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FOSTERING CIVIL SOCIETY DEVELOPMENT: INTERNATIONAL ORGANIZATIONS AND THEIR IMPACT OF JUDICIAL PROFESSIONAL DEVELOPMENT IN SERBIA

Summary: This study evaluates the impact of international organizations on the process of civil society development in Serbia following democratic changes in the period between 2001 and 2006. On the sample of judicial professional organizations, essential for the process of rule of law reform that the country is undergoing as well, the study concludes that international organizations play a crucial role in providing funding and program development resources. However, these civil society organizations are facing significant challenges in several areas, including membership retention, project diversification, and financial sustainability, among others.

Key words: Civil Society, Professional Associations, International Organizations, Democratization

Introduction

International organizations have played an important role in the process of democracy consolidation in Serbia. This study evaluates the influence of international organizations in the period between 2001 and 2006, focusing specifically on judicial professional associations. These are important as they serve a dual role: they are important

members of civil society and give an indication of the strength and capacity of civil society organizations in the country. At the same time, judicial professional associations are important as they play a significant role in the process of rule of law reform. Focusing on these types of organizations is therefore of great importance as it allows us to make an assessment on two important elements of a strong democratic system – rule of law and civil society. A functioning democratic state is impossible to develop without a strong system of the rule of law. Civil society, on the other hand, represents the interests of the citizens as it provides an avenue for participation in the political process.

Democratization process in Serbia, as in other eastern European countries, was to a large degree facilitated by international organizations. Throughout the 1990s, an army of international organizations worked on two parallel fronts – aiding the humanitarian efforts to relieve the impact of civil wars in the region and on supporting local groups trying to remove the authoritarian government from power. In late 2000, the later of the two goals was accomplished. At that point, the international community remained present in Serbia, but with a different mandate. Developing democratic institutions in the country became the primary goal of international organizations and government agencies that flocked to the country.

A number of studies have taken an interest in the role that international organizations play in democracy promotion. I will discuss relevant studies and attempt to draw some parallels between the cases discussed in the literature and the case of Serbia. In addition, I will briefly focus on the historical development of the civil society in Serbia. How much influence do international organizations have on the civil society development in Serbia? What have been the main areas of interest of the organizations indicated in the study? How strong has their impact been? To answer these questions, the study examines the following judicial professional organizations in the time period between 2001 and 2006: Judges Association of Serbia (JAS), Prosecutors Association of Serbia (PAS), Magistrates Association of Serbia (MAS), and Yong Lawyers of Serbia (YLS). The study argues that despite significant financial and other investments, judicial professional associations face a number of challenges in their effort to establish sustainable, efficient organizations that can uninterrupted carry out projects aimed at accomplishing their missions.

Civil Society

Civil society organizations play an essential role in the process of democratic transition as well as democracy consolidation that follows. Civil society organizations play a number of important roles in a democracy as they disseminate information; educate citizens and the government, foster the growth of social capital. In addition, one of the most important roles of civil society, the focus of this study, is its role in interest aggregation and articulation. The role of civil society in democratic transitions in Eastern Europe as well as other parts of the world has been widely discussed in the literature, from Poland and Czech Republic to Georgia and Ukraine. Less attention, however, is being paid to civil society organizations in consolidating democracies where new institutions are being established, possibly for the first time. In Serbia, this is the case with judicial professional associations.

Democratic transitions in Eastern Europe cannot be discussed and evaluated without evaluating the role of the international community in the process. International organizations play a crucial role in funding both civil society organizations and rule of law reform projects. US and European donors have poured millions of dollars into both types of processes in Eastern Europe since the early 1990s. Evaluating the effect of those projects has been difficult. Majority of the literature focuses on sustainability of civil society. As Green and Kohl (2007), among other, state, despite the fact that democracy assistance projects have significantly grown in the past fifteen years, following transitions in Eastern Europe and Latin America, little evaluation of the effect of such projects has been done. Those working in the field agree with such assessment as most executives of international donor organizations in Serbia state that little time is left to evaluate the effect of the projects implemented.

Democratization literature emphasizes the importance of civil society in the process of democratization and democracy consolidation. Following democratic changes in the world at the end of the twentieth century, scholars have taken a new interest in civil society as it relates to democratization and the process of democratic consolidation. According to Diamond (1999), civil society advances democracy

in two ways: by helping to generate a transition from authoritarian rule to democracy and by deepening and consolidating democracy once it is established. According to Bernhard (1993), civil society is a necessary condition for democracy. Di Palma (1991) argues that under democracy, civil society is an integral part of the system of the rule of law.

Putnam (1993) develops this idea by arguing that civil associations contribute to the effectiveness and stability of democratic government both internally, effecting their individual members, and externally, by effecting the wider polity. Diamond (1999) states that although the role of civil society is not decisive or even most important, a more active, pluralistic, institutionalized and internally democratic civil society is, the more likely democracy will emerge and endure. Schmitter argues that the presence of a strong civil society contributes positively to the consolidation of democracy. Finally, Cohen and Arato (2003) point out that civil society is an important terrain of democratization – of democratic institution building.

I will accept the definition of civil society as given by Linz and Stepan (1996). The authors define civil society, as „that arena of the polity where self-organizing groups, movements and individuals relatively autonomous from the state, attempt to articulate values, create associations and solidarities and advance their interests”. Defining the scope of civil society, Diamond (1999) distinguishes between the following types of institutions - economic, cultural, informational and educational, interest, developmental, issue oriented and civic organizations.

Further, as an important component in the democratization process, and in the phase of democratic consolidation that follows, civil society serves a number of purposes. Edwards (2004) and Diamond (1999) both discuss these by focusing on three interrelated areas – political, economic and social. And while democratization literature, focusing specifically on Eastern Europe discusses at length this political area of civil society operation, authors discussing the role of civil society especially in the United States discuss political and social area of civil society operation. Civil society in the political area, then, provides the basis for the limitation of state power and for the control of the state by society as it checks and limits the power of the state while

institutionally reforming the state. Secondly, civil society supplements the role of political parties by stimulating political participation and representing collective interests. Furthermore, civil society tends to generate a wide range of interests that may cross-cut and so mitigate political polarities of political conflict, it recruits and trains new political leaders (Diamond 1999).¹

In its social role, civil society disseminates information and empowers citizens to defend and pursue their interests and values. Many civil society organizations are engaged in developing techniques for conflict mediation, while others focus on community development. Lastly, Diamond (1999) argues, an overarching function of civil society is that of enhancing the accountability, responsiveness, inclusiveness, effectiveness and legitimacy of a political system, as a vigorous civil society gives citizens respect for the state and positive engagement with it.

This educational role of civil society is important in building social capital that, building on Tocquevillian argument, gained more prominence in the early 1990s in Putnam's (1993) discussion. In *Making Democracy Work*, Putnam emphasizes the importance of civic engagement and social capital for the strength of democracy in a country. Putnam (1993) argues that citizenship in a civic community is marked by active participation. Citizens are engaged in the pursuit of collective interests, less interested in their own self-interest. Further, in a civic community, citizens are active, helpful, respectful and trustful and tolerant toward one another, despite the difference in their opinions. This value of civic engagement is then twofold, as Putnam argues, since it increases the level of social capital on one hand, and on the other increases the degree to which the public communicates its preferences to political leaders (Putnam 1993).

Following his lead, a number of authors see this social capital and civic engagement as very important in the process of democracy consolidation. As a mediator between the states, society, economy, civil society „collects, conveys and articulates interests and generates

¹ According to Carothers and Ottaway (2000) US donors treat civil and political society as separate as they claim that it is possible to promote democracy without becoming involved in „partisan politics” and getting involved in internal politics of another country.

the societal capital necessary for binding citizens together in ties of trust and reciprocity” (Henderson 2003: 2). Ultimately, civic engagement enhances democratic representation by facilitating interest aggregation and articulation (Hill and Matsubayashi 2005; Kwak, Shah, and Holbert 2004; Letki and Evans 2005; Putnam 2000; 1993).

Civil Society in Serbia

We can trace the development of civil society in Serbia back to the early 20th century. At that time, a number of humanitarian organizations were formed under the rule of the royal family and the domination of the Orthodox Church. After World War II, we find in Serbia, as in other communist countries, a type of mandatory civil society (Paunovic 1997). Independent voluntary organizations were outlawed and only organizations formed under the direction of an all intrusive state were allowed (Letki 2004). Membership was mandatory, and only organizations that did not have any political background or any significant social objective were allowed (Howard 2003).

In the 1990s, as the wars escalated in the Balkans, following the legalization of pluralism, a number of non-governmental organizations (NGOs) were formed to oppose hate speech, end war and violence, assist war victims, and protect elementary human rights (Paunovic 1997). Over the course of the decade, as the regime strengthened its power, other civil society organizations were formed with a single purpose of ending the authoritarian rule of Slobodan Milosevic. In October 2000, led by a student organization, and supported by a number of local NGOs, democracy movement in Serbia was able to throw the authoritarian government out of power.

This marked the second stage in the three-stage process described by Ekiert and Kubik (1999) and Bermeo (1992) in transition from communism to post-communism. The first two stages—deconstruction of the old regime and the transfer of power—were complete by January 2001. First, in October 2000, following the presidential election, Vojislav Kostunica was inaugurated as a first democratic president of (then) FR Yugoslavia removing Slobodan Milosevic from power after more than a decade. Second, in late December 2000, Democratic Op-

position of Serbia, a coalition of eighteen political parties led by Zoran Djindjic won about 64% of the seats in the Serbian parliament (Erlanger 2000). In January 2001, Zoran Djindjic, was elected prime-minister by the new parliament and immediately called for „an „absolute rupture” with the Milosevic years (BBC 2001). The third phase, the consolidation of a new democracy, is in the process now.

After 2000, the number of international organizations working in Serbia increased significantly. According to the 2005 study by Civic Initiatives, about one third of international donors working in Serbia today came to the country after 2000. While most focused on economic reform, a number of organizations focused on building civil society organizations in the country. Democratic transitions in Eastern Europe that have seen similar patterns as we find in Serbia have sparked wide debate in the literature on the role of international organizations on the development and sustainability of civil society (Diamond 1999; Fioramonti 2005; Howell and Pearce 2004).

Communist government and the subsequent quasi-democratic governments of the 1990s have left little space for a vibrant civil society to develop in Serbia. The communist government that was in power after World War II accepted Marxist-Leninist philosophy that civil society was the enemy of the state and rejected the notion of the pluralism of civil society (Shills 2003). The term „civil society” was replaced by the terms „capitalistic” or „bourgeois”; society was placed directly under the control of the state leaving no space for citizens to organize independent civic associations. In the early 1980s, however, we can see the reemergence of civil society, with the purpose of changing authoritarian communist governments. From Poland to Czech Republic, Slovakia, and ultimately Serbia, Ukraine and Georgia (McFaul 2005), this newly organized civil society played a central role in the regime change process.

In this vacuum, then, where civic engagement is limited, international organizations are the ones that take the lead in the process of building civil society. As Barnes (2001: 99) argues, „the advantages for democracy of a rich associational life therefore ‘depend’ on other circumstances.” International donors play a crucial role not only in funding certain projects, but in strengthening the capacity of various civil society institutions. In the United States, in the 1980s, a network

of governmental, quasi-governmental and non-governmental organizations devoted to promoting democracy abroad came into being (Carothers 2002). Over the course of the past decade, US, European, Japanese and other government agencies, private organizations and foundations have poured millions of dollars into civil society development (Ottaway and Carothers 2000).

Howell and Pearce (2004) argue that in countries in Eastern Europe, social capital is weak and democratic institutions are fragile. As Ottaway and Chung (1999) state, local, usually „top-down”, civil society organizations may not even have support of their local constituencies. They rely heavily on funding provided by international donor organizations, and would probably not even be in existence without foreign funding. Building on this argument, Fioramonti (2005) states an important issue – the credibility of civil society organizations „that are more likely to respond to the agendas imposed by donors, rather than be seriously committed to serving their constituencies”. Further, according to Ottaway and Chung (1999), programs and activities of NGOs are modeled by what donors are willing to fund and policies are agreed upon by the leadership of an organization and the funders. Howell and Pearce, Fioramonti and Ottaway and Chung, however, do not explore these issues deeply, but focus more on the sustainability of civil society organizations and their ability to survive financially once international donors withdraw. But the effects of this reliance on donor funding has a far more reaching affect on democracy consolidation.

Carothers (1996) builds on the sustainability issue and finds a pattern with Romanian NGOs that is being repeated throughout the region where local NGOs are reliant on foreign assistance and where the diversification of funding means shifting from one principal foreign donor to a mix of other foreign donors. Carothers (1996) discusses the issue of authenticity of NGOs as it relates to a long history of Western assistance and the perception that these NGOs are mere foreign implants with no genuine relations to local cultures, and not authentic organizations.

International donors have focused their activities on NGOs especially, and not various religious, social or other cultural organizations. Carothers (1996) argues that the US donors especially focus on civic advocacy NGOs as they see them as being a core of civil society,

and more importantly, the author argues that these civic advocacy NGOs are central to promotion of legislative advocacy as a vehicle of socio-political change. According to Carothers (1996), the assumptions under which the US donors are operating are rooted in their domestic experience where NGO advocacy groups are seeking to influence local, state and national governments. Therefore, since most Americans who are promoting civil society development in Central and Eastern Europe come out of US NGOs, they instinctively try to reproduce their experiences abroad. Quigley (2000) also argues that programs developed in Eastern Europe attempt to mimic the US experience in what he refers to „be-like-us” syndrome implemented in other parts of the world and often criticized.

As Quigley (2000) and Carothers (1996) state, international organizations have invested most of the funds into the reconstruction of the economy of new democracies in Eastern Europe (believing that economic growth would promote democratic change). Another tactic in promoting democratic change and strengthening newly formed democracies involves directing aid at one or more institutions (elections, political parties, constitutions, judicial institutions, police, legislatures, local governments, militaries, nongovernmental civic advocacy groups, civic education organizations, trade unions, media organizations) (Carothers 1999).

Alongside US donors, a number of European donors are active in the region as well, and as Carothers (1996) argues, although both US and European donors are interested in developing democratic institutions in new democracies, the thrust of the programs is often different. According to the author, European donors see NGO development as a less crucial mechanism of political change as they focus on social service NGOs which they see very important in solving everyday problems in local communities. However, whether taking a universalistic approach to promoting democracy, often associated with US donors, or a more country specific approach practiced by EU donors who focus mostly on helping countries „join Europe”, the fact is that all these organizations are active in the region and have been instrumental in establishment and development of most local NGOs.

The discussion on the capacity building of judicial professional associations is particularly important as these organizations are still

young and are the only avenue of interest aggregation and articulation for the members of the judiciary. These associations provide a number of services to their members, most notably continuing legal education, which is paramount for ensuring the development of a strong professional judiciary.

Professional Associations - Organizational Development and Sustainability

Professional associations are interesting as members of civil society as not only that they did not exist during the communist rule in Serbia, but were not established until the government of Slobodan Milošević was taken out of power in 2000. Regardless, these organizations come under the same legislation and operate in the same environment as other non-profit non-governmental organizations in Serbia.²

² In 1990 Serbian National Assembly passed the Law on Association of Citizens in Associations, Social Organizations and Political Parties. This legislation, which is in practice today, provides guidelines under which NGOs can register, how their governing institutions are to be set up, but mostly focuses on administrative and financial issues (Vasilevska et al. 1999). In 2005, civil society organizations in Serbia still did not have legislation regulating their work. Since 2000, several drafts of the legislation were circulated; however, the law was never adopted. Earlier drafts of the legislation were not endorsed by the NGO community, and several organizations, including USAID and Freedom House saw them as unfavorable to non-profit sector. A 2005 USAID report anticipated the passing of yet another draft, this one acceptable to NGOs, in early 2006. This, however, has not happened until the end of 2006. On a more positive note, members of the NGO community find the latest proposed draft (that has been sitting in the corresponding committees of the National Assembly for some time) to be good. The law was drafted by the government in association with the Council of Europe, the Federation of Non-Governmental Organizations of Serbia and another local organization working in the field of non-profit law. Members of the NGO community commend the commitment of the government in the effort to draft this legislation, but also highlight the fact that this was one of the laws that was mandated by the Council of Europe. The proposed legislation deals mainly with the registration process as it sets clear guidelines for the registration of non-governmental non-profit organizations (after the law is passed, the re-registration process is expected to last about one year). The proposed law makes all organizations equal and eliminates the confusion that existed in the past decades that came out of the duplication of the legislation – federal vs. state, at this point, both laws of non-existing states. NGOs are

As a part of civil society, professional associations representing the interests of the members of the judiciary examined are Judges' Association of Serbia, Prosecutors' Association of Serbia, Magistrates' Association of Serbia and Young Lawyers of Serbia. Judges' Association of Serbia was established in April 1997 as a part of the Serbian Bar Association. The organization, however, could not officially register at the time as their application was rejected by the Ministry of the Interior, and later the Supreme Court acting on appeal. Members of JAS saw this as an open call for conflict with the government, and as a consequence around thirty judges, members of the managing board, were dismissed from their posts. Following the democratic change, JAS was renewed and officially registered in July 2001. Currently, JAS has about 1,700 members (around three quarters of the total 2400 judges in Serbia) and twenty five branches in cities around Serbia³ (JAS 2006a).

Assembly of JAS is its highest institution. Members of the Assembly are representatives of local branches, while other members of the association can participate in meetings, but have no voting power. The Assembly has a mandate to choose the presidents of local branches, members of the managing board, approve programming activities of the association, adopt annual budgets, etc. The President of the Association presides over Assembly's meetings. The Managing Board has the mandate to run the organization. Members of the board are representatives of local branches (each branch has one representative for each one hundred members). The organization also has an executive director, not a member of the Association. Executive director runs the organization on day to day basis. JAS has other bodies: supervising board, programming board, board for ethical questions (JAS 2005c).

Prosecutors' Association of Serbia was founded in November 2001. Managing bodies of PAS are the Assembly, the Board, Court of

Honor and Supervisory Board. PAS has branches in cities around Serbia, and the mandate of the managing bodies of the association is specified in the Statute of the Association. The Association is represented by the President of the Assembly, while the administrative duties of the Association are performed by the secretary of PAS. Main goals of the Association are recurring the independent status of prosecutors in the judicial system, advancement of legislation regulating the office of the public prosecutor, influence on the legislative power regarding modernization of Public Prosecutors' Offices organization, and harmonization with the European standards (PAS 2001).

Magistrates' Association of Serbia, founded in March 2002, lists protection of human right and the improvement of the profession among the main goals of the organization. Among others, MAS lists efforts to change the status of magistrates and include magistrates into the judicial system, support for the independence of the judiciary, improvement in the reputation and material status of magistrate judges. The association has around 500 members (out of 750 magistrate judges working in Serbia today) and its bodies include the Assembly, managing board, supervisory board and the court of honor. As other organizations, MAS has branches of at least twenty members in cities around Serbia and each branch has a president and a managing board. According to the Statute of the organization, managing board and its president run the organization, while the Assembly is the highest ranking organ of the organization (MAS 2006a, 2002, 2006b).

The organization that represents the interests of the youngest members in the judicial system is the Young Lawyers of Serbia (YLS). The organization was founded in April 2002 by the judges' assistants working in Belgrade Courts. The Association is administered by the Managing Board (which consists of the President, Executive Director and five vice-presidents, each of which is at the head of a committee (Project Committee, Financial Committee, Committee for Branches, Public Relation and Marketing Committee and Committee for relation with international organizations, non-governmental organizations and other institutions)). YLS numbers around seven hundred members which include young lawyers employed in courts, international organizations, universities, economy and non-governmental sectors, local government, etc. It has branches in several cities in Serbia (Novi Sad, Kraljevo, Zrenjanin, Sombor, Nis, Pancevo, Novi Pazar and Kraguje-

facing problems regarding taxation laws. Currently, NGOs are exempt from paying taxes on income up to about \$4,000 while all their income must be applied to further the organization's purpose. NGOs are, however subject to all local taxes. Also, amendments to the Law on Value Added Tax provide exemptions for bilateral donors and permit them to pass on these exemptions to their beneficiaries (USAID 2005).

³ JAS has its branches in the following cities: Zaječar, Zrenjanin, Valjevo, Jagodina, Negotin, Niš, Novi Pazar, Novi Sad, Šabac, Vranje, Subotica, Užice, Kragujevac, Kraljevo, Pančevo, Prokuplje, Požarevac, Sombor, Smederevo, and Belgrade.

vac). YLS set its goals to educate and professionally train young lawyers, modernize and reform the judiciary based on experiences and technical solutions of EU, create new image for the judiciary, improve democracy and establish legal and civil country (YLS 2004, 2006).

The four professional associations are organized in a similar manner, having the same governing bodies, and more importantly, were able to attract a large number of members. Before the democratic change in 2000, none of the groups working in the judicial system had the ability to organize outside of the state and form its own interest group. Judges were under the constant pressure of the imposing regime, while prosecutors and magistrates were seen as a long hand of the authoritative state. After 2000, majority of those working in the judiciary did belong to one of the professional associations. All above discussed associations aim to protect the status and independence of the members of their profession, lobby with the law makers improve the image and standing of their respective professions, bring it into compliance with the European Union laws and overall secure the development of democracy in the country. The organizations are active in increasing the level of education of their members.

One of the major challenges facing these professional associations is securing the funding. The majority of the funding is provided by international organizations. Judges', Prosecutors', Magistrates' Associations and Young Lawyers of Serbia are being funded almost exclusively by international organizations (PAS receives only 20% of its total funds from membership fees. The rest of the funds are provided by their international donors, ABA/CEELI and OSCE).

All of the organizations do charge a membership fee. This amount, in all cases is nominal (around 100 dinars per month – about \$1.5) and is not enough to cover even the basic expenses of the organizations. The organizations, then, keep this money and use it in cases of emergency or to cover some office expenses. Some of the organizations, in an effort to reduce their reliance on foreign funding, have discussed raising the membership fees. This proposal, however, is regularly rejected. Executives in the organizations cite poor economic position of the members of the judiciary among the main reasons to reject such proposals.

All the projects implemented by professional organizations are supported by international organizations. The majority of the projects focus on continuing legal education. All professional associations are organizing training seminars for their members on various topics of interest for their members. Programming activities are usually planned by the managing boards of the organizations. All professional associations have programming boards whose members are mandated to make decisions on programming activities planned for the organization. Most of the decision making, therefore, is focused in Belgrade. Very rarely are opinions solicited from local branches. The main role that members of the organizations in branches around the country play deals with technical support. Local boards are in charge of organizing training seminars and disseminating relevant information.

Since they were formed, judicial professional associations have significantly developed their organizational capacity. Judges' Association of Serbia is certainly the most developed organization. It operates from an office in Belgrade, and has another twenty five branches around the country. The organization also has an executive director, and several other full and part time staff members in charge of day to day operations of the organization, including an office manager and a treasurer. Since 2001, JAS has enlisted the help of both local and international NGOs in order to enhance its organizational capacity. Members of the organization have participated in trainings organized by Civic Initiatives, a local NGO specializing in organizing trainings geared at strengthening the capacity of civil society organizations. Members of JAS, as well as PAS, MAS and YLS have participated in training programs organized by American Bar Association Central And Eastern European Law Initiative (ABA/CEELI) on strategic management, budget planning, grant writing, lobbying, etc.

Through its Regional Institution Building Advisors program (RIBA), ABA/CEELI provides technical assistance in institution building. The goal of the program is to promote long-term stability of its partner organizations. RIBA trainings and workshops focus on project design and implementation, financial planning and management, human resource management, operational and systems management, fundraising, media, public relations and marketing, advocacy and constituency building, monitoring and evaluation techniques and training for trainers (ABA/CEELI 2006b). Over the years, ABA/CEELI has

organized a number of RIBA trainings and workshops that aimed at strengthening the organizational capacity of its partner organizations. Aside from this program, other international organizations do not organize capacity building seminars.

International organizations, however, do assist professional organizations with grant writing and reporting. According to members of the professional associations, donor organizations are very open to assisting them develop grant proposals as well as programs they plan on implementing. Further, international organizations have different guidelines and criteria for granting funds for their local partners. Despite the lack of grant writing experience, international organizations have been very engaged in assisting the associations in putting together grant proposals. According to the members of the associations, there have not been instances where the international donor organization has refused to assist them with grant wiring or reporting. By the same token, none of the organizations have been penalized or have received reduced funding due to the technical mistakes made in their reporting.

Executives of professional associations, however, are aware of the fact that most international organizations will be leaving the country in the coming years. Some organizations have taken some steps in diversifying their funding. While MAS still receives most of its funding from ABA/CEELI, the organization has partnered with United Nations Development Program (UNDP) as well on the program aimed at strengthening the capacity of misdemeanor and magistrate courts implemented in partnership with the government. PAS also receives majority of its funding from ABA/CEELI. During 2006, PAS has also reached out to OSCE as a potential funder. YLS was able to diversify its funding as well. After it was formed, YLS was funded by ABA/CEELI exclusively. Over the past several years, the organization was able to secure grants from other international organizations and implement a number of new projects. Swedish Helsinki Committee for Human Rights and the Embassy of Netherlands have both awarded grants to YLS in the past. Open Society Institute has also contributed in the past couple of years to the organization's court internship program (YLS 2006). Lastly, JAS receives the majority of its funding from Organization for Security and Cooperation in Europe (OSCE). The organization also has other funders, including ABA/CEELI, who at one point was the largest donor.

Now, despite the fact that most organizations do not rely only on one donor, the organizations are almost exclusively being funded by international donors. The 2005 study on the status of the NGO sector in Serbia conducted by Civic Initiatives saw a similar trend in the entire NGO sector. According to the study, in 2005, majority of non-governmental organizations in Serbia was relying on international donor funding - 74% of the organizations polled. Furthermore, this study revealed that most organizations were not prepared for the change in the structure of financing. This change is inevitable as most international organizations are planning to withdraw from the region in the coming years. According to the study, in December 2004, 49% of international organizations were not able to say how much longer they planned to stay in the country, while the rest of the organizations polled stated that they would leave the country in 2007 (Dereta 2005).

Regarding the cooperation between international donor organizations and NGOs, 2005 study highlighted the trends occurring with legal professional associations. Large portion of this relationship revolves around grant application and reporting duties of local NGOs. According to the Civic Initiatives study, international donors felt that members of local NGOs knew little on how to write a successful proposal, while NGOs felt quite the opposite (Dereta 2005). The results of the study outline a major issue plaguing professional associations, and the NGO community in general, weak organizational capacity. Further, the impression one gets when examining the activities of the organizations is that their goals are short term, and that no serious attempts are being made to secure organizations' existence beyond reliance on foreign funding.

Executives of judicial professional associations, on their part, are aware of the fact that international donor funding will diminish in the coming years. The organizations even argue that they are thinking of other ways how to fund their activities. However, by the end of 2006, none of the organizations have developed programs funded by other sources, nor developed a strategy to reduce their reliance on international donor funding. As noted earlier, some attempts have been made at increasing membership fees. These funds, however, even if increased would not be enough to fully support the work of the organizations.

Organizational Capacity and Sustainability Building – An Assessment

Between 2001 and 2006, all organizations indicated in the study have significantly developed their capacity and programming activities. A number of problems still remain. It is also important to keep in mind the unique position of the members of the associations. They are at the same time employees of the government and members of a civil society organization. Further, since all four organizations are relatively young, they mostly rely on their members to volunteer their time for development of the organizations.

At the outset of the reform process in 2001, many in the judiciary saw this as an opportunity for the judiciary to secure its independence and to improve its position. Judges' Association was finally registered as a legal organization (since it operated illegally since it was formed in 1997). Prosecutors were allowed by the law to form their professional association. Magistrates followed soon as well as Young Lawyers who saw the need among their members to improve their position and create new opportunities to advance their position. According to the leadership of professional associations, however, this created a problem as the organizations' membership grew fast and on the other hand, the general perception was that many joined the organizations for pure opportunistic reasons.

Leadership of professional associations also argues that many are unsatisfied with the impact the associations have had on their status. Many see associations as a tool that fights for the increase in their salaries, backs up its members during the selection process before the High Judicial Council⁴ or to deal with individual problems of its members. While the associations have attempted to lobby the government on general issues regarding judicial reform, the leadership of the asso-

ciations is quick to point out that they are not political organizations, but non-governmental organizations. Their activities are developed accordingly.

Between 2001 and 2006 professional associations in Serbia have worked on two tracks – developing their infrastructure and developing their programming activities. With regards to their infrastructure, JAS is certainly the most developed organization. Other organizations still have very small staff and mostly rely on volunteering and enthusiasm of several members. Lack of funds is cited as a major obstacle in developing organizational infrastructure. Grant writing and the search for funding is a very time consuming process. Considering the fact that members of associations are employed full time in Serbian courts, this does not allow them for much time to devote to such activities. As executives in international organizations argue, professional associations are concerned with their day to day activities, and rarely look far into the future and make long term plans.

International donors have played an important role in developing the capacity and infrastructure of professional associations. International donors work on two tracks with professional associations in helping them develop their infrastructure and capacity. First, they organize training seminars (on topics, including financial, strategic management, grant proposal writing, reporting, etc.). Second, and probably more important track refers to the day to day contact between professional associations and donors. These efforts, however, are not always successful. According to executives of international organizations, one of the major reasons for this are frequent changes in the leadership and staff of professional associations. JAS is the only organization that has several professional staff members, including the office manager and financial manager. These professional staff members can, then, focus on running the organization on a day to day basis, focus on grant writing and reporting. Other professional associations do not have as large budgets to be able to afford to hire full time professional staff, as their institutional infrastructure is not as developed as that of the JAS. For other associations, problems run much deeper as their infrastructure is so undeveloped that they do not even know what type of help they need. Until recently, PAS did not have any staff at all. Today, both PAS and MAS have only one full time staff member. In the first about two years, YLS operated from the Palace of Justice in

⁴ The High Judicial Council (HJC) is charged with ensuring that the process for appointing judges and prosecutors is apolitical, informed, and not influenced by the executive. HJC, further, ensures and strengthens judicial independence from the executive and legislative branches of the government. One of the goals is to put an end to political appointments and ensure that professional criteria prevailed in the process of selection of judges and prosecutors (Hiber 2004).

Belgrade as the organization did not have enough funds to rent office space. Today, YLS has office space and one part time staff member.

This lack of institutional structure of the organizations does not allow them to develop long-term. The organizations that depend on a handful of energetic and enthusiastic leaders can hardly recover once these leaders leave the organization. Both PAS and MAS face this danger and have experienced such problems in the past. However, a change is visible in all these professional associations. They are more open to cooperating with foreign donors. Initial animosity especially toward American donors, and the view of them being spies, has completely disappeared from the leadership of the organizations and is fading among the members of organizations around the country. More importantly, when it comes to programs developed and implemented, international donor organizations see a great improvement in that area. Initially, the majority of projects were initiated by the donors. More recently, the situation has changed, and it is professional associations themselves who recommend projects and approach the donors for funding. Professional associations also recognize that the donors welcome their proposals and are more interested in funding projects initiated by professional associations.

It is also important to note that programming activities of professional associations are somewhat restricted by the interests of their donors. Organizations have argued that they had to implement smaller programs that were not of great interest to their members in order to secure future funding. In cases of American donors who rely themselves on the funding from American government, their goals change often as the goals and interests of American government change. This makes it difficult for some much needed long term projects to be implemented and in turn diminishes the trust professional associations have in their donors.

When we look at the internal decision making structure of the professional associations, however, the view is that the entire decision making is concentrated in Belgrade. On a number of occasions projects implemented by the associations were met with hostility by local branches. One of the examples centers on a constitutional conference organized in Nis, JAS branch in southern Serbia, by the leadership of the organization. The head of the Nis branch refused to attend the con-

ference and a number of judges followed suit. MAS leadership faced animosity from its members during the annual meeting where they presented projects developed by the organization. A large number of magistrates from Serbia saw the organization's leadership as pursuing American agenda and using funds awarded to the organization for their personal needs.

Furthermore, as members of the associations argue, majority of the programming decisions are made by the leadership in Belgrade. Although MAS and PAS are organizations where most of the initiative for programs comes from local branches, final decision is still on those working in Belgrade. As the leadership of the organizations argue this is simply due to the fact that most donors are in Belgrade. Approaching potential donors, then, is mostly done by members of the Belgrade branch.

Due to limited funds, trainings are often limited to 4-6 towns in Serbia. These are large towns where appellate courts, according to the new organization of the courts, should be seated. Most notably, trainings are rarely organized in southern Serbia. Trainings organized by PAS in 2006 reached prosecutors in southern part of the country and revealed not only the great need for training in this region, but a great interest of the members. Furthermore, although organized by the Prosecutors' association and aimed at their members, training seminars were attended by judges and magistrates from the region. Such uneven distribution of Continuing Legal Education (CLE) projects can create problems for the entire judiciary. This uneven development of the judicial cadre can create a great imbalance in the quality of administration of justice. Judicial professionals, as a consequence, feel unrepresented by their organization and often left behind. Furthermore, such practices may diminish the trust and confidence members of the associations have in the organization and the leadership to pursue their goals and interests. Leaders of professional associations realize that this is a big problem, and in the past year have taken some initiatives to include members of all branches around the country in their programming activities and decision making bodies (JAS and PAS have moved to organize their board meetings in towns around Serbia to make them more accessible to their members).

Being represented and supported by a strong organization is particularly important in frequent clashes between legal professionals in Serbia and the government. Professional associations in Serbia have had some success in this area, but there is much need for improvement. In 2006 when a number of judges were to be dismissed from their posts (including one of the leaders of JAS), JAS met with the Ministry of Justice and was able to overturn the decision. Moreover, several developments have shown that the support the associations are receiving from their international donors gives them significant leverage against the government. In late 2005, for example, the Minister of Justice attended the constitutional conference organized by JAS. The conference was supported by ABA/CEELI, its donor United States Agency for International Development (USAID) and the US Embassy. The event was also attended by the US ambassador in Serbia as well as representatives of the Council of Europe. International donor organizations recognize their role in this area and have over the years often backed professional associations in their clashes with the government.

Prosecutors and magistrates, however, have not been as successful in pressuring the government on issues of their interest. None of the proposals made by PAS to the government regarding the constitutional position of prosecutors were included in the Constitution adopted in late 2006. Furthermore, when it comes to appointment and dismissal of prosecutors, the association has relatively little influence as both are firmly in the hand of the executive, despite several attempts by the Law on the High Judicial Council to change that. Young Lawyers of Serbia have also been somewhat successful in influencing the government, regarding the appointment of new judges. In large part due to a strong media campaign, the government was forced to re-examine its appointment decision that was called to be based on nepotism and family relationships, and not professional qualification of candidates.

At the end of 2006, professional associations in Serbia are faced with several issues that, according to several studies of civil society and the NGO community in the country, plague the entire third sector. Most of the organizations have a very weak infrastructure. Significant changes in leadership of the organizations can be detrimental for the operation and existence of the associations. Secondly, professional associations' reliance on foreign financial and other support puts them in

a vulnerable position. As noted earlier, international donor community is slowly pulling out of the country. General assessment is that without international donor support these organizations become shells or completely cease to exist. Despite their claim that they recognize the need to expand their funding resources, professional associations have not taken any concrete initiatives in that direction. Lastly, the ability of professional associations to lobby the government is still weak, and will be only weakened without the support of international donors. On the other hand, both leadership of professional associations and executives of international donor organizations agree that the government in power is not interested in listening or cooperating with anyone in the process of judicial reform.

Conclusion

Since late 2001, international organizations in Serbia have worked with the government, civil society and the industry on reforming political and economic systems in the country. One of the main goals of these reforms was democratic institutional development and European integration. Majority of the projects financed and implemented by the international community focuses on strengthening the economic system of the country. Other projects aim at developing democratic institutions, including civil society. International organizations have implemented projects that aimed at strengthening democracy in Serbia and speeding up its process of European integration. The effect of the projects implemented, however, is difficult to assess.

The reform challenges Serbia is experiencing, however, are not new or unique. International organizations and foreign government agencies have been engaged in reform initiatives in other Eastern/Central European countries since the early 1990s, and soon after authors began discussing the outcome of those reforms. As early as in 1996, Newberg and Carothers (1996) saw flaws in the international assistance to countries in Central Europe as they embarked on the long road of democratization. According to the authors, since 1989 promoting economic security has been the „the paramount policy initiative for the United States in the region, while promoting democracy is an

ancillary goal” (1996, 1). Governments of these countries were keen to receive democracy assistance programs, and the donors were happy to give them out. However, as the article argues, especially in the case of the US, the priority of these projects was the speed rather than nuance. Accordingly, democracy assistance programs were implemented from the checklist containing building the institutions of state and government (including a democratic constitution, a strong parliament, independent effective judiciary and active local government); frequent, free and fair elections; a strong non state actors (civil society, labor unions, etc.).

And although all these elements of democracy are certainly important and necessary, the general view began to emerge that they were generic. It seemed as national governments and international organizations were implementing same programs throughout the region. Furthermore, according to Newberg and Carothers, programs had too many „American-specific elements”. According to the authors, US assistance did not only aim at promoting independent judiciaries, but judiciaries modeled on the American judiciaries; not only independent legislatures, but those based on the separation of powers. The authors apply the same argument to the institutions and organizations of civil society. Civil society that is another limit on the state, composed of mostly NGOs, a civil society that is „more Tocqueville than Hegel, more Putnam than Havel” (1996, 8).

Ten years later, as Serbia is far along in its democratic transition, the same pattern seems to emerge. Furthermore, it seems that the cookie cutter argument stated by Newberg and Carothers applies to other international donors, not only American. According to the members of judicial professional associations, programs supported by international donors are, in their view, clearly programs implemented in other countries in the region. This stance is echoed by some authors evaluating the success of international donor support for judicial reform projects. As Quigley (2000) argues, international donor organizations tend to implement generic programs in different countries not taking into account specific circumstances of each country. Executives from the judicial professional associations, although recognize the willingness of international donors to develop programs suited to their needs, also see that many programs are being copied and pasted from

one country to the other. Moreover, local circumstances are rarely taken into consideration.

Similarly, projects aimed at strengthening the capacity of professional associations mostly come from international organizations, as discussed above. These seminars more often than not present solutions that work well for mostly American civil society organizations. As financial management, lobbying, train the trainers trainings are being organized and held by international consultants, they teach members of the associations new techniques how to improve the capacity of their organizations. On the other hand, those programs are heavily based on experiences of American or other European organizations. Even the manuals distributed often are translated from English, not developed specifically for the needs of professional associations.

Representatives of international organizations, on the other hand, strongly disagree with Serbian judicial professionals and argue that all programs are developed by the staff in local offices. Several officials even stated that they develop their programs independently from their main office and are not responsible to their headquarters. It is inevitable, however to conclude, that some overlap between programs implemented in other countries in the region and Serbia does exist. Most of the officials working in Serbia today have been long placed in Eastern/Central Europe or other developing countries in the world, and have worked on democratization projects. It is also important to acknowledge that without the financial and logistical help of international donors, Serbian government and civil society would not be able to develop nor implement their infrastructure, capacity and programs.

Although having strong infrastructure does not mean success of the reforms, it is the first important step. Furthermore, international donor help allows Serbian judiciary to share their experiences/problems with their colleagues in the region. Over the years, OSCE, for example, has supported PAS’s membership in the International Association of Prosecutors (IAP), as well as their attendance at the annual meeting of this international organization. All these projects would not be possible to carry out without international donor help.

Finally, all this raises the question of sustainability. As the 2005 Civic Initiatives report on the state of NGO sector discusses, most in-

ternational donors plan on closing their programs by the end of 2007. It remains to be seen how the country will adapt to the new environment of shrinking international support for reforms. Moreover, financing civil society reform is often far down the reform list. This is the case for international donors as well as the government. In 2005, projects for the reform of the judiciary received €11.54 million, less than half that the environment, for example. As for the support for civil society, the three year total was €81.88 million (MIER 2006). As international donors begin to withdraw, and keeping in mind the resistance exercised by the government to respond to the needs of civil society organization, it remains to be seen which path civil society reform in Serbia will take. More importantly, the developments in the following years will show whether these institutional and legislative reform efforts have taken root in Serbia.

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