

# THE RELATIONSHIP BETWEEN CIVIL ORGANISATIONS AND PUBLIC ADMINISTRATION IN HUNGARY, WITH SPECIAL REGARD TO THEIR PARTICIPATION IN LEGISLATION

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## Abstract

The relationship of the civil/non-profit sector and public administration may be examined from several specific aspects, but in our opinion these fields may be put into three – relatively – well distinguishable groups. Therefore, the relationship of administrative bodies with civil organisations may be identified in a) the creation of administrative programs and participation in legislation; b) the provision of public services, and c) the protection of rights. From these three *this work undertakes to describe in details the aspect of civil participation in program making and legislation*, in a way that elaborates on the issue from the side of state administration.

The *primary method of this research* – due to the shortage of systematic scientific bases – can not be anything else than the comprehensive collection of formal institutional facilities provided by Hungarian laws.

The paper distinguishes those special forms of participation which approach the legislator (a state administrative body participating in legislation) *directly*, and those institutionalised solutions through which the citizen or a particular (civil) organisation may influence the content of laws not by approaching the legislator (state administrative body participating in legislation), but *through another state organisation*.

It can be stated that the Hungarian legal system makes it possible to channel the direct and institutionalised participation of civil entities within program- and law-making activities of organs belonging to public administration, expressing their interests. Moreover, the Hungarian legal system has introduced developed and sophisticated mechanisms even compared to the international legal practice.

Real deficiencies can be rather detected concerning the material and legal consequences of different initiatives, the frequency of convening various corporate bodies, and *mere formal* mode of operating the particular mechanisms.

Furthermore, it makes trouble that the civil/nonprofit sector is strongly „infected” by direct party politics in Hungary: there's a large number of *pseudo-civil* entities and initiatives within the scope of activities of proposal-making, advisory and coordinative bodies. A special appearance of the abovementioned difficulties is the lack of strong and effective *state-civil society joint mechanisms* which aggregate and uphold Roma (Gypsy) interests.

In summary we can draw the conclusion that both the individual segments of civil society, the political culture and also the administrative bodies participating in legislation i. e. their representatives must improve to comply with the already existing legal framework of statutory instruments.

## Key Words

Civil/non-profit sector, Legislation, Participation, State administration, Hungary,

## 1. Introduction

Very different standpoints have been developed in the Hungarian literature regarding the features of entities that partly fill the territory between the state bodies and the narrower private sphere of the individual, and the boundaries of certain spheres (state, market and civil etc.). Many say many from Tamás Sárközy to Éva Kuti, they place the dividing and fault lines elsewhere, but all of them agree that the question is very important also from the aspect of the state's performance ability as well.

Until the middle-end of the 2000s the state received serious critique, saying that the efficiency of the state organisation and within that the governmental direction is low because of the hyper proliferation of the background organisations and the constant intention aimed at the creation of half-state fake civil organisations (public foundations, public bodies, public companies).

While in the '90s and 2000s majority of the authors condemned the state overload and the negative effects of the mesosphere, saying that it weakens civil activity, the compellingness to self-care, etc., today most of the criticism refers to the openly expanding state that draws the public duties to itself. Otherwise, in the latter case it is only that the state – recognising that directly or indirectly it is almost a sole financer in many fields – leaves out the local governments and for or non-profit organisations from the task fulfilment and financing process.

Apparently a process – serving parallel and same goals – is going on, in the frames of which the state consciously

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reorganises the legal status and the subsidy system of the organisations of the civil sphere that have potential roles in the fulfilment of public duties.

Civil organisation – at best – creates institutional channel between the society and the state, transmit the society's needs and interests towards the state, on the other hand it forces the state to continuously legitimate itself, and to increase the publicity of its operation. Civil society and political state cannot exist without each other, but both try to be superior to the other. Even in a way that it expropriates the traditional institutions and classic territory of the other „party”...

*One of the final questions is how far the civil society can go in the participation of (political) decision making?* According to the general view the presence is desirable and subservient only in the decision preparation phase that presents both informal and institutionalised forms.

The popularity of the presently emerging (?) ideas of *good governance*, as well as their increased legitimacy is due not only to governmental effectiveness, but also to the closely related participatory governance. Plural, participative democracy provides for the participation of society and economic players, thus civil/non-profit organisations in satisfying common social needs – beyond periodic elections and referenda – within the framework of the right to make recommendations, to be informed and to object, as well as in several ways within task provision possibilities. *This starting point – at least for the present – has not been significantly changed by approaches that refer to the increasing role of the state or to the newly created needs and demands arising from different crises.*

The relationship of the civil/non-profit sector and public administration may be examined from several specific aspects, but in our opinion these fields may be put into three – relatively – well distinguishable groups. Therefore, the relationship of administrative bodies with civil organisations may be identified in a) the creation of administrative programs and participation in legislation; b) the provision of public services, and c) the protection of rights. From these three *this work undertakes to describe in details the aspect of civil participation in program making and legislation*, in a way that elaborates on the issue from the side of state administration.

## **2. Methodology**

The analysis – or systematic presentation – of the consultative, coordinative or advisory, proposer, opinion-shaper institutions of public administration is completely missing within Hungarian administrative sciences *in spite of the fact* that in addition to hierarchic and merely market mechanisms several other horizontal, coordinative and service providing mechanisms have been established which led to the spread of different autonomous – and usually of low efficiency – structures in Hungary. Taking into account that many – if not all – of these entities and mechanisms are functioning by significant involvement of different civil (not-for-profit) actors, the main goal of my presentation has to be an introduction of the real weight and extent of this “sphere” by collection and systematization of existing forms within it.

The *primary method of this research* – due to the shortage of systematic scientific bases – can not be anything else than the comprehensive collection of formal institutional facilities provided by Hungarian laws. This study makes an attempt at introducing all the forms appearing in the positive law in Hungary; especially those by which civil/non-profit organisations can take part within the preparation of administrative programs and within law-making processes weltering within the scope of public administration.

*Secondly*, and of course, facts deducible from the texts of laws must be compared with reality, with factual practices of administrative organs: the execution of legal provisions sometimes demonstrates “creative” interpretations, moreover the very same legal institutions during different periods are implemented with huge variances.

And finally, *as a third aspect*, broader approaches to legal and public policy must be involved: the basic features, historical processes and the dominant factors *de facto* determining law-making and the implementation of law in Hungary are to be shown.

Our study shall be commenced with the abovementioned aspect of public policy, outlining the most important phenomena of the last decades.

## **3. The Traditional Features of Hungarian Public Administration in Public Policy Approach**

A starting point of this subchapter is that new Central-Eastern-European democracies established after 1989 did not build the political system on layered, sophisticated consultation procedures and institutional systems based on wide scale social participation, but – almost exclusively – on the Parliament-centred politic formation structures operating on the principle of representation. Many believe that one of the great problems of societies getting out from under a dictatorship is that due to the lack of civil society filling in the space between individuals and the state during their socialisation, the members of these societies could never naturally learn to incorporate the identification of problems, formulation of their interests, exchange their thoughts, the harmonisation of different opinions, due to which the various

problem-handling methods were not developed, either. From the public policy side it may be stated that in Hungary the legal and institutional requirements of representative democracy were fulfilled after 1990, but since then no material change has happened towards participative democracy; this means that Hungarian democracy "has frozen into" the level of representative democracy.<sup>1</sup>

A father tendency, a feature which may be hardly separated from the one mentioned earlier is that the all-time state – formed after the transition – *imitates, reconstructs and replaces the civil sector* through its conscious efforts, by this making it weaker. During the analysis of this, it must not be forgotten that in the economic and sociological literature of the past one or two decades the state, by undertaking the 'replacement' and 'simulation' of the organisation of market and self-regulating social mechanisms and the political organisation of society, it eventually hampers the connection between political decision-making mechanisms and the actual fragmentation of the interests of society.

Based on the main features of public policy/administrative environment it must be stated about Hungary in advance that a) due to the traditional 'from top-down' system, a general – and tendency-like – weakness is the lack of democratic control, accountability and transparency; b) due to the politicised and instable practice of the reconciliation of interests, the quality of the decisions made in the public sector are often insufficient, as is their execution; c) public policy has balance problems; the weight and coordination of the relevant players is disproportionate and incalculable due to the extreme politicisation, and political predominance characterises the relationship of the political-administrative system and society, regardless; d) the final phase of public policy is missing: public policy processes begin but they often do not get to the end. There is no evaluation phase and closure.<sup>2</sup> Within the scope of the latter evaluation the preliminary and subsequent impact studies are determinative, the main goal of which is grounding the decision-making situation of the legislator, in so far the analysis expands the pool of factors the consideration of which is – or should be – essential for well thought-through, grounded decision.<sup>3</sup> In the Hungarian model of public policy decision making – as mentioned before – the 'top-down' approach is dominant, in so far as the institutional mechanisms of the involvement of interest protection-integrative organisations operate only formally.<sup>4</sup> It is inseparable from the latter fact that the traditional features of Hungarian political culture are paternalism, intolerance and the transformation of personal relations into political ones,<sup>5</sup> and last, but not least the presence of corruption phenomena, which may be observed at a degree exceeding the average of the surrounding area.<sup>6</sup> Among the classic governmental failure phenomena – which is not traditionally Hungarian, but may definitely be observed here – the theoretical difficulties of setting and measuring public policy goals may be mentioned, as well as influence of strong interest groups, difficulties related to the size and complexity of governmental activities, and to the causal interconnection of certain public policy problems.<sup>7</sup>

In the 1990s – after the transition – there was a regrettable shift: during the transition to a market economy, the state withdrew from a number of fields, but during this 'abolishment of the state' several tasks could not be exposed to the profit-oriented processes of the market. These tasks were usually incorporated to the so-called non-profit sector, which

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<sup>1</sup>Jenei, György. 2010. Adalékok az állami szerepvállalás közpolitika-elméleti háttéréről. [Supplements to the public policy – theoretical background of state participation] In *Államszerep válság idején* [State role in crisis]. Edited by Hosszú, Hortenzia and Gellén, Márton. Budapest: COMPLEX. 95.

<sup>2</sup>Pesti, Sándor. 2001. *Közpolitika szöveggyűjtemény*. Budapest: Rejtjel. 206.

<sup>3</sup>In details see: *A Közigazgatás Korszerűsítésének kormánybiztosa által készített szempontok. „Részletes útmutató a hatályos jogszabályok utólagos és jogszabálytervezetek előzetes felülvizsgálatához.”* [Aspects prepared by the government commissioner of the Modernization of public administration. 'Detailed guide to the subsequent review of valid laws and the preliminary review of draft laws.']. 1995. Budapest: Közigazgatás Korszerűsítésének Kormánybiztosa. 5.

<sup>4</sup>Jenei (n 1) 95.

<sup>5</sup>Kulcsár, Kálmán. 1995. *Politika és jogszociológia*. [Politics and legal sociology] Budapest: Akadémiai. 336.

<sup>6</sup>[http://www.ey.com/HU/hu/Newsroom/News-releases/global\\_fraud\\_survey\\_2010\\_pr](http://www.ey.com/HU/hu/Newsroom/News-releases/global_fraud_survey_2010_pr) (accessed July 11, 2013).

<sup>7</sup>Hajnal, György. 2008. *Adalékok a magyar közpolitika kudarcaihoz*. [Supplements to the failures of Hungarian public politics] Budapest: KszK ROP 3.1.1. Programigazgatóság. 33.

was unfortunately mixed up with the civil organisations both legally and practically: 'It often happened that in complete sectors only the signboards were repainted, shifted from state to public utility status, while the old structure, the old system of operation, state financing and the old 'expert' staff remained.'<sup>8</sup> This environment, however, had a weakening effect on organised civil society, upholding its – unnecessarily strong – dependant status.

## 4. Civil Participation in Program Making and Legislation

### 4.1. General Questions of Civil Participation in Program Making and Legislation

Among general pre-questions we shall refer to the fact that the narrowly viewed parliamentary section of legislation (which is not the subject of this work) and the section in which the contribution of state administration bodies is realised differ from each other, and the social organisations' participatory rights and competences are also different in the two phases.<sup>9</sup> Furthermore, there are significant differences between contribution to the decree making of state administrative bodies and of local governments.

*The possible ways of participation may be categorised from several aspects:*

Social participation in legislation has legally detailed (institutionalised) *forms appearing on the side of the legislator as obligation* (negotiations, forums, consultations and related basic feedback), as well as forms about which only general rules of the legal system may provide a starting point regarding their possible content or limits (organisation of demonstrations, requesting expert opinion, establishing an online debate forum, etc.), without having any legal minimum regulation about the 'observation' and utilisation of such information transmitted to the decision-maker this way, and therefore these have been primarily *regulated as possibilities of the potential users of these forms* (these forms are not in focus of this work).

Among institutions establishing some kind of obligation on the side of the legislator, there are extremely diverse tools considering their 'features and scope', which show great diversity also regarding the degree and directness of the role they play in establishing the content of the final (normative) decision, or regarding the targeted level of decision making/legislation (local, national or European). It is worth noting that this work concentrates primarily on the institutions of civil cooperation operating at the national level – for the sake of understanding primarily in the state administration/local government division.

The literature, in another approach, categorises the tools and techniques of social participation into two big groups, distinguishing between traditional techniques and modern techniques. Among the latter ones, for example, the use of surveys may be mentioned.<sup>10</sup>

One of the most obvious groupings of available tools (institutional possibilities) is – as mentioned above – the *traditional* division of direct and indirect tools: in this regard the notion of directness means, on the one hand, the institutions (typically in bodies) in which the representatives of civil society may express themselves directly and, may be able to make some decisions, while, on the other hand, directness may be used also in the sense that the civil organisation directly approaches the legislative body (thus in our narrow interpretation, the competent central state administrative body or the body of representatives) with its suggestion or opinion. In the latter approach the indirect feature also means the influencing of the public administrative legislative body through another legislative body or person.

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<sup>8</sup>Pankucsi, Márta. 2012. Civilekkel a civilekért – Az ellenzéki szerveződésektől a minisztériumon át a Furmann alapítványokig. [With civilians for civilians – From opposition organisations through the ministry to the Furmann foundations] In *Civil társadalom és érdekképviselet Közép-Európában*. [Civil society and the representation of interests in Central-Europe] Edited by Simon János. Budapest: L'Harmattan – CEPoliti. 144.

<sup>9</sup>Vadál, Ildikó. 2011. *A kormányzati döntések konzultációs mechanizmusai*. [Consultation mechanisms of governmental decisions] Budapest: COMPLEX. 163.

<sup>10</sup>Reisinger, Adrienn. 2012. Civil/nonprofit szervezetek a kohéziós politikában – elméleti alapok. [Civil and non-profit organisations in cohesion policy – theoretical background] *Tér és Társadalom* 40: 113.

The titles of the chapter and the sub-chapter intentionally do not focus only on the main characteristics and rules of participation in the narrowly interpreted legislation, but also wish to mention at least those practices (institutions) through which civil/non-profit organisations may perform activities – which may not be transformed into legal instruments, but fit into the frameworks of law – influencing the life of the closer/broader community and participate in the creation of documents (strategies, concepts, declarations, calls, etc.). Therefore, when for the sake of understanding legislation is mentioned, it shall be interpreted – in a broader sense – by taking into account the abovementioned.

*One of the most important pre-questions is how far civil society may go in participation in (political) decision making.* According to the general (majority) national opinion, its presence is reasonable and desired only in the preparation phase of decision making manifesting informal and institutionalised forms.<sup>11</sup>

*Within the analysis of regulations related to legislation, it may be observed that the regulation – especially with regard to the issue before us – is still very much diverse.*<sup>12</sup> Before 1 January 2011, there was no comprehensive act which could have attempted to provide unified regulation for the possibilities and procedures of the enforcement of social interests in governmental decision-making mechanisms. A unified set of regulations about social participation is still missing; even though Act CXXXI of 2010 on social participation in the preparation of laws “implies in its title that we are facing a unified regulation, but this is not the case. In addition to this, sets of acts and government decrees contain relevant regulations regarding this issue.”<sup>13</sup> Judit Tóth noted earlier that ‘The scope of tools related to the operation of the Government and the Office of the Prime Minister<sup>14</sup> is rather diverse. Their common characteristic is that they rarely form a unified system, and rather try to find supporters among civilians for the specific realisation of the goals of the given government.’<sup>15</sup> After reviewing the relevant valid regulations, we may arrive to a similar conclusion.

The significance of this scope of issues is magnified by the fact that in a plural social order more and more interests and values are formulated, the channelling of which into governmental decisions is unavoidable in order to uphold social peace. However, social participation in governmental decision-making mechanisms shall be legally settled, just like the hierarchy of laws. In a rule of law state social participation in legislative procedures is not an optional process depending on the attitude and discretion of the power holder. Moreover, in a democracy, especially one of the participative type, the institutionalised system of proposing and opinion making shall not only go through quantity changes (*‘more forums, better regulation’*), but also quality ones, which means that regarding these, normativity does not only mean the obligation to establish and create these institutions, but also ‘making them unavoidable’, thus ensuring their development through tools protected by law.

To summarize, it may be stated that one tool for alleviating possible political abuses typical in indirect democracy is the substantial participation of citizens and their organisations in public administrative *decision making* (legislation and the lawful influencing of individual cases), and the facilitation of this in a constantly “broadening” scope.

In consideration of the before mentioned, that division may be the most obvious which

**A)** distinguishes those special forms of participation – regulated by law – able to influence legislation which approaches the legislator directly (a state administrative body participating in legislation), and

**B)** distinguishes those institutionalised solutions through which the citizen or a particular (civil) organisation may influence the content of laws not by approaching the legislator (state administrative body participating in legislation), but another state organisation.<sup>16</sup>

#### **4.2. Civil tools in state administration directly influencing the legislator**

<sup>11</sup>Sebestyén, István. 2004. Civil dilemmák, civil kételyek a civil szervezetek (köz)életében. [Civil dilemmas, civil doubts in the (public) life of civil organisations] Civil Szemle 28: 36.

<sup>12</sup>Vadál (n 9) 170.

<sup>13</sup>Ibid.

<sup>14</sup>Today *Prime Minister's Office*.

<sup>15</sup>Tóth, Judit. 2003. Civilek részvétele a jogalkotásban. [Participation of civil society in legislation] In *Nonprofit jog*. [Non-profit law] Edited by Tóth, Judit. Szeged: SZTE ÁJK. 18.

<sup>16</sup>For example, the initiation of the procedure of the parliamentary commissioner of fundamental right based on Article 24 paragraph (2) point e) and Article 30 paragraph (1) of the Fundamental Law of Hungary.

#### **4.2.1. Direct participation in program making and legislation without membership in bodies**

##### *I. Organisation of a national referendum proposal*

Act CCXXXVIII of 2013 on Referendum Proposal, European Citizens' Initiative and Referendum Procedure states that the proposal of constituents on setting the date of national referenda may be organised – among others – by associations as well, if the given question is connected with the scope of activities set forth in their articles of association.<sup>17</sup>

##### *II. Notice of public concern*

A notice of public concern directs attention to some circumstances the fixing or termination of which serves the interests of the community or the whole society. For our topic it is extremely important that the notice of public concern may contain *recommendations for legislation*. [Article 141 paragraph (3) of Act XXIX of 2004 on the amendment and repeal of certain laws as well as the establishment of certain regulations relating to Hungary's accession to the European Union]. The notion of complaint and notice of public interest, as well as the related deadlines are regulated similarly by Act CLXV of 2013 on complaints and notices of public interest to the way they were regulated before. However, there is a novelty in the regulation, namely that notices of public interest may be made in the protected electronic system of notices of public interest [Article 4 paragraph (1)].

##### *III. Social negotiation and opinions*

The two basic forms of social participation in the preparation of laws, *general negotiation* and *direct negotiation* appear in Article 7 of Act CXXXI of 2010 on social participation. The scope of the act covers opinion making by natural persons and non-state and non-local governmental bodies, organisations about draft laws and concepts of regulations grounding draft laws prepared by ministers. [Article 1 paragraph (1)] According to article 5 paragraph (5) of the act – with the exception of some laws made in fields listed in an itemised way in paragraph (3) (*e.g. draft law on the establishment of organisations or institutions*) – social negotiation shall be initiated about the draft and reasoning of a) acts, b) decrees of government and c) decrees of ministers.

*General negotiation* provides for the possibility of giving opinion through the website of the body publishing the concepts or draft (in forms obligatory for the body requesting opinion, e.g. by obligatory confirmation or preparation of substantial summaries), while the direct negotiation allows the relevant minister to request opinion directly from persons and *organisations*. The primary legal form of *direct negotiation* is the institution of *strategic partnership* – creating obligations also on the side of the minister – the framework of which is provided by an agreement determining several elements.<sup>18</sup> Through these agreements, the minister responsible for the preparation of laws may establish close cooperation with those organisations which are ready for mutual cooperation, and which represent wide-scope social interests in the preparation of the regulation of the given legal fields, or perform scientific activities in the given legal field (hereinafter referred to as strategic partners). A substantive weakness of the regulation is that Article 13 paragraph (2) of the act defines only in an *exemplificative* way – mentioning only some of the possible forms of organisations (e.g. registered church, trade union, civil organisation) – with whom such strategic partnership may be established. Another specific (and problematic) rule is the one according to which the obligation of the strategic partner is to represent the opinion of organisations which are not strategic partners but operate in the given field of law [Article 14 paragraph (1)]. In some cases this could mean that the opinion of the 'rival' organisation operating in the given field should be represented fully and credibly.

Another important rule [Article 14 paragraph (2)] in this area is that in addition to the strategic partners the minister responsible for the preparation of the given law may integrate others into the direct negotiation of the relevant draft, and upon request it shall provide the possibility for participation in the review of the given law.

However, it shall also be mentioned that the minister responsible for the preparation of laws may resort to other forms in addition to the abovementioned two for conducting negotiation (primarily for getting to know the opinion of non-

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<sup>17</sup>Article 2 paragraph (1) point c).

<sup>18</sup>A good example of strategic partnership is the strategic agreement established in November 2012 between Tibor Navracsics deputy prime minister, minister of public administration and justice, as representative of the Ministry of Public Administration and Justice, and László Csizmadia, president and the representative of the Civil Cooperation Public Benefit Foundation, providing the organisational background of CÖF (Civil Cooperation Forum).

strategic members).<sup>19</sup> It is also important that the abovementioned act allows the legislator to define other opinion-making and negotiation rights in other laws and legal instruments of state administration.<sup>20</sup>

For assessing the *real – practical – significance* of that legal institution it shall be considered that Article 5 paragraph (5) of the act contains a special and often used rule, which states that “The draft of the law shall not be put up for social negotiation if exceptional public order requires its urgent approval”. Within the regulation and actual practice of national negotiation and review a significant aspect mentioned by literature is the *capacity of public administration* (in so far as with personal, technological and primarily temporal limits, the cautiousness of public administration may be easily explained). Therefore, the extension of the examined procedure with guarantee elements shall not result in disproportionate burden for state (administrative) organisations, *endangering applicability*.

The *real legal nature* of broadly interpreted social review is shown by certain constitutional requirements related to the social players of the preparation of laws. According to the statement of the *Constitutional Court* made in its Decision 469/B/1990 CC, if the organisations drafting the laws do not comply with the obligations set forth in the Act on *Legislation*, this violation of obligations in itself shall not be sufficient reason for assessing the unconstitutionality of the enacted laws. Such violation of legal regulations about the preparation of laws may only ground the state administrative or political responsibility of the legislator.<sup>21</sup> As the *Constitutional Court* expressed in its Decision 30/2000 (X. 11.) CC, only those organisations are unavoidable for the legislator which are expressly and specifically named in law, which bear consensual or review rights and – due to their role in the democratic decision-making process, with regard to the negotiation obligations – they possess public power. If the act does not define expressly and specifically those organisations with review rights, but only regulates the review rights of the interested national interest-representative organisations in general, the *Constitutional Court* did not consider the lack of review procedure a violation of the rule of law [as later Decision 20/2001 (IV. 12.) CC referred back to this decision].<sup>22</sup> This practice has not changed significantly after the approval of the *Fundamental Law* and the new *Act on Legislation*.

#### *IV. Lobby activities*

It is worth mentioning lobby activities in a separate subsection, with special regard to corruption, which is quite significant in Hungary.<sup>23</sup> The regulatory activities of ministries, or in a broader concept, governmental legislation, make the institutions of the government targets of lobbying. The creation of the topics and target persons of lobbying is determined by – in addition to the general structure of the governmental decision-making system – the level of development of the institutional system and decision-making processes of the government, achieved in relation to the extension of the role taking of the state.<sup>24</sup> During the performance of their tasks, civil servants represent a public administration which is more open than ever, which maintains wide-scale professional and social relationship networks, which detects and reacts on influences coming from society to an increasing degree. The appearance of ‘public policy

<sup>19</sup>It usually depends on the *ad hoc* decision of the ministries’ management which draft law will be negotiated at public debate, conference and informal discussion, in order to discuss the text of the regulatory concepts and drafts. These forms usually happen in parallel with public administrative negotiation.

<sup>20</sup>Beyond those set forth in the act on legislation – extending to strategic documents as well – there are rules among the provisions of Government Decree 38/2012 (III. 12.) on governmental strategic management about the social review of drafts. According to Article 15 paragraph (1) of the abovementioned decree, ‘If in relation with the given strategic document this decree regulates so, during preparation it shall be ensured for non-state actors to access the draft and express their opinion regarding it’. According to Article 16 paragraph (1) of the mentioned decree within social review drafts shall be published also on the government website determined in Article 1 point b) of Government Decree 301/2010 (XII. 23.) on the publication and review of draft laws and regulatory concepts (which theoretically means unlimited and free access) and it shall be ensured for everyone to express an opinion about it in a digital form (as well as about any other draft, as well). According to Article 19 paragraph (1) of the mentioned government decree the person responsible for the preparation of the strategic plan documentation may initiate negotiations about the draft with selected non-state actors, in addition to social review.

<sup>21</sup>Vadál (n 9) 184.

<sup>22</sup>Ibid.

<sup>23</sup>*Közigazgatás Korrupció-megelőzési Programja 2012 – 2014*. [The corruption prevention program of public administration 2012-2014] 2012. Budapest: KIM. 3-12.

<sup>24</sup>Lékó, Zoltán, ed. 2002. *Lobbikézikönyv*. [Lobby Handbook] Budapest: Demokrácia Kutatások Magyar Központja Közhasznú Alapítvány. 25.

communities' show that public law players frequently get into contact with each other, realise their common interests and act together when formulating their professional needs. Players composing these communities are familiar with the elements of public policy institutions and procedures, and know the real significance of factors influencing the public policy decision-making mechanism. Moreover, in Hungary it may also be observed that in order to increase the efficiency of the enforcement of interests, any decision which forms the conditions and elements of public policy procedures may become the subject of lobbying – even if it has distant relations with the given fields and requires legislation. These may be budgetary, institution organisational or personal issues (e.g. in some sectoral fields, interest groups do not represent strictly professional issues but strive to influence the appointment of executive officers). This is an important issue, *even though in European countries the strictly centralised management of public administration usually significantly keeps away external interest groups from decisions affecting the internal operation of public administration.*<sup>25</sup>

The aim of the lobby act submitted and approved in 2006 (Act XLIX of 2006 on *lobby activities*) was to channel the influence of business interest on public power (decisions) into legally regulated areas and make them controllable. Therefore it did not target all forms of the enforcement of interests, but only those which were performed by 'professional' lobbyists or *lobby organisations* based on a commission and against remuneration. The linking of strictly interpreted civil/non-profit organisations to lobby activities in Hungary is somewhat *difficult to understand*, because the scope of the previous act on lobbying covered only organisations performing lobby activities in a commercial manner (based on agreement, for remuneration) – thus did not concern the presentation of interests or arm twisting by organisations due to 'commitment to their members', 'belief', 'patronage', or 'altruism'. Nevertheless several organisations which represent interests have operated as associations in Hungary, and – within some limits – it has never been prohibited for them to perform some activities in a commercial manner.

*The act was valid for an exceptionally short period of time (only for four years):* among the reasons for its failure were the fact that the majority of those representing economic interests favoured the maintenance-support of self-regulation; the forcing of common law elements completely different from the Hungarian environment; institutions appeared which were not interpretable for Hungarian political, administrative and legal culture; owing to these factors, Hungarian public administration went into *passive resistance*;<sup>26</sup> furthermore, there was the *quasi lex imperfecta* feature of the act, as well as the insufficiency of control mechanisms outside of law. Still, the most determinative feature was the narrow substantial scope of the act, the fact that it wished to regulate one narrow aspect of the issue – easily eluded by covering material interests – at a high level, without listing or at least slightly regulating the other types of influence – extending the scope of lobby activities to those, as well. The previous regulation practically did not consider the fact that today only those organisations may achieve real results which have serious professional background and resources, and are able to keep up with the latest novelties of technological development – in each case through professionally organised transmission of information. The regulation considered lobbyists 'in reality', approaching the civil servant personally or by means of telecommunication, and neglected the more sophisticated, but very much influential, financed forms of pressuring [constant pressuring through 'position papers' summarising the official opinion, 'grassroots type lobbying' (when many write on the same topic under their 'own name'), or certain indirect tools of 'community relations' improving the consideration of the organisation by the decision-makers were fully excluded from the regulation].

It was the failure of the previous lobby act which showed that *in certain fields the state cannot intervene with its substitutive regulations even in the absence of self-regulation (which has been spreading significantly against central regulations):* in some social fields, permanent results may be achieved *only through the consistent stimulation of self-regulating mechanisms*, which is a slow and delicate solution, but lacks any alternative. This is the reason – partly – why the new lobby regulation creates *obligatory rules related to the enforcement of interests only on the side of the civil servant receiving the lobbyist (by this strengthening the integrity of public administration)*,<sup>27</sup> and otherwise it trusts itself

<sup>25</sup>Ibid.

<sup>26</sup>According to the report of the Justice Service of the Ministry of Public Administration and Justice prepared in 2012 the 307 registered lobbyists tried to 'officially' influence only 316 (!) state or self-governmental measures within four years. E.g. according to the report at the approximately 3,200 local governments the lobbyists approached the competent persons only in relation to 30 decisions within four years (!)...

<sup>27</sup>Hungary undertook the obligation to establish *Codes of Professional Ethics* for civil servants and the employee protection public order approved by professional public bodies independent from the government. See Section 1 of Government Decision 1080/2013. (II. 25.) on the approval of the action plan about the obligations of Hungary within



to the already established criminal law barriers (e.g. the crime of bribery).<sup>28</sup> In Hungary this concept – realising social realities – conflicted with the opinion of organisations regarding the previous concept. Thus *Amnesty International*, *Greenpeace*, *the Társaság a Szabadságjogokért* (Hungarian Civil Liberties Union, TASZ) and others approached the minister of public administration and justice with an open letter in 2012, complaining that after 2010 it was not regulated substantively how business associations and business interest groups may influence the possessors of public power: ‘Article 19 section b) of Act CXXXI of 2010 on *social participation in legislation* (hereinafter referred to as: SPL) annulled act XLIX of 2000 on *lobby activities* without replacing it with proper regulations. The possibility of strategic partnership ensured in Article 13 of SPL concerns only a narrow field of the enforcement of interests. Through strategic partnership, ministries may establish direct relationship with those organisations ready for mutual cooperation which represent a wide range of social interests in the preparation of the regulation of the given legal fields, or perform scientific activities in the given legal field. This act is far from regulating lobbying properly. It provides exclusively for cooperation with the ministries, even though lobbying is more than participation in ministerial level legislation: each activity aiming at influencing a public power decision or at the enforcement of interests belongs to the scope of lobbying.’<sup>29</sup>

In summary it may be stated (and it is confirmed by the letter of TASZ) that in Hungary the notion of lobbying may be apprehended in broader context than commercial activities, and may be interpreted and regulated likewise.

#### **4.2.2. Participation in Program Making and Legislation Through Membership in Bodies**

##### **4.2.2.1. Consultation**

###### *National definition of consultation*

In Hungary the broadest concept of consultation has been used in a triple interpretation (or meaning):

- a) on the one hand, the broader meaning includes the most comprehensive forms of social negotiation and review [System of National Cooperation (NER), National consultation];
- b) on the other hand, it includes the legal forms of negotiation and review described earlier;
- c) finally, it still includes the specific, described consultative forums, as well.

*The present sub-chapter uses the third – narrower, more traditional – meaning as its starting point.*

###### *General issues of consultation*

In relation to consultation, it may be generally stated that grounded decision making, quality governance and legislation require discussion with the interested parties, including consultation. Consultation is the involvement of those concerned in the procedure of decision making in order to create real social negotiation. In this sense, therefore, the definition relates not only to negotiation in the preparatory phase, but also to the unique realisation of the shaping of political will, which happens in order to establish the content of the law based on compromise.<sup>30</sup> ‘In the long run, social peace may be maintained by compromises through the politics of agreements. Governance may be ‘successful and good’ only if it takes into account the heterogeneity of those governed.’<sup>31</sup>

The significance of consultation is also stressed by the Commission, which published an announcement about consultation, supporting the notion that during consultation each of those concerned should be allowed to properly

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the international initiative of the Open Government Partnership.

<sup>28</sup>It has been a debated issue in Hungarian public administration at what level and at what depth the professional ethical norms enforceable within public service shall be regulated; within the framework of the *Magyar Zoltán Public Administration Development Program* – theoretically – the old approach is getting stronger again, which – within legal frameworks – would allow for the wide-scope self-regulation of those concerned.

<sup>29</sup><http://tasz.hu/jogallamvedo?page=2> (accessed May 10, 2013).

<sup>30</sup>Drinóczi, Tímea 2010. Minőségi jogalkotás és adminisztratív terhek csökkentése Európában. [Quality legislation and the reduction of administrative burdens in Europe] Budapest: HVG-ORAC. 32-33.

<sup>31</sup>Vadál (n 9) 57.

express their opinion.<sup>32</sup> In most member states of the European Union, separate, permanent forums have been established for macro-level consultation which facilitate the continuous relationship between the government and social partners and other representatives of interests – without the burden of immediate agreements – and within this they get the chance to familiarise themselves with each other's opinion.<sup>33</sup> Beyond the narrow focus of issues related to the world of labour, this covers also specific policy issues. In member states, macro level consultations aiming at globally shaping the economy and social policy are usually hosted within the institutional frameworks of prestigious, dominant forums. Naturally, governmental-civil discussion shall also be part of social discussion. In addition to social partners, the representatives of civil organisations 'shall also be present in the work of the consultative bodies of macro-level negotiation of interests'.<sup>34</sup>

Nevertheless 'it may be stated that the prestige of consultation is much lower in Hungary than in other member states'.<sup>35</sup> In Hungary the consultative role is often interpreted as of lower value, failure – also in the self-evaluation, self-assessment of the players; as a synonym of *slow marginalisation in substantial* – macro level – *policy-making*. This same fact lies in the background of the fact that in Hungary consultation, negotiation, cooperation is basically agreement-centred, bargain-oriented. We shall also add that today in Hungary 'consultation is [often] not the indicator or instrument of values, but of relatively quickly changing interests'. A closely related phenomenon (fact) is that while in most of the old member states consultation is substantial (ensured by legal guarantees) and constant, in Hungary – traditionally – a lower level of regulation and 'ad hoc' character is dominant<sup>36</sup>, *a situation intensified by the exceptionally infrequent convening of certain forums*.

The regulation regarding bodies operating alongside the Government (and ministries and other public administrative bodies) is individual: generally the operation of each body is settled by separate law or legal instruments of state administration, which contributes to the fact that there is often parallelism or overlaps in their tasks and competences.<sup>37</sup> The functions of bodies operating beside the government are not always possible to separate; sometimes bodies with the same tasks operate under different names (e.g. inter-ministerial commissions or councils – see later). The main reason for these difficulties is that 'in Hungary comprehensive, high-level framework regulations about the main types are still missing'.<sup>38</sup> We do not necessarily agree that the issue should be regulated in more detailed constitutional rules, but it seems obvious that a detailed regulation at the level of acts is necessary. *The more comprehensive regulation of consultative bodies is reasonable because the broadly interpreted governmental consultation goes beyond consultative bodies operating beside the government or ministries, and includes macro level forums independent from the governments, as well as territorial level mechanisms and specific bodies*.

It must also be added that 'By today a complex system of governmental consultative bodies has been established in all modern public administrative systems'.<sup>39</sup> However, despite their significance and quantity, the social sciences pay relatively little attention to these institutions, having a role in the shaping of governmental decisions, '[even though] almost invisibly a new sector has emerged, the operation of which is essential for the quality of governmental activities and is also important for their transparency'.<sup>40</sup>

It should be noted that there is no good name for this system of organisations in Hungarian law. The expressions

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<sup>32</sup>Towards a reinforced culture of consultation and dialogue – General principles and minimum standards for consultation of interested parties by the Commission. Communication for the Commission, COM(2002) 704 final.

<sup>33</sup>Ladó, Mária and Tóth, Ferenc. 2002. A konzultáció és intézményei az Európai Unióban, tagállamaiban és Magyarországon. [Consultation and its institutions in the European Union, in its member states and in Hungary] Budapest: OFA. 192.

<sup>34</sup>Bódi, György and Jung, Adrienn and Lakovits, Elvira. 2003. Civil partnerség. [Civil partnership.] Budapest: KJK-KERSZÖV. 190.

<sup>35</sup>Ladó and Tóth (n 33) 193.

<sup>36</sup>Ibid. 194.

<sup>37</sup>Vadál (n 9) 80.

<sup>38</sup>Ibid.

<sup>39</sup>Vadál (n 9) 17.

<sup>40</sup>Ibid.

‘background institutions’, ‘auxiliary organisations’, or ‘consultative organisation’, ‘institutions of social dialogue’, as well as ‘proposer-review organisations’ are (may be) imprecise and deceptive, especially because in some cases these – very diverse – organisations possess public power-like competences in addition to the narrowly interpreted consultative rights.

Therefore it is necessary to scientifically define the various types of these organisations and clarify – in a comparative manner – their role in public power decision making (the preparation of laws), and due to the lack of any laws to generally regulate their participation in the governmental decision-making system, with regard to their importance (see later).

#### *Grouping of consultative bodies*

For the transparency of governmental consultative<sup>41</sup> bodies, they may be grouped according to the following actors:<sup>42</sup>

- a) the scope of participating organisations (e.g. delegating member);
- b) their features of civil cooperation;
- c) their method of selecting members;
- d) the legal regulation of the institution;
- e) the features and content of the members’ rights;
- f) the frequency of application; and
- g) the phase or level of governmental activities to which each is related.

#### *Ad a) Types of governmental (state administrative) consultative bodies based on their members*

Based on the scope of participating bodies (organisations) Vadál distinguishes between *internal consultative bodies of governmental activities* and *external consultative bodies of governmental activities*. In the first one, she lists those institutions and procedures (e.g. government commissions, cabinets and inter-ministerial commissions), in which only state bodies participate and the representatives of civil society (non-state bodies) are usually not present among the members. Into the latter grouping she lists those bodies within which, in addition to the representatives of governmental bodies, the institutions of the widest range of civil society are present: such as social organisations, representatives of interests, professional and expert organisations, representatives of science, professional chambers, etc. Within this grouping it is important that ‘through these bodies, the interconnection between governmental activities and the activities of organisations interested in and concerned about decisions may be established. Through these bodies, the presentation of interests, their collision, striving for consensus, and the professional and scientific grounding of decisions may be realised’.<sup>43</sup>

There is another grouping similar to Vadál’s which, as one method of the presentation and enforcement of specific aspects of interests – significant in the preparation of governmental decisions – at each level and area of governmental activities [partly sectoral (strictly professional) and partly functional (beyond the aspects of certain sectors)] which

- a) enforces the given (public policy) interests by establishing an independent coordinative mechanism or body (mainly relying on the staff of the state administration), or
- b) introduces the institutional solutions – including external actors – of ‘transmitting information’ related to interests ‘into governmental activities’.<sup>44</sup>

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<sup>41</sup>In lack of other indication primarily consultative bodies operating next to central state administrative bodies are in the focus of the analysis.

<sup>42</sup>Vadál (n 9) 60.

<sup>43</sup>

Ibid.

<sup>44</sup>

Balázs, István. 2011. Magyarország közigazgatása. [Hungary’s public administration] In Szamel, Katalin,

As has been mentioned before, both types of organisations may be put into the group of so-called governmental auxiliary bodies the ‘common feature of which is that part or all of their activities is related to the governmental decision-making procedure with the aim that these decisions shall be well-grounded from all – professional, legal and political – aspects and the delivered decisions shall be used also in reality’.<sup>45</sup>

Based on the abovementioned facts, it is clear that the two types of organisations are not ‘identical’: while the second – theoretically – serves the observation, aggregation of interests and their transmission to the decision-makers, the first one performs the channelling of the revealed interests, and the professional preparation of their presentation in the drafts of different programs and legal instruments, as well as their negotiation and concretisation within public administration. However, the majority of practical difficulties well interpretable from the side of civil society result from the lack of regulation and the conflict of existing regulations related to the tasks and composition of these two ‘types of organisations’ and their relationship, with regard to the fact that the two types of bodies exist simultaneously. For example, the two consultative bodies for the representation and facilitation of the management of Roma issues have been established accordingly, but the relationship between the Inter-Ministerial Committee for Social Development and Roma Issues<sup>46</sup> and the Roma Coordinative Council<sup>47</sup> has not been clarified; it is hardly interpretable and less transparent, based on government decisions and practical experiences.

This situation is further complicated by the fact that within the *internal negotiating mechanisms of state administration* (at the meeting of the Government performing final coordination, or in different coordinative and consultative mechanisms, bodies) the representatives of civil organisations (may) appear directly in several ways. For example – to continue with the abovementioned example – according to the Government Decree establishing the Roma Coordinative Council ‘[The] Government calls upon the leaders of central state administrative bodies to ensure, in case of laws related to the social development of Roma people defined in the legislative program of the Government, the possibility to provide opinion for the [civilian and non-civilian] members of the Council within the public administrative negotiation’. Furthermore, Section 49 of Government Decree 1144/2010. (VII. 7.) on the rules of procedures of the Government must be mentioned, according to which the undersecretary for administration of the Ministry of Public Administration and Justice may invite external persons – for example representatives of civil organisations – to the meeting of the undersecretary of administration; and its section 59, based on which persons – for example representatives of civil organisations – invited personally by the Prime Minister may participate at the meeting of the Government.

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Balázs István, Gajduscheck György and Koi Gyula, eds. *Az Európai Unió tagállamainak közigazgatása*. [Public administration of the European Union’s member states] Budapest: COMPLEX. 745.

<sup>45</sup>

Ibid.

<sup>46</sup>Within the scope of the examined field the Inter-Ministerial Committee for Social Development and Roma Issues supports those written in section a) herein. The Government established the Inter-Ministerial Committee for Social Development and Roma Issues for improving the standard of living and social status of Roma people and those living in poverty and for the harmonisation of governmental activities aiming at facilitating their social integration. The primary task of the Inter-Ministerial Committee for Social Development and Roma Issues – based on Government Decision 1199/2010. (IX. 29.) on the establishment of the Inter-Ministerial Committee for Social Development and Roma Issues – is to harmonise activities related to social development, to make recommendations for the Government for the harmonised planning of the resource needs of tasks related to the social development and for the supervision of finances, as well as to coordinate and evaluate the execution of governmental tasks aimed at improving the standard of living and social status of Roma people and those living in poverty and at facilitating their social integration.

<sup>47</sup>An institutional realisation of those written in section b) herein (in the examined field) is the Roma Coordinative Council established by Government Decision 1102/2011. (IV. 15.) on the establishment of the Roma Coordinative Council, which was established by the Government based on social partnership for the establishment and execution of measures facilitating the effective development of the Roma population, as well as for rendering an opinion about the results. The Roma Coordinative Council is an advisory, consultative body supporting social development, and in line with the aims of the Government it is a specific forum for transmitting information related to the interests of the concerned social groups into governmental work.

Ad b) *Basic types of governmental (central state administrative) consultative bodies – from the aspect of civil cooperation:*

1. bodies ensuring membership-like civil participation<sup>48</sup> (mixed system);
2. bodies composed of the delegates of only (central) state administrative bodies (e.g. Sulinet Expressz Program [Internet at Schools Express Programme] Project Council<sup>49</sup>) – without civil organisational rights;
3. bodies composed of the delegates of only (central) state administrative bodies – with the possibility of direct channelling of civil interests;<sup>50</sup>
4. bodies composed exclusively of experts – without direct and expressed civil participation;<sup>51</sup>
5. no civil member, but civil organisations may make suggestions for the appointment of members (their opinion is requested in a formal procedure, e.g. Hungarian Design Council<sup>52</sup>).

Ad c) *Main forms of establishing membership:*

1. ministerial request and appointment – without civilian cooperation (e.g. recommendation) before the appointment;
2. ministerial request and appointment – with the possibility (right) for civilian recommendation;
3. submission of a declaration of unilateral accession,<sup>53</sup> and declaration of will<sup>54</sup>;
4. naming a specific civil organisation in a normative source of law (e.g. HUNGARNET Association<sup>55</sup>, or earlier the National Association of Hungarian Artists);
5. with election based on the candidacy system.

It is important that the abovementioned types do not cover all types operating in practice, with special regard to the fact that the mechanisms of selecting (civilian) members and of the establishment of membership are not fixed in each case. *A practical difficulty which has been mentioned in the literature for a long time* is that in institutions (bodies) where there are provisions about the selection of civilian members, we usually only find the description of activities the performance of which allows organisations to participate, 'but it is [often] left in the shadow what the exact mechanism

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<sup>48</sup>The expression 'civil participation' primarily means those cases when the natural person participating in a consultative body is representative of a civil organisation, not in his own name, directly due to his professional expertise gained at the given field.

<sup>49</sup>Government Decree 283/2003. (XII. 29.) on the tasks and operational rules of the Sulinet Expressz Program Project Council.

<sup>50</sup>The president of the Inter-Ministerial Committee for Social Development and Roma Issues may invite other people – typically representatives of Roma civil organisations – based on the founding legal document.

<sup>51</sup>See for example the composition of the Scientific Committee set forth in Article 6 paragraph (1) of Government Decree 112/2011 (VII. 4.) on the (...) scientific committee supporting the work of the National Atomic Energy Office.

<sup>52</sup>For the appointment of the members of the National Design Council (MFT) the president of the National Office of Intellectual Property makes a recommendation, for the creation of which he requests the opinion of related professional and interest representation organisations [Article 2 paragraph (2) of Government Decree 266/2001 (XII. 21.) on the Hungarian Design Council].

<sup>53</sup>According to Article 1 of Ministry of Human Resources Decree 50/2012. (XII. 19.) on the National Patient Forum any civil organisation may join the section of the National Patient Forum (herein after referred to as: NBF) in line with its activities with a declaration of accession sent to the Board of the NBF if the civil organisation operates in compliance with act on civil organisations and performs its activities in the field of health care.

<sup>54</sup>According to Article 2 paragraphs (1) and (2) of Government Decree 65/2000. (V. 9.) on the establishment and detailed rules of the operation of the Charitable Council, the public benefit organisations performing charitable tasks which want to become members of the Council may submit a related declaration of intent to the minister – and the minister shall automatically provide credentials for the representatives of those organisations which comply with conditions set forth in Article 1 paragraph (2) and have submitted their declaration of intent.

<sup>55</sup>Section 1 of Government Decision 1129/2013. (III. 14.) on the establishment of the National Information Infrastructure Development Program Council and the definition of its rules of procedure the Government established, as proposer, review and advisory body the National Information Infrastructure Development Program Council, and its section 6 requests – among others – the president of the HUNGARNET Association to participate in the work of the Program council as a permanent member.

is for their selection' and what methods may be used for ensuring the democracy of the procedure.<sup>56</sup> This deficient legal regulation allows the government (any government, not just the current one) to arbitrarily select from among organisations formally complying with all conditions, not necessarily paying attention to their real social significance and professional preparedness.

Ad d) *Legal regulation of consultative bodies – from the civil point of view:*

Open legislation may become *counterproductive* if 'the processing of opinions and the feedback procedure are not regulated and managed properly' – says Vadál.<sup>57</sup> Mentioning these elements is especially important regarding the domestic – external – consultative bodies, because *these communication aspects provide the basis of most practical difficulties*.

Ad e) *Rights and tools available for the civilian member or for the body with civilian member:*

1. review;
2. recommendations;
3. negotiation of interests;
4. preparation of decisions;
5. decision making;
6. coordination;
7. analysis and evaluation of execution;
8. lawsuit.<sup>58</sup>

Among – public power-like – rights which go beyond traditional consultative rights (the right to information, the right to negotiate, the right to make recommendations, the right to give an opinion) those shall be mentioned through which decision making power is divided between the public administrative body (typically the Government) and the consultative body.<sup>59</sup> In such cases the original possessor of the decision making right, who is responsible for decision making, cannot deliver the decision on its own, because the concerting right (co-decision making right) of the mentioned body limits this. Naturally, in such cases the original possessor of the decision-making right cannot fully delegate the right to decision making or its responsibility for the decision (and the liability for its possible consequences), but with the self-regulating 'delegation' of certain elements of decision making it may ensure substantial participation and unavoidable control-possibility to the representatives of the targeted groups. A good – though as yet theoretical – example is the Framework Agreement established between the Government of Hungary and the *National Roma Self-Government* [NRSNG], based on which 'Within their cooperation the Government and the NRSNG establish a draft government decree, in which they define the certain fields of intervention and the participants of the co-decision agreement and together with the bodies appointed for co-decision-making define the co-decision-making mechanism relevant for the given field, by taking into consideration, and keeping in line with, the valid EU and national procedural regulations'. In an exemplificative manner, the Framework Agreement defines those fields in which it wants to give to the NRSNG effective and substantial rights for the enforcement of interests: 'The Government establishes the co-decision system primarily in the fields of programs aiming at the expansion of employment, increasing standards of education and improving standards of living, as well as of scholarship programs, investment and employment supports.' It is clear, therefore, that the decision-making and co-decision-making rights may primarily contain partial rights related to tenders, funds, or personal issues, sometimes not in a substantial manner, but 'only' in form of veto<sup>60</sup> or 'quasi veto', these latter ones covering the elements which, for example, allow for the postponement of decision-making or the

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<sup>56</sup>Héthy, Lajos. 2010. *Civil beszéd vagy "párt-beszéd"?* [Civil speech or "party-speech"?] Budapest: Napvilág. 96.

<sup>57</sup>Vadál (n 9) 162.

<sup>58</sup>The rule defined in Article 25 paragraph (7) of Act XXVI of 1998 on the rights and equal opportunities of disabled persons, according to which against those violating the rights of disabled persons defined in law the National Council for Disabled and the national interest representative organisations of disabled persons may initiate a lawsuit.

<sup>59</sup>Vadál (n 9) 61. and 86.

<sup>60</sup>The exclusive recommendation right and the right to initiative, as well as the right to consent and the decision bound to a certain voting rate may be considered as such.

suspension of the execution of the delivered decisions.<sup>61</sup>

Ad g) *Types of consultative bodies related to certain governmental levels:*

We may distinguish between bodies established beside non-local-governments based on whether they were created by the Government or independently from it. The best example for the latter is the National Economic and Social Committee established by Act CXIII of 2011 on the *National Economic and Social Committee*, which was created with the aim of discussing comprehensive ideas related to economic and societal development and national strategies existing through governmental cycles, and facilitating the elaboration and realisation of harmonised and balanced economic growth and the related social models. The Committee was established as a *consultative, proposer and advisory body independent from the Parliament and the Government*, and as the complex and most diverse consultative forum of social dialogue between organisations representing employers' and employees' interests, economic chambers, civil organisations operating in the field of national policy, national and foreign representatives of science, and churches defined in a separate act.<sup>62</sup> It is worth noting that the solution is not unique in Hungarian legal development.<sup>63</sup> It is important that independence from the government does not mean that during the activities of the forums, opinions of the Government and civil organisations cannot be directly in conflict or that the government cannot be substantially 'influenced' in some ways.<sup>64</sup>

In addition to the most comprehensive consultative mechanism(s), consultative bodies operating beside the Government and certain central state administrative bodies form a separate category; these partly appear in classic, sectoral fields (health care, education, social issues, economic issues<sup>65</sup>, etc.), and partly may be identified as intersectoral fields (e.g. see the before mentioned Roma issue).

In addition to consultative bodies operating beside or 'between' central state administrative bodies the territorial consultative bodies, or *bodies with a consultative type of tasks* shall be mentioned, the majority of which may be characterised as so-called quasi state administrative bodies. These may also be called atypical mixed bodies, in so far as they appear neither as fully state administrative, nor fully local-governmental, syndicate types of bodies.<sup>66</sup> It is true in general that the main reason for their existence is that the presentation of general and local interests, abilities and expectations could not be possible or reasonable at the same time at other forums or scenes. These creatures may be described as territorial cooperative mechanisms – typically aiming at program making – in so far as they primarily try to act as forums for the exchange of opinions and for dialogue between civilians and local-governmental and state administrative (types of) bodies. They are usually without organisational independence, but they are usually independent in exercising their tasks and competences. Examples of such are the *Regional Social Policy Committees* or the *Regional Tourism Boards*.

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<sup>61</sup>For details see: Rixer, Ádám. 2013. *A roma érdekek megjelenítése a jogalkotásban*. [Emergence of Roma interests in legislation] Budapest: Patrocinium. 158-160.

<sup>62</sup>Article 2 paragraph (1) of Act XCIII of 2011 on the National Economic and Social Council.

<sup>63</sup>The Economic and Social Council – *which has always operated in an unstructured way and without substantial rights* – was established in the building of the Parliament on 24 August 2004, and wished to remain a professional forum independent from the government and party politics 'by discussing long-term national, strategic issues'. In the Council, national trade unions and employers' interest representatives, and representatives of chambers, investors, *civil organisations* and science were present as members. The GSZT expressly aimed at being the forum of national consensus seeking to rise above everyday political fights. In this institution the different sectors were allowed to present their opinions about issues the nation was facing that would determine long-term development.

<sup>64</sup>For example, based on Article 153 paragraph (1) of Act I of 2012 on the Labour Code, the Government shall receive authorisation to define in decree – after consultation in the National Economic and Social Council – about a) the lowest obligatory wage and b) the amount and validity of the guaranteed wage minimum.

<sup>65</sup>See for example Government Decision 1166/2012. (V. 22.) on the reorganisation of the budget estimate from reserves available for extraordinary governmental measures in order to ensure the resources necessary for the performance of the tasks of the Corporate sector and the Government's Permanent Consultative Forum.

<sup>66</sup>Patyi, András and Varga, Zs. András. 2012. *Általános közigazgatási jog (az Alaptörvény rendszerében)*. [General administrative law (Within the system of the Fundamental Law)] Budapest: Dialóg Campus. 329.

### *Summary statements and general conclusions in relation to consultation*

It is an assumption in legal literature – which goes beyond our specific subject – is that the relationship of the established forums for the preparation of decisions and for negotiation, their specific role and significance should be clarified in law.<sup>67</sup> For a long time the main question has been whether in the case of decision-making mechanisms supplemented with mainly informal, ‘customised’ elements, the strictness of the legal regulations (deeper and more accountable than today) – and of the transparency and higher level of legal security theoretically achievable by this – would impose great difficulties in reaching substantial compromises and using practical ‘quickly reacting’ methods. It may be stated that the difference mechanisms aiming at the preparation of decisions should be formalised through more detailed legal provisions than today.<sup>68</sup>

Among further difficulties, on the one hand, the low level of professional preparedness and material resources of social players (the latter may appear, for example, in relation to the costs of preparing an expert opinion), and, on the other hand, as the capacity deficiency of the governmental side, the lack of such civil servant staff – specialised in negotiating activities – in central public administration may be mentioned.

#### **4.3. Tools Influencing the Legislator Indirectly, Through Other Bodies**

Here those possibilities will be presented through which the citizen or the civil organisation influences the contents of laws enacted by competent public administrative bodies by approaching not the legislator, but another state organisation. In some cases, these mechanisms may make the chances of influencing the legislator rather indirect, and sometimes – as will be shown – quite distant (*through the initiation of the review of the content of the given law, which may lead to the annulment of the law or legal regulation by the Constitutional Court*).

Such tools may be, among others,

1. *Constitutional complaint*. According to article 24 paragraph (2) section c) of the *Fundamental Law* based on the constitutional complaint the *Constitutional Court* – which may be approached also by the civil organisation concerned about the given issue – reviews the harmony of the law used in the individual case with the *Fundamental Law*;

2. *Initiating the procedure of the parliamentary commissioner for fundamental rights*. According to article 24 paragraph (2) section e) of the *Fundamental Law*, upon the initiative of the Government, one-fourth of the members of Parliament, the president of the *Curia*, the *Chief Prosecutor* or the *parliamentary commissioner for fundamental rights*, the *Constitutional Court* reviews the harmony of laws with the *Fundamental Law* within the frameworks of subsequent norm control. The related procedure of the parliamentary commissioner of fundamental rights may be initiated by anyone, in line with article 30 paragraph (1) of the *Fundamental Law*.

## **5. Conclusion**

It can be stated that the Hungarian legal system makes it possible to channel the direct and institutionalised participation of civil entities within program- and law-making activities of organs belonging to public administration, expressing their interests. Moreover, the Hungarian legal system has introduced developed and sophisticated mechanisms even compared to the international legal practice.

Real deficiencies can be rather detected concerning the material and legal consequences of different initiatives, the frequency of convening various corporate bodies, and *mere formal* mode of operating the particular mechanisms.

Furthermore, it makes trouble that the civil/nonprofit sector is strongly „infected” by direct party politics in Hungary: there's a large number of *pseudo-civil* entities and initiatives within the scope of activities of proposal-making, advisory and coordinative bodies.

A special appearance of the abovementioned difficulties is the lack of strong and effective *state-civil society joint mechanisms* which aggregate and uphold Roma (Gypsy) interests.

In summary we can draw the conclusion that both the individual segments of civil society, the political culture and also the administrative bodies participating in legislation i. e. their representatives must improve to comply with the already existing legal framework of statutory instruments.

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<sup>67</sup>See for example Trócsányi, László. 1993. *Közjogi változások és a rendszerváltás*. [Public law changes and the transition] *Magyar Közigazgatás* (1993) 7: 5.

<sup>68</sup>Kéri, László. 2001. *A kormányzati döntéshozatal szervezetszociológiai nézőpontból*. [Governmental decision-making from organisational sociology point of view] In *Közpolitika. Szöveggyűjtemény*. [Public Policy Reader] Edited by Pesti, Sándor. Budapest: Rejtjel. 218.