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Analysis of the Legal Framework for Social Enterprise Development in Bulgaria

Bulgarian Center for Not-for-Profit Law

LEGAL PROVISIONS FOR THE NPLE

I. INCORPORATION AND STATUS OF THE NPLE

Subject of legislative regulation of the Non-profit Legal Entities Act are exclusively and only the personified non-profit organizations, which acquire the form of legal entities. The non-formal organizations, non-personified structures are not regulated by the act. Furthermore the Act differentiates the Non-profit Legal Entities (NPLE) from other similar in their genesis and functions legal subjects - political parties, religious organizations, trade unions. The NPLEA by its &2 from the Final Provisions clearly specifies that these subjects are different and shall be regulated by specialized acts.

This Act came into effect on 01.01.2001 and the existing before this date NPLE reserved their rights, but were obliged to transform their by-laws or articles of incorporation according to the imperative legislative rules, and one of the most important ones was to define whether they operate in public or mutual benefit.

Court registration of the non-profit legal entities

The legal entity of the non-profit organization originates with its entering into the non-profit legal entity registrar in the region of the district court at the organization's seat. The court registration is obligatory as of the moment of constitution of the NPLE as an independent subject, different from its founders, members etc.

In this line of thoughts the following consequences could be noted as advantages of the court registration: differentiation of certain property for fulfilling the goals, legitimization before donors and third parties, regulated control and better guarantees against unconscientious persons and defense of third conscientious persons, transparent conditions, accountability and mechanisms guaranteeing the achievement of the founders' and donors' will, legitimization for public collection of funds for non-profit purposes, possibility after the court registration for consequent registration in the Central Registrar for Legal Entities, designated to perform public benefit activities etc.

In the process of court registration of the NPLE in the court registrar are to be entered certain details, which are required for all types of organizations.

The possible difficulties are related in the first place with the necessity of court and administrative actions on incorporation and registration of the organization - court, tax, BULSTAT, social insurance etc., legally required registrations and reports, bound by specific terms. The obligations for the consequent registrations are common for all legal entities. Each NPLE in a 14-day period after its entering in the court registry should acquire registration under the BULSTAT system as well as to complete registration in the National Social Insurance Institute and must be granted a social insurance number. In a 7-day period after its court registration the NPLE has to submit a tax declaration for registering for fiscal purposes, as this registration is to be

made with the tax authorities in the region, in which the management address of the NPLE is located.

The Act provides a possibility for registration of branches of non-profit legal entities out of the residential area, where the headquarters of the legal entity are situated. The branch is a differentiated structural, functional, financial, property division of the non-profit legal entity without being a legal subject itself. The foreign non-profit legal entities have the possibility to incorporate their branches in the country as well, as the branch of the foreign organizations could profit from the advantages, ensured to local organizations. The branch of the organization could operate its own activity, differing from the activity of the mother organization. In the court registrar should be entered the purposes of the foreign NPLE, the purposes of the NPLE, which shall be carried out by the branch as well as the designation of the branch for performing public benefit activity. The incorporation, activity and closing of the branch of a foreign NPLE have to be done in conformity with its national legislation. The incorporation of such a branch in the country is admissible only if its purposes do not contradict the public order and legislation of the Republic of Bulgaria.

II. TYPES OF LEGAL ORGANIZATIONAL FORMS FOR THE NPLE ACCORDING TO THE ACT

The Act differentiates the legal status of the NPLE from the other legal subjects and defines two types of non-profit legal entities. These are the two traditional organizational forms - associations and foundations. The first one has corporate character, organization with members (in this case the organization has separate rights and obligations, different from those of its members), and the second consists only of property, which should be spent for a specific purpose (for this property, differentiated according to the legal provisions, the possibility for acquiring independent rights has been granted).

Association - a union of natural persons and/or legal entities for achievement of non-profit goals

The minimal number of founders, required for the incorporation of an association operating in mutual benefit is three. For the associations operating in public benefit a higher minimum has been set - seven capable natural persons or three legal entities.

On the incorporation of an association an Incorporation Meeting is to be summoned, which must encompass three obligatory components - unanimous resolution of the founders for incorporating the relevant association, adoption of By-laws (containing the goals, means for their fulfillment, structural rules of the organization etc.) as well as the nomination of the first composition of the management bodies.

The Act regulates in details the matters concerning the required contents of the by-laws, member rights and obligations, summoning and powers of bodies.

The Act determines as the minimal required bodies of the association the general assembly (its supreme body) and managing board (as the management-executive body).

The general assembly consists of all members of the association, unless the by-laws imply anything else (for example assembly of proxies). The powers of the general assembly have been defined in details, as the most important ones are the amendments of the By-laws, election and discharge of members of the managing board as well as approval of the report for the Managing Board's activity, decisions for transferring and terminating the association, approval of the annual budget and control of decisions of other organization's bodies. By an imperative provision of the law those cannot be assigned to other bodies. Furthermore, the possibilities for court control upon the decisions of the general assembly have been settled.

The supreme body of the association is summoned by the managing board (MB) by its own initiative or by the initiative of 1/3 of the association members and in the latter case if the MB in a one-month term does not issue a written notice for summoning the general assembly (GA) - it shall be summoned by the court in the association seat based on a written claim of interested members or by a person, empowered by them. It is required for the notice to contain the agenda, date, hour, and place of carrying out of the GA as well as the person with the summoning initiative. The notice has to be published in the State Gazette. There are also provisions regarding the principle of the descending quorum (if there is a lack of quorum the meeting is to be postponed by an hour at the same place and with the same agenda and could be carried out regardless of the number of members, unless the by-laws specify something else), majorities on making the relevant decisions, restrictions on the voting right (art. 28, para. 2) as well as the prohibition stating that on matters, which are not included in the agenda, decisions cannot be made.

The operative body of the association is the Managing Board, which consists of members of the organization, but in the cases when legal entities are members of the association, they can nominate as members of the Managing Board persons, which are not members. There is a possibility for the General Assembly to assign the functions of Managing Board to be fulfilled by one single person - Manager, but actually this implies also amendment to the By-laws (through the relevant qualified majority).

Concerning the MB, its powers and order for carrying out its meetings are settled. The maximal term of the members of the MB is 5 years. The Act gives legal definition for person attending according to which one person is considered attending the meeting of the MB when he has bilateral telephone or other connection, guaranteeing certification of his identity and enabling his participation in the discussions and decision-making. The option for non-attendance decision-making is expressly included when all members of the MB sign the protocol for the decision without reserves and objections.

Foundation – an organization, to which has been granted property for fulfilling non-profit goals

The Act provides two forms of gracious contributions of property for the foundation incorporation:

- When the grantor is alive - through grant or other gracious act. The gracious act should be issued in written form, with a Notary Public authentication of signature.

- When the grantor is dead - through will.

The unilateral act should contain the necessary requisites, demanded by the incorporation act (as a minimum the purposes and granted property are to be specified).

For foundations the institute of reserved rights for the founder is provided, and the reserved rights have to be explicitly enumerated in the Incorporation act. This enables the founder to control his/her will implementation concerning the management and utilization of the property for achieving the goals of the organization.

There is an option for a one-level management, which could be effected by a one-person body (actually this is true only for foundations in mutual benefit). In case the founder at the foundation's incorporation has not reserved for himself/herself to make changes in the bodies, the nomination of the members is to be done by the relevant body itself. If it is incapable of doing so, the competent court undertakes these responsibilities.

In this sense certain control powers for the activity of the foundation and its bodies have been conferred to the court at the organization's seat. The district court has the power to elect the members of the foundation bodies according to the will, expressed in the incorporation act, in case the founders are incapable to do this themselves; it has the power to assign the reserved rights of the founder or a specified by him third party to the relevant body of the foundation under certain hypotheses (if the founder or the third party do not exercise their rights properly or in case of permanent inability in this respect). In case the founder or a designated by him third person dies, is declared absent or set under judicial disability, respectively terminated for the legal entities, if any reserved rights exist, they are to transferred to the Foundation's bodies in order to avoid blocking of the mechanism for decision making and functioning of the organization.

Another form of control is provided in art. 43, para. 4 of the NPLEA where in case of necessity for amendment of the incorporation act and in case of impossibility for this to be done by the founder or following the order established by him or legislation, the district court at the foundation's seat makes the amendments.

III. NPLE OPERATING IN PUBLIC BENEFIT - PECULIARITIES IN THE LEGAL REGIME

A considerable innovation of the Act is the classification of the NPLE in types based on their self-designation as performing activities in public or in mutual benefit. The differentiating criterion, used by the legislative authorities, is the purpose, for the fulfillment of which the legal entity has been incorporated. The associations and

foundations operating in mutual benefit are supposed to have activity directed to the mutual benefit of their members, members of bodies and/or founders, while the organizations in public benefit have main goals and activity, influencing directly the society or significant part of it. There is an option in art. 4 for the state to support and encourage the registered in the Central Registrar NPLE for carrying out public benefit activity through tax, credit-interest, customs and other financial and economic benefits. Such benefits could be implied in the relevant specialized acts.

It should be expressly noted that this classification does not create new types of legal subjects. The public or mutual benefit is a **characteristic** of the relevant type of the legal entity, which could be referred to each of the two types of NPLE - associations or foundations. The organizations in public and in mutual benefit are subject to one and the same legal regime concerning the common rules for acquiring the status of legal entity and their court registration (provisions of chapter I and II of the Act), but the imperative provisions of chapter III refer only to the NPLE, designated for performing public benefit activity and acquiring this special status.

Based on this act the public benefit activity is the activity, directed to the fulfillment of one of the following goals:

1. Development and establishment of intellectual values, civil society, healthcare, education, science, culture, technique, technologies or physical culture;

2. Support of the socially poor, disabled persons or persons, needing special cares;

3. Assisting the social integration and personal realization;

4. Protection of the human rights or environment.

Other activities could also be classified as of public benefit by law.

The non-profit legal entities, designated for performing public benefit activity, acquire this status under the following two conditions:

1/ free self designation of the legal entity as an organization for public benefit activity (art. 2, para. 1 and 2), which is done through the by-laws or articles of incorporation; the self designation as operating in public benefit is irrevocable after the entering into the court registrar, regardless of whether the NPLE submits an application for entering into the CR, becomes subject to refusal for entering into the CR or is excluded from the CR.

2/ in order to receive the rights, granted to NPLE designated for performing activities in public benefit, it is necessary to enter in the Central Registrar with the Ministry of Justice, which registrar was created based on the NPLE Act.

The purpose of the Central Registrar is to ensure transparency and public control on the collection and spending of funds on the part of non-profit legal entities. It gathers information for their court registration, list of persons, participating in the

managing bodies, information for the performed public benefit activity, authenticated financial statements (for those being liable for such statements), annual report, eventual amendments in the By-laws or Incorporation act and etc.

A new requirement was added for the preparation of a report once per year by the organizations working in public benefit, which is to contain three necessary components: 1. Data regarding the performed activities and funds spent for them, their relation with the goals and programs of the organization and the results achieved; 2. Reference concerning the amount of graciously received property and amount of revenues from other activities for raising funds; 3. Financial result. This report for the activity is public. This secures the control upon the revenues and mode for spending the funds for public benefit activities.

The Act requires auditing of the financial statements of the NPLE working in public benefit, but only if their turnover exceeds 1 million levs or they have 500 thousand levs in assets.

The NPLE, which have designated themselves for public benefit activity, but have not registered in the Central Registrar, acquire status of NPLE, designated for public benefit activity, but actually they cannot benefit from the specified privileges and advantages, if such exist (art. 4), and acquire only the obligations, following the granting of this characteristic. The same is valid for the organizations excluded from the Central Registrar.

The NPLE for public benefit should have collective supreme body and managing body. This refers mainly to the foundations, which if working in mutual benefit could have only a managing body, possibly a one-person such. (The requirement for the association, regardless of whether it is in mutual or public benefit, supposes at least a General Assembly and a Managing Board). In this way the Act adds the obligatory requirement for foundations in public benefit to have a two-level management structure – a supreme and a managing body. On other hand, it is provided that when more than one body is available, the rules for the general assembly and the managing board as in the case of associations should be accordingly applied (i.e. the rules for decision making). All this aims at strengthening the mutual inner control between the bodies of the organization itself. In this field is also the obligation for keeping a protocol book from the meetings of the collective bodies.

There is a provision for publicity of information concerning the order, in which the election of persons and the mode for their support by the NPLE is done. The purpose of this provision is to ensure transparency on the possibilities, provided by the NPLE to third parties as well as stimulation of donors and sponsors of such organizations, guaranteeing maximum transparency for the way, in which their money shall be spent.

In case of gracious spending of the property of the public benefit NPLE for specific categories of related persons, a motivated decision of the supreme body of the organization is needed, taken by a majority of 2/3 of all its members. The restrictions concerning this category of persons aim to avoid conflict of interests or possible prejudice in decision-making.

No deals could be made with the related persons, unless the deals have evident benefit for the NPLE, are subject to general conditions and the conditions are publicly announced.

IV. TERMINATION AND LIQUIDATION OF THE NPLE

The grounds for termination of any non-profit legal entity provided in the Act are: expiration of the term, for which the legal entity has been incorporated; based on a decision of its supreme body; and by a decision of the district court at the seat of the legal entity. The first two grounds for termination are completely related to the parties' will. However the court decision could be taken only if the following provided in the law circumstances exist: when the legal entity has not been incorporated legally; when it performs activity, which disturbs the public order or moral; and in case of insolvency of the NPLE.

The NPLEA implies that the liquidation of a non-profit organization is to be done by its managing body or a designated by it person and if no liquidator has been assigned under this order, he/she shall be assigned by the district court at the NPLE's seat.

The Act explicitly regulates the property regime after the liquidation - the mode for its distribution after satisfying the creditors shall be settled according to the by-laws, incorporation act or a decision of the supreme body of the NPLE unless otherwise provided by the law. If such decision has not been taken until the NPLE termination - it is to be taken by the liquidator.

For the mutual benefit organizations, the remaining property after satisfying the creditors' claims could be distributed among the members of the organization and between the persons, in whose favor the organization was incorporated or between the founders. If no such people exist, the property is transferred to the municipality of the NPLE headquarters, which on its part is obliged to use it for an **activity, as closely related to the purpose** of the terminated legal entity **as possible**.

Peculiarities in the regime of the NPLE operating in public benefit

Certain differences could be observed in the regime of transformation, termination and liquidation of the NPLE designated for public benefit activity. There is an explicit prohibition for the NPLE in public benefit to be transferred in a NPLE in mutual benefit.

A similar prohibition is provided in connection to the special regime of liquidation, which the organization for carrying out public benefit activity has. The property after liquidation could not be transferred in any way to related persons.

The legal effect is the reservation of the remaining after the liquidation property for achieving goals, same as or similar to the ones of the terminated public benefit organization. It is provided that the property, remaining after the satisfaction of

the creditors' claims, should be given to another NPLE for public benefit, having t same or similar purposes. The most important option here is the possibility for autonomous solution of this matter by the NPLE itself - to determine in the By-laws Incorporation act the organization-successor. When the organization has used th opportunity, the legal entity - successor shall be defined by a decision of the **relevant district court**. If the property is not transferred following this order, it shall be transferred to the municipality at the NPLE seat and shall be obliged to ensure that the property is used for **public benefit activities**, as close as possible to the purposes of the terminated legal entity.

ECONOMIC ACTIVITY OF THE NPLE

The NPLEA for the first time in the positive law includes an opportunity for the non-profit legal entities to perform economic activity, which should comply with specific legal criteria. However, there is no definition in the legal theory what the term "economic activity" includes generally. Some definitions of the term economic activity exist, related to subjects, aiming profit making. However, the economic activity is often characterized as synonymous to commercial activity. To some degree the practice has elaborated a definition for economic activity, which most commonly is limited to the understanding that the **economic activity is each activity, performed by the legal subjects, aiming at profit or income making**.

The Act introduces the possibility for the NPLE as independent legal entities to perform economic activity and according to the law if NPLE perform such an activity - it is to be in conformity with the provisions, defined by the specific laws, regulating the respective types of economic activity. Obviously the freedom for performing economic activity is restricted in comparison with the freedom of the rest of the economic subjects, taking into consideration the specific purpose, for which the non-profit organizations are created - ideal purpose, because **the criterion is the purpose** for which the economic activity is performed, **and not the activity itself**.

Hence, added to the general requirements for economic activity, valid for all legal subjects, the NPLEA poses supplementary requirements, having restrictive nature and identifying the term economic activity for NPLE. In this context the economic activity, in the sense of economic activity performed by NPLE, is **each activity, directed to acquiring profits, complementarily carried out by the NPLE, regulated in its statutes and related to the subject of its main, non-profit activity, the revenues from which could be used only for the achievement of the purposes, determined in its Statutes**. Here are not included the activities, considered as traditionally of nonprofit character and related to the revenues, which the organization receives from grants, various types of financing, not obtained through direct and active participation in the economic turnover. The accumulation of such funds is rather a result of the passive participation of the organization in the economic turnover as it benefits from the results, received by the economic activity of others.

The Act defines the following criteria for economic activity, performed by the NPLE:

1. Supplementary;

2. Related to the subject of the main activity;

3. Spending the revenues from the economic activity for the purposes of the organization (they are AS A WHOLE used for achieving the ideal purposes, written in the Statutes);

4. Regulating the economic activity in the Statutes of the NPLE;

5. Prohibiting profit distribution - basic difference with the commercial entities under the Trade Act.

The systematic analysis of these legal criteria brings the clarification of the term economic activity of the NPLE according to the NPLEA.

Supplementary

The individualization of this criterion is related directly to the non-profit, considered as basic, activity of the NPLE, regulated in the Statutes. From a factual point of view, the supplementary requirement means that the bigger part of the existing resources of the organization are to be mobilized and utilized for the fulfillment of the mission, tasks, goals and priorities, forming the basic - non-profit activity of the NPLE rather than concluding deals, rendering of paid services and others, aiming at profit making.

Relation to the subject of the main activity in accordance with the NPLE registration

The Act gives opportunity for the NPLE to carry out only related economic activity, i.e. economic activity, which is related to the goals and therefore the subject of the main activity. The connection, which the economic activity has with the goals of the organizations, is the important point. This activity supports the achievement of the goals of a specific organization, for example the theater sells tickets for the performance or the publishing house sells its books. In this sense "related" means that not only the money, acquired by it should be spent for achievement of the goals, but also by its character the economic activity in itself should be a vehicle for achievement of the goals. So the basic element in the definition of the related economic activity is that it assists the organization activities not only through the profit, but also through direct accomplishing of goals - it has supporting, auxiliary character for the organization's goals.

In this way the character of the relation between the economic and basic activity is in the cause-and-effect relation with the main activity - when the economic activity is a consequence of the performance of non-profit activity, for example publication of materials from a seminar of the NPLE.

The so derived framework of "relation" of the economic activity would cause the classification of some activities as unrelated and therefore not recommended to be carried out by the NPLE. Such would be the various economic activities of the organization, which are not bound to the goals and mission of the NPLE and in no

way corresponding or attributing to their achievement, i.e. not being means for achieving the non-profit goals of the organization.

In all these cases the activity, directed to generation of income through economic instruments, done by any NPLE appears as self-directed, typical, basic economic activity and as such represents unrelated economic activity. Any toleration for the organizations in terms of the remaining economic activity could not be socially grounded, because of the unfair competition and would create conditions for abuse with the benefits given to NPLE.

In this aspect the unrelated economic activity supports the organization and the achievement of its goals only with its profit, for example cigarettes and alcohol beverages trade. These transactions, if concluded by the organization, could not be favorably treated from a taxation point of view.

Spending of revenues from the economic activity for the purposes of the organization and regulating the economic activity in the Statutes of the NPLE

The NPLEA sets the requirement that in the by-laws or the incorporation act of the NPLE, similarly to the subject of activity of the commercial companies, the subject of additional economic activity is to be defined. The practice has established the inclusion of an incomplete sample listing of types of activities and the catch-all expression "and all activities, which are not explicitly prohibited by the local or foreign legislation" or "and other activities, related to the basic goals". However, if a listing of the economic activities that the NPLE shall carry lacks in the by-laws or articles of incorporation, it will not be able to perform them as the law requires for the economic activity to be defined in the By-laws or Articles of incorporation (art. 3, para.4).

Each other economic activity, which does not comply with any of these requirements and is carried out by the non-profit organization, would be illegal and the legal entity would be subject to sanctions as a final measure (for example termination of the NPLE, according to the Act, by the court, when it performs an activity, contradicting the legal provisions or public order and moral; the rule of art. 48, para. 3, p. 2 requiring exclusion from the Central Registrar of the non-profit organization working in public benefit, if acting against the law). Also the granting of preferential tax treatment for the revenues from the economic activity is logical only for the related economic activity.

Forms of economic activity

Deals - all types of deals, admissible by the Bulgarian legislation - sale, lease, grant, loans, investments as well as such deals, concluded in accordance with art. 9 of the Obligations and Contracts Act;

Services - which in their essence are also in contractual form - paid consulting services, paid educational services, social services with payment etc.;

Research and educational activity subject to payment - research, investigation, analyses, seminars, conferences, round tables etc.

Information and publishing activity subject to payment - some NPLE dispose of vast databases in various fields. There is no obstacle for such organizations to create an information center, which has no own legal personality, in which paid information to be provided;

When the organization begins to perform economic activity, which in its scale assumes basic part in this way substituting the organization's designation, it is recommended to register a separate commercial company for the economic activity. The registration of a separate commercial company is imposed also by the legal requirement that certain economic activities are to be performed by commercial entities. An additional argument in favor of this is the necessity for differentiating the management and resources of the economic activity, attraction of credit resources, solving of certain tax issues (VAT) etc. When the founder of such a commercial entity is the NPLE - this is a passive form of economic activity - the commercial activity shall be executed by the commercial company and all requirements for traders shall be valid as the non-profit organizations shall take part only with its capital not owing personal participation in the company's affairs (this conclusion applies only for the capital companies).

The advantages of this form are that:

- Institutionally the economic activity is taken out of the structures of the non-profit legal entity and differentiated as a separate commercial company, which could carry out commercial activity without restriction following the provisions of the Trade Act;

- Capital companies are subject to the principle of limited liability i.e. the non-profit legal entity is not liable for the obligations of the commercial company before third persons and at the same time the commercial company is not liable for the obligations of the non-profit legal entity.

It is not recommended for the NPLE to take part in personal commercial companies as unlimitedly liable partners. The negatives, more specifically concerning the creation and consequent participation in partnerships and other similar legal forms are the availability of unlimited legal responsibility for the partners (this means also of the non-profit legal entity) for the obligations of the commercial company against third persons. This kind of legal liability potentially endangers the property of the association or foundation - partner in such company, which means that the positives and negatives should be precisely examined when participating in such commercial structures. This is more admissible for the NPLE operating in mutual benefit, because its property is collected from its members and persons, who wish to support it. For the organizations operating in public benefit the property is usually collected based on various modes, including outside persons, who are motivated mainly by the public benefit goal, which is the reason for attracting the funds. If the NPLE is an unlimitedly liable partner with all relevant consequences, the donors' interests could be endangered.

A possible form of economic activity is the incorporation of a civil company following the provisions of the Obligations and Contracts Act. The advantages are related to the fact that this contract presents flexible forms of defining the economic

and non-profit purposes and the means for their achievement by the subjects - partners as well as the necessary movable and immovable property, which they shall give for goals achievement and activities realization. By the contract for civil company natural persons as well as legal entities could be partners. They could be local as well as foreign persons. Participants in such contract could be state bodies and also local bodies - municipalities. The civil company could have structure i.e. managing bodies, provided by the partnership agreement and the grounds for termination of the civil company should be mentioned in the agreement for civil company. No court registration is required and the civil company is a convenient form for achieving short-term and average-term economic and non-profit goals, together with other natural persons or legal entities, without restrictions of their status.

The eventual negatives are related to the fact that it is possible to have full, joint and unlimited liability of the partners for the obligations, assumed through or on behalf of the civil company (although in practice it is a common opinion that principally the responsibility is divided unless anything else has been agreed upon). The mentioned above concerning the unlimited liability of some types of commercial companies is valid in full effect for the civil company. Also, despite the fact that the civil company is not a legal entity, it is obliged to register itself for tax purposes and is subject to taxation for the income, incurred within the financial year i.e. it is a taxable person.

Actually the results from the participation in a civil company could also be achieved through participation in agreements for joint activity. The advantages of this are similar to the ones from the agreement for establishment of a civil company. With the agreement for joint activity two or more persons - natural or legal, local or foreign, unite their efforts: material, organizational, financial, informational, human and other resources for achieving common economic or non-profit goals.

The agreement is a flexible legal form: the conditions and types of joint activity as well as the forms, in which it is carried out, controlled and terminated, fall completely within the contractual autonomy of subjects - parties under the agreement for joint activity. In this sense it could be concluded that the agreements for joint activity are a convenient legal mean, through which partners - non-for-profit legal entities, natural persons or other legal entities, including state bodies and local authorities, could unite their efforts and resources for achievement of short-term and middle-term goals, without being bound to the relatively heavier registration procedures provided by the Trade Act.

OVERVIEW OF THE NPLE TAXATION

I. INTRODUCTION

The knowledge for the specific sources of financing of separate organizations and the ability for their effective usage constitutes a prerequisite for the success in the activity of the relevant organizations. An important element in this respect is the differentiation of revenues between non-profit and economic activities of organizations as well as the possible legal definitions.

The problem for the way of acquiring funds for the activity of organizations is directly related to the mode, in which these funds shall be treated from a taxation point of view. Here two groups of funds could be mentioned, being used by an organization, with respect to their origin.

The first group is related to the money, which the organization receives from grants, various forms of financing as well as the revenues from this money if not acquired through direct, active participation in the economic turnover. This group of revenues could be defined as non-profit activity.

Even more organizations, on the other hand, strive for actively carrying out specific activity, which to incur profit, serving as a base for financing their goals. Such a practice would enable the organizations to acquire bigger amount of money and ensure their sustainability, which is in public benefit.

In this case they use other source of income, and more precisely economic activity. The development of such activities allows fields as healthcare, education or social assistance to develop on the basis of the principles for free competition, despite the difficulties with developing the market in those areas, simultaneously creating favorable conditions for the consumers of such activities.

The two types of revenues have a different taxation regime. While the revenues from the first group are excluded from the tax base and are not subject to taxation, the second are subject to taxation. Frequently, the borderline between the two sources of funds for achievement of the organization's goals is difficult to be defined.

The differentiation of non-profit activity as a source of income for the organizations' activity could not be drawn as a general rule. Most legislations enumerate various examples of separate deals, subject to exclusion from the tax base of the organizations, in the cases when civil organizations perform different activities, enabling them to collect funds for achievement of their goals (fundraising). These are activities of charitable character, according to the purposes for which they are collected, and the collected funds represent certain revenue for the organizations, which organizes them (for example - charity bids, sales, lotteries). The following deals can be defined as non-profit activity - donations, grants, and charitable sales.

In their essence these activities have no commercial character because of the fact that the price of the goods, offered in them, is formed mainly under the influence of their charitable designation. It could be concluded that the following is not an economic activity: the deals, where the profit, received by the organization, has considerably higher value than the value of what was offered under the same deal; or deals, when the supplied by the organization has considerably higher value than of what is received.

In its nature the passive economic activity has the character of passive investment rather than activity. As such could be mentioned the deposits in bank accounts, on which interests are accrued or investment in securities, bonds and other financial instruments accumulating dividend, rent or other investment income. Actually they are permitted for all legal subjects, without requiring special regime for

their conduction (excluding the cases of sale of securities etc., which constitute commercial deals pursuant to the Trade Act). The indirect performance of economic activity, such as participation and investment of financial resources in shares or stocks of commercial companies should not be defined as "activities for achievement of the goals". Added to these cases are the modes for financing the traditional (classical) foundations, which have been incorporated by donation and consequently profiting from the revenues of the interests on the donation. The revenues from these investments however, are subject to taxation in Bulgaria.

The directly performed economic activity, which is the essence of NPLE's economic activity, should be effected on regular basis and relatively incessantly, in order to have the character of commercial activity. It should as well comply with all criteria, required by the NPLEA - mainly as a mean for collecting money in direct support for the achievement of the goals

It should be highlighted that the provision of tax benefits in the world practice is conditioned not only by the type of activity - source of revenues for the organization, but also by the type of the organization, which has acquired the relevant income. The organizations having commercial character are rarely recipients of tax benefits. Having similar regime are the organizations, designated to perform activity in mutual benefit for a closed group of persons. The regime of tax benefits is related above all to organizations, designated to perform activity in public benefit. As a result of this designation, they are a subject to control on the part of specialized bodies in the relevant countries, have to establish, based on explicit legislative criteria, whether or not the organizations actually perform activity in public benefit.

The clear definition of revenue sources for the organizations and their relevant taxation regime is a precondition not only for the steady development of the organizations, and for these areas of economy, in which they perform their activity, but it is also a guarantee for restricting the possibilities for fraudulent actions based on the granted favorable taxation position.

II. TAX REGISTRATION

The basic legal act, regulating the obligations related to the so-called **general tax registration** is the **Code of Tax Procedure** (State Gazette, issue 103 dd. November 30, 1999, in effect as of January 1, 2000, issue 29 dd. April 7, 2000 - Decision No 2 of the Constitutional Court from 2000, amended in issue 63 dd. August 1, 2000).

According to art. 18, para. 1, p. 1 of the **Code of Tax Procedure all local legal entities, including the non-profit ones**, are taxation subjects and are liable to registration for taxation purposes.

Besides the general tax registration exist also the so-called **specialized tax registrations**. They refer to the **value added tax and the excises**, in the cases when the non-profit organizations are liable to taxation for them and conclude deals, which pursuant to the criteria set forth by the Value Added Tax Act and the Excise Act are subject to taxation in accordance with the obligations settled therein.

As the non-profit legal entities are economically independent, they fall within the definition of the term "enterprise" in the **Accounting Act**. It states that the enterprise means economically differentiated legal entities, sole traders and non-personified companies, which carry out activity permitted by law. Therefore the non-profit organizations should keep accounting, irrespective of whether or not they perform economic activity.

III. CORPORATE INCOME TAXATION ACT

The Corporate Income Taxation Act (CITA) regulates the taxation of the profits and income of local and foreign legal entities by income tax, municipal tax, as well as the withholding of tax at the source of the income for some categories of income, explicitly specified therein.

The legal entities, that are not traders, including the budget organizations and religious organizations, are subject to taxation of their profit and income, derived under deals enumerated in art. 1 of the Trade Act, performed by occupation, including lease of real estate and chattels.

Even though they are not registered under the Trade Act, if the non-profit legal entities conclude commercial deals by occupation According to art. 1 of the Trade Act (including lease of real estate and chattels), this would be an economic activity, which would make them taxable persons pursuant to the CITA - art. 6, para. 1, p. 2. Therefore, they shall be liable for the results of this activity (profit and income) similarly to all other traders. In this case the non-profit legal entities should keep separate analytical accounting for their economic activity, to issue profit and loss statement and submit annual tax declaration not withstanding the results of their economic activity.

Profits tax

If the non-profit legal entities perform economic activity they are liable to taxation with **profits tax** for the state budget as well as to **municipal tax**. The base for calculation of the **municipal tax** at the amount of 10 percents is the taxable profit, established under the order provided by chapter two of the Act. The base for calculation of the profits tax is the taxable profit, established under the order provided by of chapter two of the Act, decreased with the municipal tax. The profits tax of the taxable persons amounts to 15 percents.

Tax on the representative expenses, donations and sponsorship, accounted as expenses.

According to art. 35 of the Act the **expenses for celebrations, representative and amusement purposes as well as these for presents, which do not bear the commercial name or trademark of the taxable person, donation and sponsorship are liable to taxation with a final tax**. According art. 48, para. 1, the tax on the representative expenses, donation and sponsorship, accounted as expenses, amounts to 25 percent. Not subject to taxation are the expenses incurred on advertising, defined in the Act as the expenses for popularization of goods and services through materials,

publications (magazines, newspapers, catalogues, almanacs, brochures, indexes, reference books), radio broadcasting, announcements, television clips, advertising films etc.

Concerning this tax it should be differentiated whether the donation and sponsorship are paid out of the capital reserves or are accounted as expenses.

Tax on the social expenses and expenses for maintenance, repair and exploitation of automobiles under the conditions, specified in CITA.

Even though they are not mentioned in section III of chapter one, regulating the tax base, in chapter three of the act "Withdrawal taxes" in **art. 35 and art. 36 these categories of expenses are also given** as separate subjects for taxation. The tax on the social expenses (art. 36, para. 1 of the CITA) is applied if the expenses are According to art. 293 and 294 of the Labor Code. If not, art. 23, para. 2, p. 4 of CITA for the legal entities and art. 40 of the Natural Persons Income Taxation Act (NPITA) for the natural persons are to be applied. In case the social expenses are paid out of the social funds, created from the profit, art. 36 of CITA is not to be applied, but for the natural persons art. 40 of the NPITA shall be applied. Pursuant to art. 36 (1) of the Act the **social expenses**, which in their essence represents additional cash and in kind remuneration for the staff, including the hired on management contracts, are taxed at the source with a final tax. The "social expenses" encompass: provided to the staff, including the hired on management contracts, social benefits in accordance with art. 293 and 294 of the Labor Code and reported as expenses for the activity. The tax amounts to 20%. According to art. 36, para. 2 of the Act the expenses for maintenance, repair and exploitation of automobiles, when not involved in activity by occupation are subject to taxation at the source of the income, which is final. The tax amounts to 20%.

The tax under art. 35 and 36 represents an expense for the activity of the enterprise and it transforms the financial result following the provisions of chapter two, regulating the taxable profit.

Tax on the income from dividends and liquidation shares, received by local legal entities or non-personified companies.

For the non-profit legal entities this income is taxed with tax at the source of the income (art. 34 of the CITA). With the so taxed income the legal entity shall have right to decrease the financial result before transformation for tax purposes. Base for taxation of income from dividends and liquidation shares, charged (personified) in favor of local and foreign persons (including the non-profit ones), is the gross amount of this income. According to art. 34 (1) of the act the dividends and liquidation shares, charged by local legal entities and non-personified companies to local natural persons and local legal entities with ideal goals and foreign entities, are taxed with a tax at the source of the income, which is final. The tax amounts to 15%.

Tax declarations

The submission of a tax declaration is an obligation of the taxable persons, whose failure to fulfill it in the relevant terms is subject to sanction as defined in art.

65 of the Act – fine up to 1 000 levs. The tax declaration is a private document and represents and out-of-court acknowledgment of certain facts, being evidence against the person, submitting the declaration.

According to art. 51, para. 1 the owed annual income tax, municipal tax and the other corporate taxes are determined following the provisions of this act and are declared in the tax declaration form, established by the Minister of Finance. The tax declaration is to be submitted by the taxable persons in the respective tax authorities not later than March 31 of the next calendar year. To the annual tax declaration is enclosed also the annual financial statement without the appendixes. The act does not provide tax declarations to be filed for the advance payments.

In case the non-profit legal entity performs economic activity, which falls within the provisions of art. 31 and art. 32 of the NPITA and has an annual turnover up to 75 thousand levs for the previous year, the income from this activity is taxed with a final annual patent tax (art. 1 of the NPITA). In this case it is not subject to taxation subject to CITA. For the result of all other economic activities the CITA is to be applied. If the legal entity besides the patent activities performs also other non-specified in the NPITA activities, the income from the whole economic activity is taxed following the order of the CITA notwithstanding the turnover.

A non-profit legal entity, which does not perform economic activity, is not a subject of this act and shall not submit annual tax declaration. In order to appraise whether economic activity is performed or not a precise analysis of the activity is to be made.

Tax benefits

The non-profit legal entities can receive donations from commercial companies. According to the latest amendments in the text of art. 23, para. 3, p. 1 of the Corporate Income Taxation Act, the accounting financial result (profit or loss) is to be decreased with the amount of the donation up to 10 percents of the positive financial result before the tax transformation, made out of the capital reserves, respectively the owner's account, when it is in favor of: a) educational and healthcare institutions and organizations, which are on budget account, medical institutions; b) legal entities, which are not traders, having charity, social, environmental, healthcare, scientific research, educational, cultural and sport goals; c) registered in the country and municipalities religious organizations; d) funds for support of disabled persons and victims of natural disasters; e) Bulgarian Red Cross; f) assistance to socially poor persons, disabled persons, children with impaired health or orphans; g) restoration and preservation of historical and cultural monuments; h) cultural institutes or for the purposes of cultural, educational or scientific exchange under the agreements, on which Republic of Bulgaria is a signatory; i) non-profit legal entities, registered in the Central Registrar of non-profit legal entities for carrying out public benefit activity; j) established and provided scholarships for education of pupils and students in the Bulgarian schools; k) the municipalities.

This donation should be received also by the organizations, working in public benefit and registered in the Central Registrar for the non-profit legal entities, designated for performing public benefit activity with the Ministry of Justice.

However, the law provides a serious exception, allowing the usage of this benefit for donations, made in favor of other persons. The decrease could be used under the condition that the donation does not favor the managers making it or persons in charge of it. A criterion for using the benefit is that the donation should be **given to the enlisted organizations or for the enlisted purposes.**

When the donation is not in cash, its amount is defined by the balance amount of the donation or sponsorship item.

The tax benefits for donation are acknowledged on the grounds of a contract or other evidence, certifying that the subject of the donation has been received. The donation agreement is regulated in art. 225 of the Obligations and Contracts Act. The limit of 10% encompasses the current period.

IV. NATURAL PERSONS INCOME TAXATION ACT

The non-profit legal entities could be employers According to the Labor Code or pay other income to natural persons as well. The law assigns them obligations concerning the taxes related to the income paid by them to natural persons. Subjects to the tax obligations under the Natural Persons Income Taxation Act are the local and foreign natural persons. The local natural persons are taxable for income, originating from sources in Bulgaria and abroad. The foreign natural persons are tax liable for income from sources in Bulgaria.

According to para. 3 of art. 9 income from labor activities and income from providing services are from a source in Bulgaria, when the labor or services have been provided on the territory of Bulgaria notwithstanding the source for labor or services payment. According to para. 4 of art. 9, irrespective of the provisions of para. 3, the income paid by a local person or place of economic activity to a foreign person on the territory of Bulgaria, is considered as income from a source in Bulgaria.

Taxation of the income from labor remuneration

Art. 19 and art. 38 of the NPITA are applied for all labor remunerations. According to art. 19 the taxable income from labor and the equaled to them relations includes all payments, including awards and cash and/or in-kind contributions by the employer received by the taxable persons for the calendar month. The income, explicitly defined in art. 19, para. 2 of the Act, is not subject to taxation.

The taxation of income from labor and equaled relations is progressive as the tax amounts are given in art. 38 of the Act. The tax is accrued and paid on a monthly basis by the employer to the account of the tax authorities by tax registration.

Remuneration for non-labor relations

The regime of chapter eight of the Act is applied for non-labor relations. Based on art. 21, para. 3 the persons, exercising free profession and other activities and services with non-labor relations as well as the persons, performing management and control functions for a fee, form their tax base for the income from these activities

according to art. 22, according to which the tax base is calculated by decreasing the taxable income from the relevant activity with the expenses for the activity in the amount defined by law.

"Persons, exercising free profession" and "Persons, rendering personal services" According to art. 36, para. 1 of the Act have to pay advance tax of 20 percent. The advance tax is to be paid over the gross amount of the income received, decreased with the legally acknowledged expenses under art. 22, after the taxable income from all sources exceeds the annual non-taxable income. The tax is calculated and paid by the enterprises, payers of the money for the activities under art. 22 – the non-profit legal entity paying the income.

The income tax under chapters eight and seventeen of the Act is to be paid by the employers and assignors at the same time as the withdrawal or bank transfer of amounts for salaries and/or other remuneration from the bank account of the employer/assignor, and for cash payments - up to the 10th day of the next month to the account of the tax authorities at the seat of the employer/assignor. No advance tax is due following the order of art. 36 for the persons, performing activities subject to taxation with final (patent) annual tax under chapter fourteen of the act.

According to art. 57 of the Act each enterprise paying income to natural persons during the fiscal year, other than the income under labor relations and pensions, is obliged to present a reference form for the paid income to the tax authorities at its seat. The form under para. 1 contains data for the total amount of paid income and total amount of retained tax during the past year and is to be submitted not later than March 31 of the following year. The form is established by an order of the Minister of Finance.

Tax benefits

With the amendment of art. 22, para. 1, p. 3 and art. 25, para. 2 of the NPITA a benefit has been introduced for the donors - natural persons, having income from non-labor relations and from rents, who have made donations up to the amount of 10% of the tax base after deducting the legally permitted expenses for their activity. The donation should be made in conformity with the provisions of art. 28, para. 1 of the NPITA. According to art. 28, para. 1, p. 1 of the NPITA the donation should be made in favor of non-profit legal entities, registered in the Central Registrar of the non-profit legal entities carrying out public benefit activity. In this case the law again permits an exception in the text of art. 28, para. 1, p. 1 permitting for this benefit to be used by grantors, whose donation is in favor of educational and healthcare institutions and organizations on budget financing, medical institutions; legal entities, which are not traders, having charity, social, environmental, healthcare, scientific research, educational, cultural and sport purposes; registered in the country and municipalities religious organizations; funds for support of disabled persons and victims of natural disasters; Bulgarian Red Cross; assistance of socially poor persons, disabled persons, children with impaired health or orphans; restoration and preservation of historical and cultural monuments; cultural institutes or for the purposes of cultural, educational or scientific exchange under the agreements, on which Republic of Bulgaria is a signatory; established and provided scholarships for education of pupils and students in the Bulgarian schools; and municipalities.

V. LOCAL TAXES AND FEES ACT

Real estate tax

In art. 10 to art. 28 of the LTCA as well as in Appendix No 1 of the LTCA is regulated the real estate tax. The non-profit legal entities are subject to taxation with this tax if they are owners or users of the respective estates. According to art. 10 of the Act the real estate should be located on the **territory of the country** in order to fall under the effect of the Act.

From the generally taxable real estates the LTCA excludes from taxation the expressly exempted estates by virtue of art. 24, including: chitalishta, buildings of the Bulgarian Red Cross; buildings, used by the universities and academies for the educational process and scientific activity; churches of legally registered religious organizations in the country; parks, sport playgrounds, platforms and other similar real estates for public needs; museums, galleries, libraries. The exemption is under the condition that the real estates are not used for economic activity, which is not related to their main activity.

According to art. 11 the taxpayer is the owner of the taxable real estate or the user of the established material right for usage. Only the ownership right and restricted material right for usage (art. 56-62) are grounds for taxation of the real estates.

The provisions of art. 14, para. 1; art. 16, para. 1 and art. 27 of the LTCA are applied for the declaration of the real estates subject to taxation by the non-profit legal entities. They are obliged to declare in a two-month term the circumstances, specified in the law before the tax authorities where the taxable real estate is.

According to art. 14, para. 1, art. 16, para. 1 and art. 27 of the LTCA along with the declaration's submission, the non-profit legal entities submit a statement for the tax owed separately for each real estate by February 1 each year before the tax authorities at the place of its location. This obligation is regulated in art. 17 of the LTCA. When there is no change in the number and type of the taxable real estates it is enough to submit a only once a tax statement for the relevant real estate.

According to art. 28, para. 1 of the LTCA the tax on the real estates is to be paid on four equal installments within the terms herein: until March 31, until June 30, until September 30 and until November 30 of the year of payment. The persons, who have paid the whole tax until March 31, receive a benefit of 5% on the tax due. The tax is calculated on the tax appraisal of the real estate and amounts to 0,15 %.

The non-profit legal entity has the right to choose whether to pay the **communal waste fee** on the grounds of the tax appraisal or on the grounds of used waste vessels (type and number). In the second case a statement is to be submitted not later than October 30 of the previous year in the tax authorities at the real estate location.

Inheritance tax

No inheritance tax is owed for the legacies in favor of a legal entity, which is not a trader, i.e. including the non-profit ones. The inheritance tax is regulated in art. 29-43 of the LTCA as well as in Appendix No 2 of the LTCA.

According to art. 38, para. 1 of the LTCA the inheritance tax is not applied to the state, municipalities, Bulgarian Red Cross, chitalishta as well as the legal entities, which are not traders with the exception of the non-profit organizations, designated for mutual benefit activity, on acquiring real estates by legacy.

Transportation vehicles tax

The general rule is applied for the transportation vehicles tax for all legal entities, except otherwise provided (art. 58, para. 1, p. 3 of the LTCA - Bulgarian Red Cross). Each newly obtained transportation vehicle is subject to mandatory declaration in a 1-month term after the date of acquisition in the tax authorities at the seat of the legal entity.

Tax on the acquisition of real estates by virtue of donation or through payment

When there is a donation of a property (movable or immovable) to the non-profit legal entity, two hypotheses are possible:

a) The donation is not related to the statutory purposes - then tax is due;

b) The donation is related to the statutory purposes - also two hypotheses are available here:

- A tax is due when the property is not used by the non-profit legal entity for fulfilling its statutory purposes as well as when it is transferred to a third party for purposes different from the statutory ones;

- No tax is due when the property is used by the non-profit legal entity for fulfilling its statutory purposes as well as when it is transferred to a third party having goals, identical with the statutory ones.

According to art. 48, para. 1, p. 4 the non-profit legal entities, registered in the Central Registrar of the non-profit legal entities for performing public benefit activity are exempted from tax for acquisition of property by donation or by payment, but only for the received and given donations.

VI. VALUE ADDED TAX ACT

In case the non-profit legal entity performs independent economic activity and its place of carrying out is on the territory of the country (specified by the principles of the VATA), it is a potential subject of the VATA. Independent economic activity is each activity, performed on a regular basis or by occupation, including each intellectual activity, exercised as free profession. The term encompasses also each activity related to the production, commerce, agriculture, services rendering, for usage

or consumption by consumers. The usage of material and non-material property, with the obtaining of revenues from it, if having permanent character, is also considered as an independent economic activity.

The obligation for registration under the VATA originates only if the taxable turnover for the 12 previous months before the current month exceeds 75 thousand levs. At the same time there is an opportunity for registration by own will, but only for persons, concluding export deals, which are not exempted and total over 50 thousand levs for the 12 previous consecutive months before the current month. All other persons, who are not registered under the VATA, are final consumers for the purpose of this tax. They don't have the right to restore or deduct the accrued to them by registered persons tax i.e. to receive tax credit. In order to be registered, one has to file an application to the tax authorities at the location of their seat.

If one person imports goods, notwithstanding the availability of registration, the customs authorities shall charge VAT. For the non-profit legal entity, concluding such deals and being registered under the VATA, all rights and obligations under this act apply similarly as for traders. It is important to notice that the non-profit legal entity, which is registered under the VATA, cannot deduct or restore the charged tax for purchased goods and services, which it uses for carrying out its non-profit activity. And when it is unable to define which part of them is used for the non-profit and which for the economic activity (i.e. for taxable deals) it shall have only the right for partial tax credit. The term tax credit is construed as a sum of charged to the registered person VAT for received good or service through a taxable delivery or performed by the person import within the tax period, which the person has the right to deduct. The tax rate of the value added tax is 20%.

According to art. 59, para. 6 of the Value Added Tax Act no tax is due for the import of gracious aids with the exception of excise goods, supplied to the non-profit legal entities, performing public benefit activity and registered in the Central Registrar of the non-profit legal entities carrying out public benefit activity with the Ministry of Justice. The exemption from taxation with value added tax of the imports of gracious aids and donations in favor of these legal entities is one of the most significant amendments. This donation shall only be used for the non-profit, public benefit activity of organizations and could not be sold. This amendment favors only the grantors of these organizations, but not the activity, carried out by these organizations.

According to art. 49 of the VATA also the donation of goods, except the excise goods, and services are released from paying value added tax and by virtue of this act, made in favor of: educational, healthcare and medical establishments, scientific, cultural, social etc. organizations on budget financing; nationally represented organizations of disabled people; specialized enterprises and cooperatives of disabled people; for support of victims of natural disasters or heavy production accidents; Bulgarian Red Cross; for the national security and defense; state, municipalities, ministries, departments, state and local authorities; socially poor people, disables people, children with impaired health or orphans as well as their relevant centers, houses of senile or persons with physical or psychical abnormalities. A donation is also the gracious disposition by persons or organizations with the goods and services - subject of donation.

SOCIAL ENTERPRISES

There is no legal definition, in the acting Bulgarian legislation, for the term social enterprise as well as provisions, regulating the status, form and activity of such formations. There is no Bulgarian legal act, where the term "social enterprise" is used either.

The substance of this term, being exact translation from the English term *social enterprise* could be, on one hand, derived through clarification of the legal meaning of the terms "enterprise" and "social services" according to the Bulgarian legislation and on other hand through comparative analysis and interpretation of identical or similar terms from the foreign theory and practice and thereafter establishing the possible application of these terms with respect to the Bulgarian legislation.

I. ENTERPRISE

The term enterprise is not unambiguously defined in the actual Bulgarian law as the separate acts give their autonomous definitions designated only for the purposes of their own regulation.

According to the Trade Act, the **commercial enterprise** is a combination of rights, obligations and factual relations of one trader.

By virtue of the Competition Protection Act an **enterprise** is any natural person, legal entity or civil group who or which performs economic activity notwithstanding its legal and organizational form.

According to the Accounting Act **enterprises** are: the traders under the Trade Act; legal entities, which are not traders, budget enterprises, non-personified companies and foreign persons, carrying out economic activity on the territory of the country through place of economic activity.

Tax acts - Corporate Income Taxation Act and Natural Persons Income Taxation Act for the purposes of taxation define the term **place of economic activity**, which represents certain premise or base or permanent execution of commercial deals in the country.

Generally the enterprise represents a separation and concentration of various resources - human, financial, non-financial etc. in order to carry out activities directed to revenue accumulation - profit, income.

The term social enterprise could be defined as performed and managed by a NPLE differentiated economic activity, supporting the following fields - education, culture, ecology, healthcare, protection of minorities, disabled and people in unequal position and all other social spheres.

It should be noted that the definition above is given ad hoc - for the specific case and has clear theoretical character, derived on the grounds of interpretation of the

scarce provisions contained in our legislation. It is one of the many evidences for the significant need of adoption of new specialized legislation for the social enterprise, which would fill this vast deficiency.

II. SMALL AND MEDIUM SIZED ENTERPRISES

According to the Small and Medium Sized Enterprises Act, small and medium sized enterprises are: the micro-enterprises, small enterprises and medium-sized enterprises. Micro-enterprises are the small enterprises having staff up to 10 persons. Small enterprises are the enterprises, which have staff up to 50 persons, annual turnover up to 1 million levs and are independent. Medium-sized enterprises are the enterprisея, which have staff up to 100 persons, annual turnover up to 3 million levs and are independent. An independent enterprise in accordance with the SMSEA is such a commercial company or a cooperative, in which not more than 25% of the capital or number of votes in the general assembly are possessed by persons, which could not be associated to one of the mentioned above small and medium sized enterprises.

According to the act the incorporation and development of small and medium sized enterprises are encouraged through financial support, guaranteeing part of the credit risk on granted credits, development and implementation of programs for small and medium sized enterprises, information and consulting servicing, access to public procurements, educational projects for professional qualification and mastering of entrepreneurship skills, etc. A priority have the so called production small and medium sized enterprises, those creating new jobs in regions with an unemployment level, higher than the average for the country, grass-roots small and medium sized enterprises, etc.

The social enterprises and the small and medium sized enterprises

For the purposes of its regulation the Small and Medium Sized Enterprises Act in relation to the legal definition for small and medium sized enterprises defines that an "enterprise" is each person - trader according to the Trade Act.

Therefore, a relation between the social enterprises and small and medium sized enterprises could be distinguished only in the cases when a social enterprise is differentiated as a separate legal entity - commercial company, incorporated by the NPLE.

With respect to the requirement for independence of the enterprise, valid for two of the three types of small and medium sized enterprises, the act could be applied only in relation to a social enterprise, which is a micro-enterprise, i.e. having staff up to 10 persons.

The advantages that such an enterprise could profit in its capacity of a micro-enterprise could be summarized as follows:

1. Involvement of the social enterprise in various programs for small and medium sized enterprises on central and local level;

2. Obtaining specialized information for and from the small and medium sized enterprises; information about financial institutions, civil associations and non-governmental organizations, supplying financial resources for the development of small and medium sized enterprises in the Republic of Bulgaria; information about sources of financing; information of educational courses and thematic seminars, directly related to the activity of the small and medium sized enterprises;

3. Training for business plan drafting under projects and programs and receiving consultation;

4. Participation in the network of the small and medium sized enterprises and opportunities for partnership and coordination with similar enterprises;

5. Possibility for usage of premises, which are leased only to small and medium sized enterprises according to the act, designated for administrative, production or economic needs;

6. Applying for financing under national and international programs for encouragement and development of small and medium sized enterprises.

III. CREDITS AND LOANS. CURRENT LEGISLATION

The main regulative base of credit and loan granting under the acting Bulgarian legislation is contained in the legal acts, settling the banking activity. According to the Banking Act, the performance of the deals, listed in its art. 1 is banking activity. Part of this activity is the gathering of deposits (depositing activity) and usage of the deposits for credit granting at own risk and peril (crediting activity). The public depositing activity and crediting activity, which are typical bank transactions, together with a greater part of the other deals, stipulated in the act, could be executed only by banks - legal entities, incorporated in compliance with the special legislative requirements of the Banking Act. The Act expressly provides that a written permit (license), issued by the Bulgarian National Bank is required for carrying out banking activity.

Therefore the legislation implies license regime only for the execution of banking activity, part of which is the crediting, effected by banks through publicly gathered money as the legal regulation of this regime is given with the Banking Act, the Bulgarian National Bank Act and Regulation No 2 for the licenses and permits, issued by the Bulgarian National Bank. This regime is not applicable to legal entities as the NPLE.

The Cooperatives Act stipulates the legal possibility for incorporation of mutual aid funds for the natural persons - members of the cooperative and for crediting under the conditions of a special act.

The cooperative is a separate type of legal entity, representing voluntary unification of natural persons, with variable capital and number of members, who through mutual aid and cooperation perform economic activity.

The mutual aid fund represents a separate cash fund of the cooperative, from which in compliance with the adopted by the managing bodies regulations, loans are granted to the cooperative's members. It should be stressed upon the fact that the mutual aid fund is a closed system for internal distribution of loans, as the right for receiving of loans from the mutual fund could be obtained only by a person, who is a member of the cooperative and according to our Cooperatives act only natural persons could be members of a cooperative. As to the legal opportunity for a cooperative to perform crediting activity, which to serve a group of persons not belonging to its members, in the present moment it exists only as a possibility, deprived of a practical way of implementation because of the lack of a special act, regulating it.

Credits and loans, granted by and to the NPLE

The NPLE are a separate type of legal subjects, to which the law explicitly provides the possibility to perform economic activity, which means a possibility for entering in all kinds of legally admissible transactions i.e. such deals for which there is no special legal prohibition. The granting of a cash loan by a NPLE does not represent banking activity or a credit deal and therefore does not belong to the activities, for the performance of which the act requires a special license to be issued.

The granting of a cash loan from the budget of a current program or project, implemented by an NPLE is not related to preliminary public depositing activity or pursuing goals connected with gaining and distribution of profit by the NPLE itself. In this sense the granting of loans represents a component of the regulated under the NPLEA supplementary economic activity and if it complies with the special requirements of this act and rules of the other actual acts settling the economic activity (as the Trade Act; Accounting Act etc.), it is legally admissible.

Several different legal modes for granting cash loans by the NPLE could be applied. The first one is through a **loan agreement**, under which the NPLE in its capacity of a creditor transfers to the borrower the ownership over certain amount of money against the obligation of the latter to pay the lent money back within the agreed upon term. Principally this loan for use is free of interest, as interest could be incurred on it only in case that such has been stipulated in writing in the contract. However, this contract cannot contain clauses, defining the mode and purposes for which the lent money shall be used, as this does not fall within the subject of the contract. In this point of view in cases when the cause for granting the loan is that the money should be utilized with a determined designation, i.e. when the lender is directly interested in the usage of the granted money for achieving specific goals, this legal mode of transferring appears to be inappropriate.

Another legal mode for granting money is the contract of assignment, with which the NPLE as an assignor procures to an assignee to perform certain actions on account of assignor, who shall be obliged to supply the assignee with the cash resources, necessary for execution of the assignment. The assignor shall not pay remuneration to the assignee, unless such has not been expressly agreed upon in the contract. Therefore when the assignor has provided the assignee with the resources necessary, after the execution of the procurement the money has to be paid back to the assignor achieving as a result the effect of a non-interest recoverable loan with purpose designation. The positive feature of this approach is that the granting of

certain cash resources could directly be bounded with the goals, for which they are to be used, which implies that the recipient of the money shall be obliged by virtue of the contract to use it exactly for these activities, which the assignor has defined, eliminating the described above disadvantages existing with the loan agreement. The next positive feature of the mandate contract is that the assignee is obliged to report to the assignor and deliver the results from the execution of the procurement. In this sense the assignor could directly follow the stages of procurement execution and even determine that the amount shall be paid by installments based on the completion and reporting of certain stages during the whole procurement completion. Similar scheme is used for example on the grant distribution under the PHARE program of the European Union.

Another suitable form for lending money for achieving of specific purposes is the **agreement for joint activity**, especially in the cases when the interested parties in the relevant activities, which are to be carried out, are more than two. This agreement could be concluded as multilateral and parties on it could be natural persons as well as legal entities - for example representatives of commercial company, municipality, local non-profit organizations and the organization, granting the means. In this agreement the rights and obligations of each party, means of control over the performance of the activities, etc. could be stipulated in details.

When there is a requirement in the implemented program for the loans, as a part of the program budget, to be distributed in the form of typical bank credits it is possible to conclude an **agreement with a local bank or a commission contract**, under which the legal entity or its branch, delivering the loans, assigns to the bank, under specified conditions, to enter in relevant contracts with the beneficiaries, under the program, basing the loans on these contracts. It should be taken into account that in this case the credits shall incur interest and this would represent a typical economic activity.

Concerning the legal possibilities for loans to be granted and managed by NPLE no peculiarities exist, i.e. the organization borrower concludes a contract and based on it receives the loan assuming the obligation to use it for the agreed upon in the contract purposes and activities and pay it back after the expiration of the stipulated term. In the cases when the activities, which should be performed represent additional economic activity of the organization, the rules of the NPLEA are to be observed as well as the requirements of the other legal acts, containing provisions regarding the economic activity, for example the Trade Act, Accounting Act, taxation acts etc.

Regarding the possibility for loans to be granted to social enterprises, in terms of the definition given above, there is a distinction according to the fact whether the social enterprise is separated as an independent legal entity - commercial company, established by the NPLE or it is an internal separate structure (unit, department), part of the NPLE itself. In the first case as a party to the loan contract would be the commercial company. In the second case signatory would be the NPLE itself as this variant would be more suitable taking into consideration the greater guarantees, which this form implies for the achievement of the social goals and it could also turn to be economically more effective because of the fact that if the NPLE is designated for

performing activity in public benefit and it is entered in the Central Registry with the Ministry of Justice, it could use the relevant tax benefits.

IV. EMPLOYMENT ENCOURAGEMENT

With the recently adopted new legal acts and statutes in the field of employment encouragement a significant development was achieved. At present Bulgaria has modern and harmonized with the European legislation legal provisions in the field of employment encouragement, which should be quickly and effectively applied taking into consideration the existing difficult socio-economic conditions in the country.

Employment Encouragement Act

From the beginning of year 2002 the Employment Encouragement Act has been in effect, giving detailed and complete settlement of various groups of programs and measures encouraging the opening of new jobs, education, entrepreneurship etc. The act focuses also upon the sources for financing the activities on employment encouragement by foreign donors and organizations.

The act regulates several basic sets of programs and measures for employment in public benefit activities, differentiated by target groups. They are implemented by the Employment Agency in cooperation with the employment committees to the district councils, municipal authorities, the government, municipal and private enterprises and non-profit legal entities. The implementation of each program includes the legal planning and actual application of some expressly encouraging measures. In order to profit the legal privileges, established as encouraging measures, the employers should conclude an agreement with any department of the Employment Agency.

Legal privileges - measures for employment encouragement

1. Measures for hiring young people

- For each unemployed person aging up to 29 years with no labor experience, directed by the department of the Employment Agency, the employer receives the amounts for the labor remuneration and due installments on account of the employer for the funds of the state social insurance and the National Health Insurance Fund for the term of the labor contract, but not more than 12 months as well as the expenses for education and acquisition of professional qualification;

- For each hired unemployed person without any labor experience and aging up to 29 years having decreased labor abilities or young people from social establishment, who have completed his/her education, directed by the department of the Employment Agency, the amounts for labor remuneration are transferred to the employer as well as the due installments on account of the employer for the funds of the state social insurance and the National Health Insurance Fund for the term of the labor contract, but no longer than 18 months as well as the expenses for education and acquisition of professional qualification.

- The employer, who hires for a term not shorter than 12 months on full-time job position unemployed persons aging up to 29 years, directed by the department of the Employment Agency, the amounts for labor remuneration are transferred as well as the due installments on account of the employer for the funds of the state social insurance funds and the National Health Insurance Fund for each person for the period, in which he/she has worked, but not longer than for 12 months;

- The employer, who hires for a term not shorter than 24 months unemployed persons with decreased labor activity and persons from social establishments, who have completed their education, directed by the department of the Employment Agency, the amounts for labor remuneration are transferred as well as the due installments on account of the employer for the funds of the state social insurance funds and National Health Insurance Fund for each person for the period, in which he/she has worked, but not longer than for 24 months;

- The employer, who hires unemployed persons with incessantly maintained registration not less than 12 months, with a probation term in accordance with the Labor Code directed by the department of the Employment Agency, the amounts for labor remuneration are transferred as well as the due installments on account of the employer for the funds of the state social insurance and the National Health Insurance Fund for each hired person during the period of probation.

2. Measures for encouragement of education and professional qualification.

The employer, who accepts for training and professional qualification mastering and/or practice of unemployed persons aging up to 29 years, directed by the departments of the Employment Agency is reimbursed with the funds for each accepted person during the term of training or practice.

3. Programs and measures for transition from passive to active measures.

The employer, who hires with a labor contract unemployed persons, for a period not shorter than the half of the legally defined working time, directed by the Employment Agency, is reimbursed with the amount of one minimal monthly salary, established for the country and the due installments on account of the employer for the funds of the state social insurance and the National Health Insurance Fund for each hired person for the period, during which he/she has worked.

4. Programs and measures for education during the whole life.

- The employer, who maintains or improves the qualification of the hired workers and employees, could apply for financing of the training, not exceeding the half of the maximal defined amount of funds for the training of one person;

- The employer, who hires unemployed persons, directed by the departments of the Employment Agency for training and work at the working place, the amounts for the labor remuneration are transferred as well as the due installments on employer's account for the funds of the state social insurance and the National Health Insurance Fund for each person during the period, in which he/she has worked, but not longer than for a 6-month period;

- The employer, who opens special working places for mastering a qualification through practice and/or apprenticeship, including young people, excluded from the secondary education system, amounts are reimbursed for each accepted person during the term of practice and/or apprenticeship.

5. Encouragement of entrepreneurship

For a person or persons, who are unemployed and having right of compensation cash or aid for unemployment and wish separately or jointly to start business for production of goods and/or services, a single subventions from the "Unemployment" Fund are provided after approving the business plan by the department of the Employment Agency and a request from the person is submitted to the department of the Employment Agency, declaring his/her wish to receive the subvention instead of a compensation cash or aid for unemployment.

6. Programs and measures for creating of new jobs

- The employers - **micro-enterprises**, registered under the acting legislation are reimbursed with 12 months installments for the funds of the state social insurance, for the first 5 unemployed persons, directed by the departments of the Employment Agency, hired with a labor contract on full-time job, provided that they keep their positions for a term of 24 months.

- The employer, who hires unemployed persons on a part-time position for a period not shorter than 3 months, directed by the departments of the Employment Agency are reimbursed with the amounts for the labor remuneration as well as with the due installments on employer's account for the funds of the state social insurance and the National Health Insurance Fund for each person for the period, in which he/she has worked, but not longer than 9 months.

7. Programs and measures, ensuring equal opportunities through socio-economic integration of risk groups on the labor market

- An employer who has 50 or less workers and employees and hires for a term not shorter than 12 months unemployed persons with permanently decreased labor ability, directed by the departments of the Employment Agency, is reimbursed with the amounts for labor remuneration as well as with the due installments on employer's account for the funds of the state social insurance and National Health Insurance Fund for each person during the period, in which he/she worked, but not more than for 12 months.

- An employer who has more than 50 workers and employees and hires for a term not shorter than 12 months unemployed persons with permanently decreased labor ability, directed by the departments of the Employment Agency over the specified rate by the Labor Code and, is reimbursed with the amounts for labor remuneration as well as with the due installments on employer's account for the funds of the state social insurance and the National Health Insurance Fund for each person during the period, in which he/she has worked, but not for more than 12 months.

- An employer, who hires on a temporary, seasonal or hourly position unemployed with permanently decreased labor ability, directed by the departments of the Employment Agency, is reimbursed with the amounts for labor remuneration as well as with the due installments on employer's account for the funds of the state social insurance and the National Health Insurance Fund for each person during the period, in which he/she has worked, but not for more than 6 months.

- An employer, who hires with a labor contract for a term of 12 months registered **unemployed women - deserted mothers (adoptive mothers) and/or mothers with children under 3 years of age**, directed by the departments of the Employment Agency, the amounts for the labor remuneration are paid back as well as the due installments on employer's account for the funds of the state social insurance and the National Health Insurance Fund for each hired person for the term of the contract.

8. Programs for employment of unemployed people in public benefit activities

The Employment Agency together with the employment committees to the district councils, municipal administrations, state, municipal and private enterprises and non-profit legal entities implements programs for employment in public benefit activities of unemployed persons, which are applied with priority in regions with unemployment rate above the average for the country and with priority to hire unemployed persons up to 29 years of age, continually unemployed persons with secondary or lower education.

For each hired with a labor contract unemployed person, directed by the department of the Employment Agency, the amounts for labor remuneration are to be paid back for every working hour, additional remuneration of minimal amounts, established by the Labor Code and the legal acts on its application and the due installments on employer's account for the funds of the state social insurance and National Health Insurance Fund for the term of the labor contract, but not for more than 5 months.

For an employer, who hires on full time job for a term not shorter than 12 months an unemployed person, who has been "imprisoned" and directed by a department of the Employment Agency, in term up to 12 months after setting at liberty, the amounts for labor remuneration and the due installments on employer's account for the funds of the state social insurance and the National Health Insurance Fund for each person for the period, in which he/she has worked, but not for more than 6 months.

State Aids Act

This act is quite new - from 19.03.2002 and regulates situations, on which state aid could be granted to enterprises, carrying out activity in the social sphere. By virtue of the act "State Aid" is any type of financing, provided by the state or municipality, or on the account of state or municipal resources, directly or through other persons, under any form, which breaches or interferes the free competition by favoring certain enterprises, the production or the trade with certain goods or the offering of certain services. There is an opportunity for the existing social enterprises

to apply for state aid in order to ensure financial stability and therefore sustainability of their activity.

In compliance with the act it is admissible to grant state aid, when:

- The aid has a social character and is granted to certain persons provided that the aid is not discriminative concerning the origin of the relevant goods;
- It encourages the economic development of regions with lower living standard or high unemployment rate;
- It supports the implementation of a project with a considerable economic significance for the Republic of Bulgaria and for the countries, with which it has established a regime for inspection of state aid or for overcoming considerable difficulties in the economy of the Republic of Bulgaria;
- It supports the development of certain economic activities or separate economic regions in case that it does not negatively affect the conditions for the trade exchange between the Republic of Bulgaria and the states, with which it has established a regime for inspection of state aid.

In accordance with the Final Provisions of the act, it comes into effect three months after its promulgation in the State Gazette (19.03.2002) and towards the moment of its coming into effect Rules on its implementation shall be adopted. These rules shall regulate in details the legal criteria and procedure for state aid granting.

V. VOLUNTEERS

The legal trends in a greater part of the European countries show that the voluntarily labor is not explicitly regulated, despite being acknowledged as an exclusively valuable alternative resource for supporting national and local policies in the field of social development, culture, healthcare, sports and the civil society as a whole. In most of the European countries the term voluntary is used as a characteristic of a non-governmental organization. In this sense the term volunteer encompasses citizens, who exercised their right for association leading to institutionalization of their will and their transformation into legal subjects, which status and mode of work are regulated by special acts.

Bulgaria, following the general European trend, is facing similar problems. There is a lack of clear and single formulation for the term volunteer and generally no legal provisions on the voluntary and free of charge labor. There is no a legal definition for gracious labor in the Bulgarian legislation, showing that as of this moment internally non-harmonized legal framework for regulating the voluntary activity exists.

The development of the volunteer labor in Bulgaria is related to the evolution of the citizens' attitude toward the volunteer labor, strengthening of the existing organizations, mediators between citizens and institutions for easing these interrelations. One of the biggest challenges is the achievement of consensus between

the separate institutions for the benefit from the volunteer labor in various spheres of social-political life.

SOCIAL SERVICES

Legislation regulating the matter

The Constitution of the Republic of Bulgaria does not provide explicit provisions concerning the social services in Bulgaria and the role of non-profit organizations in this field. However, considering that social services are an indivisible part of social assistance, it should be noted that chapter two of the Constitution, regulating the basic rights and duties of the citizens, in art. 51 provides that the citizens are entitled to public insurance and social assistance. The conclusion can be made in this respect that the Constitution as a basic law of the country guarantees the right of citizens to benefit from the social services, rendered in the field of social assistance, to which right also corresponds the duty of the state to provide an effective system for rendering social services through the generation of up-to-date social legislation

The issues related to the performance of social services are regulated by the Social Assistance Act /promulgated State Gazette, issue 56 from 1998/, the Rules of Implementation of the Social Assistance Act /promulgated State Gazette, issue 133/11.11.1998, amended issue 38/1999, amended issue 42/1999/, Decree No 4 dated March 16, 1999 on conditions and procedures for delivery of social services /promulgated State Gazette, issue 29/ 30.03.1999, amended issue 54/ 1999/, the Law on Protection, Rehabilitation and Social Integration of the Disabled /promulgated State Gazette, issue 115/1995/. The Child Protection Act and the Local Taxes and Fees Act also regulate these matters.

According to art. 16 of the Social Assistance Act, social services are defined as activities for supporting persons and families, facing difficulties or unable to satisfy their essential living demands. The legal definition of the term "social service" is extremely important because it identifies the scope of the duty of the state to ensure to its citizens adequate social services.

It is evident that the legal definition for the term "social services" is quite narrow and is reduced mainly to activities of social assistance, oriented basically toward the disadvantaged people. From a comparative legal analysis of the legislation of the West European countries as well as of countries, which like Bulgaria are in period of transition, for example Hungary and Croatia, becomes evident that traditionally the term "social service" includes not only activities for supporting disadvantaged people but also activities with social value in the field of healthcare, education, culture or generally services in public benefit.

Subjects, rendering social services

According to Art. 18, para. 1 of the Social Assistance Act social services are provided by the state, the municipalities, by legal entities and natural persons. In compliance with the existing legislation, the non-profit organizations are registered as legal entities and are equal partners along with other legal entities, operating in the

sphere of social services. The separate subjects, which by virtue of the law deliver social services can organize and render social services with joint participation on the basis of a contract. No preferences or limitations are stipulated with respect to the activity of the separate providers, including non-profit organizations

The non-profit organizations are entitled to carry out all activities in the field of social services observing the Social Assistance Act and secondary legislation. No explicit limitations or special provisions concerning the activity of foreign non-profit organizations in connection with rendering of social services is stipulated in the current legislation. However, taking into consideration the conditions and procedure for granting licenses for performing social services and the requirement that applicants have to submit a document for tax registration in the country as well as a document for entry into the registrar of the relevant court, it can be concluded that if a foreign NPO should be effective i.e. to be licensed for rendering social services, it should be registered in accordance with the Bulgarian legislation.

Types of social services and institutions for social services.

According to the provisions of art. 36, para. 1 of the Rules for Application of the Social Assistance Act and art. 3, para. 1 and para. 3 of Decree No 4 on the Conditions and Procedures for Delivery of Social Services, the different types of social services may be divided in two major groups with respect of the place of their performance, namely: social services, provided in the usual home environment and social services, provided outside the usual home environment. Depending on the time, during which the social services are provided, they may be day-care or year-round.

Social services are rendered through social service institutions. The National Agency for Social Assistance (National ASA) ratifies the minimum statutory requirements for the organization of the activity of the social services institutions. The ratified statutory requirements are mandatory for institutions opened by natural and legal persons, including NPLE.

1. The types of social services delivered in the usual home environment are stated in detail in art. 5-art.10 of Regulations No. 4 on the Conditions and Procedures for Delivery of Social Services and are performed through:

a/ day-care homes - which create conditions for the day care of persons with mental impairments, persons over 18 years of age with physical impairments with certified first or second group disability and of persons over 60 years of age;

b/ home social patronage - through it are provided services to persons over 60 years of age, persons with certified first or second group disability and disabled children. Home social patronage includes the delivery of food, maintenance of the personal hygiene and the hygiene of the premises, inhabited by the person attended, **providing** necessary assistance in case of disability or serious illness, assistance in the communication and the maintenance of social contacts and rendering various everyday services.

c/ social services bureaus - which provide social and legal consultations on problems connected with social assistance, perform activities in distributing humanitarian aid, perform social work with disadvantaged children, persons and families, offer consultations and assistance in finding jobs, caring for

babies, elderly and sick people, consult and assist persons and families who want to adopt a child.

d/ centers for social rehabilitation and integration - which render social services to children with slow development, to children and adults with sensory impairments, to children with difficult behavior, children and adults with physical impairments, persons with mental impairments, disadvantaged children and adults, abused children and women, alcohol addicts, drug addicts, former persons who have been in prison, persons prostituting and beggars. The centers provide rehabilitation, social and legal consultations, orientation to social service institutions, programs for social integration and re-socialization, education and vocational orientation, the training in professional skills of persons with mental impairments;

e/ dining centers - provide food for the needy;

f/ clubs for disabled persons - organize social contacts and possibilities for active life for persons with a certified group of disability;

Before we examine the social services provided outside the usual home environment we will expound on the specific day-care social services delivered to the disabled, stipulated in art. 44 of the Law on Protection, Rehabilitation and Social Integration of the Disabled (promulgated State Gazette, issue 115 dated 1995). Part of these services constitute a special case of the day-care homes, the centers for social rehabilitation and integration, the dining centers and the clubs of the disabled due to which they will not be commented explicitly upon in the present account. Together with them, however, other possible day-care social services for the disabled are provided in this law and namely: residential care for the disabled at their homes, opening of specialized shops, rendering of everyday and communal services, as well as administrative, legal and intermediary services tailored to the individual needs of the disabled. All social services in the meaning of the Law on the Protection, Rehabilitation and Social Integration of the Disabled can be performed by natural and legal persons, NPLE and religious communities, after receiving permission from the Ministry of Labor and Social Policy.

2. The types of social services provided outside the usual home environment, stipulated in art. 11-art.18 of Regulations No. 4 on the conditions and procedures for delivery of Social Services, are rendered in the following institutions and include:

a/ homes for children or adults with physical impairments, which render social services to children of 7-25 years of age with heavy physical impairments that prevent them from attending ordinary and special schools within the system of the Ministry of Education and Science, persons under 18 years of age with heavy physical impairments of the limbs with first or second group certified disability, and blind persons over 18 years of age;

b/ homes for children or adults with mental impairments which provide social services to children and young persons from 3 to 18 years of age with a different degree of mental impairments, children or adults with sensory impairments (blind, deaf), persons over 18 years of age with different degree of mental impairments, persons over 18 years of age with mental illnesses, persons over 18 suffering from dementia;

c/ social vocational centers which provide professional qualifications and new qualifications to persons from 14 to 35 years of age which have a certified group of disability, with slight intellectual retardation and with sensory impairments, as well as to children over 14 years of age from disadvantaged families;

d/ children's villages which provide conditions for short-term recreation for children and young persons from 7 to 18 years of age who are orphans or with one living parent, children of divorced parents and single mothers, children from families eligible for social assistance or from disadvantaged families, children from social services institutions and children from refugees' families;

e/ homes for elderly persons which provide social services to persons over 60 years of age, as well as to persons with impaired mobility or bedridden patients of the same age;

f/ homes for temporary accommodation in which social services for homeless persons over 18 years of age are rendered. The period of accommodation in these homes can extend up to three months within one calendar yea. In art. 16, par. 3 of Regulations No. 4 is provided exception to orphans who have completed social vocational institutions or other institutions and who can be accommodated in the homes for temporary accommodation for a term of one year;

g/ orphanages in which are rendered social services to children and young persons who are under 18 years of age and left without parental or foster care. The activity of the orphanages is stipulated in the Rules on the organization and the activity of the homes for abandoned children, issued by the Ministry of Labor and Social Policy (promulgated State Gazette, issue 29 dated 1999);

f/ seasonal homes, which provide conditions for recreation for a period of up to three months to persons over 60 years of age, persons over 16 years of age with a certified group of disability, **able to** attend to themselves and persons and families with children under 18 years of age who are eligible to social assistance.

Partnership between the state and non-profit organizations in the process of delivery of social services

According to art. 21 of the Social Assistance Act, non-profit organizations may perform all the activities in the social services, provided they comply with the current legislation. Considering the legislation in the domain of social assistance it can positively be concluded that there are no social services in Bulgaria, which under the law or any secondary legislation are confined solely to the area of operation of the state or municipalities. Explicit provisions regulating delivery of social services by non-profit organizations to disadvantaged people are not provided in the current legislation.

Green-light provisions for non-profit organizations for working in the social sphere are permanently provided for in the current legislation. Regarding the role of the non-profit organizations in the delivery of social services, on first place it should

be noted the ambition of the legislator for regulation of the legal possibility non-profit organizations to consult state authorities. An expression of this form of partnership is the participation of non-profit organizations in public bodies with consultative nature. According to art. 4, para. 3 of the Social Assistance Act the activities in the domain of social services are performed by the Ministry of Labor and Social Policy in cooperation with the municipalities and non-profit organizations pursuing charitable and other philanthropic goals. To achieve this cooperation the law provides for the establishment of Council of Social Assistance, which is a public consultative body at the Ministry of Labor and Social Policy. Representatives of different Ministries of the Republic of Bulgaria, the National Association of the Municipalities of the Republic of Bulgaria, representatives of the organizations of employers and the employees, represented on national level, as well as, representatives of the non-profit organizations participate in this Council. Similar provision is provided for in the Child Protection Act.

The partnership between the state and non-profit organizations in the field of social services is a systematically implemented principle through out the texts of the Social Assistance Act. It refers both to cooperation on central and local level. According to art. 10, para. 2 of the Social Assistance Act, the municipal office for social assistance works in cooperation with the non-profit organizations, natural and legal persons and encourages their activity in the domain of social assistance

The acknowledgment of the role of non-profit organizations in the delivery of social services and the social necessity of cooperation between them and state on central and local level is an advantage of the Social Assistance Act. However, without mechanism regulating these partnership issues, the legal possibility, could tern just into recommendation without actual application.

As it was mentioned above, the non-profit organizations may render all types of social services. They can provide them individually or with joint participation on the basis of a contract with other social services providers. This possibility is set forth in art. 39 of the Rules of Implementation of the Social Assistance Act. According to this provision the social services may be organized and delivered mutually on the basis of a contract between the different social services providers /state, municipalities and natural persons or legal entities/. The term "legal entities" explicitly implies non-profit organizations. Unfortunately, the current Bulgarian legislation does not provide a social contracting procedure, clear-cut criteria for non-profit organizations and a minimum set of prerequisites for concluding such contracts. With a view to the aforesaid the provisions referring to delivery of social services with the joint participation of the separate providers remain just wishful thinking and have a rhetorical character.

Possibilities of the non-profit organizations providing social services to use municipal or state private property

Pursuant to the Law on Municipal Property and the Law on State-Owned Property, the non-profit organizations on the grounds of their activity, can negotiate the use and the acquisition of rights over estates, representing private municipal or state property. The municipal council of the respective town or village organizes the care for, the management and the disposition with the municipal property by adopting

for the purpose the appropriate decree on the procedures for acquisition, care for, management and disposition with municipal property. Therefore it should be known that every municipal council adopts such a decree and although it is based on the law it is possible that certain differences exist in the different municipalities.

The NPLE rendering social services have the possibility, according to the provisions or art. 14, par. 2 of the Law on Municipal Property, to lease premises owned by the municipality for the performance of social activities. The accommodation is done with a writ of the municipality mayor under the terms and procedures of the above mentioned decree on the care for, management and disposition with municipal property, adopted by the respective municipal council. The term of the lease cannot be extended to more than 3 years. Thus the ensuing leasehold legal relations may be terminated on the part of the municipality before the end of the term if a pressing municipal need arises. In that case the lessee is obliged to vacate the premises within a period of three months from the service of the notice. In addition to this the NPLE may acquire the right of ownership on a real estate - private municipal property, or limited estate right to construction on municipal land under the general procedure upon the holding of auction. A contract is signed on the grounds of the results of the auction.

The Law on Municipal Property does not provide preferences for NPLE rendering social services in leasing or acquiring estates constituting private municipal property. A tangible opportunity for efficient cooperation between the NPLE and municipalities in the sphere of social services exists in art. 39 of the Law on Municipal Property. According to the above-mentioned provisions there is a legal possibility to grant a gratuitous right for usage to a NPLE on an estate, which is private municipal property. The gratuitous right for usage is constituted with the writ of the municipality mayor for a period not longer than 10 years, only upon the decision of the municipal council. A contract between the municipality and the NPLE is concluded on the grounds of the writ. It should be noted here that the law does not explicitly imply NPLE but since this is a possibility opened to all legal persons, NPLE rendering social services are implicitly included. The requirement for the writ of the mayor to be based on the decision of the municipal council presupposes the preparation of a motivated project for rendering social services on the part of the organization, whose project shall be considered by the municipal council before the pronouncement of the decision.

The Law on State-Owned Property provides also the possibility for use of real estate, private state owned property for the performance of social activities. Basically private state-owned property estates are leased by auction or with a tender. Art. 19 par.2 of the Law on State-owned Property provides a legal possibility for cooperation between the state and non-profit organizations rendering social services. According to this provision real estates constituting private state –owned property may be leased by auction or with a tender for health, educational and humanitarian activities satisfying the needs of the population. In view of the aforesaid, it can be concluded that no preferences for non-profit organizations rendering social services are provided in the legislation, that regulates the management of municipal and state-owned property. With regard to this there are no preferences for non-profit organizations providing social services for disadvantaged people. Non-profit organizations are treated equally

with the other legal entities. There is no obligation for the municipalities or the state to assist NPLE providing social services by renting them premises or other material assets.

Equality of subjects, rendering social services.

Important prerequisite for the efficient participation of the non-profit organizations in the process of delivery of social services is the equal status of the separate social services providers.

From the analysis of the existing legal framework one could observe the unequal attitude of the legislator towards non-profit organizations in comparison with the legal entities - commercial companies and natural persons, delivering social services.

Basically the persons using them pay fees for the social services rendered by the separate providers. According to art. 18, par. 1 of the Social Assistance Law when NPLE render social services and the revenues accrued from fees for rendered social services exceed the expenses, according to the annual financial reports, the surplus is deposited in the "Social Assistance" Fund. Conspicuous is the fact that the Law does not stipulate such an obligation for the other social service providers, which puts the NPLE rendering social services at a disadvantage.

The Social Assistance Law obliges NPLE, which have received funding from the "Social Assistance" Fund to submit annual general and financial reports on their activity in the area of social services. Such obligation is not stipulated for the other licensed legal and natural persons that have used financial resources from the Fund. This **distinction in treatment clearly** discriminates NPLE in contrast with the other social services providers.

Such a discrimination of NPLE exists not only in the sphere of social services in the narrow sense of the term, but also in other socially significant areas, for example healthcare services.

Funding of social activities. Licensing.

An extremely important aspect of the delivery of social services and role of non-profit organizations in this field is the problem of funding and the possibilities for non-profit organizations to be financed by the state or municipalities.

What options have been defined for financial support of social services providers, including the non-profit organizations, according to the Bulgarian legislation?

For the purposes of funding of **social assistance activities**, the law provides for the institution of a "Social Assistance" Fund at the Ministry of Labor and Social Policy. According to art. 22 of the Social Assistance Act the licensed social service providers - non-profit organizations may apply for funding from the "Social Assistance" Fund. Mandatory for NPLE rendering social services, which apply for funding by the "Social Assistance" Fund is to have been granted a license by the

National ASA. The allocation of funds is possible after approval of a project. It should be pointed out that the license is a prerequisite for receiving financial support from the " Social Assistance" Fund, but is not a mandatory requirement for a non-profit organization to deliver social services. The provided procedure for licensing is quite formal and does not contain real criteria for the applicants.

Another possibility for NPLE to apply for funding by the state exists under the Law on Protection, Rehabilitation and Social Integration of the Disabled. According to art. 48 of the same law the "Rehabilitation and Social Integration" Fund is instituted at the Council of Ministers. The fund is a legal person with a non-budget income debit and credit account and a registered office in Sofia. The resources of the "Rehabilitation and Social Integration" Fund are used for the **support** of projects and programs for **disability** prevention, and for rehabilitation and social integration of and social assistance to the disabled. The fund is administered by a Managing Council, which organizes tenders and **decides** on projects and programs for prevention, rehabilitation and social integration. NPLE rendering social services for the disabled may apply for funding of projects and programs by the fund. The Managing Council is the **decision-making** body. In case of refusal for funding the Managing Council must motivate the refusal by specifying the actual and legal reasons for such a decision and within 14 days of its pronouncement to notify the persons concerned. The refusal of the Managing Council may be appealed under the procedure of the Law on Administrative Legal Proceedings.

In fact, the provisions of art. 48 and following of the Law on Protection, Rehabilitation and Social Integration of the Disabled are probably the only legal provisions in the current legislation referring to non-profit organizations delivering social services to disadvantaged people /e.g. disabled/. However the difference is based not on the different attitude of the legislative authorities, but on the goals, for the achievement of which the "Rehabilitation and Social Integration" Fund has been established.

According to art. 8 of the Municipal Budgets Act, in the expenditure part of the municipal budgets, funding may be provided for "healthcare, social, educational, cultural, sport and tourist activities of the municipality and activities for development of children and young people". Art. 9 of the same act states that on the formation of the expenditure part of the budget under art. 8 the municipal council shall define the relevant amounts of the funds, including these for "other expenses" /including services/, which do not contravene the law. The project of the municipal budget shall be prepared on the grounds of a strategy adopted by the municipal council and prognosis for municipality development. Therefore there is a possibility, in compliance with this strategy for development of the relevant municipality, in the expenditure part of the municipal budget to be provided for funds for social activity and social services delivered by the municipality in cooperation with third parties, including non-profit organizations.

Unfortunately, because of the restrictive budgets and insufficient decentralization of power and funds, actually this legal opportunity is not utilized.

It is evident that the legal possibilities for state funding of non-profit organizations, social service providers are very limited. The granting of state financial aid, however, is not a long-term solution even if it is the first step towards the financial security of joint activities in the social sphere.

The long-term decision, which shall ensure sustainability of the non-profit organizations' activity in the field of social services is the adoption of adequate legislation, regulating the partnership between them, the state and municipalities and creating favorable financial environment for the non-profit organizations to accumulate funds, with the idea to invest in their activity, including social services for disadvantaged people.