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**CREATION OF FAVORABLE CONDITIONS FOR EFFECTIVE INTERACTION  
BETWEEN PUBLIC ADMINISTRATION AND NGOS IN PERSPECTIVE OF  
UKRAINIAN AND POLISH EXPERIENCE**

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## 1. Introduction

The existence and operation of non-governmental organisations (NGOs) are a prerequisite for a full-fledged implementation of the principles of plurality and democracy in a society. By associating with NGOs and other organisational forms of civil society, individuals exert their influence on the integrated and sustainability-directed social development and the enhancement of social prosperity, quality of life and social safety.

This paper describes the characteristics of NGOs-government relationship, concentrating on issues which affect the efficacy of inter-sectoral collaboration. It explores the main elements of government policy and practice which could foster a more conducive environment for the positive contribution of NGOs to development.

## 2. Definition of terms

The definition of the term NGO can be found in materials of the United Nations. The UN research report written by Riva Krut offers an illustration of NGOs in civil society as follows:

"The term NGO is private: it defines groups by what they are not, rather than what they are. As a set of entities, civil society might be considered as 'a sphere of social interaction between the household and the state,' characterized by 'community cooperation, structures of voluntary association and networks of public communication. Civil society is therefore separate from the household, the state and political parties, but a strong civil society depends on a strong state, even though it is perceived as being, and in many cases is, in opposition. Civil society can be a crucial contributor to democratization because it enables and widens participation, protecting citizens against the abuse of state power and guaranteeing the political accountability of the state"<sup>1</sup>.

The UN Office of Civil Society Organisations and Participation Programs (UN CSOPP) describes NGOs as the "space between the citizen and the state where the will of citizens is manifested and mobilized outside official auspices...related to economic and community development, self-help, service delivery and voluntarism." The UN CSOPP further defines NGOs as "non-state associations whose main aims are neither to generate profits nor to seek governing power.

In this paper, we assume definitions offered by Salamon and Anheier<sup>2</sup> restricting our attention to organisations which are (a) formally constituted, (b) non-governmental, (c) self-

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<sup>1</sup> Kurt, R. *Globalization and Civil Society: NGO Influence in International Decision-Making*. Geneva, Switzerland: United Nations Research Institute for Social Development, 1997, p. 7

<sup>2</sup> Salamon, Lester M. / Anheier, Helmut K.: *Civil Society in Comparative Perspective*, in: Salamon, Lester M. / Anheier, Helmut K. (eds.): *Global Civil Society: Dimensions of the Nonprofit Sector*, Baltimore: Center for Civil Society Studies, 1999, pp. 3-39

governing, (d) non-profit (i.e. not organized chiefly for business purposes), and (e) not overly partisan (in a party political sense). This is a broad base including international, national and grassroots organisations; special interest organisations, networks, service providers and public service contractors; operational and advocacy NGOs; professional associations, community associations, and many other categories.

### **3. "Ideal" model of inter-sectoral relations**

A constructive relationship is only possible when both parties share common objectives. The potential for a strong, collaborative relationship exists where the government has a positive social agenda and where NGOs are effective. This does not mean that NGOs are sub-contracted, but that a genuine partnership is present between NGOs and the government to work on problems facing the country or a region based on mutual respect, acceptance of autonomy, independence, and pluralism of NGO opinions and positions.

As an instrument of civil society, the NGO sector accepts the role of watchdog over the policies and practices of government in the interest of the consumers, its services and the wider public. In this role, it should target government in its advocacy, lobbying and negotiating functions when required. At the same time, NGOs should be open, transparent and accountable to the public. Through its representative structures the NGO sector will be accessible to the government for purposes of joint planning, information sharing and decision making. It is imperative that the respective roles and responsibilities of government and the NGO sector are negotiated, clarified and understood by all. This is based on a shared vision and common goal, the competencies and mandates of the partners.

A true partnership characterised by mutual accountability between partners needs to recognise that each party has different objectives, brings different capacity to the partnership, and that they both will learn something in the process. This highlights the need for mutual respect of each partner's mission and values as well as agreement on the terms of the relationship. The success of a partnership depends on the extent to which ownership, power and commitment are shared by the partners. Ethics and principles play an important role in the partnership because they enhance the degree to which ownership; power and commitment are respected and shared.

It is important to comply with several principles for all these forms. The main point is clarity about terms of reference. Both parties need to be clear about what the mutual activity is about, what form the process will take and what difference the NGOs input might make to the process. A very important point is allocation of sufficient time. There should be sufficient time for all meaningful activities, especially consultation. On many topics, NGOs need time to consult their partners and stakeholders - consulting through a network may require time. Also, any consultation

process must contain a mechanism for explaining where input from civil society has made a difference; and if not, why views or ideas put forward were not accepted. The key to maintaining a constructive relationship remains in the clarity and transparency of mutual practice and a genuine commitment to policy dialogue, with discussions in areas where government and NGOs disagree as well as where they agree.

The next important question is ensuring of governmental accessibility to NGOs. This includes accessibility to information and other resources of the relevant Department. Communication mechanisms are to provide for timely and comprehensive information dissemination between the parties.

NGOs can take collaborate with government in the following ways:

1. encouraging official aid agencies and government ministries to adopt successful approaches developed within the voluntary sector;
2. educating and sensitizing the public as to their rights and entitlements under state programs;
3. attuning official programs to public needs by acting as a conduit for public opinion and local experience;
4. operational collaboration with official bodies;
5. influencing local development policies of national and international institutions;
6. helping government and donors fashion a more effective development strategy through strengthening institutions, staff training and improving management capacity.

**NGOs-government relations foresee such forms as:**

- participating of NGOs in development and discussion on legal acts
- holding monitoring of governmental activities by NGOs
- providing social services
- creation of consulting and expert boards
- mutual educational activities
- implementation of mutual projects

**4. Description of situation in Ukraine**

The policies of the Ukrainian government towards NGOs during the 1990s to this day can be characterised as quite favourable. Faced with the social and environmental consequences of the process of economic reform, the government has been willing to tolerate NGOs working in areas

such as environmental protection and social welfare provision. Other types of NGOs are not received as favourably by the government.

However, at the same time, all political parties in Ukraine declare their readiness toward the creation of strong work connections with NGOs. On the national level at least two documents foresee the necessity of new bi-sectoral relation. paragraph 3.1 of the Strategy of the National Security (signed by the President of Ukraine on February, 12, 2007) read as follows:

*"Improving of the system of interaction between public authority and institutions of civic society needs new impulses"*<sup>3</sup>

Another reference is found in paragraph 1.1. of a Government Action Plan, which reads as follows:

### ***"1.1. CIVIL SOCIETY***

*State support of civil society development must provide for:*

- *adjusting of effective dialog between government, nongovernmental organisations and citizens;*
- *creation of favorable conditions for activity of civil society institutes;*
- *timely and open reacting of government to initiatives and appeals of community"*<sup>4</sup>

On November, 21, 2007 the Cabinet of Ministers of Ukraine by the Order Nr 1035 accepted the Concept of Assistance to Development of Civil Society in Ukraine. While the Concept sets out the general list of forms of cooperation between NGOs and government, it does not commit the government to do it. The plan of action regarding the implementation of the Conception had not been elaborated.

For last several years, the Ukrainian government has declared its willingness to involve NGOs into the decision-making process.. Partnership, cooperation and public participation are popular phrases. We hear a lot of calls for the cooperation between public administration and non-governmental organisations. But the question of how to fashion this cooperation remains open.

On the one hand public administration and non-state actors often seek to collaborate; on the other hand they have different approaches to such cooperation which are based in different values so that the so-called 'partners' do not share common goals, values or expectations. The mutual distrust appears to be deep-rooted. The government fears that NGOs are eroding its political power and NGOs mistrust the motivation of the government and its officials.

Though controversial and risky, many of the NGOs of strategic significance are overcoming their inhibitions and are seeking closer collaboration on all government levels. In this way, NGOs

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<sup>3</sup> <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=105/2007>

<sup>4</sup> [http://www.kmu.gov.ua/control/uk/publish/article?art\\_id=104231107&cat\\_id=47292901](http://www.kmu.gov.ua/control/uk/publish/article?art_id=104231107&cat_id=47292901)

believe they will be better able to achieve the impact described above, and they will be able to expose government to a grass-roots perspective which might otherwise be neglected. However, with closer collaboration comes increased risk of corruption, reduced independence, and financial dependency.

Ukrainian legislation foresees such forms of cooperation as: President hearings, parliament hearings, public discussion of projects of governmental Acts, advisory boards of Parliament Committees (total 6 boards), public hearings, contracting services providing and consultations. The main problem is that almost all these activities (except parliament hearings) are not held regularly with the participation of NGOs because of non-transparent procedures and lack of information about activities.

Currently, the Cabinet of Ministers is setting up advisory boards involving NGO representatives in all national executive agencies. This represents an important step forward in policymaking procedures, though it is complicated by the lack of reliable databases of operating NGOs and the lack of recruitment procedures.

A method of holding consultations is laid down in the Order of conducting of consultations with public on questions of forming and realisation of public policy, which is ratified by the Decision of Cabinet under the title "Some questions in relation to providing of participation of public in forming and realization of public policy" on October 15, 2004

In an obligatory order consultations are conducted with the public in relation to:

- projects of legal acts, which touch upon subject of rights, freedoms and interests of citizens;
- projects of the government and regional programs of economic, social and cultural development;
- reports on the budget expense for the last year;
- information about work of Cabinet, central and local organs of executive power.

The executive body develops a plan, list of questions, form, terms and stages of consultations, spreads information about their conducting and results.

The existence of the expressly noted procedure of consultation with the public is positive practice. However, public authorities ignore the conducting of public discussions of projects of normatively legal acts, which touch upon subject rights, freedoms and interests of citizens, projects of the government and regional programs of economic, social and cultural development.

In the field of contracting services, provided at present, there are two principal legal mechanisms for government-NGO partnership: *social services and assigned/programmatic subsidies*

The Law on Social Services provides legal mechanisms for funding NGO-run institutions for orphans, the disabled, and the elderly. However, the procedures for accreditation of such institutions and training for social workers and volunteers have not been developed yet. Though Ukrainian legislation still precludes the privatisation of social facilities, it is already evident that the government cannot afford to fund the existing network of clinics, community centres, childcare facilities, etc. As simply cutting back funds and institutions would not be effective, local governments promote conditionally renting some facilities to operating NGOs with similar purposes.

The Law on Social Programs promotes partnerships aimed at meeting public social standards. It allows NGOs to be agents, partners or subcontractors of government agencies in implementing programs approved under the budget code and this law. The primary objectives of such programs are setting the specific objectives and priorities of social development for one to five years, as well as to secure minimum social standards and guarantees provided under Special Law. The law specifies mechanisms of NGO involvement in development and implementation of these programs. The sources for program funding are assigned (or programmatic) subsidies from the relevant budgets. Currently, the most active in subsidising specific programs via partnerships with NGOs are the Ministry of Labour and Social Welfare, the Ministry of Health, and the State Committee for Youth and Family Affairs.<sup>5</sup>

## **5. Polish experience**

According to the organisation Klon\Jawor, there were about 68 thousand NGOs in Poland in the first quarter of 2008. 30% of them cooperate with the authorities at central and regional levels, and 70% cooperate with local governments.<sup>6</sup> Such development of inter-sectoral cooperation in Poland was stimulated by the introduction in April, 2003 a new Law on Public-Benefit Activities and on Voluntary Work<sup>7</sup>. In order to facilitate co-operation between NGOs and the public administration, the Act clarified sensitive financial questions and described main forms, methods

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<sup>5</sup> Alexander Vinnikov, *Legal Mechanisms for NGO-Government Partnership in Ukraine II* [http://www.icnl.org/KNOWLEDGE/ijnl/vol6iss3/art\\_3.htm](http://www.icnl.org/KNOWLEDGE/ijnl/vol6iss3/art_3.htm)

<sup>6</sup> *Najważniejsze pytania – podstawowe fakty- Polski sektor pozarządowy 2008.* – Stowarzyszenie Klon/Jawor, Warszawa, 2008

<sup>7</sup> *Ustawa z dnia 24 kwietnia 2003 roku o działalności pożytku publicznego i o wolontariacie* (Dz. U. 2003 nr 96, poz. 873 z późn. zm.)

and standards of cooperation. In turn, the relations between NGOs and public administration are regulated by the Act on Lobbying Activity and Act on Access to Public Information.

The Act imposes on units of public administration facilities, an obligation of implementation public tasks in cooperation with non-governmental organisations.<sup>8</sup> Of particular importance is the provision that states that local authority units shall draft annual programs of cooperation with NGOs and other entities engaging in public benefit activities. Moreover, public administration units should consult projects of regulations, form task forces and inform each other on planned activities. Implementation of these provisions should increase the effectiveness of collaboration between NGOs and public administration units.

The Law on Public-Benefit Activities and on Voluntary Work establishes that organs of public administration carry out public tasks in cooperation with NGOs – this cooperation can take the form of contracting out services or giving grants that cover all or part of the costs of carrying out a given task. The Law foresees a detailed procedure for conducting a competitive tender which an organisation can participate in by submitting an offer to carry out a task on its own initiative.

In addition, public administration organs are obliged to cooperate with NGOs in the non-financial sphere, e.g. by involving interested organisations involved in consultation on normative acts and creation of joint teams of an advisory character. The cooperation should take place on the rules of subsidiarity, independence of the parties, partnership, effectiveness, fair competition, and transparency based on an annual program of cooperation between units of local government and NGOs – and, in the case of the national government, on the basis of the government document "Principles of Social Dialogue".

Thus, the Polish law foresees four forms of cooperation:

*1. Commissioning non-governmental organisations to perform public tasks*

According to the Department of Public Benefit of the Ministry of Labour and Social Policy, the most important element of cooperation between public administration units and NGOs consists in commissioning public tasks to organisations by virtue of open bid competition. The Act defines obligatory elements of the offer to be announced by administrative unit, competition procedure and required elements of the agreement to be reached with a non-governmental organisation. Public administration units were granted appropriate controlling powers towards institutions implementing commissioned public tasks.

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<sup>8</sup> Although the law is intended primarily to the local government - NGOs relations, the government is also in some ways adapts to this level

2. *Mutually providing information about planned directions of activities and cooperation in order to harmonize these directions*

The purpose of this form is to harmonise the activities of the public administration (on the local level) and the third sector. Responsibilities of the exchange of information lie on both sides. Local governments have to inform NGOs about directions of activity and also can expect information from the organisations. The forms of mutual exchange of information are meeting NGOs and representatives government.

This element is a base for creation of joint teams. Both NGOs and government need to know as much as possible. Representatives of the organisation may take part in sessions of the governmental bodies, particularly those related to sphere of cooperation.

3. *Consulting with NGOs according to their scope of activities, regarding legislative projects in the fields related to the statutory activities of such organisations*

The correct implementation of this form would require a database of all legislative projects as well as database of organisations, defining the scope of their interests, so that a concrete draft would be sent to a direct group of NGOs. The other way is holding meetings with organisations in order to discuss the proposed solutions or the creation of joint teams. But there are situations where results of consultations are difficult or impossible to implement. Another problem is that consultations lengthen the decision-making process and it is important to fix the deadline for submission of comments.

The consultation draft legislation is associated with access to information about current activity of the government. An example of an annual program of cooperation is found on the local level.

In case of consultation, the main problem is a delay in informing NGOs about consultation, resulting in the lack of time for correct preparation. As a rule, Polish NGOs take part in consultations about programs and strategies. However, NGOs are not invited to consultations at the stage of the definition of goals. Another problem is lack of information about results of consultations.

4. *On the institutional level, this consultation corresponds with the next form *establishing mutual teams responsible to advising and initiative that consist of representatives of NGOs and relevant public administrative bodies.**

Chapter IV of the Public Benefit Law also establishes the Council on Public Benefit Activities which serves as an advisory and opinion-forming body to the minister responsible for social security issues. The Council's tasks include issuing opinions on the implementation of the Public Benefit Law and on governmental draft laws concerning public benefit and volunteer work, as well as on the process of commissioning public tasks to be performed by NGOs; assisting in case of any dispute between the public administration and public benefit organisations; participating in audit procedures concerning public benefit organisations; creating mechanisms for informing about standards of carrying out public benefit work.

The strong side of Polish legislation is that compulsory forms of cooperation are described in the statutory act of the higher order. However, researchers have emphasized that NGOs are still not treated as equal partners by public administration.<sup>9</sup> NGO respondents have criticised the effectiveness of social consultations with the participation of NGO representatives. They decried what they saw as the arrogance of the public administration, consisting in breaking prior arrangements, or of informing NGOs of an opportunity to participate in consultations only after the fact.<sup>10</sup>

## **6. Conclusions**

Governance both in Poland and in Ukraine are still in the transition stage – from planned governance to participatory public policy. In some cases, Polish conditions for effective cooperation are more favorable. On the one hand, the state established the legal and economic framework for the operation of NGOs, and enforced the implementation. On the other hand, many organisations monitor and aim to influence the government policy.

The lack of clear and transparent rules for cooperation is a serious problem both for NGOs and for government in Ukraine. The lack of the integrated law, which regulates forms and principles of cooperation and determines institutions, result in a situation when legal mechanisms of collaboration are not utilized to a full degree by the government and NGOs. The Polish experience shows that elaboration of the principles of cooperation and their description in the statutory act of the higher order as well as descriptions of forms and procedures of collaboration allow optimizing bi-sectoral relationships.

Clear partnership relations are possible only under conditions of common aims and objectives. The lack of common goals, values or expectations among NGOs and government

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<sup>9</sup> Arszewska M., *Poland*, in: Nicholson T. (ed.) *We and they. NGOs' Influence on Decision-Making Processes in the Visegrad Group Countries*. - The Sasakawa Peace Foundation, 2008, p. 61

<sup>10</sup> *Ibidem*

produced different approaches to collaboration. Long-term collaboration can be successful only on condition that the subject matter and the modalities of collaboration are defined together both the government and NGOs.

Inputs from the NGO sector on relevant policy questions should be sought on a regular basis. NGOs can provide important inputs to the policy-making process through consultations and other similar mechanisms.

## **7. Recommendations**

The most general recommendation is to re-think the existing roles of the government and NGOs, and to create new strategic roles and plans. With the aim of establishment of cooperation between the government and NGOs on the principles of differences and complementarities it is necessary to define and implement various forms of cooperation with NGOs in the process of formulation and implementation of public policies (participation in the drawing up of legislative and other strategic documents).

As a first step that government of Ukraine should facilitate relations with NGOs so as to identify focal points within key government ministries for dealing with NGOs. This body should explore the options and develop policies relating to the NGOs in the following areas:

- building a new relationship: focusing on developing a framework for a renewed relationship between the government and NGOs and charged with devising an action plan for its implementation.

- strengthening capacity: seeking ways of enhancing the NGOs ability to meet its own goals and challenges – particularly in relation to funding, human resource development, information technology, valuing volunteering and improving information about the sector

- improving the regulatory framework: exploring ways to improve the regulation, administration and accountability.

On the institutional level there appear to be sufficient reasons for the creation of a special structure (like Council on Public Benefit Activities in Poland) for articulating the interests and concerns of the NGO sector and public authorities in an organised way and within the existing legal framework.

With the purpose of ensuring appropriate work of the mechanisms of public involvement to the decision-making process, in short-term perspective the Cabinet should do next steps:

1). To ensure the realisation of the Concept of Assistance to Development of Civil Society in Ukraine in the part of development and acceptance of annual plans on introduction of the indicated Conception and to launch the annual monitoring of the implementation of Conception and plan of actions.

2). To implement practice of obligatory presentation of reports on the results of public discussion or protocol of the public listening in relation to the drafts of normative act. To create a database of all legislative projects as well as database of organisations, defining the scope of their interests, so that a concrete draft would be sent to a direct group of NGOs.

3). To conduct monitoring of efficiency of advisory boards on Ministries and Departments activity and to implement a single reporting form about activity of these organs and its results with obligatory publication of this information.

4). To create a network of related NGOs and government to keep the information exchange and circulation about realization of Conception going constantly;

In a long-term perspective, it seems to be reasonable that procedures are started for developing a single law describing clear standards and forms of bi-sectoral cooperation. Entry of such a law into a force will help to ensure transparency and accountability of both partners.