



Civil participation in the decision-making process

Fact finding visit to Ireland

24-26 APRIL 2017

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Introduction

The Conference of INGOs of the Council of Europe visits the Member States in order to better understand the cooperation between NGOs (foundations and associations) and decision-makers, notably the public administration and elected officials, in the political decision-making process. Discussion and exchange of experiences during the visits of the Council of Europe delegation are part of a wider analysis of the effectiveness of various forms of civil society participation in decision-making. Each of the visits is followed by a report which highlights the important issues for the NGOs in that specific moment and specific socio-political context. The final recommendations are also formulated to improve the effectiveness of cooperation between NGOs and the public authorities.

In Dublin, the Conference of INGOs held an official visit on 24-26 April 2017, hosted by the Irish Social Workers Association which organised the logistical support and the meetings with NGOs active in the field of human rights, education and democracy.

The meetings with public authorities were organised by the Permanent Representation of Ireland to the Council of Europe. During the visit, our delegation met representatives from the following public authorities: Chief Commissioner of the Irish Human Rights and Equality Commission (IHREC), the representatives of the Department of Social Protection, Department of Foreign Affairs and Trade, Department of Justice and Equality and the coordinators of the Citizen's Assembly.

The delegation of the Conference of INGOs was composed of Anna Rurka, President of the Conference), Simon Matthijssen, Member of the Expert Council on NGO Law, Mikhail Chernyak, representative of European Forum of Lesbian and Gay Christian Groups (EFLGCG), member of the Conference of INGOs, and Mary Ann Hennessey, Head of the Civil Society Division of the Council of Europe.

On the basis of the collected material we present the legal context in which the NGOs are acting today, the participation experiences of the NGOs in the political decision-making process, as well the position and line of the policy development in this field. The report concludes with recommendations which are addressed to the public authorities, NGOs and the Conference of INGOs.

1 Legal framework for the functioning of NGOs

According to [Recommendation CM/Rec \(2007\)14](#) of the Committee of Ministers to Member States on the legal status of non-governmental organisations in Europe, NGOs are voluntary self-governing bodies or organisations established to pursue the essentially non-profit-making objectives of their founders or members. They do not include political parties. NGOs encompass bodies or organisations established both by individual persons (natural or legal) and by groups of such persons. They can be either membership or non-membership based, they can be either informal bodies or organisations or ones which have legal personality, can be national or international in their composition and sphere of operation, should enjoy the right to freedom of expression and all other universally and regionally guaranteed rights and freedoms applicable to them, should not be subject to direction by public authorities.

In the Irish context, NGOs work to achieve socio-political-cultural goals. The strength of NGOs lies mostly in the high degree of motivation and specialist know-how of their people (members/staff/partners) as well as in the fact that they are in close contact with a wide range of people, including the vulnerable groups – which is a key prerequisite for mobilizing people to help themselves and take the initiative.

1.1. NGOs in Ireland

During our visit to Ireland, the NGOs indicated that they do not feel confronted with legal problems that directly impair the working of NGOs, rather they focussed on interpretations, practices and traditional styles of governance which can tend to hamper the full potential contribution of Irish civil society to Irish public life. The legal and statutory information hereafter is mostly based on information we obtained from the Carmichael Centre¹.

In plain words the NGOs can choose out of four legal structures:

- A. the unincorporated groups
- B. groups with charitable status (charities)
- C. companies limited by guarantee (CLG)
- D. CLG that is also registered as charity

All these groups are membership-based structures. As far as we found, foundations (by which we mean a legal entity with a separated asset, a well-described goal and led by a board) were not mentioned as a legal form used for NGOs.

1.1.1. The Unincorporated groups

These organisations have no legal status or obligations. As opposed to the clear advantages of the ability to be quickly and cheaply setup, the lack of bureaucracy and the absence of reporting obligations, there are also the disadvantages of the personal liability for members of the group, the difficulty if not impossibility to own property or to employ staff and the difficulty to apply for funding /subsidies.

¹ Carmichael Centre, Web: www.carmichaelcentre.ie

1.1.2. The unincorporated groups and the groups with charitable status (Charities)²

Both of these have to apply to the Charities Regulatory Authority and if they want to have tax exemption they need to fill out a formal application to the Revenue Commissioners. Against the advantages of credibility in the eyes of the funders and the general public, and the possible tax benefits, there are the disadvantages of the restriction of the activities to the constitution that is obliged, some regulatory requirements and the fact that board members can't benefit financially.

According to the Charities Act of 2009/2016³, being a charity is incompatible with:

- a) a political party, or a body that promotes a political party or candidate,
- b) a body that promotes a political cause, unless the promotion of that cause relates directly to the advancement of the charitable purposes of the body,
- c) [...],
- d) a trade union or a representative body of employers,
- e) a chamber of commerce, or
- f) a body that promotes purposes that are—
 - i. unlawful,
 - ii. contrary to public morality,
 - iii. contrary to public policy,
 - iv. in support of terrorism or terrorist activities, whether in the State or outside the State, or
 - v. for the benefit of an organisation, membership of which is unlawful;

Concerning the exclusion of political parties, we later learned from the Justice and Equality Department that this exclusion is related to the primary purpose: if primary purpose is political then the organisation may not be labelled a charity: suggesting that, if there are only secondary side activities that are political, then the organisation may be labelled charity. A definition of political or lobbying or advocacy is not yet given and needs to be clarified via jurisprudence or more detailed regulations.

The question remains, however, whether they could support openly a political party or candidate? Other NGOs (non-charitable NGOs) are free to engage in political activities.

1.1.3. The Companies Limited by Guarantee (CLG)⁴

The Companies Act 2014, that came into effect on 1 June 2015, stipulates that a CLG does not have a share capital. Much (but certainly not all) of the law relating to a private companies limited by shares is applicable to a CLG. A CLG may have as few as one single member and no maximum number of members but the constitution of the CLG must specify the number of the member(s) with which it is to be registered.

The founding documents (memorandum of association) must set out the objects of the CLG and the CLG will have the capacity to perform any act or pursue any goal stated in this

² See the consolidated CHARITIES ACT 2009 REVISED Updated to 5 September 2016 (<http://revisedacts.lawreform.ie/eli/2009/act/6/revised/en/pdf?annotations=true>)

³ Charities act, article 2 Interpretations

⁴ The Irish Statute Book <http://www.irishstatutebook.ie/eli/2014/act/38/enacted/en/pdf>

memorandum. A CLG requires at least two directors. The founding documents need to be sent to the Companies Registration Office (CRO) which is the central repository of public statutory information on Irish companies and business names.

This legal status requires a number of administrative or formal steps like keeping a register of the members and directors, a statement of annual returns with audited accounts for the CRO. Although these are clear bureaucratic disadvantages, there are the advantages of the limited personal liability, the credibility of the organisations in the eyes of the funders and the general public and the possibility to employ staff, borrow money and own property.

1.1.4 Service centres and umbrella organisations

In Ireland, shared facilities centres for the community and voluntary sector, or social enterprises serving the Irish Community and Voluntary Sector, to nurture and support the growth of non-profits, seem to sparse. The aforementioned Carmichael Centre, being one of the few⁵.

General statistical information was not found, the group of NGOs working in the Irish community and voluntary sector is not specified in the statistics of the Central Statistics Office (CSO) (as far as we could see).⁶ We could not find an overall view of the whole sector in Ireland. Although we met a vibrant community that was very willing to inform us, we have no clue as to the (relative) magnitude or the importance/economic scale of the NGOs in Ireland.

If our information is right, the service centre mentioned above is just there for support, but does very rarely⁷ offer to perform tasks like administration (like juridical-, insurance-, or tax services) nor does it represent or coordinate the work of the community and voluntary sector on higher levels. These last services being quite common in for instance Germany.

There's a lot of information on websites about starting a new NGO. Time and again we read that people who think to take this initiative are urged to find out whether there are organisations that already try to achieve the same goals. What we learn from this is that the possibility of duplication is not unknown. From our talks with the NGOs we remember that there was nearly no coordination between them, even when they were pursuing joint goals.

In line with this, we learned from the Justice and Equality Department that they also perceive the input of the NGOs as *fragmented*.

⁵ Charities Institute Ireland: www.charitiesinstituteireland.ie (fundraising)

Volunteer Ireland: www.volunteer.ie (goal is to make sure that everyone who wants to volunteer, can volunteer)

Activelink: www.activelink.ie (provide information on jobs, tenders, volunteering, events, fundraising, training, publications and funding in these sectors)

Boardmatch Ireland: www.boardmatchireland.ie (to improve governance in the not-for-profit sector by strengthening boards and management committees) The Wheel: www.wheel.ie (A support and representative body connecting community and voluntary organisations and charities across Ireland. "We help them get things done, we represent their shared interests to Government and other decision-makers and we promote a better understanding by the public of them and their work")

Dochas: www.dochas.ie (Association of Non-Governmental Development Organisations. It is a meeting place and a leading voice for organisations that want Ireland to be a world leader in efforts to bring about global justice.)

⁶ <http://www.cso.ie/en/index.html>

⁷ Carmichael Centre supports 48 organisations

For us, as the delegation of the Conference of INGOs of the Council of Europe, the question remains whether better coordination between NGOs could possibly lead to better results and less frustration. The very inspiring results of the citizens' assembly (to be discussed in another chapter) at least make clear that there is surprisingly more common ground than the scattered Irish NGO landscape suggests.

1.1.5. Charities regulations and reporting system

The first Charities Act was established in 2009. The second one, established in 2014 gave the first statutory definition of charitable purpose in Ireland. The special register was created. "All charities carrying out activities in the State (including those with centres of business outside of Ireland) will require to be included on the Register of Charities....The categories of charitable purpose are the prevention or relief of poverty or economic hardship, the advancement of education, the advancement of religion or any other purpose of benefit to the community. The Act then details in a non-exhaustive list those purposes of benefit to the community. The definition attempts to mirror those purposes which the Revenue Commissioners currently deem to be charitable when determining charitable tax status. Additionally, charities will be able to promote a political cause in furtherance of and ancillary to their charitable objects, without risking a loss of their charitable status"⁸. The Charities have the right to "promote a political cause, unless the promotion of that cause relates directly to the advancement of the charitable purposes of the body (for example, bodies which provide services to people with disabilities and who also campaign for better services are likely to be considered charitable)"⁹ The promotion of human rights is not included in the list of purposes of benefit to the community. The Act introduces:

- An annual reporting requirement, under which all charities must submit annual returns to the Authority, detailing the activities carried out in the year¹⁰.
- An annual statement of accounts, and, in certain cases, to have these accounts audited.

"Charities whose annual gross income or total expenditure is less than €10,000 (or such greater amount as the Minister may determine, but not exceeding €50,000) do not have to prepare annual statements of account, which would normally be submitted with the annual returns, nor do they have to have their annual accounts audited. The same exemption applies to education bodies, who are defined in the Act and include most institutions of education in the State"¹¹.

The fact noted by the NGOs is the new regulation of charity adds burdens and costs. This makes the functioning of the small and local organisations more difficult.

We learned that, under Irish legal tradition, what is not legislated against is considered permissible. The Irish government seems to have chosen to make more use of institutional

⁸ Charities in Ireland by Paraic Madigan, John Gill, 14.01.2014 <http://www.matheson.com/news-and-insights/article/charities-in-ireland>

⁹ *Relate. The journal of developments in social services, policy and legislation in Ireland.* Citizen's information board. August 2014.

¹⁰ If a charity's gross annual income or total expenditure exceeds €100,000, that charity must submit a full set of accounts to the Authority with its annual return. Charities falling under this threshold need only submit an income and expenditure account and a balance sheet.

¹¹ Paraic Madigan, John Gill op.cit.

regulations through secondary law and practical arrangements and to limit the legal restrictions on the functioning of NGOs which constitutes a good practice situation and reinforces the rights and freedoms of associations.

1.1.6. Regulation of the Lobbying Activities

The Recommendation of the Committee of Ministers of the Council of Europe to member States on the legal regulation of lobbying activities in the context of public decision-making¹², defines lobbying as the activities aiming to promote “specific interests by communication with a public official as part of a structured and organised action aimed at influencing public decision-making”. In the Part C paragraph 4 of the above-mentioned Recommendation, the “legal regulation of lobbying activities should not, in any form or manner whatsoever, infringe the democratic right of individuals to:

- a. express their opinions and petition public officials, bodies and institutions, whether individually or collectively;
- b. campaign for political change and change in legislation, policy or practice within the framework of legitimate political activities, individually or collectively”.

The Irish Regulation of Lobbying Act 2015 has an important impact on the relations between the NGOs and public authorities. The NGOs can be concerned by the definition of lobbying activities and of lobbyists. The lobbying activities are related to the direct and indirect communication with public officials. That communication is about “a relevant matter”¹³ and it is made by:

- “a representative body with at least one employee communicating on behalf of its members and the communication is made by a paid employee or office holder of the body”.
- an advocacy body with at least one employee that exists primarily to take up particular issues and a paid employee or office holder of the body is communicating on such issues”.

Even if the authorities highlight the importance of the impact of this regulation on the democracy, rights to information of the citizens and organisations, openness and transparency, the difference should be made between the advocacy action and lobbying activities. The smaller NGOs can be compared and treated as the professional lobbyist. They

¹² (CM/Rec (2017)2) Recommendation of the Committee of Ministers to member States on the legal regulation of lobbying activities in the context of public decision making, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680700a40

¹³ “A relevant matter is one which relates to:

- The initiation, development or modification of any public policy or of any public programme;
- The preparation or amendment of any law (including secondary legislation such as statutory instruments and bye-laws) ; or
- The award of any grant, loan or other financial support, contract or other agreement, or of any licence or other authorisation involving public funds;

other than the implementation of any such policy, programme, enactment or award or any matter of a technical nature only” <https://www.lobbying.ie/help-resources/information-for-lobbyists/quick-guide-to-the-act/>.

don't have the same budget and the same communication tools to influence the policy making process.

2 NGOs interaction with public authorities and their participation in the decision-making process

In May 2016, the Irish government decided to create the second Ireland's Open Government Partnership National Action Plan 2016-2018, which was published in December 2016¹⁴ and will run until the end of June 2018. This national action plan has four themes for action:

1. Increased Citizen Engagement, to improve policies and services
2. Increased Transparency, to better understand government activities and decisions
3. Open Data, for transparency and innovation
4. Anti-Corruption and Strengthened Governance and Accountability, to ensure integrity in public life

The publication of the final version was preceded by wide consultation via portal (www.ogpireland.ie), and through one of the Civic Forums. The presentation of Ireland's Open Government Partnership National Action Plan 2016-2018 is preceded by the statement made by Paschal Donohoe, T.D. Minister for Public Expenditure and Reform. This credo is relevant to recall taking into account findings of the visit realised by the Conference of INGOs.

"As stated in the initial consultation document, complex policy issues cannot be solved by Government alone. When citizens are engaged in public policy making it leads to more informed decisions. Policies and services can then better respond to people's needs. How the public might respond to policies and to new or reformed services will be better understood. Citizens and service users can better understand the reasons behind some decisions and have more confidence that things are moving in the right direction. The contributions that were made as part of that initial consultation are deeply appreciated. All, including those that were critical, are equally valid. They come from a belief that we can improve how the state conducts its business"¹⁵.

2.1 Some historical elements of the evolution of the civil society sector and of its relation with public authorities

The NGOs describe their history using the following words: After the war for independence (1922) and the subsequent decolonisation and civil war, the English left Ireland with no other effective local social networks than that of the Catholic Church. It was therefore a logical first choice by the state to fund the Catholic Church for doing welfare work. The fact that most of the welfare was distributed by organisations connected with the Catholic Church resulted in a situation where the Irish see welfare as *charity* rather than a *right*.

¹⁴ <http://www.ogpireland.ie/wp-content/uploads/2013/06/Final-National-Action-Plan-2016-2018.pdf>

¹⁵ Open Government Partnership Ireland website. <http://www.ogpireland.ie/>

Although there is a constitutional division between church and state, there is until this day an evident unwillingness on the state level to materialise this principle.

After the Second World War, the Irish were poor, relatively good education was free. In the 60s social partnership arrangements developed which, together with EU membership, led to economic growth and prosperity.

In reaction on this we learned from the Justice and equality Department that the social partnership system went maybe too far and eventually became rigid and perhaps exclusionary, because it only consisted of employers, trade unions and some selected NGOs. During the financial crisis, it was felt that there was insufficient representation. The social partnership system undermined democracy and governments' ability to propose policy changes that were needed and parliament's responsibility to take decisions.

From the point of view of NGOs, the 80s, 90s system of partnerships was seen as bureaucratic and closed to citizens but provided a pattern which at least ensured participation of certain main stakeholders. During 2008-2009 Ireland faced a really severe economic crisis – 15.2% unemployment at its peak – very difficult changes had to be made to social schemes. The rapid decrease of unemployment (to 6.4%) is noted since 2012.

The reception by Ireland of the EU structural funds, obliged the state to implement guidelines on public participation, transparency and openness. This period and practices seem to be ended. An important number of public consultation meetings are now made on the base of the ad hoc arrangements.

In the development of cooperation between NGOs and the state, a big rift grew at the beginning of the economic crisis in 2008, this resulted in ending of the social partnership arrangements. Ireland pioneered severe austerity measures that could not be performed within the setting of the social partnership system. The NGO community lost at that moment its relative strength. The ending Social Partnership Arrangements in 2008 (extended beyond employers and employees including also anti-poverty stakeholders, employer's trade unions, government, social pillar and farmers) ended a certain access by the CSO to the government and the policy makers. In addition, the concept of empowering local communities for development, so strong in Ireland, has been replaced by local government led initiatives which are more administrative than political.

During this period, the NGOs also experienced a breakdown of organisations that criticised government. The Irish society seems to have trouble to get used to the vocabulary related to "legal rights", including human rights language. It is a big change now, introduced by and in public debates on the same-sex marriage, traveller identity and abortion. The young peoples' role in this field is very encouraging. However, it seems that the migrant rights are still not considered to be human rights in the sense that migrants on border facilities do not have equal and adequate access to justice.

2.2 Current situation and issues

The NGOs tell us that after 2008 they've got the feeling that they are no longer seen as natural partners in the decision-making process and that they have to crowbar themselves more and more into negotiations. One of the consequences of this change can be the fact that civil society is weaker than in the past vis-à-vis to administrative powers. We observe that the different ministries and departments integrated in their functioning, the consultation with civil society sector. The most common form is a Forum, like the Foreign Policy Forums with civil society organised every few months or regular government forum with religious communities and non-believers. However, this more direct and open form of consultation is more and more perceived as a symbolic one. The NGOs wish to go further and have the entry point to the regular policy making process. The presentations of the work led by the stakeholders does not provide the feedback or even transparency of processes. The access to the ad hoc committees seems not transparent. The list of participants is not public, nor is the criteria for selection. As a result, one doesn't know who is legitimate to speak on behalf of communities. The NGOs also mention the very late invitation and too short deadline to submit comments (too much to comment in too little time). As they said, "This results in giving information to authorities that seemingly go into a black box and it will never be clear what information is used in what way".

Confronted with the observations from the NGOs the Justice and Equality Department informed us that - concerning the policy-making process - the ministry relies on a 2014 supporting voluntary activity White Paper on participation based on independence, respect and working together – recognizing input of civil society and the role of government making policy and decisions. Consultation is important in the work of the Department, maybe more so than in other Council of Europe member states. Especially in the field of disabilities, the exchange and cooperation between the Department and the many NGOs is more coordinated. Although also here the different NGOs operate very fragmented. It is a balancing act where no single NGO is favoured. NGOs are also involved in the roll-out of new policies and are actively consulted for feedback.

The government today does not have a clear majority, so its influence on the parliamentary system is less narrow than in the past.. The opposition parties wish to keep the current government in power and to avoid elections. This situation allows advocacy to be more vibrant in political debates in parliament than with the government.¹⁶ The NGOs find that this situation gives more openings for initiatives. More conservative tendencies are observed at the level of the public administration, which interprets is accused of interpreting human rights more narrowly in relation to legal obligations.

From the NGOs' point of view, if the government does not like an initiative, it uses delaying tactics and hides behind the secret advice of the Attorney General. One can argue whether advice of a public servant like the Attorney General, given in the process of law-making,

¹⁶ As a good practice was mentioned the Parliament Action Plan for Social Inclusion but the feedback on how the contributions made affect policy is weak. The authorities declared to looking into ways of showing the impact and giving feedback.

ought to be secret. This is certainly not everywhere in the case. An argument could be that these advices are paid for by the public, should be in the interest of the public and therefore should be shared with the public. Of course there are possible items that are so sensitive that direct publication is not advisable.

As to the confidential advice of the Attorney General, we learned from the Justice and Equality Department that the pre-legislative scrutiny of laws is solely in terms of the best interest of the state.. The arguments used by the Attorney General can be published in the government memorandum / explanatory memorandum, since there is no law forbidding the ministry to share this information. Openness and transparency could do a lot to dispel suspicion and mistrust.

Local government reform in 2013 did change some of the dynamic of the interaction between NGOs and public authorities at local level. The NGOs have more formal possibilities to share their expertise and the process seems to be more structured. This reform replaced the community forum by the public participation networks (PPN) which still just getting started but seems more able to resist political interference. Local participation in local decisions have increased, regeneration schemes at the community's level deal with multiple exclusions, with more local involvement than before.

From the point of view of the NGOs, Irish politics is traditionally burdened by clientalism and *nod and wink* behaviour. Under the influence of the European Union there was more transparency 15 years ago than nowadays. This situation is directly related to the tendency for casual or personal interactions between citizens, NGOs and lawmakers. The NGOs do not tend to contradict politicians that fund them.

The clientalist tendency has also another negative consequence related to the local interests. The electorate expects personal services from elected representatives and doesn't give much credit for long-term policy work. The voters perceive power to be in local government, because of services which are seen more like favours or charity than a right. This is also one of the clarifying factors why there is a reluctance within society to use the vocabulary related to the "legal rights" and human rights as the system of rights. In this regard, the strong human rights education in the schools and in the informal forms of education, should be considered.

2.2.1 Migrant's, asylum seekers and service-user's voices

Special attention should be given to the interaction between public authorities and the NGOs funded by migrants. The civil society sector organised itself by establishing The Irish Refugee Council (IRC)¹⁷ IRC is Ireland's only national non-governmental organisation which specialises in working with and for refugees in Ireland. The migrants' associations tried to put refugees on the political agenda, but were not invited anymore by the government for consultation. This advocacy work is essential, especially in the context where the migrants themselves feel that they are not heard at all. However, in a considerable recent advance

¹⁷ Irish Refugee Council <http://www.irishrefugeecouncil.ie/about/mission>

after a “long-called for change”, the Asylum Seekers now have direct access to the Ombudsman¹⁸. Similarly, the Ombudsman for children has the capacity to treat the complaints regarding the children’s situation. Before, the residents in direct provision centres had only the possibility to bring complaints to the Reception and Integration Agency, a part of the Department of Justice. Now, the complaints can be made about standards of accommodation, meals, cleanliness and facilities. The “residents in direct provision can also raise issues relating to public bodies including schools and local authorities, the Ombudsman will not be able to investigate issues relating to asylum, citizenship, residency or visas”¹⁹. Also, the asylum seekers can’t duplicate the asylum appeals process via the ombudsman. So what are the guarantees that the state does not abrogate its responsibilities to protect the asylum seekers when subcontracting to service providers? There are around 4000 people depending on accommodation and services, through direct provision.

The voices of service-users are better heard with the help of NGOs than alone, not by itself. However, the service-users have a strongest representation on management boards of the service provider organisations. Disadvantaged communities could make better use of the legal tools which exist at international level²⁰. There is a strong need to move from individualized silence to collectivized action which gives voice to vulnerable groups. In order to achieve this, the NGOs must work together in strong collaboration. The Human Rights Commissioner and/or Ombudsperson can play this important role, bringing the NGOs together and looking together at systemic problems or individual cases according to their mandate²¹. It is important to underline that under art 42 of the Irish Human Rights and Equality Commission Act 2014 (IHREC Act 2014)²² the public bodies “shall, in the performance of its functions, have regard to the need to eliminate discrimination, to

¹⁸ Normally (see: Kucsko-Stadlmayer (ed.): European Ombudsman Institutions. Springer, Wien-New York 2008. ISBN 978-3-211-72880-2), in Ireland, the person who wants to lodge a complaint, should seek contact with the local representative of Parliament who will bring his complaint under the attention of the parliamentary commissioner (= Ombudsman). Travelers, asylum seekers and other vulnerable groups do not vote and are therefore not relevant for the parliamentarian that should bring their complaint forward. The change in 2007 that these people can directly address the ombudsman is therefore very important.

¹⁹ *Asylum seekers given access to ombudsman* by Jessica Casey. Irish Examiner, Thesday, April 04, 2017 <http://www.irishexaminer.com/ireland/asylum-seekers-given-access-to-ombudsman-446924.html>

²⁰ As example we can mention the collective complaint No. 110/2014 related to access to housing. The complaint was introduced under European Social Charter by FIDH with strong support of the national Irish NGOs. For information, an annual need of 40,000 new houses is neglected since there are only 8000 houses built per year. The national mobilisation of civil society to rise the problem didn’t gave the expected results. This complaint was considered receivable by European Social Charter and is waiting for the final decision.

Another successful collective complaint was introduced regarding the Traveller accommodation, social, legal and economic protection of the Traveller’s children (no 100/2013). Both complaints are a good example of the cooperation and solidarity between NGOs. <https://www.ihrec.ie/ihrec-responds-to-european-committee-on-social-rights-finding-against-ireland-on-traveller-accommodation/>
<http://hudoc.esc.coe.int/eng#%7B%22fulltext%22:%5B%22Traveller%22%2C%22ESCDcType%22:%5B%22DEC%22%2C%22ESCDcIdentifier%22:%5B%22cc-100-2013-dmerits-fr%22%5D%7D>

²¹ During our visit, the representative of Human Rights and Equality Commission and Ombudswoman raised example of recent public consultation with rights holders facilitated by NGOs, in the context of monitoring process of the UN Convention on the Elimination of All forms of Discrimination Against Women (CEDAW). During the meeting with Department of Justice and Equality we learn about Gender equality strategy which is under development. This work is based on the open consultations in many towns, rural and urban environment, 155 participants and also written submissions. During the summer 2017, Human Rights and Equality Commission and Ombudswoman the public authorities will prepare the contribution to the UN Committee Against Torture, based on the consultation with NGOs on prison conditions. This is also the way for IHREC to contribute to the capacity building regarding the NGOs with less experience with treaty bodies. The NGOs know that IHREC has access as an official body that all civil society organisation may not have and can bring that added value to civil society reporting.

²² Irish Human Rights and Equality Commission Act 2014 http://www.ihrec.ie/app/uploads/2016/07/ihrec_act_2014.pdf

promote equality of opportunity and treatment of its staff and the persons to whom it provides services, and protect the human rights of its members, staff and the persons to whom it provides services". Where there is evidence of any kind of error, fault, inaccuracy, omission or failure by a public body, article 42 under 5 sub a and b gives to the Human Rights and Equality Commission the power to invite the public body to carry out a review in relation to the performance by that body of its functions, prepare and implement an action plan in relation to the performance by that body. This review or an action plan may relate to equality of opportunity or human rights generally, or a particular aspect of human rights or discrimination, in the public body concerned. This is an important capacity given to IHREC, in the context where, as the NGOs noted, there is a poor accountability tradition and monitoring systems are absent.

3 The Citizen's Assembly – an example of deliberative democracy and a constructive challenge for the representative democracy

3.1 Origins

The Citizens' Assembly in 2017 broadly follows the model used for the previous Convention on the Constitution. The

establishment of the Convention on the Constitution was approved by Resolution of both Houses of the Oireachtas in 2012. The Convention's membership comprised 66 randomly-selected citizens, 33 politicians from both Houses of the Oireachtas and the Northern Ireland Assembly and an independent chair. The Resolution set out eight specific topics that the Convention was asked to consider and report on to the Oireachtas. The Convention also examined two matters which it selected for itself. The previous Government responded in the Dáil to all nine of the Convention's Reports, The responses are all available online at www.oireachtas.ie.

The [Programme for a Partnership Government](#) committed the Irish Government elected in 2016 to 'the establishment of a Citizens' Assembly, within six months and without participation by politicians, with a mandate to look at a limited number of key issues over an extended time period.' The Assembly's terms of reference were agreed by the Houses of the Oireachtas in July 2016.

The Citizens' Assembly is asked to consider the following matters and to make such recommendations as it sees fit and report to the Houses of the Oireachtas:

- (i) the Eighth Amendment of the Constitution;
- (ii) how we best respond to the challenges and opportunities of an ageing population;
- (iii) fixed term parliaments;
- (iv) the manner in which referenda are held; and
- (v) how the State can make Ireland a leader in tackling climate change.

The Assembly was established in October 2016 and on 21st April 2017, the 5th meeting of the Citizen's Assembly took place. It was the final meeting on the Eighth Amendment of the Constitution (abortion). The Members of the Citizens' Assembly recommended that abortion should be permitted in the State in a wide range of circumstances. The final report of this topic meeting is under preparation by the Chairperson. Once the report is finalised, it will be circulated for information to the Assembly members before being presented to the House of the Oireachtas. It is the Chair's intention to finalise the report on this topic by the end of June 2017.

3.2 Methodology of work

The Citizen's Assembly is composed of 99 citizen members of the Assembly, in addition to the Chairperson. Members were chosen at random to statistically represent the population and the views of the people of Ireland, and is broadly representative of society as reflected in the Census, including age, gender, social class, regional spread, etc. Members must also be on the electoral register to vote in a referendum²³. The expenses of attendance are covered (including child care arrangements) by the government. The secretariat is established by a resolution of both Houses of Parliament, paid for by PM Office. The secretariat is independent and works in a non-governmental building.

The Assembly elected the Steering Group to assist with planning and operational issues associated with the work programme. The Steering Group consists of the Chairperson and a representative group of Assembly members elected by the Assembly members. At present the Group comprises 11 members.

Since 15 October, the Citizen's Assembly had 5 weekend meetings. The 5th one ended the cycle of work on the Eighth Amendment of the Constitution (abortion).

Generally speaking the format for the meetings is as follows:

- Introductory remarks by the Chairperson
- Expert presentations
- Presentations from civil society and advocacy groups
- Consideration of submissions by Members of the public
- Question and Answer Sessions and Debates
- Roundtable discussions

Deliberation by members is a cornerstone of the Assembly exercise. Roundtable discussions are built into the timetable for each Assembly meeting to allow the members the opportunity to further examine, discuss, debate and enhance their understanding of the material they are considering. To assist with this discussion, facilitators and note-takers are present at each table. Roomaxx Ltd were selected to provide this service.

²³ Citizen's Assembly website <https://www.citizensassembly.ie/en/About-the-Citizens-Assembly/Who-are-the-Members/Red-C-Methodology-Document.pdf>

During all work of the Citizens' Assembly and on each topic, the civil society representatives, citizen organisation can make a written submission to the Assembly. This submission is taken into account during the deliberative work led by the Assembly. All meetings of the Citizen's Assembly are live streamed and all submissions are published on the website. All work made by Citizen's Assembly is accompanied by the Expert Advisory Group which assist the work of the Assembly in terms of preparing for information and advice.

In partnership with the Irish Research Council, the Citizen's Assembly produced a call for proposal for a research leader to study and evaluate the effects and impact of the methodology of the Assembly's work. The evaluation team awarded the contract to Professor David Farrell from University College Dublin. Professor Farrell is working in collaboration with Dr Jane Suiter from Dublin City University on this research. The research is carried out through the use of surveys which are completed by the Assembly members, typically at the start and end of each weekend meeting.

3.3 Discussion

Following these deliberative discussions, all matters before the Assembly are voted upon and recommendations based on the majority view of the Members and are made to the Houses of the Oireachtas. The Government will then provide a response to each recommendation made by Citizen's Assembly and, if accepting the recommendation, will indicate the timeframe it envisages for the holding of any related referendum. The success and credibility of this deliberative body will be determined by taking into account by decision makers and elected representatives the recommendations made by the citizens.

The initiative is based on a partnership with parliament and government. Even if some critics say that the authorities have initiated this deliberative practice in order to remove the subject from their own agenda and not take decisions by themselves, the social trust to the authorities will be tested by the implementation of the recommendations made by Citizen's Assembly. The the media have followed closely the work led by the Citizen's Assembly, further ensuring that the implementation of these recommendations will be a shared and public responsibility.

One of the challenges and, in the same time the strength of the organisers, is their commitment to transparency. It is a key to avoiding appearances of lack of objectivity or possibility to manipulate the outcomes for this practice is to maintain the representative attendance. In addition, the finding is that the certain cohorts are harder to retain, especially the young men. Since the inaugural meeting on 15th October, twenty-four of the original members have been replaced (during 5 weeks). This requires special attention and adjustment throughout the work process. However, the strength is not the number of people involved (the number of written submissions greatly increases the voice represented -13000 submissions for 8th amendment by email and post), but the representivity and especially the quality of the process produced in a rigorous way, accompanied by experts and academic researchers. The consultation and exchanges with NGOs are required between the thematic session, in order to inform and describe the work plan for each topic.

Recommendations

Compared to some of the visited countries, we wish to underline the existence of a genuinely enabling environment for the NGOs in Ireland. It is important that the Irish tradition to promote the community-based and advocacy work continue to progress in respect of the international standards. The recommendations formulated after our fact-finding visit have this objective.

We recommend to the public authorities and decision makers:

- To maintain the Citizen's Assembly as a deliberative body and disseminate this practice at an international level.
- To reinforce the structure for dialogue with NGOs. The ad hoc consultations should be an additional way to interact and not the principal one.
- To clarify a definition of political activity of the NGOs in respect of the Council of Europe standards (see the future Council of Europe Guidelines related to civil participation in political decision-making²⁴).
- To reinforce the statutory right to advocacy and implement the Recommendation of the Committee of Ministers on the legal regulation of lobbying activities in the context of public decision-making²⁵
- To provide meaningful and comprehensive feedback to the NGOs after the public consultation process.
- To establish the objective and transparent criteria of participation in the public consultation meetings
- Adopt the legal or constitutional changes to prevent discrimination in access to schools.
- Strengthen the implementation of the Public Participation Networks, one of the aims of the Ireland's Open Government Partnership National Action Plan.
- Reinforce the assistance to the vulnerable groups and individuals (system users) that experience difficulties to exercise their legal rights, as migrants, asylum seekers and persons with disabilities.
- Improve transparency of organisations delivering public services to avoid the clientalistic approach
- To map out the (social and economic) size, variety and impact of civil society (for example, by the Central Statistics Office) and, maybe on the basis of comparative international research, develop ways to enhance and strengthen cooperation.

We recommend to NGOs to:

- Create platforms, umbrella organisations or switchboards for collecting evidence-based data to monitor the participation of the NGOs in public decision-making process.
- Strengthen the solidarity and coordination between the NGOs.

²⁴ <https://rm.coe.int/16802eede1>

²⁵ https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680700a40

- Contribute to the civic education, human rights education and raising awareness among the general public about access to rights

We recommend to the Conference of INGOs of the Council of Europe to:

- Facilitate the access of Irish NGOs to the various monitoring mechanisms at the Council of Europe level
- Draw international attention to the need of the deliberative democracy and disseminate the Citizen's Assembly as the one of the best practices to implement.

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