



Civil participation in the decision-making process

Fact finding visit to Estonia

25-26 SEPTEMBER 2017

REPORT

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Introduction

The Conference of INGOs of the Council of Europe visits the member States in order to better understand the co-operation between NGOs (foundations and associations) and decision makers. Discussion and exchange of experiences during the visits of the Council of Europe delegation are part of a wider analysis of the effectiveness of various forms of civil society participation in decision-making. The references regarding international standards and best practices mobilised during each fact-finding visit are as follows:

- European Convention for the Protection of Human Rights and Fundamental Freedoms;
- Recommendation CM/Rec (2007)14 of the Committee of Ministers to member States on the legal status of non-governmental organisations in Europe;
- OSCE/ODIHR-Venice Commission Guidelines on Freedom of Association;
- Recommendation Rec (2001)19 of the Committee of Ministers to member States on the participation of citizens in local public life;
- Guidelines for civil participation in political decision making, adopted by the Committee of Ministers of the Council of Europe on 27 September 2017;
- Conference of INGOs' Code of Good Practice for Civil Participation in the Decision-Making Process (2009);
- UN International Covenant on Civil and Political Rights, signed on 16 December 1966, entry into force 23 March 1976,

Each of the visits is followed by a report which highlights the important issues for the NGOs and the representatives of the Ministries or other public agencies at the time of the visit and the specific socio-political context in the country. The final recommendations are formulated at the end of the report to draw attention to the democratic issues in the country visited that relate to the exercise of the right to freedom of association and associated rights, and also the right to participation.

In Tallinn, the Conference of INGOs carried out its visit from 25 to 27 September 2017. The Network of Estonian Non-profit Organisations was our partner and facilitator who provided the logistical support and organised the meetings with NGOs active in the field of human rights, education, migration and democracy (see attached programme). The delegation was interested to know their point of view on the different national and local mechanisms which allow NGOs to take part in public policies and the political decision-making process. Taking into account the context of E-State and e-governance which is highly developed in Estonia, the delegation was particularly interested to hear about their impact on civil participation in political decision-making process. For this reason, the delegation visited the e-Estonian Showroom and held a meeting with a representative of the e-Governance Academy.

The meetings with the public authorities were organised with the help of the Permanent Representation of Estonia to the Council of Europe. During the visit, the delegation met representatives from the following public authorities: Ms Liana Roosmaa, Ms Ursula Kaasik, Ms Aveli Ainsalu from the Ministry of the Interior, Mr Urmas Reinsalu, Minister of Justice and his team and Ms Liis Kasemets, Adviser in the Strategy Unit in the Government Office.

The delegation of the Conference of INGOs was composed of Anna Rurka, President of the Conference), Daria Miloslavskaya, member of the Expert Council on NGO Law, Didier Schretter, representative of the European Association for Education in the Audiovisual Media, Conference of INGO representative and Jane Crozier from the Civil Society Division of the Council of Europe.

On the basis of the collected material we present the legal context in which NGOs are operating today, the regulations which govern the participation, the good practices, as well the experiences of the NGOs met during the visit.

Legal Framework for NGOs

The legal system in Estonia is based on the Continental European civil law model and has been influenced by the German legal system. Unlike in common law countries, Estonia has detailed codifications and issues are solved according to those. Estonian law is basically divided into private and public law. Generally, private law consists of civil law and commercial law. Public law consists of international law, constitutional law, administrative law, criminal law, financial law and procedural law.

Estonian law recognises two basic forms of NGOs: non-profit associations and foundations. In general, the legal framework is favourable to both NGOs and civic activism. Each type of NGO has its own law: Non-profit Associations Act¹ and Foundations Act². Both laws regulate the activities of governing bodies and address issues regarding the dissolution, merger, and separation of organisations more explicitly than previous acts.

The Non-profit Associations Act, which regulates the activities of all membership non-profit organisations, states that profit cannot be the principal purpose of the not-for-profit association and that revenues may only be used to achieve statutory goals. It also specifies requirements for membership, orders of admission, secession, exclusion of members, and the rights and obligations arising from membership. The legislation gives a definition of a non-profit association which is a voluntary association of persons, the objective or main activity of which shall not be the earning of income from economic activity. NGOs shall not distribute profits among its members.

The Foundations Act sets limits on the activities of foundations and states that, while a foundation is allowed to engage in economic activities, financial disbursements can only be made for charitable or social purposes. The definition of foundation is given in the Foundation Act: a legal person in private law which has no members and which is established to administer and use assets to achieve the objectives specified in its articles of association.

The legal capacity of both a foundation and non-profit association commences as of entries in the non-profit associations and foundations register and terminates as of deletion from the register. Associations of persons with non-profit characteristics which are not entered in the register are not legal persons and the provisions for civil law partnerships apply to them. Persons who enter into transactions in the name of such associations are personally and solidarily liable for

¹ <https://www.riigiteataja.ee/en/eli/ee/510042014003/consolide/current>

² <https://www.riigiteataja.ee/en/eli/ee/510042014001/consolide/current>

such transactions. There are 5 types of NGOs by orientation: charitable NGOs, service NGOs, participatory NGOs, empowering NGOs and think tanks.

The base of the non-profit organisation in Estonia is the memorandum of association which stipulates the name, the address, the goals of the association, the ID or the registry codes of the founders, the obligations of the members, the names, addresses and identification details of the association's management board.

Besides the memorandum of association, the founder must also establish a series of internal regulations which will be included in the articles of association. The articles of association must also state the name and the location of the association, the association's goals, different rights and obligations of the members. Any change that may interfere with the articles' contents must be approved by at least two thirds of the members unless other majority stipulated in the Articles. The application for the Register must include the memorandum of association, the articles of association, the specimen signature of the managers, the telecommunication numbers and other relevant documents. Every person that follows the regulations of the Articles of Association and the Memorandum of Association may be a member of the non-profit organisation. If the number of members falls below two, the management board has to submit a petition for dissolution, no longer than two months after that. If the goal of the association is changed, the approval for this operation must be voted by at least 9/10 of its members unless stipulated differently in the Articles of Association. The decision of the dissolution of this type of organisation may be taken by the general meeting of the association or by the Court in case of bankruptcy or severe violation of the law. Another reason why a non-profit organisation may be liquidated is the expiration of the availability stated in the Articles of Association, the decrease in the number of members or by any other reasons stated in the Articles of Association.

A foundation is a legal entity with no membership, created in order to administrate assets in order to achieve specific objectives stipulated in its articles of association. At least one founder is necessary in order to incorporate this type of organisation and may be founded on the basis of a will. The name of the foundation must be unique. A name query from the E-Business Register allows verifying the suitability of a business name before registering a new non-profit association or foundation. The reply to a name query displays the following: same or similar names already entered into the Business Register; same or similar names being processed currently, and trademarks contained in the chosen name (registered in Estonia). The base of the foundation established in Estonia is a resolution which will state the name and the address of the foundation, the name and identification documents of the founders, the amount of money or assets donated by the founders, the names and identification documents of the members of the management board. Besides the Estonian foundation resolution, the articles of association must be signed and contain the internal rules of foundation's activities. The articles of association, the foundation resolution, a bank reference regarding the amount of money deposited in the foundation's accounts, the specimen signatures of the managers and other relevant documents must be deposited at the Registry before commencing any activities. The management board may be formed by one or more members but at least one half must be Estonian resident. The members are appointed by the

foundation resolution. The same reasons stated for the dissolution of the non-profit association opened in Estonia are available for the dissolution of a foundation in Estonia.

Other types of NGOs can be created without a registration requirement and also without legal personality, but governed by the Law on Obligations Act³. This type of NGO is usually used for local or hobby groups.

Certain tax exemptions are available if the organisation has clearly indicated the non-profit nature of its activities. Other regulations for specific non-profit organisations are stipulated in the Income Tax Act, the Value Added Tax Act, the State Fees Act, the Creative Persons and Artistic Association Act and in the Churches and Congregations Act.

Estonian procedures allow NGOs to submit electronic documents to the Business Register without using the services of a notary. The portal allows for submitting applications for registering a new company, for amending the registry data, for liquidating and for deleting a company from the register. Register entries are made on the basis of digitally signed or notarised applications. For foundations the registration is done via the notary. Notaries advise the parties to the transaction and represent the applicants in a registration department (they also transmit the documents).

The registration department of Tartu County Court (Registrar) maintains the register. Register entries are made on the basis of court decisions. Registry matters are heard as civil matters on petition in written proceedings. The registers are maintained by the courts in order to guarantee a registrar's independent status and legal competence.

The registration department of Tartu County Court maintains both:

- Commercial register (concerning sole proprietors, general partnerships, limited partnerships, private limited companies, public limited companies, commercial associations and branches of foreign companies); and
- Non-profit associations and foundations register (non-profit associations also include apartment associations, housing associations, garage associations, etc., as well as political parties, trade unions and churches, congregations, alliances of congregations and monasteries).

By the end of December 2017, there were altogether 33 292 Non-Profit Organisations, 786 of those there were foundations and 32 506 associations. The register⁴ is updated every month.

In February 2015 the Government adopted the development plan prepared under the leadership of the Ministry of the Interior, which aims at the promotion of civil society in 2015–2020⁵. The plan is a continuation of previous civil society development plans that were created for the years 2011–2014 and 2007–2010. The new plan has two priorities: capable citizens' associations, i.e. ensuring that citizens' associations have sufficient possibilities to achieve their goals, and socially active residents.

³ <https://www.riigiteataja.ee/en/eli/ee/513062014001/consolide/current>

⁴ http://www2.rik.ee/rikstatfailid/failid/tabel.php?url=17_12mk.html

⁵ https://www.siseministeerium.ee/sites/default/files/elfinder/article_files/estonian_cs_dev_plan_2015-2020_extract.pdf

The development plan focuses on the participation of citizens' associations in the drafting of policy which is seen by the Government as a natural and valued co-operation. It is also important to increase the influence of citizens' associations in the process of dealing with social problems and the improvement of the well-being of people through social innovation, social entrepreneurship and the provision of public services. The condition for achieving both goals is the presence of skilled citizens' associations which develops and implements influential activities.

The activities of the development plan are financed from the state budget, external and third sector financial resources.

The Ministry of the Interior which is responsible on the Government side said that the preparation of the new civil society development plan was elaborated with approximately 300 persons from different citizens' associations, their umbrella organisations and other stakeholders, which was an example of good practice of NGO participation in the decision-making process.

NGO participation in Estonian public policies

Citizen engagement in Estonia is becoming a part of systematic policy-making. Civil participation is viewed as an important factor contributing to increasing the quality of policy-making. The policy on participation in decision-making and citizen-centred public service aims to make the communication between the citizens and state simpler, more transparent, less burdensome which will lead to an increase in the efficiency of the public sector.

The Estonian E-state implies that the access to information is ensured at each level of governance. All information gathered by the public authorities is public unless restricted by law. This means that access to information can only be restricted by law and everyone has the right to contest limitations on access to information, if such limitation hinders personal rights of freedom. Each individual is the owner of his or her data and has control and visibility of the use of his/her personal data. This means that protection of private data is, and must be, ensured whilst providing access to information.

Principles of Collaboration between the Non-profit and Public Sector

One of the main documents regulating the role of the non-profit sector and public sector is the Estonian Civil Society Development Concept⁶ (in Estonian Eesti Kodanikuühiskonna Arengukontseptsioon (EKAK)). It is a strategic document initiated by the Network of Estonian Non-profit Organisations (NENO) in 1999 which was elaborated in a multilateral consultation process with hundreds of NGOs across country, political parties and other interest groups⁷ and was adopted by the Parliament in 2002⁸. As underlined by Mr Urmo Kübar (former Executive Director of NENO, despite the fact that the ministries were not strongly associated with the beginning of the process, the fact that the document was adopted by the Parliament "has been very useful for the NGO

⁶ Estonian Civil society Development Concept approved by Estonian parliament, Tallinn, December 12, 2002

⁸ Also in 2002 the General Assembly of the Roundtable of Estonian Nonprofit Organizations in Tartu adopted the Code of Ethic of Estonian Non-profit Organisations.

community as since then it has been possible to refer to this document whenever there are problems with public and non-profit sectors' co-operation"⁹.

According to this document, the non-profit sector and the public sector supplement each other and their co-operation aims to develop and implement the public policies and build up civic society.

Traditionally in Estonia, the relation between individuals and State is based on partnership. In this perspective citizens' associations are considered essential in the democratic process in Estonia which involves all the population. "The formation of the nation's self-initiative in the second half of the 19th century, its intensification and widening, made it possible to achieve the national goals of the Estonians, ensured solidarity and gained importance in guiding the whole social life. [...] Most importantly, by the network of self-initiated organisations and through local governments, Estonians created the possibilities for taking part in the management of public issues" ¹⁰.

The Estonian Civil Society Development Concept highlights "the mutual devotion of the public sector and the non-profit sector for supporting and promoting the self-initiated organisation of citizens. By establishing voluntary associations, people create new possibilities for expressing and following their interests, values and goals and for public discussions, also for solving daily problems and offering mutual aid"¹¹. The efficiency of public authorities and the legitimacy of public policies come from the citizens' consideration. That's why "the public sector needs to hear its citizens and co-operate with possibly many of them. In decision-making, the public sector must consider the special interests, values and goals of the members of the society and their associations, and take them seriously also in case they form a numerical minority"¹². The document develops the principles and the responsibilities of civic and public sectors concerning their implementation.

This document recognised the plurality of non-profit organisations which represent different values and interest. The public and non-profit sectors are obliged to involve citizens, ensure that people receive information on draft decisions and express their viewpoints. In this manner, the citizens and their associations are involved in the process of developing, implementing and analysing public policies and legal acts. It is admitted that the "actions of the public sector will get more credibility in the eyes of the public if the proposals emerging during public debates are taken into consideration by the political decision makers"¹³. In addition, "the partnership between the citizens' associations and public sector enables practical co-operation and division of tasks to follow the public interests more efficiently. However, the task sharing should respect the independence of citizens' associations when it comes to their goal-setting, decisions and activities. "When a civic initiative receives allocations from public sector budgets and foundations, restrictions of a political nature are to be avoided"¹⁴.

⁹ Urmo Kübar. Estonian Civil Society Development Concept (EKAK): Framework for Cooperation Between Third and Public Sector. Brief overview and some learning points. European Conference "How to foster civil dialogue in Europe" 15 May 2008, Brussels

¹⁰ Estonian Civil society Development Concept approved by Estonian parliament, Tallinn, December 12, 2002

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

Both sectors engage themselves to openness, responsibility and accountability regarding the use of allocated resources. These three principles also apply to access to information, including confidential information, whose confidential nature must be indicated and guaranteed. This element seems to be necessary for the efficient collaboration allowing the “transferring services to the non-profit organisations and financing the implementation of co-operation agreements between the public sector offices and citizens’ associations”¹⁵.

One year after adoption of the Estonian Civil Society Development Concept (EKAK) (in 2003), the Joint Committee was established, composed of representatives of each ministry and NGOs from different fields. The Joint Committee is run by the Minister of the Interior. Additionally, every two years a parliamentary hearing was organised on EKAK implementation. “At the end of 2006, NENO conducted an audit for the Joint Committee that identified three main problems in implementing EKAK: (1) lack of political interest; (2) the poor quality and implementation of activity plans caused by insufficient financial and human resources, and (3) unclear roles and responsibilities of both the Committee and its members, especially from the side of the public sector (the ministries were represented by officials who usually didn’t have the power to take decisions in the name of their ministry)”¹⁶. In order to solve these problems, on the recommendation of NGOs, the structure and functioning of the Joint Committee were revised. The common work on the implementation of EKAK (which is not the only document related to civil society sector, but constitutes the foundation of other MDO instruments such as civic society development plans) has resulted in different developments: the launching of the government’s first participation portal (www.osale.ee), the launching of the National Civil Society Foundation which is financed from the state budget and the amendment of different Laws, making the sector more transparent and accountable.

This was followed by the elaboration and agreement of the Codes of Good Practices on Involvement (2005-2011) which were replaced in 2012 by the Code of Good Public Engagement.

Good Public Engagement – Code of Practice

One of the principles announced in this Code is to engage the government to use the Impact Assessment Guidelines to assess the impact of a draft decision on interest groups and society as a whole. The assessment process implies to engage the interest groups whom the intended decision will affect and to consult on the draft document with interest groups and the public at the earliest possible stage. This applies at the moment of applying for a mandate for developing a draft and at the different stages of drafting and decision-making process¹⁷.

The document on intention to develop a draft Act, the estimation of the impact and the draft Act, are submitted by government through the Information System of Draft Acts or directly to the interest groups in order to collect their proposals and to hear their opinions. The impact analysis report is also submitted along with the draft for public consultation. The Code stipulates that the feedback from the interest groups must be provided within a reasonable period of time, generally

¹⁵ Ibid.

¹⁶ Urmo Kübar. Estonian Civil Society Development Concept (EKAK): Framework for Cooperation Between Third and Public Sector. Brief overview and some learning points. European Conference „How to foster civil dialogue in Europe“ 15 May 2008, Brussels

¹⁷ Good Public Engagement

within 30 days of the end of consultation. Each consultation process should also include the satisfaction measure expressed by interest groups.

According to line 5 of paragraph 1 of the “Rules for Good Legislative Practice and Legislative Drafting”, a government regulation adopted in 2012, the “interest groups and the public are involved in the preparation of a legislative intent, concept and draft Act and coordination is carried out in compliance with the provisions of the Rules of the Government of the Republic and the Good Practice of Involvement established on the basis of subsection 4 (2) of the Rules of the Government of the Republic. Interest groups are engaged in the post impact assessment of an Act in accordance with the Good Practice of Involvement.

Commitments of Estonia in Open Government Partnership

Estonia joined the Open Government Partnership in 2011. The country has already been the subject of a full evaluation cycle of the first (2012-2014) and second action plans (2014-2016¹⁸). Estonia is now working on the implementation of the third Action Plan (2016-2018) and the three major themes: e-government, public participation, public service delivery.

“Within the framework of the priority axis on the citizen-inclusive and open policy-making process, the Action Plan puts forth three commitments: 1) improve the availability of information needed to participate; 2) improve participation options in the policy-making process; 3) increase the capability of governmental authorities and non-governmental partners to cooperate, participate and engage interest groups” (2016-2018 OGP Action Plan)

These three points test the capacity of public authorities to engage the citizen and the capacity of non-governmental organisations to participate in policy-making. Several interlocutors underlined a gap that exists between the standards used by the government and the parliament. The OGP Action Plan should help the parliament to become more open through increasing the transparency of the entire legislative process.

E-Participation and Citizen Centeredness

Consultations with CSOs are stipulated in a governmental decree adopted in 1999 which provides that the explanatory letters of draft laws should also include the opinions of NGOs and interest groups. Elements of participatory democracy and the principle of engaging interest groups can be found in the Constitution, the rules of the Government of the Republic, and the legislative drafting rules of the Government and the Parliament

One of the major aims of the Estonian government is to establish an open law-making process. This implies adopting measures to avoid the risks of concealed lobbying and to reinforce the transparency of the exercising authority and its public responsibility. The OGP Action Plan 2016-2018 includes the creation of a self-regulation mechanism which enables open representation of interests on the basis of clear rules.

¹⁸ The OGP 2014-2016 Action Plan focused on three priority areas: the openness of the policy-making process, the transparency of the state budget and the financial management, and the citizen-centred public services.

The public consultation practices and its tools are under constant improvement. The Estonian E-State has developed a system to facilitate e-participation including several portals. Generally, the drafts of laws, amendments and development plans are published at the early stage of their development. The development of the government information system should allow the drafts, as well as the making of the draft, to be open to the public and in that case civil society, as well as other interested parties, will have an even earlier possibility to share their knowledge. The portals allow users to express their opinion and make suggestions on a published draft act within an announced deadline. All comments, suggestions and ideas are answered with information on how the suggestion has been treated: whether they have been incorporated in the paper, acknowledged, left for further incorporation at a later stage in the law-making or ignored (a reason is given if a proposal is not taken up). The results are written in a report and published on the website. After the consultation process is closed, the draft is processed for inter-ministerial discussion, and this process can be followed on the e-legislation web site. The same portals facilitate the creation of interest groups to support or comment on a specific draft act, for example interested parties can collect signatures. They can also launch initiatives, present ideas and submit petitions. In this context, one important step was the creation of the Citizen Initiative Portal (rahvaalgatus.ee)¹⁹ which allows for citizens' initiatives to be introduced in Parliament ²⁰» (developed below). New functionalities are still being added and the system is continuously improving.

Regarding the consultations process, the publication of the drafts law at the early stage of their elaboration is an important concern expressed by civil society organisations. It seems that the documents published are already finalised and it is difficult to propose alternative solutions for the discussion. The concern for the effectiveness and short deadlines makes that decision-makers decide to open the consultation, through the web sites, in parallel for interest groups and ministries. Usually the draft law should be oriented to the inter-ministerial consultation after the public one.

Progress continues to be made with regard to improving access to information concerning the activity of the government and supporting the participation of civil society and solving problems with the development of public services. These actions are also undertaken at the local level where citizens' associations play an important role in developing citizens' services and making them more efficient. The will is there to increase citizen involvement in the design process of services so that these services correspond to social needs and expectations. In the OGP Action Plan (2016-2018), attention is also paid to this issue: the more participation in the design of public services, the higher the chance of making better policy decisions and offering a better service in the future.

¹⁹ This portal is one of the activities in the Estonian Action Plan 2014-2016 of the OGP, created by the Estonian Cooperation Assembly in close cooperation with the Chancellery of the Riigikogu (Estonian Parliament) It constitutes the freeware for community decision-making (CitizenOS.com) which is set up by the foundation « Lets Do It!

²⁰ The citizen initiative is a collective petitioning right. In Estonia, every citizen can send collective initiatives to the Parliament for consideration after obtaining at least 1000 signatures. During the period from spring 2014 to the beginning of 2016, the Parliament has processed 12 collective initiatives and two of them have been made into laws (<http://rahvaalgatus.ee>)

Increasing the Transparency of the Funding of Non-Governmental Organisations

This inclusive policy is the first step to creating citizen-centred public services which are impacted by the level of transparency in the use of public funds.

The OGP Action Plan also covers increased transparency in the use of state financial resources to fund NGOs, including the disclosure of data concerning the funding of NGOs.

The shadow report made by NENO on the financing of non-governmental organisations highlighted the progress made on financing practices. "However, a systematic change in compliance with financing principles has not been achieved. There is no precise and continuous overview of the funds directed towards non-governmental organisations from the state budget and their volumes" (OGP Action Plan 2016-2018).

In an aim to achieve that, the government has included in the current OGP Action Plan, an action aiming to harmonise the financing practice using knowledge-based analysis methodology. The second priority is to disclose financing data. Ministry of Finance will yearly forward the data from the central accounting software about allocations to NGOS from the state budget to NENO, which will use its expertise to analyse and publish the data. .

During the meetings with the ministries, the delegation learnt that the ministries use different funding models. Most ministries deliver funding to non-profit organisations and do that through open calls or other transparent funding methods. A few have signed contracts of strategic partnership with umbrella or expert organisations whilst others use smaller-scale project based funding. A third possibility is the organisation of open calls for projects to NGOs through state financed foundations. In addition, a few ministries distribute small-scale funding through umbrella organisations. Many organisations working in education (including youth work), social welfare and culture can benefit from the gambling tax which is used for project based funding by the three Ministries responsible for the fields.

Two relevant initiatives to increase participatory democracy

Estonian People's Assembly

This was probably the first and the biggest deliberative initiative in Estonia. The People's Assembly took place from 2013 to 2014 and took its origins in the social protest regarding the lack of transparency and the social expectation to have more political openness. The dissatisfaction of the public was expressed in a manifesto called Charter 12 (Harta 12), initiated by 17 civil society activists and signed by nearly 18,000 citizens. Following this movement, the former Estonian President, Toomas Hendrik Ilves, (2006-2016) initiated the so-called "Ice-Cellar Process"²¹ which brought together representatives of political parties, social interest groups and non-profit sector representatives, political scientists and other opinion leaders. Following on from this, two initiatives were set-up: an online crowdsourcing function for collecting policy proposals from citizens, and a deliberation day to discuss these ideas. The aim was to find solutions through public-deliberation

²¹ The name takes its origin from the ice-cellar building in Kadriorg when the meeting took place

processes aimed at putting into practice the principle of open government and bringing governing closer to the public. The deliberative process was organised by the Estonian Cooperation Assembly, the Praxis Centre for Policy Studies, the Network of Estonian Non-profit Organisations NENO, the Open Estonia Foundation and the e-Governance Academy, together with representatives of the four parliamentary parties, the Office of the President of the Republic of Estonia as well as several IT and communication professionals.

“The Assembly focused specifically on five questions: the electoral system, political parties, competition between the political parties and their internal democracy, financing of political parties, strengthening the role of civic society in politics between the elections, and stopping the politicisation of public offices”²².

“Approximately three thousand people participated in the process of the People’s Assembly that lasted 14 weeks”²³. As a result of this deliberative experience, “three proposals out of the fifteen that were sent to the parliament became laws. In addition, four proposals have been partly implemented or re-defined as commitments in the government coalition programme [...] To further the citizens’ opportunities for participating in democratic decision-making, legal amendments were adopted that require the parliament to start official procedures based on public petitions that receive at least 1,000 supporting signatures”²⁴.

Referring to this deliberative practice, President Ilves, underlined that the “People’s Assembly is not an alternative decision-making organ to the Riigikogu. It is an additional opportunity in our developing democratic state that seeks new solutions in order to give real meaning to popular concepts such as “participation” and “involvement”²⁵.

Citizen Initiative Portal (rahvaalgatus.ee)

The Citizen Initiative Portal allows citizens to write proposals, hold discussions, compose and send digitally signed collective addresses to the Estonian Parliament (Riigikogu). Every citizen of Estonia aged over 16 can submit a proposal to the Portal and follow its process in parliament and whether or not it will become a draft act. “If the Riigikogu decides to proceed with the Address they will forward it to the relevant committees. The Board of Riigikogu will inform the contact person(s) within a 30-day period starting from the submission date as to whether the Address will be taken up or not. If the Address does not correspond to the necessary requirements, the Board of the Riigikogu will return it to the contact person(s) with an opportunity to make amendments, or will

²² About the Estonian People’s Assembly <https://rahvakogu.ee/in-english/>

²³ Praxis Centre for Policy Research (2014). People’s Assembly in Estonia – crowdsourcing solutions for problems in political legitimacy. Case description of deliberative process. https://www.kogu.ee/wp-content/uploads/2013/01/Peoples-assembly_summary-by-Praxis_2014.pdf

²⁴ Ibid.

²⁵ The political statement of President Toomas Hendrik Ilves at the Riigikogu, 8. April 2013.

<http://www.president.ee/en/official-duties/speeches/8846-the-political-statement-of-president-toomashendrik-ilves-at-the-riigikogu-9-april-2013/index.html>

inform the contact person(s) that it will not proceed with the Address and will give the reasons for the decision.

According to NGOs, the quality of submitted initiatives needs to be improved but participation has gone up. The petitions have had an impact: two of them have successfully changed a law and several have been discussed in the Parliament. More work, however, needs to be done on the process. The condition to collect 1000 signatures privileges professional organisations. Estonian villages and smaller communities raise the issue of how proposals from villages are taken into account until they reach Parliament.

The critical perspective

The NGOs agreed that Estonia offers advanced e-services based on the democratic processes that bind the state to citizens. Despite the e-participation system, the OGP Action Plan mentions the complaints of the non-governmental organisations concerning the temporality in which decisions are prepared and which does not allow for meaningful participation. The public authorities have reported (OGP Action Plan 2016-2018) that the NGOs also find that the engagement remains formal and superficial. During the meeting with the delegation the NGOs underlined that “Even if there is a desire to participate, it is often not known when and how to submit proposals. The impact of various interest groups on legislative drafting is unclear, and at times it seems unequal, which in turn amplifies the prejudices of the bias of politicians when making decisions”.

The NGOs are more critical than the public authorities regarding the established practices. They see the challenges very clearly.

Their experiences show that the standards are not always followed by all the ministries and the consultation practices vary from department to department. For example, the deadline to submit contributions is sometimes too short. They also find that some ministries are not pro-active at proposing consultation. In such cases it is often the NGOs that initiate the consultation process which from their point of view is part of active citizenship.

According to the Council of Europe Guidelines on civil participation in political decision-making (2017), “at all stages of decision making, all appropriate information should be presented in clear and easily understandable language and in an appropriate and accessible format, without undue administrative obstacles and, in principle, free of charge, in accordance with open data principles” (paragraph 20).

“Public authorities should provide publicly available feedback on the outcome of consultations, particularly information giving reasons for any decisions finally taken”²⁶. The NGOs also underlined insufficient feedback following the different stages of decisions. This lack of feedback results in some NGOs losing the thread of the process and feeling excluded from the consultation which normally takes place at several stages of decision making. The key question for some NGOs is how

²⁶ Council of Europe Guidelines for civil participation in political decision making (2017), paragraph 24.

the system works inside the government and the ministries and in this respect they are critical about the functioning of some ministries.

The different formats that exist for common work are the following: joint working groups, expert groups, task forces. CSOs are convened by invitation. Informal consultation meetings are convened to discuss a specific policy area. The NGOs call these temporary "clubs". The Government office in Estonia is more active in e-participation. The best practices are implemented by the committees which bring together both the ministries and NGOs. However, such committees do not seem to be permanent and are often of an ad-hoc nature.

According to the Council of Europe Guidelines on civil participation "where joint working groups or committees exist, public authorities should adopt transparent criteria and processes for the representation of individuals, NGOs and civil society at large" (paragraph 28). As Estonia is a small country, consultation can take the form of a simple phone call or an e-mail without using the transparent online tool. Nevertheless, the authorities underlined that e-mails and other consultation methods are usually also referred to in the explanatory statement of the law. There is still some "shadow zone" on the objective criteria used to select NGOs for consultation, "some rules are set, the guidelines exist, but each ministry can choose its own structure and decide itself on what methods, what working groups will be set-up".

Officials are often under time pressure which does not allow for the establishment of good collaborate practices. Some committees restart consultations if they are not happy with the first consultation process. Some NGOs have the impression that they are sometimes solicited by ministries after decisions have already been taken. This kind of situation may refer to isolated cases but it is important to remember that the "public authorities should not make a final decision until the end of the civil participation process which they have launched, unless exceptional circumstances so require and subject to clear justifications being given"²⁷.

NGOs at the village level are very active and try to organise public debates with community leaders. Participation practices, however, seem to be different at the level of Estonian villages and the smallest communities. For the NGOs representing the voice of villages, it remains unclear who is in charge of issues and which ministry is responsible. Rural affairs are divided into three different ministries and in each ministry there are different contact persons. Technical documents need to be translated from bureaucratic language into plain language.

Several NGOs and representatives of public authorities underlined that the training of civil society organisations (also regarding the use of e-participation platforms) is a priority to reduce the gap and make participation more equal. The NGOs would like to create more meeting places (infrastructure needed) and improve the culture of holding meetings and discussions in order to exchange information between them and have more possibilities to influence decision-making.

Despite the fact that e-services are very advanced in Estonia, there is a gap relating to the provision of e-services (priorities for the OGP Action Plan 2016-2018). Villages need better digital tools and

²⁷ Idem, paragraph 18

software. The digital divide exists and, according to some NGOs, you need to be an “expert” to find an official document online and need to know the software to be able to participate in decision-making. In addition, to use the governmental portal for e-participation a high internet speed at home is necessary, and in rural areas connections are slow. For some NGOs, the digital divide is less a technical problem and more an educational problem. According to them, the young people do not know how to use digital ID.

The government seems to agree that the digital divide needs to be reduced to guarantee equal rights and access to digital tools. Efforts are being made to provide high-speed internet connections to the people living in rural areas. The important issue seems to be the role of the municipalities in this process and on the collaboration between the government, local government and business sector. The meaning of public service depends on this.

It seems interesting to compare these opinions with the official data. According to information released by Statistics Estonia, 88% of Estonian households have an internet connection at home. The number of households with an internet connection at home has increased by 2% in the year and the number of those with a mobile internet connection has increased by 4% in the year. “While 97% of people between the ages of 16 and 54 have used the internet in the last three months, this was true for just 68% of those between the ages of 65 and 74”²⁸. To measure the digital divide, the quantitative data on access to the internet does not seem to be sufficient. The digital divide is a complex phenomenon in which the subjective perception of people plays an important role. The understanding of this issue should not be limited to access to the internet, but should also take into account the division in society caused by digitization.

From the governmental point of view, training priorities focus on the NGOs’ participation and cooperation skills in professional policy development. From the NGO point of view, training priorities are focused on the gap between those who participate in the political decision-making and those who, for different reasons (including the digital one), are excluded from this process. They want to bridge the gap and bring together different social groups but they need more resources to do that. The public officials need a highly skilled civil society in order to establish an efficient partnership. From the point of view of the public officials and umbrella organisations, the professionalisation of CSOs needs to be increased. However, it is not only the expectations related to skills that needs to be discussed, but also the expected representativeness of the NGOs needs to be discussed. We would like to emphasize that the representativeness is not only reflected in the number of members but also in the categories and profiles of the population represented. It can happen that smaller NGOs provide a qualitatively representative contribution.

Estonian E-State is quite professional and the same level of competency is expected from NGOs to be a relevant partner for the government. However, the state should not expect NGOs to be competent by default but should help them to become a more capable partner. E-participation needs professional competences: legal knowledge, digital and communication skills, engagement and social competences. Often the NGOs have the impression that they do not have enough skills

²⁸ « 8 in 10 Estonian households have mobile internet connection », ERR.ee, 19.09.2017. <http://news.err.ee/619374/8-in-10-estonian-households-have-mobile-internet-connection>

to be on the same level as the government. Capacity-building action should have support from the public authorities.

Conclusions

In conclusion, the professionalisation of the civil society sector is a shared responsibility of both NGOs and public authorities. The motivation to learn needs to come from the NGOs, but the average NGO does not have the resources needed for development activities. The resources for this should come from co-operation between NGOs and the public sector. Technical solutions have been used for inclusiveness, but from the NGOs' point of view, the state has become too passive and too dependent on technology. As they said, "digital tools are tools but not the solution". It seems that existing e-participation tools have not been developed to their full potential and functionality to contribute to the open dialogue between the public sector and different stakeholders.

E-participation channels can only support open and inclusive policy-making if there is sufficient awareness of participation principles among civil servants and their partners in CSOs. This means that training should also be offered to civil servants who, from the NGOs' point of view, do not always understand the benefits of consulting NGOs and do not provide enough feedback on the elaboration of policies. In their view, civil servants are trained on how to draft good regulations but not on how to make information accessible to a wider public or how to increase civil participation.

The collected experiences show that e-democracy is more than e-voting and e-participation. They require establishing a digital and participatory culture, in the long-term perspective.

Taking into account the large number of minorities living in Estonia, it would also be interesting to know more about their experiences in using the various channels of communication with the public authorities. Having not met representatives of these groups during the visit, this report does not mention this issue.

Finally, we would like to acknowledge the efforts of the authorities and of the non-profit sector to build a partnership based on shared interests and mutual respect. We hope that this partnership will evolve further to the benefit of both the public and the non-profit sector and society as a whole.

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