



Bulgarian Center for Not-for-Profit Law

6 Dobrudja str.; Sofia 1000; Bulgaria
tel/fax: (+359 2) 981 66 17, 988 81 66

info@bcnl.org

www.bcnl.org

**PARTICIPATION OF NGOs
IN THE PROCESS OF POLICY- AND LAW - MAKING***

COMPARATIVE ANALYSIS

** This study is made possible by the generous support of the American people through the **United States Agency for International Development (USAID)**. The contents are the responsibility of the Bulgarian Center for Not-for-Profit Law and do not necessarily reflect the views of USAID or the United States Government. This study is also made possible with support from the **German Marshall Fund of the United States (GMF)**, and the contents does not necessarily reflect the views of GMF or the **Balkan Trust for Democracy**.*



USAID
FROM THE AMERICAN PEOPLE

B | T | D

The Balkan Trust
for Democracy

A PROJECT OF THE GERMAN MARSHALL FUND

CONTENTS

SUMMARY

I. PART ONE. MAIN PRINCIPLES AND MODELS OF PARTICIPATION OF NGOs IN POLICY- AND LAW-MAKING PROCESSES

1.Principles and benefits from civic participation

2.The process of consultations at an international level – Aarhus Convention, Recommendations of the Council of Europe, EU mechanisms

II. PART TWO. NATIONAL MODELS OF PARTICIPATION OF NGOs IN POLICY- AND LAW-MAKING PROCESSES

1.Good practices of participation of NGOs in Great Britain

2.Good practices of participation of NGOs in Hungary

3.Good practices of participation of NGOs in Croatia

4.Good practices of participation of NGOs in Estonia

5.Other examples

CONCLUSION

SUMMARY

This comparative analysis of European models and practices of participation of NGO in the decision-making processes is an attempt to provide answers to some major questions in the consolidated democracies – how to enhance civic participation, improve the quality of governance, overcome the democratic deficit in the formation of policies and development of laws. The main models and good practices, which can be applied in most of the countries of Central and Eastern Europe, are outlined based on consideration of various strategic documents and institutional mechanisms for interaction between the public authorities and NGOs.

In the developed European democracies, the involvement of representatives of NGOs in the processes of decision- and law-making became common practice of public governance in the second half of 20th century. The process of consultations with the concerned parties, including representatives of NGOs, prior to the taking of any political decision or the adoption of a normative act, won recognition as a functioning mechanism leading to a higher quality of the adopted acts and of the legitimacy of the decisions and governance as a whole. This process of involvement of representatives of various public groups directly reflects the main ideas of “*participatory democracy*”, democratisation of the political relations in the developed European countries after the crisis in the representative government and overcoming of the authoritative regimes in some countries in Southern Europe (Spain, Portugal, Greece). In fact, the consultations between the political institutions and NGOs further helped to deal with some deficits of the political representation in the contemporary parliamentary democracy. Thus, the adopted decisions and normative instruments should reflect the interests not only of the ruling majority, but also of civil society in its diversity.

The new democracies of Central and Eastern Europe (CEE), following the implementation of successful political and economic reforms, and the consolidation of an autonomous civil society, are gradually adopting the established European practices of cooperation with NGO. This process is not developing at the same rate in all countries; therefore the existing mechanisms of participation of NGOs in the decision-making processes differ. This study makes an attempt at presenting the main models of interaction between the public authorities and NGOs, where civic

representatives participate in various public discussions, consultation bodies, etc. CEE countries, which have functioning mechanisms of consultation with NGOs at different levels of the public power, will be considered.

Part One of this comparative analysis is focused on the *main principles and models* of participation of NGOs in the policy- and law-making processes. Different political documents adopted at the level of the Council of Europe and the European Commission will be referred to.

Part Two of the analysis is focused on some working national models of involvement of NGO representatives in decision-making processes at different institutional levels - England, Hungary, Estonia and Croatia. The accent is placed on the mechanisms of participation of NGOs at various institutional levels (Parliament, Government), as well as on the signing (adoption) of strategic agreements of partnership between the State and NGO and the preparation of codes for consultations with NGOs in the processes of decision-making.

PART ONE

MAIN PRINCIPLES AND MODELS OF PARTICIPATION OF NGOS IN POLICY- AND LAW-MAKING PROCESSES

I. Principles and benefits from civic participation

The participation of citizens in the processes of decision-making, also referred to as „*participatory democracy*”, is often criticised as being inconsistent with the representative democracy (in practice, through elections, people elect representatives to take decisions instead of them). This is not so because „*participatory democracy*” supplements representative democracy, instead of excluding or replacing it. A number of Constitutions are quite explicit in stressing that people participate in the governance of a country also directly in addition to being represented by their elected representatives. Therefore, the political elections are not the only way by which people can impact the decision-making process.

According to the Council of Europe „*the participation of citizens is at the very heart of the idea of democracy*”[†]. The European Union maintains that „*democracy depends on people being able to take part in public debate*”[‡]. Whenever EU citizens’ participation is referred to, the terminology includes notions such as *open governance* and „*better law-making*”[§]. One of the fundamental principles of EU – the principle of partnership is based on consultation and participation.

The participation of citizens in the decision-making process is directly related to the *principle of good governance*. It leads to higher transparency and accountability of the institutions. When people are aware of the way of decision-making, it helps the foreseeability of the laws which are produced. Even if that might lead to some delay in the decision-making (which, by

[†] Council of Europe – Recommendations on the participation of citizens, Rec (2001) 19, 6 December 2001

[‡] White Paper on European Governance, COM (2001) 428.

[§] EU has a special action plan for better law-making, where the participation of citizens in the development of policies and normative acts is specially treated.

itself, is not always bad because we have witnessed a number of urgently adopted measures and laws which soon after that have required revisions and amendments), it is many times made up for by other benefits. Over the last years, the public trust in institutions has declined. The more transparent process of decision-making and the possibility for inclusion of all parties concerned into the process directly influences the re-gaining of trust. The open process and the possibility for everyone or different groups to become involved in the decision-making result in the taking of various perspectives into account, not only those of powerful groups and economic lobbies, for instance. This improves also the quality of decisions because institutions obtain information about the various possible effects which a decision may have, which information they would, otherwise, have no access to. Not in the last place, one of the most important effects of citizen participation is on the implementation of the decisions that are taken. The purpose of all different policies and laws is that they are applied upon adoption. When all parties concerned participate for real in the development of rules, which have to be respected, subsequently these rules will not only be applied more easily but will also be observed by people more willingly.

These are only part of the positive effects of citizens' more active involvement and that of their organisations in the process of decision-making. A number of examples in support of the above conclusions will be given in the parts to come.

1. How NGOs are involved in the processes – forms and mechanisms, classification of the Organisation of Economic Cooperation and Development

The Organisation for Economic Cooperation and Development (OECD) supports its members in the establishment of a more efficient, transparent and accountable governmental structure. In this context, OECD has conducted several studies on public participation in the development of policies and laws, and on such grounds it has made a special analysis^{**}.

By using the variety of forms of civic participation, Governments achieve better performance because they become more transparent, more accountable, attain better legitimacy, and improve the quality and effectiveness of the adopted decisions. These principles underline the

^{**} Citizens as Partners: Information, Consultation and Active Participation in Policy-Making, OECD, 2001

interest in participation of citizens, on a broader basis, in the decision-making process. What does each of them mean?

A. **Transparency** – the participation of citizens leads to higher transparency, as citizens better understand how their Government performs;

B. **Accountability** – the processes of decision-making are the subject of direct public control;

C. **Legitimacy** – each decision taken by a large circle of people results in a higher level of legitimacy;

D. **Quality** – undoubtedly, any public participation results in research of the opinion of a large circle of people, which allows to take into consideration more possibilities and to obtain information which, otherwise, would not be accessible to the decision-makers;

E. **Effectiveness** – the participation of a larger circle of people further results in better application and observance of laws.

According to OECD, Governments interact with citizens in three main ways:

- Provision of information;
- Consultation;
- Active participation.

Provision of information means that citizens, in the first place, know what policies or laws are under preparation or discussion, which makes possible their participation with opinions. The provision of information includes both the „passive” right of such (the right to obtain public information upon request and in compliance with the regulations on the access to public information), and the active provision of information via Internet, media, etc.

Consultation is a step ahead with respect to citizen participation – it means that the Government is interested in the opinion of people (or in part of them) and wants to find out what their positions are on a given issue. In the process of consultation, the setting-up of working groups, organisation of public debates, written consultative processes, etc. may be resorted to. In the case of consultation, it is very important that the process should really be open and citizens be convinced that their participation is of use. Processes which are formally conducted, i.e. the proposals put forward are not taken into consideration (or it is not even clear whether they will be taken into consideration) are, in practice, likely to lead to the reverse effect – lower participation of people. That is why any feedback in the process is of utmost importance, where this feedback may not be individual (i.e. to everyone who has issued an opinion), but summarised and in electronic format on the Internet, yet it is important to have it. The feedback represents a summary of the received opinions and an explanation which opinions have been taken cognizance of and why the rest have been ignored.

The **active participation** is rather a rarity in the OECD member-states and with such a form of interaction it is assumed that the Government and civil society are placed on an equal basis and each may initiate proposals for policies or projects. While with the consultations, it is the Government that sets the matters and deadlines for responses, and also selects the methods of consultation, theoretically in this case it is all a matter of dialogue between both parties. An example of active participation would be a referendum initiated by citizens.

II. The process of consultations at an international level – the Aarhus Convention, Recommendations of the Council of Europe, EU mechanisms

At international level, one of the first documents setting the requirement for broad public participation in the process of decision-making is the Convention on information, public participation in the process of decision-making and access to justice in environmental matters (the Aarhus Convention). It was adopted in 1998. As prescribed by the Convention, “each party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters”^{††}. “Each party shall ensure that environmental information

^{††} Art. 1, Aarhus Convention.

progressively becomes available in electronic databases, which are easily accessible to the public^{‡‡}. The Aarhus Convention obliges the parties accepting it to guarantee participation of the public during the preparation of plans, programmes and policies relating to the environment^{§§}. In addition to that, the parties have to guarantee publicity and public participation in the adoption of normative instruments, including via opening consultations at an appropriately early stage, making sure that:

- The time frames for expression of opinions are sufficient for effective participation;
- The draft documents are made publicly available;
- The public is given the opportunity to make comments and proposals;
- The results of the consultations will be taken into account as far as possible.^{***}

In 2001, the Council of Europe adopted a recommendation of the Committee of Ministers to its member-states for participation of citizens in local public life^{†††}. It stresses that „the level of trust people have in their elected institutions has declined and that there is a need for state institutions to re-engage with and respond to the public”. According to the Council of Europe, some of the main principles of a policy of participation are:

- Citizens should have access to clear and comprehensive information, and have a say in major decisions.
- The Council of Europe recognises the role of associations and groups of citizens as key partners in developing a culture of participation.

Part of the measures proposed by the Council of Europe include access to information, provision of information to the concerned parties, establishment of administrative offices, which are intended to facilitate contacts with civil society, etc.

^{‡‡} Art. 5, Aarhus Convention.

^{§§} Art. 7, Aarhus Convention.

^{***} Art. 8, Aarhus Convention.

^{†††} Rec (2001) 19, 6 December 2001.

As early as in 2000, the European Commission drew special attention to the participation of civic organisations in the process of decision-making⁺⁺⁺. The Commission reviewed the various practices of consultations with civil society, which existed at the time, noting that open government meant that „the systematic and regular consultations are also meaningful, efficient and conducted in a transparent manner”. An important part of this review is the fact of highlighted necessity of guidelines to conduct a good process of consultations. *The White Paper on European Governance*^{§§§} sets the major principles of good governance – openness, participation, accountability, effectiveness and coherence. The White Paper also raises the point of a structured channel for feedback, criticism and protest. It further notes the principle that „with the better involvement comes greater responsibility”, meaning that those who wish transparency also have to be transparent.

On the basis of those two documents, and Protocol 7 to the Treaty of Amsterdam^{****}, in 2002 the European Commission developed „General Principles and Minimum Standards for Consultations of Interested Parties”⁺⁺⁺⁺. The purpose was to have more concerned parties involved in the consultation processes via a more transparent process. Another purpose was to align the standards of consultation in the different EU departments. The document was subjected to a public discussion which resulted in an amended and published final version.

„*The General Principles*” represent a document, which is not legally mandatory, i.e. any failure to observe the standards does not lead to invalidation of the respective act. The reason is not to delay further the otherwise lengthy process of adopting acts by EC, and also to render some flexibility to institutions. The principles are addressed not only to representative organisations, but to all organisations and ordinary citizens. In addition to that, the Commission is expected to proactively search for the opinion of the concerned parties. It has to identify in advance the potentially concerned groups and seek a connection with them. On the other side, if due to practical reasons it is not possible to include everyone into the consultation process and the

⁺⁺⁺ COM (2000) 11, „The Commission and non-governmental organisations – building a stronger partnership”.

^{§§§} COM (2001) 428.

^{****} According to which the Commission has to conduct consultations on a broad basis prior to proposing legislation.

⁺⁺⁺⁺ COM (2002) 704

situation requires the setting up of working groups or suchlike, the criteria for selection of members need to be crystal clear.

The principles applicable to the process of consultations are set in the White Paper:

- **Participation** – conduction of consultations on the broadest possible basis on core issues;
- **Openness and accountability** – the process of consultations has to be transparent and make the subject of consultations clear, also who participates and why, etc. On the other side, the consulted have to clearly state whose interests they represent.
- **Effectiveness** – the process of consultations has to commence in the earliest phases of preparation of a proposal, in order to increase the effect of the consultations to the maximum possible extent. The principle of proportionality also has to be taken into account, i.e. the methods of consultation need to be proportionate to the objective.
- **Coherence** – mechanisms need to be worked out for feedback on the presented opinions and for assessment of the completed consultations.

The minimum standards developed by the Commission cover:

A. Clear contents of the process of consultations

According to this standard, a summary has to be submitted on the scope and purposes of consultations and specific questions be set which await specific answers. Details need to be given on the completed conferences and discussions on the subject, as well as references to related documents. It is extremely important to describe also the steps of the process of consultations to facilitate the participants in their expectations.

B. Identification of target groups

It is necessary to clearly define the target groups and search for ways to understand their opinions on the proposed policy.

C. Publication

To guarantee the obtaining of information on the various processes of consultation conducted by EC, a unified electronic portal will be used (which, of course, cannot and should not replace entirely other more traditional ways of announcing the beginning of the consultation processes). This electronic portal will be the website “Your voice in Europe”^{††††}.

D. Timeframes of participation

EC envisages the introduction of minimum 8 weeks for collection of opinions in the case of written consultations, and minimum 20 days for a notice to convene working groups.

E. Confirmation for receipt and feedback

The obligation to provide conformation for receipt may be fulfilled by sending an individual or collective e-mail or by making the opinion available on the website of EC for consultations. The feedback will be in the form of explanatory documents summarising the process and the initiated proposals.

Following the publication of „*The General Principles and Minimum Standards*”, the documents have been reviewed several times now. One of the objectives of „*The European Transparency Initiative*”^{§§§§} was to collect opinions on the process of consultations, as developed by EC. Subsequently, the results of the process of consultations in respect of the standards^{*****} were published, and according to them the standards do not require a review but rather improved application. The proposed measures include staff trainings, exchange of good practices, etc. One of the most important results of the initiative for transparency in respect of the consultations is their linking to the register of lobbyists, i.e. the opinions of the organisations or representatives of interests not registered in it will be considered as individual opinions.

†††† <http://ec.europa.eu/yourvoice>

§§§§ COM (2006) 194

***** COM (2007) 127

PART TWO

NATIONAL MODELS OF PARTICIPATION OF NGOS IN POLICY- AND LAW-MAKING PROCESSES^{††††}

I. Good practices of participation of NGOs in Great Britain

Great Britain is one of the countries of greatest traditions and best developed system of consultations with citizens and civic organisation. An exceptional role in society there have the so called charity or voluntary organisations (which we refer to as civic, non-profit or non-governmental). This role is also noted in the adopted *Compact on Relations between Government and the Voluntary and Community Sector*^{††††}. The Compact was adopted in 1998 and an annual report is issued every year on its implementation in addition to an annual meeting between the Government and representatives of the community sector. A special section in the Compact is dedicated to policy development and consultation, which prescribes in almost all cases that the community sector should be consulted on policies or documents affecting it^{§§§§§}. The Compact foresees for the Government and the community sector to develop together a code for consultation and appraisal of legislation. Such a code was produced in 2000 – *A Code of Good Practice in Policy Appraisal and Development* (part of the Compact). The document has no legal force, but it is part of the mechanisms of the Compact and its application is assessed at the annual meetings for review of the operation of the Compact. Most of the rules covered in the Code were further developed in the government adopted Code of Good Practice on written consultation in November 2000, further developed and supplemented in 2004 under the name of *A Code on the Practices of Consultations*. The Code to the Compact, however, is part of the good practices of consultations

^{†††††} The development of this part of the comparative analysis was based on the comparative legal analyses of the European Center for Not-for-Profit Law, mainly on: **Nilda Bullain and Radost Toftisova**, *A Comparative Analysis of European Policies and Practices of NGO – Government Cooperation*, ECNL, Final Report, March 18, 2004; **Katerina Hadzi-Miceva**, *Legal and Institutional Mechanisms for NGO-Government Cooperation in Croatia, Estonia and Hungary*, ECNL, 2007.

^{†††††} Compact on Relations between Government and the Voluntary and Community Sector in England.

^{§§§§§} The exceptions refer to cases of urgency or confidentiality (when an internal document is developed).

and is used as an integral part of the governmental Code. Therefore, it is important to highlight some of its rules. The Code to the Compact foresees that a preliminary notice has to be issued about the expected consultations. If possible, preliminary registration of the parties interested to participate in consultations (through a website) is recommended, and also that the circle of the consulted should not be limited only to those who obtain funds from the Government. Another recommendation implies the inclusion of civic organisations in the discussion of suggestions concerning the community sector even before the public consultation, and after that during the consultation itself, and subsequently – in the assessment of the effects of a given policy.

The Government's policy in respect of the participation of citizens and civil organisations in decision-making is best expressed in the Code on the Practices of Consultation referred to above and adopted by the Government. Its principles are in force for all governmental units. Although it has no mandatory force (it is not a normative instrument), it has to be assumed as mandatory (as the very document reads), unless exceptional circumstances impose that it should not be used (including in cases when the issue to be resolved is too specific and there is a limited circle of experts). Any case of non-application of the Code, however, has to be explained by providing reasons for non-compliance with the foreseen rules, and also what measures have been taken to ensure an efficient process of consultation.

The Code covers 6 major criteria to be met in the process of consultations:

1. To *consult widely* throughout the process, using the full variety of mechanisms of consultation, and in this process it is obligatory to have at least one written consultation, with a minimum 12-week period granted to state opinions. It would be nice to have the consultation commencing at the earliest stage possible to ensure a maximum effect;
2. Be clear about the purpose of the consultation, who may be affected by the proposed policy, what questions are being asked and the timescale for responses;

3. Have the text of the documents under discussion clear, with a summary of the whole text not longer than two pages containing the main issues and allowing a large circle of people to participate in the process of consultations.
4. Give *feedback* after the end of the process of consultations – what proposals have been submitted, how they have impacted the policy and what the next steps are. It would be nice to have the feedback within 3 months upon completion of the consultation.
5. Monitor the effectiveness of the consultation process by appointing a coordinator for the process who is to prepare an assessment as well.
6. Ensure your consultation follows the principles of better regulation, including carrying out a regulatory impact assessment on every issue, if possible.

II. Good practices of participation of NGOs in Hungary

The participation of NGOs in the decision-making processes in Hungary is a delicate issue, as the national institutions have not always been open to civic participation. Following the changes to the political system in the early 90ies, basic principles of civic participation were adopted. At the same time, the participation of NGOs in the processes of decision-making is not regulated in an independent normative instrument, but is scattered in different regulations at the national and local level.

The Constitution and the Law on Normative Acts contain provisions, which give large possibilities in principle for participation of NGOs in the processes of decision- and law-making^{*****}. Although the Law on Normative Acts has certain specific provisions on the

***** Art. 36 of the Constitution stipulates that while exercising authorities, the Government should cooperate with the civic organisations. Concerning the discussion on the mandatory nature of this regulation brought forth by a decision of the Constitutional Court, see **Judit Fridli and Ildi Pasko** (ed.), “Civil Organizations in the Legislative Process”, Publication of the Hungarian Civil Liberties Union, Budapest, April 2000
Also, art. 20 of the Law on Normative Acts stipulates that civil organisations should be included into the legislative process and preparation of various regulations which concern the interests or social groups subject of representation or protection by NGOs.

involvement of NGOs, they have not been applied for a long time, due to the absence of specific additional instruments on their application. In 2005, a long step was taken towards real civic participation with the adoption of the Law on Electronic Freedom of Information, which is the main law concerning the access to information and participation in the process of consultation. This law creates an obligation for the central and local authorities to publish information of common interest on the Internet. This information of public interest includes not only proposed bills, but also different political documents such as strategies, concepts, etc. Also, there are different forms of participation of NGOs – consultation councils, committees, working groups, as stipulated in regulations at the level of different ministries, which have their own procedures for incorporation of NGOs in the process of decision-making.

➤ **Institutional forms of participation of NGOs**

In the **Parliament** of Hungary, there has been a special parliamentary commission since the early 90ies in support of civic organisations. Initially, that commission allocated the budget subsidies for the nationally represented NGOs. Recently, the commission has been particularly busy with the creation of a legal framework necessary for the functioning of the civil sector.

In addition to that, there is a special unit with the Parliament, which performs information-related functions with respect to the civil sector by maintaining databases of NGOs, and the latter are provided with the legislative agenda according to the declared interest in a specific subject, to enable the NGO active participation in the discussions with specific proposals, statements, etc. This department is also responsible to reply to queries of NGOs, and to organise the participation of NGOs in various discussions of the commission.

In Hungary, at the level of the **Executive Branch**, there has been an independent *Department for Civil Relations* at the Office of the Prime Minister since 1998. This department is competent in terms of development and coordination of various policies concerning the third sector as a whole. This department is in charge of the preparation of the *Government Strategy on Civil Society* – an overall political document on the development of the third sector and the relationships among the institutions and NGOs. In 2004, the department became part of the newly established

Ministry for Equal Opportunities, and later was integrated into the structure of the Ministry of Labour and Social Issues. The department was set without the direct involvement of civic organisations upon initiative of the Government . At the same time, the department has been trying since the very beginning to respond to the needs of the NGO sector by initiating the development of a favourable legal framework for the functioning of the third sector.

It has to be noted that the centralisation in a single governmental department of the cooperation between the institutions and NGO is directly related to the country' accession to EU. The setting-up of a special department for cooperation with NGO is aimed at meeting the European requirements in terms of NGO participation in devising a National Development Plan, and guaranteeing the application of the principle of consultation with NGO at a ministerial level.

➤ **Adoption of a strategic document for cooperation between the Government and NGO**

In 2002, the *Department for Civil Relations* to the Government initiated the process of development of the *Government's Strategy on Civil Society* – an overall political document on the development of the third sector and the relationships between the institutions and NGO. The Strategy was initiated as an important part of the programme of the Government for cooperation with NGO. The document was developed with the active participation of representatives of civil society. In pursuance of the objectives set in the Strategy, the Government set up a National Civil Fund and initiated adoption of regulations important for the third sector, e.g. the Volunteer Law.

In 2006, the Government proposed to the ministries to develop their own strategies for cooperation with NGO, the purpose being to achieve interaction which is decentralised and more efficient within the state structures. In 2007, the Government adopted a new strategic document on the interaction with NGO.

III. Good practices of participation of NGOs in Croatia

➤ **Institutional forms of participation of NGOs**

The institutionalisation of the cooperation between NGOs and the Government in Croatia began with the setting-up of a *Government Office for NGO*. Subsequently, *the Council for Civil Society Development* was set up, which operates in close cooperation with the Government Office. Currently, the model of cooperation between the State and NGOs functions in several structures: the Government Office, the Council for Civil Society Development, the National Foundation for Civil Society Development. In pursuance of the set model, a *Strategy for Civil Society Development* was adopted and measures were taken for harmonisation of the process of the Government financing of NGO. The new organisational model of the relationships between NGOs and the State helps to improve the cooperation between the ministries and NGOs, and to set up special departments within the administration in support of the cooperation and dialogue with NGOs.

The Office for Cooperation with NGOs was set up by an act of the Government in October 1998. Its main functions are to contribute to the building-up of relations of trust and cooperation between NGO and the State through funding, consultations, training initiatives and dissemination of information. Also, this Office coordinates the working groups through various legislative initiatives which concern the third sector, such as the Law on Partnerships, the Law on Volunteering, etc. One of the major achievements of the Office concerning NGOs is in the positive results in the creation and application of a transparent mechanism for public financing in favour of NGOs. A number of working groups of independent experts have been set up to monitor the process of utilisation of public funds by NGOs. The performance of the Office is at the root of the improved cooperation between NGOs and the Government of Croatia.

The establishment of a *Council for Civil Society Development* in 2002 was the next step towards improving the interaction between NGO and the State. The Council consists of 10 representatives from different ministries working jointly with 14 representatives of the civil sector elected by the NGOs themselves. The Council is focused on the application of the *Strategy for Civil Society Development*, and the control over the expenditure of public funds for NGO programmes and projects. The functions of the Council are advisory. Its core activity is to give advice and recommendation to the Government in respect of the development and policies of

NGOs, and also to support the fulfilment of a number of objectives foreseen in different strategic documents concerning the third sector. The Council has no right of veto on governmental decisions but can initiate discussions of importance to civil society and also to control the implementation of different policies and strategies oriented towards the third sector.

➤ **Adoption of a strategic document for cooperation between the Government and NGOs**

In addition to specific institutional forms of cooperation between NGOs and the Government, Croatia also adopted various strategic documents^{†††††}, which set the main principles of joint performance, and define the common values and objectives of this interaction. Such documents are mainly of political and programme nature and are not viewed as legally mandatory. These documents are produced with the active participation of civil society within an open process of consultation and cooperation.

The adopted *National Strategy for Civil Society Development* points out the necessity of establishing common standards and mechanisms at a national and local level which will guarantee the possibilities of direct involvement of NGOs in the decision-making process, as well as in the processes of initiation, implementation and assessment of public policies and normative acts.

At the same time, the Council for Civil Society Development and the Government Office set up different working groups with NGO involvement, and with the task to come up with workable mechanisms regulating the possibilities for consultations between the State and NGOs. As a result of this process, a special *Code for NGO Consultations* is currently under development following the practice in other European countries. This is a necessary step given that most of the practice concerned with the involvement of NGOs in the decision-making process requires the application of public and media pressure, the establishment of advocacy coalitions, as well as direct lobbying before governmental authorities upon publication of a given normative or political instrument.

^{†††††} A National Strategy for Civil Society Development (2006), A Programme of Cooperation between the Government and the Non-governmental Sector (2001),

The main problems of such an *ad hoc* approach are basically due to the limited access to information in respect of the proposals, and the insufficient time for an in-depth response including the development of different analyses and statements, examination of data, and participation in public discussions.

➤ **A Code for NGO Consultations**

In pursuance of the *National Strategy for Civil Society Development*, the Government of Croatia is preparing a Code for NGO Consultations in developing laws, administrative normative acts and other regulations which concern the public interest. The Code allows for minimum standards for consultations of the state authorities with NGOs, where the consultations will involve the concerned parties as defined on a broad basis (incl. independent citizens, NGOs, informal structures of civil society, academic and other public organisations, etc.). The Code regulates the minimum standards for consultations and envisages:

1. *Publicity for draft laws and other instruments*, by making them available on the website of the concerned institution and that of the Government. The publication has to provide information about the name of the respective act, the issuing institution, and timescale for finalisation and adoption of the act.

2. *Involvement of representatives of the community* and of the concerned parties in the procedure of developing the draft of a new act and their participation in joint working groups, public discussions and other forms. The information on the website also has to contain data about the participating representatives.

3. *On-line consultations or otherwise*, where the timeframe of the consultations has to be specified in advance, as well as the ways in which the concerned community may express opinions. The timeframe cannot be shorter than 15 days upon publication of the act on the website of the respective institution.

4. *Guaranteed Internet public access* to the proposals and opinions and the reasons for their non-acceptance by the respective institution.

5. *Completion of a form for consultations* with the community, which, together with the draft of the act, is considered during the process of discussion and adoption of the act.

6. *Organisation of public discussions* on the financial, economic, social and other important effects of the adoption of acts.

7. *Organisation of trainings* for the staff of the institutions and representatives of the community to enable their adequate utilisation of the opportunities afforded by the Code.

The Code envisages an obligation for the institution preparing the draft of the act to provide arguments for the non-acceptance of the community's suggestions for amendments and improvements to the act. It further foresees an obligation for the respective institutions to issue annual reports on the application of the Code to be submitted to the governmental *Office for Cooperation with NGOs*. The latter, in turn, prepares a consolidated report and presents it to the Government.

IV. Good practices of participation of NGOs in Estonia

➤ Institutional forms of participation of NGOs

There are different institutionalised mechanisms of cooperation with non-profit organisations in Estonia. For instance, such are participations in working groups and commissions.

At the level of the **Parliament**, there is a special parliamentary group in support of civil society, which includes representatives of all parties. More than 1/3 of all members of the Parliament belong to that group and this makes it one of the largest of its kind. The purposes of this group are to attend to issues concerning civil society and to initiate legislation in support of the development of the third sector.

In the Estonian model, at the level of the **Executive Power**, the Minister for Regional Affairs is responsible for the development of policies concerning civil society. The other ministries also cooperate with NGOs, but the level and intensity of such cooperation may considerably differ between the structures. The Public Relations Service to the Secretariat General of the Government is also committed to providing support and building-up a culture of civic participation in the work of the public authorities. In 2007, each ministry nominated a person to be responsible for the organisation of civic participation in the law-making process.

➤ **Adoption of strategic documents for cooperation of the Government with NGOs**

Since 2002, Estonia has had an independent regulation of the interaction between non-profit organisations and the authorities of the Government. It is contained in a document named *Civil Society Development Concept* (EKAK) in Estonia, which by nature represents a strategically political document reflecting the *common consent* between both parties in terms of how and where it is necessary and acceptable to ensure interaction and cooperation between non-profit organisations and the State authority. Part of the regulation of this interaction also refers to the mechanisms of integration of non-profit organisations into the processes of decision-making by the public power authorities. In its essence, the Concept covers rules concerning the implementation of civil initiatives, financing of organisations, participation of the civil sector in the process of decision-making, etc. These are matters touching on different aspects of interaction and cooperation between the civil sector and the state power^{*****}. The interaction in different areas is performed by establishing public committees whose main target is to assist the building-up of a “civil society” and “social economy” in Estonia with the active participation of civil organisations.

The Concept was developed in cooperation with non-profit organisations and representatives of the state power. It sets out priorities of importance for both parties: viz.: sustainability, accountability and transparency. An important background point of the adoption of

***** **Toftisova, R.** Implementation of NGO-Government Cooperation Policy Documents: Lessons Learned, ICNL, volume 8, issue 1 (2005) http://www.icnl.org/knowledge/ijnl/vol8iss1/special_2.htm

the Concept was the public discussion and the fact that it was voted on by the Parliament as the law-making body of the State. This secures it with legitimacy on a broad basis and reflects the public significance of the issues regulated by it. Thus the document appears to be the only one of its kind within Central and Eastern Europe.

The participation of both parties not only in the development but also in the application of the Concept is guaranteed by a *Joint Commission* set up with representatives of the civil and state sector. The Commission's task is to monitor and control to what extent the parties to the agreement have fulfilled their commitments, and to develop *An Implementation Plan*. The Plan contains not only the objectives and activities to achieve them, but also indicators to decide whether the projected results have been delivered or not. The plan, thus developed, gives another positive feature to the Concept – the mechanism of practical implementation is a product of the efforts, ideas and views of both parties through their participation in the Joint Commission. To have the Concept successfully implemented, it is important to ensure **publicity** (via the website of the “NGO Roundtable in Estonia”, which contains not only the text of the Concept, but also the implementation plan, reports on the completed activities, and other information), training for experts to take over the physical application of the implementation plan, and provisions for **mechanisms of monitoring and control** in respect of the application of the Concept (the process of control includes the Joint Commission and representatives of the Parliament).

Later, on the grounds of the adopted Concept, a *Civic Initiative Support Development Plan (KATA)* was adopted in 2006. This document was aimed at aligning the practices of interaction between the civil sector and the State on the one side, and at replacing the implementation plan for the Concept after 2007, on the other side.

On the grounds of the Civil Society Development Concept in Estonia, a *Code on Good Practice of Involvement*^{§§§§§§} was developed in 2005 jointly by the civil and public sectors. It covers main principles to assist the proactive and beneficial participation of civil organisations in the process of decision-making. It is intended for application by the administration, which is responsible to consult the non-profit organisations, on the basis of the mechanisms of interaction

§§§§§§ www.ngo.ee/11583

identified in the Concept, in developing and adopting bills and amendments to them, drafts of acts of the executive power, programmes and strategies, as well as drafts of instruments adopted by bodies of the European Union, etc..

V. Other examples

There are positive examples of constructing workable models of consultations with NGOs and participation of NGOs in the processes of decision-making in other countries of Central and Eastern Europe, as well. These examples are both in terms of establishing institutional mechanisms, and adopting political (strategic) documents for partnership and consultations with NGOs. For instance, there has been a Council on NGOs with the Government in *Slovakia* since 1999. The Council is an advisory body, which can initiate different policies in support of NGOs – e.g. legislative amendments, interaction with other state bodies in relation to the provision of funds to and cooperation with NGOs, maintenance of a database of NGOs, etc.

Another interesting example is Poland's Council on Public Benefit Activities, established by virtue of the adopted Law on public benefit activities. Ever since its onset in 2004, the Council has had advisory functions to the Minister of Economy, Labour and Social Policy who is responsible for the application of the law. The Council consists of 20 members, half of them representatives of the state and local administration, and the other half nominated by NGOs and charity organisations of the church. In terms of functions, the Council is mainly concerned with exercising monitoring on the application of the law, and consultations on various legislative proposals in relation to the activities of public benefit and volunteering, and data analyses of completed inspections of organisations of public benefit. The Council may also intermediate between public benefit NGOs and the state administration, in the event of conflicts arising from the performance of activities of public benefit.

To make a comparison, an example worth noting is the successful experience of *Slovenia* where an Agreement of Cooperation was concluded in 2004 between the non-profit organisations and the Government. The Government also adopted a decision for the setting-up of a Commission on NGOs and the development of a *Strategy on the Interaction between the State and Non-profit*

Organisations. This Strategy was developed with the participation of all ministries and administrations dealing with non-profit organisations. To ensure publicity and knowledge about this document, information was made available on the Internet, and the first NGO forum was conducted to discuss it.

Several countries of the former Soviet Union have also foreseen a special procedure in which governmental bodies can consult citizens and civil organisations. In 2005, the Parliament of **Moldova** took a decision to adopt a *Concept of Cooperation between the Parliament and Civil Society*. In addition to the main principles of transparency, effectiveness, equality, participation and independence, the Concept contains particular provisions regulating the methods of cooperation. A special unit was set to the Secretariat of the Parliament to be in charge of the relations with civic organisations. A unit of experts from civic organisations is envisaged to function together with each commission. Bills are published on the website of the Parliament. Minimum once every year, public hearings are organised for each commission on important issues. In addition to that, an annual conference is also held with representatives of Parliament and civil society to discuss various issues of partnership. The Concept contains minimum standards to conduct consultations. Some of the main rules read:

- Once a bill is published on the website, there is a period of 15 days for civic organisations to state their opinions;
- Civic organisations will be informed minimum 10 days in advance of organised events, if ad-hoc meetings are to be held, and minimum 1 month in advance if the annual conference is to be held;
- Any receipt of an opinion will be confirmed and accompanied by a decision whether it is adopted or rejected and the reasons for that.

In **Armenia**, the Social Ministry adopted in July 2008 a Code of Cooperation between the Ministry and Civic Organisations. The Code contains several main rules concerning the development of policies, bills, or other regulations:

- The drafts of the documents are published on the ministry's website;
- In case of short documents, 2 weeks are foreseen for written consultations (written statements of opinions are accepted on a specific draft from everyone concerned), and in case of long documents, the timeframe is 4 weeks;
- 15 days following the end of the consultations, information about the submitted opinions is made available on the ministry's website;
- A coordinator is appointed for each consultation, who has to analyse, subsequently, the quality of the process of consultation.

CONCLUSION

The comparative analysis of the national models for participation of NGOs in the process of decision-making reveals some common characteristics:

- A commission or a department established within the **National Parliament** to deal with problems of civil society and NGO (Estonia, Hungary);
- Various governmental services and councils set up at the level of the **Executive** to coordinate the participation of NGOs in the processes of decision-making and consultations (Hungary, Estonia, Poland, Slovakia, Croatia);
- Adoption of strategic documents enabling the participation of NGOs in the processes of decision-making and consultations (England, Hungary, Estonia, Croatia, Slovenia);
- Adoption of a Code for consultations with NGO, requiring institutions to provide information and to include representatives of civil society into the consultations on the adoption of laws and other regulations (incl. through working groups, public discussions, etc.).

As a general inference, the participation of NGOs in the processes of decision-making at different institutional levels is a common European trend. The National Governments and Parliaments open possibilities for consultations with NGOs in the process of development of policies and adoption of different normative instruments. By participating in various working groups, public discussions, advisory bodies, etc. NGOs strengthen their position as a valuable partner of the State. The participation of NGOs in the processes of decision-making basically results in legislation of higher quality and establishes an environment where the laws and regulations are better applied in practice.