



NGO participation in the decision-making process

Scoping visit to Romania

12-13 SEPTEMBER 2016

REPORT

Contents

Introduction.....2

1. The functioning of associations and foundations in Romania.....3

2. Participation in the decision-making process5

 2.1. Ministry of Public Consultation and Civic Dialogue - MCPDC5

 2.2 Practices introduced by the authorities under the Open Government Partnership7

 2.3. Parliament.....7

 3.Civic dialogue from the NGO perspective8

 4. Other aspects related to participation in political life.....9

Conclusion and recommendations9

Introduction

The Conference of INGOs of the Council of Europe organises visits to member states in order to gain a better insight into the different forms of co-operation established between NGOs (foundations and associations) and policy makers, and more specifically government departments and elected representatives, as part of the decision-making process in the different areas of public policy. The discussions and exchanges held during each visit are part of a wider assessment to determine the effectiveness of the different forms of participation and public consultation. Following each visit, a report is drawn up, highlighting important issues for NGOs, at a particular time, in a specific social, political and economic context. The final recommendations are intended to improve co-operation between NGOs and the authorities.

The INGO Conference's visit to Bucharest took place from 11 to 13 September. It was organised in partnership with the Civil Society Development Foundation ([CSDF - Civil Society Development Foundation](#)) and with the help of the Permanent Representation of Romania to the Council of Europe, with a view to planning meetings with representatives of the various ministries and Parliament. The CSDF arranged the meetings with NGOs and provided logistical support for the meetings with government officials. Several NGOs based outside the capital were able to take part thanks to additional funds from EEA Grants, Financial Mechanism Office, Brussels, which covered the travel expenses.

The meetings with NGOs were organised thematically: the first meeting was with NGOs operating in the field of democracy, volunteering and equality policy, while the second was with NGOs specialising in children's rights, social services and disability. In all, the delegation talked to over 40 NGOs.

The delegation met with the following government officials: Mr Laurențiu-Ștefan SCALAT, presidential adviser; Ms Victoria-Violeta ALEXANDRU, Minister, and Mr Mihai LISETCHI, State Secretary in the Ministry of Public Consultation and Civic Dialogue; Ms Oana ȚOIU and Ms Oana POPESCU, State Secretaries in the Ministry of Labour, Family Affairs, Social Welfare and Elderly Persons; Mr Ionuț STROE, member of the Chamber of Deputies of the Romanian Parliament, head of the Romanian Delegation to the Parliamentary Assembly of the Council of Europe.

The delegation from the INGO Conference consisted of Anna RURKA, President of the INGO Conference; Mary Ann HENNESSEY, Head of the Civil Society Division, Directorate General II, Council of Europe; Beatriz COLLANTES, member of the INGO Conference's Expert Council on NGO Law; and Josien PIETERSE, member of the Board of Directors of the European Civic Forum, which is a member of the INGO Conference.

The following report is based on the information gathered and additional material describing the environment in which associations and foundations operate in Romania.

The INGO Conference wishes to thank the organisers, participating NGOs and the authorities for the excellent discussions and all the hard work that went into making the visit a success.

1. The functioning of associations and foundations in Romania

1.1 Legal framework

The National Register of Non-Governmental Organisations (NGOs) listed 96,612 civil society organisations, most of them associations (76,130) or foundations (18,449).

Romania's Constitution limits the restrictions that may be placed on certain rights and freedoms. They may be imposed only by law under specific conditions, in accordance with the principles of proportionality and non-discrimination, without prejudice to the existence of the right or freedom in question. Under Article 40, citizens are free to join political parties, trade unions and associations.

Associations and foundations may be established by natural persons or legal entities, of Romanian or other nationality. Foreign non-profit-making organisations may be recognised in Romania, subject to reciprocity, upon prior approval by the government, by registering with the Court of Bucharest, if they are already established in the state whose nationality they possess and if their aims, as set out in their statutes, do not conflict with public policy in Romania.

The creation and operation of associations and foundations are governed by Ordinance 26/2000 adopted on 30 January 2000,¹ as amended by Law No. 246/2005. Under these rules, an association may be set up by a minimum of 3 persons. The association acquires legal status upon registering with the Court. Registration takes a long time, however, as the procedures are complex and rigid. Registering an association is also more expensive than registering a company. The amendments introduced in 2005 prohibit the use in an association's name of any phrases or words which might cause confusion with the name of public authorities or local or national institutions. For the sake of clarity, the term "association" or "foundation" must be included in the organisation's name. This may partly account for the length of time required to register an association's name with the Ministry of Justice.

Foundations can be created by a single person, based on a deed stating their intention. The foundation's assets in kind or in cash must have a value of at least 100 times² the gross minimum wage in Romania.³

Federations are another type of NGO covered by Ordinance 26/2000. Consisting of at least 2 associations or foundations, they acquire legal status on being entered in the register of federations at the Court of Justice. They have separate legal status and may have their own assets.

Organisations which are in the public interest or the interest of the community may be recognised as having public utility status (if they have been in operation for at least 3 consecutive years). Since all foundations are required to meet these criteria, all are eligible to

¹ Document supplied by ICNL and published online.
<http://www.icnl.org/research/library/files/Romania/ordinanceeng.pdf>

² Ibid

³ In May 2016, the gross minimum wage was 1,250 RON (275€) or 7.382 RON per hour (€1.65 per hour) based on a work schedule of 169.3 hours per month.

apply for public utility status (Governmental Ordinance 26/2000, Article 15). Associations or federations, however, must indicate in their statutes whether they intend to pursue activities that are in the public interest or the interest of the community, or whether they serve personal but non-profit-making interests. Public utility status confers the right to receive public goods free of charge and to display one's public utility status in all documents. Such organisations are therefore required to publish extracts of their activity reports and annual balance sheets in Romania's Official Gazette, to report regularly to the competent administrative authorities on their activities, finances and any amendments to their constituent documents (these reports are accessible to the public).⁴

The new law on the social economy which came into force in August 2015 allows NGOs to become social enterprises and to play a part in creating employment for vulnerable groups.

Many of the NGOs encountered during the visit were members of national federations, international NGOs or partners in an international network. This has proven to be a facilitating factor for active involvement in public consultations at local and European level and for participation in programmes funded by the EU.

We also learnt, however, that despite significant growth, NGOs and their work are still seen by the public as a private endeavour, the purpose of which is not to serve the public interest. This makes it more difficult to develop interest in volunteering for NGOs, as such activities are seldom highly valued, either socially or professionally.

1.2 Sources of funding for NGOs

As in other EU Member States, NGOs in Romania can apply for European funds to finance their projects. As elsewhere, however, NGOs in Romania are suffering and are unhappy with the procedures governing access to this finance and the procedures imposed by their own government departments. National and regional structural funding is available, of course, and there are also governmental funds (such as the one set up by Norway). NGOs which work with and for the Roma community are eligible for specific EU-funded programmes, such as the Roma Education Fund.

Individuals can choose to redirect 2% of their income tax to an NGO of their choosing, under Governmental Ordinance 26/2000 (see Article 92 (1) of the Tax Code, as amended by Governmental Ordinance 138/2004).

Commercial companies which sponsor NGO activities can deduct from their taxable base up to 0.5% of their turnover or 20% of the profit tax due. Sponsoring is the arrangement whereby an individual or legal entity donates a certain amount of money or assets to a non-profit-making organisation, and receives tax breaks in return. It is governed by the law on sponsorship No. 32/1994, while taxation is governed by Law No. 571/2003. This instrument is as yet little used by companies. It can, however, contribute to co-operation and make it easier to raise funds for the non-governmental sector.

According to the NGOs encountered, the 2% scheme is not widely used. Some NGOs are more successful in this area than others. The ones which focus more on protecting rights such

⁴ Information provided by the Council on Foundations <http://www.cof.org/content/romania#Types>

as freedom of the press or legal protection tend to fare less well than NGOs whose activities are about coming to the aid of vulnerable persons. It is more a question of emotional marketing than any hierarchy of values. In this context, the NGOs are much more reliant on grants from the corporate sector.

If these two measures are to gain traction, an information campaign needs to be launched, to provide information about the positive effects of the scheme and to generate more public support for NGOs.

2. Participation in the decision-making process

The participation of civil society in the decision-making process is based on two pieces of legislation: Law No. 52/2003 on transparency in the decision-making process of public administration, and Law No. 544/2001 on free access to public information. Both of these laws have been amended on several occasions (Law No. 544/2001 was amended by Law No. 371/2006; Law No. 380/2006 and Law No. 52/2003 were superseded by Law No. 281/2013).

Despite an appropriate legislative framework, the NGOs note that for years now, laws are being enacted but not implemented. A review carried out by the Romanian Academic Society in 2014 showed that in cases where the authorities fail to comply voluntarily with the provisions of the law, it is practically impossible, in most cases, to compel them to do so. This lack of enforceability is more a result of the legislation itself than the way the legal and political system is organised. For example, the Constitutional Court, which is the only court with the power to repeal legislation, may do so only by reviewing the law in question. So there are also numerous legal loopholes that make it possible to circumvent the law on transparent decision making.

Romanian civil society, too, has suffered many knocks and so was very quick to react in 2013 when the previous prime minister, Victor PONTA, imposed undemocratic legal restrictions on NGOs. Anti-government protests swept the country. In 2015, following demonstrations attended by some 50,000 people, Mr Ponta resigned and was prosecuted for corruption, tax evasion and money laundering. When it came to appointing the new Prime Minister, the President of Romania was anxious to consult civil society directly, rather than just listening to his advisers. Numerous NGOs signed a letter listing the requisite competencies and stressing the need for political and personal integrity. Then, the same year, President Klaus IOHANNIS appointed the former European commissioner Dacian CIOLOS as Prime Minister in place of Victor Ponta. A “technocrat” government was formed, for a one-year term, including Romanian experts working in the EU institutions, diplomats and civil society leaders, the aim being to govern the country on the basis of expertise and skills rather than political affiliation.

The composition of this government is remarkable and, we understand, quite unique in the history of Romania.

2.1. Ministry of Public Consultation and Civic Dialogue - MCPDC

The Ministry of Public Consultation and Civic Dialogue was set up in 2015, for the first time in the history of Romania. Together with the Chancellery of the Prime Minister, the new ministry is responsible for co-ordinating the honouring of the national commitments included

in the National Action Plan drawn up under the Open Government Partnership. Over the period 2012-2015, the focus was on fighting corruption. Later, attention shifted to measures aimed at implementing national policy in the field of civic dialogue, public consultation and transparency, at a time when public institutions were so opaque as to render civil participation impossible. Increasing the participation of civil society as a key actor in public policy at every stage of the political process can be accomplished by building social trust and improving the image of public administration and institutional culture, in line with the commitments made under the Pact for an Open Government, based on transparency, public participation and accountability.

At the urging of the new Ministry, the government adopted the Memorandum aimed at standardising access to information of public interest on the websites of public institutions, requiring them to publish the activity programmes of the heads of such institutions, the organisation chart (including the names of senior officials and any vacant posts) and details of managerial pay. Under this arrangement, over 500 institutions have been monitored and supported in this process by the ministerial team.

One of the tasks consists in developing permanent consultative bodies in various public institutions, involving NGO officials, citizens and experts. To this end, a Consultative Council on Associations and Foundations has been set up under the wing of the Prime Minister. Another good example of constructive dialogue, according to NGOs, is the joint interministerial committee in charge of the strategy for combating poverty (adopted in 2016). Spanning three ministries, the committee's activities are both inclusive and effective. As was pointed out during the visit, however, while the fact that these bodies exist is to be welcomed, very often, it is the rules and procedures contained in secondary legislation that stand in the way of public consultations. The ministry has therefore begun working with other public institutions to make public consultation procedures simpler and more transparent. The meetings described in the discussions with the Minister and her staff were conducted according to very high standards, thus ensuring that each participant was able to give his or her opinion and receive a proper explanation from the ministry regarding the final decision made (recording, transcription, feedback).

At national level, the ministry has created a newsletter for e-consultations, in which any drafts subject to consultation are published (*Buletinul E-consultation*), and another publication for anyone wishing to find out about or participate in ministerial debates on draft legislation (*E-Dezbatere*). The ministry has also produced a Guide to Public Consultation containing the relevant statutory provisions and recommendations for good practice. This guide has been widely circulated (3,200 territorial and administrative divisions). To boost the administrative capacity of central government agencies, the ministry has teamed up with various other ministries to organise debates on topics of interest to civil society organisations.

The Ministry is also committed to better informing civil society about initiatives and decisions adopted at European level. It has launched a newsletter on consultations conducted by the European Union (*EU –Consultare*) which, once a week, notifies civil society of any draft decisions due to be discussed by the European Commission. The information comes from the official sources published on the European Commission website “Your Voice in Europe”.

2.2 Practices introduced by the authorities under the Open Government Partnership

The Open Government Partnership is based on an intergovernmental agreement, to which Romania signed up in 2011. This commitment goes hand in hand with a vision of civil society as a partner in the process of public policy making. In this way, decisions can be adapted to public expectations, and government decisions acquire greater legitimacy and become more effective.

In order to implement the principles governing this partnership, the government adopted a national plan for the period 2016-2018. To this end, a 2-month public consultation was launched on the site “ogp.gov.ro” in February 2016. The member states of the Open Government Partnership have also pledged to promote the UN’s 2030 Agenda for Sustainable Development and the Sustainable Development Goals. The public consultation was organised by civil society organisations under the supervision of the Centre for Public Innovation. The first stage involved coming up with ideas for the new action plan, then translating these ideas into pledges, devised and developed by individuals, representatives of informal groups and NGOs. The contributions received ranged from mere expressions of approval to written proposals. The entire exercise was conducted by a number of organisations outside the Ministry: the Centre for Public Innovation, the Centre for Independent Journalism, Funky Citizens, the Romanian Academic Society, Alex Lungu, Smart City and Median Research. The final report consisted of 28 proposals for possible commitments, 21 of which were set out in full while the remaining 7 were merely outlined. The report was submitted to the government, published online and sent to public institutions in Romania. One of the proposals which attracted our attention is to create an institutional mechanism for co-ordination and dialogue, an eminently sensible idea which, if implemented, could help to entrench existing participation practices, which are still employed only occasionally and which, according to the NGOs we spoke to, are used mainly in the run-up to elections.

2.3. Parliament

The meeting with Ionuț STROE, member of the Chamber of Deputies of the Romanian Parliament and head of the Romanian Delegation to the Parliamentary Assembly of the Council of Europe, provided an opportunity to learn about the practices introduced in Parliament: invitations for NGOs to attend parliamentary committee meetings, informal contacts between Deputies and NGO officials. Three pieces of legislation were cited by NGOs as examples of joint law making with civil society: Law No. 52/2003 on transparency in public administration, Law No. 544/2001 on free access to public information and the law on volunteering, adopted in 2014 (the culmination of a 3-year consultation with NGOs). Mr STROE has duly noted the fact that certain practices hamper participation in law making, such as last-minute changes in meeting rooms, documents that are difficult to find on the website, or failure to provide information in sufficient time to enable civil society to make its voice heard. For example, it is not uncommon for the authorities to refrain from publishing notices announcing new laws until the day they are enacted. The tensions that existed between the “technocrat” government and Parliament were not conducive to civic dialogue. In particular, the over-frequent use (albeit less than under previous governments) of emergency government ordinances enabling laws to be passed without parliamentary debate or public consultation. Unfortunately, these ordinances have been used to enact non-urgent laws,

including some concerning the construction of motorways or migration, which ought to have been the subject of a public debate.

It is also worth pointing out that a major factor in the success of the system for protecting ethnic minorities in Romania is their participation in Parliament. Each national minority (Germans, Hungarians, Armenians, Bulgarians, Greeks, Poles, Roma, Lippovans, Serbs, Czechs and Slovaks, Turks, Ukrainians, Italians, Albanians, Jews, Croats, Macedonians, Bucovina Ruthenians) has its own party, with a seat in the Chamber of Deputies. Rather than focusing on matters specific to their own community, these elected representatives are supposed to take an interest in all parliamentary business. The opportunities for society to monitor the legislative process are enhanced by the existence of a file on each Deputy's legislative activities. Thanks to these records, which are maintained and constantly updated by the parliamentary information services, the work of the Romanian parliament is significantly more transparent than that of many other parliaments in post-Communist countries.

3.Civic dialogue from the NGO perspective

As has already been pointed out, the setting-up of the Ministry of Public Consultation and Civic Dialogue is a major step forward in Romania, and an example for other Council of Europe member states to emulate.

Looking at the bigger picture, however, the feeling among NGOs is that communication with the authorities is something of a monologue, a one-way conversation. They complain of a lack of consideration on the part of the authorities, and the fact that their input is not taken into account or, once submitted, meets with no response. Draft legislation is not published in a clearly visible manner and is difficult to find on the websites of the different ministries and parliamentary committees.

As regards participation at local level, NGOs observe that although the need for civil society to express its views is great, the opportunities to do so are far less numerous. The drafts submitted for consultation are, they claim, often opaque and tainted. The rules governing public consultations are unclear. Often, notices state that consultation meetings are open to everyone, subject to the availability of seats yet the number of seats is not set in advance. There are some initiatives which were cited by many NGOs as being more participatory in nature. One notable example is the participatory budgeting scheme which gives local residents a say in which projects should receive priority funding from the local budget. These consultation meetings are often organised by NGOs which then forward the results of the consultation to the authorities. One NGO complained that local elected officials seldom make it clear that a particular idea or contribution came from civil society, preferring to take the credit for it themselves. Such practices obviously do nothing to increase public recognition of the role played by civil society. The Civic Council in the Cluj Napoca region was cited as an example of constructive dialogue. A civic platform set up in 2004 by the Human Rights League monitors the Council's decisions. Politicians take notice of what the Council has to say and many of its proposals have been translated into formal decisions or policies.

4. Other aspects related to participation in political life

Romanian NGOs may engage in political activities as long as these activities are not specifically covered by the law on political parties. They may contribute to political parties or to activities related to elections.⁵ One recent initiative provides a good example of the energy and drive displayed by NGOs in this area. Set up in 2016 by a group of young professionals eager to do more for their country, the NGO “Code for Romania” (www.code4.ro), a non-profit-making organisation with no political affiliations, created an app for smartphones to allow more effective and responsive election observation. The app could be downloaded from the App Store and Google Play, and observers could access it via a telephone number and a unique PIN number for securing the account and outbound data. It was used by 562 observers in the parliamentary elections on 11 December 2016, in 1,346 polling stations. The reports were available in real time throughout the day and, after the polls closed, the organisers centralised the reports via an online platform set up by Code for Romania.

In 2004, Romania adopted Law No. 571/2004 on the protection of personnel in public authorities, public institutions or other entities who report infringements of the law, which sets out the rules on whistleblowing. According to Transparency International Romania,⁶ the general perception of whistleblowers in Romania is slowly changing. Once regarded as traitors or informers, they are now viewed more favourably thanks to efforts to promote this law. In addition, Article 13 of Law No. 544/2001 on access to public information stipulates that information which encourages or conceals infringements of the law by public authorities or institutions cannot be considered classified. Furthermore, Law No. 50/2007 on the Code of Conduct for Public Officials stipulates that where there has been an infringement of the law regarding classified information, the provisions of Law No. 571/2004 on whistleblowers take precedence.

Conclusion and recommendations

The one-year “technocrat” government has delivered its report. We can but urge the Romanian authorities, however, to press ahead with the policy of governing the country based on the expertise and competences of its ministers. We hope that the Ministry of Public Consultation and Civic Dialogue will continue its activities and will be given more staff, so that it can establish a high-quality civic dialogue in every area of public policy and ensure the enforcement of any laws enacted but not implemented.

In order to continue this process, we recommend:

that the national authorities:

- simplify the procedures for registering associations and foundations;

⁵ Expert Council on NGO Law of the Conference of INGOs (2016). [Regulating political activities of non-governmental organisations](#), report prepared by Katerina Hadzi-Miceva Evans.

⁶ Report on Report on Whistleblowing in Romania

https://www.transparency.org.ro/politici_si_studii/studii/avertizarea_de_integritate_europa/RomaniaCountryReport.pdf

- upgrade the skills of officials working in public administration, in particular those whose jobs bring them into direct contact with NGOs;
- fund and promote training courses that demonstrate the benefits of civic dialogue and of working with civil society organisations;
- avoid making use of emergency legislative procedures (ordinances) and instead find ways to make civic consultation on draft legislation or policies effective and systematic;
- improve transparency, communication and consultations with civil society via the government's and parliament's websites to facilitate participation and make it easier to monitor the results;
- provide more information about the scheme for redirecting 2% of income tax to NGOs;
- make greater use of international instruments for promoting dialogue, such as the collective complaints procedure established under the European Social Charter.

that local and regional authorities:

- at local level, set up contact points to bring NGOs together and familiarise them with one another so that they can self-organise;
- consider setting up a hub within local government to centralise initiatives open to consultation and to promote civil society's contribution to the local community;
- devise and conduct public awareness campaigns to highlight the role and activities of NGOs in democracy building.

that NGOs

- set up a civic platform to monitor public consultations in all areas of public policy;
- help highlight the role played by NGOs via information campaigns;
- make NGOs more accountable and transparent and improve their public image by encouraging the publication of activity reports and budgets;
- remain vigilant against any failures to implement national laws;
- play a greater role in the process of monitoring the implementation of international conventions ratified by the Romanian government.

that the NGO Conference

- work more closely with the national NGOs;
- draw the attention of the Conference and other Council of Europe bodies to the examples of good practice regarding participation in the decision-making process, as observed in Romania;
- hold briefings in Romania to improve national NGO participation in the monitoring and ratification of Council of Europe conventions;
- hold a specific meeting between the INGO Conference's co-ordinating committee for the Turin Process, the authorities and NGOs in Romania with a view to ratifying the protocol on the collective complaints procedure under the European Social Charter.

References cited

- Constitution of Romania, republished (2003)
- Council on Foundations; Romania: http://www.cof.org/content/romania#Tax_laws
- Expert Council on NGO Law of the Conference of INGOs (2016). [Regulating political activities of non-governmental organisations](#), report prepared by Katerina Hadzi-Miceva Evans.
- Law No. 571 of 14 December 2004 regarding the protection of personnel in public authorities, public institutions and other establishments, who report infringements
- Law No. 544 of 12 October 2001 regarding the free access to information of public interest. The law was published in the Official Gazette of Romania No. 663 of 23 October 2001
- Open Government Partnership. Romania National Action Plan. 2016 –2018
- Ordinance 26/2000 adopted on 30 January 2000
- Report on Whistleblowing in Romania
https://www.transparency.org.ro/politici_si_studii/studii/avertizarea_de_integritate_eu_ropa/RomaniaCountryReport.pdf
- Romanian Academic Society. Policy brief #64–july 2014. The implementation of the principle of decisional transparency in Romania