

Strategic Priorities for Promoting Civil Participation in Decision-Making in Ukraine

Introduction

The current period of reforms in Ukraine is the right time to take stock of the interaction between civil society and the authorities and to look for consensus among all stakeholders on the strategic directions for building a public sphere and fostering democratic culture through promoting civil participation in decision-making.

With this in mind, the Council of Europe, in close consultation and cooperation with the major stakeholders, offered its assistance in drafting Strategic Priorities for promoting civil participation in decision-making in Ukraine. The objective of these priorities is to institutionalise effective civil participation in decision-making processes and to make it sustainable. Actions deriving from these Strategic priorities are to meet the needs and objectives of public administration reform in Ukraine and thus become an integral part of it. It goes without saying that this work would be based on principles such as transparency, accountability, participation, inclusion, non-discrimination and equality, and contributes to the fight against corruption.

Following numerous discussions and analysis by Ukrainian and international experts, basic elements for a draft strategy were put together by an expert group. On 24 and 25 November 2014, at the invitation of the Council of Europe, civil society representatives from Kyiv, Kharkiv, Rivne, Sumy, Lviv, Ivano-Frankivsk, Zaporizhzhya, Volyn, Vinnytsya and Kirovohrad, representatives of the public administration and international experts met in Kyiv to debate the proposed elements. The outcome of this meeting is reflected in the *Strategic Priorities for Promoting Civil Participation in Decision-Making in Ukraine* proposed herewith. They have been developed by a multi-stakeholder group and are submitted to this Round-table discussion in Kyiv on 8 December 2014 for consideration and recommendations for further action.

Following a consensus among stakeholders, the Council of Europe will present to the Ukrainian authorities the Strategic Priorities for Promoting Civil Participation in Decision-Making for possible inclusion in the Council of Europe Action Plan for Ukraine 2015-2017. Upon the approval of the Action Plan, the Council of Europe will be ready to support implementation of the Strategic Priorities by the civil society and the authorities of Ukraine.

The stakeholders addressed in these Strategic Priorities are the President, Parliament, Cabinet of Ministers, ministries and other central authorities of the executive power, local authorities of executive power, local self-government bodies and civil society.

Key priorities

I. Enabling legal environment for the effective participation of civil society

Drafting and adoption of legislation on public consultations and assistance in its implementation

- To ensure transparency of decision-making;
- To ensure public participation in the early stages of the political and law-making processes;
- To establish procedures for consultation, dialogue and cooperation.

II. Institutionalizing consultation, dialogue and cooperation between civil society and authorities

Developing effective mechanisms of citizen-state interaction through

- Monitoring and evaluation of existing practices of «Public Councils» and other consultative-advisory bodies regarding their effectiveness;
- Improve consultative-advisory bodies as interface between authorities and civil society as means of effective participation in decision-making;
- Introduce European best practices on civil participation with organs of public authorities.

III. Building a culture of participation: awareness-raising and capacity-building

Information campaign on civil participation in decision-making, focusing on

- Fundamental value of civil participation in decision-making in a democracy;
- European standards for civil participation in decision-making;
- Promoting wider civic engagement of individuals and NGOs;
- Sharing of Ukrainian good practices of effective citizen participation,
- Supporting media in taking up success stories, particularly in the regions.

Capacity building of civil society organizations in, *inter alia*

- Tools of participation in decision making;
- Monitoring of decision-making processes;
- Advocacy, dialogue and establishing long-term partnerships;
- Working with media.

Capacity building of the public administration in, *inter alia*

- Values, principles and benefits of civil participation;
- Mechanisms of participation of NGOs and individuals;
- Communication skills, tools and practices.

Explanatory notes

These notes are in part meant to show, by way of examples, how the Strategic Priorities above could be translated into concrete action.

Enabling legal environment for the effective functioning of civil society

A main obstacle to active and effective participation of civil society in public policy-making in Ukraine is the lack of democratic traditions and political culture. This obstacle can be partially compensated by progressive legislation that will encourage public consultations. At present, the main shortcomings of the legislation are the following:

- There are no general legislative requirements on public consultations that would clearly set up the rules on both national and local levels;
- There are no legal consequences of non-observance of the public consultation procedure.

Currently, organs of the executive powers follow the Cabinet of Ministers' Order "On carrying out public consultations on the subject of forming and realization of the state policy" (last version dated November 03, 2010 №996). Being an internal act of the government, it foresees no legal consequences in cases of non-compliance, and presents gaps in terms of mechanisms of consultation. Also, this order does not regulate activities of the President and Parliament. For organs of local self-government it has only advisory character.

However, Ukraine has also a positive practice, particularly in the field of development of legislation for business. According to the Law of Ukraine "On the Principles of State Regulatory Policy in Economic Activity" dated September 11, 2003, all drafts of "regulatory acts" must be previously announced for public discussion during a period of 1 to 3 months. Failure to comply with this procedure has legal consequences, including the suspension or cancellation of legal acts.

Therefore, to increase the public's role in policy-making, a new regulatory base is proposed, which should regulate, *inter alia*, the following, on both national and local executive levels:

- Publication of annual plans on the development of policy documents such as programs, concepts, strategies etc. as well as the drafts of legal acts - laws and regulations - by each organ, responsible for the development of such projects;
- Setting up general rules, obliging prior publication of developed legal acts for public consultations. Exceptions to this rule must be clearly defined and can be related to issues of national security, natural disasters etc.;
- Identification of issues, on which the authority should take active measures to attract potential stakeholders to public consultations, information events to attract the public, e.g. on issues of ecology;
- Publication of the starting date of the draft preparation and publication of expert groundwork prepared for the draft;
- Identification of the key stakeholders and stakeholder groups who can be affected by the decision;
- Identification of the key source for publishing drafts of legal acts – official web-resources of organs of power. It is also possible to consider the development of an integrated "Internet platform" for publishing all drafts;
- Setting criterias for the format of documents;
- Sufficient time for public consultations on specific drafts. This time has to be determined differentially, taking into consideration of specific types of organs of power and needs of rational combination of the efficiency in decision-making and needed time for the public to respond;
- Publication of all received comments and proposals;

8 December 2014

- Publication of the feedback report about received comments and proposals with consideration and arguments why they were taken into account or not;
- Definition and identification of the responsible body with power to review if rules and standards of public consultations were respected and power to return the draft to the responsible preparatory body in cases of non-compliance i.e. gatekeeper;
- Legal implications for breaching the public consultations rules.

The purpose of such regulation is to, *inter alia*:

- Ensure the transparency of the political process and rule-making procedure;
- Shift the focus from late - when drafts are already prepared - to early inclusion. Experiences of other countries clearly show how important it is to include key stakeholders already in early stages of formulating decisions, since in these first stages the general course of proposed changes and new solutions are determined and they are rather impossible to be overturned in later stages;
- Enable civil society to qualitatively engage in the decision-making process. The prerequisites for this are: accessibility of the expert ground work used by the authority and sufficient time for the identification of additional proposals, development of supportive arguments and appropriate, normatively correct formulation of proposals;
- Strengthen public confidence in the regulatory process and thus increase the public's willingness to participate in the decision-making process.

In case the state and civil society are ready, the suggested law can also regulate the following issues:

- Different methods and tools that can be used for public consultations;
- Methods of stakeholders' involvement at the early stages of policy development, drafting projects;
- Joint monitoring and evaluation of the implementation of decisions taken.

Thus, the new legislation can affect not only issues on public consultations, but also public participation in the sense of civil participation in shaping public policy, including via legislative normalization of the procedure of establishment of consultative, advisory, expert, and monitoring bodies. Special attention may be paid to the specifics of public consultation and public participation in various state authorities and local self-government bodies, and their regulations adapted accordingly.

The present strategic priorities, however, cover not only the issue of public participation in the process of legal acts' adoption. Not less important are individual cases, especially with a large number of participants, for example cases on construction of buildings. Ukraine is one of the last countries in Europe that didn't adopt a Law on administrative procedure and as a result does not lay down rules on the appropriate standards of fair procedure. However, there is the appropriate governmental bill that has a chance to be adopted in 2015. It foresees, in particular, the regulation of administrative procedures that concerns a large number of people (based on the Council of Europe Recommendation (87) 16). Consequently, practical assistance in the implementation of the rules may also be a useful component of the activation of civil society.

Institutionalizing consultation, dialogue and cooperation between civil society and authorities

Currently, in Ukraine, the main type of consultative-advisory bodies is the "public councils". They are formed by the executive powers for a period of two years. The number of participants in these councils is not limited, and in practice public councils can include up to 200 members. Their role in influencing policy is rather limited because of difficulties with their formation and organization.

8 December 2014

The Strategic Priorities entail an in-depth evaluation of the current practice of public councils and other consultative-advisory bodies. This evaluation should include recommendations on how to best increase their effectiveness and build new mechanisms of citizen-state interaction. The specifics of organs of power are to be taken into consideration: the role of the public in interaction with authorities may differ whether it is a policy-development organ, like ministries, or an organ with a specific function like the implementation of legislation, services, or inspection agencies.

Attention should also be put on the development of various e-democracy tools on both national and local level. This may include the creation of a single platform (“one-stop-shop”) for consultation of citizens with the authorities, introduction of an e-petition system and discussion forums.

A broad participatory review of European best practices in decision-making is the first step of their possible introduction. It entails an in-depth analysis of their strengths and weaknesses and an assessment of their suitability for the Ukrainian context. The review should not only look at tried and tested mechanisms, but also at innovative models and at traditional forms of democratic participation in Ukraine. Chosen practices should then be piloted in selected regions and on national level in order to address specific issues of priority concern.

Building a culture of participation: awareness-raising and capacity-building

Information campaign

One of the preconditions for democratic culture is public awareness of democratic principles and the value of co-operation between various sectors of society. One of the ways to build a community of values is through conducting a broad information campaign devoted to the promotion of civil participation in decision-making processes at all levels of the Ukrainian power structure. The campaign should involve the most influential source of information – TV via social advertisement. TV spots should be posted with the idea to achieve better understanding of civil participation in democratic decision-making. Special emphasis should be put on transparency of decision-making.

In order to secure a full outreach of the campaign, especially for the rural and small towns audience, it should include also radio. Taking into consideration the special role of the young generation in active citizen participation, also social media such as YouTube and Facebook should be used and coordinated with its TV component. The campaign should focus on positive stories. Special support should be offered to Ukrainian media to promote such stories from experiences of Ukraine and other countries.

The campaign could be composed of the following three stages:

- TV and radio emissions on civil participation in decision-making as a European standard;
- TV and radio talk shows and debates;
- TV stories about best Ukrainian practices.

In a view of optimizing its outreach, the campaign should be implemented in partnership with national TV channels, commercial TV channels, FM radio, and bloggers. Additional efforts should be directed to regional and local media, especially in pilot regions.

Capacity Building of Civil Society Organizations

To increase the effectiveness of their engagement with state representatives in decision-making processes, civil society organizations should be strengthened. Their capacity building should focus on

Ukrainian and European standards of civil participation, tools on assessing the implementation of these standards and ways to engage with the authorities to advocate change.

Capacity building of civil society organizations should hence include:

- Training on monitoring and evaluation of public policies and decision-making;
- Advocacy training i.e. strategies and tools for engaging with authorities;
- Elaboration of manuals;
- Working with the media.

Pilot projects on specific issues such as minority rights, non-discrimination, anti-corruption etc., should be supported to realize civil participation in practice. After the piloting phase, successfully tested models should be consolidated and multiplied on a broader scale. NGOs may want to dedicate their attention to specific policies, legislative reform processes, the functioning of consultative-advisory bodies or the implementation of the Association Agreement with the EU.

Strengthening existing networks should be complemented by enhancing communication between organizations on national, regional and local levels, establishing coordinating structures and building individual capabilities. This will all empower civil society organizations to provide expertise to the political decision-making process and improve both horizontal and vertical communication. Thus, capacity building should entail co-operation between civil society and authorities with the aim of shifting from information and consultation to dialogue and long-term partnerships.

Capacity Building of the Public Administration

Capacity building of civil servants on national and local level is another important prerequisite for successful cooperation. Experiences in other countries show that political dedication to open governments, procedures in place and skilled and knowledgeable NGOs are not enough to achieve qualitative implementation of consultation processes and hence better legislation. Usually higher number of stakeholders, who present several different, often diametrically opposing views, participates in open decision-making processes. To ensure that their views are properly heard and considered, civil servants, involved in the drafting of legislation, need to know different methods of public inclusion and their use in different circumstances, as well as have the skills for negotiation and conflict resolution.

Capacity building of the public administration should hence include, *inter alia*:

- Regular trainings on implementation of consultations on both national and local level, starting with few pilot „trainings for trainers“, i.e. for civil servants that would in future be responsible for the promotion and further training of their colleagues within the administration and could also provide support during individual consultations;
- Preparation of a Manual on the implementation of public consultations on all levels of decision-making in Ukraine;
- Creation of a knowledge e-hub on public participation i.e. a web database that offers advice and information on how to plan, implement and evaluate the public participation process, what are the benefits of public participation, which methods to use, how to work with specific groups etc.;
- Training on enhanced communication skills, tools and practices, including working with the media, with a view to creating transparency of decision-making and building public trust.