



REPORT

(Main findings)

“AN ANALYSIS OF THE LEGAL FRAMEWORK ON NGO’S SUBCONTRACTING BY CENTRAL AND LOCAL AUTHORITIES, WITH REGARD TO THE SERVICES AGAINST DOMESTIC VIOLENCE”.

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1. Introduction to the field of study and research methodology problems.

The current Albanian legislation on gender equality and domestic violence has advocating the principle of cooperation between state institutions with NGOs, to combat gender-based violence. Funding of social care services for other activities in this area remains an important aspect in the implementation of the cooperation, state-NGO. When the public system can not respond to existing needs, or can not provide the required quality of the social services, contracting procedures through competition become necessary. Therefore, it is important that the legislation predicts the detailed procedures ensure the NGOs contracting by the state institutions. On these foundations is built and consolidate the ongoing cooperation well regulated by law between them.

The purpose of this study is to identify the legal basis supporting the currently contracting and procurement of non-profit organizations for social services in the context of gender equality in Albania, to analyze practical and functional effectiveness of this legislation, in approach to the international standards. This analysis will lead us further insights to identify gaps or needs for improvement in laws and their enforcement practices. But carrying out such a study, presented many difficulties due to the lack of work in the Albanian literature. In Albania, this issue has been addressed very little, or not at all. Therefore, from the methodological point of view, I have been focused on the study of the existing legal framework (desk study), in the field of gender equality and domestic violence. It carried a list of all the major laws that are related to this issue, both in material and procedural point of view. Further the study is intertwined with the practice followed so far on the implementation of this legislation. A special importance was the empirical method, which served to exchange information on best practices in Shkodra, Tirana and Vlora. Regarding these experiences interviews with officials and local councilors were conducted. It is also studied the existing literature, to recognize the best practices in other countries, to compare at a glance.

2. Cooperation between the state and NGOs in providing social services. Comparative Experience.

This cooperation began to be implemented on a large scale in Western Europe and North America, in the 80-90. Most important partner states in providing social services became nonprofit organizations, although profit entities were not excluded from the opportunity for such cooperation. Thus, NGOs were contracted with public funds to provide social services. Since that time, the funds coming from public finances to NGOs in Europe, occupy 40% to 70% of the revenues of NGOs, 31% in the United States, 45% in Japan and 70-80% in Hong Kong¹. However, there were voices against, viewing with suspicion the fact that NGOs were "kidnapping" the role of the state.

The same trend, contracting NGOs with public funds in order to provide their social services, are seen increasingly in other countries that have a similar history to Albania, such as Estonia , Bulgaria, Romania, Hungary, Slovakia, Czech Republic, etc.. In these countries, there are different experiences with the collaboration of these two sectors for the provision of social services. In some countries is used the name "public procurement of social services", while in some other countries is set to the form of an institute "public-private partnership", as there are also some cases where this cooperation is called simply "outsourcing" ie, " external sources ". Mostly, the use of public funds is noted in subsidies form (and partial contributions in kind), grants and procurement. Two recent forms were more related to specific services to the public and are characterized from a competitive procedure. Study of best practices of the most prominent legislative, which are successfully implemented in the respective countries, will lead us to clear conclusions on improving the Albanian legislation and its implementation.

From the study of the Albanian situation regarding the services provided for protection from domestic violence, we can identify some experience of contracting NGOs, local contracting authorities. In all cases that have been studied competitive procedures have used, eg, in the form of presentation of projects and only in one case the public procurement procedure. Thus, we conclude that prior experiences are not unified. In the framework of the Trust Fund against

¹ Asian Development Bank (2009), Final report on government procurement of public services: People's Republic of China, Prepared by Jia Xijin and Su Ming.

Violence against Women, NGOs Network against Gender Violence and Trafficking, has supported and encouraged the Municipality of Pogradec to contract line counseling service for victims of domestic violence, with one of the NGOs acting in the municipality. While Vlora municipality cooperates with the Centre "Vatra", funded by a portion of the cost of shelter "hearth", which in addition to housing and rehabilitation services for victims of violence, serves as counseling hotline for battered women. Similarly, in collaboration with the United Nations Programme for Development, the city of Durres and Korça had contracted local NGOs to provide services to survivors of domestic violence and their children². These municipalities have been able to contract with NGOs, transferring the funds, after receiving approval of their municipal councils. Self councils have developed some rules and relevant criteria. However, it is necessary that this process should not remain under the formation of will and reaching a consensus or majority, of the city council. It should be developed in the context of procurement legislation in RA, in order to include all organizations that compete in this area.

Shkodra Municipality has conducted a comprehensive procurement procedure for contracting NGOs for social services in the context of the "Minor in Albania", funded by the Italian Decentralized Cooperation (Cooperazione Decentrata), Region Emilia Romagna - and the agreement between the City Municipality of Shkodra and Forli-Italy. The procurement was conducted based on the existing legislation, namely Law no. 9643 dated 20.11.2006, "On Public Procurement", using the procurement procedure for "Consulting Services" provided by him. The whole process was conducted with the support of the Ministry of Labour, Social Affairs and Equal Opportunities and Public Procurement Agency. Application for participation in the tender of services was done electronically according to the procedures of the Public Procurement Agency. The evaluation committee was formed by representatives of the municipality and representatives of the donor. The project evaluation was made in accordance with the evaluation criteria that are determined based on the lots of application by regulations for implementation of the Law "On Public Procurement". Announcement of the winning operators also were conducted on the basis of this law. In four lots was declared a winner, while in one lot (III) were both qualified two winners as the sum of the budgets of the two winning projects do not exceed the

² Emira Shkurti, "Issues of contracting NGOs by the state institutions", paper, published in "The role of nonprofit organizations in defense of human rights and freedoms, through constitutional and legal instruments", Tirana, 2001

available funding. This last experience was experimented as a model, in contrast to the procurement law sanctions. In the work carried out in collaboration with the Municipality of Shkodra and the Public Procurement Agency, was set the task of monitoring the projects implementation. If we analyze the procedures followed by the Municipality of Shkodra in the whole application process and procurement, it is noted that in some cases the permission of the Public Procurement Agency is to avoid the application of the procedures expressly provided by law, because the provisions they had doesn't count the features that provide social services procurements. Therefore it is necessary to fulfill the legal framework and will take into account the NGOs as competitive entities and characteristics of social services being procured.

2. Albanian legislation on NGO cooperation with state institutions in matters relating to the provision of services for protection from domestic violence.

To create a clear vision of the importance of this issue today, it is necessary to look at creating spaces and opportunities that Albanian legislation on the recognition of non-profit organizations as useful partners in the public good. Some of the most significant developments are related to the fight against domestic violence, gender equality and non-discrimination. Specifically the law no. 9970, no. 24.7. 2008 "On gender equality in society" (Article 11), creates an advisory body to the government, the National Council on Gender Equality, which necessarily three of its 14 members must be representatives of civil society. Under this law, the main responsible authority, currently the Minister of Labor, Social Affairs and Equal Opportunities, has the duty to cooperate and provide support to non-profit organizations active in the field of gender equality (Article 13/2/c). The same obligation is also placed for local government where it is determined that "local government body's work closely with nonprofit organizations to achieve gender equality in various fields, in the areas covered." (Article 14/2).

A similar role is foreseen for the Ministry of Labor, in accordance with the law 9669, dated 18.12.2006 "On measures against violence in family relations". In this law, the obligation to cooperate with the civil society and to contribute financially is more evident. For example, Article 6 determines its obligations to the authority, for financing or co-financing of projects, which are aimed at protecting and strengthening the family, caring for victims of domestic

violence, backing the establishment of support structures and the necessary infrastructure that serves to support and fulfill all needs for persons subject to domestic violence. These include financial assistance, medical and social services under applicable law, free legal assistance at all stages of the judicial process, licensing of NGOs for setting up centers that provide these services etc., the obligation to install and set up services for victims, children and offender rehabilitation center for local government. Pursuant to this law, we can identify some services which are provided by law and necessary services as required in the context of activity against domestic violence.

1. Counseling Line 24-hour (by phone under the law "measures against violence in family relations")
2. Social assistance at home
3. Free legal assistance
4. Residential and community services for survivors of domestic violence.
5. Shelters.
6. Center for counseling and rehabilitation of offenders.
7. Special social services to children who have assisted or suffered violence

A common link is above the laws set by the Law "On Protection from Discrimination", no. 10221, dated. 4.2.2010. Under this law "organizations with legitimate interests" are defined as organizations that have declared object of their activity the protection of human rights, or provide assistance to victims of discrimination (Article 3.9). These organizations can submit a lawsuit on behalf of a person or group of persons claiming they had been discriminated under the provisions of this law. On the other hand, this law has institutionalized the cooperation of the Commissioner for Protection from Discrimination, and the non-governmental organizations.

The law "On legal aid" (No. 10039, dated 22.12.2008), provides the opportunity and the obligation of the state authorities, to cooperate with non-profit organizations in order to provide free legal aid. In Article 19 of the law ("Cooperation with non-profit organizations"), it is emphasized that the Legal Aid Commission conclude a contract of cooperation with the specialized organizations in the field of legal assistance, in accordance with the format and conditions stipulated by this law. This activity may be exercised in all cases contracted by

specialized legal services to domestic violence, and other legal services to persons who are vulnerable and unable to have a lawyer. In this context, it is necessary to have state funds for the purpose of subcontracting specialized NGOs for providing free legal services in protection from domestic violence and gender discrimination.

Law no. 125/2013 “On concessions and private public partnerships”, creates new possibilities for the procurement of social services and their decentralisation.

This law clearly provides the possibility of using a private - public partnership procedure for social services³. Moreover, this law provides that local authorities can also be contracting authorities, which develop private – public partnership procedures⁴. Thus, the provisions of this law enable the making of public procurement procedures for social services and allow the local authorities to conduct these procedures, guaranteeing the decentralisation of social services.

According to the aforementioned law⁵, the private-public partnership is a contracted long term collaboration between the contracting authority (public partner) and one or more economic operators (private partner). The latter undertakes the obligation for offering public services to the users, within the competences of the public partnership. Furthermore, the law regulates the meaning, procedures and the relevant bodies for issuing the partnerships.

The law also regulates the general context for conducting the private public partnership procedures, but it includes all the objects under its framework and it does not refer to a specific object (for instance, the social service) Nonetheless, in order to specify the concrete requests for the available economic operators, the obligation stems from the specific legislation, regulating the private public partnership contract. Thus, it is necessary that this law get implemented in coordination with the law “On social services”. In this context, the adoption of the documents on the “Standards of social care services for victims of domestic violence in residential centers, both

³ Article 4, paragraph 1/g “The application area of private public concessions/partnerships”, of the law no. 125/2013.

⁴ Article 13, paragraph 2/c “Contracting authorities”, of the law no. 125/2013.

⁵ Article 8 of the law no. 125/2013.

private and public”⁶ will provide particular aid. These documents are necessary for the implementation of the legislation regarding procurements and partnerships⁷.

Forecasting plans in the National Strategy for Gender Equality against Gender and Domestic Violence (2011-2015) to subcontract NGOs to provide services in this area constitutes a very important step. The creation of a special fund to support NGOs and an office charged with its administration on the basis of Law no. 10093, dated. 09.03.2009, "On the organization and functioning of the Agency for the support of civil society", is also a larger possibility to perform subcontracting and contractions of civil society organizations. It is important to build on these foundations and consolidate an ongoing collaboration well-regulated by a specific legislation. In this context it is possible to effectively implement all laws in order to realize the priorities and expectations from the civil society cooperation. So we can have a plan in distributing the state funds in such a way so that the obligations contained in all those laws in cooperation with civil society to be implemented harmoniously.

4. Issues of legal proceedings for the procurement of social services to private providers.

In view of the legislation of other countries, there are some experiences that have separate procedures for public procurement of social services to NGOs, public procurement by those economic entities (case of Bulgaria)⁸. While, in Albania, Law No. 9355, dated 10.3.2005, "On social assistance and social services" which regulates the funding and delivery of assistance and social services in Albania, refers to the public procurement legislation. It expressly provides that "public social care services, which are financed by the central and local budget, should be procured from the local governments to private providers according to the legislation on public

⁶ Decision of the Council of Ministers no. 505, date 13.7.2011 "Për miratimin e standardeve të shërbimeve të përkujdesit shoqëror për viktimat e dhunës në familje, në qendrat rezidenciale, publike dhe jopublike". Published on the Official Bulletin no. 114, 17 August 2011 dhe Guideline No. 13, date 17.12.2012 "Për zbatimin e standardeve të shërbimeve të përkujdesjes shoqërore, për viktimat e dhunës në familje, në qendrat rezidenciale, publike dhe jopublike". Published on the Official Bulletin no. 187, December 2012.

⁷ <http://www.sherbimisocial.gov.al/wp-content/uploads/2014/03/standarde-per-dhunen.pdf>

⁸ See note 2

procurement" (Article 18 of the Law). Local government body's contract with the private legal person's winner for the services they provide in their territorial jurisdiction.

It clearly defines the nature of social care services. By providing classifications and definitions, we are able to reach necessary conclusions to determine, which are specifically the social services that can be offered and contracted in the context of activities developed to combat domestic violence and gender equality. Thus, on their funding method, the law has divided the social services, public services and private services. Public social care services include services provided in residential institutions and homes for groups. They are financed by the central budget and the budgets of independent local government bodies. Municipalities and communes manage all social services to individuals who are residents of the city or county, district and administer the services when they are provided to individuals belonging to several local units which make up the circuit.

Indeed, services in the framework of assistance to domestic violence, according to the law "On measures against violence in family relations", are managed by municipalities and communes. However, if the project of social service expansions in some communes and municipalities, there might be an agreement by representatives of local base units, so that the service could be administered by the local district. This fits best not only with the nature of the region of the projects coordinator that transcend the boundaries of a single base unit, but also with the local taxes. This is because it is not mandatory or right for the local tax contributions to support services that lie outside their unit. The law requires all the public juridical persons and private legal entities that provide social care services to be licensed by the Ministry of Labour and Social Affairs. The Ministry of Labour and Social Affairs drafts standards of social care services and monitor their implementation. The Council of Ministers has currently adopted bylaws that must meet the standards of public and private legal persons to acquire a license to provide services in this area⁹. All procedures will be conducted according to the law on public procurement, which is superior law in this area. But what we find by reading this law? Law no. 9643 dated 20.11.2006; "On Public Procurement" (amended) defines as participants in the public procurement procedures only the economic operators (Article 1 of the PPL). There is no explicit

⁹ Enhancing the decentralization and social contracting in Bulgaria, website: <http://www.bcnl.org/en/projects/694-enhancing-the-decentralization-and-social-contracting-in-bulgaria-improving-the-knowledge-and-the-capacity-on-local-level.html>

regulation on the issues of contracting services to nonprofit organizations. However, this law does not preclude service contracts with NGOs in the field of its application (Article 7 of the law: special exceptions). Based on this fact, and the fact that the above the law "On Social Assistance and Services", refers to social care services financed by the central budget or local legislation applicable to procurement, we conclude that in case of subcontracting NGOs to conduct various social services to help the fight against domestic violence, the current legislation must be applied to the procurements in the RA. On the other hand we highlight that there is no specific provision to establish specific rules within the contracting of social services, which aims to fulfill the provisions of law that provide consulting services.

However, the study of law and all laws on these contracts brought to evidence the problems which cannot be easily adapted to the context of social services contracting. The procedure for obtaining these funds it is often prolonged by not responding in due time to open or support a particular service of social care for groups or individuals in need. Also, considering the winner selection criteria for the provision of a service, based on the public procurement legislation in force, often the winner does not respond to the standards of the social care services provided by the Council of Ministers Decisions, to the determined level and cost associated with them, to the professional staff level of training, etc... This is because social services in the social sector in general and in domestic violence in particular, have a different kind of consulting services. The main objective remains a selection of service providers that offers standards and provides the best level of service. It is necessary that the selection of service providers depending on the type of social care service, to be based on some conditions as: similar work experience in the provision of social care; assessment of the regional institution responsible in inspecting social care services to respect the standards of service that will be offered by the organization invited to provide these services; methodology for compliance with the standard level of service provided based on the costs for each one of them; qualification level of the professional staff, of the entity that will be engaged in the service delivery; knowledge transfer and the bid price for the service.

5. CONCLUSIONS AND RECOMMENDATIONS.

- I. The Albanian legislation clearly regulates the possibility for cooperation between the central competent state bodies and the local nonprofit organizations on the social services in the field of protection from domestic violence and gender equality. However, a detailed legal regulation is missing, on which should be supported the decentralization of social services and the delegation or contracting licensed private services providers, like NGOs. However, it is assumed that this can be accomplished through funds allocated to local governments from the central government for the implementation of these services, through the local government's funds, as well as through funds from donations. There is no detailed legal basis, to support genuinely and directly contracting, procurement and delegation of the NGOs for social services by local authorities.
- II. By the observation of the situation on the ground, was achieved the conclusion that there are competition different experience for contracting NGOs to provide services, but these experiences are not unified. It is necessary that these contractions to be applied not only in the material legal basis, but also in that procedural, as under the current legislation there is a need for the crucifixion of contracting with the procurement procedures.
- III. Law "On Public Procurement", needs supplements and interpretations, through amendments or bylaws providing a special procedure in the case of social services. The procedure provided for consultancy services is not sufficient for application in these cases. You can also review the possibility that the special procedures for contracting NGOs to be realized through amending the law "On social services". This law would be naturally closer to the procurement procedures for these specific.
- IV. Law no. 125/2013 "On concessions and private public partnerships" is suitable for cases of social services procurement. However, there is still a lot to be done regarding its implementation, so that new practices are created. They can be compared to the

existing practices, created by the implementation of the law “On public procurement”.

- V. It is necessary to provide clear provisions that provide expertise on the experience and quality of service based on social standards, in relation to the lower price. Also, there is a need for a special treatment in relation to legal documentation that NGOs should provide.
- VI. There is a need for legal provisions, to predict a period of more than a year for the social services procured.
- VII. Improvement of bylaws needed to determine the evaluation criteria (especially in the methodology and experience of staff). It needs specific predictions about the procedures after the announcement of the winners.
- VIII. In drafting the legislation there should be taken into consideration special legal arrangements for the procurement of social services for children.
- IX. In order to have a better coordination of the management of state funds to support civil society organizations, it is important for authorities to take into account all of the harmonic legislation governing the relevant field, applying the method of crossing all laws where appropriate. For example, it comes to an effective implementation of the law "On the organization and functioning of the Agency for the support of civil society," with the Law of "Legal Aid".

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