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**INCREASING THE INFLUENCE OF NGO'S ON POLICY-MAKING  
THROUGH PUBLIC CONSULTATIONS. LESSONS FROM POLAND**

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## Introduction

Expert assessments and analysis of the development of modern civil society in Russia have become more negative over the last few years. The level of civil involvement in public life has decreased due to changes in NGO law (2006), which have imposed significant limitations on NGO activity.<sup>1</sup> NGOs have become less influential and their social impact and effectiveness have significantly declined.

Before 2006, the Russian NGO sector showed stable growth (the quantity of NGOs increased by 34% in relation to 2001). According to a Public Chamber report, a total of 360 thousand NGOs were registered by 2006 in Russia. Nowadays, the dynamics are negative – the total number of NGOs has declined significantly over the last five years.<sup>2</sup>

The sector is not only insignificant in terms of “human weight”, but is also non-influential. According to research conducted by Circon in 2007-2008, the influence of nongovernmental organizations on the decision-making process is very low: average estimates of the influence on various aspects range from 0 up to 0.9 on a scale varying from -3 up to +3.<sup>3</sup>

Surveys conducted by the Russian Public Opinion Fund have discovered another side to the problem: in 2007, 25 % of Russians acknowledged that NGOs bring some benefit to public life (essential or marginal), whereas 19 % disagreed with this statement. However, the main finding was that 56 % of respondents were not able to define NGOs’ public benefit.<sup>4</sup>

Among the large number of disadvantages of NGO activity and reasons for its insufficient effect on the policy-making process, the most crucial is the ineffectiveness of the mechanism of public consultations as one of the fundamental components of government-NGO cooperation. Many important laws and norms are not subject to public consultation before enactment and this has resulted in the fact that not all interests of related target groups are taken into account and a low level of implementation of such laws and norms.<sup>5</sup>

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<sup>1</sup> See: Federal Law No.7-FZ "On Non-Commercial Organizations," 1996 (NGO Law)

<sup>2</sup> See: Public Chamber Report, 2010

<sup>3</sup> CIRCON, 2008 ([www.zircon.ru/russian/publication/5\\_4.htm](http://www.zircon.ru/russian/publication/5_4.htm)). Research shows different indicators of third sector influence on the policy-making process, as estimated by NGOs and government representatives: from initiation of the issue to monitoring of its implementation. The assessment had a seven-range scale from -3 to +3, where “-3” – strong negative influence, “+3” – strong positive influence, “0” – absence of influence; thereby not only the “level of influence”, but also its “character” was assessed.

<sup>4</sup> Public Opinion Fund, 2007

<sup>5</sup> See: I. Zadorin, D. Zaitcev, *Grazhdanskoe uchastie v Rossii* (Journal “Politiya” No. 1 of 2011)

## **The importance of Public Consultations in the policy-making process**

Western democratic experience has shown that public consultation is a very important mechanism for taking into account the opinions of social groups, which not only allows laws to reflect social realities, but also to exclude inconsistent and impracticable decisions in the law-making process and, moreover, to obtain the support of different groups and institutions, and ensure in advance that specific (future) policies will be efficient.

Consultation is a very important aspect of civil dialogue, a process that is open in theory to all organizations having expertise in a given field. It is a process which is underpinned by democratic principles and enables civil society organizations to be a part of the policy-framing and decision-making process concerning the development and future of the country.<sup>6</sup>

Well-planned and organized public consultations provide an opportunity to clarify the opinions of the target audience and help to overcome the resistance of opposition groups and develop an effective strategy which takes into account the positions of all interested parties.

This paper considers how to increase NGO influence on the policy-making process from two perspectives.

First, it attempts to reveal the disadvantages of the legal and infrastructural framework regulating the process of public consultations and give concrete recommendations on how to improve this framework.

Second, it provides recommendations on direct activities and initiatives of NGOs and government, and what kind of policy tools from the Polish experience could be developed and implemented to facilitate the public consultations process in Russia more effectively.

This paper aims to reveal the benefits that public consultation can offer to authorities in the policy-making process and to demonstrate the value of cooperation with NGOs when conducting public consultations.

## **Socio-political origins of civil involvement in the policy-making process in Russia and Poland**

While the political and economic sectors have changed significantly since the Soviet Union collapsed, the principles and mechanisms of the policy-making process have almost universally remained the same. During the Soviet period, the civic partnership was

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<sup>6</sup> See: Participatory Democracy: a retrospective overview (European Economic and Social Committee, 2006)

perceived as cooperation between the party nomenclature (authorities) and trade unions. As long as the authorities (the Communist Party) had a leading position, the role of trade unions was limited to serving and supporting government interests. As a result, the social partnership only had vertical channels of “cooperation”, which in fact was an authoritarian model. To some extent, Russian political power still has the same model.

However, there was a short-term period in the new Russian history during which the development of civil initiatives was boosted and NGO influence on policy-making grew. The political structure and civic partnership system had a significant impact on reforms in the early 1990s. The first half of Yeltsin’s era is really treated as the birth of Russian civil society. In that period, many NGO activists were members of federal and regional parliaments and governmental bodies and were deeply involved in drafting and implementing legal reforms in Russia.

In fact, it was the first time that Russian society had a real chance to play a prominent role in the decision- and policy-making community.

The basic positive result of that stage was a transfer to Russia of technologies and expert work in the noncommercial sector, of skills and experience of successful organizations from other countries and methods and principles of the public consultation process. The young Russian generation of NGO activists who well understood modern methods of management and planning in the noncommercial sector appeared and were able to communicate with Western partners "in the same language". It was the period when Russian civil activists were practicing how to organize meetings, conferences and public discussions attracting governmental bodies, businesses and other parties.

However, by the end of the Yeltsin era, the political window that had allowed public participation in the policy-making process had closed more quickly than anyone expected, and NGO activists and organizations were forced out of the political sphere. By the end of the 1990s, they had relatively little access to decision- and policy-making and faced serious problems in their attempts to build new formal and informal channels of access to politicians and government.

But one of the most serious barriers to the development of public activity and government-NGO cooperation lies in the Russian socio-cultural sphere. In general, Russian society is very apolitical. Russian citizens are not aware of many social problems, do not know their rights, laws and legal procedures, how to affect governmental decisions and take an active part in the policy-making process.

To some extent, Poland has a similar historical perspective on the development of civil involvement. But Polish traditions of civil society are wider than in Russia and have at least

two major differences. First, the social origins of civil society are much stronger in Poland. The Polish “Solidarity” trade unions that emerged in the 1980’s were the roots of further civil initiatives.

Second, culturally both countries also have significant differences - Polish society is not as paternalistic as Russian society, and thus has much greater potential for societal involvement in the policy-making process.

Cooperation between Polish public authorities and NGOs in the law-making and policy-making process experienced stagnation in the 1990s, but Poland’s accession to the European Union in 2004 had a real boosting impact on civil involvement.

Right before the accession, the Public Benefit Act was enacted in 2003; it comprised many fundamental elements – e.g. definitions of a non-governmental organization and regulations concerning the contracting of NGOs by local self-governments and the financing of organizations from public money. It was an important step towards determining the mutual positions of the state and the third sector. It was also an important factor in the systematization of the dialogue between public institutions and NGOs, which before that time had been rather chaotic.<sup>7</sup>

After joining the EU, Polish decision makers started to consult third sector representatives more intensively, mostly because European standards obliged them to do so. However, that was a period when Polish NGOs proved their value to the authorities. Officials acknowledged that it is worth stepping out of the traditional formula of only having a social dialogue with trade unions and the church and involving citizens more and considering their interests.

This period of interaction between the authorities and NGOs may be described as a shift towards the realization of NGOs’ potential in the policy-making process, supplemented with greater motivation and a higher level and quality of cooperation from both sides.

### **Levels of civil involvement**

In this paper, we define public consultation (PC) as the process of cooperation between the government and NGOs and as one of the key regulatory tools employed to improve the transparency, efficiency and effectiveness of policy regulations.

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<sup>7</sup> See: G. Makowski, E. Marcek, Problems of Civil Dialog in Poland and Slovakia

In Western countries with developed democratic traditions, forms and levels of interaction between the government and the third sector often vary during the policy-making process, complementing and overlapping each other.

Generally, four major levels of interaction can be outlined:

– **Notification or informing.** This is a one-way process of communication in which the public plays a passive role of consumer of government information;

– **Consultation.** This involves actively seeking the opinions of interested and affected groups;

– **Participation.** This is the active involvement of interest groups in the formulation of regulatory objectives, policies and approaches, or in the drafting of regulatory texts;

– **Partnership.** A more complex involvement of interested groups; usually initiatives arise from the third sector, which plays an important role in cooperation.

### Forms of public consultation in the policy-making process in Russia

Form of consultation	Level of NGO involvement	Mechanisms of NGO influence on the policy-making process
<b>Informal Consultation</b> Limited transparency and accountability	<b>Notification</b> Access by interest groups to informal consultations is entirely at the regulator's discretion	Almost non-exist
<b>Public notice</b> More open and inclusive and usually more structured and formal	<b>Notification - Consultation</b> All interested parties have the opportunity to become aware of the regulatory proposal and are thus able to comment	Making comments on regulatory proposals
<b>Public hearings</b> Public meeting on a particular regulatory proposal; usually supplements other consultation procedures	<b>Participation</b> All interested parties	- Submit written information and data at the meeting;  - Interested parties and groups can comment in person;  - Face-to-face contact in which dialogue can take place between regulators and wide range of affected parties and between interest groups themselves
<b>Advisory bodies</b> Advisory bodies are involved at all stages of the regulatory process, but most commonly take part quite early on in the process in order to assist in defining positions and options.  There two main kinds of advisory bodies: permanent bodies and technical advisory groups to work on concrete issues	<b>Partnership</b> All interested parties	-Drafting and reviewing proposals;  -Evaluating existing regulations;  -Depending on their status, authority, and position in the decision-making process, they can give participating parties great influence on final decisions, or they can be one of many information sources.

It is clear from the table above that the first two forms entail a very limited scope of NGO involvement in the policy-making process and of collaboration with authorities, while the remaining forms provide a range of tools of mutual cooperation.

Russian practice shows that public consultations are mostly limited only to informal consultations and public notice. Russian authorities (bodies) are not really open to further cooperation, while the public sector is not mature enough to become an active participant and partner in the policy-making process. Such a situation hampers an efficient public consultation process in Russia. Next, we define the main reasons why it happens:

1. Reluctance on the part of authorities to organize PC
2. Low effectiveness of the Public Chamber as a major consultative body
3. Non-institutionalized mechanism of Regulatory Impact Assessment
4. Low level of coordination and cooperation within the third sector

To get a clearer picture we should examine these factors in detail.

### ***1. Reluctance on the part of authorities to organize PC***

Russian authorities demonstrate very weak motivation to collaborate with NGOs and, furthermore, have very few competent staff to work with third sector representatives. Communication channels are still not used on a regular basis. Regional Public Chambers - the most developed “linking” institution - usually become dependent on power elites and are only used by authorities for consultations occasionally.

The major reasons why the Russian government avoids cooperation with NGOs and remains reluctant to organize public consultations can be stated as follows:

- ✓ Treatment of NGO consultancy as interference or an attempt to control, rather than a tool of mutual collaboration and discussion of the issue
- ✓ Lack of awareness of the fruitfulness and sometimes necessity of developing laws with third sector support
- ✓ Desire on the part of the authorities to pass a law as quickly as possible
- ✓ Reluctance to share knowledge on specific areas related to authority (“We know better, we don’t need advice”)

Poland has similar obstacles to NGO-government cooperation: 2010-2011 research carried out by the Civil Service Department of the Polish Chancellery of the Prime Minister also shows similar results concerning Polish authorities’ skeptical attitude toward the need for cooperation.<sup>8</sup>

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<sup>8</sup> See: Research of the Chancellery of the Prime Minister “Improvement of the quality of decision-taking processes in governmental administration by use of the potential of scientific and expert communities”, Warsaw 2011

However, according to research results and Polish expert assessments, the situation in Poland is getting better in terms of quantity and scope of cooperation, especially since Poland joined the EU. However, divergence is evident in the attitudes of the two countries: Poland is “looking West” and trying to integrate European methods very rapidly; contrarily, Russia has limited Western influences and is trying to find “its own path”.

The only obvious way to “awaken” the government will to collaborate, increase mutual understanding, and thus the effectiveness of cooperation is to increase the intensity and depth of cooperation.

## ***2. Low effectiveness of the Public Chamber as a major consultative body***

One of the major reasons for the poor development of public consultation arises from its core regulatory body – the Public Chamber. In 2005, the Public Chamber of the Russian Federation was founded with the general aim “of analyzing draft legislation and the activities of parliament, as well as monitoring federal and regional administrative bodies” and “organizing public consultations on socially significant laws, implementing expertise on legal drafts and norms ...”.<sup>9</sup>

However, the biggest problem of this institution is that it is too controlled by the state. Such an approach is not in accordance with the main principle of the institution – independence, and the result is that in its current state it does not fulfill social requirements. Unfortunately, the existing law cannot guarantee implementation of its proclaimed goals in full. To obtain the status of a real actor in the policy-making process, the most important functions of the Russian Public Chamber require strengthening:

- ✓ Provide analysis of the social situation in the country, considering social needs and interests of various social groups and institutes;
- ✓ Form a database of the most necessary and important questions demanding qualitative legal regulation, including eliminating law deficiencies;
- ✓ Actively involve the public sector in the policy-making process
- ✓ Suggest own initiatives in a legislation process independently or through representatives.

The Polish Council on Public Benefit Activities (CPBA), which plays a similar role - of a consultative body - and has a comparable structure, was created several years earlier than the Russian Public Chamber, and according to some expert assessments has proved its efficiency as an important actor in the policy-making process. However, many other Polish experts have assessed the CPBA as a really weak institution, especially in the first several

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<sup>9</sup> See: Article 16 of Federal law №32 on the Public Chamber of the Russian Federation

years (2003-2007) of its existence, mostly because the authorities' approach prevailed at that time.

At that time, the reluctance of the new government created by the former opposition party PiS and its partners to deal with issues of civil society development had an effect on the functioning of the Public Benefit Activities Council. That period was characterized by serious communication problems between the Council and the Ministry of Social Policy and other ministries, which caused open conflicts with government officials. The CPBA did not receive draft-laws for consultations.<sup>10</sup>

At the end of 2007, when the government changed, a new era of CPBA emerged - its functions were broadened and a wider platform was created for cooperation between the state and civil organizations. These new, wider functions found expression, for instance, in the fact that the Council initiated most of the amendments to the Law on Public Benefit Activity and Volunteering that were finally admitted in 2010.

On the basis of a more accurate study of the Polish experience of CPBA, at least two good lessons could be integrated into Russian practice:

- ✓ More transparent procedure of Council members' appointment, which helps to create a competitive environment through involvement of different parties
- ✓ Close cooperation with ministries and subcommittees during the drafting process

### ***3. Non-institutionalized mechanism of Regulatory Impact Assessment***

Western countries' experience reaffirms that one of the most useful tools for increasing the effectiveness of public consultations is to institutionalize the mechanism of Regulatory Impact Assessment (RIA) as an obligatory preliminary part of the policy-making process.<sup>11</sup>

The basic terms of RIA adoption are acceptance of the strategy of the regulation process, consultations with the public sector, and prospective planning of legislative activity.

This means that RIA should be conducted at an early stage and before a decision to regulate has been taken. Ideally, RIA should be used as the basis for consultation. In this way, it is possible to consider the use of alternatives to regulation (e.g. information campaigns) or lighter forms of regulation (e.g. self-regulation) as required by the RIA model, even if they are not necessarily considered to be the most appropriate approach in the long run.

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<sup>10</sup> G. Makowski, E. Marcek, Problems of Civil Dialog in Poland and Slovakia

<sup>11</sup> See: Regulatory Impact Analysis in OECD Countries (OECD, 2007)

There have been several attempts to institutionalize the mechanism of RIA in Russia during the last several years, but this tool is not really integrated into the Russian policy-making sphere.

As for Poland, RIA has become a really important mechanism of increasing NGO influence in the policy-making process. Since it was integrated in 2001, NGOs have become much more efficient in cooperation with the government by active participation in regulatory activity.

The Polish RIA model includes several major features: the RIA Council makes its presentations on a governmental level; there are governmental requirements concerning RIA obligations; there is a budget to support RIA etc.

The Polish RIA quality control model has a two-track system. The RIA unit in the Government Legislation Centre (GLC) gives advice (first track) on the scope of RIA and on the scope of public consultation, in both cases working with officials responsible for a given draft in the competent ministry. However, the GLC has no powers to reject the draft. This can be done (second track) at the moment of discussion either by the advisory Committee of the Council of Ministers or by the Council of Ministers itself. These bodies could decide to refuse to discuss a draft without RIA. This is the job of the officials responsible for preparing the agenda for these bodies. In any case, only the advisory Committee or the Council of Ministers has the power to return the draft and the RIA to the Minister responsible in order to improve them.

The most important thing is that public consultation of all the parties affected by the proposed legislation is compulsory. Consultation is recommended at the earliest stage possible; practice shows that usually public consultation takes place parallel to inter-ministerial consultation (this results from the fact that time pressure is very strong at the moment in the Polish law-making process).

According to expert assessments, the Polish system of RIA is still not perfect and is continuing to develop. However, studying the Polish experience of RIA could be very useful for Russian officials in terms of integrating major principles into the Russian policy regulatory sphere: a two-track system of quality control, institutionalization of compulsory consultations, etc.

#### ***4. Low level of coordination and cooperation within the third sector***

While various social networks and information and coordination centers have continued to develop during the last few years, the Russian third sector has experienced a range of problems in terms of internal coordination and partnership. At the regional level,

these problems look less severe: discussion and debate centers, educational and information platforms have somehow sprung up.

However, most NGO activists emphasize the lack of knowledge and professionalism among leaders and representatives of public associations, weak financial education, shortage of managerial and communicational skills, and (lack of) ability to fulfill the function of a social moderator. In particular, NGOs are not able to involve the required professionals - lawyers, sociologists and businessmen – in their activity.

Both experts and social activists recognize that NGOs can't provide a proper level of cooperation within the third sector. And the origin lies not only in the general passivity of Russians, but also in the public organizations' and associations' own defects and problems.

From this perspective, the Polish experience may offer some good practical examples of mutual collaboration within the sector, especially from the second half of the 1990s and early 2000s, when Poland was not receiving enough external funding from foreign donors, and had to find internal resources to survive. That period in Poland was characterized by an increasing level of: activists uniting, confederations being established and volunteers being attracted.

To some extent modern Russia has similar conditions: after amendments to Russian NGO Law reducing foreign funding, Russian noncommercial organizations have a really great chance to increase their mutual interactions, reorient their values, find new channels of communication and other sources of activity.

### **Conclusions. What should be done?**

The Russian public sphere is characterized by low-level involvement of the third sector in the policy-making process. Mechanisms and procedures of intersectoral cooperation are still very weak. The process of public consultation is underdeveloped and requires regulatory and institutional changes.

Involving NGOs in the policy-making process has essential benefits for **government and state bodies**:

- It helps to create a democratic basis and an opportunity for societal participation in public life, which help to enhance government trustworthiness in the eyes of citizens;
- Open and transparent public consultations improve the quality of regulations, and also improve compliance and reduce enforcement costs for both governments and citizens.

In order to increase the fruitfulness of NGO-government cooperation through the process of PC, several recommendations may be proposed:

- ✓ Authorities should stimulate development of advisory bodies (both mandatory and *ad hoc* groups), giving them more power and credentials in the regulatory process;
- ✓ Authorities should grant more independence to the Public Chamber;
- ✓ The process of public consultations should be encouraged by bringing external organizations into the discussion to provide expertise on drafts, perspectives analysis and formulation of new ideas;
- ✓ The RIA mechanism should be institutionalized in order to increase the level of transparency and help to improve regulatory quality;

On the other hand, the **third sector** should by itself become a principal initiator in policy development and in helping regulators to balance opposing interests.

NGOs should increase internal interaction in the sector by:

- ✓ Organizing open meetings with citizens on various issues;
- ✓ Creating working groups;
- ✓ Organizing regular round tables, public councils;
- ✓ Developing networks of civil legal consultations,
- ✓ Maintaining freedom of access to information;
- ✓ Using new social technologies and cooperation techniques (like social networks, webinars);
- ✓ Developing training programs, educational courses, etc.

The Polish experience can be said to be relevant to the Russian market in terms of the fact that both countries have comparatively similar mechanisms and laws regulating the process of public consultations. It is clear that it is not appropriate practice to directly apply the same solutions and ideas as in other countries, but the Polish experience should be studied more thoroughly, in order to avoid the same mistakes and use the most effective methods for the Russian sphere.