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## THE FORMATION OF CIVIL SOCIETY IN UKRAINE AFTER THE ORANGE REVOLUTION

**ABSTRACT.** The paper aims to determine the level of public sector development of Ukraine in accordance with the guiding principles of sustainable development. The object of study is a sector of non-governmental organizations (NGOs) that are active in Ukraine since the Orange Revolution. The research subject is the civil society development of Ukraine, which was estimated in accordance with such principles of sustainability as the level of organizational capacity, external relations of the organization (including cooperation with the government, business, media, communities and other public associations), the efficiency of accomplished work and programs stated in the mission of the organization.

**JEL Classification:** L31, P2**Keywords:** voluntary associations, civil society, Ukraine.

### Introduction

In XX century over a longer period of time the command-and-administrative system in Ukraine has been an obstacle to the public activity of citizens. The organizational structure of civil society was extremely inexpressive during the old regime, and at the same time the public awareness about the human rights was considerably neglected. There were manifestations of social consciousness, such as demonstrations which, however, were held under the state control. The space for individual non-governmental social activities was practically absent and as a result of this, there was no concept of civil society, which would be independent from the state control.

With the collapse of the former Soviet Union in 1991, the newly independent Ukraine has recognized fundamental human rights and freedoms, including freedom of speech and right to assembly. The Law of Ukraine "On Association of Citizens" was adopted in 1992, served as a catalyst for rapid development of civil society organizations. The chance of developing of non-governmental organizations (NGOs) and associations free of state control appeared for the people.

Today the Ukrainian NGOs are trying to draw attention to social needs, which the state is currently unable to solve. Moreover, they are working to improve public awareness on various development issues, as well as the proliferation of information on the rights of citizens and their influence on the development of policy and its implementation.

Thus, the Ukrainian NGOs have become the main driving force behind the "Orange Revolution" in December 2004. Despite the post-revolutionary era failure in the process of

democratization and political reform during the short expected time frame, according to international observers, the trend of the civil society development was, in general, positive and stable.

However, after the Orange Revolution the legal regulation for voluntary associations was not significantly improved. According to Ukraine-EU Action Plan for 2005-2007, our state has committed to adopt new law “On Non-governmental Organizations” and “On the Media” before the end of 2005. However these obligations have not been fulfilled, although the drafts of these documents were suggested by the non-governmental organizations. Now the legal framework for activities of public associations are provided with the laws “On Association of Citizens”, “On Charity and Charitable Organizations”, “On Self-governing Communities”, “On the Legal Entity and Natural Persons Entrepreneurs State Registration” and others.

## 1. Situation Analysis

The formation of civil society in Ukraine happened in complex evolutionary way, which involved, on the one hand, the appearance of the new institutions genetically related to human rights activities, conducted by dissidents in the Soviet era and on the other hand – modification, and partly due to modernization of the soviet organizations. One of the stages of development and establishment of “civil society” in Ukraine was Orange Revolution, which is often treated primarily as a revolution of civil society.

However, sociological studies show that the rate of political participation since the early years of Ukrainian independence remains low. In particular, in 1994 82% of Ukrainian citizens were not members of any social, political organization or movement; in 2007 the same indicator was 87% (Golovakha, Panina, 2007).

Table 1. The level of confidence in charities, voluntary associations (2008)

	Frequency	% all	% answers
Just do not trust	347	19,3	19,3
Mostly I do not trust	426	23,7	23,7
It is difficult to answer if I trust or not	732	40,6	40,7
Mostly trust	271	15,0	15,1
Full confidence	24	1,3	1,3

Sample N = 1,800 adults represents in proportion (over 18) population of 24 regions of Ukraine, Crimea and Sevastopol. Statistical sampling error is equal to 2.3%.

*Source:* The national representative survey of Ukrainian society – 2008 conducted by distributing questionnaires by the Institute of Sociology NAS of Ukraine in April 2008.

Analysis of the interaction between the authorities and civil society institutions points to a number of problematic issues, according to this it is still too early for Ukraine to ascertain the existence of a consolidated democracy in terms of democratic transformations, participation of the citizen in solving of social and cultural development issues, the establishment of adequate and enabling environment for civil society and development of the “third sector”.

## 2. Civil Society in Ukraine

The concept of civil society that arose at the dawn of modern times has gone through several stages of development, changing its content with the development of the social reality<sup>1</sup>. From the second half of the XIX century and until the second half of the twentieth century it has been almost forgotten about the concept of civil society. And then, during the collapse of the communist totalitarian regimes, it again reached the peak of its popularity – as it was in the western world and in countries that have embarked on the path of democratic transformation. The exact content of the concept and the speed of the implementation of the ideal that was defined in it nobody thought of. Sometimes remembered of the dangers that were, according to British researcher John Keane, in the civil society that “gives freedom to despots and democrats equally”, and under the certain conditions can become a battleground, “where the foxes enjoy the freedom of hunting for chickens” (Keane, 2000).

After a while it became apparent that there is another complication with the approval of civil society. In those countries where democracy has been built anew (as in Ukraine, Russia or Moldova), in contrast to those where it was a return (as in the Baltics, the Czech Republic or Poland), civil society could not be formed as rapidly as it would be needed to buttress democracy. It turned out that for its full development you have to wait for decades. The process of “growth” of the civil society mostly spontaneous, therefore it takes time. Deliberate efforts can be directed to the promotion of its development, but not on the construction of specific, rationally constructed plan.

Civil Society (CS) is a public space, which lies outside the authorities, business and family relationships, and in which individuals are united voluntarily to advance common interests.

In order to avoid unwarranted judgments about such complex and multifaceted phenomenon, which is a civil society, and to competently assess its importance for any democracy, the measure of its presence and socio-political influence in Ukraine, you must:

understand the normative content of the concept:

- “Civil society” – what it represents as an ideal type; what are its main features, place and role in the public system;
- delineate the “boundaries” of civil society, separating it from other social phenomena and close to it concepts;
- determine the types of civil society through the elucidation of its common and distinctive features in different countries, to outline it specific “models”;
- on the basis of this knowledge is already possible to do an analysis of material related to the establishment and development of civil society in Ukraine (State and dynamics of non-governmental organizations development in Ukraine 2002-2006, 2006).

In a broad sense to civil society actors can be attributed: non-governmental organizations, charity foundations, business associations, bodies of self-governing communities, media, trade unions, organizations of employers, non-parliamentary political parties, religious organizations, initiative groups of citizens.

The majority of Ukrainians under the term “civil society” or “third sector” understand foremost non-governmental organizations<sup>2</sup> and charity organizations<sup>3</sup>.

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<sup>1</sup> For details please see: Historical evolution of civil society and ideas about it (forming ideal) // Independent cultural journal. – 2001. – Number 21. – pp. 6-32.

<sup>2</sup> In this article NGOs are defined as independent associations representing interests of Ukraine citizens in order to enable active participation of everyone in the development of Ukraine. These organizations include NGOs, registered under the Law of Ukraine “On Public Associations”.

<sup>3</sup> Charity organization – non-governmental organization whose primary purpose is charitable activity in the society interests or interests of certain categories of persons in accordance with the Law “On Charity and Charity Organizations”.

### 3. Role of civil society in political and public life of Ukraine

In 2009 territorial justice institutions legalized about 3 thousand local citizens' associations (respectively in 2008 – more than 2.5 thousand), about 1.4 thousand local centers of Ukrainian and international NGOs (in 2008 – more than a thousand), have registered more than 650 local charities (in 2008 – more than 700), about 4 thousand structural formations of political parties (in 2008 – about 5 thousand) and legalized by written notice on the formation of more than 18 thousand of the primary centers of political parties (in 2008 – 13 thousand)<sup>4</sup>.

There are several hundred civil society organizations in most regions of Ukraine (the number of such organizations typically ranges from 200 to 500). Kyiv city and Lvivska oblast stand against this backdrop. They are the absolute leaders by the number of registered NGOs (more than 4000), this boils rapid social and political life, which involves many local organizations. This group of leaders in the number of Civil Society Organizations (CSOs) includes also Zaporizhska (approximately 1500 organizations), Dnipropetrovska (almost 1000 organizations) and Odeska (nearly 1000) oblasts.

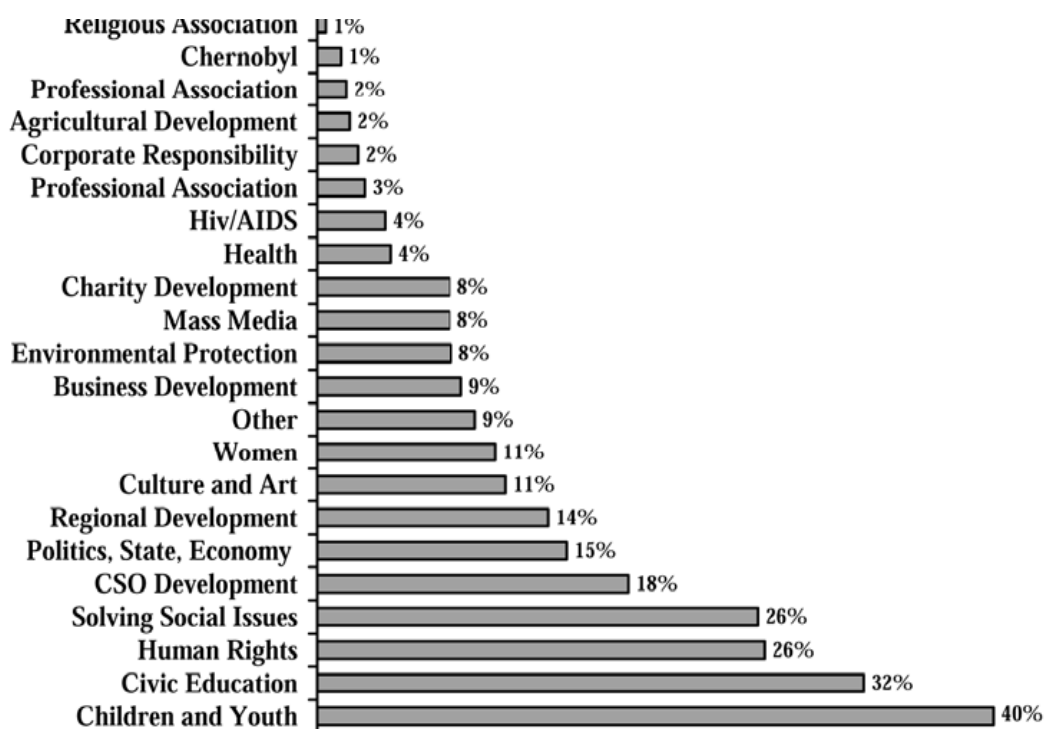
According to a study of the Creative Center “Counterpart”, the main sector of NGOs' activities is the *work with children and young people* (44%). 35% of NGOs deal with *social issues*, 31% – *protect human rights*, and 27% of organizations are concentrated in *public education*. 17% of respondents have chosen “*Development of the NGO Sector*” as the reply option.

The most common type of NGO activity is the *protection of particular interests and their lobbying* (44%). 39% of respondents practice *training and consulting*. A large number of NGOs *disseminate information* (38%) and are engaged in *educational activities* (32%). The dynamics of the most popular today NGO activity spread during the past four years is very indicative. In 2002, the *protection of interests and their lobbying* was one of the main activities of only 16% of respondents. In 2005, this indicator notably increased (by 44%). Most NGOs' customers are *youth* (45%), *members of the organization* (30%), *children* (25%) and *students and the entire population* (23% each) (State and dynamics of non-governmental organizations development in Ukraine. 2002-2005, 2006).

*Graph 1* shows the percentage of CSOs working in selected activity areas from 2003 to 2009. Almost half of all respondents reported that *children and youth* is one of the major sectors in which they work (40%). The next major sectors of activity are *civic education issues* (32%) and *human rights* (26%). 26% of respondents also said they that solving social issues was a main activity sector for their organization.

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<sup>4</sup> Information-analytical note on the activity results of the Ministry of Justice and its territorial bodies on the legalization of public associations, and other social associations during 2009 compared to 2008 (electronic resource), Mode of access: <http://www.minjust.gov.ua/0/29689>.



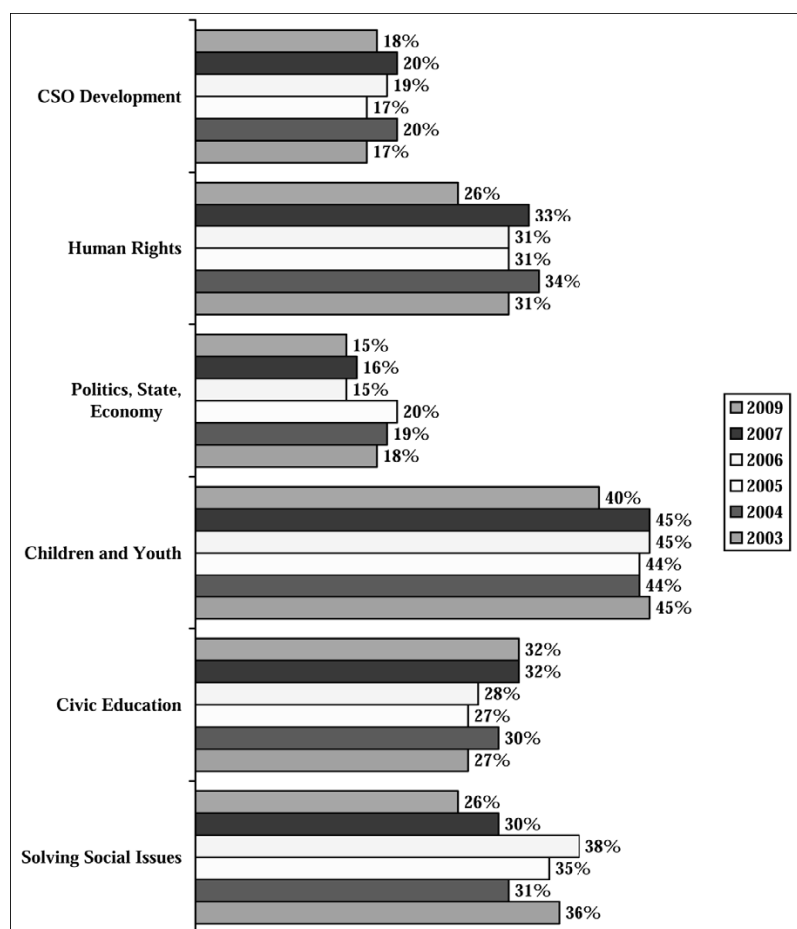
Graph 1. Major Sectors of CSO Activity

*Source:* results of the annual survey of Ukrainian civil society organizations (CSOs) conducted in September 2009.<sup>5</sup>

*Graph 2* shows the most popular sectors of CSO activity from 2003 to 2009. These sectors have remained popular for the last seven years. The most widespread types of activity among CSO are children and youth, civic education, human rights, and solving social issues.

As an overall conclusion for both the types and sectors of CSO activity, from year to year graphs remained stable. Difference in indexes for 2007 and the years from 2002 to 2009 years in the field of charity can be explained through the increased attention on the part of the public to developing a corporate culture and emphasizing social responsibility for businesses. The increase in the number of organizations participating in education dissemination may be due to the many complex reforms that took place in this sphere.

<sup>5</sup> The major goal of the survey was to observe the capacity of Ukrainian CSOs for sustainable development during 2002-2009



Source: Lyubov Palyvoda, Sophia Golota. Civil Society Organizations in Ukraine. The State and Dynamics (2002-2009): Survey Report, 2010.

#### 4. The main problems of legislative regulation of civil associations

The important task is to support the current legislative review process concerning the civil society and charitable organizations in Ukraine. This involves the direct involvement of stakeholders to co-operate, as well as organizations with sufficient experience and skills to legislative work, public advocacy and, ultimately, ensure the implementation of new laws in certain areas.

However following problems of legislative regulation of civil associations at this moment remain unresolved:

1. *Long-term registration period.* Ukrainian laws provide a month for the registration of national and international organizations, two months for charity organizations, whereas for the registration of business entities – only 5 days. The registration periods clearly worsen the registration conditions of civil associations in comparison with commercial entities that contradict the best international practice. For instance, in Western Europe, the registration of associations is easier than commercial entities. In Denmark and Sweden, for example, associations acquire legal personality from the moment of signing the charter, in the Netherlands and Portugal – when the statute founders' signatures were notarized.

2. *Territorial status.* The presence of the clause on the territorial status inhibits the activity of civil associations in the regions where they have not been registered, which is not consistent with international best practice and hinders the democratic development of legislation on public associations (PAs). The practice of the NGO status establishing based on

the territorial criteria apparently reproduces the traditions of the former USSR. Creation of the PAs and the carrying out process of their activities within the territory of registration reduces the opportunities for the development of these organizations, because the spatial expansion of their activities connected with the necessity of re-registration in the state bodies.

3. *The prohibition to enter into joint associations and corporations.* Lack of the opportunities in the Ukrainian legislation to establish a joint association of individuals and entities is not consistent with common international practice. In most of Central and Western Europe associations (membership organizations) can be set up jointly by individuals and legal entities.

4. *The prohibition to protect the rights of the non-members of the NGOs.* Domestic legislation allows NGOs to represent and defend the rights only of its members, effectively paralyzing the legitimate human rights movement in Ukraine.

5. *Dual registration of the NGOs.* Unlike business organizations public and charity organizations must pass a double registration. The law requires the charter of the organization to register separately in the judiciary, separately – a legal entity in the local bodies of state registration. This requirement is burdensome for organizations both in the material, and the temporal dimension and can be regarded as discriminatory as compared with business entities that may use a single registration window.

6. *Dual registration fee.* Ukrainian government still continues to consider a fee for the PAs registration as a source of the state budget filling, while active organization pays a much larger sum in taxes, than that of registration fee.

7. *Obscurity of state registries of public and charitable organizations.* PAs registries are opaque, uninformative, the definition of the PAs activities at the request of statistical authorities are too narrow, which does not allow them to keep records of actual activity, comparable to the European countries' PAs. The obscurity of records precludes effective public control for corrupt charity organizations, which are created by officials. The problem is compounded by the fact that various state registries and the authorities give different data on the number of NGOs.

8. *Limitations for commercial activities.* The law prohibited NGOs to be involved in commercial activities directly, allowing them to simultaneously create an additional entity. This leads to the limitation of sources of the NGOs funding and reduce their financial stability. Civil society organizations in developed countries have the right to conduct business provided that the proceeds are earmarked for charter activities.

## **5. Prospects and priorities for the development of civil society in Ukraine**

Now we can say that the sector is beginning to realize itself as a kind of integrity that has common interests and common vision of the problems. Common and consolidated requirements for the authorities concerning the desired public policy that will develop the civil society begin to form. Over the past two years, a number of new social organizations that represent the real interests of territorial communities and funded by a local private (non-political) sources emerged. This contributes to a better “rooting” and increases viability of the sector as a whole.

However, there are certain risks for the sustainable development of civil society in Ukraine:

- insufficient amount of property and financial resources, owned by the “third sector”;
- suspension of the financial support for community initiatives in Ukraine by international donors (primarily this is a risk for analytic centers);
- lack of the direct access to EU structural funds for the Ukrainian PAs;

- the part of the middle class in Ukrainian society is too small (10%), this significantly restricts the social basis for the development of civil society;
- the reduction of democratic reforms and European integration policy by the new government, waiver of the administrative reform and local government reformation;
- preservation of the existing discriminatory law on Pas (Yakymenko, 2007).

To reduce the influence of these risks and ensure the sustainable development of the “third sector” it is necessary to conduct a significant reform of the laws on PAs and make a great effort to popularize ideas about people's participation in social activities, the creation of new organizations and to enhance their abilities.

Key priorities for the development of civil society in Ukraine:

1. Improvement of the representation and protection of the interests of the citizens by the increasing of NGOs and people number involved in community activities. This will require simplifying of the procedure and reducing the cost of the establishment and registration of the NGOs, charity organizations and self-governing communities. It should be adopted a new law “On Non-governmental Organizations” and accept the changes in the law “On Self-governing Communities”. It is expedient to create resource centers for citizens and CSOs in all regional centers, forming a network of experts who will advise on the establishment of organizations and hold the Advocacy campaigns.

2. Expand the range of social services provided for NGOs. This requires increasing of the funding for social services provided by CSOs in the state and local budgets. The funding share of CSOs in the cost of state and local budgets would have to increase from 2% in 2006 to 8% in 2009, including the government procurement (not less than 3%). The changes to the law “On Social Services” have to be done and a State registry of social services subjects have to be created. This requires the introduction of criteria for the services provision and an independent assessment of their quality. In combination with the principle of “Money – client” this will allow the most efficient and rational use of available resources.

3. To increase transparency and efficiency of decision-making process by monitoring the activities of government, the introduction of mechanisms for public participation. To do so, it is needed to accept the changes to the law “On Information” that would simplify the access of citizens to the public information and reduce the amount of state information, which is closed to the public. Need to enhance and improve the quality of consultative and advisory bodies (civil authorities), to attract the largest possible number of CSOs and authorities to conduct mutual consultations on an ongoing basis.

4. To ensure the development of philanthropy and to increase the financial base of CSOs through the establishment of development funds for communities and bring the share of funding of CSOs from the public and private sources to 1% of GDP. To do this, it is needed to modify the laws “On the Enterprise Income Tax”, “On the Tax from Individuals” and to conduct for members of the CSO training programs on technologies of local fundraising.

5. To provide the legal basis for the development of local democracy through the adoption at local government level in each territorial community of documents such as:

- the statute of a territorial community;
- procedure for local initiatives implementing;
- the procedure for public hearings;
- the procedure for public consultation on the formation of and implementation of local budgets) the procedure of public discussion concerning the urban planning documents,
- provision on the social projects contest
- provision on bodies of self-governing communities, in which guarantees of their activity and principles of relations with the local authorities must be established and secured.



## Conclusions

To ensure the sustainable development of the “third sector” it is necessary to conduct a significant reform of laws on public associations, and make an effort to promote the ideas of people's participation in social activities, creation of new organizations and development of this potential.

The development of civil society in Ukraine is considerably weaker than it is necessary to exert a significant effect on people's lives and encourage changes in public policy. The “third sector” in Ukraine is at a stage of consolidation and “rooting”. Trade unions and political organizations in Ukraine do not identify themselves as members of civil society. The society does not accept the civil society as an effective tool to represent and protect their rights. Civil society organizations do not appear at the forefront of the struggle for rights of the citizens.

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