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ReLOaD2

LEGAL ANALYSIS ON CIVIL SOCIETY SUPPORT WITH PUBLIC FUNDS FROM MUNICIPALITIES

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Acronym

ReLOaD - Regional Programme for Local Democracy in the Western Balkans.
UNDP - United Nations Development Program.
CSOs - Civil society organizations.
EU - European Union.
CSSA - Civil Society Support Agency.
LNB - United Nations Joint Program "No One Left Behind".
SDC - Swiss Agency for Development and Cooperation.
Guide - "Guide On the procurement of social services at the municipality level in accordance with the legislation in force".

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INTRODUCTION

The allocation of public funds constitutes an important task for every public administration and governing body. The proper allocation of public funds confirms the intention of the governing way. The Regional Program for Local Democracy in the Western Balkans (ReLOaD) bases its approach on the previous experiences of the United Nations Development Program (UNDP) that have developed in Bosnia and Herzegovina in the bodies to manage funds for public spending and services for citizens in the most responsible field of local self-government, as well as on the experiences of working with more than forty local self-government units, some of which have already started using this approach. The aim of this program is the allocation of budget funds, especially funds from the budgets of local self-government units, to enable a more useful and transparent transfer of funds to civil society organizations (CSOs). Although this methodological approach focuses on the first level of local self-government units in Albania, the municipalities, it can also be applied to other bodies and different levels of government.

The methodological approach for the transparent allocation of funds allocated to CSOs was designed based on the need for simple instruments that can be used mainly by local communities for the distribution of their budget resources, but also based on the requirements of CSOs and their desire to have easier and simpler access, not only to public funds from the budgets of local self-government units, but also to funds from other sources.

Likewise, this model aims to combine the recommendations of the European Union (EU) for the Management of the Project Cycle and its guidelines for the evaluation of the acceptance of project proposals, as well as to provide the means for the efficient spending of public funds. Some of the main goals of this model are to provide:

- a high quality in the process of planning and implementation of projects.
- uniformity in the use of tools and documentation for project implementation.
- successful monitoring of projects and spending of funds allocated to CSOs.

For several years, ReLOaD has been implemented in several municipalities of Albania, which are successfully implementing it, providing significant support to civil society, thereby empowering citizens. The implementation of ReLOaD over the years has led to the division of municipalities into two groups, municipalities that finance CSOs through their own funds and municipalities that finance CSOs through ReLOaD program funds. Between the years of implementation, the municipalities that implement ReLOaD with their own funds have encountered a problem within the framework of the legal procedures that must be followed for the distribution of funds to CSOs. Municipalities submit whether ReLOaD funds should be subject to public procurement procedures or whether the LOD methodology implemented by ReLOaD should be applied.

In the framework of this problem, the need arose to draw up this in-depth legal analysis, whether the funds determined by the municipalities for the ReLOaD project should be subject to public procurement rules or the LOD methodology followed so far is an efficient methodology in their distribution. “Legal analysis for the support of civil society with public funds from municipalities” tries to give an overview of all the legislation, which operates and interacts within the framework of the distribution of municipal funds, and tries to give some recommendations to help municipalities in:

- carrying out procedures within ReLOaD.
- increasing their support to CSOs, as an important link to empower citizens and the public services offered to them.

I. ReLOaD, MUNICIPALITIES AND LOD METHODOLOGY

The distribution of funds within the ReLOaD project is carried out through the LOD Methodology, which was prepared based on the experience of the project for local democracy, implemented in Bosnia and Herzegovina. This project has contributed to the realization and institutionalization of cooperation between the public sector and CSOs. However, for the challenge of supporting civil society, the project has designed the LOD Methodology, which enables a transparent allocation of funds and ensures the strengthening of mutual trust. The approach used by the methodology aims to simultaneously maximize the use of funds allocated to civil society, as well as realizing the development goals of local communities.

The LOD methodology aims to help the bodies of local self-government units in the use of public funds and the realization of public expenditures assigned to CSOs, focusing on real needs. The final goal is to implement the project-based approach, so that the municipalities realize their development objectives, in cooperation with civil society organizations. The project-based approach is about organizing transparent public calls for all CSOs to submit project-proposals related to a certain field or priority. These project proposals are then evaluated by a commission and financed from the municipal budgets. This transparent and competitive process of selecting CSO projects makes it possible to provide a better service and achieve concrete results for citizens.

A project is a collection of multiple activities, each of which must be well planned, organized and implemented to achieve certain objectives and/or meet certain needs of the local community. The application of the LOD methodology contributes to the solution of a multiple and extremely complex problem. The LOD methodology makes it possible to transparently select the most appropriate and high-quality projects, through a professional evaluation of the proposals and through the evaluation of the capacities of the CSOs that wish to implement these projects. It makes possible the implementation of projects that lead directly to the achievement of defined development objectives.

For several years, ReLOaD has been implemented in several municipalities of Albania, which are successfully implementing it, providing significant support to civil society, thereby empowering citizens. During the years of its implementation by the municipalities, which implement the project with financing from their own funds, a problem has been encountered in the framework of the distribution of the public funds vis-à-vis CSOs of the civil society, in relation to the implementation or not of the legislation, which operates within the framework of public procurement. Within this issue, there is a need to draw up an in-depth legal analysis, whether the funds determined by the municipalities for the ReLOaD project should be subject to public procurement rules or the LOD methodology followed so far is an efficient methodology in the distribution of funds.

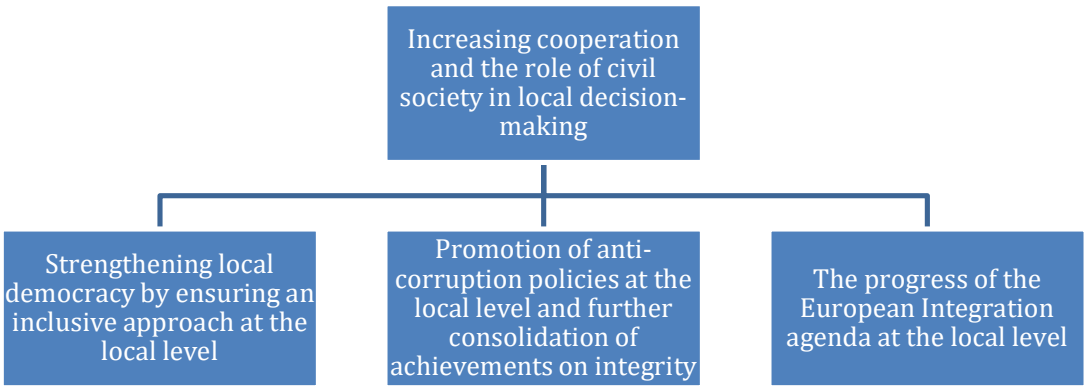
This legal analysis tries to give an overview of all the legislation that operates and interacts within the distribution of municipal funds and tries to give some recommendations to help

municipalities in carrying out the procedures and increasing their support to CSOs, such as an important link to empower citizens and the services offered to them. Also, this analysis tries to present the practices followed by the municipalities and the relevant legal procedures, for the support of the civil society through the public funds of the municipality itself.

II. LEGAL ANALYSIS

Local self-government is a jurisdiction that is organized, and functions based on a composite legislation, where on the one hand Law No. 139/2015 "On Local Self-Government" (amended), which defines the organization and functioning of this power, and on the other hand all other laws and by-laws, by means of which local self-government can perform the functions and tasks defined by law no. 139/2015 "On local self-government" (amended).

The support of various civil society actors is an important element for local self-government, starting from the fact that local self-government is organized, and functions based on the principle of subsidiarity, which means decision-making as close as possible to citizens and for citizens. The Decision of the Council of Ministers No. 252, dated 20.4.2023 "For the approval of the cross-sectoral strategy for decentralization and local government 2023-2030, its action plan 2023-2025 and the passport of indicators" defines among its objectives, objective no. 5, where the focus of addressed to civil society - increasing cooperation and the role of civil society in local decision-making.



Based on the evaluation report drawn up by the Municipalities for Europe, local self-government units[1] have given a total of 63 grants for joint projects in partnership with civil society organizations. Grants are categorized up to 100,000 ALL from 100,000 - 500,000 and over 500,000 ALL. The municipalities with the highest number of grants were Shkodra Municipality with 18 grants and Tirana Municipality with 15 grants, Përmet Municipality (6 grants) and Gjirokastër Municipality (4 grants). Other municipalities have given 1-3 grants, while 35 municipalities (57%) have not given any grant in 2020.

[1] https://www.bpe.al/al/bashkite-ne-procesin-e-integrimit-te-shqiperise-ne-bashkimin-evropian-raporti-i-vleresimit-2021

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Civil Society

Civil society has a very important role for the EU and its importance is defined in Article 15 of the Treaty on the Functioning of the EU, which recognizes the decisive role of civil society in the good governance of a country.

All EU institutions and bodies aim to function in the most transparent way possible to promote good governance and guarantee the participation of civil society in it. The role of civil society is seen in:

- The right to information on official documents.
- Realizing an open, transparent and regular dialogue with civil society during EU legislative proposals.
- Participation in public decision-making and giving opinions by civil society.
- Realization of continuous consultations with civil society within the EU activity.
- The right of citizens' initiative, enjoyed by the citizens of the EU to force the latter to issue a legal act within the framework of the implementation of the treaties.

The legislation in force of the EU, but also in Albania, does not have a definition for civil society. In the EU White Book, we find a definition of civil society, as:

"*Civil society groups especially union and partnership organizations (social partners), non-governmental organizations, professional associations, aid organizations, organizations that involve citizens in local and municipal life, with a specific contribution of churches and religious communities*".

Starting from the above, Law No. 8788, dated 7.5.2001 “On non-profit organizations” (amended) determines that any natural or legal person, local or foreign, has the right to establish a CSO, to be a member of her or participate in the governing bodies or in the administrative staff of the non-profit organization.

Article 35 of the same law defines that the sources of CSO income are the income from quotations when there are such, funds, grants and donations offered by private or public, domestic or foreign entities, as well as income from economic activity and assets owned by the CSO. CSOs provide income from sources recognized by this law and make expenses only for the realization of the purpose and object of activity for which they were created, as well as for the management and maintenance of their assets. No form of profit distribution or financial and material benefit from the income and profits of the non-profit organization is allowed by the persons who are subjects of the charter or founding act, except for obligations in the form of wages, salaries, payments, rewards and compensations arising from employment contract or other similar contracts or for the coverage of expenses incurred by order and on behalf of the non-profit organization. Based on the above definitions, CSOs do not have the purpose of their daily work, the realization of economic activities to generate profit and “enrich” the founders, members, managers, etc., as commercial companies can have. Commercial companies have the goal of their daily work to make a profit, to function and exist in the market.

Article 36 of Law No. 8788, dated 7.5.2001 "On non-profit organizations" (amended) establishes that the CSO, for the realization of the purpose and object of its activity, has the right to exercise economic activity. CSO can develop economic activity without the need to create a separate entity for this purpose, provided that this activity is in accordance with its goals, has been declared as one of the sources of income and provided that this activity does not constitute the primary purpose of the organization's activity. If the CSO, through the exercise of economic activity, realizes profits, they must be used to fulfill the goals defined in the statute and in the act of its establishment.

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- ***Public procurement***

Article 1, point 2 of Law No. 162/2020 "On public procurement" determines that:
"*Procurement, according to the meaning of this law, is the purchase of works, supply of goods or services through a public contract by one or more contracting authorities or entities from economic operators selected by these contracting authorities or entities, regardless of whether the works, supplies of goods or services are used or not for public purposes".*

Article 4, points 6, 9 and 32 determine that:
"*6. "Contracting entities" are:*
a) contracting authorities or public enterprises, which perform one of the activities mentioned in articles 60 to 66 of this law.
b) entities, which are not contracting authorities or public enterprises according to letter "a" but have as their activity one of the activities mentioned in articles 60 to 66[2] or any combination thereof and operate based on special rights or exclusive, given by a competent authority.
9. "Public funds" are:
a) any monetary value of the state budget, determined for use in public procurements.
b) any monetary value of the local budget, determined for use in public procurements.
c) aid funds or loans, given by foreign donors, according to an international agreement, in which the implementation of the procedures of this law is required.
ç) income from the state, local enterprises, commercial companies and other entities, where the state owns the majority of shares or capital.
32. "Economic operator" is any natural or legal person, or public entity or group of persons/entities, including companies with their temporary enterprises."

Based on the above definitions; to be in the conditions of public procurement at the level of local self-government, we must be in the conditions of:

- purchase of works, supply of goods or services through a public contract by one or more contracting authorities or entities.
- a monetary value of the local budget, determined for use in public procurements,

[2] The activities defined in articles 60-66 are: gas and heating; electric energy; water; transport services; ports and airports; postal services.

- being an economic operator to carry out an offer with the aim of providing services, performing works, supplying goods in the areas defined by the legislation on public procurement, that is, in the conditions of carrying out an economic activity.

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Legislation on budget system

Article 3, point 19 of the law No. 9936, dated 26.6.2008 "On the management of the budget system in the Republic of Albania" (amended) defines that a grant is income, received in the form of a donation, for a defined purpose or no, without condition of return and without interest, which is used to finance economic activities.
Article 9, letter "a", point "iii" and Article 10, letter "b", point "ii" determine that in the receipts of local self-government units, in non-reciprocal receipts, income from grants and in payments of the local self-government unit include payments related to non-reciprocal transactions: payments for grants, contributions and donations. Article 39, paragraph 4 stipulates that the Council of Ministers, with the proposal of the Minister of Finance, regulates the relations and procedures between the ministry responsible for finance and the units of the general government, for signing, issuing and reporting grants.

Based on the above-mentioned definitions, the categorization of a fund that is distributed within ReLOaD as a grant connects it to the economic activity, where as a result of the grant, the municipalities ensure receipts but also make payments, within the framework of the legislation for the management of the budget system. The categorization of ReLOaD funds as a grant does not reflect the characteristics of the grant and cannot be distributed by municipalities under the conditions and legal provisions related to it.

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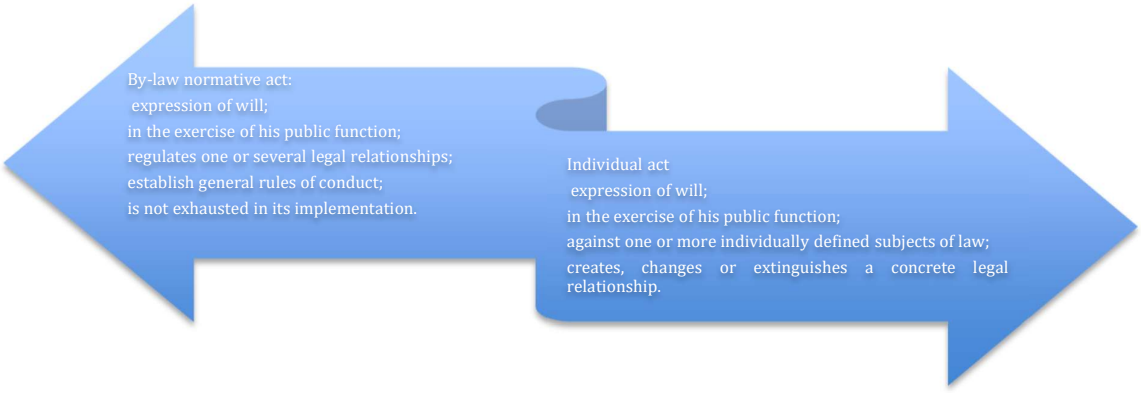
Administrative law and local self-government

Law no. 44/2015 "Code of Administrative Procedures of the Republic of Albania" defines that the sub-legal normative act is any expression of will by a public body, in the exercise of its public function, that regulates one or several legal relationships, establishing general rules of behavior and is not exhausted in its implementation. Based on this definition, the decision of the Municipal Council for the approval of the LOD methodology is a by-law normative act and serves quite well as a legal basis for the undertaking of fund distribution procedures, not requiring other legal approvals at the central level.



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- ***Sports legislation***

What has been noticed over the years, in the implementation of ReLOaD by municipalities in Albania, is the distribution of funds through the LOD Methodology to sports associations operating in these municipalities. In some municipalities of the country, sports associations are few, not allowing compliance with the principle of competitiveness of the LOD Methodology: the competition of several CSOs to benefit from a public fund from the municipalities.

Article 19 of Law No. 79/2017 "On sports" (amended) determines that:
"*Sports associations have the purpose of participating in sports activities or their development, in accordance with this law and the Albanian legislation in force.*
2. The way of creation, the form of organization and operation and the object of activity of sports associations are based on the Civil Code of the Republic of Albania, the legal framework for non-profit organizations and for the registration of non-profit organizations, as well as based on this law.
3. National sports associations cannot develop sports activities or participate in them without being registered as members in the Albanian federation of the relevant sport.
4. Sports associations can also benefit from funding from the central or local government bodies, in accordance with the provisions of the Albanian legislation in force, through transfers and from other sources."

Based on the above-mentioned determinations, municipalities can distribute funds to sports associations, through transfers and regulating the procedures for their distribution through a decision of the Municipal Council, which can exclude these procedures from the LOD Methodology.

III. SIMILAR MODELS

Are all public funds in central government and local self-government in Albania subject to public procurement procedures? Are there cases of funding of civil society actors from public funds and that their distribution is not subject to public procurement rules?

- ***Funding of projects within the framework of civil society support***

Articles 18 and 19 of the law No. 10 093, dated 9.3.2009 "On the organization and functioning of the Civil Society Support Agency (CSSA)" define that:

"*1. The fund is distributed according to the priorities determined by the supervisory board.*
2. The executive director of CSSA:
a) ensures the drafting and development of grant conditions, in accordance with the specifics of the fields.
b) publicly announces the grant and the competition criteria and the selection of the beneficiary candidates.
c) creates the commission for the evaluation of project proposals, with no less than 3 people for each competition procedure, in whose composition representatives of civil society organizations participate, as invited, according to the principles and rules defined by supervisory board.
ç) determines the deadlines and the persons responsible for negotiating the conditions or necessary changes in the project proposal, according to the conditions determined by the evaluation commission.
d) notifies the candidates participating in a certain procedure.
dh) concludes the contract with the winner.
3. The evaluation committee has the following tasks:
a) opens, examines and evaluates the qualification criteria of the project proposals received, in accordance with the criteria and deadlines defined in the competition documents.
b) announces the results of the competition and informs the participating candidates about the non-winning projects, giving the relevant reasons.
4. The contract defines, at least, the method of transferring the fund, the documentation and the method of financial and performance reporting, the types of expenses, recognized and acceptable, the forms of control, including the obligation of the beneficiary entity to make available To the High State Control, the documentation for the financial activity carried out, the way of documenting the expenses and the product/results of the funded project proposal, as well as the conditions or other mutual responsibilities.
5. The responsible body of other financing authorities, pursuant to points 2 and 3 of this article, is the holder of this authority.

Article 19
Basic procedure
1. Financing authorities, in the sense of this law, distribute funds for the support of society civil, based on open competition and public selection of project proposals, in accordance with the principles and procedure defined in this law.

2. Project proposals are evaluated based on their compatibility with the goals of the program for which they are proposed, the ability of the candidate and the effectiveness of the activities, in terms of results and costs. Detailed evaluation criteria for each grant are publicly announced.
These criteria cannot be changed during the entire relevant procedure.
3. The project proposal selection procedure includes the following stages:
a) publication of the annual action plan.
b) the prior notification and publication of any competition procedure for a specific grant and the placement
relevant competition documents available.
c) changes and clarifications made during the procedure.
ç) submission of the project proposal and registration of participating candidates by the authority financier.
d) review of the acceptability of completion of technical and financial skills and registration and evaluation of the project proposal.
dh) notification of competition results, including conditions for adaptation or changes.
e) in case of rejection of all candidates, the statement and reasons for this rejection.
ë) the possible negotiation for the defined changes, as a condition for the approval of the winning project proposal.
f) negotiation and signing of the contract.
g) publication of information, according to the provisions of this law.
4. The supervisory board, with the proposal of the executive director, approves the model contract, according to
legislation in force and procedural rules, applicable to funds for support
civil society, which are distributed according to this law."

The support of civil society by CSSA is done through funds provided by the state budget but are not subject to the rules of public procurement but are carried out according to a well-detailed procedure defined in the legislation in force.
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- ***Financing of social services of local self-government units***[3]

UNDP in Albania, within the United Nations Joint Program "No One Left Behind" (LNB) - the second phase, which is implemented in partnership with the Albanian Government and financed by the Swiss Agency for Development and Cooperation (SDC) has supported the drafting of the "Guide On the procurement of social services at the municipality level in accordance with the legislation in force" (Guide). In this Guide, among other things, it is presented:

[3] https:/www.undp.org/sites/g/files/zskgke326/files/2023-07/udhezues_per_prokurimet_e_sherbimeve_sociale.pdf

"*The Public Procurement Agency has not provided a solution to the ambiguity of the Municipality of Tirana regarding social services worth less than 20,000,000 ALL. In this response, the Public Procurement Agency states that:*
i. Services that within a calendar year have a fund below ALL 20,000,000 are not subject to procurement procedures.
ii. The Contracting Authority will carry out the procedure respecting the principles of transparency, equal treatment of economic operators and promotion of competition.
So, based on this answer municipalities:

- *They do not have a legal obligation to follow an open procedure according to the Albanian legislation for the procurement of the service and,*
- *They must build a selection procedure for the provision of social services respecting the principles of transparency, equal treatment of economic operators and the promotion of competition.*

It is recommended for the realization of contracts for social services worth less than ALL 20,000,000, the use of the practice of selecting non-profit organizations for the provision of social services and the set of documents, drawn up during the consultancy, presented in Annex A."

Annex A of the Guide defines a procedure organized not according to the legal provisions of the legislation in force for public procurement, but of a public, transparent competition and in compliance with the legislation in force of social services.
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- ***Funding of projects within art and culture***

Article 26 of Law No. 10 352, dated 18.11.2010 "On Art and Culture" (amended) determines that:
"1. The Ministry responsible for art and culture, from the budget fund approved for each year, finances:
a) projects presented by physical, legal, local or foreign persons, whose activity is art and culture.
b) artistic and cultural projects and activities, which are considered of particular importance and have a budget that reaches over 40 percent of the annual fund for projects.
2. This fund is not subject to public procurement legislation.
3. The procedures, which are followed for the financing of artistic projects, according to letter "b", point 1, of this article, are approved by decision of the Council of Ministers."

The Decision of the Council of Ministers no. 709, dated 24.10.2012 "On the financing procedures of artistic and cultural projects and activities" and the Decision of the Council of Ministers no. 540, dated 21.12.1992 "On the creation of artistic and cultural councils and the remuneration of their members" defines the procedures to be followed for the financing of projects within the framework of art and culture, specifying that these funds are not subject to

public procurement procedures. Municipality of Tirana[4] reflects in detail the procedures that are followed in the distribution of funds within the framework of art and culture[5].

Dokumentacioni i nevojshëm për aplikim, i protokolluar në Sektorin e Informimit Qytetar :

1. Kërkesa për mbështetje

Drejtuar Bashkisë Tiranë (Drejtorisë së Përgjithshme të Promovimit të Qytetit).

2. Formulari i aplikimit (Shkarko)

3. Projekt propozimi

Përshkrim i detajuar i projektit i hartuar sipas pikave të përcaktuara në formularin e aplikimit.

4. Preventivi total i projektit (Shkarko)

I detajuar sipas zërave dhe donatorëve të tjerë.

5. Preventivi për Bashkinë Tiranë (Shkarko)

[4] https://tirana.al/uploads/2019/5/20190516100126_vendim-nr12-miratimi-i-rregullores-se-financimit-te-projekteve-kulturore.pdf
[5] https://tirana.al/faqe/thirrje-per-aplikime

IV. INITIATION OF PROCEDURES BY MUNICIPALITIES

The municipalities that have become part of ReLOaD, have approved in their municipal councils, all procedures and documents, within the framework of the interaction for the benefit of public funds from civil society actors. ReLOaD makes it possible to distribute funds through a consolidated methodology that is the LOD Methodology. Based on the analysis of the methodology used and the legislation in force, it became possible to draw up some conclusions and recommendations, as follows:

- Public procurement legislation determines who, what and how we are subject to public procurement rules by linking each procedure with a well-defined objective, which is economic activity with the aim of ensuring profit.
- Supporting civil society with public funds does not constitute an economic activity because it does not entail the provision of a service, the supply of a commodity, the purchase of a product for municipalities, with the aim of ensuring profit, in the economic sense for CSOs. Supporting civil society means the transfer of public funds towards different actors of civil society, in this case CSOs, to empower other actors of civil society. It is worth emphasizing the fact that in the distribution of public funds, the LOD methodology enables the development of a public, open, competitive and transparent competition.
- The decisions of the Municipal Councils, which have approved the procedures within the framework of ReLOaD, constitute the legal basis for decision-making for local self-government units. The decision of the Municipal Council constitutes a by-law normative act, on which all procedures are based. By analogy in the case of the financing of projects in the framework of art and culture, the Municipality of Tirana and not only, has approved in the Municipal Council the procedure for the distribution of funds and the relevant structures that make their distribution possible. In all the cases presented in the legal analysis, the procedures followed in the distribution of funds are similar to the LOD Methodology defined by ReLOaD.
- Legislation in the budget field defines what "grant" means, closely linking it to economic activity, where municipalities have receipts and payments from grants. Based on legal provisions, municipalities may not classify the fund as a "grant" but may classify it as a "civil society support fund'; "funding for civil society".
- In the case of social services, the Public Procurement Agency has submitted that: for funds up to 20,000,000 ALL, the procedures defined by the legislation in force for public procurement should not be followed, but an open, transparent and public competition should be carried out. Based on these determinations, we can interact with the Public Procurement Agency to have its opinion, regarding the procedures to be followed and how they should be followed, by the local self-government units.

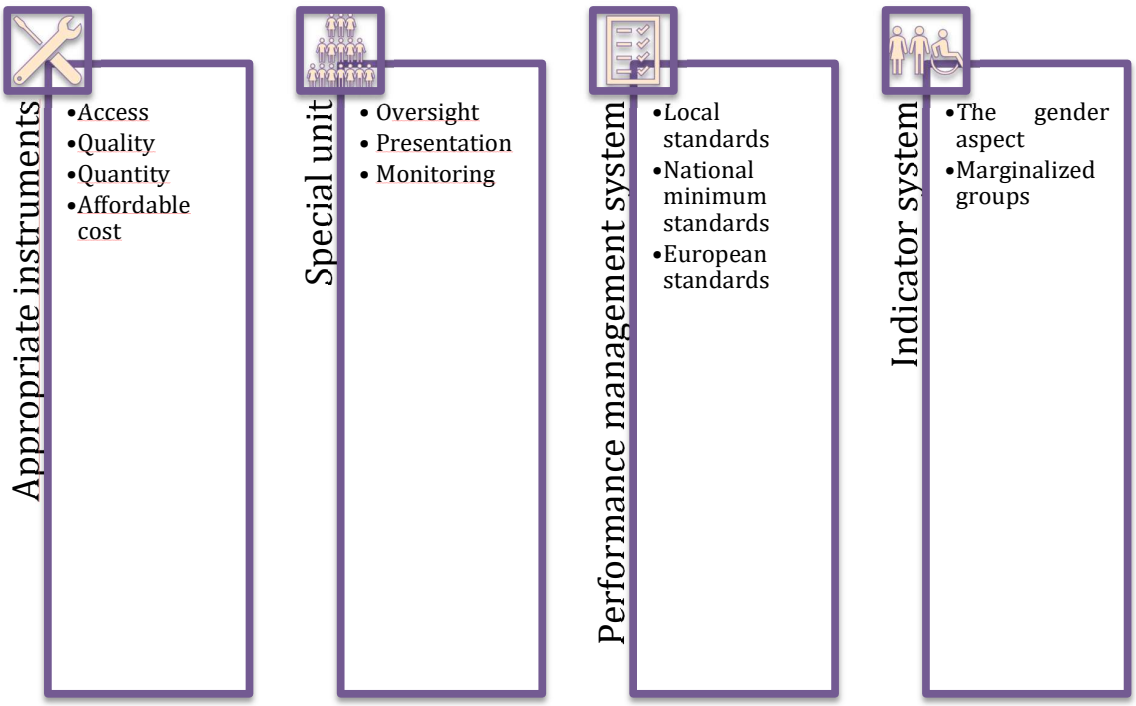
V. PUBLIC SERVICES AND GRANTMAKING WITHIN THE FRAMEWORK OF ReLOaD

Local self-government units are the state structures that provide the most public services, with more than 160 services provided. In the framework of the provision of public services, Law No. 139/2015 "On Local Self-Government" (amended) determines that local self-government units ensure the provision of public services, through one or more of the following instruments:

- own organizational units, which are part of the administrative structure of the local unit.
- enterprises for public services, according to the legislation in force.
- contracting the provision of services with third parties.
- the use of appropriate instruments of public and private partnership, according to the legislation in force.
- creation of commercial companies owned or co-owned by the local unit, according to the legislation in force.

In any case, regardless of the instrument selected, the local unit will be responsible for:

- designing and establishing a service performance management system, based on local standards and/or minimum national standards.
- design and establishment of a system of indicators, including the gender aspect for performance measurement.
- the creation of a special unit in the structure of the local self-government unit, which will be responsible for the presentation, supervision and monitoring of the performance and service, including the gender aspect.



The local self-government unit can provide financial support to municipal enterprises for public services and/or to commercial companies with the capital of the local self-government unit, the scope of which is related to the provision of a public service that is the responsibility of this unit.

Based on the above, local self-government units are granted the right to spend their public funds for the provision of the services they are responsible for, only if these public services are provided by:

- municipal enterprises for public services; and/or
- commercial companies with capital of the local self-government unit, whose field of action is related to the provision of a public service that is the responsibility of this unit.

In Article 2, points 4 and 4/1 of Law No. 8788, dated 7.5.2001 "On non-profit organizations" (amended) states that:
"*4. "Non-profit activity" means* ***any economic or non-economic activity, provided that the income or assets of non-profit organizations, if any, are used only for the realization of the goals defined in the organization's statute****.*
4/1. "Economic activity" means the activity organized by a non-profit organization, with the aim of ***generating income in exchange for the provision of services or goods, to enable the mission of the organization, provided that the economic activity does not constitute the primary purpose of the organization, as well as to be used for the fulfillment of the goals defined in the statute and in the act of establishment****."*

Based on the above legal definitions, we bring to your attention that the activities of non-profit organizations are divided into non-profit activities and economic activities, where the realization or provision of services by non-profit organizations is presented as an economic activity, where the secured income is used to fulfill the defined goals in the statute and in the act of establishment.

The above-mentioned law determines that, for the realization of the purpose and object of its activity, the non-profit organization has the right to exercise economic activity. It can develop economic activity without having to create a separate entity for this purpose, provided that this activity is in accordance with the goals of the non-profit organization, has been declared as one of the sources of income and provided that this activity does not constitute the primary purpose of the organization's activity. If the non-profit organization, through the exercise of economic activity, realizes profits, they must be used to fulfill the goals defined in the statute and in the act of establishment.

In the context of the activity carried out by non-profit organizations and the payment of tax obligations on their part, article 2 determines that:
""Grant" is the provision of funds or material basis through a contract or agreement, according to a defined competition procedure, for the realization of the activity of the non-

profit organization, in accordance with the purpose and scope of its activity, defined in the statute."

Article 40 of the same law defines the tax obligations that non-profit organizations are subject to base on the type of funds they benefit from or activities they carry out:
"*Non-profit organizations, regardless of the form of organization, the purpose they pursue and the activities they carry out, are exempt from tax on the income they realize from donations, grants, bank interest and membership fees.*
Non-profit organizations, which carry out economic activity, are subject to income tax, only in case the realized income is not destined for activities for which the organization is registered."

This legal aspect should be taken into consideration by the local self-government units, which distribute grants within the framework of ReLOaD and other donors, in cases where non-profit organizations will provide public services, which are realized and are a functional task of the local self-government units, must be subject to law No. 162/2020 "On public procurement" (amended), which states that public funds are subject to public procurement procedures and non-profit organizations themselves must comply with the legal provisions for tax obligations set forth above.

VI. LEGAL PROCEDURES ON GRANTMAKING BY MUNICIPALITIES

The local self-government units in grantmaking must conclude a contract with CSOs, beneficiaries of grants within the framework of ReLOaD. The contract drawn up by local self-government units must take into consideration the provisions of point V of this legal analysis and it must be emphasized that it must not be drawn up as a service contract, but as a grant agreement/contract.

The Service Contract is a contract that regulates the way of providing services, ensuring at the same time the protection of the economic and legal interests of the parties, where the parties are the Service Providers and the Client. Law No. 7850, dated 29.7.1994 "Civil Code of the Republic of Albania" (amended) does not have provisions that expressly regulate the Service Contract, however, based on contractual freedom, the parties are free to sign any agreement between themselves that is not contrary to the principles of law, legislation and public order in the country.

The Service Contract is an important document for persons and/or businesses that provide services, especially when the verbal agreement on the terms of service provision is not enough to meet the parties' requirements on the fulfillment of obligations and payment methods. Service Contracts can also be used by persons or companies aiming to subcontract business processes. A Service Provider can be a person or company that provides professional services to a client. In the Service Contract, the parties agree to provide services in exchange for compensation.

Local self-government units must draw up a draft contract for awarding/offering a grant, taking into consideration some mandatory elements that it must have, such as:

- detailed information on the parties signing the contract.
- information on the reasons why we are moving towards signing this contract.
- definitions of terms that will be used in the contract.
- the legislation on which the contract was drafted.
- purpose of the contract.
- the fund and details of the financing/distribution of the fund during the contract implementation period.
- period of implementation of the contract.
- the obligations of the parties, who sign the contract, specifying them in accordance with legal procedures and by-laws.
- specifying the duties of the directorates, which interact in the municipality within the framework of the implementation of the contract.
- planning and grant awarding procedures (payment planning, payment procedure and deadline, suspension of payment, non-payment).
- control mechanisms of the municipality during the implementation of the contract and the project.

- the obligation to submit documents within the reporting procedures (financial or narrative reporting).
- project evaluation/monitoring.
- the possibilities of changing the contract and legislation, which the parties will be subject to.
- detailing the contract implementation process.
- postponement of project implementation, contract and project suspension procedure and contract termination conditions.
- administrative sanctions, in case of violation of the conditions set in the contract.
- conflict of interest between the parties.
- confidentiality.
- ownership of the products benefited from the implementation of the project.
- protection of personal data.
- visibility of funding.
- communication between parties.
- legislation applicable to the drafted contract.
- the term of validity of the contract.
- procedures for notifying the parties.
- conflict resolution procedures that may arise based on the signed contract.
- the language used in the contract.
- the number of copies to be signed by the parties.
- the documents that will be attached to the contract should be placed in numbered Annexes, so that it is easier to refer to them.

In Annex No. 1 of this analysis, a draft contract for granting/offering a grant, that can serve local self-government units in grant awarding procedures, is reflected.

Analyzed legislation:

- Law No. 8788, dated 7.5.2001 "On non-profit organizations" (amended).
- Law No. 9901, dated 14.4.2008 "On merchants and commercial companies" (amended).
- Law No. 9936, dated 26.6.2008 "On the management of the budget system in the Republic of Albania" (amended).
- Law No. 10 352, dated 18.11.2010 "On art and culture" (amended).
- Law No. 139/2015 "On local self-government" (amended).
- Law No. 44/2015 "Code of administrative procedures of the Republic of Albania".
- Law No. 68/2017 "On the finances of local self-government" (amended).
- Law No. 79/2017 "On sports" (amended).
- Law No. 162/2020 "On public procurement".
- The Decision of the Council of Ministers No. 540, dated 21.12.1992 "On the creation of artistic and cultural councils and the remuneration of their members".
- The Decision of the Council of Ministers No. 709, dated 24.10.2012 "On the financing procedures of artistic and cultural projects and activities".

ANNEX NO. 1 DRAFT CONTRACT FOR AWARDING/OFFERING A GRANT

Nr._____prot. Tiranë, më___.___.20

KONTRATË

Nr.

Ndërmjet

Palëve kontraktuese

1. _____si palë që jep mbështetjen financiare (më poshtë referuar si:) e përfaqësuar nga _____me adresën e selisë dhe korrespondencës: _____Tiranë nga njëra anë,

dhe

2. Emri i Përfituesi Z._____ me numër NIPT: K_____T, si palë që përfiton fondet (më poshtë referuar si: Përfituesi), përfaqësuar nga Administratori Z._____ me numrin e kartës së identitetit _____, me adresë: Lagjja " _____

Kanë rënë dakord për sa më poshtë:

I. DISPOZITA TË PËRGJITHSHME

Neni 1
Objekti i Kontratës

(1) Kjo kontratë rregullon të drejtat dhe detyrimet e palëve kontraktuese lidhur _____

(2) Kontrata e nënshkruar u referohet termave të mëposhtëm:

Neni 2
Granti i alokuar

(1) Totali i shumës _____ LEKË.

(2) Procedurat për dhënien

Neni 3
Të Drejtat e Përfituesit

(1) Përfituesi ka të drejtë të marrë pagesën e fondeve_____.

(2) Përfituesi ka të drejtë të kërkojë ndryshime të kësaj Kontrate së paku_____.
(3) Përfituesi ka të drejtë të kërkojë ndryshimin e kësaj kontrate në këto raste:

(4) Përfituesi ka të drejtë të kërkojë ndryshime të kësaj Kontrate në lidhje me dispozitën e përmendur në_____ të këtij Neni vetëm në rast të:

- një force madhore,
- fatkeqësive natyrore të njohura nga Autoriteti Shtetëror,
- ndalimit/ndërprerjes së prodhimit të mallrave të caktuara të cilat janë pjesë e investimit, objekt i kësaj Kontrate,
- pamundësisë së furnitorëve për të ofruar mallra ose shërbime,
- ndryshimeve që lindin nga nevoja për sinkronizim me legjislacionin,
- situatave që nuk mund të parashikohen në momentin e kontraktimit,
- futjes së teknologjive të reja që mund të përmirësojnë efikasitetin e investimit, objekt i kësaj Kontrate.

Neni 4
Detyrimet e Përfituesit

1) Përfituesi është i detyruar _____
2) Përfituesi është i detyruar të përfundojë zbatimin e projektit _____.
3) Përfituesi është i detyruar t'i dërgojë bashkisë_____.
4) Përfituesi është i detyruar që në afatin prej 30 ditësh kalendarike _____të paraqesë kërkesën për pagesë dhe të gjitha dokumentet e kërkuara me kërkesë jo më vonë se _____
5) Përfituesi është i detyruar të paraqesë dokumentacionin e kërkuar nga kjo kontratë_____.
6) Përfituesi është i detyruar të shlyejë të gjitha pagesat ndaj palëve të treta_____.
7) Përfituesi është i detyruar të mbështesë kërkesën për ndryshim të kontratës me dokumentet _____.
8) Përfituesi është i detyruar të dërgojë informacion/të dhëna me kërkesë_____.
9) Përfituesi është i detyruar të informojë menjëherë për shfaqjen e rrethanave që ndikojnë ndjeshëm në ekzekutimin e kësaj Kontrate.

Neni 5
Të Drejtat e Bashkisë

1) Bashkia ka të drejtë të kryejë_____.

2) Bashkia ka të drejtë të kërkojë dokumentacion plotësues/shtesë_____.
3) Bashkia ka të drejtë të kërkojë informacion, të dhëna dhe materiale të nevojshme për monitorimin,_____.
4) Bashkia ka të drejtë të njoftojë në faqen e internetit informacionin e mëposhtëm mbi Përfituesit:

- Emri dhe mbiemri
- Shumën e fondeve në lekë të paguara sipas programit
- _____

5) Bashkia ka të drejtë të refuzojë kërkesën për ndryshime të kësaj Kontrate për arsye se_____
6) Bashkia ka të drejtë të kërkojë kthimin e grantit nëse Përfituesi: _____.

Neni 6
Detyrimet e Bashkisë

1) Bashkia është e detyruar të ekzekutojë pagesën brenda_____.
2) Bashkia është e detyruar të kryejë pagesën me _____ këst.
3) Bashkia është e detyruar të kryejë kontroll_____.
4) Bashkia është e detyruar, pas pranimit të kërkesës për ndryshim për shkak katastrofe natyrore, të veprojë në përputhje me dispozitat_____.
5) Bashkia është e detyruar të veprojë sipas të dhënave personale të Përfituesit në përputhje me legjislacionin nga fusha e mbrojtjes së të dhënave personale.

Neni 7

(1) Kjo kontratë ndërpritet:

- me marrëveshje reciproke ndërmjet palëve kontraktuese,
- në mënyrë të njëanshme nga_____,

(2) Në rast të ndërprerjes së kontratës _____ do të njoftojë menjëherë Përfituesin.
(3) Në rast të ndërprerjes së kontratës _____Përfituesi është i detyruar të njoftojë _____ së paku _____ditë përpara afatit të përmendur _____

Neni 8
Shkëmbimi i informacionit

(1) Përfituesi deklaron nën përgjegjësinë e plotë morale, materiale dhe penale që të gjitha të dhënat nga raportet, dokumentet dhe deklaratat e dorëzuara në bashki janë të besueshme dhe autentike.
(2) Përfituesi deklaron_____.
(3) Për informacion mbi dokumentet e duhura që duhet të dorëzohen _____
Adresa:

Neni 9
Mosmarrëveshjet

Në rast mosmarrëveshjesh ose keqkuptimi që mund të rezultojë nga kjo kontratë, palët kontraktuese do t'i zgjidhin ato me marrëveshje, me dëshirën e mirë me mirëkuptim të ndërsjelltë dhe, në rast të kundërt, Gjykata _____do të jetë autoriteti kompetent.

Neni 10
Hyrja në fuqi dhe kohëzgjatja e kontratës

(1) Duke nënshkruar këtë kontratë, palët shprehin vullnetin e tyre të lirë, konfirmojnë se kanë lexuar dhe kuptuar kontratën dhe janë dakord me të drejtat dhe detyrimet që rrjedhin nga kjo kontratë si dhe me pasojat e saj ligjore.
(2) Kjo kontratë hyn në fuqi ditën e nënshkrimit nga të dyja palët kontraktuese dhe mbetet në fuqi _____.

Neni 11
Numri i kopjeve

Kjo Kontratë përbëhet nga ____ kopje identike origjinale,_____.

Neni 12
Shtojca

Shtojcat e mëposhtme janë pjesë përbërëse e kësaj Kontrate:
Shtojca 1-

Datë, ____.____.20 Datë, ____.____.20

Nr. protokolli ___ /_____