Bringing ASCS closer to civil society

Gjergji Vurmo & Orsiola Kurti – IDM*

The Albanian government and civil society a year ago agreed on the main priorities and expressed their joint commitment to further consolidate the enabling environment for civil society organizations (CSOs). Improving the regulatory framework and functional practices of the Agency for the Support of Civil Society (ASCS) was one of the undertaken commitments by public and civil society stakeholders in the Conference "Social Partners – Time for Action" (16 December 2013). The statement of civil society representatives highlights such need for ASCS as an influential mechanism to support civil society organizations and strengthening of democracy and sustainable development in Albania.

Despite the contribution of ASCS during the past five years in support of the civil society sector, various challenges have been encountered related to its **functioning**, **accountability**, internal **management**, conflict of interest and compliance of its financing **priorities** with needs of CSOs. Even though it has been agreed to improve the regulatory framework of ASCS as a response to the above-mentioned concerns, concrete steps still need to be undertaken. Several initiatives have started during the last months (i.e. series of consultations organised by ASCS for the design of the Mid-Term Strategy, the commitment to endorse the Charter of Civil Society or the attempts for the creation of the National Council for Civil Society, still in the process of negotiation between the Task Force including representatives of CSOs established on December 2013 and the government) note a starting point for the improvement of the regulatory framework of ASCS and its working practices.

The aim of this paper produced by Institute for Democracy and Mediation is to encourage a process of discussions and a platform to strengthen the role and contribution of ASCS in the advancement of the civil society sector in Albania. IDM experts have thoroughly reviewed the current legal framework of ASCS, its institutional setup and practice as well as secondary sources independently reporting on the performance of the Agency. The findings of this process and the proposed solutions have been discussed through a series of individual interviews and a closed debate with relevant stakeholders and key informants from ASCS, civil society, state institutions, donors and independent experts.

The proposed solutions for a platform of civil society to improve the regulatory framework and contribution of ASCS for the development of civil society aim to encourage a well-informed consultative process. This document identifies and provides an analysis of the main challenges of ASCS, presenting alternatives to be further discussed with the civil society sector.

1. ASCS "legitimised" by civil society – Old concerns, new challenges

Many issues are addressed in this context, starting with the "legitimisation" of priorities and themes to be financially supported and other issues concerning the selection of the management, their

accountability etc. One of the concerns raised by representatives of the civil society during the last years – **transparency and inclusiveness of the selection process for ASCS Board and Executive Director** – has been partially considered in the latest renewal process earlier in 2014. Specifically, the process has been open for competition and many representatives of civil society have participated. Still, the process lacked a structure that would enable candidates to present their vision and viewpoints in the selection phase, whereas decision-making rests on the government side. Strengthening the participatory element in the selection phase and the public accountability related to the fulfilment of the objectives of the Agency (periodic reporting) could be accomplished through the establishment of the (upcoming) "National Council of Civil Society" as a bilateral forum with state and civil society representatives.

In addition, the **profile** of Board members coming from both, the civil society sector and the public institutions is crucial. The open process for the selection of the Board members from civil society highlights this aspect to a considerable degree, while the legal definition for the selection of the members from "public institutions that interact more with civil society" is vague. Considering the duties and competences of the Board, it is required that their curriculum and experience could respond to the substantial aspects of the activity of the Board. This implies that the criteria "public institutions interacting with civil society" needs to be further detailed with criteria demonstrating the experience of the candidate.

Lastly, addressing the need to further align ASCS and its management towards the civil society sector and its development priorities could be hampered by the implications of the new Law on Civil Servants (Law No. 152 / 2013 date 30.05.2013) during 2014 . Specifically, the new law enables the selection of the ASCS Director according to the rules of the seniority level in the public administration. In this way, not only candidates from civil society are excluded from the process, but it also questions many elements and practices for the functioning of ASCS:

- Firstly, it questions the competence of the ASCS Board for the selection of the Executive Director and most importantly, the Board's competence for oversight and evaluation of the Agency Director's performance.
- Secondly, it raises questions related to the duties and responsibilities of the Board in the supervisory role of ASCS and fulfilment of its objectives.
- Lastly, in these conditions, representatives of civil society would encounter difficulties to advocate for a performance of ASCS for the support of the sector and would be less interested to be integrated in its structure through the representation in the Board.

Addressing these developments is essential for other measures aiming at the improvement of the regulatory framework of ASCS.

2. Financing authorities and priorities for financial support – Consultation or more…?

Various studies and consultation processes[1] have recently revealed the objections of civil society representatives related to the priorities and areas to be supported by ASCS. They argue that these priorities do not match with the real needs of the sector. On the other side, ASCS has initiated a series of consultations in order to address this concern. The inputs on the civil society priorities will be reflected in the midterm and long-term Strategy of the Agency[2]. However, some issues still remain relevant and need to be further addressed.

Firstly, article 4 of the Law on the Organisation and Functioning of ASCS defines the mission, objectives and programmatic priorities of ASCS targeted for financial support.[3] Also, the Statute of ASCS (Article 5, point 2, letters a – e.) details the priorities that are eligible for financial support.[4] A higher level of flexibility is required when defining the financing priorities, which need to reflect the dynamics of civil society's needs. The definition of the Law "ASCS is guided in its operational functioning by the strategic priorities of the government for the civil society development" is considered problematic from the civil society sector. Instead of externally imposed priorities (by the government), ASCS needs to be guided by the development needs and priorities of the civil society itself.

Secondly, the Law on ASCS (Article 3, point 1) refers not only to ASCS as a financing authority, but also to "*any public authority, national or local, allocating funds in their own budgets for the support of the civil society*". While eligible priorities for ASCS financial support remain incomplete (i.e. "European integration", a national objective, is not reflected in the priorities determined by the law and the statute of ASCS), it is unclear whether and how the financing priorities determined by this law are applicable for other public national and/or local financing authorities. The question is: How financing priorities are "legitimised" by the other financing authorities through a consultative process with the civil society? Is there a need for that?

---

[1] See Partners Albania Presentation in the framework of the National Conference "Social Partners – Time for Action" http://www.partnersalbania.org/Rekomandimet_e_Sektorit_13_dhjetor.pdf

[2] Information available at ASCS website http://www.amshc.gov.al/web/veprimtari/2014/2014.10.7-9-Takime-Konsultative.php

[3] Article 4 of the Law no. 10093, dt. 09.03.2009: "1. The Mission of ASCS is to enrourage the sustainable development of civil society and the creation of enabling environment for civil initiatives condition to the benefit of public 2. According to its mission, ASCS offers financial support for programs that encourage and strengthen the sustainability of civil society organisations, crosscuting and international cooperation, civil initiatives, philantropy, volunteering and democratic institutions, and other programs aligning with its mission. 3. ASCS is guided in its operational functioning by the strategic priorities of the government for the civil society development 4. The above-mentioned dispositiitions are applicable for any other contracting authority according to this law."

[4] The Statute of ASCS approved with a Decision of Council of Ministers no. 769 date 15.07.2009, Article 5 defined these objectives (and financing priorities): "a) The encouragement of cooperation with NGOs which have as their work object, the monitoring of the fight against corruption, fight against trafficking in human beings and treatment of its victims, against violence in the family and against violence towards children; b) The encouragement of citizens in activities, their inclusion and participation for the development of the community; c) The creation and consolidation of capabilities of the civil society; ç) The development of inter sectorial cooperation and of cooperation between the organizations of civil society; d) The increase of public influence and activity of the organizations of civil society; dh) The development of social undertaking and employment in the non profitable sector; e) The increase of the influence of civil society in the processes of drafting and approval of public policies."

Lastly, considering the up to date practice, this opportunity (financial support for civil society) provided by the Law of ASCS has not been considered by other public authorities. Hence the question – how to operationalize it? Is there a role for the "National Council for Civil Society" (soon to be established) through sectorial forums and enhance discussions with other public authorities in addition to ASCS?

3. Practices of internal management

Media reports and concerns continuously raised by representatives of civil society have revealed doubts over the credibility and ASCS structures' roles determined by the respective legal framework. "Strengthening of public accountability" could be facilitated by the National Council of Civil Society as an external alternative for ensuring the credibility and transparency of ASCS. Still, accompanying measures could be taken in the context of the internal management of the Agency.

Firstly, "management of the conflict of interest" (Article 14 of Law on ASCS and article 20 of the Statute) and particularly the deriving decisions could be transparent at a higher degree through publishing at the ASCS website. Even though, rules are present in the law and in the statute, transparency of their implementation could further improve the credibility of the Agency. This implies not only prevention, but also management and decision-making related to concrete cases of conflict of interest.

Secondly, the current practice of work reveals a double role of the Board– as a supervisory authority of the activity of ASCS, but also as a decision-making authority concerning grant-giving (through which ASCS objectives are fulfilled).[5] In addition to the need of a specialised structure for the substantial evaluation of project proposals, ASCS could hire external experts. This situation with a dual role of the ASCS Board, acting as evaluator and supervisor the activity of ASCS and as a decision-making structure in ASCS' activity (hence, a stakeholder in its success and/or failure) creates confusion.

Thirdly, the transparency of the evaluation process of project proposals has been required by many stakeholders. This request and the required level of transparency cannot be addressed just by publishing details of winning applications.

Finally, the decision-making role of the Board in the evaluation and approval of projects in principle would require a higher level of knowledge on the content of the projects and evaluation techniques of the Board Members. It is required that the primary role of the Executive Board is limited to "supervision" instead of decision-making responsibilities laying with the management structures of ASCS.

[5] While the Law and the Stature of ASCS do not explicitly state this decision-making role for financial contracting, the regulation of ASCS (page 8) foresees that the responsible sector for the review and evaluation of the project proposal in the initial selection phase drafts "written acts, which are submitted to the Board of ASCS, to finally evaluate the winning organisations benefitting from the financial grants of ASCS in the respective calls".

This paper was prepared by the Institute for Democracy and Mediation (IDM) in the framework of the project "Balkan Civil Society Acquis – Strengthening the Advocacy and Monitoring Potential and Capacities of CSOs", supported financially by European Union (EU). The viewpoints expressed in this document belong to the authors and do not necessarily represent those of EU.

* ***Gjergji Vurmo*** *(IDM) is a senior researcher with an extensive experience in the areas of development of civil society, EU policies and regional cooperation*

Orsiola Kurti *is a researcher at IDM and expert in the areas of local good governance, citizen participation and civil society.*

IDM, December 2014