



OSCE Human Dimension Implementation Meeting

Warsaw, 19 – 30 September 2016

Working session 4: Freedom of Assembly and association

Contribution of the Council of Europe

Council of Europe standards and action for promoting civil participation and decision-making

The promotion of an active civil participation in political decision-making is pursued through:

- creating an enabling environment, including a favourable legal framework, for the functioning of NGOs;
- developing sustainable mechanisms for dialogue, consultation and co-operation between civil society and government both at the central and local level.

Background

The rights to freedom of assembly and to freedom of association (Article 11 of the European Convention on Human Rights) are inextricably linked to the right to freedom of expression (Article 10 of the ECHR). According to the European Court of Human Rights, “Article 11 must ... be considered in the light of Article 10. The protection of opinions and the freedom to express them is one of the objectives of the freedoms of assembly and association as enshrined in Article 11”^[1].

Exercised together, the rights to freedom of assembly, of association and of expression are a fundamental part of the checks and balances ensuring the successful functioning of democratic institutions. A guaranteed enjoyment of these rights is a pre-condition for the active participation of civil society in decision-making at all levels of government.

Furthermore, ensuring the participation of all individuals and societal groups in political processes is one of the prerequisites for guaranteeing democratic security.

The watchdog role of NGOs is noted by the European Court of Human Rights as “essential in a democratic society”. Therefore, “the Court considers that it is similar to the role of the press as defined in its established case-law.”^[2]

^[1] Christian Democratic People’s Party v. Moldova judgment (No 28793/02, §§ 62-70, ECHR 2006-II)

^[2] Vides Aizsardzibas Klubs v. Latvia, No 57829/00, § 40, 27 May 2004

Recent developments at the Council of Europe

Standard-setting

The [2015 report](#) of the Secretary General on the State of Democracy, Human Rights and the Rule of Law in Europe recommended that “The Council of Europe should prepare new guidelines to ensure meaningful participation in political decision making based on best practice and shared standards”.

The guidelines were included in the terms of reference of the European Committee on Democracy and Governance (CDDG). An overview of the existing practice and standards in the Council of Europe member states as regards civil participation in political decision-making was prepared and a working group to prepare the draft guidelines was constituted. The group includes an equal number of representatives of governments of Council of Europe member states and of civil society, nominated by the Council of Europe Conference of International Non-governmental Organisations (INGOs). This unique interaction at the European level is an inspiring example for member states to follow in ensuring meaningful civil participation in democratic decision-making at the national level.

At its first meeting in April 2016, the working group prepared a draft version of the guidelines which was subject to public consultation during part of this summer. The group is meeting again on 28 and 29 September 2016 to consider the input from the public consultation and to modify the draft as appropriate. The text will then be submitted to the CDDG and then to the Committee of Ministers for possible adoption.

In the process of preparation of the guidelines, the experience and the input of partner organisations has been taken into account. As far as the OSCE is concerned, the Council of Europe secretariat considered the outcome of the Civil Society Forum on Enhancing the Participation of Associations in public decision-making processes which was held prior to the Supplementary Human Dimension Meeting on Freedoms of peaceful assembly and association, with emphasis on freedom of association (Vienna, April 2015). The text contained a recommendation that “The OSCE or another international organization should develop guidelines for the effective participation of associations in public decision-making processes that would highlight what is generally acceptable as good practice in selected OSCE participating States.” Consequently, the Legislative Support Unit of OSCE/ODIHR was invited to contribute to the public consultation mentioned above.

Assistance and co-operation

A regional project on promoting civil participation in democratic decision-making in the Eastern Partnership countries is underway as well as a project with the same objective covering Azerbaijan. Both of these projects are co-funded by the European Union.

The Council of Europe is also supporting in Bulgaria the development of "CivilRightsWatch" grajdanomer.bg – a pilot online tool providing knowledge about the basic civil rights and empowering citizens to actively participate in public decision-making. The tool is functional and is being further extended and streamlined.

Pursuing its interest in the interplay between the freedoms of assembly, of association and of expression, the Council of Europe is cooperating with other donors in supporting a regional project on media and civil society in the Western Balkans.

Action by the Conference of INGOs of the Council of Europe

The Council of Europe has always considered that independent non-governmental organisations are a vital component of European society, guaranteeing freedom of expression and association both of which are fundamental to democracy. Recognising their role, the Council of Europe is unique in providing international NGOs with the opportunity to acquire participatory status.

The Conference of International Non-Governmental Organisations (INGOs) is the collective body of the some 320 INGOs holding participatory status with the Council of Europe. Through this status INGOs contribute to the decision-making process at the Council of Europe and to the implementation of its programmes, thus ensuring their relevance to the expectations of Europeans. Promoting civil participation and freedom of assembly and association are among the main priorities of the Conference of INGOs.

Fact-finding visits to member States

Mechanisms aimed at ensuring civil participation in decision-making do exist in many member States, but what use is made of them? To find out more about the tools in place and the effectiveness of them, the Conference of INGOs, led by its President, is carrying out a series of fact-finding visits to member States. The results of these meetings will contribute to the drafting of new guidelines on civil society's effective and meaningful participation in the political decision-making process, one of the priorities of the Secretary General of the Council of Europe.

The Conference's Code of Good Practice for Civil Participation in the Decision-Making Process, available in 21 languages, is one of the main resources for these visits. The Code defines a set of general principles, guidelines, tools and mechanisms for civil participation in the political decision-making process at local, regional and national level. It offers tools that may be applied at any stage and that provide cross-cutting support to the process of participation. These elements are then combined to form a matrix of civil participation that provides a visual presentation of the inter-related nature of the process and guidance for decision makers and NGO activists for further enhancing civil participation.

Shrinking space for civil society, NGOs under pressure

In some countries, new laws and government decisions have blocked the ability of NGOs to fully participate in public policy, often through restrictions on access to foreign funding. Human rights defenders have been harassed or arrested, and NGOs closed down.

It is in this context that the Conference held a debate in June "Only a matter for politicians? Civil society, money and political activities" which looked at the challenges facing NGOs in a time when civil society space is shrinking. Participants outlined methods to prevent inappropriate restrictions on NGOs, which are essential contributors to political debate and to the development of new policies and laws. Mr Intigam Aliyev,

human rights defender from Azerbaijan and member of the Expert Council on NGO Law of the Conference of INGOs recently released from prison, was the keynote speaker at the opening. In spite of the travel ban imposed on him, he received authorisation to leave the country for ten days and participate in the event.

The Conference relies on the watchdog function of its Expert Council on NGO Law which examines the legal and regulatory framework for NGOs as well as the administrative and judicial practices which affect NGOs in member States. It provides advice on how to bring national law and practice into line with Council of Europe standards and European good practice. It has carried out studies on themes such as the conditions for the establishment of NGOs, on the internal governance of NGOs and on sanctions and liability in respect of NGOs. When the need arises, it has been preparing opinions on particular problems facing NGOs in specific countries, such as the “foreign agents’ law” in the Russian Federation or the amendments to NGO legislation in Azerbaijan. More recently, it has been working on the question of regulating political activities of NGOs which has become an issue in connection with restrictions on foreign funding for NGOs. Through its Expert Council, the Conference of INGOs monitors the implementation of Committee of Ministers’ Recommendation (2007)14 to member states on the legal status of NGOs in Europe.

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