

# **The Cooperation of Non-Governmental Organizations with the Council of Europe in the Human Rights Area**

English Summary of the Dissertation by Michèle Roth, 1998

## **Part One: The Institutional Frame - Development and Current Situation**

During the first years of its existence, the Council of Europe took a slight position of defense towards non-governmental organizations (NGOs). It is true that there had been sporadic informal cooperation since 1949 and that the temptation to use NGOs as mouthpiece and to profit from their knowledge had been existing, too, but the Committee of Ministers showed clear reserve in formalizing this relationship. It was anxious not to give any means of power into the hands of NGOs.

Despite the efforts of several NGOs to formalize their relationship with the Council of Europe, the Committee of Ministers therefore only responded to two major international federation of trade unions and created a special consultative status for them.

But with that, the ice was broken and it was nearly impossible to tell other important NGOs to stay outside. This was true all the more as the two main arguments against the participation of NGOs - the political nature of the Council of Europe and the occupation of the advisory function by the Parliamentary Assembly - had been invalidated by the Assembly itself.

Therefore, it was wise to open the Council of Europe to NGOs as promptly as possible and to find rules valid for all. This was made very thoroughly. The consultative status from 1954 regulated the relations almost down to the last detail. The already existing consultative systems of ECOSOC, OEEC, and UNESCO served as examples. For instance, the Council of Europe took over the division in different categories with the intention of maintaining close contact to a few privileged NGOs and all the same including the big bulk into the system.

Yet, shortly after the introduction of the consultative status, it was obvious that a position of defense was not necessary. The NGOs turned out to be "peaceful" and cooperative and here and there, fruitful cooperation began to develop. The complex consultative status with its detailed provisions was rather an obstacle. The new regulations from 1960 led to a purified, more flexible status. The individual organs of the Council of Europe were allowed to profit from NGOs more than before.

But then, the fast growing number of NGOs with consultative status - from 38 in 1960 to 120 in the year 1972 - led to new objections. There was fear of an overstress of the consultative status and an overburdening of the bodies concerned. At the same time, it became obvious that some NGOs had aimed at consultative status only for prestige without any real commitment.

Those fears were taken into account with the new consultative status from 1972. Work-load was taken from the committees by the delegation of the admission procedure to the Secretary General. The introduction of an exclusion procedure established the possibility to exclude NGOs not complying with their obligations.

As a further simplification, the division in categories was abolished. Finally, it was stated that cooperation outside the consultative status was permitted.

1993, the first formal opening for regional and national NGOs took place, although they remain excluded from consultative status. Otherwise, the new regulations from 1993 are mainly an adaptation to the ongoing common practice. The new status attempts to assert a stricter check of NGOs to be able to profit more specifically from NGOs through better knowledge of their activities on the one hand, and to take stricter measures against NGOs not fulfilling the conditions on the other hand. These attempts may make sense, but they are threatened to fail because of the scarce capacities of the Secretariat General.

Altogether, one gets the impression that changes in the consultative status never came into being because of a future vision but as a make-up-for adaptation to changed circumstances, as a "catch" of reality.

Relating to the *European Convention on the Recognition of the Legal Personality of International Non-Governmental Organization* one may be inclined to say: "All's well that ends well." But the Convention covers only a small part of the international legal protection and preference NGOs wish to reach.

Nevertheless, the Convention could be an important aid in facilitating the work of NGOs in the member states. But it can only prove its usefulness if many more states as to date ratify the Convention, especially in Central and Eastern Europe. Therefore, NGOs should lobby in the interest of their own. Events like a NGO seminar on the implementation of the Convention held in Strasbourg in February 1998, could give a fresh impetus.

An effective functioning of the NGOs' self-organization should be in their own interest, too. The slogan "Together, we are strong" is especially valuable in times when the number of NGOs is so large that the significance of individual NGOs, with the exception of a few, e.g. *Amnesty International*, has rather declined. In the world of NGOs, the future lies in the building of strong coalitions. Only a few NGOs have such a powerful position that sole action can be advantageous for them. The striving for prestige of the single NGOs must step in the background in favour of the common cause. Different opinions have to be bundled up and reduced to a common denominator.

At the Council of Europe, this seems to function rather badly, although indisputably there has been made big progress since 1975 with the creation of the Plenary Conference of NGOs, the NGO Liaison Committee, and the NGO Groupings by areas of interest.

The meetings of the Groupings by areas of interest, originally thought to be meetings of experts, suffer in their quality because, very often, not experts but voluntary representatives living in the area of Strasbourg and lacking of professional qualification are sent to the meetings. The reasons lay aside: They are mainly of financial and time-consuming nature, but they partly also show the poor interest in the Council of Europe in general and the Groupings by areas of interest particularly.

Under these circumstances, it is hardly possible to work out a common and sound position to a topic, and there is a danger that truly committed NGOs turn away disappointedly.

Altogether, one can state that the institutional frame, in the way it presents itself today, offers the Council of Europe and the NGOs quite good conditions for a fruitful cooperation, provided that financial means and time are available to make use of these possibilities. And not least, the realization is, time and again, dependent on committed personalities who take the initiative.

## Part Two: The Cooperation in Practice - The Example of Human Rights

A general judgement of the benefit and effectiveness of the collaboration of NGOs with the Council of Europe is difficult as there are many ways of cooperation and a great variety of NGOs. Therefore, a clear assessment of the collaboration in the human rights field is not possible.

Nevertheless, it can be said that the participation of NGOs has had many positive effects on the Council of Europe and its work. Examples like the European Convention for the Prevention of Torture or the ongoing efforts on the right of conscientious objection are the best prove. Often, NGOs promote progressive ideas for the protection of human rights, ideas which, at first, seem not translatable into public policy. NGOs confront the Committee of Ministers and the Parliamentary Assembly with their demands. Besides, they often react more quickly to a change of conditions as do the more sluggish official structures. At the same time, they create an appropriate political climate within the societies of the member states to make their ideas implementable. On no account, the Council of Europe should give up these manifold suggestions and the following support.

Part II.2 shows that NGOs play an important role in the implementation of the Council of Europe's ideals within the member states. Especially in the area of education, but also for the monitoring, this is very clear. With rather negligible support by the Council of Europe but with much initiative of their own, NGOs set up many projects helping the European population to make use of the human rights which it is assured of by the governments. Besides, NGOs take over the function of *watchdogs*, scrutinizing if governments are sticking to the commitments they made and pointing to sore points without diplomatic considerations. By this, they fill in an important gap in the system of intergovernmental human rights protection and contribute significantly to the success of the Council of Europe in the human rights field.

At the moment, the collaboration of NGOs with the Council of Europe within the member states is clearly the most successful sector. It is of interest that this of all the sectors is the one where cooperation with national and regional NGOs is very frequent. Those NGOs do not have the possibility to get consultative status. The importance an NGO achieves by the consultative status can make it easier to get recognition within the own country and to hold itself against the government. These reasons speak for an integration of local NGOs in the consultative status system.

Of course, the collaboration is not always without problems and disagreement. This is not surprising considering the big number of persons and organizations involved, the different authorities and legitimations and the variety of NGOs.

There is a risk of NGOs turning away from the Council of Europe if the Council is hiding itself behind the cloak of confidentiality too often and if, above all, the governmental committees of experts do not open themselves more often towards NGOs (and the Parliamentary Assembly), if they do not democratize their working procedure and, at least, inform better on their plans and the ongoing discussions. The cooperation with the Parliamentary Assembly and its committees is mostly not optimal, too, although there are many more persons to turn to and possibilities for NGOs. If the collaboration with NGOs is really wished, this wish has to get visible in an increased commitment. At the same time, NGOs must have the opportunity to follow the effects of their suggestions so that they do not get the impression to do a fruitless job.

Understandably, it is sometimes not clear to the different bodies what the legitimation is with which certain NGOs promote their interests and on what basis they do their work. But these

difficulties should not lead to a defense reaction of the individual bodies, they rather should be solved in a constructive dialogue and a strict check of the list of NGOs with consultative status as the provisions intend to. Moreover, at certain places, e.g. at the Directorate of Human Rights, there has been collected a sound knowledge, over the years, on those NGOs with which a fruitful cooperation can take place. Of course, this should not lead to a situation where other NGOs do not get a chance anymore.

It has to be beared in mind that during the last fifty years, there has been created a considerable number of human rights instruments. It is true that there still are some gaps to be closed but the effectiveness of the human rights instruments is mainly limited because of difficulties in the implementation. It seems that many NGOs have recognized this fact and now concentrate their limited resources on the implementation process in the individual member states rather than pushing for the creation of new international law. Therefore, they lose their interest in participating actively in the work at the headquarters of the Council of Europe or concentrate, there too, on the support of implementation mechanisms as can be seen by the example of the European Convention on Human Rights.

In this context, it could be important to involve NGOs from Central and Eastern Europe not only in education, information and monitoring activities but to give them increased possibilities to participate in the law-making process of the Council of Europe and, as a result, to point out specific problems of their countries - problems which Western European NGOs might miss or misjudge. Likewise, these NGOs should be trained thoroughly in the application of the European Convention on Human Rights, so that they are able to support their population competently.

The inclusion of NGOs from the new member states is not only impeded by general problems which have a particular negative effect on these NGOs (like missing financial resources or an insufficient flow of information) but also by the fact, that most of these NGOs are national NGOs and therefore are excluded from consultative status.

The relationship between the Council of Europe and NGOs time and again gets strained through financial and personnel bottlenecks. The member states should seriously examine if not, with slightly higher funds, a remarkably positive effect could be reached. As Drzemczewski states, many collaborators of NGOs are ready to work hard and with great personal efforts.[1] But even then, NGOs can not operate completely without financial considerations, and there is a danger that especially desired NGOs turn away from the Council of Europe and concentrate their potential on other international organizations, e.g. the European Union, which have more money to spend. At this point, it is up to the governments to decide where to set priorities.

The recognition of the merits of NGOs by the awarding of the European Human Rights Prize to the International Commission of Jurists (1980), the medical section of amnesty international (1983), the International Helsinki Federation of Human Rights (1989) and Médecins sans frontières (1992) can not hide the fact that these priorities rather are not set within the Council of Europe.

Of course, it is not only the task of the Council of Europe to support a fruitful cooperation with NGOs. NGOs (at least the international ones) who really want to collaborate with the Council, do have many possibilities to do this within the given frame. Rather than asking for improvement of the conditions, they should ask themselves if they exhaustively make use of the existing possibilities and if they show enough initiative of their own. For example, the instrument of the memorandum could be used better, or the possibility of participation in the preparation of the mid-term working programme of the Council of Europe.

Organizations who are willing to invest time and energy into the cooperation with the Council of Europe do have quite good chances to be heard, as long as they do not promote special interests which are not in the interest of the Council and the public.[2]

### **Recommendations for an improvement of the cooperation**

Of course, more financial resources can not solve all the problems which arise from the collaboration with NGOs. Other reforms are necessary and are partly already in the stage of realization.

1997, the Secretariat agreed on a seven point programme to improve the possibilities of NGOs to cooperate with the Council of Europe. For example, there are plans to compile an organization chart of the Council of Europe and the relevant administrators in the various departments as well as a directory of the Council of Europe's committees and other bodies.[3] This should be an important auxiliary for NGOs bearing in mind the relatively complex structure of the Council of Europe and its time and again newly established committees of experts.

The Council of Europe's annual programme of activities and its annual activity report will be forwarded to the NGOs, so will documents concerning the organization of the Parliamentary Assembly. Another auxiliary is the NGO directory[4] which was published in 1997. However, revision is already needed.

Furthermore, there is an intention to make use of the September information meetings to provide information about the Council of Europe's structures, mainly for NGOs which have recently been granted consultative status. Another part of the September meeting could be devoted to human rights, as the Directorate of Human Rights is no longer organizing sectoral information meetings.[5] This last proposition has already been realized in 1997.

With the seven point programme first steps were made to make the Council of Europe more transparent and comprehensible to NGOs. But it is far more difficult for the individual bodies of the Council of Europe to get a general idea of the nearly 400 NGOs with consultative status. And NGOs, whose work and structure are not known, will not be consulted.

Therefore, it would be desirable to have a catalogue describing all NGOs in the same way. The best form might be a loose sheet system with each NGO presenting itself. This would keep the work-load down. A collecting system would have the advantage that the project could be started without much preparatory work and that it could be kept up to date with new self-descriptions. If there are important changes within an organization, the organization could adapt its entry without big efforts.

As the Association for the Prevention of Torture (APT) states, such a directory would not only be of use to the Council of Europe but could also facilitate cooperation between NGOs.[6]

A way to facilitate and make the cooperation more efficient is the building of alliance between NGOs with similar interests and the sending of a common observer to the corresponding committees. This was wished by the Parliamentary Assembly in 1981 already[7], and has been partly realized by the NGO Groupings by areas of interest. But especially the appointment of a joint observer/representative could be used more often.

It would have the advantage that the Council of Europe could cope better with the growing number of NGOs as one representative could transmit the joint decisions of many NGOs.

The NGOs could profit of cost reductions as not every single organization would have to be present at Strasbourg anymore. Especially in the age of modern communication, it is quite possible that meetings on the spot could partly be replaced through on-line conferencing and other means. This would mean significant cost and time savings. The NGO Liaison

Committee could take over an important function in this field and, at the same time, offer a chance for information and active participation to NGOs who are based at places far away from Strasbourg and, till now, have not had the possibility to be present at the Council of Europe.

It is, of course, important that the representatives in the NGO Groupings by areas of interest are experts. 1993, the annual report of the Groupings came to the conclusion:

"This means that the NGOs must make a significant investment, but that is the price that has to be paid for occupying their rightful place in the European sphere." [8]

Most NGOs could reach more in promoting their ideas in specific coalitions than by individual struggling. As NGOs are not a homogeneous group, there should be found a system of flexible coalition building. For each factual issue, different groupings would have to be formed. [9] The next step would be a process of consensus finding. This must not be understood as egalitarianism but as a chance to balance out different concepts and interests and to come to a common proposal accepted by a broad basis. Such a proposal would have a better chance to be heard and taken up on parliamentary or ministerial level.

The flow of information from the Council of Europe to the NGOs and vice versa still must be improved. A well kept, informative and constantly up-dated presence on the internet could mean simplification and cost saving on both sides. A corresponding directory of homepages is very desirable. The use of mailing lists would simplify and reduce the price of the exchange of documents.

Additionally, NGOs should regularly send their publications to the relevant bodies of the Council of Europe. Many seem to be quite negligent in this point. [10] Here too, the NGO Liaison Committee could take over a connecting function.

The APT made the useful proposal to send the publication lists of the different directorates and committees automatically to all NGOs. They could then order the publications they are really interested in. This would avoid sending around materials which are not required, and at the same time, the NGOs would be better informed about new publications of the individual bodies as they are at the moment. [11]

An opening and further going accountability at the ministerial level is very much desired, especially relating to the work of the committees of experts. The Council of Europe should be a shining example to its member states in transparency, and not hide itself on the pretext of confidentiality. The Secretary General of the International Commission of Jurists demands of the committees of experts for the development and improvement of human rights instruments to hold their meetings in public and to allow NGOs to participate in their work. NGOs could, for example, submit proposals or improvements to the draft texts, similar to the practice within the UN Commission for Human Rights and its sub-committees. [12]

The NGO Groupings by areas of interest, in particular, could - with some efforts and much willpower - probably reach quite a lot regarding the opening of the committees of experts. In New York, for example, a group of well-known NGOs was able to establish regular briefings by the presidents of the Security Council following their one-month presidency. During these briefings, the NGOs get informed about the events during the presidency (and very often about current events, too), and they have the possibility to ask questions and give inputs. [13] First, a few well-meaning permanent representatives at the UN could be won to do the briefings. In the meantime, the process has developed a self-dynamism which no member of the Security Council can evade (even China was ready to do a briefing, also there are many human rights NGOs belonging to this group of NGOs). Persistence and diplomatic sensitiveness - in this case - have paid off.

If this is practicable with such an exclusive body as the Security Council, it should be even more possible to reach similar agreements with the Rapporteur Group on Relations between the Council of Europe and NGOs (in October 1998, the group was replaced by a Rapporteur) and with the committees of experts of the Council of Europe, e.g. in the form of regular meetings with the chairs of the committees (not each month, of course, but twice or three-times a year). Of course, this could work only on the condition that the NGOs are ready to send to these meetings highly qualified and well informed representatives. The APT is right in saying:

"In the last instance, it is always the NGOs themselves that must take on a more active role within the Council of Europe than is now the case." [14]

Finally, to ease the work of NGOs, it is necessary to prompt further member states, especially the new ones, to sign the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations. Other instruments facilitating the international work of NGOs will rather not be created in the near future if one thinks of the time it took until the member states agreed on a minimal solution.

#### Footnotes:

[1] Drzemczewski, *The Role of NGOs in Human Rights Matters in the Council of Europe* (1987), p. 281.

[2] E.g., in 1973, the International Nativist Federation called for the inclusion of the right to "functional nudity" in natural surroundings into the European Convention on Human Rights;

Committee of Experts on Human Rights, DH/Exp (73) 19, Letter from the International Nativist Federation, 25 Mai 1973.

[3] These proposals were made by the Association for the Prevention of Torture, see Association for the Prevention of Torture (APT), *Improving Co-operation Between Human Rights NGOs and the Council of Europe. Suggestions from the Association for the Prevention of Torture*, 3. April 1997 (available from APT), S. 2.

[4] Council of Europe, List of international non-governmental organisations (NGOs) enjoying consultative status with the Council of Europe, Strasbourg, Feb. 1997.

[5] Liaison Committee of the Non-Governmental Organisations, **ONG.CONF.PL (98) 3**, 1998 Plenary Conference of NGOs, 28 January 1998, Progress Report of the Liaison Committee of NGOs (October 1996-October 1997), §I.4.

[6] Association for the Prevention of Torture (APT), *Improving Co-operation Between Human Rights NGOs and the Council of Europe* (1997), S. 3.

[7] Parliamentary Assembly, **Doc. 4740**, Report on relations of the Parliamentary Assembly with International Non-Governmental Organisations (NGOs) 1. Juni 1981, §I.8.iv.

[8] Liaison Committee of the Non-Governmental Organisations, **ONG.CONF.PL (93) 5**, 1993 Plenary Conference of NGOs enjoying consultative status with the Council of Europe, 3 February 1993, Progress Report on the Activities of NGO Groupings by Areas of Interest, S. 17.

[9] see Association for the Prevention of Torture (APT), *Improving Co-operation Between Human Rights NGOs and the Council of Europe* (1997), S. 4.

[10] Parliamentary Assembly, **Doc. 4740**, §II.40.

[11] Association for the Prevention of Torture (APT), *Improving Co-operation Between Human Rights NGOs and the Council of Europe* (1997), S. 2.

[12] MacDermot, Niall, Propositions pour l'amélioration des procédures dans le domaine des droits de l'homme aux Nations-Unies et au Conseil de l'Europe, in: Bettati, Mario u. Pierre-Marie Dupuy, *Les O.N.G. et le Droit International* (Collection Droit International) Paris 1986, S. 153-157, S. 154f.

[13] NGO Working Group on the Security Council, Information Statement (Revised, June 1997) available at <http://www.globalpolicy.org/security/ngowkgrp/statemt2.htm>.

[14] Association for the Prevention of Torture (APT), *Improving Co-operation Between Human Rights NGOs and the Council of Europe* (1997), S. 1.