



Civil participation in the decision-making process

Fact finding visit to Armenia

27-29 November 2019

Report

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Introduction

The Conference of INGOs of the Council of Europe visits Member States to get a better understanding on how cooperation between NGOs (foundations and associations) and decision makers takes place. The exchanges during these visits are part of a wider Council of Europe analysis of the effectiveness of various forms of civil society participation in the decision-making and the enabling environment for NGOs in the different Council of Europe member States.

The definition of NGOs that applies to the activities of the Conference of INGOs is the one used in Recommendation 2007(14) of the Committee of Ministers of the Council of Europe. According to this text, “the NGOs are voluntary self-governing bodies or organizations 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, the right to participation in public affairs is inherent to the System of the European Convention on Human Rights (ECHR), directly associated with the right to freedom of association (article 11 of the ECHR). The references regarding international standards and best practices used during each fact-finding visit are as follows:

- European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR);
- Recommendation CM/Rec (2007)14 of the Committee of Ministers to Member States on the legal status of non-governmental organizations in Europe;
- OSCE/ODIHR-Venice Commission Guidelines on Freedom of Association;
- Recommendation Rec (2001)19 of the Committee of Ministers to Member States on the participation of citizens in local public life;
- Report on funding of associations, adopted by the Venice Commission at its 118th Plenary Session (Venice, 15-16 March 2019);
- Guidelines for civil participation in political decision-making, adopted by the Committee of Ministers of the Council of Europe on 27 September 2017;
- Recommendation Rec (2018) 11 of the Committee of Ministers to member States on the need to strengthen the protection and promotion of civil society space in Europe;
- Revised Code of Good Practice for Civil Participation in the Decision-Making Process (2009, 2019);
- UN International Covenant on Civil and Political Rights, adopted on 16 December 1966, entry into force 23 March 1976.

The Republic of Armenia has experienced many hardships throughout its history due to its complex geo-political situation. Armenia joined the Council of Europe in 2001. However, already in 1997, Armenia became a party to the European Cultural Convention and in this capacity contributed to the development of Council of Europe standards.

In 2018, Armenia experienced political transformation through the Velvet Revolution. Civil society (particularly Merzhir Serzhin (Reject Serzh) and the Restart student initiative) played an

important role in this transformation by organising mass protests, calling for accountability of policymakers and pushing for stronger human rights and anti-corruption policies.

After the Velvet Revolution, the opposition leader Nikol Pashinyan was elected Prime Minister on 8 May 2018 and formed a new government. Parliamentary elections were organised in December 2018. Currently many civil society activists are government officials and members of parliament, as well as of local government – for example Yerevan City Council.

The visit of the Conference of INGOs delegation to Yerevan took place from 27 to 29 November 2019. The delegation was composed of Anna Rurka (President of the Conference of INGOs), Katarzyna Sokolowska (Member of the Bureau of the Conference), Goran Miletic (Member of the Expert Council on NGO Law of the Conference of INGOs), Wielie Elhort representative of European Forum of LGBTI Christian Groups, member of the Conference and Jane Crozier, member of the Secretariat of the Council of Europe Democratic Innovation Division).

The hosting organisation, the Federation of Youth Clubs of Armenia (FYCA), was established in 1999 and unites more than 100 youth clubs, organisations, initiatives, centres and projects in Yerevan and all Armenian regions. The FYCA promotes young people's participation and civic activism in the decision-making process. It is a member of 10 international youth organisations and networks, some of which are part of the Conference of INGOs.

During the visit, the FYCA organised two meetings with more than 50 NGOs: human and civil rights organisations, lawyers and women organisations, LGBTI groups, youth organisations, anti-corruption NGOs, volunteers' organisations.

The Permanent Representation of Armenia to the Council of Europe organised the programme with the public authorities. The Conference of INGOs delegation was able to exchange views with Ms Kristinne Grigoryan, Deputy Minister of Justice, Mr Tigran Samvelian, Head of the Department of Europe, Ministry of Foreign Affairs, Ms Zaruhi Batoyan, Minister of Labour and Social Affairs, members of the Armenian delegation to the Parliamentary Assembly of the Council of Europe (Mr Vladimir Vardanyan, Mr Sos Avetisyan, Ms Tatevik Hayrapetyan), Mr Hrachya Sargsyan, first Deputy Mayor of Yerevan and Mr Arman Tatoyan, Human Rights Defender of the Republic of Armenia.

The aim of this report is to provide recommendations to the public authorities and NGOs, as well as to the Conference of INGOs, on what is needed to reinforce NGO participation in policy and political decision-making in a sustainable way. The authors adopted a comprehensive approach, looking at the state of co-operation between the civil society sector and public authorities, the dynamics of this cooperation, its development and implementation and the monitoring of public policies.

The report does not aim to be exhaustive. It presents the results of the discussion and the exchanges with the NGOs and public authorities met during the visit. Additional information has been added after analysing public reports drawn up by international and national institutions and NGOs and in the light of certain developments that have taken place since the visit.

Freedom of association, right to participation and associated rights - legal aspects

According to the Ministry of Justice, in 2018 the Republic of Armenia (RA) had 4,222 public organisations, 1,120 foundations, and 244 legal entity unions registered. This represents a decrease in the number of public organisations by 560 over the past year due to a state policy adopted in 2016 to dissolve the public organisations which had not provided reports for the last four years. The number of legal entity unions decreased by 73, mainly as a result of legislative changes introduced in 2017 which required them to modify their charters and re-register as foundations or public organisations by February 2019.

It should also be noted that “*action popularis*” initiatives are the object of attention from public authorities and the civil society sector. “*Amicus curiae*” [(literally, “friend of the court”; plural, *amici curiae*)] allows someone, who is not a party to the case and who may or may not have been solicited by a party, to assist a court by offering information, expertise, or insight that has a bearing on the issues in the case. Currently in Armenia only NGOs working in the field of ecology have *amicus curiae* but the Ministry of Justice hopes to enlarge the mandate to allow other NGOs to bring a case to court. The delegation was informed about the ongoing discussions to extend this right and give “*amicus curiae*” to NGOs in the framework of the draft law on disabilities¹. In order to carry out strategic litigation at international level, it is important that NGOs have the experience and capacity to do it already at national level².

An enabling legal environment for non-governmental organisations (NGOs) and citizen participation (participatory democracy) has de facto been incorporated into the Eastern Partnership (EaP) that aims to strengthen the relationship between the European Union (EU) and its six neighbouring countries: Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. More engagement with civil society organisations is one of the 20 deliverables of the Partnership and the first one within “Cross-cutting deliverables”. In March 2019, the EU adopted an updated Roadmap for Engagement with Civil Society in Armenia, with clearly defined priorities, targets and actions for cooperation between NGOs and the EU. The updated Roadmap focuses on supporting an enabling environment for civil society organisations, supporting their participation in policy processes and improving the capacity of civil society organisations to effectively engage and be sustainable. Similarly, the Council of Europe Action Plan for Armenia 2019-2022

¹ See also the recommendation made by OSCE/ODHIR included in its Final Opinion on the Draft Law of the Republic of Armenia on Ensuring Equality before the Law

<https://www.legislationline.org/countries/country/45/Armenia/show>

² A guidebook for non-governmental organizations and human rights defenders published by Polish Helsinki Foundation for Human Rights, specifies the ways in which the NGOs can carry out strategic litigation: “by providing pro bono counsel to persons involved in matters of considerable social importance; by joining litigation as an intervening party exercising the rights of a participant in the proceedings; by initiating litigation on their own; by submitting *amicus curiae* briefs, in which organisations present human rights issues that are relevant from the perspective of constitutional and comparative law but do not directly refer to the facts of a case; by conducting cases before international bodies”. Helsinki Foundation for Human Rights (2019). *Strategic litigation in the area of human rights proceedings before the court of justice of the European Union. A guidebook for non-governmental organizations and human rights defenders*. <http://www.hfhr.pl/en/hfhrs-guide-on-strategic-litigation-before-cjeu/>

includes “promoting participation and diversity” as one of two actions under the pillar “Democracy”.

Registration and governance

Apart from the Constitution, the regulatory framework for NGOs in Armenia is given in the Civil Code, which provides the basis for non-commercial organisations. According to this law, it is possible to establish public associations and foundations. Public associations include several types of organisations such as public organisations (NGOs), religious organisations, political parties and trade unions. Furthermore, the Law on Non-Governmental Organisations regulates the establishment and the work of associations (membership organisations), while the Law on Foundations focuses on foundations as non-membership organisations.

According to the two legal frameworks mentioned above, an NGO can be established by at least two individuals or legal entities whilst a foundation can be established by one person. While there are no restrictions related to the citizenship, nationality or residency of founders, the RA Law on Public Organisations (16.12.2016, article 5) foresees that minors can establish organisations through their legal representatives (with different requirements depending on age)³. However, religious organisations, trade unions, political parties are legal entities that are prohibited by law to establish organisations or become a member of an organisation. To exercise political and religious activities an organisation must be registered as such and cannot be registered as a non-governmental organisation. The same rule is valid for trade unions, whose work is regulated by the Law on Trade Unions.

There are no legal limitations on the goals of organisations, but all organisations should function on the principles prescribed by the law (legality, non-discrimination, good faith, the common interest of its members, voluntary membership, autonomy and accountability). All legal entities in Armenia must be registered with the State Registry Agency, according to the Law on State Registration of Legal Entities. The Agency must register an organisation within ten working days, and this rule is generally respected in practice. It can also reject applications and groups and organisations can re-apply as many times as is necessary. In practice, it is found that organisations that have been rejected improve their application in light of the feedback from the Agency. However, the interpretation by the State Registry Agency of the reasons for rejection prescribed by the law can differ and this leads to inconsistency. According to local experts, initial rejections due to minor omissions or mistakes are more frequent in State Registry offices outside Yerevan. The list of documents necessary for registration includes an application for registration, the organisation’s charter and a protocol of the founding assembly or the decision on the founding of the organisation with information on the founders, as well as receipts showing the payment of the relevant state fees. From what we heard during the visit the fees are reasonable.

In addition to setting out the procedure for establishing an organisation, the Law on Non-Governmental Organisations also regulates the governing bodies of the organisations and their

³Persons under fourteen may become a member of a public organisation at their own will, based on the application of a legal representative, and persons aged fourteen to eighteen may become members of an organisation based on their own application with the written consent of their legal representative (CSO Meter, 2019).

competences, the publicity of activities, international activities, liquidation and oversight to see if all the provisions are generally in line with international standards. Activities and methods of work of organisations are listed as “The Rights of the Organisation” and together with “State guarantees of the Functioning of the Organisations” are the basis for the participation of NGOs in public life.

However, these provisions are vague and clearer procedures are needed in order to secure the involvement of civil society in the decision-making process. According to some NGOs, state officials, prosecutor and law enforcement agencies often fail to implement the laws because of the stigmatisation of NGOs. Such attacks, often verbal, often include hate speech which is not regulated by the Criminal Code. In April 2019, the Human House Rights Foundation, a member of the Conference of INGOs, published a letter of concern⁴ regarding growing hate speech and smear campaigns against rights defenders, “coming from (often fake) Facebook profiles and media outlets”. It shows that hate speech, which is on the increase, needs to be regulated not only by law but also through education for a culture of deliberation respectful of all.

Reporting

The only reporting obligation for NGOs is to provide the state with a financial report. If, however, there have been important changes in the organisation, then the NGO must notify the state of such changes. Foundations, on the other hand, are required to publish an annual report that gives information on implemented projects and financial sources, expenses and the names of staff members paid from the foundation’s budget. Associations are required to publish a similar report only if they have had any funding from public sources during the reporting year. All these reports are published online.

On 29 October 2018, the State Revenue Committee of Armenia⁵ published draft amendments to the Law on Public Organisations. The original Law on Public Organisations dates from 2016 and required reporting only by those NGOs in receipt of public resources (resources of state or local self-government bodies and bodies or legal entities that manage public resources). The draft proposed in 2018 introduced a reporting requirement for all public organisations regardless of their funding source. In its first version, it required the online publication of personal data about donors, members, staff, governing bodies and volunteers who had received funding. Finally, the part of the report to be published online should include “the names of public administration and local self-government bodies, the names of legal entities, the residency and the legal form of the organisation, the group of individuals according to the size of the income made. The part of the report which would not be published online includes the physical person's name, surname, the amount of income, the passport data, public service number, residency address or place of registration, telephone number all of which are non-disclosable personal data, and the processing, as well as transfer of these data to third parties and their use shall be carried out exclusively by the authorized body, in accordance with the procedure established by law. Personal data relating

⁴ Human House Rights Foundation. Armenian authorities urged to address growing hate speech against defenders. Letter of concern. <https://humanrightshouse.org/letters-of-concern/armenian-authorities-urged-to-address-growing-hate-speech-against-defenders/>

⁵ Draft in Armenian <https://www.e-draft.am/en/projects/1283/about>

to the source of annual income may be included in the report published on the website at the discretion of the organisation publishing the report, and only in compliance with the law.”⁶

The first proposal met with strong opposition by the NGO sector which was basing itself on Council of Europe standards. In this context, a Working Group on the “Issues of Transparency and Accountability Provision of NGOs and Foundations” was set up under No 93-A Decree dated on 14 February 2019. The draft law was developed by this Working Group which was composed of representatives of the public authorities and 9 members representing civil society organisations⁷.

The Conference delegation was informed about the further developments which took place after the official visit. NGOs were consulted by parliamentary committees on the proposed amendments to the Law on Public Organisations. On 6 March 2020 the law was passed in its first reading. The amendments adopted in the first reading refer to Article 24 of the current Law. After the second reading in the National Assembly of the Republic of Armenia, which took place on 25 March 2020, the President signed the amendments on 8 April 2020. All NGOs will now be obliged to submit a financial report to the State Revenue Committee, including⁸:

1. the full name of the organisation, taxpayer’s registration number (VAT number), location (subject to publication in case of appropriate notification by the NGO), state registration number, year, month, date, telephone number, e-mail and official website (if available);
2. the name and position of the head of the executive body;
3. the subject of the activity and the goals defined by the charter;
4. the number of members of the organisation (as of the situation of December 31 of the reporting year), as well as the number of volunteers (during the reporting year) whose work duration exceeds 20 hours per week;
5. the number of meetings convened during the reporting year;
6. the title of the projects implemented during the reporting year, brief description (place, purpose, status);
7. the total amount of annual income (cash and/or total property);
8. used funds and/or movable, immovable property;
9. information on the type of business activities carried out by the Organisation during the reporting year and the use of the profits received as a result.

NGOs using public money must, in addition to the above mentioned, also report:

1. the name and the place of the programme implemented with public funds, the status of the programme (completed or in progress) and information about it (purpose, main results);
2. the total amount of annual revenues (cash and (or) property) of public funds, according to the sources of receipt;
3. use of public funds and (or) property, expenses;

⁶ <https://www.e-draft.am/en/projects/1283/about>

⁷ https://ccd.armla.am/wp-content/uploads/2019/03/0_Hraman_93-A_2019.pdf

⁸ http://parliament.am/draftreading_docs7/K-436_DR2.pdf

4. The Organisation is obliged to publish the annual activity report on its official website (if any) and on the personal page of the dedicated System of electronic reports (hereinafter referred to as the System) published by the Organisations every year before May 30 of the following year;
5. If the organisation does not fill in the information provided in the points 1 and 2 of Part 2 of this Article on the personal page of the System every year, the changes related to them are automatically updated.⁹
6. In case of approval of the report by the organisations on the personal page of the System, it is published on the official website of the State Revenue Committee Tax Service (www.taxservice.am), which is available to everyone;
7. The model of the report provided for in this Article, as well as its publication and submission procedure shall be approved by the authorized body.
8. The report provided for in this Article shall be kept for a period specified in the Charter of the Organisation, which may not be less than five years.

Access to information

The Constitution of the Republic of Armenia guarantees the right to information about the work of state institutions and local self-government. The Law on Freedom of Information regulates the procedure, the form and the conditions for access to public information with a guarantee that information will, in general, be provided within five days. If additional work is required to provide the requested information, the information shall be provided to the applicant within 30 days after receiving the request, of which the applicant shall be notified in writing within 5 days of receiving the request, stating the reasons for the delay and the final deadline when the information will be provided.

The fee is related to administrative costs only (printing or copying). The provision of the information can be refused in five cases (professional confidentiality, national security, private information, copyrighted data, preliminary investigation data). In cases where information is not provided, citizens or organisations can, according to the law, submit a complaint to the court, but this opportunity is not often used due to lengthy procedures.

A unified platform for electronic enquiries (www.e-request.am) is available since 2018, allowing organisations and citizens to send an electronic request to all state bodies. This measure should be seen as a positive step, but the effects should be evaluated in the coming period. However, the provision of information to those who are not requesting it through this portal should be improved, especially by local self-governments.

The Law on Local Self-Government stipulates that a community of 3,000 and more inhabitants must have an official website where documentation, procedures, location and timelines of all meetings, public hearings and discussions with community residents will be available, as well as the results of public hearings and discussions on decisions of the community council and the

⁹ <https://www.arlis.am/DocumentView.aspx?docid=141094>

Mayor. This website should also contain procedures on the participation of local community residents in the self-government process, procedures for creating and operating consultative bodies adjunct to the head of the community, conducting open public hearings and discussions and similar information. Similarly, the Law on Freedom of Information guarantees that state institutions, regional administrations and major communities will have official websites where they publish information about their activities and have feedback options and where they should publish at least once a year important information about their work.

The level of access to information depends, however, on the subject of the information requested, the governmental body and the personal approach of officials, as well as the reputation of the CSO requesting the information. The pro-active publication of information by public authorities needs improving.

Access to funding

Funding provided by state to the civil society sector appears stable and a certain status quo is maintained. According to the USAID CSO Index, the total budget amount for non-profit grants and subsidies directed to CSOs increased by approximately 60% between 2017 and 2018. However, the process for allocating state grants became more open and transparent after the Velvet Revolution.

The efforts for more transparency are fostered by the Open Government Partnership (OGP) initiative of which Armenia is a member. The 3rd OGP Action Plan (2016-2018) already underlined the need for greater transparency and accountability regarding the allocation of grants from government. “However, within the scope of the commitment, the Ministry of Labour and Social Affairs only elaborated a competition procedure but did not apply it. The commitment was partially performed. The Ministry of Sport and Youth Affairs of the Republic of Armenia (which since April 2019 includes the Ministry of Education and Science and the Ministry of Culture) is applying an online system for the provision of state grants, which allows making state support to youth organisations more transparent and public and raising the level of effectiveness of the process. However, after the Revolution, the system was changed from online to hardcopy version. Almost all the grants are granted in an uncoordinated manner and without a competition”¹⁰. The 4th OGP Action Plan (2018-2020), includes Armenia’s commitment “to make compulsory the competition procedures for granting financial resources from the State Budget to Non-Governmental Organisations (CSOs) and to develop unified mechanism (reports) of accountability for all agencies”¹¹.

The key role played by CSOs in the recent political transformation improved their public image and public trust. It also had a positive impact on the perception of the civil society sector as a real and potential change maker.

Organisations and foundations in Armenia are dependent on international grants and other sources of funding (public fundraising, crowdfunding, business contributions) constitute only a

¹⁰ Open Government Armenia Action Plan 2018-2020. 3rd December 2018
<https://www.opengovpartnership.org/documents/armenia-action-plan-2018-2020/>

¹¹ Idem.

small part of their income. This means that NGOs cannot realise long-term planning and they function from one project to another.

Several NGOs noted the lack of capacities within the NGO sector and not enough funding to improve advocacy skills. A lot of Armenian NGOs do great work at the grassroots level with vulnerable groups but a lot of them do not know how to elaborate solid policy papers, present knowledge-based research, draft proper recommendations and evidence-based advocacy documents. Improving quality is hard to achieve because it requires a lot of resources. Investing in solid policy making advocacy skills is indirectly reinforcing participatory decision making as well. Some NGOs are trained in monitoring and in the implementation of the public policies. Such projects should be more accessible to a wider number of Armenian NGOs.

Organisations do not face obstacles from government in searching or receiving resources through various means of fundraising. Entrepreneurial activities are legally possible, but current legislation does not provide a favourable tax environment for NGOs who engage in entrepreneurship and legal frameworks are complex. NGOs may be exempt from paying VAT when purchasing goods or services if the project comes under an intergovernmental agreement or based on other decisions of relevant authorised institution. The National Human Rights Strategy addresses certain problems and has made provisions such as making state registration and tax regimes easier. The Conference's delegation learned that the Ministry of Justice is aware of the complexity. The Deputy Minister of Justice expressed her readiness to learn more about NGOs' proposals regarding this issue.

In accordance with a governmental decision, the state distributes funds to local organisations. In general, all grants should be given as a result of a competition organised and held under this procedure. In 2018, more than 12,000,000€ were allocated to support NGOs, but consolidated information about the distribution of these funds is not fully available. The law does not provide a precise specification regarding funding, nor does not differentiate between types of CSO funding, including service contracts, grants, donations, and subsidies. It is often unclear if, and why, a competitive or a non-competitive funding allocation model was used in a particular case. It is also often unclear what mechanisms of monitoring are being used by the state after approved funding.

There are no clear selection procedures and criteria for grant competitions, despite several positive developments during 2018 and 2019 that have been welcomed by local NGOs. Funding, as well as non-financial support (i.e. free office space), from the budgets of regional government and local communities is even more discretionary and non-transparent. In this regard, local NGOs mentioned the Ministry of Labour and Social Affairs as a positive example of cooperation. This Ministry organised a transparent grant competition with clear criteria, but it looks like this is the exception rather than the rule.

Existing permanent mechanisms and tools for the participatory policy-making process

The Republic of Armenia Law on Legal Acts (2002) for the government or legislators obliges these bodies to hold public consultations with civil society, expert bodies, or other stakeholders,

with a view to assessing public opinion, to seek alternative proposals, and to evaluate the risks and financial costs of the proposed initiative.

As a result of adoption of the Law “On petitions” of the Republic of Armenia everyone “has the right to submit a letter on matters of public significance, report on shortcomings of activities of state and local self-government bodies and officials, or a proposal on improving the activities of state and local self-government bodies and officials, settlement of issues relating to economic, political, social and other sectors of civil life or improvement of legal regulations in effect. At the same time, under the above-mentioned Law, the two ways of submitting petitions, written and electronic, are totally separate. Accordingly, the realisation of this constitutional right would be more effective and guaranteed with the creation of a unified electronic platform for submitting petitions”¹². Considering the above, Armenia has committed itself in the framework of 4th OGP Action Plan to set up a unique electronic platform to facilitate the effectiveness submitting petitions. The platform is good step forward, but the implementation of regulations related to public consultations need to be improved.

Role and functioning of the Public Councils

The structural mechanism for consultation is provided, among others, by the Public Council with several smaller specialised Public Councils attached to the different ministries. Given their place in the laws and the institutional landscape, the Public Councils are the permanent bodies, co-ordinating consultations on policy and legislation.

In civil society opinion, the effectiveness of these bodies depends on the one hand on the level of the CSOs’ pro-activeness and skills, , and on the other, on the attitude and the political will of the officials.

The main Public Council is a constitutional and an advisory body¹³. The procedure for appointing a member of the Public Council is determined by the law "On the Public Council" adopted on 7 March 2018 by the National Assembly. Twelve advisory commissions were replaced by fifteen branch commissions within the council. The extraordinary meetings of the Council may now be convened at the request of 1/4 of the council members instead of 2/3 previously. Sessions of the Public Council can occur at least once every two months and are supported by the state budget. The Public Council is assisted by the Office of the Public Council, which has the status of a governmental body. Student and youth organisations, veterans' unions, have a possibility to nominate candidates to the council¹⁴.

The Public Council is composed of 45 members, the first 15 members are appointed by the Government. The appointed Council members must then publish a general call to local self-government bodies, NGOs and all civil society organisations to nominate candidates to the Permanent Committees of the Public Council. Within three weeks of reception of the

¹² <https://www.opengovpartnership.org/members/armenia/commitments/AM0044/>

¹³ Article 161 of RA Constitution. “The Public Council shall be an advisory body of the Government. The procedure for the formation and rules of operation of the Public Council shall be prescribed by law.”
<https://www.president.am/en/constitution-2015/>

¹⁴ https://arminfo.info/full_news.php?id=34514&lang=3

candidatures the 15 Council members, together with the Cabinet of the Prime Minister, elect by secret vote 15 members from this list as Chairmen of Permanent Committees. Then these 30 members nominate one candidate each following which they elect by secret vote the remaining 15 members from the various structures through rating-based selection. Within three days of receiving the list of the elected Chairmen of the Permanent Committees, the Prime Minister selects the Chairperson of the Public Council from the list of 45 members and submits to the government for approval”¹⁵.

Some weeks before the Conference of INGOs’ visit the President of the Public Council Vazgen Manukyan resigned due to his disagreement with some trends that he observed, namely: “vetting, transitional justice, the politicisation of the trial over the case regarding the events of March 1, 2008 and the assaults on judges” – as he said in one of the interviews¹⁶.

Civil society informed the delegation about other recent resignations at committee level, specifically because the steps aiming to increase the efficiency of the Council were not supported by the Government. The civil society representatives underlined the difficulties to be heard also within the Public Council, especially when their proposal or opinion did not follow the Government’s political line. This is of serious concern to civil society.

These difficulties seem to highlight a wider problem - with the exception of a few good examples, there appears to be very little or no consideration given to the inputs and proposals made by civil society in the framework of the policy decision-making process. As the assessment of public participation made in 2014 by OSCE / ODHHR shows, “the public participation in the law-making process in Armenia is a “growing but ineffective” process. The ministries publish draft laws on the official website for public consultations (www.e-draft.am), but the suggestions are not usually taken into serious consideration”¹⁷. Even in cases where inputs have been taken in consideration, NGOs are not made aware of this, have no way of checking and have no feedback. Without responsiveness there is no dialogue.

Since 2018, each ministry is obliged to set-up a specialised public council gathering representatives of interested public organisations and the media, in order to increase the effectiveness of the activities of state bodies, submit proposals and comments on the policies implemented by each ministry. The activities of the councils are carried out on a voluntary basis and the participation of their members is rotational.

“Research in this field shows that most of the ministries held regular public council meetings. At the same time, this research identified a number of issues related to the councils’ effectiveness, accountability, access to information on the work varied out, and activities of the board members. For example, not all annual reports of the councils’ activities are published, and the meetings of the councils take place less often than prescribed by law”¹⁸.

¹⁵ ECNL, Transparency International. CSO METER. Assessing the civil society environment in the Eastern Partnership countries. Armenia 2019.

¹⁶ Armenia Public Council on PM. Armenia New Agency. <https://news.am/eng/news/543217.html>

¹⁷ OSCE / ODHHR (2014). Assessment of the legislative processing the Republic of Armenia. Legis Paper-Nr.: 247/2014 www.legislationline.org p.9

¹⁸ ECNL, Transparency International. CSO METER. Assessing the civil society environment in the Eastern Partnership countries. Armenia 2019.

In the post-revolution context, the question arose whether to maintain or replace the councils. Some civil society representatives considered these structures as a part of an old legacy, established by the old regime. One of the participants in the meeting underlined: “I started in 1990 and was involved in a public council. I agree that this council was not effective, but we should improve the way it functions and not destroy it. There should be experts involved. The councils to the ministries do have problems, but we need to solve these issues and not abolish every structural body. We can change the members, but not the councils. In recent years the Council attached to of the Ministry of Environment has not held any meetings”. In addition, regarding the government’s ecological policy, several NGOs raised the need for an inter-sectorial approach. In the past, the Committee for the protection of Sevan lake established within the Public Council worked for 4 years and brought many benefits. This was made possible through a cross-sectoral cooperation between the ministries and NGOs.

There is no mechanism in place allowing to introduce complaints when consultations do not happen or when the draft laws are not published. In theory, such omissions on the part of the Government can be challenged by citizens under the Administrative Procedural Code, but this has never happened.¹⁹

Civil society also noted a lack of information regarding the functioning of the councils and a lack of monitoring of their functioning. The big challenge is to include regional, small, local, and grassroot CSOs in these structures.

Despite the problems identified by our interlocutors and the elements that need to be improved, the model of Public Councils seems interesting and sustainable.

In an increasingly “liquid post-modern society”, it is recommended to adopt a semi-institutionalised approach: support permanent participatory structures and in addition organise dynamic, open to all, ad-hoc participatory processes. If civil society is truly considered a democratic and political actor, ad-hoc consultation and participation cannot replace institutional participatory structures, the work of which is advisory and based on co-decision between public officials and civil society.

E-draft platform

The Law on Normative Legal Acts stipulates mandatory public consultations on draft legal acts both at the local and national level. The duration of public discussions is at least 15 days, and all drafts are published on the unified government website (www.e-draft.am), where anyone can provide feedback through submission of opinions, recommendations or amendments, as well as vote in favour or against the proposed text. However, this period does not always seem to be respected. CSOs noted that sometimes they have a very short period to submit their proposals on the draft policy documents and that as the period is not flexible, their proposals arrive too late and are therefore not accepted.

¹⁹ Anahit Otaryan, Sofya Piradyan (2016). Measuring good governance in Armenia. Report on piloting the methodology. The NGO “Protection of rights without borders.

E-draft.am²⁰ is a unified website for the publication of Draft Legal Acts which was launched in 2017. It allows anyone to get familiarised with the draft legal acts presented by government agencies, download the drafts, and in the case of registered users (either as an individual or a legal entity) vote for or against and propose recommendations. “The summary of the proposals with justification for their rejection or acceptance is available both for registered and non-registered users. According to the procedure of organising and conducting public consultations, the summary, protocols and revised drafts are posted on the official website of the body organising the public consultation, as well as on the e-draft.am website. Based on the analysis and the summary of the received proposals, the body carrying out the public consultation makes the necessary adjustments to the draft.”²¹ However, there is no guarantee that the work already done will be accepted by the government or parliament which can change the draft in its entirety.

“The RA Ministry of Justice coordinates and supervises the operation of the unified website and monitors the process of posting and discussing drafts. “In case a draft law has not undergone public discussion prior to submission to the government, the government can send it back to the body which submitted the draft and urge it to publish the draft for consultations”.”²²

According to the Procedure for Organising and Conducting Public Consultations, the revised drafts and the summary from all public consultations should be available on the E-draft website, and also on the website of the institution that is proposing legislation.

Several participants in the meetings with the Conference of INGOs’ delegation suggested enhancing this mechanism to make it more effective. The open consultation can allow both conservative and progressive forces to express their opinion. However, it is up to the elected officials and public authorities to make a selection from the proposals received. Taking into account national and international standards in this regard, feedback in a summative form from the authorities explaining the follow-up to the consultation process, together with the rationale behind the choice made by public authorities, is an essential element of accountable decision-making.

NGO participation in public policy reforms

After the Velvet Revolution, Armenia dynamically undertook several fundamental reforms which are considerably improving public policies. This process requires an intensive and long-term commitment and collaboration with all stakeholders concerned. In many thematic fields, the contributions made by NGOs are visible.

Several reforms and projects aiming to support dialogue between civil society organisations and public authorities in different areas of public policies are financially and logistically supported by the Council of Europe and the EU.

²⁰ Unified Website for Publication of Draft Legal Acts, <https://www.e-draft.am/>

²¹ Procedure for Organising and Conducting Public Consultations, Appendix to RA Government Decision N 1146-N, 10.10.2018

²² idem

While many NGOs have experience in monitoring the implementation of international standards, the use of existing monitoring mechanisms established by the government should be improved. There is neither a regular, common and sustainable institutional mechanism, nor government demand, regarding the monitoring of public policies by civil society. This depends not only on the political will of each Ministry, but also on the determination of NGOs. During the visit, the NGOs participants underlined the very good cooperation with the Ministry of Justice (MoJ) concerning its political agenda and they highlighted in particular the reform of the justice system and the new strategy of human rights protection and its related 2020-2022 action plan.²³

In addition to the work of the public councils, public hearings are planned, but they are not systematically organised by all bodies. The Ministry of Justice seems to be one of the few who organises them regularly regarding proposed draft laws.

The Deputy Minister of Justice provided more information about the coordination body under the responsibility of the MoJ in the field of human rights protection. CSOs with 3-5 years' experience can apply and selected NGOs have an active participation in drafting laws. A specific online platform has been created which regularly reports on progress made. Whilst recognising this as a good practice, in order to be considered a very good example, this coordination body should have objective selection criteria, communicated to all potentially interested parties. The Conference of INGOs delegation was not made aware of such criteria.

During the exchange with the Deputy Minister of Justice, the issue regarding the way in which the NGOs are invited to contribute to the policy making process was raised. The Deputy Minister stated that most frequently, there was a public call for contribution. The selected NGOs must have the necessary expertise on the specific issues. However, the Ministry of Justice did not provide sufficient information regarding the selection criteria. This could suggest that the Ministry relies on the working relations already established with some NGOs. If this is the case, then only the well-known and strong NGOs are given a seat at the table.

According to several opinions expressed, public consultation should not take place only in the context of a reform, or "when the government is forced by international institutions to do so". Consultation should be part of a culture of dialogue and cooperation, and formal procedures need to be introduced in that respect.

Some of the online platforms are clearly not active and do not encourage a bi-directional communication. The information shared there serves only to give greater participatory legitimacy to the ideas already fixed beforehand by the public authorities. The example given during the visit concerns the platform for the reform of public administration. NGOs leave these e-spaces when they realise that their contributions are not taken into account or when the meetings of the platform are not planned on a regular basis or when they do not receive any feedback from the authorities.

In some ways, NGOs influence the public policy decision-making process through their personal connections with decision-makers. This is considered by some as a bad practice, which opens the door to a clientelism and a risk of corruption.

²³ Approved by the Cabinet in March 2020. <https://news.am/eng/news/540871.html>

Important concerns were also voiced regarding the temporality of the interaction processes. Some of our interlocutors regretted that the real exchange took place only during the two weeks after the official publication of the draft of the law. The exchanges would be much more fruitful if the consultation started not only earlier, but also continued through to the final stage when the final draft was prepared (see the Council of Europe Guidelines for civil participation in political decision making).

The two examples below show the dynamic of the interaction and the role played by NGO coalitions in the area of public reforms:

Transparency of public life

Several NGOs are very actively involved in the successive RA OGP Action Plans aiming to establish an open and participatory policy-making process by increasing the transparency and accountability of public services.

The Anti-corruption NGOs' coalition (composed of 100 organisations) is one of the most important, taking into account the anti-corruption agenda of the Prime Minister and the new Government after the revolution. The new anti-corruption policy 2019-2022 was adopted a month before the Conference of INGOs' visit - "133 recommendations were submitted by the Coalition from which 101 were accepted fully, partially, or taken into consideration"²⁴.

The transparency of public funding for NGOs is an important topic on the agenda and NGOs are willing to contribute to enhancing the system of public funding for NGOs in order to eliminate arbitrariness, and advocate for transparency.

Policy-making process initiated by NGOs

According to several interlocutors, public institutions should not be the only bodies to propose consultation or drafting around a subject requiring reform. Initiatives can also come from the NGO side, particularly if the subject meets the interests of specific civil society groups.

The pilot project on gender budgeting, implemented by 200-230 NGOs in 4 regions constitutes such an example. The project named "Budget 4 All" was launched by the Winnet Armenia Network for Women Resource Centers²⁵ in the framework of the EU-funded "Commitment to Constructive Dialogue" Project²⁶.

The programme consisted of an assessment of the sensitivity of the gender component in the public budget at the community level and of the establishment of the specific mechanism at the

²⁴ The CSO Anti-Corruption Coalition of Armenia about Armenia's Ranking in Corruption Perception Index (24 January 2020) <https://armla.am/en/5413.html>

²⁵ WIENNET Armenia <https://winnetarmenia.org/hy/>

²⁶ The "Commitment to Constructive Dialogue" project is implemented with the financial support of the European Union by a Consortium of civil society organisations, which are the Armenian Lawyers' Association (lead organisation), Agora Central Europe (NGO based in the Czech Republic), the Armenian Centre for Democratic Education-CIVITAS, the International Centre for Human Development, the SME Cooperation Association and the Union of Communities of Armenia. The project is funded by the European Union and launched on 15 December 2016. Duration of the project is 34 months. The 9 target areas of the project are: *Justice, Human Rights, Public Finance Management, Business, Education, Social sphere: Social inclusion of children with disabilities, Agriculture, Economy, and Energy.* <https://armla.am/en/2882.html>

national level (participatory budget) allowing NGOs to participate in the design, implementation and monitoring of the state budget. According to the Project Manager of the “Budget 4 All”, the aim is to improve knowledge, understand all the mechanisms and tools that will enable participation. “We are trying to improve our knowledge related to the public budget and understand all the mechanisms and tools that will enable our participation in budgeting processes in the near future and later. We are all sectoral organisations and coalitions and being involved in the process of the discussion of the budget applications of the ministries, will later on bring results when the expert opinions and suggestions made by us will be included and reflected in the public budget, and the participation of NGOs will help solve many problems in Armenia,” she said.

During the past several years, NGOs have initiated public hearings with state bodies. The good collaboration between NGOs and the Ministry of Finance led to a specific measure being undertaken by the Prime Minister: “The Prime Minister instructed the state authorities to conduct public discussions with the involvement of CSOs on the Medium-Term Expenditure Framework (MTEF) for 2020-2022 compiled for each authority, including related to the Applications for Budget Financing for 2020, as well as the cost-based justifications for applications”²⁷. On 9 January 2020, the Prime Minister signed a decision to start the budget process for 2021. According to RA Law on the Budgetary System of the Republic of Armenia, the “authorities should, by 10 April, 2020, discuss budget proposals with the interested civil society organisations in their areas of competence during the development of the Draft MTEF (including State Budget 2021), and approve the results (including a summary of the acceptance or rejection of the submitted comments and suggestions) of the discussions”²⁸.

All the bodies concerned received funds from the state budget to organise public discussions. This new dynamic and cooperation led to a governmental decision stating that as from 2021 the budget programming will be the subject of an open public discussion. The NGO sector will be invited to issue their recommendations and express their opinion on the efficiency of the budget. In this way, the Ministries will be able to adjust their decisions according to the needs identified on the ground and propose more relevant short and long-term solutions to the problems identified. The budget will not only be better prepared and implemented, it will also be more transparent, inclusive and relevant.

Anti-discrimination policy or policy on Equal Rights

The RA Constitution provides that everyone shall be equal before the law. The Constitution, amended in 2015 in its Art. 14.1 prohibits discrimination on the grounds of gender, race, skin colour and other social characteristics.

The anti-discrimination policy is an intersectoral topic and includes different stakeholders in its implementation. In 2019 the Council of Europe started its Action Plan for Armenia (2019-2021) which will support the efforts of the authorities to take efficient action against discrimination on

²⁷ Armenian Lawyer Association. Replies received from Government Agencies on ALA Recommendations and Comments have been sent to the Prime Minister, the NA Committees and the Ministry of Finance. October 2019. <https://armla.am/en/5043.html>

²⁸ Armenian Lawyer Association <https://armla.am/en/5462.html>

all grounds according to the European and international anti-discrimination standards. The Action Plan will also provide support to the authorities in improving access to justice for victims of discrimination by strengthening the redress mechanisms and anti-discrimination policies.

During the Conference of INGOs visit, the Deputy Minister of Justice informed the delegation about the drafting process and consultation regarding the anti-discrimination law. In December 2019, OSCE/ODIHR published its final Opinion on the Draft Law of the Republic of Armenia on Ensuring Equality before the Law.²⁹ One of the OSCE/ODHIR recommendations refers to the clarifying the definition of discrimination in order to avoid in law and practice possible contradictions with violations international norms. Another recommendation is to “revisit the title of the Draft Law to make it clear that the latter guarantees equal treatment and equal opportunities to every individual without discrimination” In this regard, the Conference of INGOs recommends referring to the definition of direct and indirect discrimination³⁰. Many CoE member States have excellent laws against discrimination and the Republic of Armenia should use the best practice from these countries and avoid any omissions in the process of adoption of this crucial legislation.

The OSCE/ODHIR opinion includes a very relevant element by recommending “the quality body” (in RA it comes under the responsibility of the Human Rights’ Defender), as well as non-governmental organisations, having a legitimate interest in a case, be entitled to bring cases on behalf of, or in support of, a victim of discrimination”. In the light of the existing legislation allowing NGOs to bring a case to court regarding environmental policy, this recommendation, if implemented, will constitute a very interesting development for the civil society sector.

Regarding the functioning of the equality body, the law makers should also take into consideration the ECRI General Recommendation No 2 which “recommends empowering the equality body to promote conciliation procedures where appropriate”.

LGBTI groups and their protection

LGBTI persons are one of the most marginalised groups in Armenia and have no adequate cover for their particular health and legal needs. They live in constant fear of being verbally and physically abused for their sexual orientation and / or gender identity at home, at work, at educational institutions, and, the worst case is when they need healthcare and / or legal protection based on their constitutional rights. NGOs observed that these groups are not only ignored by the current legislation, which has no effective protection mechanisms for them, but they are also hunted down and degraded by political figures, medical workers, law-enforcement officers, and the general public. In 2018 and 2019, the New Generation Humanitarian NGO registered over 1,000 human rights’ violations based on peoples’ sexual orientation and gender identity, from which 30% related to medical aid and services, 20% related to compulsory military service, 10% related to acquisition of identification documents, 12% related to work relations, protection of

²⁹ OSCE/ODHiR. Armenia Legislation Online <https://www.legislationline.org/countries/country/45/Armenia/show>

³⁰ According to the Council of Europe definition an indirect discrimination takes place where a generally applicable law or policy has a disproportionately adverse effect on members of a particular group, even if there is no discriminatory intent. “

personal data and other spheres, 28% related to criminal cases entailing discrimination, violence and torture by the law enforcement authorities, police and judiciary bodies.

The draft Law “On Ensuring Equality before the Law” has some controversial points according to several NGOs. The equality policy in Armenia was developed by previous governments. Today Armenia need a strong anti-discrimination policy. It is not just a question of equality before the Law but more specifically SOGI based discrimination and its prevention. The draft Law does not mention “sexual orientation” or “gender” or “gender identity”.

Civil society organisations forwarded their recommendations on the necessary steps to be taken regarding the implementation of the Human Rights Protection National Strategy 2017-2019, but they were not retained by the Ministry of Justice. These recommendations included the adoption of comprehensive anti-discrimination legislation that would grant effective protection levers to LGBTI groups. This legislative gap is repeatedly mentioned by NGOs in their reports regarding SOGI-based discriminations, human rights violations, violence and torture, which are submitted and reported to state authorities and the issue is constantly raised during meetings with state authorities but without effect.

The inclusion of such provisions in the draft Law will send a clear signal to the population that the rights of this specific group matter. Furthermore, NGOs also noted the missing provision relating to hate speech. For them, it is not only necessary to criminalise hate speech, but also prevent it. In order to accomplish this objective, concrete measures should be adopted. Apart from the legislation, a strategy on combating discrimination and related action plans need to be adopted.

During the meeting with the Conference delegation, the Deputy Minister of Justice spoke of the difficulties to define and introduce hate speech into the Criminal Code and explained the Armenian choice to address this issue under “incitement to violence”. The Republic of Armenia has ratified Protocol No 12 to the ECHR which provides for specific anti-discrimination provisions.

The Deputy Minister of Justice informed the delegation that hate speech was finally regulated under the Criminal Code. The latter was amended by a new provision that holds an individual accountable of his/her public “calls of violence, threatening the life or health of persons, publicly justifying violence threatening persons’ life or health or advocating such violence”³¹.

According to NGOs, hate speech is not commonly defined and regulated by Armenian law. Article 397 of the Criminal Code additionally provides criminal liability for denial, mitigation, approval or justification of genocide and other crimes against peace and humanity on the grounds of race, skin colour, national or ethnic origin and religious belief. However, the object of such crimes is more linked to public order and national security rather than the privacy and personal dignity of the individuals.

³¹ Armenia’s Justice Ministry seeks to criminalize hate speech
<https://www.panorama.am/en/news/2019/08/14/Justice-Ministry-hate-speech/2153118>

For several years, hate speech targeting LGBTI persons and NGOs has been an important issue in Armenia, leading the persons and entities concerned to court litigation³².

LGBTI groups which dealt with cases of violations of LGBTI people's rights on the grounds of sexual orientation and gender identity unanimously said that the draft Law on Equality did not include any pertinent clauses regarding the specific needs of the LGBTI people in the current Armenian context. This lack of specific provision is the main reason for the lack of proper investigation by law-enforcement authorities in cases related to discrimination and hate crime on the grounds of sexual orientation or gender identity. Consequently, the victims are not properly protected."

For many experts and NGOs, the anti-discrimination law should address in a more specific way the prevention and monitoring of hate speech in line with standards and norms on freedom of expression as recommended by the Council of Europe Commissioner for Human Rights in her report published in January 2019 following her visit to Armenia³³.

The Republic of Armenia must develop a separate strategy and concrete measures and tools for combating hate speech, in line with ECRI Recommendation 15³⁴ which recommends member States to:

- seek to identify the conditions conducive to the use of hate speech as a phenomenon";
- ensure that the gathering of data on hate speech is not limited to the criminal justice sector;
- clarify the scope and applicability of responsibility under civil and administrative law for the use of hate speech;
- support non-governmental organisations, equality bodies and national human rights institutions working to combat hate speech;
- combat misinformation, negative stereotyping and stigmatisation;
- support the monitoring of hate speech by civil society, equality bodies and national human rights institutions;
- withdraw all financial and other forms of support by public bodies from political parties and other organisations that use hate speech.

Law-enforcement bodies deny LGBTI victims to register themselves as victims, which leads to further discrimination and utter ineffectiveness of investigation and punishment. What is more disturbing is that LGBTI people are frequently denied access to regular healthcare, to HIV-related services, to transgender-related medical care, and are often humiliated by medical workers. These victims cannot redress their abused rights since they fear further discrimination at the police station and in court. The current absence of comprehensive anti-discrimination legislation that bans discrimination on account of someone's sexual orientation and gender identity, and that gives a clear definition of all related notions, such as hate speech and hate crimes leads to gay

³² Hate Speech vs. Free Speech in Armenia <https://iwpr.net/global-voices/hate-speech-vs-free-speech-armenia>

³³ Council of Europe Commissioner for Human Rights. Report on Armenia recommends measures to improve women's rights, protection of disadvantaged or vulnerable groups, and establishing accountability for past human rights violations.

³⁴ ECRI General policy recommendation no. 15 on combating hate speech adopted on 8 December 2015.

and transgender people having no ability to exercise their right to self-determination, to health, to privacy, and, in some case, their right to life.

“LGBTI people are usually the most discriminated marginalised group in the labour market, healthcare system, in the military and all the other places. Mostly, transgender people in Armenia are forced into sex-work. In most cases they don’t go to university, since there is also discrimination there, and they don’t get higher education diplomas to work. They can’t find any work and thus perform sex-work” explains Luiza Vardanyan from Pink Armenia³⁵.

The President of the Conference of INGOs expressed her concerns when in 2018 the European Forum of LGBTI Christian Groups and the New Generation Humanitarian NGO (a member of the Conference of INGOs) was forced to cancel its LGBTI Christian Forum in Yerevan, under violence and death threats³⁶. In June 2019, a campaign against the Open Society Foundation reached dramatic levels, with threats to office staff and hate speech. Many CSOs defending rights called upon “the law enforcement agencies to take action to protect the public order, to ensure free and safe movement of office employees and visitors. It should be noted that these protests had certain political connotation. According to experts, supporters of the former government built on the attitudes of the most traditional social groups to start such campaign as a means of fighting against the current authorities who were “patronising the degraded values.”³⁷

Many NGOs note a lack of strong political commitment from the public authorities in addressing the problems faced by LGBTI groups (physical safety, hate speech, personal data protection of the persons assisted by NGOs³⁸). This lack of support and protection from the government bodies when human rights of LGBTI people are violated is one of the main problems. NGOs see a strategy to sweep the preoccupations of LGBTI groups “under the carpet”.

The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)

The number of femicides in Armenia is increasing. These tragic events are relayed by the media. Each femicide is accompanied by action and marches of solidarity. Such actions are an important step to building a common response to domestic violence through the implementation of the Istanbul Convention which today provides the highest legal standards to prevent and combat violence against women and domestic violence.

³⁵ THE LGBTI COMMUNITY IN ARMENIA: A Difficult Balance Must Be Maintained
<https://eaparmenianews.wordpress.com/2019/12/13/the-lgbt-community-in-armenia-a-difficult-balance-must-be-maintained/>

³⁶ LGBT Christian Forum, New Generation Humanitarian NGO Organisers forced to cancel LGBT Christian Forum in Yerevan, Armenia amidst violence and death Threats. <https://www.euroforumLGBTIchristians.eu/images/pdf/2018%20EF%20NGNGO%20Forum%20cancellation%20press%20release.pdf>

³⁷ ECNL, Transparency International. CSO METER. Assessing the civil society environment in the Eastern Partnership countries. Armenia 2019.

³⁸ In the public procurement contract, the authorities could ask as for a personal information.

Armenia signed the Istanbul Convention in 2018, with several reserves³⁹, and is on track for its ratification⁴⁰. Various conservative forces accuse the government of using this as a way of trying to legalise same-sex marriage and change adoption rules in Armenia. The so called “gender ideology” is used as a slogan by those who oppose the ratification of the Istanbul Convention by the Republic of Armenia. This disinformation also has consequences on LGBTI persons and has led to the rise in hate speech and hate crimes against them.

In 2017, the Republic of Armenia adopted the Law on Domestic Violence. According to several interlocutors this law is not fully implemented. According to some CSOs, the law was adopted under the pressure of the European Union which requires such a law and policy under the specific grant agreement. In addition, several provisions of this law are seen by specialised NGOs as a kind of determination to “save the couple” rather than first and foremost protecting the victim⁴¹. The Istanbul Convention goes further by obliging authorities to prosecute the perpetrators. Criminal investigations and proceedings must go on, even if the victim withdraws the complaint. Only by doing this can victims rebuild their lives and hope that one day the problem will be eradicated from society. It is also useful to add that the Istanbul Convention obliges States to implement therapeutic aid for the perpetrators of violence, in order to break the cycle of violence.

According to our interlocutors, both the ratification of the Istanbul Convention and its implementation are crucial for society. High-profile public campaigns to inform the population correctly about the phenomena and help victims access their rights should be prepared without delay. Such campaigns should be part of a comprehensive communication strategy engaging all segments of society, media, public and private institutions.

It was confirmed by the Deputy Minister of Justice that the public authorities were faced with a lot of challenges in order to ratify and implement the Istanbul Convention: the provision of safe houses, the need for technical assistance to those providing services, the need for capacity-building for law enforcement officers and lawyers. The root causes of domestic violence and inequality also need to be tackled through education. Armenia makes use of the Council of Europe online HELP programmes and in addition, training is provided by the Human Rights’ Defender’s Office and NGOs such as Pink Armenia. The Ministry of Justice has the role of facilitator in this process.

³⁹ Article 30, paragraph 2;

- Article 55, paragraph 1 in respect of Article 35 regarding minor offences;

- Article 58 in respect of Article 37;

- Article 59,

⁴⁰ The RA government requested the Venice Commission opinion. The latter stated that there is no obstacle of constitutionality which could prevent Armenia from ratifying the convention. See more in the Opinion on the constitutional implications of the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) adopted by the Venice Commission at its 120th Plenary Session (Venice, 11-12 October 2019) [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)018-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)018-e)

⁴¹ The law requires that the victim goes to the police which in the context of violence is already very difficult for the victim. In the case of a first offence, the offender receives an official rebuke and only in the case of a second offence, can the offender be expelled from the home for 20 days. The court intervenes late in the proceedings with the possible proposal of professional mediation.

The NGOs underlined that the ongoing disinformation campaigns need to be countered by a positive narrative in favour of change. This narrative should be part of a wider public peaceful deliberation within polarised Armenian society.

NGOs' contribution to social policy

During the visit, the Conference delegation met with the Minister of Labour and Social Affairs and her delegation, as well as with several NGOs active in providing services for vulnerable groups and persons with disabilities.

The conclusions of the European Committee of Social Rights from 2019, show that Armenia has many challenges linked to structural problems, such as poverty, care reform, deinstitutionalisation of the residential care for children and adults. According to research in these areas, the sharing of competences and responsibilities between public institutions is quite complex and involves several Ministries (Ministry of Labour and Social Affairs, Ministry of Education, Science, Culture and Sport, Ministry of Territorial Administration and Infrastructure, Ministry of Health, Ministry of Finance, Ministry of Justice) as well as the Police, the Human Rights' Defender's Office, churches, several international and national NGOs and donors.

The Minister explained that in addition to the reform, the priority was to tackle discrimination in all fields, including the introduction of an anti-discrimination provision in the labour code. The draft version of the law on the Rights of Persons with Disabilities will address the issue of disability-based discrimination⁴².

This Ministry has a very dynamic collaboration with national and international service provider NGOs. In the context of social policy, NGOs are important players, by providing services and developing a social entrepreneurship which links social innovation, social justice, social collaboration and social values. NGOs' competencies are needed in order to develop community-based services and to prevent institutionalisation. The Conference delegation was informed that regarding the outsourcing of services, there were some 130 ongoing calls.

In 2020, new women's shelters will be opened throughout Armenia. A reporting and monitoring system is necessary to control the quality of the services provided and NGOs will conduct independent monitoring of the centres. The calls for outsourcing need to be broadened in order to reach regional government and some services need to be outsourced to local and regional authorities.

NGOs' contribution to the youth policy

The Ministry of Labour and Social Affairs also works on youth issues. The Deputy Minister informed the delegation about their intention to establish a 'Youth Platform'. However, the criteria and process of selection were not communicated to the Conference delegation.

⁴² The public consultations regarding this draft law took place in February and March 2020 FEB <https://www.e-draft.am/en/projects/2311>

Up until April 2019, the responsible body for youth policy and strategy implementation was the Ministry of Sports and Youth Affairs. Currently, youth policy comes under the Ministry of Education, Science, Culture and Sport.

Until 2017, Armenia had a State Youth Policy Strategy Council and its Action Plan⁴³ with following priorities:

- 1) Promotion of youth participation processes in political, economic and cultural life;
- 2) Youth Employment and Socio-Economic Issues;
- 3) Promoting a healthy lifestyle among young people;
- 4) Development of youth's spiritual and cultural values - military-patriotic education;
- 5) Continuity of education to promote processes of youth participation in the political, economic and cultural life, youth employment and socio-economic problems of the youth.

The Armenian Youth Council exists and seems to be under reconstruction.

The Minister informed the Conference delegation that in December 2019 some youth related programmes would be implemented.

Several NGO representatives underlined the urgency to develop a new Youth Strategy, in order to have a common and coherent vision of youth policy for the whole country, in both urban and rural territories.

They also underlined the need to revise the approach proposed by the employment centres, in order to respond better to the specific needs of young people. The Conference delegation learned that very recently the State Employment Agency had started consultations with youth organisations on this issue.

Civil participation at the level of the Republic of Armenia National Assembly

According to the Law on Normative Legal Acts of the Republic of Armenia, draft legislative acts are subject to public discussion, except for the draft law on ratification (accession) to an international treaty (art 3). Drafts of other normative legal acts may be put up for public discussion at the initiative of the body developing or adopting the draft. The Chairman of the National Assembly, a permanent or an ad-hoc commission, or a political party can organise hearings. They are not, however compulsory.

The duration of the public discussion is at least 15 days. The justification for the adoption of the normative act shall be published by the legislative body at the same time as submitting it to the interested bodies. The results of the public discussion and the amended draft legal act shall also be published.

There are two readings of draft acts in Armenian Parliament. Between the 1st and the 2nd readings only MPs can submit amendments and if a new article is added only the political parties can

⁴³ <https://www.arlis.am/DocumentView.aspx?DocID=80598>

submit amendments and not individual MPs. The public can participate in this stage of the process by giving suggestions/amendments directly to the MPs.

The rules of procedure of the National Assembly give the possibility for citizens, 50,000 signatures are required from citizens with the right to vote, to submit a regular draft law to the National Assembly through the civil initiative procedure. Amendments to the Constitution require 200,000 signatures⁴⁴. “The civil initiative shall be exercised in accordance with the procedure established by the constitutional Law of the Republic of Armenia “On Referendum” in accordance with the established requirements for the legislative initiative by the Rules of Procedure”⁴⁵. Several reports underline technical difficulties regarding the process of registration and signature collection, as well as a very “non-citizen-friendly character of this procedure”. Several recommendations have been made by CSOs in this regard⁴⁶, Armenian CSOs consider the mechanism and platform named Rahvaalgatus.ee, established in Estonia (see more in the Conference of INGOs Report on the fact finding visit in Estonia, 2017) as an example of good practice

The experiences shared by the civil society representatives during the meeting concerned, in a very small part, their interaction with the National Assembly.

The 4th OGP Action Plan, even if validated by the RA National Assembly does not seem to underline sufficiently the importance of this institution in carrying out the specific tasks which are planned in the Action Plan.

From the meeting with MPs from the “My Step Faction”, the delegation understood that one of their priorities is making Parliament more open to the public. The Chair of the RA National Assembly Standing Committee on State and Legal Affairs said that he preferred to invite legal experts rather than NGOs to the committee meetings. However, the MPs added that public hearings are a new phenomena in the RA National Assembly as is webcasting the Standing Committee’s meetings. The National Assembly meetings are already webcast.

As already mentioned, the revolution led many civil society representatives to stand for election and start a political career and consequently there are many MPs with a good knowledge of the civil society sector. This is clearly a factor that can strengthen mutual understanding, but it should not replace or substitute a sustainable and citizen friendly mechanism for a participatory policy-making process, in line with Council of Europe standards⁴⁷.

Civic participation at the level of Local Self-Government

The Law on Local Self-Government states that citizens in local municipalities should be informed about activities at local level. In municipalities with more than 10,000 inhabitants,

⁴⁴ RA Central Electoral Commission. Referendum Initiative. Draft law on amendments and additions to the constitution of the Republic of Armenia <https://www.elections.am/initiative/>

⁴⁵ The constitutional law of the Republic of Armenia. Rules of procedure of the national assembly. <http://www.parliament.am/parliament.php?id=bylaw&lang=eng>

⁴⁶ Manougian H. Direct Democracy: Can Citizens in Armenia Force a Referendum? EVN Report <https://www.evnreport.com/politics/direct-democracy-can-citizens-in-armenia-force-a-referendum>,

⁴⁷ For more information look at the Council of Europe Guidelines of civil participation in political decision making

local council sessions must be broadcast online. The same Law also allows community councils to establish advisory bodies which can involve experts, residents and other stakeholders.

The Open Government Action Plan for Armenia commits local governments of communities with 20,000 residents or more, to apply the e-draft model. This entails posting on the website the drafts of regulatory legal acts to be adopted by the head of the community and the council of elders.

The Law on Local Self-Government requires authorities to inform the local population seven days before each session of the local council, and local citizens may attend the session.

Regarding action carried out at local level, the civil society representatives expressed their regret that in the majority of cases there was an absence of mechanisms in place to frame co-operation with the local authorities. They were rather of the opinion that the interaction was based on personal contacts. “They just call us and ask if we have any suggestions, but without any working mechanisms and formal procedure”.

The delegation also met representatives of the Municipality of Yerevan and learned about the current priority action linked to ensuring a healthy environment for the residents of the capital city, Yerevan. An important challenge is to reduce air pollution and to improve the public transport network. The previous year the Municipality had prioritised waste management and the city’s economy.

In such a context, the Municipality of Yerevan is trying to increase the transparency and accountability of its public policy.

- There is a monthly meeting with media to keep people informed about ongoing work and progress;
- The municipality has set up a specific interactive website where everyone can be informed on how the money has been spent⁴⁸;
- The website “activecitizen.am” was launched in order to collect suggestions from citizens and involve them in the discussions about the ongoing projects;
- Point 5 of Article 11 of the Law of the Republic of Armenia on Local Self-Government obliges communities to have an official website where documents are posted and can be downloaded. It was mentioned however, that the dynamics of this online exchange between authorities and citizens need to be reinforced.

In this respect, there is a citizen-oriented policy innovation based on a unified data management and information system “Municipal Management Information System (MMIS). This system supports so called “citizen offices” (one-stop-shop) facilitating the interaction between citizens and public administration, public service delivery using innovative methods and tools, and to foster involvement of citizens in local self-government processes.

In 2018, this system was operational in 230 municipalities and 29 Citizen Offices were functional⁴⁹. This development is a part of the e-governance policy of Armenia.

⁴⁸ <https://budget.yerevan.am/>

⁴⁹ Local self-government system methodological guides and templates <http://www.mtad.am/en/Methodological-guides/>

Human Rights Defender's Office and its work with NGOs

Regarding the equality and anti-discrimination policy mentioned previously in this report, the Human Rights Defender plays an important role, according to the provisions of the Constitutional Law on the Human Rights Defender, which defines and describes the mandate, competences and powers.

The Human Rights Defender in Armenia is an Ombudsman and a National Human Rights Institution acting in accordance with the Paris and international Principles. The Defender is independent and observes whether international and domestic human rights standards are respected by public and local self-government bodies and officials, and in cases prescribed by this law, also by organisations acting in the public sphere.

In the context of his/her legal mission, the Human Rights Defender provides his/her opinion on the draft law and policies to the Government and RA National Assembly. The Office receives the individual and collective complaints, collects the information and conducts a preventive activity. The Defender has the possibility to apply to the Constitutional Court with regard to the compliance of laws, decisions of the National Assembly, orders and instructions of the President of the Republic of Armenia, decisions of the Government and the Prime-Minister.⁵⁰ In the framework of the cooperation with the Constitutional Court, the Defender also presents a special opinion (amicus brief) on human rights-related cases examining in the Court.

As part of his/her function on promoting the development of normative legal acts, the Human Rights Defender develops and submits recommendations to the competent authorities on making amendments and supplements to legal acts. It is also noteworthy that prior to the adoption of draft laws on human rights and freedoms they should be sent to the Defender for written opinion. The Defender is also entrusted with independent monitoring of the implementation of a number of convention provisions in the country. In particular, the Human Rights Defender is entrusted with the mandate of the National Preventive Mechanism provided by the Optional Protocol — adopted on 18 December 2002 — to the 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the Republic of Armenia. The Human Rights Defender also monitors the implementation of the provisions of the UN Convention on the Rights of the Child, as well as the UN Convention on the Rights of Persons with Disabilities (CRPD).

Some NGOs feel that the Human Rights Defender has too many tasks and responsibilities in too many fields which can have an impact on the quality of the work and its independence from government.

The Conference delegation met the current Human Rights Defender, Arman Tatoyan and his team during the last day of the visit.

The exchange focused on his cooperation with NGOs and his vision of the civil society sector in Armenia. The Defender underlined the important link between his office and NGOs in Armenia, firstly as partners of the monitoring work carried out by his office and secondly as active players at the grassroots level.

⁵⁰Human Rights Defender of the Republic of Armenia https://ombuds.am/en_us/site/AboutBuildingmeaning

The HR Defender's Office is a partner of different projects with human rights NGOs.

In his view, the ministries should establish more transparent criteria for the selection of civil society representatives who are invited by government officials to meetings and to contribute to policy work. The Conference delegation agrees that this would give a more equal chance to NGOs to be a partner in the decision-making process. Currently, only strong organisations have a reform agenda and develop policy recommendations and can bring them to the table of the decision makers. Mr Tatoyan also underlined the need for continued capacity-building training for NGOs.

“Nothing about us, without us” - NGOs in the context of political and social polarisation

The meetings with NGOs provided the ideal opportunity to meet organisations with different thematic scopes of activity and diverse opinions regarding the effects of the revolution on human rights and democracy. Some of them felt that the government bodies had started their mandate very well, being extremely responsive. This was helped by the fact that a significant number of past activists are now present in the government and parliament structures, and they have a first-hand knowledge on how civil society works and, therefore, appreciate and value cooperation with civil society organisations/representatives. However, several civil society representatives expressed their concern that some of the newly elected officials often advocated for the priorities of their own previous organisations. Several interlocutors noted that some officials have favourite NGOs with whom they prefer to work and sign memoranda, particularly with NGOs who are members of international organisations and/or groups.

Some NGOs are excluded from this cooperation and for no official reason, are not invited to meetings. They think that this exclusion may be linked to the fact that they worked with the previous ruling Republican Party.

This highlights the necessity for public institutions to establish transparent criteria and transparent mechanisms for participation.

However, as the Conference delegation observed during the meetings, and confirmed by the interlocutors, the demarcation line is not only opposing political opinions but also the generation gap. Our interlocutors observed a worrying tendency where persons of a certain age and experience feel excluded by the fact that “youth” has taken power. Those who feel excluded feel they have something to give, wish to be heard and think that the new establishment could learn from their experience.

Some NGOs had worked with the previous government and continue to work with the new one. This does not necessarily mean that they supported the previous one or support the present one. The NGOs do see changes, but they remarked on the lack of knowledge and experience of some of the newly appointed or elected officials. Those who had been active and had supported the protests in 2018 had very high expectations about the changes to come after the revolution. In some cases, these high expectations have turned into disappointment and have reinforced polarisation.

All participants observed the increasing polarisation and some of them qualify this process as radicalisation, due to the manipulation and disinformation of public opinion by some media, political leaders and public personalities, promoting very “radical” positions for or against the new government and its new policies.

Several NGOs said that the new government, compared to the previous government, does not like criticism coming from civil society. The stigmatisation of NGO activities by naming them political is still present. Many NGOs want to protect themselves from such labelling or “political colouring” and as a result they do not engage in the protection of political or civil rights. For all participants, and it seems to be a consensual point, the important challenge is the fight against artificial nationalism, fake patriotism, and fake national values which impede Armenia’s progress and place in the global arena.

Conclusion

To conclude this report, we can unquestionably say that expectations are very high among Armenian citizens regarding the strengthening of democracy and the rule of law, the fight against corruption and the protection and enhancement of human rights. A lot of challenges remain but there have also been some important accomplishments.

Regarding civil society and NGO participation in policy and political decision-making, despite the diverse provisions in the laws and existing structures such as the public councils, the effectiveness and the use of the right to participate in public affairs appears to depend very much on a proactive approach by the citizen and by NGOs.

Moreover, the timeframe (15 days) for public consultation of legislative acts is short and public discussions are mostly limited to a number of selected NGOs who are invited by the body organising the debate and not open to all on the basis of objective criteria.

Apart from the consultative bodies established by the laws covering public participation in decision-making, no particular policy or strategy exists to regulate or promote state-CSO cooperation. At the end of 2019, the National Strategy for Human Rights Protection 2020-2021 was adopted together with an Action Plan, but it is still hard to assess the possible effect that this will have on the improvement of the legislative framework and the implementation of international human rights standards. Existing participatory mechanisms are not consistent, and their effectiveness needs to be improved. It requires openness from both sides, from the NGOs as well as from public institutions, in order to define a new relationship between the public authorities and civil society.

The Conference of INGOs delegation would like to thank all the interlocutors and contributors to this report. We hope that the recommendations below will be taken into account in order to strengthen an effective and sustainable NGO and public participation in decision-making which is at the core of European democracies.

Recommendations

Progressive public policies and participatory democracy:

Taking into consideration the different areas of public policy, the Conference of INGOs would like to draw attention to the following points.

To push for the ratification of the Council of Europe Istanbul Convention. This implies not only preparing the legal provisions but also conducting a major campaign to dispel false ideas about the Convention and to inform the population about all the areas covered by the Convention, including its contribution to the protection of victim rights. Such campaigns should explicitly mention all the areas covered by the Istanbul Convention.

To reinforce youth policy that takes into account the specific needs of young people and is based on their direct involvement in the decision-making process.

Regarding the rights of LGBTI persons who currently do not have adequate protection from attacks, discrimination, hate speech and hate crime, there is an urgent need to provide:

- Specific legal provisions concerning SOGI related cases of discrimination;
- Develop a regular and sustainable dialogue with the NGOs defending and promoting LGBTI rights.

Regarding its anti-discrimination policy, the Republic of Armenia should adopt and implement the anti-discriminations law, based on Council of Europe good practices and standards. This also concerns the functioning of the Equality Body which should be in conformity with the ECRI General Recommendation N° 2.

A specific strategy should be drawn up for combating hate speech, and concrete measures and tools should be implemented, according to ECRI Recommendation N° 15.

Regarding the dialogue with national and international NGOs on the social policy agenda and human rights, there is an urgent need for the Republic of Armenia to ratify the Additional Protocol providing for a system of collective complaints under the European Social Charter. The collective complaints procedure is an exemplary mechanism which increases public dialogue through the implementation of Council of Europe standards.

An enabling environment for NGOs

Public authorities and NGOs should adopt a strategic roadmap to foster an enabling environment for civil society in Armenia.

Regarding the financial aspect of the functioning of the civil society sector there is a strong need to improve the tax treatment for CSO economic activities, give equal treatment to NGOs and business and improve the effectiveness and transparency of state funding.

In the context of disinformation, there is a need for greater support for independent NGOs which have a clear democratic structure and transparent funding.

In order to increase transparency and public trust and reduce polarisation, clear rules on public participation and selection criteria should be established by the Ministries, the National Assembly, Local Government and all public agencies involved in public policies.

Support for young people who are active in improving the current situation of the country should be increased to facilitate their participation in national and international fora.

Build a culture of dialogue and transparency

Consultation should be part of a culture of dialogue and cooperation and for it to be effective, formal procedures need to be in place. NGOs and public institutions need to be responsive to each other. NGOs should encourage the public authorities to take further steps to propose an ambitious political agenda. Civil society participation in local self-government is highly prioritised in the laws, however the practical enforcement of participation needs further improvement.

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