



# EUROPEAN (BUT NON E-U) LEGISLATION AND POLICIES OF RELEVANCE TO ASSOCIATIONS AND ALL CIVIL SOCIETY

IT IS AN INCREASINGLY COMMON ASSUMPTION THAT MATTERS DESCRIBED AS 'EUROPEAN' RELATE TO DIRECTIVES, DECISIONS, POLICIES, PRACTICES OR STRUCTURES EMANATING FROM THE EUROPEAN UNION (EU). YET WHILE THE EU HAS INDISPUTABLY ADMIRABLE FEATURES AND ATTRIBUTES, IT HAS TO BE RECOGNIZED THAT IT HAS NOT YET MOVED AS FAR AS SOME OTHER EUROPE-WIDE INTERGOVERNMENTAL BODIES IN ITS RELATIONSHIPS WITH ASSOCIATIONS AND CIVIL SOCIETY IN GENERAL. THAT TERMINOLOGY WILL HERE ENCOMPASS THE USUAL PANOPLY OF NGOS, FOUNDATIONS, TRADE UNION NETWORKS AND ORGANIZATIONS PROMOTING CITIZENS' CAUSES.

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The European intergovernmental body that is plainly the standard setter in recognizing, cooperating with and fostering Civil Society is the **Council of Europe (CoE)**, founded in 1949 to promote respect for democracy, human rights and the rule of law. Its 1950 *European Convention on Human Rights and Fundamental Freedoms* remains a beacon: indeed it is so successful in defending individual rights that it is at risk of collapsing under the weight of its success, so immense is its backlog of cases. It must not be forgotten that the 1950 Convention is a rarity in that its judgments are mandatory, their implementa-

tion being supervised by the CoE Committee of Ministers.

The CoE's *European Social Charter*, adopted in 1961, guarantees economic and social rights, also with a built-in monitoring procedure, and now with the right for concerned NGOs and trade unions (the recognition procedure is liberal) to bring cases against government institutions.

Of immediate relevance to Civil Society was the adoption by the CoE in 1986 of an instrument that had expert input throughout the

drafting process from two INGOs : the Union of International Associations and INTERPHIL. This was the *Convention on the Recognition of the Legal Personality of International NGOs*. One can only regret that to this day this Convention (European Treaty Series No. 124) has no more than ten governmental ratifications.

Within the CoE the *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*, adopted in 1987, includes a permanent Committee with the power to visit and report on places of detention.

The CoE Committee of Ministers in 1990 created an unusual body, the *European Commission for Democracy through Law* (known as the Venice Commission) composed of high-level jurists who give widely-recognized opinions on the compatibility of national laws with democratic standards; contribute to the drafting of laws on electoral practices; and advise constitutional courts.

Many more CoE Conventions and structures of relevance to Civil Society followed: in 1992 the *European Charter for Regional or*

*Minority Languages*; in 1994 the *European Commission against Racism*; in 1995 the *Framework Convention for the Protection of National Minorities*; in 1999 the *Commissioner for Human Rights*; in 2005 the *Convention on Action against Trafficking in Human Beings*; in 2007 the *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*; and in 2008 under the aegis of the CoE Conference of INGOs, the *Expert Council on NGO Law*.

It is indeed important that Civil Society in all its diversity is aware of these many instruments and bodies, for they provide the framework and the norms by which citizens and their organizations may hold public authorities accountable for their actions and inactions.

The CoE indeed has a landmark document specifically in this area. Having upgraded INGO consultative status with the CoE to participatory status in 2003, the Committee of Ministers in 2007 - after in-depth consultation with civil society representatives - adopted its *Recommendation (2007) 14 on the legal status of NGOs in Europe*, a truly groundbreaking intergovernmental text. The Ministers already in the Preamble state that they are 'aware of the essential contribution made by NGOs to the development and realisation of democracy and human rights, in particular through the promotion of public awareness, participation in public life and securing the transparency and accountability of public authorities' and moreover that 'the existence of many NGOs is a manifestation of the right of their members to freedom of association and of their host country's adherence to principles of democratic pluralism'. Could Civil Society ask for a better springboard for its public benefit and justice advocacy work?

But there is more! Among the 77 Articles of Recommendation (2007) 14 of the Committee of Ministers are such unambiguous statements as:

- 6:** NGOs should not be subject to direction by public authorities.
- 12:** NGOs should be free to undertake research, education and advocacy on issues of public debate, regardless of whether the position taken is in accord with government policy or requires a change in the law.

- 14:** NGOs should be free to engage in any lawful economic, business or commercial activities in order to support their not-for-profit activities without any special authorisation being required.
- 47:** NGOs should not need any authorisation from a public authority in order to change their internal structure or rules.
- 50:** NGOs should be free to solicit and receive funding not only from public bodies in their own state but also from institutional or individual donors, another state or multilateral agencies.
- 57:** NGOs should be assisted in the pursuit of their objectives through public funding and other forms of support, such as exemption from income and other taxes, as well as incentives for donations through income tax deductions or credits.

And most enlightened of all:

- 76:** Governmental and quasi-governmental mechanisms at all levels should ensure the effective participation of NGOs without discrimination in dialogue and

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consultation on public policy objectives and decisions. Such participation should ensure the free expression of the diversity of people's opinions as to the functioning of society.

- 77:** NGOs should be consulted during the drafting of primary and secondary legislation which affects their status, financing or spheres of operation.

The CoE Conference of INGOs has itself broken new ground in 2009 by preparing a Code of Good Practice for Civil Participation in the Decision-making Process, a political document contributing to the strengthening and deepening of democracy throughout Europe. The Code illustrates convincingly that NGOs can and must form a crucial component of participation in an open, democratic society,

in part because they engage large numbers of citizens and residents of every country. Associations and Civil Society in general will be able to draw inspiration and techniques from this Code for their ongoing relationships with international, national and local authorities.

The lengthy catalogue, since the beginning of this article, is not (I hope) just a fastidious accumulation of references and citations. It rather is intended to illustrate that an intergovernmental body (the CoE currently has 47 Member States) can be proactive in its relations with Civil Society, and can - often in partnership with civil society organizations - set standards in very wide legal/political/social/technical fields of direct concern to citizens and affecting their daily life. That is where there is deep confluence between the intergovernmental mechanism and the ideals and actions of civil society organizations.

In short, to know the law is good. To influence its drafting and its implementation is better. To know public policies and practices is good. To

influence their formulation and their fulfilment is better. That's the role and the task of civil society organizations as they promote citizens' causes.

[www.uia.org](http://www.uia.org), [www.fiig.org](http://www.fiig.org)

**Notes:** Information on all Council of Europe instruments and texts referred to above can be obtained through the website [www.coe.int](http://www.coe.int)

The author is aware that another article could be written about the implications for Civil Society of the Helsinki Final Act (1975) leading to the Conference on Security and Cooperation in Europe-CSCE, its Office for Free Elections (1991), its Office for Democratic Institutions and Human Rights (1991), its High Commissioner for National Minorities (1992), its transformation into the Organization for Security and Cooperation in Europe-OSCE (1994), the OSCE Representative on Freedom of the Media (1997), the OSCE Special Representative on Combatting Trafficking in Human Beings (2003), and of course its ongoing Human Dimension Implementation Meetings.