



CONFERENCE OF INGOs
OF THE COUNCIL OF EUROPE

CONFERENCE DES OING DU
CONSEIL DE L'EUROPE

July 2016

**“Only a matter for politicians ? Civil Society, money and political activities”
Debate organised by the Conference of INGOs on 6-7 June 2016 at the Council of Europe**

Report

The debate considered three interrelated dimensions - freedom of association, political activities of NGOs and foreign funding for NGOs - which are essential in order for NGOs to play their role in a pluralist democracy and for the protection of human rights. The debate aimed at identifying the needs for protection, proposing changes to strengthen freedom of association and at taking preventive measures so that restrictions do not spread and human rights could be reinforced where the rights and freedoms recede. The overall aim is to ensure that NGOs are considered in their diversity as democratic actors and not only as agencies implementing governmental decisions. This is the concern of the Council of Europe: where human rights NGOs and human rights defenders are persecuted, collective efforts should be employed to usher those member states back to their commitments to the Convention on Human Rights.

General information

The debate gathered some 80 participants representing NGOs, governments, donors and international organisations under the chairmanship of Anna Rurka, President of the Conference of INGOs. It was transmitted live on the Internet.

Intigam Aliyev, human rights defender from Azerbaijan and member of the Expert Council on NGO Law of the Conference of INGOs was the keynote speaker at the opening. Upon request of the Council of Europe and the Conference of INGOs, he had received authorisation to leave the country despite his travel ban.

Representatives of Council of Europe bodies chaired the three thematic sessions:

- first session on freedom of association: Nils Muižnieks, Commissioner for Human Rights
- second session on political activities: Yves Cruchten, Luxembourg, Socialist Group, Parliamentary Assembly of the Council of Europe
- third session on foreign funding: Cyril Ritchie, President of the Expert Council on NGO Law

Astrid E. Helle, Chairperson of the Ministers' Deputies Rapporteur Group on Democracy, participated in the opening session and Snezana Samardzic-Markovic, Director General of Democracy addressed the audience in the closing session. Speakers came from some 15 different countries. The multi-stakeholder setup facilitated a critical analysis of the situation and helped to identify possible solutions beyond the beaten paths. Participants appreciated that the Conference of INGOs offered a platform for open dialogue on major challenges faced by civil society and were grateful for the opportunity of sharing experience and networking.

Key ideas of the three thematic sessions

Freedom of association

Participation in public and political debates, even when the voice expressed opposes the position of the government, is a right which is internationally protected. NGOs help governments to focus on issues that really matter to people, therefore they need to be independent. Associations should be treated equally, irrespective of the position they hold, be it in line with the authorities or not, namely in accessing funding.

Today, in countries where NGOs and their leaders (and sometimes their family) are considered as disturbers of the government's order, they face charges, which are politically motivated. Lawyers who defend their rights and journalists are also concerned. Attacks and intimidation that are not investigated by the authorities can be just a start. Calls from international organizations and several countries for authoritarian governments to meet their obligations are interpreted as interferences in the internal affairs of the country or even attempts to overthrow the government. Human rights NGOs (some sectors are more concerned than others: transitional justice, women's rights, LGBT rights, migrants' rights) are either excluded from cooperating with public authorities or have their legitimacy questioned. They are forced to register abroad in order to try to monitor the respect of human rights for the wider part of the population. NGOs that still work in these authoritarian regimes accept not to exceed the "red line" and to be "desirable", which means being less active, not criticizing the government and abandoning their own freedom of expression. The problem in these countries is systemic, not isolated. In most authoritarian countries, persecutions against NGOs are accompanied by an important number of political prisoners and there is no independent judiciary, free press or transparent elections. Anti-terrorism legislation is used against Human rights organizations and security measures are shrinking the space of civil society. There is a huge difference between being a violent extremist and being critical of the authorities. Security measures should protect civil rights and not limit them. The ECHR should give additional priority to cases on association and assembly rights.

An example of good practice in NGO policy can be seen in the establishment of the Romanian Ministry for Public Consultation and Civil Dialogue, in November 2015. One of the priorities of the present government is the Open governance concept, which implies transparency, public consultation and accountability. Romania is a member of the open governance partnership since 2011. The priority is to strengthen the involvement of NGOs, build public ownership over public decisions, which will be achieved through e-consultations and access to public interest information. The legal registration process for NGOs will also be made easier. From the point of view of the Romanian civil society organizations, the NGOs have good relations with the government. The legislative framework allows NGOs to be involved in policy making, even if sometimes it is not respected by the government.

The political activities of NGOs

Using the concept of political activities to prohibit the involvement of NGOs in public policy is a new tactic, which leads to the same result of limiting the scope and action of NGOs. But that increases the gap that divides political institutions from civil society and reveals increasing reciprocal mistrust. In some states, the will of public authorities is to reduce NGOs to service delivery organizations, which only execute the decision taken by the public authorities and not propose new solutions through advocacy actions. Civil society organizations are the *political actors of change*, *change makers* and with this

approach any public activity by an NGO could be considered as a political activity. Why is 'political' honorable when used by governments or politicians and not honorable when used by single individuals or NGOs? Participation implies engagement in 'public affairs'. Public policy activities must include actions attempting to influence legislation, engagement in decision-making processes, lobbying, campaigning on issues of relevance, raising awareness of issues of concern, monitoring elections, participating in public affairs and criticism of actions by public authorities etc... The state has the last word on whether to accept or not the amendments but these activities cannot be prohibited! If you want to change the world you need to be political.

Foreign funding for NGOs

NGOs that benefit from foreign funding, including international grants are perceived as regime changers by authoritarian governments. Only very few countries have good financial support for NGOs. If this situation does not change, only a few professionalized NGOs will survive, yet, funding of small NGOs at local level is crucial.

Public funding is disappearing, or becoming too restrictive without any guaranties for freedom of association. NGOs need private funding to fill this gap. Independent fund operators should be easier to access by NGOs.

Donors need to be more flexible, more coordinated and follow the interest of the NGOs and not the contrary. Donors always want new innovative projects. However, today the ordinary activities of NGOs and their functioning are in danger. This base must be secured so that civil society organisations can innovate. It is also important to pay attention to the cost of the funds and administrative proceedings. In the 80s, you would write a letter and receive funds. In the 90s, we started fundraising. Now, we have a grant writer and a full-time fundraiser. The cost for asking money and for finding new ways of funding amounts to 30% of the budget.

Donors should be more active in the defense of civil society and strengthen their engagement on behalf of NGOs, for example by putting pressure on authorities to release political prisoners, unfreeze bank accounts of activists etc.

Summary of some of the main issues raised and proposals made; the list is not exhaustive.

- A shrinking space for civil society goes hand in hand with a lack of independence of NGOs, media, the judiciary and problems with free and fair elections. Sometimes, anti-terrorism, anti-money laundering, anti-tax evasion laws are used to restrict NGO action.
- In some countries, human rights defenders are stigmatised and criminalised, in particular when working for vulnerable groups or in (post-)conflict zones.
- Human rights defenders and more generally civil society leaders and their organisations need support and protection, including international pressure for the liberation of imprisoned activists and the creation of a Council of Europe platform for the protection of human rights defenders.

- Some countries reduce the civil society space through restrictive legislation, in particular with regard to access to foreign funding, what leads to a decrease in the number of NGOs, a transfer of offices of NGOs to other countries, self-censorship and a less active civil society.
- A culture of participation is needed, recognising that participation is not a privilege but a right which is not limited to expressing views but also including authorities' obligation to listen to NGOs in the political decision-making process.
- Open government initiatives led in some countries to an increase in participation of citizens, individually or through NGOs, and to more transparency and accountability.
- To enhance participation, it was necessary that NGOs established networks and that capacity building was provided to both, civil servants and NGO representatives.
- Because the role of NGOs as drivers for change was seen positively, not all participants saw the need to distinguish between political activities and public policy activities.
- Providing funding to NGOs was not about donors paying someone to do something for them but about enabling NGOs to do their jobs in monitoring, advocacy or service provision.
- To increase NGOs scope of action, donors should be more flexible, take long term commitments, also for small grassroots NGOs and not limit support to project funding.
- More opportunities for domestic funding by public authorities, companies and philanthropists were necessary.

Recommendations for action proposed by the participants in the debate were directed to governments, international organisations, donors and NGOs themselves.

For the Council of Europe, a number of recommendations made at the debate require follow-up action:

- Participants discussed the creation of a Council of Europe platform for the protection of human rights defenders. A majority supported the idea and underlined that such a platform should focus on reprisals against human rights defenders related to their interaction with the Council of Europe and such a platform needed to be supplemented by other protection measures in order to be effective, particularly NGOs protective mechanisms.
- Participants welcomed the preparation of new guidelines for meaningful civil participation in the political decision-making process and expressed the wish to be consulted by the European Committee on democracy and governance which oversees the preparation of these guidelines.
- Participants called for Council of Europe support for improving the environment for NGOs in its member States by providing assistance in aligning legislation, regulations and practice with European standards and by involving representatives of NGOs and public administration in capacity-building activities.
- It was suggested that the Conference of INGOs looks into possibilities for creating a Council of Europe fund to pool donors' financial support for NGOs.

All participants agreed that diplomatic and financial measures (programs that include human rights dialogues, country-visits and meetings with local NGOs, common statements) that give importance to “NGOs under threat” should be strengthened. Debates about new and innovative support for freedom of association and good practices should be organized on a more regular basis. Respect of human rights should be part of the international security agenda. Collaboration with NGOs should be included as part of the training programmes followed by public authorities, at local and national levels in order to be able to interact in a constructive way. Investment in Human rights is for tomorrow and for the day after tomorrow. NGOs always represent causes turned towards the future!



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“Only a matter for politicians?”

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6-7 June 2016, Room 5, Palais de l'Europe, Strasbourg

Programme

Monday, 6 June 2016

12.00 **Opening**

The measure of a country's democracy lies above all in the dynamism and diversity of its NGOs, whose closeness to citizens enables them to initiate communication between the various segments of society and political institutions. At present, laws, measures and policy decisions in several countries reduce the ability of NGOs to engage in activities aimed at participating and introducing changes in public policies, often in connection with restrictions on access to foreign funding.

What are the challenges that NGOs are facing in a time when civil society space is shrinking?

- Welcome by Anna Rurka, President of the Conference of INGOs
- Keynote speech by Intigam Aliyev, human rights defender from Azerbaijan and member of the Expert Council on NGO Law
- Statement by Ambassador Astrid E. Helle, Permanent Representative of Norway to the Council of Europe and chairperson of the GR-DEM

13.00 to 14.30 **Lunch break**

14.30 to 16.00 **First session: Freedom of Association**

The rights to freedom of expression, assembly and association are protected by the European Convention on Human Rights (articles 10 and 11). Their exercise is not only a question of enjoying human rights and fundamental freedoms but also of civil and political rights.

How to strengthen the ability of NGOs, as democratic players in their own right, to take action?

- Introductory statement and moderation of the session by Nils Muižnieks, Commissioner for Human Rights

Contributions by:

- Olga Abramenko, Expert, Anti-Discrimination Center "Memorial", Representative of the International Federation for Human Rights (FIDH)
- Maria Dahle, Executive Director, Human Rights House Foundation
- Brigitte Konz, President of the Steering Committee for Human Rights (CDDH)
- Andrea Rossi, Deputy Head, Division of Human Rights and Multilateral Diplomacy, European External Action Service, EU
- Loredana Tassone, Expert for the Human Rights Committee and the Permanent Delegation to Strasbourg, Council of Bars and Law Societies of Europe – European lawyers promoting law and justice

16.00 to 16.30 **Coffee break**

16.30 to 18.00 **Second session: Political Activities of NGOs**

In a democracy, NGOs contribute to the political debate and to the development of new policies and laws. This political engagement is about participating in public affairs and influencing legislation; it is not about achieving power in elected bodies.

What is the difference between “political activities” and “public policy activities”?

How to prevent inappropriate restrictions on NGOs?

- Introductory statement and moderation of the session by Yves Cruchten, Luxembourg, Socialist Group, Parliamentary Assembly of the Council of Europe
- Statement by Mihai Lisetchi, Secretary of State, Ministry for Public Consultation and Civic Dialogue of Romania

Contributions by:

- Päivi Anttila, Senior Sector Officer – Civil Society, EEA and Norway Grants
- Konstantin Baranov, Member of the Coordinating Council, International Youth Human Rights Movement
- Katerina Hadzi Miceva, Director of the European Center for Not-for-profit Law, member of the Expert Council on NGO Law (statement presented by Cyril Ritchie on her behalf)
- Jacopo Leone, Democratic Governance Officer, Office for Democratic Institutions and Human Rights, OSCE
- Andrei Pop, Director of Programmes, Civil Society Development Foundation
- Danny Sriskandarajah, Secretary General, CIVICUS (Video message)

18.15 to 19.30 **Reception at the Blue Restaurant, Council of Europe**

Tuesday, 7 June

9.30 to 10.30 **Third session: Foreign Funding**

“NGOs should be free to solicit and receive funding – cash or in-kind donations – not only from public bodies in their own state but also from institutional or individual donors, another state or multilateral agencies ...” (CM/Rec(2007)14, paragraph 50) but a considerable number of countries have introduced laws which de jure or de facto limit NGO’s access to foreign funding.

What is the situation of NGOs?

What action do governments and donors take to regulate and provide financial support to NGOs?

- Introductory statement and moderation by Cyril Ritchie, President of the Expert Council on NGO Law

Contributions by:

- Gunnar M. Ekelove-Slydal, Deputy Secretary General, Norwegian Helsinki Committee
- Anna Gerasimova, Director, The Barys Zvozkau Belarusian Human Rights House
- Marko Grdosic, Chair of the Advisory Council on Youth of the Council of Europe and Chair of AEGEE-Europe
- Ishai Menuchin, Chairman of the Board of Amnesty International Israel
- Alastair Rabagliati, Director of operations, European Endowment for Democracy
- Hanna Surmatz, Legal Counsel, European Foundation Centre

10.30 to 11.00 **Coffee break**

11.00 to 12.00 **Continuation of the third session: Foreign Funding**

12.00 to 13.00 **Conclusions and closure**

- Snezana Samardzic-Markovic, Director General of Democracy, Council of Europe
- Anna Rurka, President of the Conference of INGOs



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The measure of a country's democracy lies above all in the dynamism and diversity of its NGOs, whose closeness to the citizens enables them to initiate communication between the various segments of society and political institutions. In this context, they oversee respect for, and the effectiveness of, individual rights and the interests of vulnerable groups. Their activities among the general public drive innovation; they watch over the separation of powers in democratic states and are the principal whistle-blowers. Their political advocacy work provides assistance for policy makers.

Freedoms enshrined in law

Freedom of association is not limited to the creation and registration of NGOs but encompasses their freedom to function and carry out their activities. “No restrictions shall be placed on the exercise of (freedom of association) other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.” (Article 11.2 of the European Convention on Human Rights)

Freedom of association is being undermined, indeed compromised, today and necessitates a substantive discussion on strengthening the ability of NGOs, as democratic players in their own right, to take action.

Political activities of NGOs

In a democracy, NGOs contribute to the political debate and to the development of new operational and policy provisions. “NGOs should be free to undertake ... advocacy on issues of public debate, regardless of whether the position taken is in accord with government policy or requires a change in the law.” (Recommendation CM/Rec(2007)14 on the legal status of NGOs, paragraph 12)

The activities of NGOs in a democracy require a meaningful degree of independence and the possibility of taking action in the field of public policies. Do these activities lead to the assumption of power by NGOs? Are they a threat to public order?

The Expert Council on NGO Law recommends distinguishing between two dimensions of political engagement of NGOs¹: “political activities” in terms of the direct engagement of NGOs in the political arena, such as the nomination of candidates, financial support for political parties and candidates in elections; and “public policy activities” in terms of influencing legislation, engaging in the decision-making process, participating in public affairs, criticising actions by public authorities, advocacy, and monitoring elections.

Foreign funding

“NGOs should be free to solicit and receive funding – cash or in-kind donations – not only from public bodies in their own state but also from institutional or individual donors, another state or multilateral agencies ...” (CM/Rec(2007)14, paragraph 50)

Laws and measures – which in some countries prohibit NGOs from financing their activities from money originating from abroad, foreign private donors or international funds – considerably reduce the number of NGOs in the country concerned. This is the case in the Russian Federation, where the number of NGOs has declined by 33% over a three-year period (2012-2015).²

The democratic principle that free access to financial resources is a civil right that fosters the full participation and independence of NGOs is being denied in some countries today. The expressions “foreign agent” and “citizens of the worst sort” are discriminatory terms that are dangerous for a state governed by the rule of law.

Observations

Sometimes camouflaged by an appeal for greater transparency, restrictive measures are a breach of the above fundamental freedoms. Political stability is seen as being opposed to democracy, as if the two excluded each other.

The effects of laws, measures and policy decisions that conflict with NGOs’ rights are many and varied. They include:

- arrests of human rights defenders, obstruction of the NGOs’ legitimate work, harassment of activists;
- political discourse aimed at influencing public opinion in order to discriminate against, stigmatise and exclude certain NGOs from the public sphere;

¹ Expert Council on NGO Law:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680640fc2>

² Statements by Alexander Svinin, head of the Perspektiva project, compiled by the Bellona foundation, <http://bellona.org/news/russian-human-rights-issues/russian-ngo-law/2015-10-foreign-agent-law-has-put-33-percent-of-russias-ngos-out-of-business>

- NGOs' financial dependency on public funds, which limits their freedom of expression and ability to influence public policies;
- tax disadvantages and a ban on acting as election observers.

In the light of the foregoing, the Conference of INGOs of the Council of Europe, which is concerned about this situation, invites you to take part in the debate on the situation of NGOs with regard to their political activities and/or their activities aimed at participating and introducing changes in public policies.

In this context, what political and financial means do national authorities, donors and international institutions deploy to promote the development of organised civil society and NGOs' participation in the decision-making process?

We would like this debate to take place with the participation of NGOs, public authorities, donors and international experts. We hope the event will constitute an important step towards identifying needs for protection that will make it possible to enhance the independence of NGOs, foster their development and facilitate their involvement in political life.

All the players mentioned have a shared responsibility in these issues, and I look forward to your participation to enable us to move forward together towards a more open and flourishing civil space.

Anna Rurka

President of the Conference of INGOs of the Council of Europe