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Citizen’s legislative initiative in Kosovo: lessons learned for participatory democracy in Ukraine

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Introduction

Involving NGOs in lawmaking is the important component of the democratic decision-making process. The government - civil society cooperation helps citizens to advocate their interests, exchange information and ideas, ensure public support for political decisions and initiatives, achieve mutual understanding and build a spirit of cooperation. The level of involving NGOs in policy making process in Ukraine and Kosovo is mostly similar. But in Kosovo citizens have the possibility to initiate the legislation and kosovar NGOs have success practice of using this legislative initiative. This policy brief focused on the research this success practice and considering of the possibility to use it in Ukraine. This is the question of current interest for Ukraine, because the impact NGO on the lawmaking is rather limited, especially on the local level. The majorities of the Municipal Charters in Ukraine contain the difficult procedure of the local initiative, for example, citizens need to collect from 5.000 to 20.000 signs for providing the local initiative.

Situation in Ukrainian and Kosovar NGO participation in lawmaking

The Civil Society Organization Sustainability Index¹, which reports on the strength and overall viability of NGO, **shows the growing advocacy capacity** of the Ukrainian and Kosovar CSO during last two years.

The index is built on the expert assess of the sustainability of each country's NSO sector. The Index measures the sustainability of each country's CSO sector based on the CSOSI's seven dimensions: legal environment, organizational capacity, financial viability, advocacy, service provision, infrastructure, and public image. These characteristics are clustered into three basic stages: Sustainability Enhanced, Sustainability Evolving, and

¹ <https://www.usaid.gov/europe-urasia-civil-society>

Sustainability Impeded. The Sustainability Enhanced stage being the highest level of sustainability and development, corresponds to a score between 1 and 3 points; the Sustainability Evolving stage corresponds to a score between 3.1 and 5 points; and the lowest level of development, the Sustainability Impeded stage, corresponds to a score of 5.1 to 7 points on the scale.

In 2014 Ukrainian NGO took 2.2 scores for advocacy and engagement in policy making (in 2013 – 2.5, in 2012 -3.5), Kosovo took 3.6 (in 2013 – 3.7, in 2012 -3.6). In 2014 in that index the highest scores for advocacy took Poland - 1.6, Estonia - 1.8, Latvia – 1.9, Czech Republic – 2.0.

During last two years we can see some **positive and perspective cooperation initiatives**, which show the success of the NGO-authorities cooperation practice in Ukraine and Kosovo. It should be mentioned the RPR initiative in Ukraine² - the experts of the RPR have developed or amended 59 draft laws³, and CivKos Platform in Kosovo⁴ – the experts of the platform work in cooperation with the central and local authorities, platform has the branches in 5 municipalities.

But NGO impact on lawmaking in Ukraine and Kosovo is still situational and not enough developed.

The Code of Good Practice for Civil Participation in the Decision-Making Process⁵ defines the next gradation of the participation levels: Information, Consultation, Dialog, and Partnership. If we use this evaluation systems for considering the problem of the NGOs involving in lawmaking process in Ukraine and Kosovo, we can state, that the **interaction between government and civil society still has set the place between the Information and Consultation stages.**

Low level of participation is caused by the three **common problems** in participatory democracy models in both countries:

1. Imperfect legal framework for NGO involvement in decision-making;
2. The unwillingness of the public bodies to build cooperation with the NGOs at the regular basis, as a result - existing legal participatory democracy instruments are not properly functionalized;
3. Citizens don't have information about current forms of involving in policy making.

The legal framework for citizen's participation in decision-making provides some opportunities for NGOs to have influence on legislative process. NGOs could participate

² <http://www.rpr.org.ua/en>

³ <http://www.rpr.org.ua/en/achievement/laws>

⁴ <http://www.civikos.net/en/Home?>

⁵ <http://www.coe.int/en/web/ingo/civil-participation>

in organizing and conducting committee hearings, joining to the legislative drafting working groups under the parliamentary committee, working in special consultative-advisory bodies, using of electronic consultation mechanisms.

But the current legal framework in Ukraine and Kosovo is not explicit in obliging public institutions to proactively produce day-by-day cooperation with civil society organizations. And a successful citizen involving depends not only from providing relevant legislative background, but also from implementing of this laws and willingness of the authorities.

However, in Kosovo the current legislation framework gives the important **opportunity for civil society** to expand their participation in lawmaking process. The Constitution of the Republic of Kosovo⁶ and the Law on the Legislative Initiative⁷ provides all citizens of Kosovo with the right to introduce legislation (full the draft law, the concept for a law or law amendments) in the Kosovo Assembly by collecting at least 10.000 signatures and submitting these to the Assembly's Table Office.

The clear and realistic legal procedure for proposing the law by citizens has been used by civil society organizations for advocating their legitimate interests. The coalition of the Kosovar NGO uses this opportunity to amend the Law on Public Financial Management and Accountability to provide just compensation to victims of human rights violations.

The procedure of the citizen's legislative initiative in Kosovo

The Law "On Legislative Initiatives" establishes the **clear and easy to implement procedure** of the citizen's legislative initiative. The procedure consists of the next stages:

- **Notifying the Assembly for the commencement the initiative.** The representative of legislative initiative sends the announcement for the commencement of the initiative to appropriate Table unit in the Assembly of Kosovo and provides information to the Assembly whether the initiative for drafting a draft law or the proposal for the draft law will begin by providing detailed explanation regarding the objectives aimed to implement. The appropriate Table unit in the Assembly confirms a receipt of notice for legislative initiative.
- **Collecting signatures.** Within six months from the date when the representative of the legislative initiative notifies the Assembly of Kosovo about the commencement of the initiative, the process of collecting signatures must be

⁶ The Constitution of the Republic of Kosovo, Article 79.

⁷ Law No. 04/L-025 on Legislative Initiatives, Chapter IV.

completed and the legislative initiative must be sent to the Assembly of Kosovo. Expenses for the preparation of collecting signatures for the legislative initiative are covered by the representative of the initiative. The representative notifies the Assembly of Kosovo for the legislative initiative and for funding of the initiative and shall make transparent the sources and the amount of funding. The list which includes at least 10.000 signatures shall include: form of legislative initiatives and its title; name and surname; personal number; place of birth; signature and date of signature. Representative makes sure that the citizens sign only once and contain all the information required by the Law.

- **Verification of the list.** The list which includes at least 10.000 signatures should be verified by Central Election Commission within 15 days. In case of any discrepancies found in the context of the Law during the process of verification list, Central Election Commission shall inform the representative of initiative to improve the list of signatures not more than 30 days. In case the Central Election Commission states that the initiative is in accordance with terms defined by the Law, shall notify the representative of legislative initiative, within 3 days.
- **Submitting the initiative to the Assembly.** Draft Law or the proposal of drafting a certain Draft Law together with the disclosure document about the objectives to be achieved to realize and signed by at least 10.000 citizens shall be submitted to the Assembly by the representative of initiative. The representative of the initiative shall submit the Draft Law to the President or Presidency of the Assembly, solemnly.
- **Review of Draft Law.** The representative of legislative initiative is invited to participate in the work of relevant Committees of the Assembly. Presidency of the Assembly may allow the representative to present the initiative at a plenary session or shall assign a deputy with the proposal of the representative to present the initiative in the plenary session. The representative of the legislative initiative is invited to participate in the relevant Working Groups.

Citizen's legislative initiative campaign in Kosovo

Kosovar NGO the Justice and the People Campaign⁸, which is focused on the protection of victims of human rights violations by the state, in 2013 initiated the gathering 10.000 signatures of Kosovo's citizens to support amending Article 69 of the Law on Public Financial Management and Accountability, which limits the damages injured parties may recover to economic damages substantiated by evidence⁹.

Article 69 of Kosovo's Law on Public Financial Management and Accountability, which governs the expenditure of public funds, provides that victims of human rights violations

⁸ <http://www.justiceandthepeople.org/>

⁹ <http://www.justiceandthepeople.org/learn-more/>

may recover only economic damages substantiated by the court on the basis of evidence. This provision precludes recovery of non-economic damages, which include mental distress and pain and suffering. This contradicts the Kosovo Constitution as well as Kosovo's obligations under international law.

To remedy this deficiency, the Justice and the People Campaign proposed an amendment to Article 69 of the Law on Public Financial Management and Accountability to permit recovery of non-economic damages by victims of human rights violations, bringing the law into compliance with Kosovo's Constitution and improving the state's ability to protect the rights of the citizens. The initiators of the campaign expect that this initiative will strengthen the protections of citizens' fundamental human rights and increase government accountability for the protection of rights.

On 18 December 2013, the Justice and the People Campaign filed a formal notice with the Assembly of Kosovo to launch a citizen legislative initiative to collect 10.000 signatures to amend the Law on Public Financial Management and Accountability.

To collect the required 10.000 signatures, the Campaign created a network of NGO partners in 9 Kosovo's cities, which together collected in general 13.166 signatures of citizens in the entire territory of Kosovo.

On April 2, 2014, the Campaign submitted these signatures to the Assembly. Representatives of the Citizens' Legislative Initiative presented the initiative to the President of the Kosovo Assembly¹⁰.

The Law amendment has been listed as the law for the primary consideration in the 2015 Legislative Work Plan of the Parliament.

On April 1, 2015, the Kosovo Assembly's Committee on Budget and Finance considered and approved in principle the citizen legislative initiative of the Justice and the People Campaign¹¹.

On May 7, 2015, the amendment was adopted in general on the plenary session of the Kosovo Assembly¹². The amendment is sent to the functional committees for debate and consideration before it returns to Parliament for a second reading and vote by members of Parliament. The law can be passed on second reading by majority of the voting members, or can be referred back to committee for further discussion before a third reading and a final vote.

¹⁰ <http://www.crpkosovo.org/se/News/PRESIDENT-OF-THE-ASSEMBLY-WELCOMED-THE-REPRESENTATIVES-OF-THE-CITIZENS--LEGISLATIVE-INITIATIVE>

¹¹ http://www.justiceandthepeople.org/wp-content/uploads/2015/04/citizen-legislative-initiative-update_ENG.pdf

¹² <http://www.kuvendikosoves.org/common/docs/ligjet/Evidence%20of%20laws.pdf>

The citizen's legislative initiative campaign in Kosovo showed the NGO ability to use the legal forms of participation in policy making. The initiators of the campaign passed through all formal procedures, gathered the active citizens, built the NGO partner network in regions, worked in partnership with Assembly committees and deputies.

Successful realization of the citizen's legislative initiative became possible because of good regulated and clear procedure, enshrined in law. The Kosovo's legislation gives to the citizens possibilities to participate in lawmaking and advocating their legitimate interests.

Citizen access to the legislative process in Ukraine

Under the Constitution of the Ukraine, citizens have no right to initiate the legislation. The right to initiate the laws belongs to the deputies, the President of Ukraine, the Cabinet of Ministers of Ukraine and the National Bank of Ukraine. And Ukrainian citizens can address to them with the proposal to provide necessary legislative regulation.

Ukrainian legal basis gives to NGOs some possibilities to participate in lawmaking. The legal framework for cooperation of governing authorities with civil society in Ukraine include The Constitution of Ukraine, the Law of Ukraine "On Citizens' Appeals", the Rules of Procedure of the Verkhovna Rada of Ukraine, The Law of Ukraine "On Committees of the Verkhovna Rada of Ukraine", The Law of Ukraine "On Access to Public Information", Law of Ukraine "On public associations", The Law of Ukraine "On status of deputy of Ukraine", The Law of Ukraine "On information".

The legislative process in Ukraine consists of the 7 stages¹³ and **citizens can access to the first four**: 1. *Legislative proposal*; 2. *Bill drafted*; 3. *The legislative initiative (introduction the draft law to the Verkhovna Rada)*; 4. *Considering the draft law (public hearing, first, second, third reading, introduction alternative draft laws)* 5. *Adopting the draft law by the Verkhovna Rada*; 6. *Approval the law (signing of the law by the President of Ukraine)*; 7. *Information (including the law to the Unified State Register of Legal Acts and assigning it a registration code. Publication of the law in official media: the newspaper "Voice of Ukraine" and "Official Bulletin of the Verkhovna Rada of Ukraine"*.

For the participating in the first three legislation stages, NGOs have to build dialog with the subjects of legislative initiative.

In accordance with the Ukrainian laws, citizens can initiate the legislation on the local level. The Law of Ukraine "On Local Self-Government in Ukraine" contains the provision on the rights of the citizens to provide the local initiative. But procedure of local

¹³ http://www.academy.gov.ua/doc/mijnar_spivrob/mizhnar_proekt/pdf/psp2/gromada.pdf

initiative defined and established by the local authority or regulated in the Municipal Charter. The most Municipal Charters in Ukraine have the difficult procedure of initiating the local act by citizens. Some of them contain the norm, on which the initiative group needs to collect from 5.000 till 20.000 signatures of the local community members for supporting the initiative (for example Odesa, Rivne, Lviv, Severodonetsk).

Conclusion

Ukrainian civil society demonstrates the ability to participate in policy making process, especially during last two year's. Some NGOs have the relevant education, institutional and professional capacity for quality drafting legal documents. But Ukrainian legislation framework gives very limited possibilities to involve CSO in legislation process. The success of the citizen's lawmaking initiatives depends on the availability of the legislative initiatives subjects to collaborate.

Ukrainian Parliament needs to amend the Constitution after the consideration of the amendment in Constitutional Court of Ukraine to give citizen's the right to initiate the law. It could give to civil society huge opportunity to defense their rights and provide reform in Ukraine. But the constitutional amendments process is very difficult and the perspective citizen's legislative initiative on the central level is implemented poorly.

It is important to give the legislative initiative right to the local communities in terms of decentralization in Ukraine. That is why Municipal Charters of the communities must contain the realistic procedures of local initiatives.

Undoubtedly, the Kosovar success practice could be used in Ukraine at the local level because of the similar legislative framework and situation in the field of citizen's participation in policy making process. As the procedure of the initiating and conducting the citizen's legislative initiative in Kosovo is well regulated, it could be used in Municipal Charters of the local communities in Ukraine (but the number of signs have to be relevant to the number of community members).

The NGOs participation in decision making is the important part of the good governance especially in term of the European integration process in both countries. That is why implementing the forms of participatory democracy in Ukraine, which were successfully implemented in the developing countries, is particularly meaningful.