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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

In co-operation with

OSCE/ODIHR

and

**THE PRESIDENCY OF IRELAND OF THE COMMITTEE OF MINISTERS
OF THE COUNCIL OF EUROPE**

International round table

**CIVIL SOCIETY:
EMPOWERMENT AND ACCOUNTABILITY**

**Council of Europe, Strasbourg
Tuesday, 13 September 2022**

(Hybrid format)

PRESENTATION

**WORK OF THE VENICE COMMISSION
REGARDING CIVIL SOCIETY PARTICIPATION
IN PUBLIC DECISION-MAKING PROCESSES,
INCLUDING LAW-MAKING**

by

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Law Reform Commissioner**

Participation by citizens in public decision-making processes.
 Participation by civil society as structured groups of citizens in that decision-making process.

Clearly participation is a central element of democratic government. Sounds very easy. When you try to put a structure on it, the topic becomes more complex.

Change is often fostered by a combination of domestic civil society and external actors, which impels political forces towards change. Those two elements working on the political system have to operate in an open manner so as not to look like covert outside interference.

Context is the work of Venice Commission. It is now standard practice that the Venice Commission will question what the level of public/stakeholder participation was on a law under examination.

A poor process in that regard will undermine the credibility of the law making.

Legality principle in the Rule of Law checklist,
 Process for enacting law must be transparent, accountable, inclusive and democratic. Therefore the engagement with stakeholders about law making should be transparent and on-the-record. It is not enough to say 'consulted widely'.
 Lobbying rules help with this but if over restrictive such rules can be seen as a constraint on participation and expression.
 Draft laws must be published followed by an opportunity for comment. The comment process might be to the Ministry or the Parl or some committee to examine the draft.
 Laws must be reasoned so they should be accompanied by explanatory reports which set out what consultation took place.

Gen comment 25 on Art 25 of ICCPR says 'citizens also take part in the conduct of public affairs by exerting influence through public debate'.

NGOs will be agents of participation but there might be restrictions applied

Justified/legitimate ones might be
 Tax rules
 Labour law rules
 Registration for liability
 Charities rules

Fundraising rules
 Anti money laundering rules
 Data protection rules

Political party rules, might be designed to include NGOs active on political topics, and this might attract financial disclosure.

More doubtful restrictions may include,
 Lists of members; Registration for legal personality; Confidentiality.
 Insisting on confidentiality might conflict with the concepts of transparent, accountable and inclusive.

Some of these rules may look optional, but might be a condition of public funding or even a condition of participation.

NGOs will have staff, bank accounts, premises, expenses on research. They may have public funding. They may have public contracts as their partnership with government expands to include carrying out some public functions. Senior figures from the NGO world may move back and

forward into government. Eventually their non-gov character becomes doubtful.

Consultation, even when mandatory in law, cannot take from the role of the law-maker. Enactment without the expected consultation does not detract from the legitimacy of the parliamentary process and the enactment. There may be public or parliamentary sanctions but the law stands. Courts will be very slow to interfere with the law as enacted. In most states there was little or no consultation with the special COVID laws.

That may be a reason to prepare laws for emergencies in advance.

The executive/gov might constrain itself to consult widely in law-making but if parliamentarians (maybe back-benchers or an opposition party) push through a law or an amendment, that stands even without the expected consultation.

Is there a different expectation of the role for participation as between consultation in the parliamentary process, and other stages such as in planning by ministries, regulation making by the executive or other delegated law-makers such as local authorities?

EU Charter and right to good administration.

Many states now have provisions on the level of consultation by civil society in law-making. Some such provisions are in primary laws, or rules of parliament, or in secondary rules/protocols/guidelines.

An example of hard law is to be found in Moldova's Law no239/2008 on transparency in the decision making process, so in the preparation of a new draft election code there was a WG with civil society, a shared public event, public consultation and online workshops.