity of the nation, toward the incitement of racial, national, ethnic or religious enmity, or toward violations of civil rights and freedoms. Organizations establishing secret or paramilitary structures or resorting to violence in order to reach their goals are also prohibited.

With respect to internal governance, the *Non-Profit Legal Entities Act* (referred to below as the NGO law), allows for two types of non-profits – associations and foundations. As regards their beneficiaries, the law also distinguishes between organizations acting in the private interest of their members or other persons and organizations whose functions and goals are for the public good.⁴ The latter are exhaustively regulated, unlike the former. Public benefit NGOs are held to a much

¹ Further on this period see *Non-Governmental Organizations in Bulgaria*, Center for the Study of Democracy, Sofia, 1997.

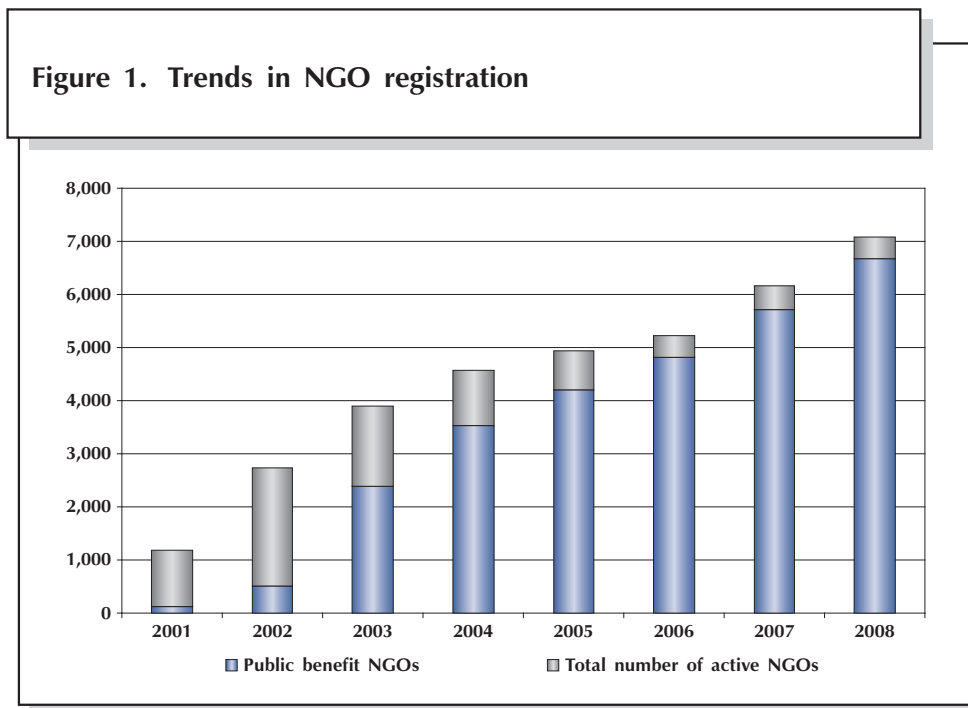
² Since this paper will look into the civic aspects of the work of these institutions, their governance and funding, "non-profit" and "non-governmental" will be considered as coextensive terms. Unless otherwise specified, "NGO" will be used to mean both.

³ *Non-Governmental Organizations in Bulgaria...*, p. 46.

⁴ See the *Non-Profit Legal Entities Act. Questions and Answers*. Bulgarian Center for Not-for-Profit Law, Sofia, 2007, p. 39.

higher standard of accountability, transparency, accounting procedures, auditing, etc. When terminated, their assets are transferred by a court order to an NGO with a similar profile or to the local municipality. In return for these stringent requirements, public benefit NGOs are entitled to receive government or municipal funding for their activities, and their donors could receive certain tax breaks. Once incorporated by the court, a public benefit NGO also needs to enlist in the Central Registry of Non-Profit Legal Entities (hereinafter “the NGO Registry”) administrated by the Ministry of Justice where it submits annual reports.

When the law was enforced in 2001, it was not initially clear how the status of organizations acting in public interest would work; as a result, many organizations opted for registering as acting in private interest. Later on, however, **most non-profit organizations**, except for the community centers (*chitalishte*), **started changing their registration to non-profit legal entities acting in public interest** (see Figure 1 below).



Source: National Statistical Institute and the NGO Registry, 2010

The trend leveled off around 2006 and subsequently, according to the National Statistical Institute (NSI), the share of non-profit organizations acting in public interest has remained rather stable – between 92 and 94 percent. Overall, in August 2010 there were 20% more NGOs of both types compared to 2008. Even assuming that some of these NGOs are inactive and do not submit information to the NSI, it is clear that Bulgarian organizations prefer to be registered as working for the public benefit.

The general preference for the public benefit status has much to do with the structural changes in NGO financing. These became apparent in 2004 – 2006,

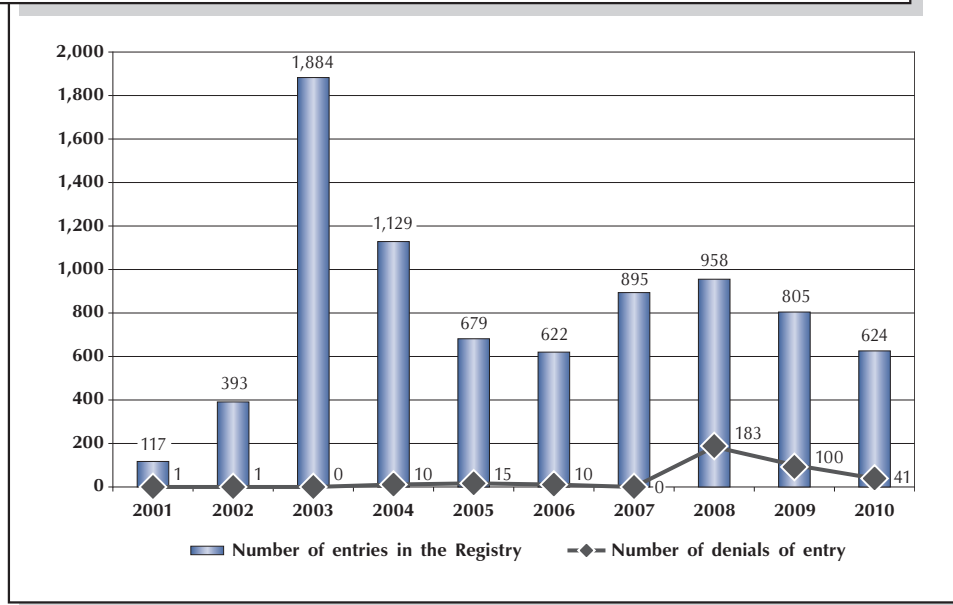
when traditional donors started to withdraw from the third sector leaving the government as the major donor and distributor of funds. As eligibility for government funding requires that the NGO is registered in the public benefit, many opted for it. Nevertheless, there are still some private benefit NGOs – usually small organizations in small municipalities – that reckoned it was not worth spending time and money on a new registration. Some municipalities consider it appropriate to fund them since there is no explicit regulation against it.

A particular problem of the legal regulation of NGOs is the two-step process of registration which public benefit NGOs have to go through – the first judicial, the second administrative. First, the local court considers applications for the establishment of an NGO and, if approved, declares it established as public benefit non-profit organization. Although, the various courts apply quite different criteria in the process, which has imposed unnecessary costs, this has not bucked the general trend towards the public benefit status. Next, the Ministry of Justice registers the same organization in the NGO Registry. There are, however, no clear rules for organizations that were registered in the public interest by the court but were denied a registration by the NGO Registry or were removed from it. There have been a total of 23 such cases since the opening of the Registry, with some being registered later on (e.g. 20 percent of the organizations rejected during the first 6 months of 2009 received a registration within the next year). The total number of denied registrations is 361, with 90 percent of them between 2008 and August 2010; 29 percent of all currently registered were enlisted in that period.

The bulk of the denials could be explained by missed deadlines for re-registration or attempting to register public benefit NGOs that had already been in the Registry. The latest amendment to the NGO law concerning this matter was enacted in September 2006 and extended the registration period by one year, i.e. until the end of September 2007 which accounts for the surge in denials from 2008. Some of the organizations that missed the deadline were forced to register a second non-profit legal entity under a similar name and then merge it with the original organization.

A new reason for denials has emerged during the past year. The law allows non-profit organizations to carry out for-profit business but in a number of cases the Ministry of Justice decided that there had been a **contradiction between the proposed type of commercial activity and the requirements for public benefit status**. For instance, such refusals are given to organizations attempting to bypass the *Higher Education Act*, or organizations attempting to provide services that are typical for a business consultancy. The increase in registration refusals could be explained by the arrival of a new policy team in the Ministry after the 2009 elections, but even more so to by a general disapproval for the commercial operation of NGOs. **This approach, however, is not applied to organizations that have already obtained their registration**, making the playing field much less level. Yet, it is expected that the Ministry of Justice will start applying the above criteria to already registered organizations as well. The latter is likely to cause negative reactions from NGOs that are predominantly involved in commercial activities but hope to receive state funding in the future, thus, insisting on keeping their public benefit status.

Figure 2. Trends in registration denials



Source: Central Registry of non-profit legal entities acting in public interest. Figures for 2010 are for August.

There are three specific types of non-governmental, non-profit institutions that are regulated separately – community centers (*chitalishte*), trade unions, religious institutions, and political parties are separate forms of civil associations. Under the *Labor Code*, for example, trade unions are entitled to defend the rights of workers and represent workers' best interest. Even though the Code provides for the same registration procedures as for non-profit legal entities, trade unions are a separate category which by law has different objectives and responsibilities. For similar reasons political parties are also excluded from the category of non-profit legal entities. According to the *Political Parties Act* they are voluntary associations of Bulgarians having the right to vote, which aid the formation and expression of political will through elections or other democratic means.

Some shortcomings notwithstanding, the legal framework in Bulgaria provided for the rapid growth of NGOs during the years of transition. This has established the backbone of an increasingly robust civil society which was a key factor in overcoming the totalitarian heritage.

1.2. BRIEF HISTORY AND PROFILE OF THE SECTOR

Stages of transition

Four periods can be distinguished in the development of NGOs. **The first one** is the period of establishment and starts at the beginning of 1990. Some of the

currently largest NGOs in Bulgaria were registered in the period from 1990 to 1994 (amongst them are the Open Society Foundation, the Center for the Study of Democracy, the Atlantic Club, the Center for Liberal Strategies, the Institute for Market Economics, the Applied Research and Communications Fund, etc.).

During the **second period** – 1994-1998 – the major international donors launched their programs for supporting Bulgarian NGOs. The number of organizations increased (a CSD survey found roughly 3,000 registered NGOs at the end of 1996⁵), their missions mostly echoing the priorities announced by donors.

The third period was marked by an institutional strengthening of the sector (1998-2005). New foreign donors arrived on the scene, while others (e.g., USAID, the Open Society Foundation) reduced somewhat their funding. That was also the time of emergence of national sources of NGO funding.

The fourth period begins after 2005. As NGOs could now benefit from an array of European Commission programs, bilateral donor programs were gradually wound down and most were discontinued after EU membership in 2007. This was also, however, the time when organized crime and the Russian oligarchs became involved in the NGO sector. It was the beginning of a kind of sector capture whereby politicians and senior civil servants started using non-profits for a variety of shadowy ends (more on this in 2.3. below).

The thematic profile of NGOs in Bulgaria was very much shaped by the factors that influenced their initial development. The majority of the early organizations were set up by scholars – mostly in the humanities. In many cases these were experts of ideological research institutes who, after the collapse of communist party control, utilized their social and political capital by establishing non-profit start-ups with the strategic, financial and technical support of foreign donors, political parties and organizations.⁶ As in other former communist countries, the old quasi-academic institutions that used to supply ideological advice to governments were supplanted by the new kids on the NGO bloc.⁷ This process was driven by the funding shortage suffered by these institutes at the end of the regime, the ambition of the younger generation of researchers to gain independence from compromised superiors, as well as unwillingness of Western partners to cooperate with the old ideological establishment.

Scope of the sector

There are various difficulties in determining the exact size and composition of the third sector in Bulgaria. Some are related to the **discrepancies** between the number of registered NGOs and those which are actually operational, the **lack of public information** about NGO activities, as well as insufficient information about their funding, size, and the use of the grants received. For example, at the end of 2001 there were 15,580 NGOs with a Bulstat registration (incl. 3,800 community

⁵ Bezlov, T. and A. Stoyanov, *Bulgarian Think-Tank Survey: Final Overview Report*, CSD, Sofia, 1997.

⁶ Venedikov Y., *Sotsiologicheskite predizborni prouchvania – mezhdur serioznoto i opasnoto*, Lutch, 1994.

⁷ Struyk, R. *Reconstructive critics – Think Tanks in Post-Soviet Bloc Democracies*, Urban Institute, 1999.

centers), while the Center for the Study of Democracy estimates that only about 1,000 to 2,000 of them remained active in the long run.

At the end of 2007, there were 26,696 non-profit legal entities, of which 22,078 associations, 4,560 foundations, and 58 offices of international non-profit legal entities in the Bulstat registry. This represents a doubled growth compared to 2001. These numbers, however, are misleading. Many NGOs have never performed any activities or have only worked on a single project. According to the NSI, 6,165 NGOs have submitted financial statements for 2007, some of which reporting zero turnover. This means that only about 20 percent of all registered organizations do some work.

Despite the lack of complete and reliable information about the activities of the third sector in Bulgaria, several conclusions follow from the analysis of data from a CSD survey:⁸

- **The increased number of registered NGOs is not indicative of an expansion of this sector** or an increase in its effectiveness. Quite to the contrary, comparing data from separate studies shows that at the end of 2001 the sector was in stagnation with the volume of financial contributions not being able to reach the levels of 1996.
- **The structure of funding** did not change much during the period 1996-2000 and was characterized by the predominance of foreign sources. Even when Bulgarian sources are included (approximately 25 percent of all financial contributions for 2000), most of them are actually funds administered on behalf of foreign donors, especially the European Commission (most of its funding is administered by Bulgarian government agencies).
- It is difficult to estimate the **amount of contributions** because a large part of the donations is received in-kind and another part remains unrecorded. Some organizations have different interpretations of the concept of donation, including a wide range of services and goods.

Types of NGOs

The CSD survey found that by 2002 a considerable variety existed among non-profits as regards their size, type of operation, location and other characteristics. Several distinct groups could, nevertheless, be outlined:

- Group 1 – approximately 20-35 large organizations located mainly in Sofia (organizations with around or over 20 full-time employees are considered large);
- Group 2 – approximately 50-75 mid-sized organizations (with 10 or more full-time employees);
- Group 3 – small organizations (200 to 300 organizations) which are registered mainly in regional centers. Additionally, about 30 to 40 organizations operating in smaller municipalities could be considered a part of this group;
- Group 4 – approximately 600-800 very small organizations, many of which have only one employee working only intermittently.

⁸ *Development of Charities in Bulgaria: Strategic and Steady Partnership with NGOs*, Analyses/Reports, Center for the Study of Democracy, Sofia, 2002.

With respect to their objectives, NGOs could be classified as:

- Organizations with a wide range of civil and professional objectives;
- Organizations with more specific objectives (e.g., support to the economic reform, research of the political system, support to local authorities, work with a specific social group, etc.);
- Organizations with an open affiliation to some of the political parties in Bulgaria.

There are other typologies based on the **nature of employment** of NGOs (permanent and full-time vs. part-time), the **management structure** (set up around a couple of high profile individuals vs. teams of peers), and the **degree of institutionalization of their output**. A study of think tanks in Central and Eastern Europe found a link between these types of organizations and the research methodologies applied by them.⁹

Service and charity

Another large category of NGOs are the ones **providing social services**. The type of these services "...depends on the capacity of the supplying institution, the features of the location, the territory where the company operates, the needs of the target groups."¹⁰ NGOs are mainly involved in supplying social services within the community they belong to, i.e. social services for families or family-like environments. For example, NGOs provide soup kitchens for children and the elderly or for the community in general, day-care centers, centers for social rehabilitation, home assistance services, social mediation, etc. The main recipients of these services are various disadvantaged groups – poor or socially disadvantaged children and families, children and young people with specific needs, homeless children, elderly, lone or sick people, etc.

Often, together with the specific forms of social care, organizations provide other services such as payment of bills, cleaning, basic medical care, house visits, administrative and transportation services, clothes and food for the poor, etc. It is common for these organizations to combine social services with some form of medical care – assistance by nurses or occupational therapists, gynecological checks, psychiatric consultations, sexual education consultations, free anonymous counseling and AIDS tests, as well as testing for other conditions.

In 2003, amendments to the *Social Services Act* for the first time allowed NGOs to provide social services, including services for children under 18, and to apply for funding from the state and municipal budgets through tenders.

Most active among **charity NGOs** are organizations working with vulnerable groups: associations for the disabled or people suffering from various conditions (patient organizations), organizations protecting the rights of various minorities, etc.

⁹ Struyk, R. *Think Tanks: Practical Guidance for Maturing Organizations*, The Urban Institute and LGI / OSI, Budapest, 2002.

¹⁰ Bulgarian Center for Non-Profit Law, *Contracting of Social Services between the State and the NGOs England, Germany, Poland, Hungary, The Czech Republic and the Practices in Bulgaria*, Sofia, 2004, p. 61.

NGOs 2.0

In the past few years, NGOs made good use of **the new communication technologies**. The extensive adoption of IT, especially the fast expansion of internet services, created a new platform for civic initiatives. There have been many instances in which proactive websites have gained sufficient public support for a public cause or persons in need to turn into NGOs or social movements. The web became a tool for civic advocacy and facilitated the emergence of a voice of previously disenfranchised or fragmented communities – something hardly feasible through traditional mass media (some specific initiatives are described in Appendix II).

These developments further motivate the third sector to protect the freedom of information and to organize against any attempts for government control over the Web for supposedly legitimate ends. At the same time, the emergence of online movements and virtual NGOs become an additional challenge to political elites who see it as an impediment to their attempts to enhance control and patronage over this constantly expanding segment of public opinion.

The case of think tanks

The process of inception of NGOs out of the research institutes of the communist period further led to the establishment of a specific kind of NGO – the think tank. NGOs provided the right *modus operandi* for entering the emerging market of policy analysis, advice, creation and even facilitation of its implementation in virtually all Central and Eastern European countries.¹¹

Easy to distinguish, widely recognized, and having notable influence over public opinion, think tanks have largely **modeled themselves on their Western counterparts, mainly in the US**. This is largely attributable to the available funding and advice in the beginning of the 1990s which was dominated by American public and private institutions.

Think tanks are often entrusted with great expectations but also associated with the disenchantment of transition (especially as some think tankers were not averse to crossing into government). Their public profile is mainly driven by the media that finds among them authoritative commentators and competent analysts of current affairs. Having a sway over the minds of the public was indispensable in their main line of business – influencing policy. The international outreach of think tanks was also considerable as they easily found partners among NGOs, governments and other institutions in Europe and the US looking for both independent and reliable expertise in Bulgaria.

Think tanks were also among the first NGOs to emerge after the change of regime in 1989, most of which are still going strong: the Center for the Study of

¹¹ Buldioski, Goran. *Some Musings of Development of Independent Policy Making and Think Tanking in Central and Eastern Europe*, in National Security and Defense, №6, 2007, p. 50, Razumkov Centre.

Democracy, the Center for Economic Development, the Center for Liberal Strategies, the Center for Social Practices, Club Economics 2000, the Institute for Market Economics, and a handful of others.

Box 1. NGOs in the shadow of academic institutes

A peculiar subset of the category of think tanks has sprung up as a byproduct of transition. The founders and members of these NGOs are most often university academics with tenure who create a non-profit organization on the side, as it were, as a source of complementary income or for projects that cannot be done through their employer. These are also often set up as a reaction against mismanagement at the academic institution. The areas of expertise of the NGO and academic institute usually overlap.¹²

Depending on the situation, the NGO could either compete with the academic institute for funding or cooperate when partnership enhances the prospects for success or helps meet the requirements of the donor. In some instances of collaboration members of the NGO team participate in the project in their capacity as employees of the academic organization, while at other times the NGO relies on its informal contacts with colleagues from the academic institution.

Many of the academics utilize their informal contacts with donors, mostly national public funds, which are made possible through their participation in expert committees that assess project proposals and evaluate project implementation within the National Science Fund, the Operational Program Administrative Capacity (OPAC), the Human Resources Development Operational Program, or various ministries. This breeds risks of conflict of interests or of violation of the principles of scientific ethics.

In many cases, such NGOs are used to duplicate existing research projects at the academic institutions by applying for the whole project or parts of it to a separate, usually national grants institution. This leads to double reporting and the double payment of fees.¹³

It is difficult to estimate the number of these NGOs and their turnover as they work ad hoc with prolonged gaps between projects at times.¹⁴ They often have no offices of their own but are registered at the address of the respective academic institution or at the home address of one of their founding members. Staff for administrative work is hired on a project basis or is performed by the administrative staff of the academic institution for extra payment.

¹² This group does not include professional associations or associations of students because these are based on occupation and any person holding the right professional qualification could be their member.

¹³ This type of misuse should not be confused with the programs for national co-financing of projects under the Seventh Framework Program of the EU or financing of additional activities within an existing project – these are usually international comparative projects where additional funding allows the expansion of the analysis of the national aspect of the study.

¹⁴ There is a case of an NGO with 10 full-time staff, 7 of whom teach at the Sofia University, at whose address it is registered, stating on its website that for the period 2008-2009 it has worked on projects worth approximately 150 thousand euro. In a different case, two NGOs, each having between 5 and 10 staff, most of whom also work for two research institutes, have received about a half a million euro for the same period.

Dating back to the same period are some NGOs which follow the German model of party foundations, established to promote the vision of a particular political party. In spite of having significant human – as well as potentially financial – resources, the ex-communist party (later transformed into the Bulgarian Socialist Party) did not succeed in creating an influential foundation similar to, say, the Friedrich Ebert Foundation affiliated with the Social Democratic party in Germany. Other parties established their own non-profits – the Bulgarian Social Democratic Party established the Yanko Sakazov Foundation, while the Democracy Foundation was founded by the center-right Union of Democratic Forces. Both environmental parties at that time – the Green party and Ekoglasnost – also set up their own NGOs. Although most were legally foundations (the status possibly chosen to suggest a charitable nature), in fact they provided research as well as technical and organizational support to the respective party. Thus their influence rarely reached beyond the party circle and their contribution was confined to managing the international contacts and participating in research projects.

The case of chitalishte

Community centers are a specific type of non-profit legal entities. Known in Bulgarian as *chitalishte*, they started to appear in the 19th century as institutions combining the functions of community centers, arts houses, schools, libraries. As with other types of NGOs, there are more registered – 3,474 entries in August 2010 – than actually operational (only 2,895 have submitted reports to the NSI for 2007). Since 1997, there has been a decline among rural *chitalishte* – some are closing down – while they remain active in urban areas.

Table 1. Dynamics of community centers and their membership, 1997-2007

	1997	1998	1999	2000	2005	2007
Community centers (number)	3,646	3,125	3,056	3,027	2,838	2,895
in towns	536	514	510	511	539	548
in villages	3,110	2,611	2,546	2,516	2,299	2,347
Membership (thousands)	219	191	170	170	164	168
in towns	96	86	81	74	68	67
in villages	123	105	89	96	96	101
Average membership	60	61	56	56	58	58
in towns	179	167	159	145	126	122
in villages	40	40	35	38	42	43

Source: NSI annual reports for 2006, 2007, and 2008

Although *chitalishte* are non-profit legal entities, their establishment and operation requires a larger number of founders/members – 50 active persons in villages and 150 in towns. This membership requirement has been particularly problematic in rural areas where they find it difficult to engage a sufficient number of people. Similar shortages have troubled urban *chitalishte* as well. Even when the membership list has reached the required minimum, general assembly meetings are held with hardly a quorum. The Ministry of Culture does not perform the required biannual control over the centers' activity and thus fails to issue dissolution warnings, as instructed by the *Community Centers Act*.

In general, **community centers are less transparent** than public benefit NGOs. The *Community Centers Act* does not even require community centers to be registered as non-profit legal entities acting in public interest in order to become eligible for state or municipal funding. Only seven of the existing *chitalishte* have applied for and obtained such registration. The Community Centers Registry and oversight by the Ministry of Culture has been deemed sufficient to ensure their good governance. Only the statute of a community center is required for registration, and it is not publicly available; there is no requirement for annual activity reports or financial statements; they are to provide an account for their activities only to the local municipality and only for the contributions received from the municipal or the state budget. **This lack of transparency is a serious negligence on behalf of the responsible institutions**, especially taking into account that community centers take up to 40-50 percent of government funding for NGOs (data for 2005 through 2007) while being two to three times fewer in numbers.

Community centers are also treated preferentially in a case of foreclosure. The law stipulates that their assets are not liable in claims except when these stem from employment contracts. When a community center is closed down, the general assembly may distribute the property among its members which is not allowed for public benefit NGOs.

1.3. NGOs AND PHILANTHROPY

After an initial abundance of funding in the early years of transition, in the following decade it started to tighten up. This was not made easier by a shaky economy, imperfect laws and even less perfect enforcement. In this context, public funds had difficulty finding their way to NGO projects and thus the **private donations proved to be the only means for funding**, in particular for charitable organizations. Although deeply rooted in Bulgarian tradition, philanthropy had to struggle against legislative impediments which hampered the crucial role of business for the sector's development and exposed it to pressures from the gray economy.

In the past few years, things have changed and there has been a significant increase of charity campaigns carried out with the assistance of the electronic media which encourage individual donations channeled through organized charities. Broadcast media have become particularly active in this field, raising money for disadvantaged children or people in need of advanced surgery.

The public mostly trusts donation campaigns under the auspices of prominent personalities, especially politicians. These campaigns, however, are not carried out by NGOs but are administered by specially created funds or public councils. Most non-profits find it difficult to compete with the traditional media behemoths for public attention and their causes are thus drowned by what are often effectively PR campaigns by politicians. Many NGOs turn to the internet, instead.

A number of different types of **donations by individuals** can be distinguished:

- The first and most popular type are **single anonymous donations** of several euro, the total number of contributors being relatively small. These are made usually through text messaging – a kind of today's version of the traditional Red Cross boxes – as a result of media calls for donation. Charity events, concerts, exhibitions are also used;
- Another one, to have emerged in the past decade, takes place among certain **peer groups** which are motivated to donate on a regular basis slightly larger amounts (€5-10). These include professional teams that are often motivated by a colleague to support a certain cause;
- The third group, a subset of the second, are **religious communities**. Their members make contributions either during a service (common for protestant denominations) where one may feel obliged to do so, or for a specific cause. Many religious communities have their own non-profit legal entities which administer the donations, carry out the work and report back to the community;
- A separate group consists of **people of comparatively modest means**, including the retired, who donate small sums (€20-30);
- A specific small group are **NGO activists** – members of managing boards and general assemblies, or well paid experts – who donate to the organizations they work for;
- In a very recent development, **foreign citizens** have started donating in the hope that this would speed up the process of acquiring Bulgarian citizenship;
- There are, of course, also **the wealthy** whose donations are usually rare and might include the donation of real estate property.

Poor management and shortages in public healthcare funding have brought about a degenerate kind of philanthropy whereby **patients and their families are pressured into donating** to foundations connected to the respective hospital. It is, in fact, a hidden form of rent-seeking. In a particularly perverse case, €157,000 was donated to fighting cancer as a ransom for the release of a kidnapped person.¹⁵

Another not uncommon type of **“involuntary donation”** is made by parents being asked to give money or goods to their children's nurseries, kindergartens, or schools. Prior to the implementation of an electronic enrollment system in Sofia, donations were a common way to have one's child accepted in a kindergarten.

In the **corporate sector**, possibly because of the economic slump, only 5 percent of the companies have a long term donation strategy.¹⁶ When they donate, businesses

¹⁵ Angel Bonchev Donated €157,000 for Charity. Darik Radio news, 29.07.2008.

¹⁶ *Development of Charities in Bulgaria: Strategic and Steady Partnership with NGOs*, Analyses/Reports, Center for the Study of Democracy, Sofia, 2002.

often do it through a contract for advertising and not as a grant. This, however, could be problematic for NGOs which do not engage in business as they have to report such income as profit to the tax authorities (see 2.4. below for more on that).

NGOs usually associate their greatest expectations with corporate donors. Contributors from this group are mainly mid-sized enterprises whose owners are personally motivated and emotionally involved in certain causes. Donations are also a common practice for large international corporations with offices in Bulgaria. In this, they follow the corporation's overall charity policy.

Most donors tend to support organizations that have a good standing in the community. Generally, the larger the NGO, the more it is expected to demonstrate its professionalism and strict accounting in order to gain the confidence of donors. Donations to small NGOs are sometimes driven mostly by personal contacts and sentiments. Start-ups, however, need to go through a testing period in order to prove their transparency, good financial management, and generally build up an image.

Box 2. Fundraising methods

- During the past 3-4 years fundraising through text messages has gained popularity and a number of businesses specializing in such campaigns have sprung up. This method relies on advertising through broadcast media as it needs to appeal to large numbers of people who donate very small amounts. Some NGOs still raise money through traditional methods – donation boxes, selling of postcards and calendars, charity campaigns, etc. – but at times expenditure on these exceed the revenue.
- Charity concerts, balls, and exhibitions could be successful depending on the location and the demographics of the local community.
- Large successful campaigns have been organized under slogans appealing to popular sentiments. Examples are the campaign of the Bulgarian Red Cross *Don't say No to an orphan asking for bread*, or the Balgarka National Civil Forum under the slogan of *The poor help the poor*. These campaigns hit the right nerve, brought about very good results and strongly influenced society.
- When approaching businesses with grant requests, NGOs with international experience and know-how adopt a very professional approach – they study the company carefully and consider its range of interests and activities before asking for sponsorship. Projects are designed to match the potential donor's fields of interest and discussions are rehearsed in advance. Smaller NGOs rely either on representatives with considerable public standing or on personal contacts. These often prove to be more successful than a number of formal and institutionalized techniques.
- Door-to-door fundraising, because of its potential for fraud and the fees charged by collectors, which on occasions could surpass the overall donations, has a rather negative image and is viewed with suspicion by the public.
- Online marketing is a method that is not currently effective but has potential. The same can be said about fundraising from Bulgarians living abroad who could also be approached online. Another prospective model of fundraising is pay-roll donation – people agreeing to have certain amounts withheld from their regular remuneration.

When funding projects, some donors prefer to cover part of the expenses or directly purchase goods. For most, the donation of money is usually accompanied by clear conditions of use. The two keys to donor trust are transparency and accountability. At any given time donors should be able to receive an account of how money has been spent and how it had helped the cause.

Individual benefactors often seek additional personal involvement in a charity cause, as in the case of helping orphaned children. This allows them to exercise control over the use of the donations, and is based on the notion that the beneficiaries need personal attention and contact as much as they need money.

Table 2. Share of the various sources in NGO funding

Type of Source	%
Foreign donors	58
State	6
Local business	5
Donations	7
Membership fees	11
Service fees	8
Others	5

Source: Regional Stakeholder Consultation Survey by the Civil Society Index Project, 2004

Individuals rarely declare donations in their annual tax forms. One reason is that to be deductible from taxes donations need to be sizable which few can afford. Another is the difficulty in obtaining certifying documents; sometimes, as in the case of text messaging, these cannot be obtained at all.¹⁷ For the 2009 fiscal year, for example, donations by individuals were recognized as tax deductible expense provided they did not exceed 5 percent of the tax base.¹⁸ According to population surveys, approximately half the people in Bulgaria donated money through text messages in 2009.¹⁹ The Bulgarian Donors' Forum estimates that donations by individuals make up about 10 percent of all donations in the country. According to the same research, about 20 percent of NGOs in Bulgaria received donations in 2009. This is probably overestimated by at least 8-10 percentage points, even if only active non-profits are included. The discrepancy is attributable to the fact that some of the contributing companies prefer to record their donations as advertising spending for tax purposes.

¹⁷ Moreover, in these cases VAT is charged on the donation. The same difficulty applied to giving through charity boxes of churches, organizations, etc.

¹⁸ For some specific donations (culture) it is 15% or even 50% (for medical care for children) but altogether deductions from the tax base cannot exceed 65%.

¹⁹ Bulgarian Donors' Forum, *Tendentsii v blagotvoritelnosta prez 2009 godina*, Dnevnik Online, 31.03.2010.

Information about corporate donations provided by the National Revenue Agency (NAR), although possibly incomplete, adds perspective to the results of population surveys. For the period 2007-2009, an average of 720 companies a year have made donations to NGOs, while an average of 490 made to nurseries, kindergartens, high schools, universities, and academies. In 2009, the average size of the donation to a non-profit, according to corporate tax forms, is a little over 13,000 leva (€6,600). The total amount of donations from business enterprises and reported in tax forms is worth about €24 million. Bulgarian Donors' Forum estimates the contributions to various causes and activities at €23 million; approximately €15-16 million of these were donated by Bulgarian businesses.

Although the NGO law allows the state to use various tax, customs, credit and other types of financial relief, these have not been used, especially given the consensus which followed the introduction of the currency board in 1997 that there will be **no specific tax preferences for different categories of legal entities**. A contributing factor for the abstention from financial relief for NGOs is the bad experience of the early 1990s when NGOs abused various tax and customs breaks provided by the government for shadowy business deals.²⁰ Preferential treatment allowed by the special laws does not yet provide opportunities for Bulgarian associations and foundations to receive significant support from businesses and other donors. This puts them in a disadvantageous position even compared to similar organizations in Central and Eastern Europe.²¹

The third sector itself is also a source and channel for donations. NGOs donated €25 million in 2008 which is about 30 percent of donations, including grants. Several types of contributions are included in this amount: **conditional grants** usually provided through offices of international NGOs or Bulgarian NGOs administering civil society development grants; **unconditional grants** are typically administered on behalf of corporate or individual donors intended for social welfare institutions; various types of **scholarships** for students.

Although since the beginning of the 1990s Bulgarian non-profits have acquired a certain amount of experience in grantmaking, there are still a number of **risks related to the transparency and, above all, prevention and disclosure of conflict of interests by members of the managing boards of NGOs acting as donors or grant administrators**. This problem can hardly be solved by legislation, especially when it does not involve public funds. It should be perfectly feasible, however, to strengthen self-regulation in the sector that would lead to greater transparency and conflict of interests prevention. Detailed recommendations to this end are made in Chapter 3 below.

²⁰ Such preferential treatment was introduced in 1990, and was then canceled in 1992. Some organizations took advantage of a preferential customs regime for NGOs and started importing excise goods. Most of the organizations that took advantage of these were in fact commercial enterprises not having received a single grant.

²¹ See *Survey of Tax Laws Affecting NGOs in Central and Eastern Europe*, International Center for Not-for-profit Law, 2001.

Table 3. Donations as reported in annual tax forms

Beneficiary	2007		2008		2009	
	number	thou- sands of levs ²²	number	thou- sands of levs	number	thou- sands of levs
Medical offices and hospitals	333	4,034	187	4,819	386	5,483
Specialized institutions for social services, the Social Assistance Agency and the Social Assistance Fund at the Ministry of Labor and Social Policy	141	354	65	488	137	928
Specialized child care institutions and orphanages	385	1,101	212	2,388	444	1,027
Nurseries, kindergartens, schools, universities or academies	611	2,582	340	15,297	525	2,572
Central government and municipal institutions	886	28,202	572	17,540	895	9,809
Faith organizations	223	847	117	1,405	199	1,589
Enterprises or cooperatives of disabled people and the Agency for the Disabled	97	429	32	154	73	250
Disabled individuals and specialized technical facilities for them	618	5,660	198	3,391	332	2,636
Disaster victims	12	22	3	21	20	59
Bulgarian Red Cross	108	161	23	113	45	137
Low income people	109	1,001	48	217	77	284
Disabled or orphaned children	302	1,594	123	1,763	238	1,339
Cultural institutions or for cultural, educational, or scientific exchanges	202	939	100	662	142	350
Public benefit NGOs (not incl. institutions sponsoring culture)	873	10,490	431	11,375	866	11,530
Student scholarships	87	486	48	867	85	743
Energy Efficiency Fund	2	1	1	1	2	15
UNICEF	18	94	4	105	51	61
Medical Treatment of Children Fund	<i>n.a.</i>	128	19	346	24	106
Sponsorship of arts	26	665	9	276	13	128
Donations of computers and peripheral equipment less than one year old to schools and universities	22	126	9	47	15	280

Source: National Revenue Agency, 2010

²² The Bulgarian lev is exchanged at a fixed rate to the euro at 1.95.

2. RISKS FOR THE GOOD GOVERNANCE OF NGOs

2.1. FROM TROUBLEMAKERS TO KINGMAKERS

The evolution of Bulgarian NGOs from gadflies on the margins of the turbulent scene of the early transition years to holders of advanced expertise and authoritative suppliers of policy advice has been part of a broader international process of transformation of the role and potential of non-profits. Non-governmental organizations no longer confine their remit to dispensing charity and condemning government and no longer rely entirely on grants to fund their existence. They used to be good at pointing out what was wrong; they are increasingly better at developing solutions.

From the outset, NGOs in Bulgaria sought to embody the idea of **social entrepreneurship** which served to balance out market and government failures; they are now gradually developing new markets for services.²³ NGOs – and not only in Bulgaria – increasingly emphasize market mechanisms not as something which is deficient and should be corrected by them, but as a **means for facilitating social change**.²⁴ While 20th century NGOs have largely been outsiders (to power, the corporate world, or social elites) focused on the detection of problems and exercising pressure to address them, an increasing number of NGOs in the 21st century are becoming part of the elite and are integrated into the system (the corporate as well as political) through a constantly improving expertise of various public policies.

When the sector was emerging, most NGOs sought to enlarge the range of their donors as quickly as possible. This, in turn, entailed changes to the organizational goals and tended to shift the focus from the organization's original mission to achieving the objectives set by the donors. Today, as they strive for stability, social entrepreneurs are much more confident in pursuing their own agenda, not least because they have started to expand their sources of financing by branching out into commercial services.

The most important asset of a non-profit organization being its reputation has long been among the tenets of received wisdom in the sector. For some time now, however, NGOs have been trying to establish themselves as **mediators**, even brokers thus making their reputation seem tradable. Corporations used to fund non-profit work as means of brushing up their social image; now these interactions increasingly look like strategic partnerships. Fewer NGOs are engaged in anti-business campaigns, more are **providing advice and consultancy**, some even

²³ In Bulgaria, NGOs and social entrepreneurs were among the pioneers of private radio stations, internet providers, sociological agencies, and other businesses.

²⁴ *21 Century NGO in the Market for Change*, SustainAbility, 2003.

effectively underwrite corporate reputations. More ambitiously, many think tanks endeavor to have a say in the changing institutional structure of capitalism.

In a nutshell, over the years Bulgarian NGOs have advanced their expertise, built up their profile and broadened the range of their objectives. It is not uncommon now for think tanks to draft laws, for environmentalists to effectively challenge developers or for watchdogs to cause the introduction of new transparency regulations in state bureaucracies. In this context, for NGOs to seek to rewrite the rules of engagement with business and government would only seem natural.

Worldwide, partnerships of non-profits with businesses and government have been discussed and implemented for a while. International experience shows that a truly successful institutional partnership needs a number of conditions to be present: reciprocal accountability, equitable distribution of costs and benefits, performance measurement, trust, demarcation of responsibilities, financial transparency, and, ideally, a mechanism for making joint decisions. It would be enlightening to examine how the collaboration of Bulgarian NGOs with business and government measures up against this standard.

2.2. THE POTENTIAL AND PITFALLS OF PUBLIC-PRIVATE PARTNERSHIPS

The issue of the interaction between the three sectors in Bulgaria, and particularly the relationship between governmental and non-governmental organizations, has been of crucial importance ever since the beginning of the democratic changes. Despite the early notions that government and NGOs should view each other with suspicion, if not hostility, a more conciliatory *modus vivendi* was bound to emerge, even if only because the non-profit nature of the third sector makes it dependent on the other two. It is a *modus*, however, not easy to achieve, especially as the electoral and business cycles (vicissitudes, more like it, in a country in transition) tend to disrupt long term relationships.

Increasing rapprochement with state and business required NGOs to start thinking about finding a way to collaborate without risking to get bogged down in partisanship or slide into all-out commerce. From the perspective of NGOs, this aspect of their public activity created the need for a constructive balance between two functions – of a partner and of an opposition to government.²⁵ Finding this balance was indispensable because “...the absolute predominance of one of these functions would have a negative effect on both the civil society and the government. If civil society organizations only act as an opposition or a challenger, they would miss the opportunity to exercise influence over the policy and decision-making, thus reducing the chances of effectively representing and defending the interest of citizens that established them.”²⁶ Conversely, getting too close also creates risks: “A partnership at any cost involves the risk of participating in unacceptable or wrong decisions, de-

²⁵ See: *National Assembly – a Guarantee of a Responsible State*. Proceedings of a public hearing, October 15, 2008, p. 8.

²⁶ Statement made by Dr. Maria Yordanova, Director of the Law Program, Center for the Study of Democracy, at National Assembly – a Guarantee of a Responsible State, p. 8.

prising civil structures of the opportunity to correct such decisions and, in extreme cases, there is a risk of political endorsement."²⁷

Politicians could be expected to have an interest in associating themselves with NGOs promoting public objectives which are not necessarily on the agenda of the political parties. For example, think tank expertise could very well be used for a consensus around certain policies; for think tanks, in turn, being able to influence policy is their *raison d'être*. A certain residual patronizing streak, left over from communist times, is still discernible, however, in the attitudes of the political establishment towards NGOs.

The vulnerability of NGOs to political encroachments decreases with the increase of their professionalism. The Center for the Study of Democracy is the organization with the longest experience in the process of institutional interaction between the third and the other two sectors. For the past two decades, CSD has made a good use of the instruments for establishing public-private partnerships without having to compromise its non-partisanship. Cooperation has been carried out through programs and projects which involve experts from state institutions; memoranda of understanding have been signed with a number of central government ministries, particularly on projects financed by the European Commission. As such cooperation was not influenced by the change of government, it became a kind of knowledge cache allowing continuity in policy making. Most projects were intended to introduce European standards, and by financing them the European Commission effectively supported reforms in Bulgaria and helped the capacity of NGOs to establish partnerships. It is, therefore, much more effective – from the point of view of sustaining reforms and strengthening the NGO sector – **to finance think tank-government partnership projects** rather than get government agencies to administer NGO funding which still contains **considerable discretion** (e.g., projects under Operational Program Administrative Capacity-OPAC).

Public-private partnerships between Bulgarian non-governmental organizations and state institutions, as well as partnerships with business organizations, were originally facilitated by the process of Bulgaria's accession to the EU, as well as by exchange of experience and bilateral assistance from the US and European countries. The emergence of expert communities and the building of bridges between them and the institutions of policy making have been among the long-term results of the successful implementation of this mechanism. The Center for the Study of Democracy and other think tanks have even on occasions had to play the role of mediators among government institutions themselves as they often work in isolation.

There are still those in central and local government who view partnerships with NGOs with skepticism at best. This is particularly so with respect to human rights and watchdog organizations. A pertinent example would be the anti-corruption initiative *Coalition 2000* in which the Center for the Study of Democracy entered into partnerships with a network of local NGOs at the end of the 1990s and tried to involve local officials as well. Although no formal objections were raised, municipal authorities effectively boycotted cooperation. This was done through a

²⁷ Ibid.

range of methods, from rejecting civic monitoring as unlawful to playing down corruption threats to various administrative tricks that blocked cooperation. Pressure was exercised by local officials over journalists from the regional and local media participating in the anticorruption initiatives in their capacity of partners to the respective NGOs.

Typically, non-governmental organizations maintain relationships with the central and local authorities that are directly relevant to the organization's specific objectives. The ones most frequently mentioned in surveys are the Ministry of Labor and Social Policy, the Ministry of Education and Science, the State Agency for Child Protection, and local social assistance offices.

Due to budget shortages, municipalities often contribute to the work of NGOs by providing property for their activities or supporting fundraising initiatives. In some cases, municipalities get involved in finding solutions to specific problems, but rarely offer financial or material assistance to NGOs. The state and local authorities are often used as a source of information, and joint activities could include surveys. Most often, municipalities merely serve to administer funds from elsewhere and rarely contribute their own finances to NGOs.

In short, the collaboration between NGOs and representatives of local or central authorities is **not based upon any specific long-term strategy**. Instances of such collaboration are **rather sporadic**, depend on the existence of a specific need, and are based mainly on the personal expertise and contacts of the people involved. Usually, it is the NGOs that initiate public-private partnerships. They actively advocate for a sustained involvement of civil society organizations in public policy making at the central level (e.g. in designing and implementing democratic reforms and policies for European integration), as well as at the local level (in providing various social services).

A culture of public-private partnerships is strongly supported by Bulgaria's foreign partners in Europe and the US. Yet, the lack of genuine interest among state institutions in collaborating with civil society and the absence of reliable national donors create incentives for NGOs to focus on foreign sources of assistance (the European Union and member countries, the US, the UK, Norway, the Netherlands, etc.), and conversely disincentives for the third sector to search for local partners, thus further alienating the state and the civil society.

2.3. RISKS OF NGO CAPTURE

The strengthening of the non-profit sector may not have resulted in an explosion of public-private partnerships but that has not made it immune to unhealthy attention from politicians.

In the years of transition, **state capture** was not simply the most dangerous dimension of corruption but also a practice that very much shaped the structure of national governance, (de)formed the emerging private sector and created the class of entrepreneur-politicians. It has been mainly through the absorption of the

pre-accession and structural funds of the EU that the NGO clientele of national and local politicians emerged. Thus, the EU approach of having national authorities administer European funding for NGOs was “domesticated” to fit attempts at partisan domination of the non-profit sector. This has become yet another reincarnation of the mechanism of subversion of public governance by private interests.

The shortcomings of the legal and regulatory framework, discussed in the previous sections, make it easier for the authorities to misuse NGOs. The lack of mandatory procedures for transparency in the sector, ineffective financial control from the state (which should not entail interference in the work of NGOs), the low level of self-regulation, the cumbersome procedure for registration and re-registration of NGOs, all contribute to the vulnerability of NGOs and allow illegitimate interests to operate in a niche of very low transparency and accountability.

NGO capture is particularly evident at the local level where municipal officials take advantage of the inadequate regulatory framework and lowered control to the detriment of the third sector. An example of such inadequacy is the provision allowing mayors and their deputies to sit on the managing boards of non-profits. There is no regulation – respectively, no public registry or auditing – concerning the participation of municipalities in civic associations and non-profit organizations which would help to prevent conflicts of interests in the context of public-private partnerships. Thus, a partnership could take place without any transparency or accountability which is a prerequisite not only for involvement in corrupt practices, but also for undermining the very nature of non-profits by risking to turn them into a cover up for white collar crime.

An indirect evidence of NGO capture is the otherwise inexplicable boom in NGOs registrations during the past few years. The number of non-profit legal entities in Bulgaria **increased eight-fold** between 2000 and 2010, reaching a total of about 8,500 (*chitalishte* not included). From 2008 to mid 2010, the increase was 40 percent which is equal to the number of active NGOs in 2002. In normal circumstances, such a growth would be considered an indication for innovative social entrepreneurship and strengthened civil society. In Bulgaria, however, the reasons should be sought elsewhere. During the first half of the transition period (1990-2000), NGOs were seen as an **instrument for modernization and democratization** of social and political life in the country. During the last 10 years, this has been reversed into a gradual **undermining of the civic nature** of NGOs.

As elected officials and civil servants were prevented from holding shares or sitting on the managing boards of business, they switched to NGOs as **optional means of benefiting their political and personal clientele and a safe heaven after public office**. For example, 76 percent of the members of the 2005-2009 parliament, and the same share of ministers and chairpersons of state and executive agencies under the coalition government of the time, as well as over 90 percent of municipality mayors in Bulgaria were members of managing boards of NGOs at the end of 2008.²⁸

²⁸ The information was obtained during the period from July through December 2008 through the information service Ciela.

A number of other influential government officials and members of political cabinets established new or joined existing NGOs. As a rule, such organizations – sometimes referred to as **PONGOs** (politically owned, or politician's NGOs) – have no websites, provide scarce information and do not advertise their relationship with the authorities. Unlike traditional party foundations or associations, which do not conceal their political affiliation, are comparatively open in their assistance to the respective party (providing mainly analytical services and securing additional income for party elites), and receive their main financing from sources other than the state, **PONGOs utilize their political and administrative capital without disclosing any conflict of interests**. While in office, their patrons secure funding, establish a background for the NGO and promote its image, thus ensuring that they have a fallback option should they leave public service.

A case in point is the National Institute of Public Procurement. Until recently, its managing board included most of the key figures in government institutions related to public procurement. This type of PONGO received state financing (through the NGO subsidy program of the Ministry of Justice or through various ministries and agencies mostly within OPAC) and often exercised influence over policy. In general, such organizations do almost no project work but serve as a façade for their members to sit on various public consultation bodies, thus effectively blocking truly active and independent NGOs from participation.

PONGOs are often registered at the address of the official institution where its boss is employed. After getting its first funding the PONGO would move to another address and even operate independently of the respective public institution in the case of change of government. Often, public officials work for the PONGO in their office hours – get trained, write project proposals (possibly even implement them) – before moving full time to the PONGO where they would receive a higher salary. This is the model of a typical PONGO financed through European funds allocated by the state (starting with PHARE, and later OPAC).

Although in 2009 the *Prevention and Disclosure of Conflict of Interests Act* outlawed the participation of elected officials and public employees in the managing boards of non-profit legal entities and required them to declare possible conflict of interests as regards their participation in NGOs, **the PONGO problem was only partially resolved**. There are two major reasons for that: the restriction did not affect local government officials and those who were forced to leave the managing boards were replaced by close associates. Although not instructed by the law, some mayors left their NGOs but installed close friends or subordinates (e.g., drivers).

Experts estimate PONGOs in Bulgaria to be between 9 and 13 percent of all NGOs. Taking into account that about 21-25 percent of the total number of NGOs are sports clubs and about 15 percent are business and professional associations, associations of municipalities or trade unions, it turns out that PONGOs constitute a significant part of the remaining non-profit organizations (between 14 and 22 percent). Although they are still **few in absolute numbers**, the fact that during the past several years these organizations **have received the bulk of state support and represent more than half of the turnover** in the sector is a serious hazard to civil society independence.

These developments constitute the **first significant change** in the nature of non-profit organizations, as compared to the period between 1990 and 2000. Nowadays NGOs are either much more dependent on central and local authorities for funding or are under direct control through the participation of public officials in their management. Non-profit organizations controlled by politicians and senior public officials are used only as **instruments for the absorption of funds**. Using various mechanisms, politicians created a **sizeable loop of NGOs owned by them**, with no international experience or expertise, yet receiving generous funding in a blatant conflict of interests.

The portion of the government budget allocated for funding NGO work still lacks priorities and goals.²⁹ The selection process is not transparent and there are no criteria for evaluating the outcomes of projects. Instead, this instrument is continuously misused by politicians and senior civil servants making the NGO capture a reality in Bulgaria.

In 2008, NGO financing controlled by the government (national budget or from the European Union) was approximately 40 percent of the total project funding for 2006. In contrast, at the end of the 1990s, most of the NGO funding came directly from foreign sources and was considerable – approximately 10 percent of FDI. Currently, external project financing of the sector (not administered by the Bulgarian government) is dominated by the EU Framework Programs and the Competitiveness and Innovation Program. The types of projects they fund, however, are relevant mostly for medium and large non-profit organizations and think tanks, leaving less than a hundred NGOs eligible to receive this type of financing. As a result, only a narrow circle of organizations can afford to remain independent from the discretion of government authorities.

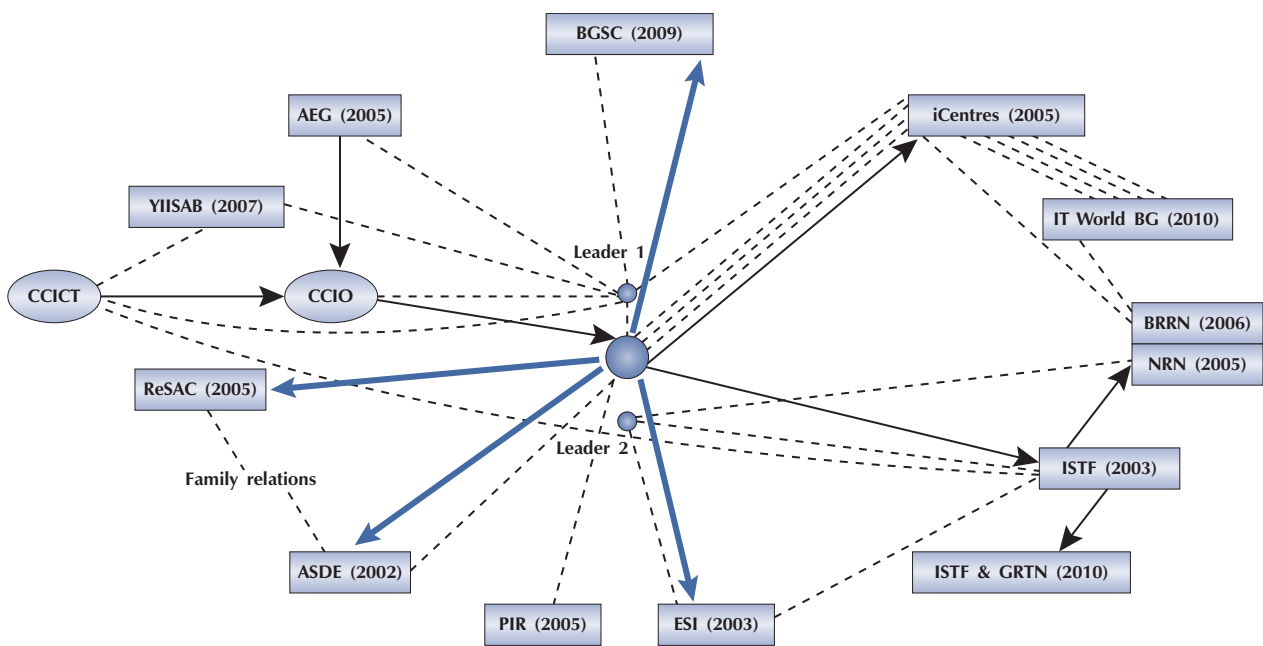
Today *non-profit*, rather than *non-governmental*, is the term of choice thus shifting attention away from their civic characteristics towards the fact that they do not generate or distribute profit. In the international experience, such organizations are known as **government-owned non-governmental organizations** (GONGOs). A pertinent example of these was the operation of the State Agency for Information Technologies and Communications in the period 2005-2009 (SAITC; succeeded by the current Ministry of Transport, Informational Technologies and Communications). The Agency was overgrown with GONGOs/PONGOs financed directly or indirectly by it and was advocating that the state must start establishing non-profit organizations as a means for the absorption of structural funds.

A problem for the analysis of PONGOs and GONGOs is that it is often difficult to distinguish between them. Even when the founding members are public entities, they appoint a managing board of individuals in their personal capacity. Moreover, the *State Property Act* does not require the maintenance of registries of the state participation in non-profit organizations and thus many municipalities do not have such registries (although they are required to do so by the *Municipal Property Act*). In such circumstances, it is very likely that newly elected local officials would not be able to figure out quickly what the non-profit interests of their institution are.

²⁹ In 2010, for example, sports projects were funded with priority. These should, however, be financed by the Ministry of Physical Education and Sports rather than the Ministry of Justice.

The NGO Registry does not allow public access to the constituent documents, thus making it difficult to discern whether an organization is a PONGO or a GONGO. This can only happen through a voluntary public disclosure of information or by closely monitoring changes to the managing boards. Approximately 25 GONGOs are known to the public; they have been active during various periods and appropriated considerable funds without any transparency and accountability.

Figure 3. Network of non-profit organizations around SAITC



Connections: - - - - - Connected by a person, who participates in two organizations
 —————> Institutional participation
 —————> Funding

- BGSC – Bulgarian Supercomputing Application Centre
- BRRN – National Research and Education Network of Bulgaria
- NRN – National Research Network
- ISTF – Information Society Technologies Foundation
- GRTN – Greek Research and Technology Network
- ESI – European Software Institute
- PIR – Public Internet Registry
- ASDE – Agency for Sustainable Development and Eurointegration
- ReSAC – Remote Sensing Application Center
- CCICT – Coordination Centre on Information, Communication and Management Technologies
- CCIO – Coordination Council on Information Society, chaired by the Chairman of SAITC
- AEG – Adaptation to Electronic Governance
- YIISAB – Youth Innovation and Information Society AB

Source: Center for the Study of Democracy

Box 3. A GONGO case study

Another example of a GONGO is the iCentres Association. Two weeks after the elections for the 2005 parliament, the Agency for Development of Information and Communication Technologies (the predecessor of SAITC) and Bulgarian Posts became founding members of iCentres. Both organizations have the Ministry of Transport and Communications as their principal. Approximately €5 million were spent for the iCentres project without public procurement, using UNDP as cover even after Bulgaria joined the EU and UNDP no longer operated in the country. An indication of the poor management of iCentres is the fact that it made its registration in the NGO Registry only in October 2007 – more than two years after its establishment and only after the Applied Research and Communications Fund, one of the leading NGOs in the field, made the omission public. Five years later, the result is an insolvent association with a debt of over quarter of a million euro. The last GONGO or PONGO, inaugurated by SAITC, was the National Super-Computer Center. A member of its managing board and executive director was the advisor to the SAITC chairperson who was also a secretary of the government Coordination Council on Information Society. The same person was involved in four other non-profit associations (two GONGOs and PONGOs), while holding an office at the Council of Ministers and receiving a salary financed by public funds through UNDP (the iCentres and several other projects).

There is now a **clear risk** of a new influential group of predominantly PONGOs, with some GONGO elements, dominating a particular NGO field of work. These are the so-called Local Initiative Groups (LIG) the formation of which was required by the EU LEADER initiative for the development of rural areas.³⁰ These are public-private partnerships which need to have as members at least two municipalities (having less than 50 percent of the membership), local businesses, and (other) non-profit organizations. The funds allocated for activities resulting from LIG decisions are €77 million.

Local authorities usually have a strong influence over the structures and membership of the now 80-100 LIGs registered. Aside from direct municipal participation, they involve friendly businesses and non-governmental organizations (which are sometimes the classical type of PONGO or GONGO). In this way mayors secure their total control over the membership of the managing board and its decisions.

Governance risks associated with the quasi-NGOs arise from two main factors:

- The lack of clear regulation by the Ministry of Agriculture and Foods over the procedures concerning the establishment of these NGOs and the lack of mechanisms to monitor compliance.
- The *Prevention and Disclosure of Conflicts of Interest Act* does not apply to the operation of LIGs.

The governance risks in GONGOs are increasingly acknowledged internationally. In a recent decision³¹ by the UK government 192 GONGOs will be scrapped and 289 others will be merged or substantially reformed in the long-awaited “bonfire of quasi NGOs”.

³⁰ For more details about the initiative and the accompanying difficulties and risks see: Koleva, Y. and A. Dimitrov. *Dalgiyat pat na evropeiskite pari kam balgarskoto selo*. Dnevnik Online, 14.07.2010.

³¹ Gordon, Gavin. *192 GONGOs to be scrapped*, The Independent, October 14, 2010.

The trends described above mark the main risks related to the **capture of NGOs by government authorities**. Somewhat paradoxically, these have been taking place through the funding instruments of the European Commission. It is worth remembering, however, that **the Commission did not pay timely and adequate attention to the early signals of corrupt practices** in the state appropriation of funds designated for civil society. Clientelism and corruption in the third sector were disclosed to the public in 2005 when the Bulgarian Chapter of Transparency International accused officers at the Delegation of the European Commission in Bulgaria and the Ministry of Finance of manipulating the evaluation of proposals to the Phare Democracy program; suspicions of corruption have not yet been disproved.³² Later, other Bulgarian NGOs alerted national and European institutions on other cases within then existing EU funding instruments and mechanisms with significant corruption risks.

Box 4. Corruption risks within the EU funding instruments and mechanisms

Being the guardian of the EU Treaties and the key institution in the enforcement of the standards of the Union requires a high degree of transparency and accountability by the European Commission. By implication, this applies to its Delegations and Representations in member and candidate countries, in particular in instances where these are instrumental in monitoring the compliance with EU's good governance standards. To this end, it is important that the image of these institutions is impeccable.

Still, there is a concern among Bulgarian civil society that the EC Delegation/Representation in Sofia might have failed in a number of occasions to achieve the standards of transparency it advises Bulgarian institutions should live up to.

Unresolved corruption allegations. In 2005, the Chairman of Transparency International – Bulgaria accused the officer in charge of civil society at the EU Delegation, of corruption and clientelism in relation to the management of the Phare Civil Society Program. Documents disclosed by the media showed how expert evaluations of project proposals had been manipulated to ensure the awarding of the contract to the “right” candidate. This case provided strong evidence that the grants to the civil society organizations in Bulgaria might have not been allocated through a competitive bidding but seemed rather a result of a compromise between decision-makers in the EU Delegation and in the Bulgarian Ministry of Finance, each of them defending their own clientele.

As a result of the public scandal ACCESS Foundation, a leading Bulgarian anti-corruption outfit, surveyed 250 Bulgarian civil society organizations who had been awarded Phare grants. One third of the respondents admitted that the selection procedures under the Phare Civil Society Program “lacked any transparency”. Despite these allegations, no action to clean the image of the Delegation had been taken thus far.

³² The only reaction of the European Commission to the issue was contained in the regular monitoring reports and the letter of Ms. Catherine Day concerning a draft for the amendment of the conflict of interests law.

Box 4. Corruption risks within the EU funding instruments and mechanisms (Continuation)

Lack of adequate oversight mechanisms. A serious deficiency – favorable for corruption – of many programs funded by the EU in Bulgaria was the lack of adequate oversight. On the one hand, according to the applicable EU rules and procedures if the contracting authority was a national institution any appeal for errors or irregularities was subject to the beneficiary country’s national legislation. On the other hand, the relevant Bulgarian legislation and related case law excluded any funding from international organizations, including the EU, from any domestic supervision, including judicial control.

Conflict of interest risks. In the second half of 2006, the European Commission’s Directorate-General for Enlargement carried out an Extended Decentralised Implementation System audit of the of procedures and structures related to the implementation of all the National Programs in Bulgaria. Subject to audit were the Implementing Agencies for the EU assistance programs.

Among the initial findings of the auditors was a potential conflict of interest in the appointment of the Head of the Financial Unit of the Central Finance and Contracts Unit (CFCU) at the Ministry of Finance. Apparently, a former employee of a Greek consultancy firm was appointed Head of Unit of the CFCU three weeks after leaving the firm. This happened at a time of evaluation of a tender in which the consultancy was among the bidders. Two months after this appointment, the consultancy – Planet SA – was awarded the contract.

In a letter (dated November 30, 2006, the date of award of the contract) quoted in the auditors’ report³³ the Delegation of the European Commission denies the existence of any conflict of interest in this case, contrary to the findings of the Commission’s auditors. Particularly worrying in this case is that even EU institutions (in this case the then Delegation of the European Commission), which the public expects to be the guardian of the integrity of the spending of EU funds in Bulgaria, failed to act.

Continued EU funding for NGOs through the mediation of the government increases the risks of corruption.³⁴ A partial solution could be found in the fact that during the next programming period (2013 – 2020) the European Commission will also work directly with authorities in the planning regions and less through central governments. Still, this will not change the ways of financing NGOs. Direct funding for NGOs from Brussels is very limited and does not distinguish between GONGO/PONGO and truly non-governmental organizations. Furthermore, the bilateral donors of the 1990s and early 2000s, both American and European, did not allow remuneration to be received by public officials from the projects they funded; such restrictions no longer apply.

Source: Anti-Corruption Reforms in Bulgaria: Key Results and Risks, 2007, Center for the Study of Democracy

³³ *Final Audit Report on the Request by the Republic of Bulgaria for the Conferral of Management of Aid Under Extended Decentralisation*, Brussels, 19 January 2007, p. 50.

³⁴ *Anti-Corruption Reforms in Bulgaria: Key Results and Risks*, Center for the Study of Democracy, Sofia, 2007, pp. 62-63.

2.4. THE BUSINESS OF NON-PROFITS

Business is not an altogether alien concept for Bulgarian NGOs. In fact, it is decreasingly so. Understanding why and how they opt for profit would help chart their future development.

The Bulgarian NGO law allows **commercial activities by the third sector** but only if these are related to their declared main area of activity and the proceeds finance the accomplishment of the non-profit objectives. Neither the law, nor the NGO Registry regulations, however, specifies any compliance monitoring procedures. Thus, some NGOs take advantage of their legal status and use it to engage in for-profit activities competing with businesses.

Three categories of NGOs could be differentiated according to their business methods. The first group is comprised of organizations that **do not engage directly in commerce** and rely entirely on grants, membership fees, and donations. For instance, organizations which have judges on their managing boards are obliged by law to be in this category. Such NGOs could wholly own a commercial company whose profit is used exclusively for the non-commercial activities of the NGO. Other NGOs, conduct business mainly for **securing the co-financing required by donors** or report grants from business as commercial revenue. The share of the for-profit activities in the total turnover is below the average for NGOs in the country. NGOs in the third category operate almost as a typical business with commercial revenue reaching up to 100 percent of their income.

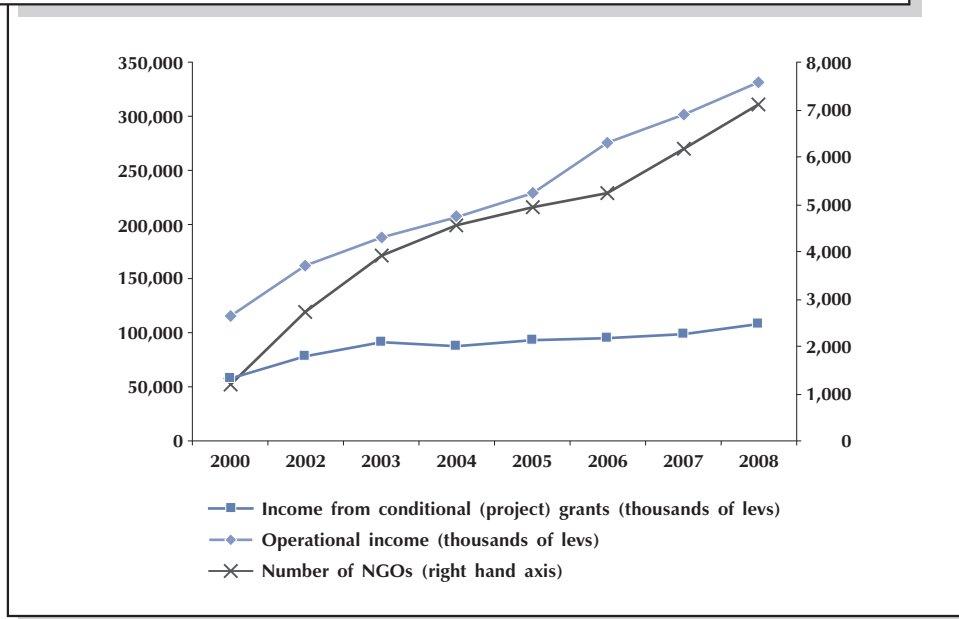
NGOs possess a considerable expertise that could be used in for-profit work. Between 2001 and 2008 the third sector (excluding *chitalishte*) had approximately 13,700 employees (in full-time equivalent employment-FTE) and 14,300 service contracts with individuals. Larger NGOs (with more than 15 – 20 full-time employees)³⁵ prefer to use this human resource for the institutional development of the non-profit operation and have their own commercial companies where experts are involved via consultancy contracts. Some mid-sized NGOs (which are usually the largest organizations outside Sofia) perform their supplementary commercial activities by maintaining separate accounting for commercial and not-for-profit activities. In the case of the smallest NGOs, their for-profit work is usually performed by board members or staff in individual capacity.

For the period 2000 – 2008, the commercial turnover of NGOs increased almost twelve times and the share of business income in their overall revenue grew from 9 percent to 36 percent. This growth was accomplished in the context of a continuous decrease of project grants from 50 percent of the total turnover in 2000 to 32 percent in 2008; total NGO **turnover increased almost three times** for the same period. For the first time in 2008, income from project grants was less than commercial revenue. Although data for 2009 will not be available any time soon, it could be assumed that this trend will remain. There would have been nothing inappropriate in greater income from business, had this been accompanied by increased accountabil-

³⁵ Raymond Struyk places a similar limit of 10 researchers, employed full time, for think tanks in their second phase of development in *Managing Think Tanks: Practical Guidance for Maturing Organizations*, The Urban Institute and LGI / OSI, Budapest, 2002.

ity of its spending, better transparency of the activities, and if the managing boards of these organizations were not dominated by senior public officials.

Figure 4. Dynamics of NGOs and their income (2000 – 2008)



Source: National Statistical Institute, 2001 – 2010

An indication of how the institutions of the state decided to deal with growing NGO business could be found in the 2008 amendments to the *Municipal Property Act*. By way of these, municipalities were allowed to **conduct business through non-profit institutions**. Though it may be suggested that the legislature sought to better regulate these activities, in fact the law did not provide for **any oversight mechanism** of the operation of commercial companies in which the municipalities would participate indirectly through NGOs (and to which they grant municipal property, usually buildings). There are a number of cases where a mayor bypasses the restrictions for sitting on commercial boards by becoming the manager of an NGO which in turn runs the business. NGOs could also be used to bypass various requirements of the *Public Procurement Act* and could even facilitate privatization of municipal property by stealth.

Another indicator of the changed place of non-profit organizations is their profit margin. In 2008, it was 35% – well above the average for the economy. A possible explanation would be that some of the costs of the organization are charged to project grants.

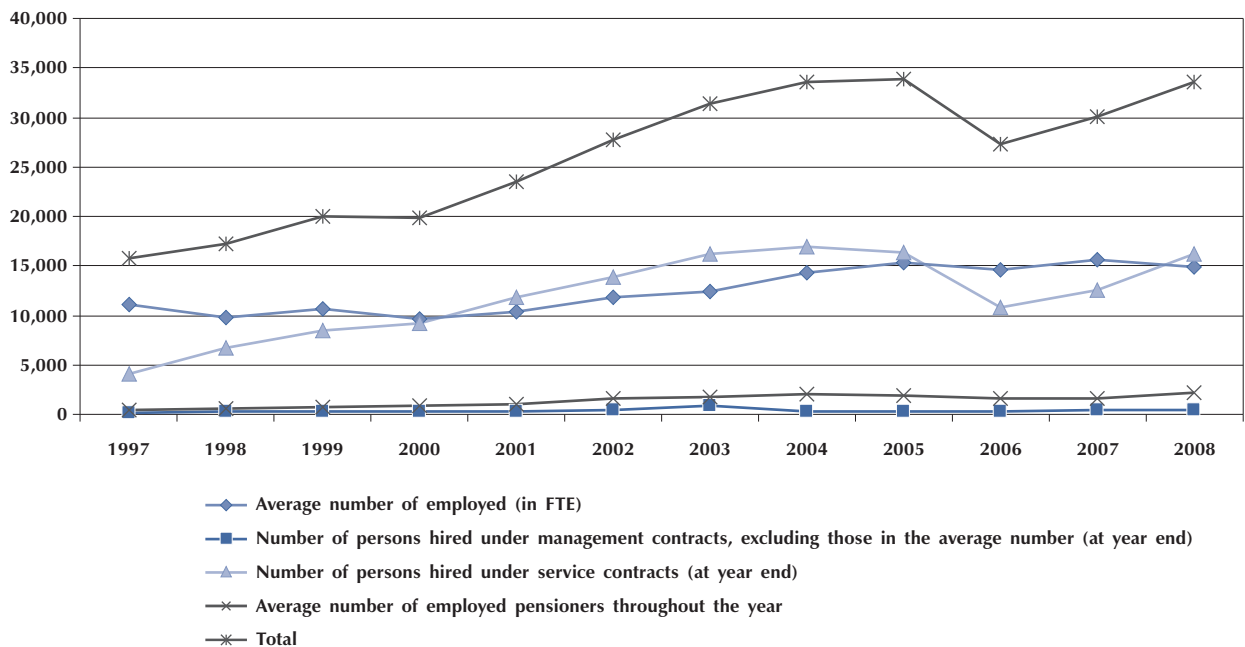
Another way of looking at this business is to compare commercial revenue to corporate donations to NGOs. In 2006, profit constituted a fifth of the unconditional grants (donations); in 2008, it amounted to 70 percent. This implies that non-profit organizations are better motivated and equipped to undertake commercial work than rely on donations. Also, as mentioned in 1.3., often corporate donations

come as advertisement contracts related to a certain event or activity of the NGO. This not only increases the share of profit in revenue but also its margin, because of the requirement for separate accounting of non-profit and commercial activities, where the former is financed by the profits from the latter.

The average turnover of a non-profit organization in Bulgaria is around €25,000 for 2007 and 2008. At the same time, only about 10% of all non-profit organizations are registered for VAT purposes (threshold for compulsory registration is 50,000 levs – a little over €25,000). There were 787 registrations as of August 2009 and 836 as of June 2010.³⁶ These numbers include non-profit organizations with turnover for the period below the threshold which still had to register or organizations for which the restrictive period after cancelled registration had not expired. Organizations with a turnover exceeding the threshold but no for-profit activities are not included. These statistics reveal that most NGOs are very small, both in terms of turnover and employment (the average employment in NGOs in Bulgaria is 2-3 full-time employees and additional 2-3 hired through ad hoc contracts).

Another effect of these developments is an increase of what is in effect a market concentration in the sector proceeding along two lines. On the one hand, it is related to **the size of the turnover**. If in 2000, an annual turnover of half a million

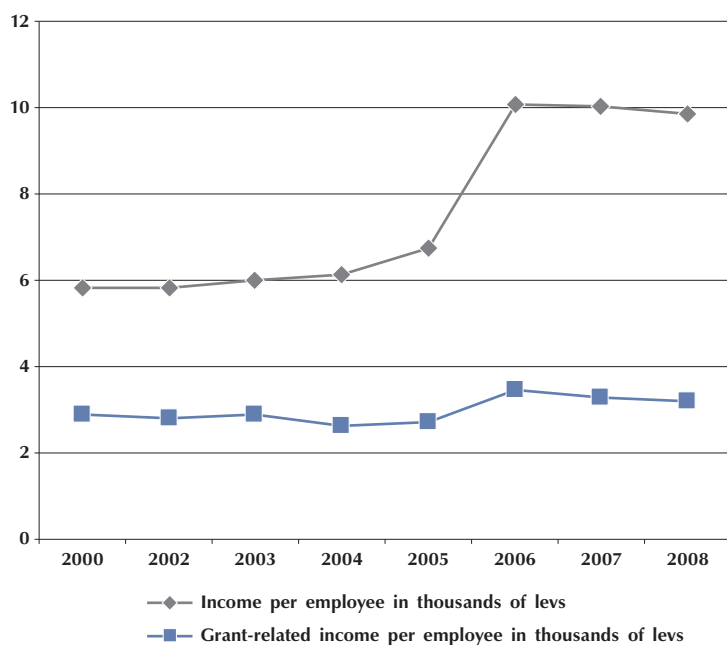
Figure 5. Employment in the third sector



Source: National Statistical Institute

³⁶ Based on the National Revenue Agency bulletin about VAT registrations and additional calculations by the authors.

Figure 6. Output of the third sector



Source: National Statistical Institute

euro rendered a certain non-profit organization a leader in the sector, nowadays this could be the worth of a single project or procurement contract. Approximately 10 percent of non-profit organizations in Bulgaria account for over 70 percent of the turnover in the sector. Contracts for 3 – 5 million euro are not uncommon in both structural fund programs (and not only for targeted funding of employers’ organizations but also for standard projects) and in public procurement.

Such contracts raised reasonable doubts about their appropriateness. For example, contracts between the State Agency for Information Technologies and Communications and two non-governmental organizations concerning earthquakes and floods were awarded without a procurement procedure by being classified as R&D which is exempt from tendering by the *Public Procurement Act*.

The second concentration is related to management control over organizations and the sector in general. The number of non-profit organizations increased six fold for the period 2000 to 2008, while for the same period the average number of employees increased by only 55%; the number of those with management contracts rose by 31 percent and experts with service contracts were 76% more.

Such a discrepancy could be due to several factors. One is **increased productivity in the sector.** Total productivity (as measured by income per employee) increased by 50 percent in 2006 and remained rather stable at this level. However, productivity as related to project grants remains practically at its level of 2000. This could be explained by better efficiency of for-profit work compared to non-profit.

Another more likely and significant contributing factor is that many of the newly emerged non-profit organizations are merely **new covers** for individuals that are already part of the third sector. The practice in the business sector where a single enterprise is served by several legal entities has already spread to NGOs. Even when it comes to brand new PONGOs, the administrator-entrepreneurs do not confine themselves to just one organization but create a whole portfolio of them. NGOs established and developed at the beginning of the transition (1990-1995) are also interlinked through exchanges of membership in the general assemblies and even in managing boards.

The two types of NGO concentration reinforce each other since the biggest non-profit organizations in terms of turnover (10 percent of all) are also the ones with the highest rate of interconnectedness through the participation of the same individuals in the management of several organizations. Often experts work on projects for a number of different NGOs thus possibly inflating the employment statistics in the third sector (a total of 33,647 at the end of 2008).

Another risk related to non-profits getting involved in business is the evident reluctance of many NGOs to hire independent financial auditors (only a handful are audited by external auditors). There are no publicly accessible reports that would allow watchdogs to monitor whether a certain non-profit organization conducts business, what are the balance sheet results and review how profits are used for the achievement of the non-profit goals. Such reports could, for example, allow courts to enforce the provision banning judges from being members of the managing board of a non-profit entities conducting business.

There are other risks stemming from the penetration of serious **organized crime in civil society**, mainly at a local level. It started in the period 1990-2000 when organized crime started penetrating the non-profit sector through sport clubs and lobby organizations established to promote their business interests. A recent development is that some of these organizations present themselves as think tanks. The associated risks include allowing shadowy figures to obtain public legitimacy, turning these NGOs into a tool for money laundering or the appropriation of European funds for illegitimate use. The same risks derive from the **entry of non-profit organizations close to the Russian oligarchs** and from the non-transparent financing (e.g. under OPAC) of NGOs in municipalities of particular interest to the oligarchs.

3. POLICY RECOMMENDATIONS

During the last two decades, various concepts and visions for the role of the civil society have been elaborated and put into practice. According to some, civil society organizations are to be the **watchdogs of the democratic process**, while others see them as **levers of the government of the day**.³⁷

Bulgarian NGOs have grown in numbers, turnover, fields of competence, international outreach and influence; so have, correspondingly, the public expectations towards them. This paper outlined a number of consequences of this growth, and in particular its risks. Enhanced opportunities for the sector created new and spotlighted some old weaknesses and risks.

To minimize these, heightened standards for good governance, a supportive but also demanding legal framework and improved cooperation with central and local government are needed. As a result of the analysis, as well as numerous interviews and discussions with NGO representatives, several groups of recommendations to various stakeholders should be considered.

Above all, a **national policy for the development of civil society** is required making **partnership between the institutions of the state and NGOs a priority**. It should establish a new balance of their rights and responsibilities and ensure a sustainable funding environment.

3.1. REFORM OF THE INCORPORATION AND REGISTRATION PROCESS

For 15 years now, the Center for the Study of Democracy has been supporting a **comprehensive reform of the registration of legal entities** in Bulgaria³⁸ which still needs to be completed. Among the unfinished items on the agenda is the update of the *Strategy for the Establishment of Central Registry of Legal Persons and Electronic Registries Center in Bulgaria*, taking into account the administrative reforms under the *Electronic Government Act* and the *E-Government Strategy for 2010-2015*. Effective electronic government in the country has two prerequisites. In the short term, the **operational compatibility and integration of existing registries**, of which there are estimated to be around 70 in the central and over 500 in the

³⁷ As believed by some party leaders of the 2005-2009 government.

³⁸ CSD's work on this issue started with the development of *the Law for the Registered Pledges* in 1995-96. Later, in two publications titled *Reforming Judiciary in Bulgaria: Towards the Introduction of Modern Registration System*, CSD 2002, and *Opportunities for Establishment of Central Registry of Legal Persons and Electronic Registries Center in Bulgaria*, CSD 2003, and a number of public events. The Center has facilitated the overall dialogue in this area and helped the drafting of the *Strategy for the Establishment of Central Registry of Legal Persons and Electronic Registries Centre in Bulgaria*.

local authorities, needs to be ensured. Longer term, a **consolidated electronic registry center** should be operational.

Currently, NGOs are incorporated as legal entities by way of decisions of the local court. The contrast with businesses, which are simply registered, implies that associations of citizens are somehow inherently riskier undertakings in need of judicial permission and also burdens the courts with non-judicial work. Difficulties also arise from the differing practices of the various local courts (even within the same court).

NGO incorporation should be **transformed from a judicial to an administrative procedure** provided by the **Registry Agency** which currently manages the registration of commercial companies. The Registry Agency would thus need to assume the functions of the current NGO Registry which registers public benefit NGOs (the merge should be straightforward as both are overseen by the Ministry of Justice). By making initial incorporation/registration, as well as subsequent governance amendments (to statutes, managing boards, etc), easier such a change would also facilitate **electronic registration and re-registration**, which is currently not possible. Registration **fees would be reduced** which would be of great importance to many small non-profit legal entities. The transition should not be overwhelming for the Registry Agency, as there are no more than 8,000 active NGOs (according to reports by the National Statistical Institute).

If the proposal for migrating NGO registrations to the Registry Agency is accepted, then all non-profit legal entities would submit their reports to the Agency. This would necessitate an amendment to the *Accountancy Act* which currently instructs public benefit non-profits to report to the NGO Registry.

Should the merge of the NGO Registry into the commercial Registry Agency be further delayed, it would be **necessary to reorganize the NGO Registry allowing for electronic registration and requiring private benefit NGOs to register as well**. This would ensure operational compatibility with the Commercial Registry and effective oversight over concentrations, compliance with bans on the participation by officials in private entities, etc. For years, the website of the NGO Registry has failed to provide access to documents submitted by non-profit legal entities. It remains unclear whether certain discrepancies (e. g., changes in the managing board of an organization which have not been recorded in the registry) of the information are caused by the NGOs or by those responsible for updating the files. Furthermore, hard copies of the documents are difficult to access for people outside the capital where the Registry is located.

Such an overall registry reform would:

- enhance **transparency**;
- **reduce transaction costs** for businesses and NGOs;
- enable a new type of **civic control and self-regulation** through the so called **crowdsourcing**.³⁹

³⁹ The outsourcing of tasks, traditionally performed by an employee or contractor, to a large group of people or community (a crowd), through an open call.

- aid more **effective risk assessment** and administrative oversight;
- create incentives and **facilitate the work of municipalities** which are required to register their participation and representation in the managing boards of non-profit legal entities, but fail to do so;
- allow easy **verification of compliance** of public officials with regulations about participation in private legal entities, etc.

3.2. RECONSIDERING PUBLIC VS PRIVATE BENEFIT STATUS

More transparency for private benefit NGOs

Although they are few (only 3% of all NGOs), **there are practically no regulations for the operation of private benefit NGOs**. They are not required to keep their activities transparent, are not bound to make their financial reports public, or to publish an annual report of their activities, even though they are eligible to receive (and do receive) public funding. Given their current nontransparency this should be disallowed, unless **requirements for them are made at least equal to those for limited liability companies**.

There is also the issue with the associations for joint management of rights which are a specific type of private benefit NGO. The Ministry of Culture is responsible for keeping a registry of these organizations, yet all it contains is a list of names, dates, registration numbers, office address, and representatives. Given that there is a legitimate public interest in their output, they should be **subject to the requirements for transparency and accountability as applied to public benefit NGOs**.

Monitor public benefit NGOs

Making registration easier should be accompanied by stricter and more detailed oversight mechanism over public benefit NGOs. Such a mechanism would **guarantee both effective control and non-interference in the activities of civil society organizations**, especially organizations critical of the government. Ideally, the Ministry of Justice would be required to **develop and implement a risk assessment procedure** as the basis for exercising control.

The status of non-profit legal entities once incorporated by the court as acting in the public interest but later for various reasons de-listed from the NGO Registry remains unclear. This would be solved by making incorporation an administrative procedure of a single registration.

There are inconsistencies in the regulation of *chitalishte*, the work of which is of considerable public interest, that should be overcome. **The transparency requirements for them should be made to correspond to their status as recipients of subsidies from central and local government**.

3.3. OVERSIGHT OF NGO PROFIT MAKING

There is currently no way to monitor whether NGOs are not used by public officials to bypass proscriptions to conduct business, whether and how the separate profit and non-profit accounting is maintained and whether profits are used by NGOs for their non-profits aims. There are numerous cases of non-profit legal entities that are largely or exclusively involved in commercial activities and bypass proscriptions for officials such as mayors or judges on holding interests in commercial companies.

One of the most transparent ways for a non-profit institution to conduct commercial activities is to **separate for-profit work in a wholly owned commercial company**, but this entails substantial costs which cannot be afforded by many of the smaller NGOs. However many NGOs which have the capacity to bid in tenders for consultancy in Bulgaria and abroad have incorporated subsidiary companies for consultancy services. The European Commission often funds typical NGO work through service contracts, rather than grants. Non-profit institutions could, therefore, be **required to separate profit operations into a wholly owned business when commercial turnover exceeds a certain amount (e.g. 500,000 levs)**. Such a measure would not affect most of the organizations, as only 836 non-profit legal entities were registered under VAT as of June 2010 (VAT registration is compulsory for a turnover of commercial activities exceeding 50,000 levs).

3.4. REVIEWING LOCAL GOVERNMENT INTERESTS IN NGOS

The participation of municipalities in non-profit institutions should be reconsidered. Although the applicable law (*Municipal Property Act*) **stipulates that there should be a uniform approach in the local regulations** of the terms and conditions of exercising the property rights of municipalities in commercial enterprises and their participation in NGOs (only associations are mentioned in the law), local legislative acts either do not regulate these matters at all or just repeat the provisions of the law.

The first necessary step is, therefore, to **adopt a common regulation for municipal participation in non-profits and in commercial companies**. The regulations should allow the prevention and disclosure of conflicts of interests concerning other founding members of the non-profit legal entities.

As a follow up, it is necessary to establish and maintain a **public registry of municipal participation in non-profit legal entities**, as stipulated by the *Municipal Property Act*. The number of municipalities that have such a registry is negligibly small.

Third, **every municipality should audit and disclose to the public its interests in NGOs**. Sometimes NGOs with municipal involvement set up, alone or jointly with other legal entities, commercial enterprises. It is difficult to control the activities of the latter and there are preconditions for the abuse of municipal interests, as there is no control over municipal representation in general assemblies and managing boards. In addition, poor management of the archives in the mid 1990s

when some associations with municipal participation were established, eases the process of capture of such organizations.

Fourth, **each municipality should adopt clear criteria and transparent procedures for entering into partnerships with non-profit legal entities**, such as for proposal drafting and project implementation. All the relevant information about these should be publicly available on the websites of the municipalities.

3.5. ENFORCING NGO GOVERNANCE STANDARDS

To improve the legal framework for governance of non-profit legal entities, it is necessary **to ensure better transparency of the membership in general assemblies of associations**. This will, in turn, lead to the disclosure of controlling interests in the sector, where often serial non-profit entrepreneurs set up a number of seemingly different organizations thus effectively producing sectoral concentrations.

It is the composition of general assemblies that can allow an insight into the nature of a given NGO. Although non-profits are expected to be also non-governmental, many are controlled by public bodies (e.g., ministries, municipalities, state and municipal companies) either directly or through members of political cabinets. Currently, as local courts maintain the files on NGOs, it is virtually impossible to register information for every single general assembly meeting. What is needed is a registration of founding members and submission of attendance lists of general assembly meetings. Such a requirement should not necessarily apply to all but only to public benefit, or some other kind of “enhanced transparency” NGOs which are allowed to receive public funding.

Second, **an overall legal framework is needed for the creation, governance and dissolution of non-profit legal entities where public bodies, including those established through a special law, have an interest**. This issue is only partially addressed at the local level by the *Municipal Property Act*; the *State Property Act* does not include a corresponding regulation for the participation of ministries, agencies, and state enterprises. Currently, there is no information about state representatives’ participation in non-profit legal entities. As a result, there are numerous examples of bad governance of non-profit legal entities initiated by state bodies and enterprises. **Amendments should be made to the *State Property Act* to introduce provisions at least as strict as those for municipalities**. An analysis and change of similar regulations applying to the interests of other public organizations (such as the Bulgarian Academy of Sciences, universities, etc.) in non-profit legal entities is needed.

Although, senior public officials are barred from holding management positions in NGOs, mayors and their deputies are still allowed to do so. Besides, the requirement for disclosing conflict of interests concerns only participation in managing and controlling bodies of NGOs but not participation in general assemblies. There are several possible ways for improvement of the current regulations:

- Conflict of interests legislation could be changed so that mayors of the various types of local government structures are treated in the same way as other

bodies of the executive. This could be achieved either by **banning mayors from being members of general assemblies** of non-profit legal entities, or by **removing the ban for everyone**.

- Another approach is to modify the **proscription for membership in the managing boards of non-profit legal entities having for-profit operations** (as it is done for judges). To make that ban effective strict control must be exercised over the activities of non-profit legal entities where officials of this category sit on the management bodies. Conflict of interests commissions or inspectorates could request the Ministry of Justice to carry out inspections in accordance with the ongoing control stipulated by the law.

The introduction of **compulsory disclosure of interest in non-profit legal entities** in the declarations required by the *Prevention and Disclosure of Conflicts of Interests Act*. Membership in NGOs could be regarded as similar to owning shares in businesses. This should be introduced especially if restrictions on the participation in managing and controlling bodies of non-profit legal entities are abolished.

Currently, there are no consequences envisaged for NGOs for not complying with the NGO law. The law should be amended to provide for various types of **penalty payments in cases where NGOs or their members violate the law**.

Many attempts have been made at establishing a mechanism of **self-regulation in the third sector**. A recent example are the Good Governance Standards developed by the Workshop for Civic Initiatives (see more in Appendix I). Non-profit legal entities need to be more active in the process of self-regulation and implementation of good governance principles. This could be done by joining existing platforms with mechanisms for verification and by adhering to good governance principles.

3.6. BULGARIAN NGOs IN INTERNATIONAL DEVELOPMENT ASSISTANCE

By acceding to the EU, Bulgaria undertook commitments for participating in the **international development assistance provided by the Union**. Under these commitments the contribution of the country should reach 0.33% of the gross national income (GNI) by 2015 (EU average goal being 0.7 percent by that year). The necessary laws and regulations for this to take place have been drafted in the framework of projects by the Center for Comparative Studies and the BG Chance Foundation but have not been adopted yet. These should urgently be endorsed to allow the technical capacity for assistance to be put in place.

Bulgarian NGOs have a considerable experience in working with international development partners, in countries where assistance would be provided with priority and in the crucial thematic fields of development. Thus, Bulgaria's international development assistance would be provided effectively through a **partnership between the government and civil society organization with development experience**. Some of the new EU member states, such as Poland and the Czech Republic, have already started to use NGOs for the achievement of their national contribution to international development assistance.

Public-private partnerships in development assistance should be established through a transparent procedure in order to **avoid the negative experience with the Operational Program Administrative Capacity (OPAC)** where projects were largely assigned to organizations lacking experience. Moreover, the managing boards of these organizations were dominated by representatives of various local and central authorities and local party leaders.

As the experience of other countries providing international assistance shows, Bulgarian development aid could very well come across **NGO capture in the recipient countries**. This is why it is of great importance to provide **good governance mechanisms** for the management of assistance programs.

CONCLUSION

The emergence of today's non-governmental organizations is **part of the evolution of civil society** in a democratic environment. In Bulgaria, the development of NGOs was a reflection of the social and political changes and prevalent attitudes during the past two decades. The outcomes of the institutionalization of the third sector are thus rather ambiguous and a testimony to both the great potential of civic activism, and the existing challenges and risks for this sector.

The most serious threat to the third sector is the process of NGO capture that is fueled by two factors. On one hand, there is increasing pressure from senior public officials to undermine the civic nature of NGOs, subvert their watchdog function and bring them to work for political party objectives. On the other, NGO leaders are often the ones who initiate corrupt practices that ensure them preferential treatment in receiving government or EU financing.

Quasi civic institutions, which became known abroad as PONGO (politically owned NGOs) and GONGO (government owned NGOs), gained popularity as new forms of NGO capture by central and local authorities. A particular Bulgarian case of capture are the so-called local initiative groups (LIG) developed within the EU LEADER initiative for the development of rural areas. LIGs include representatives of at least two municipalities, local business enterprises, and (other) non-profit organizations but do not comply with current standards for transparency and accountability expected from this type of organizations.

Politicians and senior civil servants are penetrating the nominally independent third sector by establishing a large number of non-profit organizations for the purpose of **absorbing the EU structural funds**. The result is a circle of NGOs which lack international experience and domestic expertise yet receive a major share of the financial resources for the sector.

The paradox is that **these unfavorable developments took place through the use of the funding instruments of the European Commission** despite the priority which Brussels made of combating corruption and organized crime in Bulgaria. This was not helped by the unfortunately little attention paid by both local Commission officials and their superiors to the early signals of corrupt practices in the dispensation of public funds to NGOs. Moreover, what allows PONGO and GONGO type of NGOs to flourish even as Bulgaria is a EU member is that Commission-funded NGO projects have no provisions against payments to government officials, something which was never allowed prior to membership by the foreign donors that operated in the country.

The civic and non-profit nature of the third sector is being further compromised by the increasing involvement of NGOs in business. During the past several years the volume of commercial activities performed by NGOs has increased threefold.

For the first time in 2008, income from grant financing, which has been the usual way of funding an NGO, was smaller than the income from business. This trend will likely remain in the future. The shift has been largely driven by the policy of **allowing municipalities to engage in business through non-profit** entities. Such business attracts various shadowy interests as the third sector is still a twilight zone in terms of governance – many NGO managers are still reluctant to hire an independent financial auditor; annual reports, including on the spending of profit on the non-profit objectives of the institution (as required by the law), are not available or easily accessible to the public.

An extreme case of infiltration of the NGO sector is the penetration of serious **organized crime representatives in civil society** mainly at the local level. Such a process started through captured sports clubs and was followed by lobbying organizations and even pseudo think tanks. These NGOs are turned into a tool for money laundering or the appropriation of European funds for illegitimate uses. The same risks are related to the invasion of non-profit organizations related to the Russian oligarchs.

The continuing **sympiosis** between the authorities and the business sector, as well as between the public officials and non-governmental organizations result in compromising the autonomy, integrity and institutional development of the third sector. This encroaching may have been intended as tacit by its initiators but civil society is reacting to it through a wave of new civic activism which to some extent makes up for losses in the public profile of the sector. New initiatives target corruption as well as bad governance at the local and national level, as such corrupt practices harm civic rights and interests. As a result, at the beginning of the 21st century, civil society once again has the opportunity to identify itself with worthy causes and to replenish its sources of legitimacy.

Above all, a **national policy for the development of civil society** is required making the **partnership between the institutions of the state and NGOs a priority**. It should establish a new balance of their rights and responsibilities and ensure a sustainable funding environment. NGOs and government should work towards these objectives jointly but each should also assume their share of responsibilities.

The Center for the Study of Democracy recommends that **non-governmental organizations are made part of the ongoing reform of the registration of legal entities** as a way of ensuring transparency, reducing transaction costs in the economy, and providing a new type of public oversight as well as self-regulation.

A whole set of measures is to be urgently adopted aiming to improve the **legal and regulatory framework** by reducing bureaucratic barriers, achieving higher efficiency, and expanding transparency. These measures should include: making the incorporation of NGOs an administrative procedure rather than a judicial process, allowing also for online registration as is the case with commercial companies; reviewing the rights and responsibilities of public benefit and private benefit NGOs; better regulation of governmental oversight of the sector while ensuring non-interference of controlling bodies in the work of NGOs; banning the participation of mayors and their deputies in the management NGOs; compulsory reporting of membership in non-profit legal entities.

The package of recommendations to **local authorities** includes the adoption of a uniform regulation of their interests in NGOs and businesses, the maintenance of public registries of municipal participation in non-profits, regular auditing of these interests, and the adoption of transparent and clear criteria procedures for the partnerships between local authorities and the third sector.

Last but not least, the NGO sector needs more transparency and public accountability. It needs to adopt good governance standards covering issues such as organizational structure, financing, etc.

APPENDIX I. NGO GOOD GOVERNANCE STANDARDS

In the fall of 2010, a group of Bulgarian NGOs adopted a charter for good governance of NGOs:⁴⁰

Organizations which are registered under the Non-Profit Legal Entities Act and which signed these standards declare that:

- *They support, stand for, and promote civil society values; they are tolerant of differences and would not accept any form of discrimination; they encourage the active participation of civil society in the public, political, and economic life in Bulgaria;*
- *They respect the rule of law and comply with Bulgarian legislation;*
- *The activities of the organization would facilitate the accomplishment of its mission;*
- *They comply with the requirements of their Statutes and of their other internal documents and regulations;*
- *They respect human rights and freedoms, including the freedom of religious affiliation, and stand against any attempt to use the legal framework of non-governmental organizations as an instrument for promoting the influence of destructive, manipulative, and totalitarian cults and sects;*
- *They work for strengthening the role of the non-governmental sector within Bulgarian society, as a politically neutral defender and a representative of the public interest, an equal and responsible partner of the state, the local authorities, business, and the media;*
- *They do not pursue and do not advocate partisan goals, do not finance and do not raise funds on behalf of political parties;*
- *They do not participate in money laundering schemes, corruption practices, financial frauds, and terrorist actions, and pledge to inform the respective institutions about any attempts/offers to become involved in such activities;*
- *They respect intellectual property rights on the products they use (studies, papers, etc.) and do not publish such materials without permission, or comply with the copyright requirement to quote sources.*

Organizations which signed these standards declare that they will comply with them along with the provisions of their own Statutes.

STANDARDS

Transparency

*1. The organization **updates its website** and provides detailed and correct contact information, as well as information about its team, the managing bodies and their members, its annual financial and program reports, including sources of financing. Organizations, which*

⁴⁰ For further details see <http://www.ngostandarti.net> (in Bulgarian).

finance other persons or organizations, publicly announce the recipients and the respective amounts on their websites and through other appropriate means.

The organization maintains a website with:

- contact information
- information about the team
- information about the managing bodies
- information about the activities of the organization
- annual financial and program reports
- a list of approved projects and financial support provided during the past two years (if the organization is a donor)
- publicly announced information about donors and financing organizations

Organizational structure

2. The rights and responsibilities at all levels within the organization are clearly outlined. The information about the structure of management (statutes, membership of the governing and the managing body) is open to the public. The organization has a clear managing system consisting of at least two levels. The organization holds annually at least two meetings of the managing body and at least one meeting of the governing body.

- Clearly presented structure
- Statutes
- Statutes clearly regulate the mandate of the managing body

Oversight and accountability

3. The organization has a clear system of internal control, including financial control. The organization makes efforts to have persons on its governing and managing bodies in addition to those employed by the organization. Donations are spent in accordance with grant agreements or contracts.

- Legal status certificate to verify the participation of people who are not part of the operational team, governing, or managing bodies;
- Contracts for donations received and expenditures made / contracts for grants given to demonstrate the relevant use of the funding.

4. Fundraising

- Fundraising campaigns should present to the public correct information about the organizations carrying out such campaigns, as well as the designation of the funds.
- Organizations are to announce publicly the amount of money collected through the campaigns, the costs of the campaigns, the spending of the funds, and the results achieved.

Conflict of interests

5. Organizations seek in all their actions to avoid situations of conflicts of interests; general assembly members should abstain from voting on issues of personal interest (e.g., re-elec-

tion or remuneration); general assembly members and employees should disclose any existing or potential situation of possible conflicts of interest;

- Minutes from meetings
- Statements of disclosure of conflicts of interests (incl. possible or existing situations, etc.)

6. In cases where members of the management of the organization, or individuals related to them, are employed by programs financing the organization or by departments of local or central government, the organization would receive no funds from the respective programs or departments.

- Statements of disclosure of employment of members at managing and operational level, as well as people related to them.

APPENDIX II. BULGARIAN CIVIC INITIATIVES

1. CIVIL E-REPRESENTATION PLATFORM

The platform for electronic voting and the nomination of civil representatives to committees and other state institutions in Bulgaria is a successful example of self-regulation in the third sector. Its work and evolution, as well as some operational difficulties, provide a useful experience to be shared with other NGOs.

Civil e-Representation is one of the key services offered by the Bluelink network to its main users – active non-governmental organizations. The network was created in 1998 as a joint initiative of individuals who were actively involved in the work of about ten environmental Bulgarian NGOs. Although there is a natural competition among these NGOs for raising funds and gaining public support, Bluelink was formed at a time when their representatives already had built an atmosphere of mutual trust and collaboration. Trust was not built as much on interpersonal relations, but was rather based on a common cause – protection of the environment. Trust is the traditional factor explaining every social activity – either commercial or non-profit, but in this case it is a prerequisite for the effective collaboration of NGOs and the establishment of common rules and forms of self-regulation.

The founding members of Bluelink were forced to act in very dynamic conditions and work on many issues at the same time, so they actively searched for ways to increase the efficiency of the communication within the group. For them, it was also important to expand their opportunities for communication and influence over important target groups, including other organizations and civil groups, state and municipal institutions, and the media. Last but not least, they needed to continuously increase their social base of supporters and followers. Bluelink was formed with the promise to help them achieve these goals using the internet. An important factor for the development of the network and its emerging forms of self-regulation was its role of a provider of services for active environmental NGOs, being their trusted zone of action and communication.

Even though it might sound straightforward, it was not easy for Bluelink to resist all forms of pressure that would divert it from this role. The most serious among these was the pressure exercised by donors and project financing. Under this type of pressure, the network as well as many other non-governmental structures in the post-socialist period could have lost their original objectives, becoming one of many NGOs existing only to provide regular payments to its employees and founder-members. This threat, however, was overcome by adherence of founders and team-members to civic values and their determination to develop this particular initiative.

Another important principle in the functioning of Bluelink was, and still is, keeping its neutral and impartial position with regards to the vast circle of users of the network. It is resisting the attempts for ideological, operative, and personal influence from its founders. The ability of the network and the people involved in it to maintain its function of a service provider made it an appropriate platform for the implementation of functions of self-governance of NGOs.

The particular occasion for the creation of the Civil e-Representation Platform was the closing of the secretariat of environmental organizations which existed until 2004. One of the secretariat's main functions, apart from organizing annual national conferences, was administration of the procedures of electing representatives of NGOs to committees and bodies of the Ministry of Environment and Water. These procedures were held at the Ministry's request to fill certain positions designated for civil society representatives. The initiation of procedures of this kind was made possible by the conjunction of two determinants:

- The fact that the continuous active work of the group of NGOs gradually turned them into a obvious – though not always welcome – partner of the Ministry of Environment and Water and other government institutions involved in protecting the environment;
- The Ministry of Environment and Water proved to be one of the state institutions most open to the participation of NGOs and the public in spite of the administrative culture of inertia, lack of transparency, penetration of political and business interests, and inherited hostility to civil control. This outstanding position of the institution is due to various factors mainly related to the nature of its objectives, historical evolution, professionalism, and the personal skills of employees at different levels, as well as the active cooperation of the Ministry with international organizations and its participation in a number of international exchanges.

According to Bluelink data, in the middle of 2010 the platform was used by 254 registered organizations and civil groups. These are not only environmental NGOs, but also organizations and agencies operating in the areas of agriculture, regional development, energy, civil society, social development, business, etc. Registered users are also *chitalishte*, clubs of the Open Society Foundation network, chambers of commerce and industry, etc. The platform is an opportunity for institutions to organize transparent and representative (within the range of its registered users) procedure for civil participation in their consultative bodies; provides updated information about the participation of platform-elected representatives in various councils, and gives numerous communication opportunities related to representation.⁴¹ As a result of 49 election campaigns since the establishment of the platform, a total of 102 representatives have been elected. There are 56 institutions registered on and using the platform services for election of NGO representatives. Apart from structures within the Ministry of Environment and Water, these include Ministry of Regional Development and Public Works, Ministry of Agriculture and Food, consultative and hunters' councils, committees for monitoring operational programs funded by the European Union, the Commission for Resolving Controversial Cases and Conflicts in Forestry, etc.

⁴¹ For more details about service provided by the platform see <http://vote.bluelink.net>

The set of rules forming the self-regulation process is available to the public on the internet behind the link “Full text of the mechanism of the procedure for election of NGO representatives”.

After the election procedures were transferred to the internet and the secretariat functions to Bluelink, a requirement was introduced that all participating NGOs submit certain documents to Bluelink:

- a registration of the NGO under the Non-Profit Legal Entities Act (for new participants) or for re-registration, when there is a change of circumstances (for current members);
- a certificate of current legal status updated every 2 years;
- a letter in which the organization expresses its willingness to participate in the procedure of the election of NGO representatives, signed by the official representative of the organization or an authorized person;
- a short description of the organization’s activities related to the protection of nature, the environment and sustainable development (one page).

Every organization is entitled to one vote in elections. An interesting detail is that there is a penalty measure adopted by organizations – an organization’s right to partake in elections could be ignored or rejected if the organization fails to meet the requirements. Participating organizations authorize the secretariat of the platform to control and apply regulations.

This initiative does not yet ensure the level of representation that its participants would like to have and this could be explained by a number of factors. Participation in any kind of self-regulation implies certain transaction costs which many organizations consider not worth making, given the relevancy of the expected benefit in the form of gaining considerable collective or individual reputation, representation (direct or indirect) of their position to government institutions; sometimes organizations simply have different priorities.

Active participants in civic initiatives consider it their right to have their representatives at state institutions and do not view it as a favor by the government. Ever since the establishment of Civil e-Representation, the platform faces continuous doubts among participating NGOs whether it is beneficial or harmful to have their elected representatives in state institutions, according to regulations and positions determined by the government. The dilemma of whether they should or should not participate questions the whole expedience of civil representation in its current form, as well as the related self-regulation mechanisms.

The way state institutions behave often adds fuel to the fire of skepticism with regard to civil representation. There are problems like late announcement of procedures and attitudes that treat civil participation as mere formality. In one case, the Ministry of Environment and Water *de facto* refused access of an elected NGO representative to the Higher Expert Council – the consultative body addressed when an ecological license for investment and other projects is considered. Despite these and other causes of tension, good will is still prevalent and the e-Representation Platform is used by NGOs and by an increasing number of institutions.

There have been times when the desire of a certain organization or individual to win the elections at all cost in many cases brought about tension during procedures when NGOs tried to outwit the system applying different schemes, e.g. registering their branches as separate voting organizations. On occasions an attitude of nihilism, which unfortunately prevails public life in Bulgaria, towards political processes and social values was brought into the network.

In terms of technology, the Civil e-Representation Platform has difficulties responding to continuously changing realities and user demands in the internet. Many of the new users, as well as the very team of Bluelink, find faults in the functioning, interface, and the design of the platform. Still, although there are no elements of social networking that are visually attractive and probably useful, the platform remains an effective and widely used tool for both NGOs and state institutions.

In the light of the experience of the first five years of operation of the e-Representation Platform, it is necessary to rethink some of the current self-regulation mechanisms and introduce new ones. In 2010, Bluelink opened a discussion among NGOs using the platform and included optimization of election mechanisms in the agenda of its annual meeting which was attended by representatives of interested environmental NGOs.

A major conceptual issue which was discussed was the scope of the platform. By definition it is designed to service NGOs – civil society bodies registered under the respective law. Lately, however, a number of civil initiatives emerged in the environmental movement which were not registered as legal entities. The impact of these initiatives over state institutions and processes in some cases exceeded the level achieved by traditional NGOs. Examples include the campaign against the developments in protected territories such as Irakli, nature parks “Strandja” and “Vitoshka”, and the counteraction to introducing GMO products. This put on the agenda the question whether it is right to restrict participation in the e-Representation Platform to registered non-profit legal entities and if it would be necessary to include informal but active civil initiatives.

The platform is a self-regulation mechanism, administered by a civil society entity (Bluelink) and as such could easily be opened to civil initiatives. Although all participants principally agreed that such an opening is necessary, the issue of the legitimacy of participants was an insurmountable obstacle. How can genuine participants in civil processes obtain legitimate status other than by the state and the court? Further complication was caused by the shared understanding that existing state mechanisms are inadequate tools for determining how active or useful NGOs are in pursuing of their mission. This understanding is based on the existence of numerous NGOs which actually behave like quasi-companies and serve only to attract finances and to avoid taxation and other restrictions of commercial activity. So there is the paradox that legally incorporated NGOs which have deviated far from their civil objectives have full access to civil representation, while true civil initiatives are denied such access.

On the basis of long-term experience in self-regulation and community relationships built upon mutual respect and confidence, environmental organizations came

to the conclusion that it is not the state that can best determine the legitimacy of participants in civil society processes but participants themselves. A suggestion was discussed that civil initiatives which have no legal registration can still participate in the election of civil representatives with the approval of the whole environmental community. This is the idea of application of community control over the legitimacy of participants and the functioning of self-regulation mechanisms, inspired and based on the scientifically accepted system of community assessment without the participation of the state. Thus, the environmental community took a new step in their thinking – from self-regulation to self-determination.

A serious weakness in the operation of the election platform was the insufficient use of existing feedback mechanisms and the means for elected representatives to consult the community. Changes to some practical elements of the mechanisms were discussed, including shortening the election periods, introduction of mandates and strict requirements of feedback, and discussions with of elected representatives.

A major issue of discussion was the financial independence of the platform. In the context of continuous risk that the specific financing for Bluelink would cease, platform participants raised the issue of its self-financing. The principle of imposing participation tax was approved but brought about a number of important questions. Avoiding any hint of financial eligibility for participation was a widely shared notion since it would contradict the principle of openness of the platform to all NGOs and civil initiatives. A reasonable solution was found in the possibility of the secretariat to decide upon fee exemption according to criteria set in advance. This would allow organizations or civil groups, which do not have the necessary funds to support the financial independence of the platform, to be able to take part in the procedures by applying for fee exemption.

The experience of the initiative show that self-regulation in the non-governmental sector, as well as in all other sectors of society, is possible when grounded in mutual respect and trust that all participants would abide by the principles and loyalty of the common cause. All participants in a certain self-regulatory process must strictly observe its inherent good manners and spirit of mutual understanding. The temptation to take an advantage of the imperfection of the procedures and apply some other schemes needs to be continuously counteracted.

An organization which services, controls, and applies self-regulation mechanisms in the third sector must be very strict in keeping its position of neutrality and service to the NGOs. At the same time, it should constantly demonstrate a serious attitude toward the process and apply the regulations adopted by its participants.

The successful functioning of the mechanism of self-regulation needs the corresponding body – similar to the NGOs working group – to monitor and control on behalf of the participants the mechanism and the work of the secretariat; the body should be independent of the secretariat and be able to control or change it if necessary.

Being dependent on donors for funding is a serious risk for NGOs, as it might pressure them to adapt their activities to the priorities of donors and turn them

into micro-agencies for project implementation. It could compromise their ability to quickly respond to issues related to their original objectives. The same holds true of organizations that try to ensure and service the self-regulation in the NGO sector – they could cease to exist should donor funding dry up. It is strategically important that processes of self-regulation are not dependent on outside financing. If it still needs to be financed, funds should rather be secured by the very participants in the process.

2. BG-MAMMA.COM: FROM DISCUSSIONS, THROUGH ADVOCACY, TO CHARITY

The creation of Bg-mamma.com was a spontaneous follow up of the “Future Mothers” Club at Dir.bg. The website became the first Bulgarian internet portal entirely dedicated to childcare. Its original purpose was to provide a place for summarizing and organizing the information shared in the club. At the same time, some active participants began to collect, translate into Bulgarian, and post articles related to pregnancy and raising children. All this happened in 2002 and just a few months later a forum was started as part of the website that quickly gained popularity.

As of June 2010, Bg-mamma is the largest portal related to pregnancy and maternity. The forum contains over 30 sub-categories, including various clubs by interests, location, and age of children. There are over 113,000 registered users and more than 2,000,000 discussion topics, some of them being way off the issues of raising children. The forum provides opportunities for professional online consultations with medical doctors, nutritionists, psychologists, lawyers, etc. There is also a virtual representation of Bulgarian branches of organizations such as La Leche League Intl.

Over the years, Bg-Mamma repeatedly won awards for most successful Bulgarian website. Its library is regularly enriched by new additions of original and translated articles. Public interest in the website and the forum attracts users, professionals, and advertisers. Experts in various areas use it to promote their publications and offer consultancy services. Sponsored topical sub-forums are created for the advertisement of specific products/services and related discussions. Ads no longer target solely the consumers of baby goods. Interest in the website increased to the extent that at the end of 2008 Net Entertainment Group acquired the majority share of Bg-Mamma.

The website is much talked and written about because of its influence in the real world. Various cases that were shared and discussed in the forum found their solutions following the public pressure exercised by users. These include fraud attempts, child abuse, anti-social behavior, etc.

Bg-mamma is not just a virtual phenomenon. Its users initiate opportunities for real-life contacts, take an active stand on current affairs, organize protest actions, conduct charity campaigns, and stand up for worthy causes. What unites them is their sense of belonging to a common virtual world. Many informal associations

are based on acquaintances from the forum: informal groups of single parents, of adopted and adopters, of families of children with disabilities or chronic diseases; their objective is to support each other and exchange information.

A number of civil organizations and initiatives, which originated within Bg-mamma, developed over the past few years and became considerable factors for the work of the legislation and the judiciary. These are: Bulgarian Mothers' Movement, Association of Present and Future Mothers, "Full House" Club, and many regional civil associations.

The Bulgarian Mothers' Movement⁴²

It started in 2004 as a single charity initiative to help orphaned and abandoned children. In 2010, the movement already has eight active branches in different towns and a well developed network of volunteers throughout the country and abroad. Every year it organizes charity bazaars, donation campaigns, and celebrations for children in institutions related to holidays and important events in their lives (Christmas, Easter, Children's Day, first day at school, etc.). It offers support to childcare institutions for the provision of specific equipment and specialized personnel – speech therapists, occupational, and physical therapists.

The main objectives of the organization include:

- elaboration of a clear strategy for the reform, structural change, and closing down of orphanage institutions (on June 15, 2009, a working group on the reform including Bulgarian Mothers' Movement was established); measures for increasing the motivation of the employees of childcare institutions;
- speedy adoption of the new *Family Code* stipulating new procedures for child-adoption aimed at shortening the time children spend in institutions (the Code was adopted by the 40th National Assembly during one of its last meetings in June 2009);
- elaboration of an efficient strategy for foster care development and its long-term implementation, including informational campaigns; granting better payment to professional foster parents;
- appointing teams of experts to be employed by maternity hospitals in order to prevent mothers from abandoning their children;
- provision of opportunities for social integration and professional training and orientation for children raised in institutions.

In 2010, the Bulgarian Mothers' Movement became a member of the National Council at the Child Protection State Agency. At the end of 2008, the first stage was completed of the largest project of the Foundation "Protected Home TOGETHER" (www.podslon.org) and the facilities welcomed their first tenants. The facilities were built in the village of Gurmazovo, Bozhurishte municipality, by Architecture-and-Design Agency which is a partner in the project. The project was funded mainly by individual donors and accomplished with the support of the Bozhurishte municipality which provided the site. The first beneficiaries are young men, aged 18-25, who left

⁴² www.dbm.bg-mamma.com

childcare institutions and need to prepare for an adult life. They receive professional training, meet prospective employers, and learn how to take care of a home. It is estimated that young people who just turned 18 and had to leave the respective institutions would need between 3 months and a year to find a job and a home and be able to start a life on their own. The objective of the projects is that orphaned or abandoned children have the opportunity to begin a worthy and fulfilling adult life and be able to take care of themselves and their future families.

Association of Present and Future Mothers⁴³

The Association of Present and Future Mothers is a civil organization originating from the Bg-mamma forum, which unites efforts of parents throughout Bulgaria to establish better conditions for raising children. It is an expression of parents' disapproval of the irrelevant demographic policy and works for the elaboration of recommendations to be submitted to the respective state institutions. Some of the aims pursued are increased investments in day-care centers and playgrounds, improved hygiene and balanced healthy meals in kindergartens, a general improvement of the conditions for raising children, educational reform, prevention of violence amongst children, allocation of child allowances to all children independent of their parents' income, income tax according to family status, etc.

The organization was established in 2006 and took less than six months to sign the necessary contacts with members of parliament, mayors, state and other officials. The first result of the organization's activities was the amendment of the *Social Insurance Code* voted in 2006. It came as yet another demonstration that there is an active civil society in Bulgaria which can partake in the process of decision-making on issues of public importance.

The long-term objectives of the organization include:

- to assist in the process of implementation of a national strategy for overcoming the demographic crisis in Bulgaria;
- to initiate public debate and serve as a mediator between civil society and state institutions on the issues of pregnancy, childbirth, and raising children in Bulgaria;
- to participate in legislative initiatives and suggestions for amendments of current regulations concerning social, health, and educational policies;
- to provide an independent expert assessment of problems related to pregnancy, giving birth, and raising children in Bulgaria.

A typical feature of the organization is its willingness to initiate debates with institutions. It raises issues of public importance and offers specific expert solutions; opens discussions on pressing issues, challenges politicians and institutions, and enables all stakeholders to become a part of these efforts.

The activities of the organization include various social initiatives, festive events for children, participation in round-table discussions with experts and officials, press conferences, public debates, etc.

⁴³ www.snbm.org

The “Full House” Club⁴⁴

Parents of three or more children met in the Bg-mamma forum and soon after that established the “Full House” Club, which later became a part of the Parents Association. Members are united by specific issues of being part of a big family, as well as the desire to raise more than two kids to their best ability. One of the objectives of the club is to make the model of the big family an attractive perspective for young people. Its members take active part in a number of working groups and public councils involved with the issues of child-raising. Suggestions made by the club are included in the National Strategy for Children. Another success is the priority which children from big families have for admission to kindergartens in Sofia. The organization also works on the inclusion of big families in the project for home loans at better conditions, as well as the implementation of a voucher system as a form of support to families in obtaining better education and healthcare for their children.

3. THE AREVIK CASE OR THE LESSONS FROM A CIVIL PROTEST (AS TOLD BY ONE OF THE ORGANIZERS)

The first protest in front of the Specialized Home for Temporary Accommodation of Foreign Citizens in Busmanci took place on March 20, 2010, and was organized by the Bulgarian Anarchist Federation together with a civil initiative committee (the names of its members were not announced). The protest was attended by activists from Anarcho-Resistance and September 23rd, a youth communist organization. Anarcho-Resistance are a wing of anarchists in Bulgaria with comparatively moderate behavior; they can participate in a dialogue and initiatives with individuals whose values are different from theirs. The other people at the protest were a minority compared to the above three groups. There were a total of 20-30 participants and about the same number of policemen. Organizers did not aim at high attendance. They kept the whole organization of the protest in secret to avoid problems with neo-nazi groups. Posters and flags bore the logo of anarchists. At the same time, they insisted that their faces remain unseen on photos (because of possible confrontations with neo-nazi groups).

The first protest demanded mainly the closing of the facility in Busmantsi and releasing of people kept there. Slogans that were shouted were typical for anarchists around the world, when protesting in front of their detention centers: “No one is illegal”, “We are all illegal”, “No borders, no nations, stop deportations”.

In spite of this protest, the attempts of the few activists failed to draw attention to the problems of foreign citizens in Bulgaria, and specifically of those who are illegal. A new protest occurred in relation to the case of Arevik Shmavonyan, a pregnant Armenian girl. The idea for the protest originated within the Facebook group supporting Arevik. The primary intention was to protest particularly in her defense and to even take a trip to Montana and protest in front of the police

⁴⁴ www.roditeli.org

office where the detention order was issued. Gradually, it transformed into the idea of protesting in defense of the rights of people detained in Busmantsi. The person who suggested this second protest wanted to remain anonymous and someone else had to take over the whole organization process and stand up with their name. As a result, an initiative committee was formed.⁴⁵

Many members of an informal group of young people with left and anarchist convictions also helped with the organization of the protest: they made suggestions, provided a place to work and spray-paint for the posters, even organized transportation for some of the participants. Members of the Facebook group in support of Arevik also joined the preparations by giving ideas, making badges, T-shirts, posters, offering transportation, etc. Some bloggers also contributed to the cause; Lidia Staikova from Haskovo was especially active though pregnant herself (she gave birth the day after the protest). A journalist also helped a lot; he was at the heart of the organization but did not join the initiative committee because he would report on the event. Due to possible conflicts of interest, lawyers defending illegal immigrants were not included either.

It was particularly difficult to formulate the demands of the protest. It was important that these were achievable and reasonable objectives that would gain some public support. Coordination was needed between the opinions of the members of the initiative committee and the people closest to it (i.e. participants with right political convictions and the left and anarchist participants) and to consolidate these with the opinion of the lawyers. For example, a suggestion was made to insist on better living conditions in Busmantsi. The group of anarchist and left youth disagreed; they stood up for the closing of these facilities and the unconditional release of the people there, so it was not a question of improving the conditions at all. After some negotiations, the latter group withdrew their objections but still kept their opinion. The integration of all demands expanded the scope of the protest and grew from counteraction to specific practices in Busmantsi to a general defense of the rights of foreign citizens in Bulgaria. This is why it was announced as a rally and not a protest; the organizers did not merely protest against something, but gave specific suggestions. The left group got familiar with the suggested measures related to education and healthcare and decided to withdraw some of their objections.

The organizers were ambitious to spend practically no money on the event and largely use materials that were already available – first, to avoid any speculations of who paid for the event, and second, to challenge everyone who wants to organize a rally but thinks that it requires a lot of money. Along with the positive aspects, the lack of financing did not allow the organizers to ensure police escort, which turned to be almost fatal for the participants injured in an attack in a tram.

As far as the administrative preparation is concerned, organizers sent a notification to the municipality signed by the members of the initiative's committee. Although the procedure only requires a notification and not a special permission, it turned out that a response was required. Organizers believe that the procedure

⁴⁵ The committee included the following four public figures involved with immigration issues: Ivan Kulekov, Yana Burer Tavanie, Victor Lilov, and Svetla Encheva.

for organizing a rally is, in essence, based on a permission which municipal officials call “co-ordination”. After that, the initiative committee received a piece of paper stating that notification should also be given to the deputy-mayor, the city inspectorate, the mayor of “Izgreve” region, and the police office. The latter institution wanted to meet a representative of the organizers and asked that two people are appointed by the organizers to communicate with the police during the event. Finally, it was clear that the two days of foregoing procedures stipulated by the law are absolutely inadequate for meeting all the requirements of the municipality.

The date of the event was changed several times for reasons of internal organization. The rally took place on June 6, 2010, and the participation of about 100 people was beyond expectation. It lasted for two hours, and there was a great fluctuation of people coming and going. The extensive media presence was surprising. It must be noted that a brawl in a tram hindered the participation of the injured and those who traveled with them, but also of their friends from the organization “Call for Education” who were in the next tram and, after witnessing the incident, assisted the injured to the hospital.

Participants arrived at the facility around 10 a.m. and introduced to the police the two people appointed for communication. About thirty minutes later, there was a rumor about the presence of suspicious people with hoods on their heads hanging around Gara Iskar, and the police was informed about it. There was no reaction from the police, and 10 minutes later the attack in the tram occurred.

Participants included those involved in the organization of the event and their helpers, foreigners – both legal and illegal, several intellectuals, namely, professor Georgi Kapriev and the sociologist Stefan Nikolov, as well as a group of actors. The group of the Bulgarian Anarchist Federation (which was the best organized) started to shout slogans against deportations. After the event, those of the participants who had their cars with them gave a lift to the foreign citizens, as the news of the fight had already spread.

Unfortunately, the reports of the event were mainly connected to what happened in the tram. Yet, the fact that there are various groups of people demanding change of legislation concerning foreign citizens in Bulgaria was publicized. At this stage, organizers admit the fact that they failed to stir public debate but there are still reactions from politicians in the context of an upcoming amendment to the *Foreigners in the Republic of Bulgaria Act*.

Among the lessons learned is that it is **necessary to identify in advance organizations that attend, as a group, and pay special attention to communicating with them and/or take explicit measures**. Special attention must be paid to security issues, especially if expecting a confrontation with representatives of organizations that actively stand up against the protest. It is recommended to provide a sound system and a general outline of the event.

4. CIVIL PROTEST AGAINST INTERNET SURVEILLANCE

The first civil initiative against the direct, constant and almost uncontrolled access to traffic data by special services and the police took place in 2008. The Access to Information Program, an NGO, filed a complaint in the Supreme Administrative Court against a regulation of the Ministry of Interior which allowed the investigation and security services permanent access from a computer terminal to internet traffic data and phone call print-outs. No warranty is required for obtaining information but a simple demand for access granted by a senior official in the police on the basis of a “need of criminal investigation” or for “reasons of national security”. Mobile and internet operators are not even notified of the access to data, as the information is obtained by the police through an open interface.

After almost a year of legal proceedings and appeals, a five-member jury of the Supreme Administrative Court rejected the texts of the regulation and announced that they are in contradiction to the European Convention on Human Rights, to texts of Directive 2006/24/EU, and to Articles 32 and 34 of the Constitution of the Republic of Bulgaria. The court also stated that restriction of rights and freedoms could not be done through a regulation, and that the reasons for access, as described, are not a guarantee against abuse and violation of constitutional rights of citizens.

Security services and the investigation now need a court order to obtain the necessary information from operators.

The Ministry of Interior started to make attempts at regaining privileged access (there were at least five separate attempts), sometimes even acting on the edge of the law. For the past two and a half years, three ministers of the interior made efforts to acquire easier access to such information.

In the very beginning, civil initiatives against these intentions were reduced to a single non-governmental organization and a few discontented individuals, but gradually escalated to very critical publications in the media and, in 2010, there were several protests in front of the National Assembly, as well as a number of Facebook groups and petitions enjoying large public support.

Back in January 2009 – a month after the court decision – the Ministry of Interior initiated an amendment to the *Electronic Communications Act* aimed at re-gaining access but this time through the law. The amendment was well concealed among other suggested changes not related to traffic data. The text most probably would have been adopted by the members of parliament had not some of them noticed the “insignificant correction”. Members of the parliamentary group of the NMSS, being part of the government majority at the time, at first could not stand up against the amendment suggested by their coalition partners and openly confront them. Several publications in the media and the harsh critical reaction in the internet-forums were a good occasion for the opposition and the NMSS to confront the other two governing parties. NMSS members of parliament took it up as their cause and alarmed the media several times when there were attempts at adopting the same texts (even when directly breaching the working rules of the National Assembly).

During the discussions, the Access to Information Program made a number of suggestions aimed at the protection of the rights of citizens in relation to access to traffic data. Joint efforts of the non-governmental organization, the opposition, and the NMSS resulted in a restriction allowing access to information only in cases of serious and computer crime after obtaining the necessary warranty.

Only twenty days after the voting in the National Assembly, the Ministry of Interior initiated new amendments to the *Electronic Communications Act* and submitted them through BSP, MRF, and independent members of parliament. These, once again, aimed at ensuring passive interface access to information based on the same “operational and investigative activity” which was rejected by the Supreme Administrative Court. The non-governmental sector started a campaign under the slogan “**Say NO to direct police access to traffic data!**” which was supported by approximately 2,000 people. That and the negative statement of the parliamentary department responsible for the approximation of Bulgarian legislation to European Union law, as well as the objection by the ombudsman of Bulgaria, did not influence the intentions of some of the governing officials. Still, divisions within the governing majority resulted in the rejection of the amendment.

The pre-election period brought about some respite. The new government and the new policy team at the Ministry of Interior did not abandon the position that security services are under too many restrictions and the law interferes with their normal functioning. Thus, in December 2009, the Ministry of Interior asked for amendments that would have the requirement of a court order for access to traffic data, but once obtained access would be accomplished through a dedicated interface. The explanation of the Ministry was that providers are too slow in providing the information.

The growing sensitivity of the civil society led to the rejection of these arguments. A number of groups were created in Facebook, the biggest of which was “I stand against the access of the Ministry of Interior to my computer and my telephone”, with 35,080 members. Parallel groups were also largely supported: “We do not want the Ministry of Interior to watch us uncontrolled in the Internet” – 17,062 participants, “Let’s stop the unrestricted control of the Ministry of Interior over mobile networks and the Internet” – 1,732 participants, and “Bulgaria is not a Big Brother show” – 731 participants.

The **Access to Information Program** objected to the suggested amendments and took part in all meetings of parliamentary committees and forums discussing the issue. Apart from that, civil discontent was encouraged by other organizations, including a **group of bloggers “Bulgaria is ours”, the Green Party, association of free speech “Anna Politkovskaya”, the Electronic Society** and others. Several protests were organized through Facebook and were carried out in front of the National Assembly on January 14 and 26, 2009, and February 17, 2010.

The government of Prime Minister Boyko Borissov is very sensitive to public opinion and gradually gave up the intention of amending the law. The Prime Minister stated on several occasions that protests are not necessary because the matter was settled and civil rights would be protected. The Minister of Interior, Mr. Tzvetan Tzvetanov, gave up the demand of direct interface access, and later

gave up the intention to expand the range of criminal actions for which traffic data would be demanded. The minister clearly stated his reasons – public pressure.

5. NATIONAL NETWORK FOR CHILDREN

The National Network for Children unites 66 Bulgarian non-governmental organizations working with and for children and families. The organization was established in 2006 to coordinate organizations with similar range of activities, aiming at effective defense of children's rights by means of implementing various policies.

In December 2009, the National Network for Children responded harshly to the announcement that children would participate in the upcoming season of Big Brother. Letters were sent to Nova TV, the producers from Old School Productions, the Electronic Media Council, and the National Self-Regulation Council requiring that no children under the age of 18 be allowed to participate in the production.

Leading experts (psychologists, pedagogues, and social workers) agreed that involving children in this kind of shows has at least three major negative consequences:

- it is a direct violation of the rights of participating children, and particularly of their right to privacy, good parental care, and protection from labor exploitation;
- there are serious psychological risks for participating children – the lack of control over the environment during the show and the constant videotaping threaten their psychological and even physical health; there is also a risk of making them subjects to ill-intentioned adult voyeurism (pedophiles, etc.), as well as of their social stigmatization upon their return to the communities they live in;
- there is a risk for all children watching the show; experts in psychology are worried that any tolerance of unacceptable behavior of children in the show would bring about an avalanche of imitation.

After the television refused to stop admitting children to castings for the show, the National Network for Children decided to publicly stand up for children's rights. The official statement of the National Network for Children was supported by 130 non-governmental organizations. It was presented in 11 towns throughout Bulgaria at press-conferences with the participation of leading child psychologists, teachers, social workers, etc.

A special website was created linked to the official website of the National Network for Children⁴⁶ to explain the risks for children participating in such reality formats. Over 6,000 people joined the Facebook group created for the same purpose, and a thousand others supported the online petition against the involvement of children in the show.

⁴⁶ <http://bigbrother.nmd.bg/>

In spite of all efforts of the civil sector and the numerous discussions of the issue in the Electronic Media Council and the Commission for Culture, Media and Civil Society at the National Assembly, children were included in the fifth season of Big Brother. It was a partial success that producers and the management of Nova TV took some of the advice of the experts and minimized the displaying and the involvement of children in activities in the house. The National Network for Children also considers it a success that the civil sector successfully united the efforts of different organizations and demonstrated their firm position that children's rights must be respected in all activities of the adults. The interference of the National Network for Children was the first time ever that media experts at the Electronic Media Council, the National Assembly, and the internet opened discussions about the children's rights in the media and the responsibility for their protection.

The biggest success regarding the rights of children came after the start of the show, when a group of members of Parliament initiated an amendment of the *Radio and Television Act* which forbids the inclusion of children in reality formats harmful to children's physical and psychological health and normal development. Many discussions of the issue are still undergoing with the participation of experts from the National Network for Children.

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