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LOBBYING, ADVOCACY AND THE LAW FOR NON-PROFITS



*Regional Conference on Regulating Lobby-activities in Central and Eastern Europe, October 24th
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“For public interest lobbies, inflexible righteousness may be blessed, but principled flexibility is the key to success.”

Public Interest Lobbying

Participating in the public policy process can mean conducting and getting involved in any one or more of a wide range of activities including legislative lobbying, administrative or regulatory advocacy, judicial advocacy, public interest research, public education efforts, community organizing, voter and candidate education, accessing and disseminating public information, and facilitating and building partnerships, coalitions and negotiations among nonprofits and government.

Lobbying is one specific form of public policy participation that is often a key strategy for making and changing specific laws. Other forms of public policy participation may ultimately influence legislation but generally serve other key parts to the policymaking process including: building public support or opposition, create rules and appropriate funds to implement laws, inform the public and decision-makers about the consequences of making law changes as well as inaction on public issues, shaping views and opinions about the policy problems themselves and influencing the construct of the legal environment for laws and policies. Creating civic space to discuss and make decisions about public priorities and policy decisions is another key form of participation.

People sometimes confuse the words “lobbying” and “advocacy.” The legal definition of lobbying usually involves attempting to influence legislation. Advocacy covers a much broader range of activities which might, or might not, include lobbying. One way of differentiating between the two terms is to understand that lobbying always involves advocacy but advocacy does not necessarily involve lobbying.

Lobbying by NGOs is a powerful strategy for making people's lives better and for building stronger communities. While lobbying is only one form of public policy activity, it is often the most important step toward reforming laws that affect the groups and people NGOs serve.

Any citizen or member of any organization who discusses a legislative agenda with a legislator could be considered a lobbyist.

Lobbying in Croatia

In Croatia, there are no legal provisions that regulate lobbying. Moreover, the Constitution does not guarantee the right to influence law making during legislative process. The lobbying process, an extension of the right to be heard and an exercise

in democracy, reflects the Constitutional provisions on fundamental rights and freedoms, where it states that everyone shall have the right to address public government bodies with his/her suggestions ... (article 46. of the Constitution of Republic of Croatia).

There is a clear division that is drawn between decision-makers and general public in Croatia, which is rarely overcome by organizations representing civil society. Such forms of public participation as advocacy and public campaigns are more a rarity in the "third sector" in Croatia than a real and effective tool. Moreover, there is no practice of public hearings in Croatia, which makes it even more difficult for organizations to state their positions on certain legislation in clear and open manner. However, there are some successful examples. In general, civil society organizations in Croatia engage rarely in **direct lobbying** when *stating their position on specific legislation to legislators or other government employees* who participate in the formulation of legislation. There are more examples of NGOs participating in **grassroots lobbying** when they *state their position to the general public and ask the general public to contact legislators or other government employees* who participate in the formulation of legislation.

GONG – EXAMPLE OF CAMPAIGNE "ORANGE AMENDMENT", 1999.

After few months of public advocacy campaign, which included signing of petition for introducing an article on non-partisan election observation (27 795 signatures were collected), most of the GONG's amendment on impartial election observation has entered the new Law on Elections of Representatives for Croatian Parliament. It was the HDZ (the ruling party at the time) who proposed this amendment after fierce lobbying with members of both the opposition and that party, both with national leaders and members on local level. Amendment has become Article 107 of the Law, which for the first time enabled legal basis for impartial observers to observe the whole election process. Republic of Croatia was one of few countries in the region with provisions on impartial election observation of such quality.

Our advocacy practice today has put us in close and frequent contact with three major committees of the Parliament. Thus, for example, we work with Committee on Constitution, Standing Orders and Political System, Committee on Local Self-government, Committee on Information and Media, Secretary of the Parliament. In addition, we have excellent working relationships with the Ministry of Justice (which is one of the major law proposing subjects).

As for the general population, they have very little channels of influence on decision-makers with regard to law making and formulation of policies. Consequently, the citizens do not perceive many discussions made by authorities as legitimate. Not perceiving decisions as legitimate provokes greater incentive to violate the «unfair» legislation, or to find different «ways around» legislation.

Because of the sudden deregulation and structural changes in Croatia after the fall of communism, there is a problem with transparency and quality of public services. Non-formal decision-making practices became the "shadow mechanism" of the public

institutions. Croatian researchers have done very little so far to study such themes as lobbying and advocacy in legislative assemblies.

The problems of the institutional cause of the underground lobbying in Croatia, following experiences of other CEE countries, could include:

- possibility of corrupted lobbying practices by some economic actors in legislature;
- somewhat low level of information about channels and mechanisms on civil society influence on the official decision-making;
- inability of public agencies to deal more effectively with such "heavy" problems as close linkages between business and politicians with organized crime

The consequences of non-transparent and unequal lobbying damage economic and social development of a country. Illegal, corrupted lobbying in legislature closes channels for public participation in setting community priorities and weakens the advocacy capacity of civil society organizations. Civil society organizations are the ones who can become the driving force to support and push the public agencies in their work, as well as to execute citizens control over the authorities.

Effective way to diminishing such institutional causes for corruptive lobbying would be precise legal framework combined with active advocacy strategies of civil society organizations and well established public participation.

Why lobbying should be regulated?

1) Legal security

Public officials are continuously making public policy decisions and adopting legislation that affects vital interests of individuals, corporations, labor organizations, religious groups, civil society institutions and other entities. Public officials need to receive factual information from affected interests and to know such parties' views in order to make informed policy judgments. In exercising their rights to try to influence public policy, interests often choose to take underground ways to reach decision-makers offering "back door deals". This is not surprising, regarding the fact that if there is no regulation on certain matter (as lobbying), various interest groups will find different ways to accomplish their goals in most efficient way, not worrying about possible disclosure and sanctions for their behavior.

Concerning civil sector, for many nonprofit organizations, "lobbying" is almost a dirty word. At the very least, it provokes great anxiety. Is it even legal for a nonprofit? If so, how much can you do? What exactly is it? Not certain of the answers to these questions and many others -- and not wanting to jeopardize the rest of their work -- many organizations avoid lobbying altogether.

2) *Prevention of corruption*

The underground lobbying is one of the strategies in the framework of unofficial economic activities. Interest groups tend to influence law making process, especially in regional and local assemblies, because they set up "rules of the game".

A lack of transparency and weak or no legal framework combined with often discretionary decision-making process causes corruption. Preventing corruption is much more effective than fighting its' results. Transparency of decision-making process is one of the key issues in this prevention. It requires of government and decision-makers to be open (meaning access to information as well as to the premises of government bodies) and understandable (meaning that accessible data can be easily understood). Legislative tool also play a key role in preventing corruption, where such law as Lobbying Disclosure Act containing certain provisions, giving government officials no space for arbitrariness and stipulating penalty for any infringement of the rules would be more than useful.

The role of NGOs in this process is also decisive. Firstly, in exercising control over observing the rules by those who are involved in decision-making process. Secondly, NGOs in the process of public expertise of the laws can influence the rules themselves (proposing amendments to the existing acts and proposing new ones) in order to minimize chances for corruption. However, NGOs should bare in mind the following: *to help preserve and advance public trust and confidence in our democratic institutions and the public policy advocacy process, NGOs while lobbying should have a strong obligation to act always in the highest ethical and moral manner in their dealings with all parties.*