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**Author: Martin Jaigma**

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## **ON THE INTERFACE BETWEEN CIVIL SOCIETY AND STATE AND ITS IMPLICATIONS FOR THE QUALITY OF GENDER EQUALITY POLICIES IN ESTONIA**

### *Development of civil society in Estonia*

Establishment of organisations independent from the state became lawful again in 1989, when the parliament approved the law on freedom of associations. The law tackled both parties and non-governmental organisations. After restoration of independence the number of associations has grown quickly, especially from late 1990s (Hinno 2008, 5). The term civil society itself appeared in the public debates only in the middle of 1990s, until then the discourse related to the building up of nation state dominated. One of the strongest impulses inserting the term civil society into public debate was the pressure for more democracy during the process of joining European Union. Inclusion of civil society was a part of almost all parliamentary discussions that concentrated on the EU integration process. The development of democracy was interpreted mainly through interest groups, non-profit organizations and projects promoting civil society participation (Ling 2008, 11). In spite of the important role played by NGOs during the period in which Estonia regained its independence, civil society is still the frailest element of the country's democracy today. This problem is not caused by an insufficient number of NGOs in the country, as will be pointed out below, but rather by the insufficient resources at the disposal of NGOs, and their insufficient ability to participate in the development of Estonian society. Representatives of Estonia's public and non-profit sectors are trying to debate about the function of the NGOs and look for the resources necessary to perform those functions (Koncz 2005, 198).

Notwithstanding EU integration process and the pressure from above, Estonian people have been more inert to embrace new understandings, namely the function of civil society. One of the indicators of citizen activity is membership in citizen associations. In Estonia, despite the big number of associations (in August 2008, 27 372 organisations, including apartment associations) this indicator is quite poor. Such result originates from two surveys, commissioned by the ministries of Justice and Social Affairs in 2006 and 2007 respectively (Mänd 2008, 14). In 2008, another survey was conducted to review the trustworthiness of non-profit organisations. The outcome shows that 46% of the population trusts NGOs (8% trusts completely, 38% rather trusts them) and 24% does not trust them (18% rather trusts and 6% does not trust). These indicators have not changed much over the years and there is always a large group of people (25-31%) who cannot provide opinion about non-profit organisations. Although there are more people than trust these organisations, it still is a low indicator of trust. Similarly to non-profit organisations, low level trust in the same survey was given to trade unions (50%), Prime Minister (48%), the government (45%) and the parliament (43%). Political parties, however, were the least trusted (22%) (Mänd 2008, 15).

Citizens' participation in political life in Estonia has been reduced to providing mere opinions about legislative acts – there are web portals for this kind of activity. Furthermore, opinions expressed there do not come from average citizens but rather from different interest groups and leaders of organizations. Limited opportunities of citizens to influence politics are considered weakness of participatory democracy. To face the truth, legislation process interests very few people (very small number people also using these abovementioned portals) and people's opportunities to influence politics remain marginal. (Toots 2008, 15).

A key event in the civil society build-up process has been the approval of Estonian Civil Society Development Concept (hereinafter EKAK)<sup>1</sup> by Estonian parliament in 2002. An analysis was conducted on the civil society discourse in the parliament touching upon EKAK with two key parliamentary debates being the source of the study. One of them was the discussion from 2002 when the EKAK was first debated. The second debate in the analysis dates from 2007, when the parliament, according to clause in EKAK, had to convene to discuss the monitored changes related to this conception. (Ling 2008, 26-27). During these five years, most of the basic discourses had been changed, and in case of already established discourses, structural elements of these discourses had been further developed. If basic discourses from 2002 could be summoned as discourses of economic effectiveness, national patriotism, cooperation and participatory society (all eyed with suspicion) then the repertoire of the basic discourses from 2007 was remarkably more diverse – discourses of citizens' state, public opinion, and the third sector of society were on the agenda. The analysis showed that treating civil society as a service provider in 2002 had been transferred to the visions in 2007, also suspicions about the principles of financing. The focal point in the discourse of participatory society in 2007 was spreading the good practices and developing value-based public authority, which were non-existent in 2002. However, the scepticism about the public authority's ability to effectively, and not only superficially and formally, include the third sector remained (Ling 2008, 58).

To put it in other way, when in 2002, the need of an active citizen was declared through the national-patriotic angle, then in 2007 the discourse where political functions of the civil society would be interpreted through historical memory were totally absent. New discourse emerged that promoted free person's meddling with the politics and declared that this person should be the source of the state's politics. Also, the emphasis was put more on the development of civic education and competence of a democratic citizen (Ling 2008, 59). Yet, in spite of the development conception of Estonian civil society being introduced for years, the influence in the field of civic education has remained fragmentary and developmental activity relies disproportionally on the contribution of civic associations (Hellam 2008, 5). The absence of long-term and trustful partnership with the public sector has been pushing NGOs into so-called project-based world. In order to keep up their existence, they constantly have to apply for projects and compete in getting them with other NGOs. On the one hand, such environment promotes democracy since their activity widens the selection of provided services and forces them to take interest in opinions and expectations of citizens-consumers. On the other hand, here lies also danger in changing the role of the third sector. If NGOs compete with each other in providing services, they will not have time or motivation to deal with the public interests, and market principles enforced upon them bring about the marketisation of these organisations (Toots 2008, 17).

Relying on the studies and analysis of state budgetary financing of the civil organizations, one can claim that already in the late 1990s different financial schemes were used, there were no pervasive principles among the state institutions, financing was not associated with the process of state development plans and fulfilling priorities. It was difficult to get an overview of the sums allotted, to which areas did these sums go, and on what grounds the decisions were taken. Since there was lack of information to secure the transparency of financing, and there have been no unified or systematic principles to make decision regarding financing, there was also no possibility to introduce the system of evaluation of efficiency of financing. Even today the state budgetary financing practice of civil organizations is not much clearer. Definitions related to financing are still causing

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<sup>1</sup> EKAK is a document which describes the different roles of the public sector and the nonprofit sector which supplement each other, and the co-operation principles in developing and implementing public policies and building up the civic society.

confusion. Different kinds of financing are mixed up and some ministries finance single short-term activities according to the principles of project financing etc. Positive developments can be seen in relation to using the resources of EU structural funds – more attention is given to transparency of financing, efficiency and connecting with the state priorities. In addition, more than before the strategic role of civil organisations is taken into consideration, through which the organisation contributes to the activities of the state institutions, and operating subsidies are given to the organizations by the state authorities to cover everyday costs (*Kodanikuihenduste* 2008, 122).

However, the experts see the biggest deficiencies of Estonian democracy in the limited chances of citizens to influence politics (weakness of participatory democracy), political imbalance of media (problems with functioning of the public) and excessive intertwining of business interests and politics. Although it is popular in Estonian society to take interest in politics, this interest cannot find a practical outcome in the form of real participation in political process: almost one-fifth of Estonians, one-fourth of Russians and two-fifth of people without citizenship have totally distanced themselves from politics.<sup>2</sup> Thus, the poor participation of Estonian population in political life and weak political culture are the main problems of Estonia. It has been maintained that one of the reasons why there is no visible progress in the development of democratic citizenship in Estonia is the negligent process of civic education. (Hellam 2008, 8). Obviously it has a lot to do with the weakness of civic education.

Open Estonia Foundation has been leading the working group of civic education and public awareness created to EKAK (Hellam 2008, 3). Due to the working group initiative, the year of European civic education was celebrated in 2005, a webpage dedicated to civic education was created, suggestions were made to modernize the curriculum of civic education, and competition of pilot schools of civic education was organized. These few successful projects have been just only good examples and not the integrated system. Making generalizations from the past 10-year experience one can notice that Estonian civic education is project based. Civic education as a whole and teachings provided in the formal education are not associated with the broader vision of societal development. Project based approach reflects also in the unstable and insufficient financing – most of the new initiatives have been accomplished by the support of Open Estonia Foundation and other non-governmental organizations. NGOs are ready for activities but there is a lack of strong partner from the public sector. By far not all member of society are not aware of opportunities of civic education and included by it. In 2007-2008, reorganizations took place in the joint commission of the Government and civil society representatives to apply EKAK, which have terminated the activity of the civic education and public awareness working team. Thus, at the moment there is nobody who would coordinate the topic of civic education. Secondly, in 2008 Baltic-American Partnership Programme (BAPP) ended its activities in Estonia. Civic education has been one of BAPP's programmes. On the state level there are no plans or decisions how to guarantee the sustainability of civic education related work, for example, how to even continually administrate and renew the webpage on civic education (Hellam 2008, 3-4).

Besides the already mentioned studies and analyses, USAID NGO Sustainability Project has monitored the interaction of NGO sector and the state authorities in Estonia and assembled a synoptical timeline of more recent years that provides additional assistance to understand the current situation. By 2005, the level of advocacy skills in the NGO sector in Estonia greatly varied: some developed rapidly advocacy skills and created broad initiatives, while others showed only little improvement. There were no clear mechanisms for

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<sup>2</sup> Referred source: Hallik, K. *Kodakondsus ja poliitiline kaasatus*. In *Integratsioon Eesti ühiskonnas*. Mitte-eestlaste Intergratsiooni SA 2006.

encouraging participation although the State Chancellery, nonprofit umbrella and public sector organizations poured some energy through public awareness campaigns to promote such kind of participation. Furthermore, government institutions commissioned studies on potential partners from NGO sector, and public servants were subject to relevant instruction and training. Many NGO representatives started to be included of various committees and working groups, but their communication with NGOs suffered consequently. In all, the ability of NGOs to participate in the decision-making process was not evenly distributed. It meant that both professional NGOs and also the ones lacking professional qualities prevailed, thus creating space for further development in civil society.

By 2006, both the governmental and NGO sector had grown more aware of the need for advocacy and civil society involvement in policy making. NGO advocacy activities on the EU level were irregular and the state provided little support. There were many awareness-raising campaigns toward these objectives but they were rather short-term and ineffective.

By 2007, cooperation between the public and nonprofit sectors in policymaking had been steadily improving. Ministries started to appoint officials whose tasks were to include NGOs decision making, supervising the implementation of the Code of Good Practice on Involvement in ministries and help both government officials and NGOs in matters of involvement.<sup>3</sup> Moreover, the government set up the participation portal<sup>4</sup> which can channel the comments and suggestions of civil society organizations and individuals about the ongoing consultation processes, at the same time the ministries make available to public the draft laws, background materials etc. In the long run, the users of the portal will be also able to initiate legislations (Hadzi-Miceva 2007, 37-38). As a positive sign in 2007, the government added a chapter on civil society to their action plan. At the same time, NGOs did not improve their service providing capacity, while the public sector was waiting NGOs to play a more vigorous role in public service delivery.<sup>5</sup>

### *Cooperation and inclusion of civil society into policy making*

In all, what is criticised most in Estonia by various researchers is the weak ability of non-governmental organizations to establish dialogue with the state authority. Also, NGOs are in danger to be encapsulated in their own world and not being able to attract more significant number of people (Toots 2008, 16). This has taken place despite the fact that consultations with NGOs are mentioned in a governmental decree adopted and implemented in 1999 which stipulates that the explanatory letters of draft laws should also include the opinions of NGOs. However, there are some positive shifts, as now the word civil society is contained in every politician's lexica. Yet, it seems that politicians see civil society to develop independently. Politicians see their role in waiting till citizens and their associations will get sufficiently mature in order to take them seriously in the politics. Thus, today civil society is still not regarded as an equal partner and one's role in its maturing process is not felt. (*Demokraatia* 2006, 65).

According to another analysis, the general framework of inclusion in Estonian is present in various legislative acts, but it is more of a symbolic nature and interest groups do

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<sup>3</sup> [http://www.usaid.gov/locations/europe\\_eurasia/dem\\_gov/ngoindex/2007/](http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/2007/)

<sup>4</sup> The portal is called Participate. It was started by the State Chancellery in summer 2007. Everyone interested has access to that portal and can post their ideas, suggestions, petitions and comments. To sign in, only person's name and valid e-mail address is required, upon which password is sent to the participant. No other private information is required, even if the latter is provided, the moderator can delete it. People can form interest groups within the portal to tackle certain issues or address certain ministries etc. All ideas and questions presented through the portal are treated as official addresses to authorities and will be answered (set by the law).

<sup>5</sup> [http://www.usaid.gov/locations/europe\\_eurasia/dem\\_gov/ngoindex/2007/](http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/2007/)

not have especially high regard of their chances in being included. In few fields there are actual agreements of cooperation between the state and non-profit organizations (e.g. social and environmental fields), but this kind of cooperation has been more a result of the strength of organisations and international agreements than the purposeful policy of inclusion from the state side. In Estonia, inclusion is approached pragmatically – the ones who include see it primarily as means to improve the quality of legislation formation and to alleviate tensions, while interest groups want a better representation of the interests of their organisations (Illing 2005, 4).

But are there other types of practices of inclusion in Estonia? One may say that in some cases inclusion is practised more out of the need and custom than principles emanating from EU legislation formation or fulfilling normative regulations. The main reasons of informing NGOs are different in visions of the parliament and ministries. The parliament informs mostly in order to collect data to assess the economic, budgetary and social risks when implementing the legislation. In all, ministries' interests and goals might differ significantly from those of non-governmental organisations. Ministries inform interest groups to secure the better implementation of laws and raising awareness of the state's decisions. These reasons in many ways do not coincide with the reasons that interest groups have in the cooperation. There are lot of mutual misunderstandings. The NGOs see themselves mainly as protectors of interests of their organisations and members, and according to them ministries and the parliament include them primarily for the reason that interest groups are active. Officials and representatives of the parliament, on the other hand, see the purpose in consultations with the interest groups in finding the best solution to the society and raise the responsibility of these interest groups. While in theoretical approaches the ministries and the members of the parliament rely on the principle of common benefit, which the inclusion should enhance, then in the vision of interest groups the question why they should be included it is missing. Interest groups do not believe that they are included to bring about the best solution for society and they do not explain they participation with this argument. However, they sense a sort of responsibility but it is not placed high on agenda. (Lepa 2004, 133).

For example, women organisations<sup>6</sup> are not engaged with the state and follow an autonomous agenda building its own institutions. They are not invited to report to consultations, do not receive money from the state and is not commissioned by the state to undertake specific tasks. Contrary to other large interest groups (e.g. Estonian Chamber of Disabled People, Estonian Union for Child Welfare) women's umbrella organizations do not enjoy any stabile support from the state or receiving commissions (only exceptions here being shelters but their services are partly funded by local governments and not the state). Despite the lack of the state's support, women's organisations continue pursuing the installment of majority of gender equality policies.

The studies show that NGOs are not sufficiently familiar with lobbying and influence techniques nor are they knowledgeable of the legal opportunities that exist. When commenting on draft legislations, NGOs do not always have enough information about existing possibilities provided by the law. Consequently, they hope that changes will result from national political acts. NGOs have attempted to impact the lawmaking process in public by organizing public seminars and forums, analyzing the impacts of the drafts, publicly asking questions of politicians, and by broadcasting expert opinions. (Rikmann 2007, 30-31).

As to public sector, the study conducted in 2006 showed that 92% of civil servants find NGO involvement to be essential for improved results in lawmaking. Another study by

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<sup>6</sup> There is no organised feminism in Estonia, nor active feminist political groups etc. Feminist viewpoints in Estonia can be discussed mainly within academia and cultural discourses. Thus feminism in Estonia is not related to women's movement but rather used as a perspective which both men and women use in analysing the society (Mälksoo 2000, 10,17).

Tallinn University proved that civil servants who have permanent contacts with NGOs see this kind of cooperation in a more positive light. The ones without permanent contacts, in turn, are caught by unrealistic expectations, disappointment and prejudice. (Hadzi-Miceva 2007, 36).

Only less than half of officials have that kind of cooperation experience and only 16% is involved with regular cooperation. This small part of civil service, however, is the platform to develop the cooperation, improve the quality and widen the scope. It is important from the future perspective that currently there are marked regional differences in cooperation between officials and NGOs. While most of the resources and social life has concentrated in Tallinn, the cooperation with non-governmental organisations takes place primarily outside the capital, in local governments and county governments. Improvement of cooperation between NGOs and officials could be one of the factors, which could improve politics on regional level. Officials' cooperation with NGOs is mainly related to elaboration of policies, preparation of resolutions, and communication with public and counselling. But development of policies and preparation of resolutions are the fields of cooperation through which the interests of NGOs can exercise influence on the public authority. About one-third of officials, the ones in regular cooperation with organisations, are involved in such tasks (one-fourth in preparation of resolutions). However, there is much room for improvement, because more than one-third of officials dealing with such questions do not have the experience of cooperation. Cooperation is reached by initiatives. According to officials, initiatives originate equally from both sides, although there are numerous cases of unilateral initiatives from NGOs or officials. Since common initiative presumes acknowledgment of common interests of both parties and mutual recognition, then the large share of the latter is seen as a positive signal of cooperativeness of officials (Rikmann 2007, 30-31).

### *Implications of civil society/state interaction for the quality of gender equality policies*

Theoretical foundation of the article is based on the assumption that the involvement of the third sector in policy making should ideally foster and promote opportunities for gender equality mainstreaming in society. At least this is the way how such interaction is usually seen. However, one of the ideas of the current article is to find and show instances where the role of civil society in Estonia has not always been positive but veered towards conservative positions.

The starting point is to delve into actual documents of the chosen issues preceded by short timelines of policy debates within these issues.

#### ***General gender equality:***

Estonia is a relative newcomer to the scene of European gender equality policy development. Early 1990s was the prime time of discovery or introduction of gender issues and the start-up of the process towards greater gender awareness. As a newly established sovereign country on European map, Estonia had to set off from the scratch in many areas and do the "learning" with great speed in order to catch up with others and be accepted to the European community. Rapid introduction of new ideas and the need for restructuring and development of equality policy mechanisms and its content was naturally met and is still met by certain rigidity of the society in its response: awkward, nationalistic, conservative and deeply rooted traditionalist views, outcomes of the system that inhibited normal course of the society's development for half a century, often prevail when equality matters are at stake.

Nevertheless, civil society in Estonia has been getting more mature and also a policy making environment has been changing. Transposition of several important EU directives have already taken place (culminating with the adoption of Gender Equality Act in 2004), the society in general has become much more gender aware than a decade ago, more debates on equality matters take place and there are various ongoing developments which could possibly find a positive legislative outcome in near future.

In implementing generic gender equality policies, the impact of EU has probably been the greatest as adopting EU *acquis* was a necessary prerequisite to the accession process. Eventually the voice of the civil society was also heard, e.g. during the drafts' proceedings of Gender Equality Act, but it still lacks essential power and authority and is often ignored by policy makers.

A main development in the role of NGOs as promoters of gender equality that has significance is the amendment to the Article 26 of the Act on the Chancellery of Justice provides that in conciliation proceedings for resolution of discrimination disputes, a person who has a legitimate interest to control compliance with the requirements for equal treatment may also act as a representative. Trade unions and women NGOs may be considered as persons with a legitimate interest to submit a petition in the name of the victim initiating conciliation proceedings.<sup>7</sup>

Civil society texts in general gender equality issue have been articulated by Estonian Women's Association, Open Estonia Foundation, and Unit of Gender Studies (at University of Tartu). What sets civil society texts apart from the governmental ones is their more explanatory and persuasive undertone. It seems that fundamentals of gender equality had a great need to be clarified in order to convince decision makers and the public to take necessary steps – e.g. adoption of Gender Equality Act. Civil society texts also try to mitigate unsupported fears what gender mainstreaming might entail and show the disadvantaged situation of women in society. Undercurrent of the documents is rather critical towards the government, although strength is wished for decision makers to overcome the obstacles.

Governmental texts originate either from the Government or the Ministry of Social Affairs. These texts stress on the importance of the adoption of policies and legislations due to international obligations Estonia is bound to and the need to unify national legislation with EU legislation. The language of texts is more technical and tedious. As to topics treated, both civil society and governmental voices are rather uniform in focussing on the relevance of Gender Equality Act.

However, as to frames, there are no such significant differences between governmental texts, parliamentary debates and civil society texts, which all stress the important role of the state agents to make or bring about wished changes or amendments.

There are two frames that are connected with the relationship between the state and civil society actors. One of them is *Social debate*. It is described as the lack of consultation or NGOs in policy process. It argues that there is a lack of democracy in the policy process and is often connected with the governance frame. Efficiency or better governance could be one motive for including NGOs in the policy process. The second frame, actually the subframe is *Social debate (Inclusion)*, referring to NGOs included into the policy process and pointing to the democracy or listening to the opinion of the public.

Both abovementioned frames in Estonian supertexts are too weak and mentioned only briefly. However, there are two occasions in civil society texts that touch upon the issue.

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<sup>7</sup> 2007: QUING Deliverable No. 19 - Series of timelines of policy debates in selected topics: Estonia.

The first one is Supplementary Report to Estonian National Report for the CEDAW 26th session on the Implementation of the UN Convention on the Elimination of all Forms of Discrimination against Women (2002). It has the following comment on Gender Equality Act: “Direct and indirect discrimination as well as sexual harassment are defined in the gender equality draft legislation. Albeit the legislation was weakened by the different ministries, its adoption is important for the advancement of gender equality, only pressure from women’s organizations delivered it eventually to the parliament”. The troubles to get the draft to the parliament testify to the troubled dialogue between the state and NGOs.

The second civil society text deals also with Gender Equality Act and comes from the address of the Annual Conference of Estonian Women’s Organizations to the Parliament, from January 2004. The address of the conference says the following: “One aim of the law should be the development of social dialogue and inclusion of civil society organizations to the process of policy formation. Resultant from the latter, the Gender Equality Council should include also members of women’s organisations”. However, till now this council has not been formed, although in law, due to the lack of (human) resources.<sup>8</sup> This is a telling fact that refers to the potential and capability of NGOs and how seriously the matter is approached by parties involved.

### ***Non-employment:***

The formative and most significant period in the non-employment issue history in Estonia started with the new millennium (and the first serious battle of the wider society and non-governmental organizations with the Parliament to enforce certain crucial articles of the European Social Charter) and continued to the accession of the state to the European Union and adoption of the Gender Equality Act at the same year. These years were marked with the harmonization of the Estonian legislation with the EU *acquis*, which involved instituting provisions of equal treatment and anti-discrimination.

The key developments during the period took place in the sphere of reconciliation of work and family life, tax and benefit policies, equal pay and gender pay gap. The gender pay gap in Estonia still tends to be one of the greatest among EU members and despite of the adopted laws on paper to eliminate it, in practice it does not function so well and obviously needs deeper changes in society’s attitudes. With regard to reconciliation of work and family life there has been a row of policy documents, which have reckoned with its importance, such as the Holidays Act, the State Family Benefits Act, Labour Market Service Act, and Act on Parental Benefit etc. These laws were amended repeatedly to decrease the cleavage created by mismatch of the employment and family life. The most significant motion in tax-benefit policies, which also stirred up a considerable public interest and need, was the adoption of the Parental Benefit Act, the so-called “parental salary”, which was adopted in 2003. The Act, besides having relevance also to reconciliation policies, is seen also as a saviour in the population policy. Testimony to this is the increasing birth rate during recent years. Also Estonia’s pension system was significantly reformed in 2000 when retirement age of women and men were set to equalize in the next decade.

In implementing policies related to non-employment and labour issues, the voice of civil society actors applying pressure to achieve isolated objectives (e.g. adoption of certain articles in European Social Charter) was occasionally heard. The impact of EU on non-employment legislation was definitely strong during Estonia’s pre-EU accession period when harmonizing with EU *acquis* was high up in agenda.<sup>9</sup>

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<sup>8</sup> 2009: QUING Deliverable No. 40 – Comparative country studies: Estonia.

<sup>9</sup> 2007: QUING Deliverable No. 19 - Series of timelines of policy debates in selected topics: Estonia.

Civil society texts in non-employment issue come from Estonian Women's Association Roundtable, International and Social Research Institute, and Estonian Women's Association. On the whole, these voices are rather critical toward the government and policymakers. Their vocabulary often includes arsenal of strong arguments that the found shortcomings are in apparent contradictions with European values, Estonian constitution and international legal provisions. A couple of voices are less belligerent in their content and rather make suggestions or refer to the society broadly as the source of current problems.

A set of voices in governmental texts traditionally emphasize the need to comply with international treaties and EU directives on promoting legislation. Generally a neutral tone prevails that refers neutrally to what should be done without passing any evaluation or judgement. Only in one occasion the voice gets more emotional, when speaking of parental benefits, which should foster natural growth of population.

There are significant differences between civil society and governmental texts. Namely, impression is there that while the civil society texts try to concentrate more on the improvement of women's situation (career opportunities, gender pay gap, reconciliation policy etc.), then governmental texts stress more on child-care and parental benefits issues in general in order to encourage Estonian families to have more children.

Of civil society texts, Shadow Report on the Convention on the Elimination of All Forms of Discrimination against Women (2007) deals with gender pay-gap. The report states that: "Estonia's weak trade unions lack interest and are not properly mandated to ensure the application of the principle of equal pay for work of equal value. Since the institutions tackling the pay gap are few and the attitudes toward the gender pay differences tolerant, the trade unions have failed to exercise enough pressure to change the situation." The result of this passiveness, among other factors, is one the largest gender pay-gap in Europe. Such situation hampers economical development and is discriminatory towards women. Bringing justice to labour market through measures tackling interrelation of work and family life and, importantly, changes of societal mentality can be seen as one of the remedies to reverse the process. At the same time, it is an example of the third sector's role in society, which rather strengthens conservative approaches than helps to improve the overall situation.

The other occasion showing interaction between civil society and the state originates from May 2000, when Estonia ratified the Amended and Revised European Social Charter. The proceeding of the charter stirred up public criticism and discontent from the women's organizations as the Government initially wanted to exclude several key articles, justifying it with the reasoning that the State should not ratify something what it cannot currently fulfil. The articles which the Coalition wanted to leave out were the following: 20 (all workers have the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex) and 26 (all workers have the right to dignity at work). The most vocal in the protests against these exclusions was Estonian Women's Association, supported also by other women's organizations. Eventually the final version of the Charter, which was adopted by the Parliament, included the article 20. From the timely perspective this could be seen as a major victory of women's organisations over the prevailing attitude of the authorities that had promoted the paradoxical vision – not to set any goals before "society" is ready for them. Otherwise it would have served as a good pretext to lay inconvenient issues under canvas for indefinite time. The outcome of this debate apparently fortified NGOs positions in future disputes over crucial issues as well.<sup>10</sup>

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<sup>10</sup> 2009: QUING Deliverable No. 40 – Comparative country studies: Estonia.

### *Intimate citizenship:*

The towering task of every consecutive government since the middle of 1990s has been to assure and to proclaim that the survival of the nation (with the threatening negative natural growth) into the third millennium is of utmost importance. Thus, the governments have been trying to facilitate and create the situation where families would start to feel that having children would not be so burdensome task and there are measures that provide social and financial security when children have been born. Regulative mechanisms of reproductive rights and behaviour are mostly found in national population policy and reproductive behaviour plans. They tend to consist of several interrelated components such as the improvement of family benefit systems, reconciliation of work and family life and better and more accessible infertility treatment. Another relatively important sub-issue concerns civil partnerships, partnering and gay marriages. Firstly, there is a divide between reality (e.g. large share of cohabiting partners) and legislation that tackles the issue (referring mostly to traditional, married couples). Regulating new type of families, including same-sex couples, has only recently gained more public concentration (new draft of Family Law and possible law on civil partnerships in 2008). The issues of divorce, separation and marriage revolve mostly around providing more attention to single parents, mostly to single-mothers.

In the development of policy process, domestic influences and actors have been most active; and largely they count for governmental actors as many issues coincide with official pursuits. However, as it is the case with the public debate over civil partnership and same-sex unions' legislation, mostly local NGOs representing sexual minorities have voiced their concerns.<sup>11</sup>

However, the voice of gay and lesbian civil society organizations is weak, as are the organizations themselves. Their fight for civil partnerships embracing same-sex couples lists one major appeal to the policy makers in late 2005 and few articles in newspapers. Portrayal of the issue in media has improved over the years (increasing objectivity and neutrality) but there almost no responsibility is taken when it touches upon the third-party related content, like commentaries in newspapers' online-versions and news portal's. Since high natural growth and national-conservative ideals have been almost every government's top priority, one cannot be very enthusiastic about a speedy change of attitudes in legislation.

Nevertheless, the major activity from civil society's side comes from Estonian Women's Association Roundtable, NGO Women's Association Kadri, Estonian Association of Sexual Health, and from six civil society organizations representing sexual minorities or guarding minorities' rights. These are mostly women (from women's organizations), but there also a couple of gay and lesbian organizations. A couple of civil society voices are tuned to attack government policy plans, one of them is reproaching the government for not involving their organization in policy development. One voice delves first into general elucidation of the homosexuality issue, takes a stance against the government which in its ignorance goes against European norms, and then suggest a legal change.

Governmental texts contain of voices stem from the political factions of the parliament, Ministries of Justice and Social Affairs. One of the voices sees the need for introducing the legislative amendment in connection with the harmonization of EU legislation. Yet another voice demands legislative change due to the state's internal developments and not the outside pressure.

Overall, governmental voices are more specific and less declarative in what are they doing. While civil society texts are rather vocal about recognition of homosexual partnerships

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<sup>11</sup> 2007: QUING Deliverable No. 19 - Series of timelines of policy debates in selected topics: Estonia.

and rights of sexual minorities, then governmental texts are hardly touching topic. Instead, they rather focus on nation's reproductive health and achieving the natural growth of the population.

The frame which associates most closely with civil society/state relationship is *Social debate*. It has been identified as something when governmental initiatives to reform intimate relations have not been thoroughly debated, consultations with NGOs have been scarce or disregarded, there is no of political and social consensus, and the majority of people refuse the changes. In all, the attempt is to maintain the social status quo.

In September 2007, non-profit Women's Association Kadri, connected with social democratic faction in Estonia, voices its concern over the proposed Family Law. The text in general reflects that civil society organizations in this matter have not been consulted with. More specifically, Kadri urges that a bill (Family Law) with such profound consequences to the society and women cannot be enforced without preliminary investigations, pointing to the fact that the government has not turned to experts for advice. However, more space is used for pointing out what is wrong than offering concrete solutions.

Another civil society text from April 2007, crafted by Estonian Women's Association Roundtable, has identified a number of problems in the draft of Family Law Act that should be critically revised. Ministry of Justice is reproached by not carrying out sufficient background analysis to estimate socio-economic impact of the future law. Also, the Ministry did not include the Roundtable into the development of the draft although the help was offered. All this has led to the situation, where there is no legal definition of family in the draft and conjugal proprietary relations have taken the worst turn for women.

These two abovementioned texts show again that the civil society actors are not spearheading towards the novel changes in lawmaking process but aim for the stalemate, for the status quo.

Connected with the same Family Law, also a parliamentary debate from September 2007 sheds some light to such relationship. In particular, the oppositional party states that the government has acted in this issue too hastily and not consulting with the general public has resulted in a confusing and immature draft. A member of the opposition states the following: "We find that the law is not essentially introduced to the public. Yes, there has been some actions during the last couple of days, Erik Salumäe (*another parliamentarian – M. J.*) said that take a look in Internet. But not everybody in Estonia has Internet - not yet and nothing can be done about it. There has not been any general discussion in the public. Again one important law is being pushed through with the method of coalition steamroller: let's see and discuss only later. This has been done already here." Voice of this parliamentarian represents a conservative voice. It opposes the introduction of the modernized Family Law and new ways of its introduction in media. The political situation enables him to use the argument of dialogue with the public, and government's inability to be successful in it, to gain popularity points for the opposition.

Exemplary is the parliamentary debate that took place in September 2002. Member of the parliament Kalle Jürgenson is perplexed whether indirect information in media about the alleged legislative amendment, which would legalize gay marriages in Estonia, and which has been allegedly discussed between gay and lesbian organizations and the Ministry of Justice is true or not. The question is directed to the Minister of Justice Märt Rask during the parliamentary hearing. Kalle Jürgenson makes it also clear that the party he is representing, Pro Patria, does not support the idea of legally equalizing traditional and same-sex marriages. He supports his case with the quote from Silvar Laanemäe, representative of Gay Association, who said the following: "I am working on it. This is a part of my main work. Ministry of Justice ordered from Gay Association, which Board I belong to, an evaluation and the motion

to legislative amendment. And I believe that we will make it by autumn.” (*An answer to the journalist's question, when there will be gay marriages in Estonia - M.J.*). Consequently, Kalle Jürgenson is not satisfied about the situation where the Ministry of Justice is allegedly coordinating legislative amendments concerning same-sex marriages only with the gay organization and neglects the possible wider debate in society as a whole. Jürgenson finds it also unacceptable that information about such developments comes from the media and not from authentic sources. Kalle Jürgenson believes that Ministry of Justice should provide authentic first-source information concerning the possible legislative amendment legalizing same-sex marriages and include more interested parties - Estonian general public, political parties, people - to discuss this sensitive issue.

Minister of Justice Märt Rask replies to that in the following way: “Ministry of Justice has not ordered from Estonian Gay Association or from anyone else an opinion or suggestion to amend the law, I keep in mind here amending the Family Law Act, to allow gay marriages or giving gay couples the right for adoption in Estonia. I would still emphasize, that the draft in the case of which we asked the opinion from the representatives of sexual minority groups had to do with equality, and this is the topic which connects with the interpretation of the article 12 from Estonian Constitution and, in this sense, touches foremost upon the issue of gender discrimination. It means that we cannot keep a blind eye and say that we don't have such sexual minorities and we won't take them into account. However, as wise politicians we have to come to a conclusion how Estonian society will develop, and for that reason to hear somebody's opinion doesn't mean inserting this opinion into the law.”

The confusion over the alleged draft law shows clearly how one particular non-governmental organisation is not taken seriously (partly because of which it stands for) and downplayed by the will of political parties and the opinion of “majority”.<sup>12</sup>

### ***Gender based violence:***

Focal points of societal concern in gender-based violence orbit mainly around prostitution and trafficking, and, on the other hand, around domestic or family violence issue. Prostitution and trafficking, due to its cross-border and trans-national characteristics and Estonia's position between East and West, has over the years acquired much more relevance than just a domestic issue. Various governmental action plans and programs, international cooperation among police administration (especially with Nordic countries) testifies to the seriousness of the problem. Fight against trafficking and prostitution has become one of the key priorities of Estonian Police. Domestic violence, according to surveys, researches and the data of women shelters, is another vital issue that Estonian has to face. The issue has agitated public debates and concern throughout the years. However, legislative ground that would recognize and mention family and domestic violence in law is absent. Also, there is a shortage of expertise and data collection mechanisms at the side of police and also special laws that would deal with issue. Furthermore, currently Estonia is a society where the state's emphasis is placed primarily upon dealing with offender and punishments, while position of the victim is often neglected. Therefore it is important to mention, for example, the amendment made to the Code of Criminal Procedure in 2006 that established effective barring orders on offenders and was partly a victory of NGOs who applied pressure towards this objective.

Since prostitution and trafficking tends to affect many countries simultaneously, there has been considerable international pressure on Estonia to fight ever more effectively against such forms of violence. Also local civil society actors have shown noticeable interest to change the effective legislation into more victim-friendly system but it definitely takes much

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<sup>12</sup> 2009: QUING Deliverable No. 40 – Comparative country studies: Estonia.

more effort. Full credit, however, should be given to NGOs who have established a functioning network of women's shelters across Estonia.<sup>13</sup>

Voices of civil society include Estonian Women's Associations Roundtable, Estonian Women's Studies Resource Centre, Tartu Shelter for Women and University of Tartu. Civil society documents in Estonia are represented mostly by studies conducted by various NGOs (Estonian Women's Studies and Resource Center, Estonian Open Society Institute, Estonian Women's Association Roundtable). It is difficult to assess the impact of these surveys on the behaviour of state actors. Non-state actors and organizations (e.g. shelters) are generally quite weak and they do not enjoy much financial support from the state and have to rely on their own resourcefulness. As a result, across all subissues, civil society texts consider State efficiency – good governance the most efficient tool to achieve objectives and, likewise, the source of problems.

On the whole, civil society texts have taken a critical position on policy makers' initiatives or non-initiatives, except a study that describes more the situation in trafficking than attacks government's activities. The rest of the texts concerning trafficking in human beings are riddled with critical notes on the government's address. Violence against women is the second issue that has deserved civil society's attention. The two texts focussing on it express their doubts whether government's amendments are sufficient to solve problems, or stating that there are serious legislative deficiencies that hinder the process.

Governmental texts channel voices of the government and the Ministry of Social Affairs. From the first glance, there are no real differences between civil society and governmental texts on what are the sorest issues in the society. However, the most elaborate and articulated texts from the government's side touch upon the trafficking in human beings and neglect the topic of violence against women (domestic and family violence).

Delegation of State Responsibility is the frame most closely associating with the issue and is described in a way where actors other than the state ones should show more activity and initiative dealing with particular problems – especially NGOs and other community actors.

The study by Estonian Women's Studies and Resource Centre (“Anti trafficking in human beings activity in Estonia: experts views on problems and solutions”) from 2004, which was supported by Nordic Council of Ministries and focuses on Estonia's fight against trafficking in human beings and major legislative and co-operational problems involved, is one of the examples. In this research, researchers have found out multiple and major problems related to the fight against trafficking. Legislation and international obligations adopted to root it out are either ineffective or weakly applied in practice. The study points to a still ongoing debate among experts and decision-makers about the definition of trafficking in human beings, which eventually leads to problems in proper cooperation between important actors fighting against trafficking. Particularly, officials and workers of non-governmental organizations are not interested in cooperation. Sadly, the lacking will of cooperation from the non-governmental organisations' side does not bring about improvements in the fight against trafficking.

Relying on the research results, the study has made a number of suggestions that should make the fight against trafficking more effective. It involves partners from the state institutions and also NGOs. Primary tasks are developing national action plan to combat trafficking, elaboration a proper legislative base and investing into schooling and information sharing among various actors. The research yield suggestion for NGOs and others: to increase

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<sup>13</sup> 2007: QUING Deliverable No. 19 - Series of timelines of policy debates in selected topics: Estonia.

the movement of information and common actions, if necessary, and to develop the schemes of information movement; sharing knowledge and information, in-service training.

There is another civil society text in the trafficking subissue from January 2006: Estonian Women's Association Roundtable's address to the Government in connection with the draft national action plan on the fight against trafficking in human beings in 2006-2009. The Roundtable points to the problem that their and other NGOs suggestions about the national action plan to fight trafficking are ignored by the government. The Roundtable sees government as responsible in ordering service from NGOs for the purpose of help in the fight against trafficking.

The third example, a policy plan, originates also from the trafficking subissue. It is the Development Plan for Combating Trafficking in Human Beings 2006-2009 from 2006. The general goal of the development plan is to improve the fight against the trafficking in human beings. This general objective is linked to more concrete sub-actions that include forming a precise overview of the problem, thus enabling to take up further actions as awareness campaigns, better cooperation between institutions and organizations, improving help for victims and responding effectively to crimes related to trafficking. Implementers of the plan are a number of ministries but also NGOs.

The final example comes from the Open Society Institute research from 2001 on violence against women in Estonia. References include mostly different actors whose activity in the area of fighting against the violence is seen either ineffective or non-existent. One of their target groups is also the state, who is seen to assume the leading role in hindering violence against women. The research, among other, states: "The state should have the leading role in hindering violence; it has to shape a favourite climate for abolishing violence. Another main task of the state is creation of a legislative context hindering violence, building up the legal system that guarantees treatment to the victims in accordance with requirements of human dignity and security." Ideally, the role of civil society, given that in Estonia no forum exists for active cooperation between state authorities and NGOs working in the field of violence against women, should thus be setting up an efficient mechanism to engage the NGOs working in the field of violence against women in the drafting, implementation, or evaluation of laws and policies. However, till this point such efforts have been inadequate.<sup>14</sup>

### *Concluding remarks*

To encapsulate the core issues that impede the cooperation between the two sectors, the public sector has to pay attention to the following that has come to characterize it. There is insufficient knowledge about potential partners and about the processes of involvement, which makes the consultation process often formal without any real effort to ensure meaningful input from NGOs. Difficulties stem also from poor quality of drafts laws (which tend to be very long and complicated) and poor planning of time and short deadlines. The time given to organizations for sending their feedback to draft laws is usually 2-3 weeks, which is often not sufficient when organizations want to gather their members' or constituencies' options first, especially if they are not informed in advance about forthcoming consultation processes. Thus NGOs are often involved only in consultations about ready-made draft laws instead of involving them in the stages of needs assessment and development of the draft. The public sector is often also not capable to give feedback to organizations who have contributed to the law-making processes with their proposals. Non-governmental organisations, in turn, have to tackle the lack of resources (both human and financial) to make

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<sup>14</sup> 2009: QUING Deliverable No. 40 – Comparative country studies: Estonia.

meaningful contributions to policymaking, competence to comment on legal texts, and ability to consult and involve their members and target groups when they formulate the organization's position towards a policy or law (Hadzi-Miceva 2007, 36-37).

Thus, one of the most consistent storylines of implications in the relationship between NGOs and the state is that of distrust and suspicion, the roots of which stem already from early history of NGOs instigation in Estonia. Improvement and betterment of gender equality policies in Estonia have been mostly pushed by women's organisations. However, the state authority and legislators have been rather stubborn to invite these organisations to negotiation or consultation tables and ask for suggestions. The result of such ignoring has deepened also the isolation of non-governmental organisations and the feeling that the state should be the one offering all the solutions.

The plausible outcome of such distrust is the lack or unwillingness for cooperation that has effect on NGOs positioning and ambition in society. It means that the role of civil society has not always being progressive but has contributed, less or more willingly, the maintenance of a social status quo system. Examples of the latter were found in all issues, except general gender equality texts.

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