



INSTYTUT SPRAW PUBLICZNYCH
THE INSTITUTE OF PUBLIC AFFAIRS



ЦЕНТР "СТРАТЕГИЯ"

Fellowship Program for Young Russian Policy and Opinion Makers

Policy Papers 08/07

THE CONSULTATIVE BODIES' ACTIVITY IN POLAND AND RUSSIA: REAL VS. ILLUSORY EFFECTIVENESS

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The papers in the series have been written by young Russian policy analysts as a result of study visits to Warsaw in the framework of a fellowship programme co-coordinated by the Institute of Public Affairs, Warsaw and the Strategy Center, Saint Petersburg, funded by the National Endowment for Democracy. The opinions are those of the author.



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Abstract

This policy paper focuses on analysis of the activities of consultative bodies between the government and NGOs in Poland and Russia. The aim is to find out the reasons for their effective or ineffective functioning. Particularly, the object of this policy paper is national state policy toward NGOs which affects the process of collaboration within consultative body's activity. Two empirical cases are used to illustrate this issue: the functioning of the Public Chamber at national level in Russia and the activity of the Council on Public Benefit Activity under the Polish Ministry of Labor and Social Policy.

1. Introduction

1.1. Consultative body as a particular mechanism for intermediation

To take into account different points of view, consultative bodies include a wide range of interest representation: officials, bureaucrats, representatives of political parties, civil society organizations and commercial organizations. Their main function is involving citizens in the decision making process at the stage of elaborating the policy. Consultative bodies provide regular, formal platforms for systematic intermediation between the authorities and interest groups, including NGOs' representatives.

The establishment and functioning of NGOs requires involving both the government and the civil society. On the one hand, a consultative body is created and supported by the authorities. The activity of the body is set out in the law or an executive resolution. Officials play a key role in the formation of consultative body appointing its members. On the other hand, consultative bodies are attractive for NGOs. They provide access for NGOs into the formal structure of the authority, which allows them to lobby their interests.

1.2. Problem definition





Consultative bodies may be used as an instrument by both NGOs and authorities. NGOs' opportunities for exerting influence over the decision-making process depend on the effectiveness of the consultative bodies themselves. The degree to which they are effective may be indicated by their formal activities (amendments to regional laws, and proposals in regional programs initiated by NGOs). From the NGOs' point of view, such activities of the deliberative bodies are substantively effective when their proposals are translated into specific political decisions or measures (regional laws or executive acts). In contrast, ineffective activities are characterized by the lack of decisions which take into account the NGOs' interests. When the chambers undertake such ineffective activities they merely approve state decisions through appeals to the citizens or to the state. Among such ineffective or purely procedural activities of consultative bodies are legal appeals that lack any serious effects on regional policy.

Problems of insufficient impact of NGOs on the activities of the consultative bodies have been observed in both the Russian and Polish cases. In Russia, several articles noted that the Public Chamber does not exert sufficient pressure on the authorities. Rather, the Chamber's members focus on popular issues to demonstrate their importance to the public.¹ These included the protection of the rights of soldiers in the Russian army and the defense of civic rights of people who live in dilapidated buildings in South Butovo (Moscow region). Unfortunately, until now the Chamber's interventions have not brought about any positive changes in these areas. Moreover, some of the Chambers' initiatives have been criticized by NGOs' representatives and experts as contradicting the NGOs' interests. Those included the legislative initiative (which failed) to forbid for officials to use such words as "dollar" and "euro".

Several NGOs' attempts to influence decision making process also failed. Since the very beginning of its work, the Public Chamber has not been able to protect NGOs' interests during legislative process while nation parliament changed the main principles of federal law "On NGOs" in 2005. This law was adopted without public debate in spite of the Chamber's demands to suspend this process (the Public Chamber was being formed at that time). This shows that the national parliament could sideline the Public Chamber in the legislative process. Also, there have been some initiatives which were not supported by the authorities: a statement against mayor's appointment, amendments to the Forest Code etc. All these facts demonstrate that the Public

¹ Nezavisimaja gazeta. "Obshestvennaia palata soschitala dobrye dela" ("Public chamber accounts good deals"). 3.08.2006; Nezavisimaja gazeta. "Palatki dlia ministrov" ("Chambers for Ministres"). 7.08.2006



Chamber does not operate like an instrument to represent public opinion and protect civic rights, and fails to influence the changes in the state policy in different spheres.

The situation with the Council on Public Benefit Activity in Poland is more complex - as opposed to the powerless Public Chamber in Russia, the Council has proved to be partly effective. The interviewed NGOs' representatives assess its activity to be quite effective till national elections in 2005. The website of the Ministry of Economy, Labour and Social Policy gives a lot of information on the consultative body's activity: "the Council systematically expresses its opinion on government drafts of legal acts related to public benefit activities and volunteer work contributed to the formulation of tax provisions in cooperation with the Ministry of Finance representatives of the Council participated in the Inter-departmental Task Force for National Development Plan"¹ Until 2005, NGOs were deeply involved in the decision-making process and exerted influence the formulation of legislative acts and social policy. However, in the common opinion of NGO representatives, the change of the government played the crucial role in Council's activity, resulting in the absence of any decisions or recommendations (as it can be seen on the official website). Since the leadership of Ministry of Economy, Labour and Social Policy changed, the activity of the Council became worse. One interviewee referred to the change as "collapse" in effectiveness (Jan Herbst. Klon/Jawor Association). As Grzegorz Makowski (Institute of Public Affairs, Social Policy Program) argued, the problem is that "the new Ministry is not interested in this body" any longer.

2. Factors influencing the effectiveness of NGO-government consultations

In this paper, two key factors in the effectiveness of NGO-government consultations are analyzed: internal features and external conditions. Thus, the main reasons of ineffectiveness are considerable state influence on the intermediation with the third sector by determining the principles, membership and agenda. The second important factor is the reason for its creation which influences its role in the political system.

To sum up, I can say that both cases are different comparing such internal factors as the position of the consultative body in the system of power, its functions and composition of

¹ The main scope of work of Public Benefit Activity Council:
(http://www.pozytek.gov.pl/Basic_information_on_the_Public_Benefit_Works_Council_588.html?PHPSESSID=9018eea7a46b9fe04a79f050445cfe65)



participants. The Polish case is characterized by strong and well organized NGOs which effectively collaborate with officials who are also members of the Council. On the basis of this fact I can conclude that the membership of the consultative body does matter. The degree of NGOs' professionalism and inclusion of the representatives of the national government and local authorities play a key role in ensuring effective activity of the Council.

The Russian case shows well-formulated principles for NGOs involving in legislative procedures and executive decision making process. The problem concerns membership of the Public Chamber which claims to be representative but it does not have legitimacy among Russian NGOs. Thus, the Chamber's members are not professional enough to protect their interests by means of this consultative body. To complete this analysis, I am going to discuss the role of the authorities in the consultative body's activity. So, the next step is analyzing external factors which can influence the effectiveness of consultative bodies' activity.

3. Internal factors

3.1. Analysis of formal framework

Comparing two cases, there are similar formal frameworks which represent additional channels for NGOs' opportunities to make "input" into the political system and ensure the participation of the public in policy-making. Both the Council and the Chamber have consultative status in the structure of the national government. These bodies were created by national politicians to involve NGOs into the decision-making process in the framework of a permanent platform for intermediation with the officials. But in the two cases these similar frameworks produced different results.

The Council on Public Benefit Activity was set up by the Law on Public Benefit Activities and Volunteer Work on April 24, 2003. It is an "advisory, analytical and assistant body" (Article 35.1 of the Law)¹ which helps the Ministry of Economy, Labour and Social Policy in social security issues.

¹http://www.pozytek.gov.pl/Basic_information_on_the_Public_Benefit_Works_Council_588.html?PHPSESSID=9e63f8b4dbd9f0ced27c0ce39cf91fd2





To some extent, the Council's tasks duplicate functions which are provided by the existing mechanisms. Article 35.2 states that the Council's activity should concentrate on the evaluation and monitoring of implemented policy. This suggests that, first of all, the Council is seen by the authorities primarily as provider of feedback from the society, rather than as a partner in the formulation of the policy. The Council helps the state reduce its costs in obtaining feedback from the society. But this function is already provided through a process of consultations and official requests to NGOs. As one expert said: "the involvement of experts in decision making process is more convenient for the authorities because it helps make quick decisions through consultation without a special structure for doing so" (Marek Rymsza, Institute of Public Affairs).

Moreover, there is no need to create a particular mechanism (such as the Council) for exchanging the information since such instruments already exist at the lower level. Consultations take place within networks involving all the stakeholders (NGOs and officials) in the framework of particular issues. This mechanism is assessed by the NGOs as effective. According to Marta Pejda (Zagranica Group) the "government takes into account analytical papers prepared by the NGOs".

At the same time, the new channel for NGOs participation in legislative process was successfully used by NGOs as a tool for their participation in the process of policy formation and assessment of its implementation. The Council's members can represent their interests during, and not after the legislative process. This is provided by Article 35.2.2, which envisions "issuing opinions concerning governmental draft laws in the field of public benefit and volunteer work" (Article 35.2.2). As the official website indicates, this tool of participation resulted in the Councils' suggestions and amendments into executive acts and legislative drafts.¹

The Public Chamber was established by the President of Russia at the national level in 2006. The main function of this body is to control the government's activities in all spheres. To provide this function 18 committees were created. They were made responsible for particular issues, such as the environment, culture, education, civic rights etc. NGOs also use the form of a working group to elaborate analytical papers for solving particular problems. These structures

¹ The main scope of work of Public Benefit Works Council:
(http://www.pozytek.gov.pl/Basic_information_on_the_Public_Benefit_Works_Council_588.html?PHPSESSID=9018eea7a46b9fe04a79f050445cfe65)





allow the Chamber's members to involve experts and organize detailed discussions to prepare high-quality papers.

The Public Chamber's activity is more concentrated on decision making process (first of all, in the legislative process). Procedures have also been well elaborated to submit prepared analytical papers for consideration of responsible state organizations. There are two channels for the Public Chamber to participate in the decision-making process: providing public discussions on key law drafts and preparing expert documents (resolutions) for the executive branch of the government.¹ In this context, NGOs take part in parliamentary committees to offer amendments on behalf of the public. Also, the Chamber's members participate in the decision-making process through their representatives in Ministries as all Chambers' commissions attached to Ministries.² The process of NGOs participation is well elaborated in the Law "On Public Chamber": all the Chambers' suggestions should be considered during the legislative process in the national parliament or in the working groups in Ministries. However, taking into account the fact that there are no such widespread networks which provide collaboration between NGOs and the government (as in Poland), this formal framework could be complemented by introducing such practices at the national level in Russia.

3.2. Principles of the formation of the consultative bodies

As NGOs are responsible for the usage of legal rules, the next testing factor will be the membership of the consultative body. Members of the Council are appointed by the Minister of Economy, Labour and Social Policy. Half of all the members are representatives of the third sector; the remaining part comprises the representatives of governmental offices at the central and local level. This does not mean that the state completely controls this process. NGOs play a significant role in this process, organizing elections within non-profit sector to ensure appropriate representation of NGOs (Jan Herbst. Klon/Jawor Association). The winners of this election are nominated as candidates from whom Minister chooses new members of the Council. So, in spite of the formal rules of the Council's formation, NGOs initiated informal practice to

¹ Federal law "On Public Chamber of Russia Federation" (<http://www.oprf.ru/rus/documents/article-2.html>)

² Evans Alfred B. The Public Chamber in Action: representation or coordination?





influence their representation in the Council. Due to this practice, some NGOs (for instance, Klon) assess the interest representation in Council as appropriate.

The President plays a key role in creation of Public Chamber. He appoints one-third of all the members. These members select another one third part of Chambers' participants from among the best-known NGOs. The last one third part is formed through regional elections and should represent regional and local NGOs. Thus, the Public Chamber consists of NGOs' representatives and well-known people. Officials and politicians cannot be members of Public Chamber. This principle aims to guarantee the independence of the Chamber from the state.

In my opinion, the principles of Council's formation promote the achievement of consensus between the officials and representatives of NGOs as they need to produce joint suggestions for the Ministry. In turn, in Russia the NGOs work separately, only informing the officials about their needs and demands. This makes the Council a more effective deliberative mechanism. But these structural preconditions do not influence the results of the Council's activity. This situation can be explained by the position of consultative bodies which consist of a huge number of interest groups and discuss wide range of questions. It is probably safe to say that deliberative mechanisms are effective on lower level where concrete issues discussed. This point can be confirmed by the representatives of NGOs who consider that "there is no need to meet with the minister or deputy minister because there are more effective contacts with subordinate officials" (Marta Pejda. Zagranica Group).

Some experts consider the process of the Chamber's formation as unequal and nontransparent (especially at regional level).¹ As a result, some famous and influential NGOs (for instance, Moscow Helsinki Group) were not included in the Public Chamber. Due to this fact we can assess the representation of non-profit sector as inadequate. Moreover, this leads to the inclusion of weak and "loyal" NGOs in the Chamber's activity. In consideration of Polish experience, we come to a conclusion that in spite of formal rules NGOs should influence formation process to create more appropriate representation of third sector in consultative body.

4. External factors

¹ Only active civil position can make the Public Chamber to turn to the face of the society. From the interview with Nina Beljaeva. Information Agency REGNUM (<http://www.regnum.ru/news/577214.html>)





4.1. Political situation as a crucial factor for the consultative body's activity

Several attempts were made at the national level in Russia to establish certain mechanisms for intermediation between the state and society—it is worth noting the Civic Forum (in 2001) and Public Chamber (in 2006). These institutional forms of intermediation provoked various critiques from experts and some NGOs in the context of the contemporary political situation in Russia.¹ The main arguments that were raised pointed to the strengthening of state interference into all spheres of society, including third sector. The interference was associated with the state's financial support for “loyal” NGOs. In this environment, consultative bodies became formal mechanisms for dividing the third sector and imposing formal rules on the practices that had been so far informal.

The openness of a political system is an important but not sufficient condition for the effective activity of consultative body. In contrast to the Russian case, the Polish political system is sufficiently open to ensure democratic elections and a transparent decision-making process. The more open and competitive political system in Poland promotes the NGOs' access to the decision-making process. Nevertheless, some holdovers from the post-communist transition remain - one is: the “paternalistic relationship toward the third sector in Poland” (Marek Rymsza, Director of Social Policy Program, Institute of Public Affairs). According to NGO representatives, authorities attempt to take advantage of NGOs to promote their policies.

4.2. Conditions of the bodies' creation

This part of policy paper concerns external availability of the authorities to collaborate with NGOs. In democratic political system the government is interested in the establishment of a consultative body as the participation in the decision-making process allows taking into account various kinds of interests. This leads to a more balanced (qualitative) decision making process. All participants benefit from the interaction of this kind. The authorities receive impartial “feedback” from different groups whose opinions help shape effective policy measures. Interest groups, in their turn, gain access to “input” into the political system, which allows them to lobby

¹ D. Babich: But Will the Public Chamber Have Any Teeth? Russia Profile 2005, N. Petrov: *Obshestvennaja palata: dlia vlasti ili dlia obshestva? Pro et contra* 1: 40 – 59, 2006





their own interests. This liberal model applies only in the situations when the authorities depend on public support and have to manage policy efficiently. It obviously requires some degree of openness in a given political system to make the state interested in such kinds of interaction with interest groups.

Creation of consultative bodies for intermediation with different interest groups shows readiness of the authorities to be open to different views in the course of policy formulation (the Russian case). But it seems that these external attempts can be bounded by formal procedures and are not necessarily accompanied by state openness and particular conditions for NGOs' influence decision making process (the Polish case after 2005). The reasons for this situation can be found in the conditions under which these bodies were established.

Analysis of political conditions helps to understand the state's interests and intentions in the creation of the consultative body. The Council on Public Benefit Activity was established as part of the partnership between the government and the non-profit sector, required by Poland's accession to the EU. A new policy was launched toward non-profit sector, implementing the European Social Inclusion agenda. The Ministry of Labour and Social Policy played a key role in this process. In particular, European integration had important impact on the process of elaboration of the Act on Public Benefit Activities in 2003. Such a law was needed in light of the European standards, which required the involvement of third sector representatives in the decision making process, and empowered NGOs as independent actors to control the national government.

Some experts note that the Act introduced at last a conventional definition of non-profit sector and their conditions in decision making process (which had not been stated).¹ A discussion paper adopted by the European Commission in 2001 is an example of such legal basis, which provides these principles and takes a strong definition of the third sector, NGOs, funds and their classification.² The Act also provided legal framework for cooperation with the third sector in new conditions of European Union financial support. As a representative of one of the Polish NGOs mentioned: "the government should involve NGOs in their programs due to the European

¹ G. Makowski: *Principles of Inter-sectoral Cooperation as Laid Down in the Legislative Act Regarding Public Utility Activities and Volunteer Work.*

² The Commission and Non-governmental organizations: Building a Stronger Partnership.
(http://www.euromedrights.net/english/Download/EU-NGOrelations118_en.doc)



standards of cooperation” (Kataryna Batko-Toluc. Association of Leaders of Local Civil Groups).

In conclusion, while the central authorities did not need to create a consultative body as there were a lot of effective tools to get NGOs’ expert opinion, the Council could be seen as a platform for partnership with NGOs which should play an important role in policy formation and implementation. Clearly, there was a political need to create such a particular mechanism to get projects from the European Union. However, the government’s response has been ambivalent - little procedural assurance or openness for NGOs’ initiatives has been shown since 2005.

In Russia, the conditions for the creation of the consultative body are much worse. The absence of an open public forum for the interaction between interest groups in Russia leads to the emergence of closed mechanisms which act only to legitimize the state’s own political decisions. The Public Chamber is seen by NGOs as a tool of the state for legitimization and implementation of its policy. The authorities seek to co-opt “loyal” NGOs in the decision-making process by means of consultative bodies. The state uses interest groups as a means of mobilizing public support and reducing their opposition potential, but not as a source of policy expertise. NGOs can also participate in implementing state policy but they cannot influence it in defense of their own interests. The lobbying of NGOs’ interests is allowed in exchange for support and is limited. NGOs get financial and organizational support for their activity in exchange of the loyalty.

A lot of Russian experts blame the central government that the idea of the Public Chamber has a latent aim to legitimize state decisions.¹ The reason for it lays in the weak national parliament which does not have sufficient public support in Russian society. The main argument of this criticism is that of the perceived strengthening of state interference into all spheres of society, including the «third sector», coupled with the overall weakening of civil society in Russia.

Taking into account these political motifs of the Russian authorities and the process of Chamber’s formation, I conclude that the main reason for its ineffective activity consists in the weak position of NGOs within consultative body, which prevents them from using formal procedures to improve political decisions.

¹ Petrov. N. (2006). Obschestvennaya palata: for authority or for citizens? Pro et contra 1: 40 – 59





5. Conclusions

Analysis of Polish and Russian cases shows that there are complicated conditions for ensuring effective activity of the consultative bodies. Particular features of the cases explain the differences in the level of effectiveness. On the basis of comparing these conditions, some conclusions can be drawn and several suggestions offered for the Russian case.

Analysis shows that one of the main problems of the Public Chamber consists in the inadequate representation of the third sector. The Polish case demonstrates an effective strategy for NGOs to cooperate during the process of the Council's formation. This experience can be used by the Russian NGOs to unite their efforts to have more resources to be represented in the Public Chamber. Especially it concerns well-known advocacy NGOs which are not represented in the consultative body nowadays. As the Polish case shows the active position of NGOs during the process of the consultative body's formation leads to the adequate representation of the third sector.

As the Polish case demonstrates, interests of the officials play an important role in the collaboration with NGOs. Moreover, their participation in the consultative body's activity promotes its effectiveness. If politicians are interested in the expert opinion being provided by the NGOs, they are more receptive to their initiatives and involve them into decision making process. It may be proposed to include officials into the Public Chamber as the permanent members. This change of the membership can be done through the amendments to the law "On Public Chamber" at the initiative of either the officials or NGOs. The inclusion of the officials promotes reconciling NGOs and state interests as they elaborate joint decisions. Moreover, closer partnership among officials and NGOs will help increase the role of the expert opinions which may result in the improvement of the state decisions.

