

SUMMARY OF THE SILE PROJECT'S EVENT HELD ON 10 MAY 2022

UTILIZING EXPERIENCE-BASED KNOWLEDGE OF SILENT AGENTS IN LEGISLATIVE DRAFTING

On 10 May 2022, the SILE project organized its third Breaking the Silence event, this time for law drafters and law drafting experts. The topic was how to gather and utilize experience-based knowledge of silent agents in legislative drafting. The event was a continuation of the event held in December 2021, where the same theme was examined from the perspective of experts by experience, organizations and research

This compilation first presents a general description of the event. After that, we present issues raised in theme groups, and finally, a concluding summary of the event.

General description of the event

The 'Utilizing the experience of silent agents in legislative drafting' organized by SILE and Ministry of Justice was held remotely on 10 May, 2022. Originally, the event was planned to be held at Säätytalo in Helsinki, but the majority of those who registered preferred to take part remotely, which is why it was decided to change the event to a webinar format.

In this event, answers were sought especially to the following questions: 1) how to get tacit experience-based knowledge as part of law preparation, 2) how to utilize the information produced by organizations and research about silent agents and 3) what are the possibilities and limits of direct consultation practices? The event consisted of presentations (including general discussion), theme group work and a concluding discussion. Petri Uusikylä, the interaction manager of SILE, chaired the event.

The first presentation was given by Kati Rantala, director of SILE, dealing with how silent agents are (or are not) taken into consideration in legislative drafting and why it is important. Niklas Wilhelmsson from the Department for Democracy and Public Law in the Ministry of Justice spoke next. He shared his experiences on the development of consultation practices in law preparation. Consultation was examined in relation to the normative base, the stages of the law preparation processes, and various stakeholders. After that, Juho Martikainen from the Department for Criminal Policy and Criminal Law in Ministry of Justice took the floor. He told about the way in which the consultation of prisoners is being piloted in the Vankusu project as part of reforming the Prison Act and the Pre-trial Detention Act, and what special features are involved in the consultation of prisoners. The section of presentations was completed by Lotta Hautamäki from the University of Helsinki. She spoke about SILE's consultation pilots as part of the reform of substance abuse and mental health legislation. After the presentations, the participants were divided into two thematic work groups.

Compilation of theme group discussions

The titles of the working groups were 'Possibilities and limits of direct consultation practices' and 'Research and organizations as producers of information on silent agents'. The participants were divided evenly into both groups, and lively discussions took place in them. The theme groups also had virtual Flinga whiteboards at their disposal, on which participants could write comments anonymously during the discussion.

The following issues were raised in the group discussions:

Utilization of research-based knowledge

The contexts of knowledge production and law preparation are different. It was stated, for example, that it may be difficult for an organization to understand the nature of law drafting well enough to produce useful information for the process (beyond and through formal modes of consultation). On the other hand, there is also a lack of channels through which it would be easy for organizations to communicate information to decision makers.

Questions related to the availability of tacit knowledge and resources

Lack of time affects law preparation both in terms of direct consultation and the utilization of research. Also producing multilingual materials is a big challenge in terms of resources. In direct consultation practices, experiential knowledge is transmitted without intermediaries. Research can transmit important information about silent agents' everyday conditions, when it is not possible to hear them directly. Requisite research is not always available, however, and conducting separate studies is not always possible because of tight schedules or scarcity of resources. On the other hand, laws are of different types. Sometimes there may be more resources available, but those may have been directed to consultation instead of conducting research. Even then, it may mean that resources are directed to more traditional consultation (circulating the draft bill to stakeholders for comments), not direct consultation or new hearing pilots. Direct consultation requires much more resources than traditional consultation.

Applicability of information

In the application of qualitative research data, questions related to generalizability were perceived as a challenge. On the other hand, it was recognized that numerical data does not always give a sufficient understanding of reality. The knowledge base may also contain contradictions - different sources may represent opposing views. The participants perceived it to be important to pay attention to the objectivity of the information produced by different parties.

In consulting, on the other hand, statistical generalizability is not sought, and even a single insightful point of view or comment can be important. In the discussions, listening was perceived as the most important method, especially for obtaining experiential knowledge. Through consultation, perspectives of the subjects of the law can be brought to the fore. Different groups can also produce other important suggestions and ideas during the consultation. It would be good to utilize co-creation more.

Participation

Silent agents have weaker opportunities to get their voices heard in decision-making. The participants pointed out that in addition to having a strong normative basis for broad-based consultation, it is important to take into account the perspective of equality and offer concrete opportunities to be heard also for those who find it more difficult than others to participate in decision-making. If the aim is only to fulfill formal requirements, the information obtained in the hearings is not influential. The information produced in consultations is also important for carrying out a high-quality impact assessment.

It is important to recognize experiential knowledge as one important type of knowledge. Sometimes 'official' experts by experience are involved in law preparation. Their participation can be problematic, however. If their involvement is superficial, it can easily lead to frustration. For consultation not to remain an illusion, it is best to link it as concretely as possible to a law drafting project.

The interaction between researchers and law drafters was also identified as being essential: it is important to make contacts with researchers so that research-based knowledge can be obtained and utilized as efficiently as possible. It is important for researchers to be active in this interaction.

Possibilities and limits of direct consultation

Many of the participants had experience in consultation, in particular in organizing workshop hearings. It was concluded that the hearing and the matters discussed there need to be prepared and planned well in advance. The law drafter must carefully consider on which topics to ask for comments, and the discussion should be related to the sections of the law under preparation, so that it would bring added value to the drafting of the law. In order to bring concrete views to the fore in the hearings, the discussion must take place on a concrete level. If the content of the consultation is too general, the points of view cannot be utilized well in the drafting.

In particular, individual consultations were not always perceived to produce sufficiently in-depth information. Some of the participants had tried process-based consultation activities, and they had good experiences of it; when the same parties are present at different stages, the information obtained in the hearings deepens. Hearings were felt to be good opportunities to "test" the assumptions made in the preparation of the law about how the law being prepared would change people's behavior. Those who participate in the consultation can tell whether the assumptions are realistic and justified. When planning hearings, one should also take into account the fact that those present have an influence on the dynamics of the hearing event. When considering the outsourcing of hearings, it is worth remembering that from the law drafter's point of view, to read a report on hearings is completely different than to be on site at the hearing.

The aspect of communication related to consultations was also felt to demand a lot from the law drafters. For example, skills are needed to produce hearing materials and to speak clearly about the law. One has to think carefully about how to communicate the matter and what the proposed change would concretely mean to the consultees. Backgrounding the topic carefully, particularly about the goals of the bill, is important, and especially so when a completely new law is being made. If, on the other hand, a law that has been in force for a long time is changed, the need for background information is. A sufficiently early and concrete message to the various parties about what kind of concrete changes are coming, and what kind of effects it is estimated to have, can also support the implementation of the law and increase acceptability of the law. In addition, clear communication supports people's agency.

In order to avoid frustration, the consultees must not be led to believe they can have more influence on the law under preparation than is actually possible.

Summary

The event examined the utilization of the experiences of silent agents in law preparation, especially from the point of view of the law drafters. In the theme groups, the topic was approached through both direct consultation practices and information produced by research and organizations. Various perspectives

related to participation and information utilization were discussed in a diverse manner. In the theme groups, the discussion was lively and produced excellent information for the project both about the possibilities and limits related to direct consultation and the utilization of research and information produced by organizations in law preparation.

The experience of the subjects of regulation is an important part of the knowledge base of law drafting. Direct information about their viewpoints can be obtained through consultations, which is new in many areas. Direct consultation is influenced by, among other things, available time, resources, know-how, courage and opportunities to reach the groups to be consulted. Direct consultation has different functions. Communication related to consultation is important and requires special expertise, especially if the topic arouses strong opposing points of view.

Utilizing research and information produced by organizations is also important. The availability and usability of existing information do not always meet the needs of law drafting. The utilization of qualitative information, along with quantitative information, complements the knowledge base of law drafting. The role of research and information communicated by organizations is emphasized when the target groups cannot be heard directly. Connections between researchers and legislative drafting should be actively developed and maintained. Likewise, channels should be created for the transmission of information produced by organizations.

Based on the event, it seemed clear that hearing the experience of silent agents is considered important. It is necessary to develop methods that support the participation of those who find it more difficult than others to make their voices heard. SILE's work towards producing models that make it easier for silent agents to be heard continues. During the summer and autumn, we pilot the consultation of different groups. We will pilot face-to-face meetings as well as online methods. Especially when talking with silent agents, the method and environment of consultation must be chosen to suit the group being consulted. The project will organize a larger event in 2023, where the results and observations achieved during the first funding period of the project will be presented. We thank everyone who participated in the event for the valuable discussion and important perspectives regarding the consideration of tacit knowledge of experience.