



**Vitosha
Research**

**Problems of Not-For-Profit Organizations /NFPO/ in Bulgaria -
*Focus-group information analysis***

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1. Survey Methodology

1.1 Main Objectives

The present survey has been conducted as part of the long-term commitment of the Center for the Study of Democracy to the problems of the Third Sector and the active promotion of its firm establishment and further development in Bulgaria. It is an element of the research project entitled Creating a Favorable Fiscal Environment for NFPOs and has been carried out by the Vitosha Research team. The chief objectives of the survey were:

- establishing typical public attitudes to the activity of NFPOs in Bulgaria and common perceptions of their nature and role;
- identifying the key problems in the activity of NFPOs, as well as the reasons and grounds for their emergence;
- analyzing the current legal framework of NFPO activity and the need for a new law on not-for-profit organizations;
- determining the specific nature of the various types of NFPOs and possible differences in their legal treatment;
- exploring alternative sources of funding for the activity of NFPOs and discussing the problem of NFPOs engaging in business activity;
- examining the existing NFPO taxation system and possibilities for creating a more favorable fiscal environment.

1.2 Research Method

The survey was carried out by the focus-group discussion method. There were a total of four discussions: three in Sofia and one in Plovdiv. The discussions took place in the period 12-15 May 1997. There were a total of 31 respondents. The participants in the discussions included:

1. First group /Sofia/: experts in the field of not-for-profit organizations /6 persons/;
2. Second group /Sofia/: NFPO managers and representatives /10 persons/;
3. Third group /Sofia/: citizens /9 persons/;
4. Fourth group /Plovdiv/: NFPO experts and managers /6 persons/.

2. Public Attitudes towards NFPOs

The past seven years of radical transformation of socio-political and economic relations in Bulgaria have also been marked by the gradual emergence of the fundamental structures of modern civic society. An important part of this process has been the development of the so-called “third sector” of public life, formed along with the “public” and “private for-profit” sectors. The number of NFPOs has increased substantially and by now exceeds 4,000. The dynamic development of the third sector has, however, been quite contradictory, accompanied by serious problems, and eliciting equivocal public attitudes.

2.1 Attitude towards NFPOs

The discussions held drew a complex and incongruous picture of popular attitude towards NFPOs in Bulgaria. The most general impression is that the development of the third sector in Bulgaria was approved of in principle and perceived as a natural process of affiliation with the standards of modern democratic civic society. The presence of NFPOs in public life was perceived as a consequence of free private initiative and NFPOs were considered able to assume positive social functions in several major directions:

1. Allow citizens to freely associate in safeguard of their own interests.
2. Mobilize civic energy for addressing pressing social problems and the achievement of important social goals.
3. Support the development of those social spheres /education, social welfare, environment, healthcare, culture, and others/ which are experiencing serious difficulties under the conditions of economic crisis.
4. Assume social functions which the state is not in a position to perform effectively.
5. Assist in the obtainment and effective utilization of funds from foreign sources.
6. Provide additional opportunities for professional fulfillment and create new jobs.

7. Promote new social practices and standards consistent with a democratic society by assuming controlling, deterring and corrective functions with respect to the public and private for-profit sectors. Yet, when specifically assessing the activity of NFPOs in Bulgaria, respondents voiced serious doubts regarding their actual goals and functions. The impression is that public opinion is still skeptical and at times even negatively inclined towards NFPOs.

The chief source of the existing mistrust is found in the notorious attempts to use NFPOs as cover up for unregulated business activities. As one of the participants put it:

“..the worst thing is, at least it seems to be the case at present, that because of John some people start hating Saint John. I mean, because of some organization which is supposed to be part of the so-called third sector, but is in fact just bypassing the law, all too often public opinion is very quick to react and the negative attitude is indiscriminately directed towards the entire third sector.” /man, Sofia/

Many of the statements implied the open or underlying assumption that “a whole lot of business companies and money were made under the guise of not-for-profit goals”. The way one of the female participants jokingly defined the term not-for-profit organization is quite revealing: “Organizations importing whisky and cigarettes without paying custom duties”. This stereotype seems quite entrenched in mass consciousness although in the past few years the scope of such practices, as acknowledged by participants themselves, has been strongly constricted.

Another type of negative attitudes is related to the specific area of activity of some NFPOs. Public opinion is most sensitive with respect to a particular kind of religious organization.

“I am very skeptical and very cautious regarding charitable organizations inspired by certain religious teachings or movements.” /man, Sofia/

There were also concerns that not-for-profit organizations might serve as conduits of foreign influence over the country’s political life, be used to destabilize state institutions and pose a threat to national interests. In its purest, this view was expressed as follows:

“A foundation assembles fresh young people, sends them abroad for training, then arranges for them to take up well-placed positions... The next step towards destabilizing state structures or a society is quite easy to make.” /man, Sofia/

To this most radical way of perceiving the potential threats associated with the third sector we can also refer the expressed opinions regarding possible connections of some not-for-profit organizations with the “shadow economy”, “the mafia”, “political terrorism”. Naturally, such views are rather extreme and were not shared by the majority of respondents but their presence in mass consciousness cannot be ignored. It is significant that such arguments are also based on personal experience from NFPO involvement of some of the participants in the discussions /“he’s not pursuing charitable goals,.. he’s really after criminal goals of personal or other gain”/.

The registered mistrust towards NFPOs was confirmed by NFPO managers. They believed the common attitude towards the third sector was one of suspicion /“many people think this is a way of making money”/ or at best, of indifference. Only a small part of the population and the business companies are involved or concerned with the activity and problems of the third sector. The majority of respondents thought this sector was still underdeveloped in Bulgaria. It is still held in low esteem and its public image is lacking in definition and consistency.

2.2. Perceptions of the Nature of NFPOs

In the course of the discussions respondents were asked to share their understanding of the meaning and scope of the term “not-for-profit organization”. Despite the wide-ranging opinions expressed, it is possible to identify a number of typical approaches in defining the term which may provisionally be classified as follows:

1. Legal approach

This type of definition was given largely by the legal experts and some NFPO managers. The suggested definitions were close to existing juridical formulations and emphasize the legal content of the term.

“That is, above all, a legal entity striving to achieve certain goals of a social, humanitarian type... in the non-commercial sphere and whose activity is not driven by the pursuit of profits” /woman, legal expert, Sofia/

Interestingly enough, even in the groups of experts and NFPO managers such definitions were more of an exception. What is more, there appeared a certain “anti-juridical” tendency in interpreting the content of the term “not-for-profit-organization”.

‘..it [the legal definition] is meaningless from a social point of view. It may be useful to the legal community which can thus define these organizations in some way, but it is hardly of use to the organizations themselves.’ /man, psychologist, Sofia/

The argumentation of this point of view was based on the inability of legal definitions to reflect the specific social and psycholological nature of this type of organization.

2. Socio-psychological approach

The primary emphasis here fell on the free and voluntary character of the association of persons sharing common goals and interests. Those are typically people with the same views seeking effective forms and means of achieving their goals.

‘..those are above all voluntary associations of people sharing the same views... brought together by their wish to lend support to some activity’ /woman, Sofia/

These definitions as a rule also implied the assumption that the common goals and interests ought to be of a “socially important”, “charitable”, “uncommercial character”. These specifications naturally take us to another level of interpretation of the term.

3. Taxonomic approach

In this case the content of the term was explained by describing the specific nature of the activities and goals pursued by not-for-profit organizations. A distinction was made between the terms “non-governmental” and “not-for-profit” organizations.

The presumption was that “the underlying motives for setting up this or that organization are very different” and the general term cannot reveal their actual specific nature. This accounts for the variety of terms popularly employed: “third sector”, “not-for-profit organizations”, “nongovernmental organizations”, “civic associations”, etc.

There were attempts to differentiate the content of some of the terms in use. For instance, “nongovernmental organizations” were associated with “organizations with an area of work close to government policy but using nongovernmental means”. As for “not-for-profit organizations”, they were said to constitute “...forms of association of people for the achievement of certain common goals and common interests which are beyond business turnover” /woman, sociologist, Sofia/. The most important characteristic of the latter type of organization, according to the majority of participants was that “they do not work for profits”.

With this approach there immediately arose the question of the scope of NFPO activity and which organizations properly belong to the third sector.

Several controversial and borderline cases were identified: the organizations in the political and religious spheres, trade unions, professional associations, state-funded not-for-profit organizations /scientific and cultural institutes/. One interesting opinion, for instance, was that on a national level trade unions tend to be perceived as state structures while on the level of the business company they have the character of civic professional associations. On the whole there seems to be insufficient terminological clarity in this sphere even among people immediately involved with the problems of the third sector - “the terminology is yet to be clarified”, “everything that’s going on at the moment is still in quest of its proper identity”.

4. Functional approach

Such a point of view was only expressed by three of the discussion participants and mainly concerned the social functions of NFPOs. On the one hand, they were regarded as “*some kind of self-regulatory processes in society*”. On the other hand, their development was said to proceed as “*a subtle way of privatizing the public sector, of denationalization, that is*”. Part of the functions performed by the state were gradually being transferred over to the third sector, producing both strong individual economic incentives, as well as new opportunities for professional fulfillment.

An analysis of the different approaches to the interpretation of the content and scope of the third sector makes it possible to outline the most essential features of not-for-profit organizations according to the focus-group participants:

- free and voluntary association;
- juridical identity as independent legal entities;
- nonprofitmaking;
- engaged in activities in the nongovernmental and uncommercial spheres;
- defend the common interests of their members and/or address socially important issues;
- complement and/or take over certain functions of the state while at the same time serving as social corrective factors.

3. Main Problems of NFPO Activity

A broad range of problems were identified in the course of the discussions as impeding the activity of NFPOs. They may be systematized in several major groups.

3.1. Outdated Legal Framework of NFPO Activity

It was noted that the procedure of registering a not-for-profit organization was “very sluggish” and ought to be facilitated and speeded up.

“The law is so outdated - the postulate that foundations are managed by the ministries or that the property of not-for-profit organizations is turned over to the state - that’s simply absurd” /woman, expert, Sofia/

“The provisions of the Law on the Persons and the Family date back a very long time. They are completely inadequate to the modern development of these public organizations.” /man, legal expert, Plovdiv/

3.2. The Contradictory and Subjective Character of Current Court Practice

One of the major problems faced by NFPOs, as identified by both NFPO managers and experts, was the inconsistent court practice. It was to a great extent attributed to the imperfections and gaps in the legal framework itself.

“...in this country the absence of proper regulations leads to arbitrary practices by the court administration, the tax authorities and the executive power. That is, at any time some state institution may decide whether the respective not-for-profit association is functioning properly, whether it’s engaging in business activities or not.” /expert, Sofia/

This impression was confirmed by the personal experience of some discussion participants. The most typical and repeatedly mentioned example concerned the requirements imposed by the courts with respect to the documents necessary for the registration of an NFPO /“regional courts do not have unified requirements concerning the registration of not-for-profit organizations”/. It was noted that despite the absence of a prohibitive provision in the law, judges tend to avoid registering NFPOs if their charter says they are to carry out business activities in support of the achievement of their goals.

“I have noticed that different courts have different criteria and requirements regarding the documents needed for the registration of an organization. Some require a certificate showing no previous conviction, others do not. In Sofia, for instance, it is all right to include business activity in the charter, but here in Plovdiv they shun that.” /man, Chairman of an NFPO Board of Directors, Plovdiv/

3.3. Ill-Defined and Restrictive Taxation System

The lack of clear-cut regulations not only leads to serious difficulties in the accounting and taxation of NFPOs but also creates preconditions for various ways of “bending the law”.

“...in a confused legal situation one obviously needs to take advantage of all existing loopholes and we all do, naturally” /man, NFPO manager, Sofia/

Some specific examples of “loopholes” were also mentioned.

There is a variety of specific loopholes and some of them were mentioned in the course of the discussions: registration of companies by NFPOs, reporting null revenues before tax authorities, opening personal bank accounts, and others.

“Right now we are looking at different options and we are forced to register a limited company - and we will, we are even considering whether to register a community cultural center. So you see how they

are only making things difficult for us and instead of seeking ways to develop our activity, we are looking for loopholes.” /man, NFPO manager, Plovdiv/

The fact that the activity of not-for-profit organizations is practically identified with that of business companies emerged as a particularly grave problem - “while engaged in not-for-profit activity we are treated the same as business companies”. This observation concerns primarily NFPO accounting and taxation.

“The problems we come up against are typically related to the lack of proper regulations in preparing the accounting records and tax return of the organization. We are generally treated as a business company... without any distinction from the organizations registered under the Law on Commerce.” /woman, representative of an environmental organization, Plovdiv/

3.4. Obstacles to NFPO Self-Support

One of the specific obstacles mentioned concerned overhead charges.

“Under the grave economic conditions in which we find ourselves, with respect to overhead and maintenance costs we are still charged as much as business companies.” /woman, civic association representative, Sofia/

There was concern that the present major sources of funding were unable to guarantee more secure and stable prospects to NFPOs. The majority of respondents agreed that the implementation of specific projects now constitutes the most significant financial resource of NFPOs.

“And at this stage the only thing left is the project policy, but that can’t last forever. As much as it is of help now, perhaps there will be a period of another 5-10 years, but how much longer?” /man, NFPO manager, Plovdiv/

In this respect the foremost priority appeared to be the creation of a proper legal and economic environment for the optimal use of the full specter of possible sources of funding for not-for-profit organizations - “from the national budget, the local budgets, from specialized national and local funds, from various regional, national, and international projects”. A favorable tax policy facilitating the obtainment of funds from the for-profit sector and individuals would also play an important role in this respect. The absence of effective tax incentives to donors was almost unanimously pointed out as one of the most serious difficulties faced by not-for-profit organizations.

“We need a normal environment, we need business sponsorship if we are to survive.” /NFPO manager, Sofia/

The problem was also raised of the possible dependence of not-for-profit organizations on the large donors which makes all the more pressing the need for promoting alternative ways of third-sector funding.

“On the one hand this makes them dependent on a few donors, controlled by Network for Democracy, Open Society and a couple of others, but to a certain extent that also makes them dependent on the state as well.” /expert, Sofia/

3.5. Persistent Popular Prejudices and Negativism Regarding NFPOs

Part of the problems of NFPOs stem from the observed lack of awareness of their specific nature and goals as well as the lingering skepticism and negativism regarding their activity /“the existing environment is not at all favorable to the nongovernmental sector”/. Such an attitude, according to participants, was not only to be observed among the general public but also in business circles and among state administration officials.

“Every single Bulgarian believes it’s some kind of swindle. And if not, then something must simply have gone wrong; and where it’s successful, the money comes from outside for projects the actual objectives of which are rather obscure.” /woman, lawyer, Sofia/

Particular emphasis was placed on the inadequate interaction and at times even confrontation between not-for-profit organizations and state and local authorities.

“Up to now we were at a stage where “nongovernmental” more or less meant “anti-governmental”. This should by no means continue this way.” /woman, manager of a social organization, Sofia/

Specific instances were related when citizens encountered serious obstacles on the part of state institutions upon their attempts to seek cooperation between the authorities and NFPOs. The following is a typical case:

“Years ago I repeatedly tried to set up a public organization in my neighborhood, it would have been purely community-based, for addressing the problems of the neighborhood. You can’t imagine what resistance the local authorities, the local municipal council, put up, just for some office space. And the presumption was - what are you trying to do, get the people against us?” /woman, Sofia/

It was acknowledged that to some extent the negative attitude to NFPOs has objective grounds in the attempts to abuse of the specific NFPO status. In this sense, some of the respondents believed the lax control exercised by the respective authorities posed a serious problem.

“If only the prosecution were doing its job properly - I used to be a prosecutor myself and I left precisely because the prosecution wasn’t doing its job; every day it should have initiated legal action not against journalists... there should instead have been dozens of legal proceedings based on publications in the press.” /woman, former prosecutor, Sofia/

In this respect there were suggestions of other ways of forestalling possible abuse by unscrupulous NFPOs. One possible measure suggested by a legal expert participating in the discussion was the requirement that certain business activities /for example, import and export, or trade in alcoholic beverages and cigarettes/ only be carried out by companies registered under the Law on Commerce.

3.6. Preferential Treatment and Privileged Position of Some NFPOs

As reasons for such instances respondents cited the undefined relations between the third sector, private business and the state, as well as the absence of clear-cut, transparent NFPO funding procedures. Although the perfect parity of all NFPOs was considered an absurdity, there still was general insistence on the need for clearer rules, equal opportunities and abolition of the artificial administrative and monopolistic barriers impeding access to resources.

It should be noted that these attitudes are partially due to either personal discontent at having been denied funding for certain projects /“I also have reservations about the distribution of funds and sponsorship decisions in some cases... For instance, we are dissatisfied with this Network for Democracy program”/ or the institutional involvement of some participants with the interests of certain NFPOs. Contrasting positive examples were also cited /Open Society Fund/ where assistance had been provided to absolutely “unprivileged” individuals and organizations.

4. Legal Framework of NFPOs

One of the most important topics in the discussions held concerned the legal framework of NFPO activity and the necessary changes in the existing legislation. Four years ago a group of experts at the Center for the Study of Democracy started working on a draft law on not-for-profit organizations. The draft law was discussed at numerous conferences and seminars and input was received from various Bulgarian and international experts. A working group has also been established at the Ministry of Justice which is to finalize the draft law. Additionally, some changes in the system of NFPO taxation are being considered. In this connection, the participants in the discussions were asked to share their opinion about some of the essential ideas underlying the proposed changes in the legal framework of third-sector activity.

4.1 The Need for a New Law on Not-For-Profit Organizations

The question whether it was necessary to adopt a new law on not-for-profit organizations elicited a broad range of responses. On the whole the opinion predominated that such a law was timely and necessary. Nevertheless, some respondents thought that in principle the third sector did not need strict legal regulation. The third alternative suggested was to amend the existing legislation. An analysis of the rationale behind these three basic approaches can shed further light on existing attitudes and expectations regarding the activity of NFPOs and its legal framework.

1. *The motives for favoring the adoption of a new law on not-for-profit organizations* typically built on encountered practical problems and difficulties in NFPO activity. They were of varying origin and some of the more important ones have already been considered.

The existing legal framework of the activity of not-for-profit organizations /which refers largely to the Law on the Persons and the Family of 1949/ was considered outdated. This Law is an inherent part of a system of social relations which have by now undergone substantial changes. This not only complicates the activity of NFPOs but leaves room for the abuse which has become a recognized social reality.

“If the future legislation fails to regulate those things, the not-for-profit organizations are bound to seek detours.” /man, NFPO manager, Sofia/

Participants also noted some specific imperfections, gaps or vague provisions in the acting Law:

- vagueness of the term “not-for-profit organization”;
- overly complicated, deficient and burdensome procedures for setting up and registration of an NFPO /“what we now have as legal basis for the creation, the registration... is extremely inadequate”/;
- lack of clear-cut rules concerning the management and disposition of the property of not-for-profit organizations;
- lack of legal regulation of the relations between not-for-profit organizations and state institutions;
- lack of an effective democratic system of control securing legality and guarantees against NFPO abuse of public confidence and public funds;
- lack of regulations concerning the liquidation of assets upon dissolution and bankruptcy of NFPOs and the now envisioned “nationalization” of the property of dissolved not-for-profit organizations /“if for some reason the association is dissolved, it turns out that the state will get the results of our work, as accumulate in the property”/.

The opinion was expressed that a law on NFPOs would better protect the interests of not-for-profit organizations and safeguard them from subjectivism and arbitrary interpretations by court, tax, and state authorities.

“The nongovernmental sector is completely misplaced within the general legislation where it finds itself.” /woman, expert, Sofia/

Discussion participants believed the possible adoption of a new NFPO law should be accompanied by amendments to some other acts in the commercial code: the Corporate Tax Act, the VAT Act, the Local Taxes and Fees Act, the Personal Income Tax Act, the Accounting Act. The view was expressed that the creation of a modern and economically rational taxation system for NFPOs should be founded on modern general civic and legal principles. It was appropriate for such a general legal framework to be regulated by a single law.

“I believe that a single act of legislation would be most effective.” /man, lawyer, Sofia/

2. *The advocates of the second alternative* - refuting in principle the need for new NFPO legislation, defended their point of view firmly enough even if they did not predominate in the discussions. The chief argument in favor of this opinion was that a comprehensive general law would restrict opportunities for free association and private initiative and might formalize and bureaucratize their activity.

Another line of reasoning against the adoption of a new law on not-for-profit organizations was related to concerns that it might be a way of “shedding responsibility”. According to some respondents the preparation of such a law was motivated mainly by practical problems in NFPO activity while the common practice was very inconsistent and not always quite lawful.

3. *The third, compromising approach* did acknowledge that there was a call for certain changes in the legal framework of NFPOs, though without regarding them as a priority, and questioned the need for an entirely new law. The proposed solutions were confined to updating the Law on the Persons and the Family. The following opinion was quite representative:

“There is no need for a new law. Because we should not further burden the parliamentary agenda. A more detailed elaboration of the chapter on such non-personified legal entities would be sufficient.”

/man, expert, Plovdiv/

Another argument was also pointed out.

The economic and sociopolitical situation in Bulgaria is as yet all too dynamic and uncertain. A number of social relations are still of a blurred and contradictory character. In this sense, minimal legislation may have its positive aspects as well. On the one hand, it would allow the natural evolution of new social practices and forms of association by creating a few generally accepted rules and norms of behavior. On the other hand, there would be no unnecessary restrictions on the activity of not-for-profit organizations and no need for frequent amendments to the existing legal provisions.

By and large, even when acknowledging the need for adopting a new NFPO law, it was largely conceived as prescribing the most important general rules of the functioning of not-for-profit organizations and the safeguard of public interests. A balance was to be found between the following extremes: overregulation, bureaucratization, and total administrative control on the one hand, and on the other - lack of guarantees against abuse and NFPOs serving to cover up illegal activities.

On the whole it would seem that the idea for a new law on not-for-profit organizations was generally well-received, provided the law does not restrict and over-regulate the activities of the various types of NFPOs for the purpose of managerial and administrative convenience but is truly aimed at stimulating and providing a favorable social and economic environment for their activity.

“I should think that any regulation - financial, administrative, legal.. - ought to be aimed at stimulating the efficient use of available human, information, technical resources... In other words, legislation ought not to restrict, but to stimulate.” /man, expert, Sofia/

4.2. Types of NFPOs and Their Specific Legal Treatment

The acknowledged large diversity of different types and forms of NFPOs raised alternative suggestions for their legal treatment. There can be discerned several basic approaches in seeking solutions to this problem.

The most radical opinion was that at the present stage it was neither possible nor necessary to adopt any new legal framework whatsoever for the activity of third-sector organizations. This would impose unnecessary restrictions on their activity as it could not take into account the specifics of each type of NFPO.

The more moderate view was that if a new legal framework was to be established, it “could not consist in a single, comprehensive law”. Alternatives were suggested wherein the basically different types of not-for-profit organizations would be subject to separate acts of legislation /for instance, a law on trade unions, law on chambers of commerce and industry, law on charitable organizations, etc./.

Still, most participants agreed there was a need for a general law on not-for-profit organizations which however, was only to establish the most fundamental principles and rules of their activity. Such legislation should by no means attempt to regulate in detail the third sector or impose artificial restrictions.

Many of the statements drew various distinctions between not-for-profit organizations based on specific criteria. According to the respondents, the specific characteristics of the different organizations should be taken into account even if it is decided to adopt a single general law on NFPOs. There was greatest insistence on a detailed differentiation between the legal status and treatment of foundations and associations.

“The law should clearly state the difference between a foundation and an association.” /woman, NFPO representative, Plovdiv/

Specific parameters were also suggested for differentiating the legal treatment of foundations and associations.

Those are: registration conditions /for instance, the required size of the donation with which the organization is founded/, forms of management, system of control. In this context, a distinction was made, for instance, between “passive” /largely foundations sponsoring the third sector and not carrying out other activities of their own/ and “active” organizations /those engaging in specific activities and working on specific projects/. It was proposed that the latter should be subject to simplified accounting and control procedures. The chief argument was that their activity is very closely monitored by the funding institutions.

“This general law should nevertheless differentiate the two basic organizational forms of the third sector - the active and passive organization. Typically, what takes place in the active ones is a simple transmission of money - they receive funding from somewhere and spend it on projects for which they are accountable to the sponsoring institution... this type of organization, which spends funds in the public interest ought to have a much simplified system of accountability before the state.” /man, NFPO manager, Sofia/

The question of the character of membership in the different NFPOs was brought up and a distinction was suggested based on this criterion.

“Perhaps the law should specifically refer to three types of associations. One type would be the associations of individuals, another - associations of legal entities, and a third, mixed one - both individuals and legal persons.” /man, NFPO manager, Plovdiv/

Discussion participants were asked their opinion about the differentiation envisioned in the draft law between organizations established and operating in the mutual private interests of their founders and members /“mutual benefit organizations”/ and those established and operating to the benefit of the public /“public benefit organizations”/. Most respondents approved of such an approach. Several questions were raised in this connection.

1. Criteria for distinction between the two types of organizations. The generally preferred option was the principle of self-determination. The organizations declaring they would work “to the public benefit” voluntarily accept to operate within a specific legal framework. It should entitle them to certain incentives. In this case it was considered possible for these organizations to be encouraged in certain ways by the state as well.

2. Specifics of the legal treatment of the two types of NFPOs. On the whole participants approved of the idea of introducing stricter rules concerning the management and disposition of property of the “public benefit organizations” and stronger mechanisms of control over their activity and the way they dispose of their funds.

At the same time there was also an alternative opinion wherein such a differentiation might put some of the not-for-profit organizations at a disadvantage. It was suggested that if the state wanted to stimulate certain activities or turn over some of its functions to not-for-profit organizations, it was necessary to treat them on equal terms.

Concerning the relations between NFPOs and the state, there was general insistence on the need to ensure equal opportunities and conditions for all not-for-profit organizations /“with the possible small distinction between active and passive organizations, e.g. between foundations and the rest”/.

3. Regulating the activity of charitable organizations. The draft law envisions specific provisions concerning charitable organizations. Charitable status would be granted by a special Charitable Organization Commission and such a status would secure access to additional specific incentives and entitlements facilitating their activity.

Participants in the discussion were not quite unanimous on this question.

There were no objections in principle against granting preferential treatment of the activity of charitable organizations. The view was expressed, however, that the economic incentives should not only apply to a certain type of organization but to charity activities in general. There was even a suggestion for the adoption of a special law on charity.

“I believe tax incentives should concern charity undertakings rather than specific organizations... Any producer, owner, entrepreneur, etc., should be entitled to the same tax relief if carrying out charity.” /woman, NFPO representative, Sofia/

The main issue in this case was the mechanism of granting charitable status. About one third of the focus-group participants expressed concerns in two main respects: in the first place, the procedure of licensing those NFPOs applying for charitable organization status, and second, the need to create a special commission which is to grant such a status. The view was advanced that the proposed procedure would create administrative and bureaucratic obstacles to the carrying out of charitable activity. In any case, the status, authority, and functions of a Charity Commission ought to be subject to a broad public discussion before proceeding to specific legislative solutions.

It was also suggested that the introduction of a licensing procedure for charitable organizations might increase the likelihood of abuse and turn into “yet another channel of corruption”.

Another related factor, as brought up by some participants, were attempts by some not-for-profit organizations /the Union of Bulgarian Foundations and Associations was mentioned in this connection/ to appropriate monopolistic functions of “the highest authority in the sector”.

At the same time, it should be pointed out that the provisions of the NFPO draft-law concerning the status of charitable organizations were supported by the majority of respondents. It was stressed, however, that the choice of preferential legal status ought to be a voluntary one, that it should stimulate the activity of charitable organizations and safeguard the interests of the donors and society.

5. Funding and Fiscal Environment of NFPO Activity

The problem of the funding of NFPOs and the creation of a favorable fiscal environment for their activity emerged as the central topic of the discussions held. Various aspects of those issues were considered and a broad range of sometimes divergent opinions was expressed. In this respect the main issues discussed can be summarized in the following topic groups:

1. Should NFPOs be able to engage in business activities?

There definitely prevailed the opinion that NFPOs should also have the opportunity to carry out business activities through which they can become self-supporting.

“The law should allow us to carry out activities that would bring in certain revenues and through which we can be self-supporting” /man, NFPO manager, Sofia.

In this connection it was noted that despite the absence of a prohibition of economic activities in the current legislation, not-for-profit organizations encounter considerable practical difficulties in this respect. First of all, regional courts as a rule do not register NFPOs whose charter refers to the carrying out of business activity. Second, deciding what does constitute “economic activity” and what does not is as yet arbitrary and depends on the subjective judgement of tax officials /“it is ultimately up to the tax inspector to decide what is economic activity”/. In the third place, those third-sector organizations which do engage in some for-profit activities are generally regarded with suspicion, which was not always justified, according to participants. Finally, the question of the deductible expenses of not-for-profit organizations has not been settled, which also poses accounting problems.

However, participants did not believe the possibilities for engaging in such economic activities should be entirely unlimited. If this activity becomes predominant for the organization it should be carried out under the respective provisions of the commercial code.

2. Should NFPOs be able to generate profits?

On the whole discussion participants adhered to the principle that NFPOs do not operate for profits nor distribute profits. Yet the opinion was also expressed that NFPOs may generate profits which should be used exclusively to support the organization’s activities and to achieve its goals.

“I do not agree with the view that such organizations ought not to earn profits - provided they are spent for the achievement of the organization’s goals, that can only benefit its activity.” /man, lawyer, Sofia/

Some were inclined to allow the possibility for NFPOs to generate profits not only to support their activity. In such cases, however, they would be subject to the taxation and legal provisions valid for any for-profit business activity.

3. Should there be tax incentives to NFPOs?

The majority of discussion participants were inclined to support certain tax incentives to the activity of NFPOs but under specific conditions. The most widely held view was that such incentives should only apply to the activity related to the achievement of the organization’s goals, e.g. the so-called “related activity”.

However, in this case as well, there were certain counterarguments.

On the one hand, there arose the question of the loyalty of competition, when one and the same activity is treated as “related” in one case and not in another. This was perceived as an “anti-market” principle.

On the other hand, there were concerns that in the absence of clear-cut criteria, “in Bulgaria anyone can turn things in a way as to ensure that the activity is related to the goals of the organization”, or it would be possible to establish as many not-for-profit organizations as the number of “related” activities that need to be carried out under preferential taxation /”... I can simply set up ten NFPOs with ten different related activities”/. And thirdly, the goals of an organization tend to change and evolve. An activity which at one point may be related to the goals of the NFPO may no longer be so at another stage, and vice versa. All of these considerations sustain a certain skepticism with respect to tax incentives to related activities of NFPOs.

Three of the participants in the discussions upheld the principle of equal treatment of all who engage in economic activities.

“... as for economic activity, I believe that it should simply be unconditional, that there should be no preferences. If the Law on Commerce envisions certain incentives to those operating under its provisions, that’s all right, but they should all be on an equal footing.” /man, expert, Plovdiv/

The chief argument in support of this view was that the availability of tax incentives to certain types of organizations would encourage abuse. There is a deeply rooted conviction that even the smallest existing possibility for bending the law is bound to be used /”Should there be a single tiny loophole, alcohol and cigarettes are sure to sneak in that way”/. In this sense, participants generally disapproved of tax relief for for-profit activity of NFPOs.

Another suggested option was to grant certain preferences only with respect to not-for-profit activity of NFPOs:

“There can only be tax relief where there is no for-profit activity.” /woman, expert, Sofia/

Here again there arose the problem of a scrupulous distinction between for-profit and not-for-profit activity, which respondents believed to be difficult to solve and allowing arbitrary and subjective interpretations.

4. Should tax incentives apply to all types of not-for-profit organizations or only some of them?

One possible solution to the problems arising with the distinction between “for-profit” and “not-for-profit” activity, “related” and “unrelated” activity, is to adopt as a basis for providing incentives not the nature of the activity conducted but rather, the type of NFPO. There were various suggestions in this respect.

“Perhaps the only change in the present legislation that I would appeal for, is the introduction of different modes of preferential treatment. Or in other words, for the truly charitable organizations, which receive money in order to spend them on social activities, there should be full tax exemption. Those who are intermediaries should only be partially exempted. And finally, those working in their own private interest... should not be entitled to any tax relief.” /man, expert, Sofia/

There was highest agreement among respondents with respect to introducing significant incentives to charitable organizations which voluntarily accept to work under specific legal regulations and strict control over their activity /”if it is to be 100%, then let it be as it is in the States - total control, for instance”/. In some cases it was considered admissible to introduce certain incentives to all public benefit organizations.

“... and as for organizations which do not work to the public benefit, they will not be entitled to the respective preferential treatment” /man, lawyer, Sofia/

It was proposed to assign specific control functions to specialized private institutions or to introduce an extensive public control system. Participants also relied on the assumption that not-for-profit organizations themselves have an interest in excluding and “marginalizing” those who violate the legal and moral norms established in the third sector. A strong motive in this respect would be the wish to restore public confidence and attract more funds for their activity.

There was also insistence on the transparency of NFPO activity /for instance, obligatory public disclosure of their budgets/.

The serious drawbacks were noted of appraising each activity rather than the organization as a whole.

It was believed necessary to stimulate the overall activity of the organization, especially when it is actively pursuing socially important goals, realizing a “social entrepreneurship” of sorts.

5. Should there be other indirect incentives which would help create a more favorable fiscal environment for not-for-profit organizations?

It is important to note that the issue of the taxation of NFPOs was not raised by discussion participants as a problem in itself but rather, as an integral part of a broader context. It was considered primarily in terms of the funding of NFPO activities and as related to their survival. It was stressed that the absence of tax incentives to those sponsoring the third sector either dooms NFPOs to stagnation and bare existence or makes them take up for-profit activities which are not always related to their goals.

“If there are no incentives to donors all NFPOs will start carrying out business activities.” /man, lawyer, Sofia/

The discussion participants essentially agreed that the current environment was not favorable enough to the proper operation of not-for-profit organizations. Changing this situation was believed imperative and was associated not so much with tax relief for NFPOs themselves but with incentives to the donors, business organizations and state institutions willing to support the third sector.

“Not-for-profit organizations may not be entitled to tax exemptions but there are other ways and sources of compensation. Perhaps what is more needed now is to somehow stimulate and improve the general environment...” /woman, NFPO representative, Sofia/

The availability of certain tax incentives to donors was considered a key element of a more favorable tax policy regarding not-for-profit organizations /“it matters more to us to have incentives to those who will donate”/. Part of the respondents placed an emphasis on attracting mainly the financially more powerful foreign sponsors - “organizations which are in position to bring in money”. Others were concerned that “the money largely comes from abroad”, which creates conditions for a certain dependence on them and predetermines the priorities of the activities undertaken. It would seem that there are sufficient funds for certain types of activities /information, civic society development, support for democratic institutions/, while others /education, healthcare, social welfare/ definitely suffer a shortage of money. In that case it was considered more important to encourage Bulgarian donors and organizations.

“And I think that if there were incentives... for Bulgarian organizations, Bulgarian businessmen, Bulgarian companies, and even state institutions, for working with not-for-profit organizations, I’m sure that would be very beneficial and the state could then relieve itself of quite a lot of activities thanks to private initiative.” /woman, NFPO representative, Sofia/

One of the proposed schemes for encouraging sponsorship was for the funds /or part of them/ contributed to not-for-profit organizations to be recognized as company expenditures.

Several specific questions were raised in this connection, concerning the NFPOs which have legal entities among their founders. In those cases, according to some respondents, there were possibilities for transfer of funds and tax evasion /“some larger company sets up a foundation or a pension fund where it can hide such funds”/. It is also unclear what the legal regulation would be of the contributions by legal entities.

The possibility was specifically noted of abolishing or reducing the size of donation tax due when the donations are in favor of not-for-profit organizations.

In the course of the discussions there were also some suggestions about forms of stimulating the activity of not-for-profit organizations other than tax exemptions.

There was greatest support for the idea of transferring to the third sector functions previously performed by the state and local authorities. This does not imply financing of NFPOs by the national budget but rather, stimulating the enterprising and efficient not-for-profit organizations which would be competing among themselves for the implementation of specific projects. This would both allow the state to free itself from certain, not very efficiently performed activities, and to implement a selective policy of promoting those spheres which are of foremost import at a given stage. It would also help reduce the size of public administration in the areas where not-for-profit organizations prove more

viable and effective. Special attention was paid to stimulating NFPO activity on a regional level, “because it tends to have more immediate impact and tangible results there”.

In this context, it was deemed necessary for the law to include specific and unequivocal provisions allowing better interaction between state institutions and the third sector.

The need to simplify NFPO accounting requirements was repeatedly brought up. It was noted that in many cases the present system involves pointless procedures which can find a more expedient solution. Here is a specific example:

“Each quarter we file these blank declarations. I’m not carrying out any business activities so we just cross everything out, the declaration we submit is blank. Why do we have to do it? I can state that I’m not doing any business activities in my tax return in the end of the year.” /woman, representative of an environmental organization, Plovdiv/

The view was expressed that in principle, the public benefit NFPOs “ought to have a simplified accounting system”. It was pointed out that these organizations are also accountable before the sponsors who provide funding for their activity. On the other hand, however, some participants did not think there should be any differences among not-for-profit organizations with respect to the required financial records since “if it’s very simple, it will also be very simple to cheat”.

It was in this context that the question of tax control and the functions of the tax administration was raised. It was considered appropriate for such control to be exercised by special local authorities. It was suggested that tax officials ought to receive some special training, particularly in the larger towns, since they are generally not too well acquainted with the specifics of the third sector.

“I’m not talking about some entirely new tax authority or someone especially appointed to this position but a tax official who is already working in the administration and simply becomes in charge of this activity. Such people should receive some kind of training.” /man, expert, Plovdiv/

6. Main Conclusions

The discussions held have outlined a complex and multifaceted picture of the state of the third sector in Bulgaria, of its social environment and the attitude towards the activity of not-for-profit organizations. Participants shared a broad range of opinions and suggestions concerning the functioning of not-for-profit organizations. Summarily, we can make the following main conclusions and recommendations:

1. Third-sector development in Bulgaria is generally perceived as a positive and natural element of the process of establishment of a modern democratic civic society, which mobilizes and makes use of the energy of free private initiative. Not-for-profit organizations provide opportunities for addressing important social problems, relieve the state of some of its unworkable functions, support those public spheres which are experiencing serious difficulties under the conditions of economic crisis, attract additional resources into the country, create additional opportunities for professional fulfillment, and others.

2. Public opinion is still skeptically, and in some cases negatively, inclined when specifically assessing NFPO activity in Bulgaria. The widespread mistrust can be traced to a deeply entrenched popular belief that not-for-profit organizations are being used as a cover for illegal business activities. Doubts were voiced that NFPOs are associated with the “shadow economy”, are used as conduits for foreign political or religious influence, or serve private and group interests.

3. The majority of respondents agreed that the third sector is still underdeveloped in Bulgaria. It enjoys little public esteem and is not perceived as an equal partner of the private for-profit and public sectors. The public image of not-for-profit organizations is vague and controversial and there is no clear understanding of the scope, structure and import of the third sector.

4. On the whole there prevailed the opinion that the acting legal framework is inadequate to the changed conditions and modern requirements for the proper functioning of not-for-profit organizations. Participants noted the contradictory court practices, the lack of consistent criterias and requirements regarding the registration and operation of NFPOs, the subjective and arbitrary interpretation and application of the laws and other relevant regulations. All of which makes way for abuse and seriously undermines third-sector development.

5. There was concern that the presently available major sources of funding are unable to guarantee stable future prospects to not-for-profit organizations. The existing economic environment was not considered favorable enough to NFPO activity. The absence of viable incentives to donors was almost unanimously pointed out as one of the most serious problems faced by not-for-profit organizations. In this connection, most participants supported the adoption of a new law on not-for-profit organizations and the need for amendments to other acts of legislation /the Corporate Tax Act, Local Taxes and Fees Act, Personal Income Tax Act, Value Added Tax Act, Accounting Act/.
6. It was the prevalent opinion that if a new legal framework for NFPOs was to be adopted, it should only prescribe the general principles and most important rules of their activity. It was generally considered necessary to find a balance between the extremes of over-regulation and administrative restrictions, on the one hand, and the lack of guarantees against abuse and NFPOs serving as cover for illegal activities, on the other. The chief purpose of the changes in the legal framework ought to be to stimulate the third sector and provide a favorable social and economic environment for NFPO activity.
7. Participants supported the idea of a distinction between not-for-profit organizations operating in the mutual interests of their founders and public benefit organizations. Most believed that this distinction should be based on the principle of self-determination. The organizations stating that they are to work in the interests of society would thereby voluntarily accept and become subject to specific legal regulations. The latter should provide for certain preferences and incentives but likewise for stricter control over their activity.
8. There was general agreement with the idea of granting special status and preferential treatment of charitable organizations and charity initiatives.
9. The overwhelming majority believed not-for-profit organizations should be able to engage in economic activities through which they can support themselves. The basic premise adopted was that NFPOs do not distribute, but may generate profits which are to be used for the achievement of the organization's goals.
10. Granting particular tax incentives to donors and sponsors was highlighted as a key element of the creation of a favorable tax environment for not-for-profit organizations. Special attention was paid to the need to encourage Bulgarian donors and organizations.
11. There were proposals for stimulation of the third sector through the transfer of functions up to now performed by the state and local government authorities. The preferred form was assigning specific projects to NFPOs on a competitive basis.
12. Participants supported the initiation of a broad public debate on the proposed changes in the legal framework of NFPO activity. It would have a definitely positive impact in several respects. First of all, it would inform the general public about the problems of NFPOs and the main principles and ideas for addressing those problems by changing the legal framework. Second, it would help achieve greater transparency and better understanding of NFPO goals and activities. Thirdly, it would help educate and improve the legal background of those working in the third sector. And finally, it would make it possible to find the best legal solutions to the issues at hand, also brought up in the course of the discussions.

Overall, the conclusion can be made that the problem of creating a favorable environment for the functioning of not-for-profit organizations is the Gordian knot which must be cut in order to clear the way for the socially beneficial development of the third sector and a modern civic society.