



Civil participation in the decision-making process

Fact finding visit to “the former Yugoslav Republic of Macedonia”

26-27 MARCH 2018

REPORT

Table of Contents

Introduction.....	3
Legal framework of the functioning of NGOs and its participation in political decision-making	4
General overview	4
Legal framework for the functioning of NGOs	6
Transparency in the access to funding.....	8
Interaction between the Government, Parliament, Local Self-government and NGOs.....	11
From Participation to Strategic Partnership	14
Social Entrepreneurship viewed as a way to increase NGOs' Independence.....	15
Ombudsman mechanism for civil control	16
Conclusion	17
Recommendations	18
For public authorities:	18
For NGOs:	18
For the Conference of INGOs:	19
Sources	20

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. 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 political decision-making.

The definition of NGOs that applies to the activities of the Conference of INGOs is the one used in the Recommendation 2007(14) of the Committee of Ministers of the Council of Europe to the Member States. According to this document, “the 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” (Art I.1).

In this context participation is considered as the associated right to freedom of association. The references regarding international standards and best practices mobilised during each fact-finding visit are as follows:

- European Convention for the Protection of Human Rights and Fundamental Freedoms;
- Recommendation CM/Rec (2007)14 of the Committee of Ministers to member States on the legal status of non-governmental organisations in Europe;
- OSCE/ODIHR-Venice Commission Guidelines on Freedom of Association;
- Recommendation CM/Rec (2001)19 of the Committee of Ministers to member States on the participation of citizens in local public life;
- Guidelines for civil participation in political decision-making, adopted by the Committee of Ministers of the Council of Europe on 27 September 2017;
- Conference of INGOs’ Code of Good Practice for Civil Participation in the Decision-Making Process (2009);
- UN International Covenant on Civil and Political Rights, signed on 16 December 1966, entry into force 23 March 1976.

Each fact-finding visit is followed by a report which highlights the important issues for the NGOs and the representatives of the Ministries or other public agencies at the time of the visit and the specific socio-political context of the country. The final recommendations are formulated at the end of the report to draw attention to the issues related to the exercise of the right to freedom of association and associated rights, and the right to participation as observed in the visited Member State.

The Conference of INGOs carried out a visit to Skopje from 25-27 March 2018, hosted by the European Policy Institute, who organised the logistical support and the two meetings with all together 47 NGOs active in the field of democracy and rule of law, the fight against corruption, the reform of the public administration, the fight against discrimination, socio-economic issues, social cohesion, media reform, education and youth policy. A specific field visit was organised at the LGBTI Support Centre Headquarters.

The meetings with public authorities were organised with the help of the Permanent Representation of “the former Yugoslav Republic of Macedonia” to the Council of Europe. The Conference of INGOs delegation met with the Minister of Information Society and Administration, the Deputy Minister of Justice, the Delegation to the Parliamentary Assembly of the Council of Europe, the Ombudsperson and the Delegation of the European Union in Skopje. The delegation of the Conference of INGOs was composed of Anna RURKA, President of the Conference, and Christoph SPRENG, Vice-President of the Conference of INGOs.

Legal framework of the functioning of NGOs and its participation in political decision-making

General overview

2016 was very animated and disruptive year for the NGO sector in “the former Yugoslav Republic of Macedonia” with the “Colourful Revolution” and the serious pressure that followed it. In April 2016, the controversial decision taken by President Gjorgje Ivanov to drop the investigation against the former Prime Minister Nikola Gruevski and other politicians who were charged with crimes or who were under investigation¹ met with the opposition of the NGO sector and several thousand people who initiated the so-called “Colourful Revolution”². From 2016 until May 2017, the NGO sector was a victim of harassment and inspection provoked by the so-called “de-Sorosization”³ of civil society in the country. In February 2017, state institutions carried out a series of inspections and financial audits of around 20 NGOs that had participated in a pre-election civil campaign “We decide”, which sought to improve public understanding of the electoral system and rules. After serious pressure from pro-governmental media and pro-governmental NGOs the allegations were considered as unfounded by the Ministry of Interior⁴. The independent NGOs were confirmed in their rights⁶.

After the parliamentary elections held on 11 December 2016, a new SDSM-led Government was established in June 2017. The newly formed Government of freed the country from its previously hostile political environment for NGOs. This new context gave a new hope for

¹ “Macedonia: 'Colorful Revolution' paints raucous rainbow” <https://www.dw.com/en/macedonia-colorful-revolution-paints-raucous-rainbow/a-19203365>

² Chromo Skopje. The Colourful Revolution in Skopje <http://www.fabrica.it/chromo-skopje-2/>

³ VMRO-DPMNE announces “the start of desorosization process”. Meta.mk Skopje, 13 January, 2017 <http://meta.mk/en/vmro-dpmne-announce-desorosization-process/>

⁴ “Spasovski: All investigations into civil society organizations have now been officially closed” <http://meta.mk/en/spasovski-all-investigations-into-civil-society-organizations-have-now-been-officially-closed/>

⁵ “Investigations against NGOs have been completed – no crimes were found, says Spasovski”. Meta.mk Skopje, 17 November, 2017 <http://meta.mk/en/investigations-against-ngos-have-been-completed-no-crimes-were-found-says-spasovski/>.

⁶ ‘NGOs demand that inspections and political persecution stop’ <http://meta.mk/en/ngos-demand-that-inspections-and-political-persecution-stop/>

more democratic changes and policies. The Government's Work Plan called "*Plan 3-6-9*" was adopted in 4 July 2017 after high-level consultations with international institutions and the NGO sector. In the Government's Work Plan the political will and attitude toward NGOs is expressed by following sentences: "The Government treats the civil society as an equal partner and corrector of its decisions, with the full right to participate in policy-making, to give suggestions and to criticise. The Government intends to make the dialogue with the civil society continuous, transparent and fully inclusive"⁷. In 2017, the government organised a public call for civil society to contribute to the preparation of the Government Work Programme. Following the announced call, several initiatives were submitted.

According to the 2016 CSO Sustainability Index⁸, the official number of CSOs registered in the Central Register of "the former Yugoslav Republic of Macedonia" as of December 2015 was 14,245. However, only 4,148 of these submitted annual accounts or financial statements and were therefore considered active.

The NGOs met during the visit had a lot of experience and skills in networking and in result-oriented work, either on an ad hoc or on a more permanent basis. The participatory approach within the NGO sector seems to be very strong. Organisations are implementing various capacity-building programmes at the local level, especially with regard to gender equality mainstreaming. However, in this field there are still pressing problems, such as access to rights and services by women and persons with disabilities living in the rural zones, an increasing segregation in the education system⁹, as well as the necessity to establish an action plan regarding the implementation of the Istanbul Convention. Regarding the latter, according to several NGOs, there is a need to create a specific agency to reflect on standards and their implementation¹⁰.

The visit of the Conference of INGOs to Skopje took place during a time of enthusiasm regarding implementation and intensification of the dialogue between authorities and NGOs. The current general social and political climate is propitious to implementing an inclusive policy. However, important challenges remain as well. 46% of the citizens consider the possibility to influence decisions affecting the local municipalities as very important. However, in 2016, only 3,1% thought that they could have a great influence, 12% of them considered their participation as a moderate influence, 69,2% considered itself not to have any influence at all. The same percentage of the population in the survey considers to have no influence at the national level regarding the debate on the future of the Country. Regarding these results, "only education, out of all socio demographic variables, occurs as a significant indicator. In 2012 and 2013, the citizens with lower education were more

⁷ Vaska Leshoska Tanja Maleska Jana Korunovska Srbijanko Neda Korunovska Damjan Zdravev Filip Dimchevski Blazen Maleski (2016). "Citizens and their communities. Civic engagement, activism and volunteering in Republic of Macedonia, Skopje. The data for this study is collected via computer assisted telephone interviews (CATI) and the five-year presentation is based on responses from a total of 5967 respondents.

⁸2016 Civil Society Organization (CSO) Sustainability Index for Central and Eastern Europe and Eurasia <https://www.usaid.gov/europe-eurasia-civil-society>

⁹ Council of Europe Commissioner for Human Rights during his visit in "FYROM" in February 2018 "was particularly concerned about increased separation between ethnic Macedonian and ethnic Albanian children, who have little opportunity to meet, learn and play together because the education system is divided according to language of instruction"

¹⁰ "The former Yugoslav Republic of Macedonia" ratified the Istanbul Convention in March 2018. The Convention is entered into force on 1 July 2018.

convinced in their political power than the citizens with higher education”¹¹. It was hoped that the planned referendum regarding the name of the country would contribute to rebuilding public trust in the state institutions.

To increase the volunteering in society should be an important priority for the state's institutions and local government. “Most grassroots CSOs depend solely on volunteers, while professional CSOs use very few volunteers. Official statistics on volunteering are not available, although according to the 2016 World Giving Index, just 7% of respondents reported participating in voluntary action in 2015, compared to 9% in 2014 and 14% in 2013”¹². Stimulating civic engagement should be a priority for a new dynamic government. This priority needs to be addressed with specific policy measures that help citizens to achieve positive results. Interactive media campaigns could inform citizens about participation possibilities. A specific legal framework for youth, recognising their experience as volunteers in formal education, professional training and market access are necessary¹³. As such, it is important to emphasize that the country has a dynamic National Youth Council connected to international bodies, which through on-going projects and campaigns (as “Move your fingers” or platform Mladi.mk¹⁴) support civic associations and mobilise citizens for social change. During the visit, youth organizations underlined a good example of participation, consisting of trilateral cooperation between parliament, government and the NGO sector. For youth organization the co-management body of the Joint Council on Youth of the Council of Europe constitutes the example to follow.

Legal framework for the functioning of NGOs

Freedom of association is guaranteed by the Law on Association. Restrictions apply if programmes and actions are “directed at the violent destruction of the constitutional order of the Republic of Macedonia, encouragement and incitement to military aggression and stirring ethnic, racial or religious hatred or intolerance, undertake terrorism-related activities, undertake activities that are against the Constitution or the Law and violate the freedoms and rights of other people” (Art 4). Article 14 guarantees the freedom of expression by NGOs and their participation in public debate and public affairs.

The independence of NGOs is guaranteed by article 10 of the Law on Associations and Foundation:

“The organisations shall be independent in the governance, determination and fulfilment of the goals and activities stipulated by their statute in accordance with the Constitution and the Law”.

¹¹ Overview of the State of play on the implementation of Plan 3-6-9 as of 15.11.2017
<http://vlada.mk/sites/default/files/dokumenti/Overview%20of%20the%20state%20of%20play%20on%20the%20implementation%20of%20Plan%203-6-9%20%28EN%29.pdf>

¹² 2016 Civil Society Organization (CSO) Sustainability Index for Central and Eastern Europe and Eurasia
<https://www.usaid.gov/europe-eurasia-civil-society>

¹³ The Law on Volunteerism was adopted in 2007. Recently, the National Youth Strategy 2016-2025 was adopted as policy roadmap.

¹⁴ Youth National Council <http://www.nms.org.mk>

The Law on Association and Foundation (LAF) was adopted in 2010. “The registration process is fast, inexpensive, and easy to complete”¹⁵. The operation of foreign associations and foundations is also regulated by the LAF. All kinds of organisations under this law can receive funding, among others, from membership fees, donations, income generating activities, public funds from the government of “the former Yugoslav Republic of Macedonia” and local self-government.

During the visit, the delegation learnt that the Ministry of Justice had the intention to improve several dispositions included in this law or prepare a new draft at the end of the year. The necessity to update the Law on Association and Foundation was also underlined by several NGOs during the visit. Specifically, article 13 seems to be restrictive regarding the international¹⁶ standards on freedom of association and associated rights. According to the law from 2010,

“Organisations cannot perform activities of a political party, i.e. they cannot provide direct or indirect financing to a specific political party and to influence elections. (2) As influencing elections in the sense of paragraph (1) of this Article, shall be considered participation of organisations in elections and election campaign of a specific political party and direct or indirect financing of the election campaign of a political party” (art 13)¹⁷.

From the civil society perspective, “it is necessary to avoid ambiguity in interpretation and enforcement of legislation on the part of state institutions”¹⁸. The political activities should be defined in accordance with the Council of Europe's standards¹⁹. The rights of NGOs to engage in the campaign during the electoral period should be respected on the basis of the appropriate regulations and be transparent, in order to allow civil society groups to share their critical analyses, to influence the decision-making process, and to advocate for the fundamental rights, for transparency and accountability of public organizations, including political parties, etc. The aim should be to define the activities and not to attribute to NGOs the image of party political organizations.

The LAF allows CSOs to perform economic activities that are in line with their statutory goals. However, the NGO sector underlines the necessity to adjust this regulation included in the LAF with the Tax Laws. NGOs can participate in public procurement at the national and local levels under the same conditions as other entities. Nonetheless, they cannot receive a special benefit as non-profit entities. The profit making entities have a better regulation than CSOs, specifically in the Tax exemption regulations. The Law on Donations and Sponsorships for Public Activities (adopted in April 2006) introduced the possibilities for companies and

¹⁵ 2016 Civil Society Organization (CSO) Sustainability Index for Central and Eastern Europe and Eurasia
<https://www.usaid.gov/europe-eurasia-civil-society>

¹⁶ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Association, Recommendation 2007(14) of the Committee of Ministers of the Council of Europe

¹⁷ Consolidated text on Law on Associations and Foundations, published in “Official Gazette of the Republic of Macedonia” no. 52/2010 and 135/2011).

¹⁸ Blueprint developed by CSOs for urgent democratic reform
<http://www.epi.org.mk/docs/BLUEPRINT%20DEVELOPED%20BY%20CSOs%20FOR%20URGENT%20DEMOCRATIC%20REFORMS.pdf>

¹⁹ Expert Council on NGO Law of the Conference of INGOs Regulating Political Activities OF Non-Governmental Organisation, December 2015.
<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680640fc2>

individuals to support CSOs undertaking activities of public interest (tax exemptions and deductions) but according to the TACSO (Technical Assistance for Civil Society) report of 2014, there were important challenges in the implementation of the Law on Donations and Sponsorships linked to “unclear definition and interpretation of the key terminology and harmonisation with other laws; lack of objective criteria for determining public interest; complicated procedures for the implementation of the tax exemption; and allocated competences in several institutions”²⁰. In its 2016 report, TACSO noted that “despite the absence of tax benefits/benefit for the CSOs in the legislation, the experience of the CSOs has shown that the procedure for VAT exemption continued to be used for part of their projects, which are funded by money obtained based on donation agreement between “the former Yugoslav Republic of Macedonia” and foreign donors”²¹. In 2017, the Law on Personal Income Tax was amended with some positive regulations regarding the NGOs’ obligations. Further changes are needed, as mentioned in the Roadmap for Development of Civil Society Organizations 2017-2022 and in the Criminal Code.²²

Transparency in the access to funding

Article 49 of the LAF mentions the mandatory publication by state administration, municipalities and municipalities in the City of Skopje on their websites of the organizations that received funds and the goals for which the organizations have received these funds. The tax and customs benefits shall not be applied for the funds if they were used contrary to Article 12²³ and 13²⁴ of this Law.

The sustainability of the NGO sector remains a crucial challenge for the sector itself as well as for the public authorities. Around 60% of active NGOs received funding from international donor funds (USAID, EU, Embassies, etc.). A lot of NGOs combined different sources of funding, including government grants, business sector, membership fees, and individual donations. Regarding the funding provided by the local self-governments, the TACSO report (2016) highlighted that the amount is not more than 1% of the municipal budget. According to MCIC’s 2016 Monitoring Matrix report for Macedonia²⁵, 22% of respondent CSOs (N-156) received state support from the national budget, and such support accounts for more than

²⁰ TACSO (2014) Needs Assessment Report Former Yugoslav Republic of Macedonia/

²¹ TACSO (2016) Needs Assessment Report Former Yugoslav Republic of Macedonia

²² “To amend and improve legislative framework on operation of associations and foundations (tax regulations, law on accounting for CSOS, recognition of the status of informal initiative, networks, as well as revision and accurate definition of Article 13 from the Law on Associations and Foundations, non-partisan operation, as well as exemption of authorized representatives from CSOs from definition of responsible officers given in Article 122, paragraph 4 from the Criminal Code).”

²³ 1. Organizations cannot be established for the purpose of profit generation. 2. Organizations may perform profit generating activities, if the activity is related to the goals determined by the statute. 3. If profit has been generated from the operations of organizations, it has to be used for fulfilment of the goals determined by the statute. 4. The generated profit from paragraph (3) of this Article cannot be allocated among the founders, members, members of bodies, directors, employees, or any other person associated with them.

²⁴ 1. Organizations cannot perform activities of a political party, i.e. they cannot provide direct or indirect financing to a specific political party and to influence elections. 2. As influencing elections in the sense of paragraph (1) of this Article, shall be considered participation of organizations in elections and election campaign of a specific political party and direct or indirect financing of the election campaign of a political party.

²⁵ “Monitoring Matrix Country Reports for Macedonia” <http://www.balkancsd.net/monitoring-matrix-country-reports-for-macedonia/>

10 percent of the budgets of only 12 percent of respondent CSOs". The important point expressed by NGOs during the meetings concerns the necessity to intensify coordination between the donors as well as the respect of the level of independence of NGOs. The impact of the funding programme on the "landscape" of the NGO sector that adapts its activities to the funding sources is generally known. Lack of cooperation between the donors can provoke more competition rather than cooperation. Very specialized and selective funding programmes formatting civic space does not leave them the choice to carry out the activities that they themselves find useful for society. In this context, more open approaches are necessary, ensuring the bottom-up approach, which currently seems to be missing. There is a need to empower grassroots local organizations and service providers in the whole country, not only those concentrated in Skopje. The proposal would be to create more local branches and space where local grassroots NGOs can establish a working relation with other NGOs and other individuals in order to ensure the flow of information, improve the know-how and capacities of local government. At the local level, there are the same challenges: build a local infrastructure for networking which can facilitate the NGOs' work and lead to more open calls and direct consultation. This issue concerns youth organizations in particular. Local youth councils and their budgets come under the responsibility of municipalities. Students and youth organizations are more concerned by logistical constraints that hinder participation and prevent them from attending consultative meetings.

EU funding is provided principally through the Instrument for Pre-Accession Assistance (IPA). The Horizontal Facility Programme²⁶ proposes technical assistance to the Government in order to create an enabling environment for Civil Society. One of the main objectives mentioned by the representative of the Ministry of Justice is a standardization of state funding to civil society organizations. During the visit the EU delegation in Skopje highlighted two new developments which will come in over the next years. They consist in providing more support for the functioning of middle-sized NGOs throughout the country and on supporting the network's platforms to cooperate with public institutions and business communities for an enabling environment for NGOs. During the Conference of INGOs' visit, several NGOs underlined the need to strengthen partnership with the business sector and employers' associations. This need was raised above all by the service provider NGOs.

In the past, the government was considered as an important source of CSO funding. On average, between 3.8 and 6.2 million EUR were allocated to CSOs annually¹⁰. However, as it was underlined by the NGOs, the direct funding was not transparent. It was allocated to arbitrarily pre-selected beneficiary organizations and only a very few state institutions distribute funds through open calls to tender. Allocations were made under the budget line to NGOs, political parties, religious communities and others non-state actors. In May 2017, the Unit for Cooperation with NGOs of the General Secretariat published detailed information about the decision to allocate the governmental funds to support specific civil society organizations²⁷. However, the new government cancelled this decision which had been taken in the pre-election period by the previous government. It was decided to notify

²⁶ This programme is a co-operation initiative between the Council of Europe and the European Union for South East Europe. The Horizontal Facility is a three-year programme, implemented by the Council of Europe since May 2016. One of the actions aims to improve the accessibility of free legal aid in "The former Yugoslav Republic of Macedonia", engaging the Ministry of Justice, lawyers, the country's Bar Association and other NGOs

²⁷ ВЛАДА НА РЕПУБЛИКА МАКЕДОНИЈА Службен весник на РМ, бр. 60 од 23.5.2017 година
http://www.nvosorobotka.gov.mk/sites/default/files/Odluka_60_2017.pdf

the State Audit Office to reconsider the previous decision on the allocation of these funds, and if there was a basis for abuses, to open an investigation into an attempt for unintended spending of budget money²⁸.

More transparency is needed from the state institutions regarding funding procedures, deadlines and recipients. “The former Yugoslav Republic of Macedonia” established the Code of Good Practices for Financial Support to Civil Society Associations and Foundations. However, as other codes, this document is not binding for public administration. The public consultation in the creation of a periodic schema for funding could be a good way for the public authorities to answer the real need of the citizens and NGOs (i.e., participatory budgeting, social audit). According to the survey led by the IBP (International Budget Partnership), the score obtained by the Country in 2017 gives a lot of space for improvement regarding the transparency, public participation and budget oversight²⁹.

²⁸Владата донесе одлуки со кои помага на земјоделци, спречува злоупотреби на буџетски пари и ќе го заштити меѓународниот углед на Македонија <http://vlada.mk/node/12938>

²⁹ International Budget. Open budget survey - Results. <https://www.internationalbudget.org/open-budget-survey/results-by-country/country-info/?country=mk>

Interaction between the Government, Parliament, Local Self-government and NGOs

Civil participation in the policy-making process is regulated by several documents at Governmental and Parliamentary level. These are “the Constitution of the Republic of Macedonia, the Law for Referendum and Other Forms of Direct Vote of the Citizens, the Law on the Government, the Law on Organization and Operation of State Administrative Bodies. There are also many bylaws that regulate this issue, such as: Rulebook of the Government of the Republic of Macedonia, Strategy for Cooperation of the Government with the Civil Sector, Code of Good Practices for Participation in the Civil Sector in Policy Making Process, Methodology for Regulatory Impact Assessment, and the Guidelines for the Ministries”³⁰.

In 2004, the Government established the Unit for Cooperation with NGOs within the General Secretariat of the Government. Since 2007, the Government structured its interactions on the basis of the Strategies for Cooperation of the Government with Civil society and its Action Plans. The important accomplishment mentioned in the Strategy 2012-2017 is a creation of the Code of Good Practice for Participation of the Civil Society in Policy Making Processes. However, in the civil society perspective there is a strong need to update this document in the coming years. Some criticisms were made regarding the lack of the implementation of the Strategy. The NGOs noted an important gap between the goals mentioned and their implementation, especially by Local Government. The realization of such goals needs to strengthen the capacities of civil servants and of NGOs at the local level, by inclusion of vulnerable groups of citizens affected by the decisions. The Unit for cooperation with CSOs should be strengthened and the public administration should increase its responsiveness to the citizens and NGOs. There is a strong correlation between the level of responsiveness of public administration and their good collaboration with citizens and civil society. In the countries where such level is high, the people feel respected by the public institutions (administration). In return, they undertake easier civic actions and contribute to the common good. Democracy requires a high level of responsiveness from administrators, taking into account that the citizens are the formal “owners” of the States and the accountable public institutions are to serve the general interest of the citizens³¹. This vision was shared during the meetings with NGOs. Our interlocutors agreed that it is not only the quantity of the answers received which is important, but their quality and substance. From the NGOs’ point of view, the development of the future reforms should better include the research findings and research projects in the reform process and in the planning phase. The NGOs’ potential in the research fields should be regarded as a baseline for public policy. The research led by NGOs fills the gap between grass root level and academic analyses. The aim should be to link the theoretical concepts, frameworks and research findings with daily reality and practice.

³⁰ S Ogenovska, S Trajkovska. The enabling environment for civil society development in Macedonia. Report2016. Balkan Civil Society Development Network.

³¹ Eran Vigoda (September/October 2002). From Responsiveness to Collaboration: Governance, Citizens, and the Next Generation of Public Administration. Public Administration Review, Vol. 62, No. 5, pp.527-540

From Responsiveness to Collaboration: Governance, Citizens, and the Next Generation of Public Administration

All NGOs underlined the necessity to be involved in the process of policy decision-making at the earliest stage of the process. The second key element is the feedback made by public institutions regarding the acceptance or refusal of the contributions received. Only through the openness of the consultation process can the transparency of the decision be improved. Most of the NGOs had an experience of sporadic participation. NGOs noted a lack of coordinated and synchronized approach in policy planning and management. The policy calendar of all public institutions should be referenced with all consultative meetings regarding the laws, taking into account the time constraints. The planning and predictability of the process determines the quality of contributions sent by NGOs. These observations questioned the manner to conduct the Regulatory Impact Assessment (RIA)³² by the public authorities. The RIA seems to be one of the most important instruments for civil society. The latter formulated strong criticism regarding the lack of Regulatory Impact Assessment in preparation of some draft laws³³.

According to the NGOs, a low level of RIA awareness between public authorities and administration seems to be an obstacle for direct involvement of different stakeholders and democratic players. The RIA should cover existing policies, as well as prospective and strategic draft public documents.

Inscribed in the context of Private-Public Dialogue (PPD), regular, open, transparent and sustainable public consultations should be positioned as a strategic means for public authorities, allowing them to identify and to collect useful information and draft good quality and effective regulations. This is a way to improve the public services and increase the accountability of the public institutions. Some NGOs mentioned positive examples in the case of the amendments of the Law on Asylum and International Protection (April 2016) when most of the contributions were included³⁴, and also in relation to the Law on Prevention and Protection against Discrimination amended in 2016³⁵. However, most of the time, the participation process is very fragmented and irregular, depending on the sector and the Ministry involved. The process should be predictable, accountable, so that consultations would be followed up by feedback from the public authorities regarding the content, process and their final decisions.

In 2016, the Government decided to create the Council for Cooperation between the Government and the Civil Sector. At that time, the election to the Council was boycotted by numerous NGOs³⁶. In July 2017, the new Government reaffirmed this orientation and started to conduct a dialogue with NGOs in order to amend existing regulations. Finally, the Unit for

³² Since 2009, RIA is implemented in Macedonia. In 2017, the government obliged all the ministries to follow the RIA procedures and the publish the documents on ENER portal. Since 2011, the Ministry of Information Society and Administration (MISA) has a responsibility for implementation, coordination and oversight of RIA

³³ As it was a case on 14 March 2018 - the day when the Parliament voted the Law on the Use of Languages for the second time, aiming to establish the use of the Albanian language in official communications. Source: IDSCS Institut for Democracy Societas Civilis Skopje, Konrad Adenauer Stiftung Foundation, "Hurdling on 3, 6 and 9. The recommendation has been secured, what is next?" Monitoring of implementation of the last three months of the 3-6-9 Plan, May 2018

³⁴ However, according to the Helsinki Committee of Macedonia, some provisions of the law presents still some inadequacies to the international standards. <http://www.mhc.org.mk/analysis/518?locale=en#.W142LvZuJ-U>

³⁵ For more information, Venice Commission Opinion No. 915 / 2018, Strasbourg, 19 March 2018

³⁶ Да се запре изборот на претставници во Советот за соработка на Владата со граѓанскиот сектор Monday, 06 June 2016 11:35 <http://www.mcms.org.mk/mk/vesti-i-javnost/vesti/1783-da-se-zapre-izborot-na-pretstavnici-vo-sovetot-za-sorabotka-na-vladata-so-gragjanskiot-sektor.html>

Cooperation with NGOs, within the General Secretariat of the Government launched a public call for the selection of 16 civil-sector representatives from associations and foundations³⁷.

Concerning the e-participation tools, the government established two e-platforms: e-democracy and ENER-Single National Electronic Registry of legislation (www.ener.gov.mk) in order to improve transparency and inclusion in the legislation process. "According to the Government Mirror Report for 2015, only 11% of the Ministries published the information for draft laws on the web pages like ENER and e-democracy, while 89% of them are using other forms of informing the public such as direct meetings, promotional events, press conferences, workshops, etc."³⁸ Currently the Ministry of Information Society and Administration manages the ENER where all Ministries should publish the draft laws, bylaws, and consolidated texts of laws for public consultation. Through this e-platform, the non-state actors can submit electronically their comments and proposals directly to the competent institutions. The NGOs see the usefulness of their contributions via this platform. The drafts are improved after consultation when the documents enter into the parliamentary procedure. In addition, in August 2017, the Government decided to increase the minimum number of days for consultation on ENER from 10 to 20 days. The Government also initiated a practice of publishing its decisions and meeting agendas, thus replying to a long-standing public demand. According to the NGOs, the publication of the meeting's agenda should be combined with a consultative meeting with them regarding the strategic planning with the Ministries.

Regarding the Parliament, Civicus noted that an example of a new trend is the creation of a new inter-party parliamentary group to promote LGBTI rights in the National Assembly. "It includes 13 members of Parliament from different political parties and its aim is to cooperate with CSOs working on LGBTI issues in building a society where sexual and gender identity will not constitute an obstacle to the full enjoyment of human rights and freedoms³⁹.

The representatives of the PACE delegation underlined that the Parliament building was very open to the citizens. Many exhibitions take place there, accessible to everyone. The public debates organised by the Parliamentary Commissions include NGOs. From the first reading of a draft, NGOs serve as "our corrector", as underlined by one of the MPs during the meeting. According to the PACE delegation, NGOs should be accountable to MPs and, in the context of "the former Yugoslav Republic of Macedonia", the "de-politisation" of NGOs is needed. From the MPs' perspective, several NGOs are influenced and defend the interest of political parties, which proves their lack of independence. From the NGOs' point of view, as we can see in the "Blueprint developed by CSO"⁴⁰, greater transparency is expected from the Parliament. One of the proposals is the introduction in the Rules of Procedure for the

³⁷ OGP Macedonia Mid-Term Self-Assessment 2016-2018 <https://www.opengovpartnership.org/documents/macedonia-mid-term-self-assessment-2016-2018>

³⁸ TACSO Needs Assessment Report Former Yugoslav Republic of Macedonia (Updated 2016) <http://www.tacso.org/Publication/ArchiveRead/14799>

³⁹ Monitor Civicus <https://monitor.civicus.org/newsfeed/2018/06/21/Civil-Society-And-Government-Relations-Improve/>

⁴⁰ Blueprint developed by CSOs for urgent democratic reform <http://www.epi.org.mk/docs/BLUEPRINT%20DEVELOPED%20BY%20CSOs%20FOR%20URGENT%20DEMOCRATIC%20REFORMS.pdf>

Parliament of a specific procedure “in order to establish and regulate registration and accreditation of stakeholders for participation in parliamentary activities”. This joins one of the conclusions that came out of the exchange conducted with the representatives of the Parliament concerning an open and transparent list which should be established for the CSOs and social groups potentially affected by parliamentary decisions. This open list should indicate the stakeholders to invite to the public online or offline consultation. For the moment, we understood that invitations to NGOs depends on the arbitrary decision of the chair and relations established with MPs. While personal contacts can never be avoided, this is not the right criterion for a transparent and objective public consultation.

This kind of regulation regarding the accreditation of the stakeholders should be reflected in connection with the Lobbying regulation. The GRECO report underlines the lack of improvement and “serious weaknesses as regards the current arrangements on lobbying based inter alia on the Law on Lobbying of 2011”. The country had announced its intention to proceed with a number of changes (introducing a Code for lobbyists, amending the above Law, among others) and GRECO had pointed to the need to combine these initiatives “with a greater transparency on MPs’ contacts with lobbyists and other third parties in connection with on-going legislative proposals outside the meetings of the Assembly and its commissions”⁴¹. Taking into account the possible impact of the Lobbying regulation on advocacy action led by civil society organizations, we strongly advise public authorities to take into consideration the Recommendation CM/Rec(2017)2) on the legal regulation of lobbying activities in the context of public decision-making adopted by the Committee of Ministers of the Council of Europe on 22 March 2017. The specific section of this document refers to the freedom of expression, political activities and participation in public life. Article 4 stipulates that the “legal regulation of lobbying activities should not, in any form or manner whatsoever, infringe the democratic right of individuals to express their opinions and petition public officials, bodies and institutions, whether individually or collectively; campaign for political change and change in legislation, policy or practice within the framework of legitimate political activities, individually or collectively”.

In several Member States of the Council of Europe, public consultations are not mandatory when the legislative initiative comes from the Parliament. In the political context, where the ruling party has a majority in the Parliament and in the Government, this principle can be used to avoid a public consultation. Therefore, considering the state of representative democracy today, it seems relevant to make public consultation mandatory for Parliament too, not only for the governmental initiatives.

From Participation to Strategic Partnership

According to Article 73 of the LAF, “the organizations may obtain the status of public benefit organizations if they perform public benefit activities, implement programs and projects on central and/or local level, independently or in cooperation with state administration bodies and municipal bodies, the bodies of the municipalities in the City of Skopje, as well as if they use the financial resources for realization of activities”. Article 74 of this law mentions all sectors where the public benefit activities can be established. Four interesting criteria are mentioned for public benefit status.

⁴¹ 4th Evaluation Round. Corruption prevention in respect of members of parliament, judges and prosecutors. Second compliance report “the former Yugoslav Republic of Macedonia”. Report adopted by GRECO at its 80th plenary meeting (Strasbourg, 18-22 June 2018)

The organisation should have:

- ✓ “the necessary organizational structure in accordance with this Law;
- ✓ human resource capacities required for the activity in accordance with the Law;
- ✓ appropriate financial resources, i.e. total assets or annual income amounting to least 1.500 Euro in Dinar equivalent according to the exchange rate of the National Bank of Macedonia;
- ✓ prescribed rules on conflict of interests and on providing transparency and publicity in its work;” (Art 75)⁴².

Openness and transparency in participation can lead to a strategic partnership between state institutions and NGOs. Since the beginning, the new Government declared its preparedness to work on democratic reforms in the country. A lot of NGOs seem ready to establish a partnership relation with public institutions. An indication of this is a document “Blueprint developed by CSOs for urgent democratic reforms”, drafted with the implication of 146 representatives from 73 CSOs, scholars and independent experts in public policy⁴³ “CSOs and experts involved in the development of this document, expect that publicly declared willingness for reform on the part of the new Government will come into effect through the implementation of a vast portion of recommendations listed in this document. As regards failure to implement proposed reforms in certain policy areas, government and decision-makers will be expected to explain their approach and reasons for having pursued different solutions. In particular, policy solutions proposed in this document necessitate determination and commitment to deal with accumulated problems in the public institutions. Throughout the entire process, the government should respect the principles of transparency, accountability, participation and effectiveness”.

Good collaboration was noted by NGOs with the current Ministry of Labour and Social Policy, which organized 2-3 day meetings in order to reflect on the specific law and problems in the sector of social policy⁴⁴ and working groups on anti-discrimination law, which took place over a longer period of time. The management of migration flow was also accompanied by good cooperation between NGOs on both a daily and on a weekly basis, with regular coordination meetings between NGO and public authorities.

Social Entrepreneurship viewed as a way to increase NGOs’ Independence

Social entrepreneurship is a subject of public interest in more and more countries. This model is viewed as a new way to solve social problems by conducting economic activities. The social entrepreneurship model implies involving marginalized groups and conducting

⁴² There is no the criterion regarding operating time, which seems to be a more open option than observed in the law of some other Member States.

⁴³ This type of document was also drafted in 2016. In 2017, the public policies areas concerned by these proposals are as follow: public finances and economy; justice system; fight against corruption; elections and electoral system; public administration; oversight on the police and the agencies for security and (counter) intelligence; Parliament; civil society; social protection, welfare and sustainability; education and youth policies; environment; culture; and health care.

⁴⁴ During the visit, the delegation learnt that the ratification of the additional protocol of European Social Charter is on the agenda of the Ministry allowing to introduce the collective complaint procedure. We encourage strongly this process.

activities in order to produce the social values and social and economic changes. The Strategy for Cooperation of the Government and civil society 2012-2017 contains a specific chapter regarding social cohesion. Social entrepreneurship is mentioned as a model to promote under the Law on Association and Foundation. In addition to creating new jobs, social entrepreneurship answers the social needs using the business model of organizations with democratic governance. Under article 12⁴⁵ of the Law on Association and Foundation, civil society organizations are able to perform economic activities directly or by establishing trade companies. However, this is not sufficient. Even with some interesting and relevant initiatives such as “Smart Start”, according to some NGOs, it seems to be impossible to establish a classical social entrepreneurship practice without a specific framework⁴⁶. The European Union supports the development of social entrepreneurship in the country through several projects⁴⁷. The Minister of Labour and Social Policy announced the new law on social entrepreneurship by the end of 2018 or 2019⁴⁸, which is a positive step to supporting an enabling environment for such activities. However, it is also important to build and maintain the link between citizen grass root initiatives and association and social business organization which implement the social entrepreneurship.

Ombudsman mechanism for civil control

During the visit, the delegation of the Conference of INGOs had the pleasure of meeting Mr. Idzet MEMETI, Ombudsman of Republic of Macedonia⁴⁹. Mr. Memeti led the Office in very dynamic and responsive way, belonging to several international networks. The discussion explored the main challenges for the Ombudsman Institution in order to make the work of the ombudsman more recognized and visible. Mr. Memeti drew the attention of the delegation to the following issues which should be addressed in the near future: work of the enforcement institutions, rights of persons with disabilities, equal representation of national minorities.

An interesting example of the NGOs’ involvement, especially those representing different professional bodies, was observed in the case of the new independent external oversight mechanism (EOM) over the work of the police. In this area, the authorities were assisted by Council of Europe experts to introduce the model implemented in Slovenia. The Ombudsman office, assisted by several NGOs, (especially associations representing professional expertise such as psychologists) initiated a new “Ombudsman mechanism for civil control”. A special unit devoted to this mechanism was created. Its aim is to support and protect victims, represent their interest in all procedures and investigation by police powers and prison police. According to the discussion during the visit, the unit should include three independent investigators from the police side and three specialized NGOs, from the civil side. The NGOs should be chosen by the Parliament through open public calls. In March 2018 it was a pilot project. In June 2018, the Assembly amended the scope of the work of the ombudsman institution.

⁴⁵ According to article 12, “organizations may perform profit generating activities, if the activity is related to the goals determined by the statute. If profit has been generated from the operations of organizations, it has to be used for fulfillment of the goals determined by the statute”.

⁴⁶ Centre for intercultural dialogue www.cid.mk

⁴⁷ www.europeanwesternbalkans.com

⁴⁸ www.mia.mk

⁴⁹ www.ombudsman.mk

Conclusion

In the past, the environment for LGBTI persons, groups and NGOs acting for their rights was difficult. NGOs were victims of harassment and political pressure. The echo of this period is still felt very strongly by the activists. Democratic institutions need a strong civil society and in the case of “the former Yugoslav Republic of Macedonia”, NGOs are ready to contribute to reinforce the public authorities in order to achieve progress in the democratic reforms. According to the interlocutors “the former Yugoslav Republic of Macedonia” seems to have regained the space lost in the past. However, NGOs continue to have legitimate expectations towards the Government regarding its accountability, transparency and also regarding the effectiveness of the reforms promised to the electorate.

Several interlocutors underlined the necessity to build the connection with grass root organizations. There are many organizations with a high level of expertise. However, a transfer of skills and knowledge is necessary to the smallest grass root organizations in order to ensure the sustainability of the whole sector. According to some NGOs, the NGO sector at local level is dying. It seems to be urgent to connect the local, regional and national perspective in order to involve the local organizations in the policy planning and decision-making. It can be done by umbrella organizations which in their contributions to the regional and national level could mobilize the local resources and build the capacity of local organizations. In addition, in order to develop a strong civil society at the local level, funding should be made available for smaller NGOs allowing them to expand their activities⁵⁰.

.....

We thank all state-actors, independent human rights institutions and NGOs of “the former Yugoslav Republic of Macedonia” for the substantial and open exchange. All the interlocutors were aware of the improvements needed, in law and in practice, and of the potential to share and enrich the on-going reforms by international partnerships.

⁵⁰ UNDP already seems to provide such open calls for a smaller organizations.

Recommendations

For public authorities:

1. Taking into account the progress already made in the way that public consultations are conducted (minutes of the meeting etc.), further improvement should be made by state administration bodies when consulting with CSOs in the early stage of preparation of policies and laws, by providing feedback after the consultations;
2. Change article 13 of the Law on Association and Foundation (LAF) to be in line with international standards;
3. Improve dialogue with CSOs with regard to the social needs of the population; the appropriate public authorities should sign and ratify the additional Protocol on the Collective Complaints Procedure under the European Social Charter.
4. Strengthen citizens' awareness of the opportunities that exist to be included in the preparation of laws and policy making;
5. As announced by the Minister of Labour and Social Policy establish a new law on social entrepreneurship and maintain a balance and complementarity between different models of citizen engagement between citizen associations and social business organizations;
6. Local Governments should implement the Code of good practice in decision making;
7. Implement the Regulatory Impact Assessment on a regular basis;
8. Establish a registration and accreditation mechanism for stakeholders wishing to participate in law-making processes and public consultation in the Parliament;
9. Allocate the necessary means for regular, systemic, open, transparent and sustainable public consultations;
10. Build a local infrastructure to facilitate the NGOs' work
11. Adjust the fiscal and tax regulations to the current needs of NGOs to operate according to the Law on Associations and Foundations
12. Take into account and implement the Recommendation CM/Rec(2017)2) on the legal regulation of lobbying activities in the context of public decision-making adopted by the Committee of Ministers of the Council of Europe on 22 March 2017.

For NGOs:

1. Strengthen citizens' awareness and capacity to seize the opportunity and respond to the expectations of the public authorities in the preparation, implementation and assessment of the laws and policy making;
2. Strengthen partnership with the business sector and employers' associations;
3. Raise awareness of the need to ratify the European Social Charter;
4. Ask the Parliament for progress made regarding the Recommendations addressed to them by the GRECO Authority of the Council of Europe.
5. Contribute to building a local infrastructure for networking with grass root civil society organizations.

For the Conference of INGOs:

1. Submit this Report to the Government Representative of “the former Yugoslav Republic of Macedonia” for comments;
2. Publish the Report along with the comments from the Government on the website of the Conference of INGOs;
3. Invite the Authorities and a CSO representative to the Conference of INGOs plenary meeting;
4. Contribute to reinforcing CSOs in “The former Yugoslav Republic of Macedonia”
5. Produce a legal opinion on the new law or on the amendments of the existing Law on Associations and Foundation (LAF) in order to contribute to the enabling legal environment in the Council of Europe Member States.

Sources

Macedonia: 'Colorful Revolution' paints raucous rainbow" <https://www.dw.com/en/macedonia-colorful-revolution-paints-raucous-rainbow/a-19203365>

Chromo Skopje. The Colourful Revolution in Skopje <http://www.fabrica.it/chromo-skopje-2/>

VMRO-DPMNE announces "the start of desorosozation process". Meta.mk Skopje, 13 January, 2017 <http://meta.mk/en/vmro-dpmne-announce-desorosozation-process/>

"Spasovski: All investigations into civil society organizations have now been officially closed" <http://meta.mk/en/spasovski-all-investigations-into-civil-society-organizations-have-now-been-officially-closed/>

"Investigations against NGOs have been completed – no crimes were found, says Spasovski". Meta.mk Skopje, 17 November, 2017 <http://meta.mk/en/investigations-against-ngos-have-been-completed-no-crimes-were-found-says-spasovski/>.

"NGOs demand that inspections and political persecution stop" <http://meta.mk/en/ngos-demand-that-inspections-and-political-persecution-stop/>

Leshoska V, Maleska T, Korunovska J, Neda Korunovska S, Zdravev D, Dimchevski F, Maleski B (2016). "Citizens and their communities. Civic engagement, activism and volunteering in Republic of Macedonia, Skopje. The data for this study is collected via computer assisted telephone interviews (CATI) and the five-year presentation is based on responses from a total of 5967 respondents.

Overview of the State of play on the implementation of Plan 3-6-9 as of 15.11.2017

Expert Council on NGO Law of the Conference of INGOs. "Regulating Political Activities of Non-Governmental Organisations", December 2015.

OSCE/ODIHR-Venice Commission Guidelines on Freedom of Association

Recommendation 2007(14) of the Committee of Ministers of the Council of Europe on the Status of Non-Governmental Organisations.

Consolidated text on Law on Associations and Foundations, published in "Official Gazette of the Republic of Macedonia" no. 52/2010 and 135/2011).

Civil Society Organization (CSO) Sustainability Index for Central and Eastern Europe and Eurasia, 2016

TACSO. Needs Assessment Report Former Yugoslav Republic of Macedonia, 2016

TACSO. Needs Assessment Report Former Yugoslav Republic of Macedonia, 2014

Monitoring Matrix Country Reports for Macedonia" <http://www.balkancsd.net/monitoring-matrix-country-reports-for-macedonia/>

ВЛАДА НА РЕПУБЛИКА МАКЕДОНИЈА Службен весник на РМ, бр. 60 од 23.5.2017 година
Владата донесе одлуки со кои помага на земјоделци, спречува злоупотреби на буџетски пари и ќе го заштити меѓународниот углед на Македонија <http://vlada.mk/node/12938>

International Budget. Open budget survey - Results. <https://www.internationalbudget.org/open-budget-survey/results-by-country/country-info/?country=mk>

Ognenovska S, Srajkovska S. The enabling environment for civil society development in Macedonia. Report 2016. Balkan Civil Society Development Network.

IDSCS Institut for Democracy Societas Civilis Skopje, Konrad Adenauer Stiftung Foundation, "Hurdling on 3, 6 and 9. The recommendation has been secured, what is next?" Monitoring of implementation of the last three months of the 3-6-9 Plan, May 2018

Vigoda E. (September/October 2002). From Responsiveness to Collaboration: Governance, Citizens, and the Next Generation of Public Administration. Public Administration Review, Vol. 62, No. 5, pp.527-540

Да се запре изборот на претставници во Советот за соработка на Владата со граѓанскиот сектор : Monday, 06 June 2016 11:35 <http://www.mcms.org.mk/mk/vesti-i-javnost/vesti/1783-da-se-zapre-izborot-na-pretstavnici-vo-sovetot-za-sorabotka-na-vladata-so-gragjanskiot-sektor.html>

OGP Macedonia Mid-Term Self-Assessment 2016-2018:

<https://www.opengovpartnership.org/documents/macedonia-mid-term-self-assessment-2016-2018>

Monitor Civicus <https://monitor.civicus.org/newsfeed/2018/06/21/Civil-Society-And-Government-Relations-Improve/>

Blueprint developed by CSOs for urgent democratic reform:

<http://www.epi.org.mk/docs/BLEUPRINT%20DEVELOPED%20BY%20CSOs%20FOR%20URGENT%20DEMOCRATIC%20REFORMS.pdf>

GRECO 4th Evaluation Round. Corruption prevention in respect of members of parliament, judges and prosecutors. Second compliance report "the former Yugoslav Republic of Macedonia". Report adopted by GRECO at its 80th plenary meeting (Strasbourg, 18-22 June 2018)