Human Rights in Estonia 2007

Report of the Human Rights Centre at the Law School of the IUA Study Centre of the Tallinn School of Economics and Business Administration of Tallinn University of Technology

focusing on the situation in detention facilities and gender discrimination

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Introduction

This is the first general report that is being compiled by the Human Rights Centre (HRC) regarding the situation of human rights in Estonia. The HRC is an independent research centre that was founded at the Law School of the IUA Study Centre of the School of Economics and Business Administration of Tallinn University of Technology, which includes among its tasks the monitoring and analysis of the human rights situation in Estonia. Additional information about HRC activities is available at www.humanrights.ee

Information from public sources has been used to compile this report, including the annual reports of governmental agencies, reports and opinions from nongovernmental and international organisations, and materials collected by the HRC. The objective of the report is to provide as complete a picture as possible of what took place in the field of human rights in Estonia in 2007. Information from previous years has been presented in certain places for comparison and as background information. Essentially, this is a legal rather than sociological study; the implementation of laws by various state authorities has been analysed versus the understandings and value judgments of society.

This report was prepared based on the principle of objectivity and independence. The sources were analysed independently and critically, and the report was not submitted to any state authority for approval before publication. The sources included diversified materials from state authorities, international organisations, and nongovernmental organisations, and when possible they were analytically compared. In general, it should be noted that sufficient, reliable information has not been collected or statistics compiled in many fields of activity, which make it difficult to provide assessments or draw conclusions in many cases.

By their nature, human rights touch upon all spheres of life and, therefore, it is not possible to compile an all-encompassing overview. When preparing the report, the authors chose topics from those human rights fields that were most important in 2007. Not all of the fields of activity were treated with the same thoroughness. The compilers of the report would like to choose one or two basic topics every year, which will be treated in greater detail than others. In the 2007 report, these are gender discrimination, in connection with the fact that 2007 was declared the year of equal opportunities, and the situation in detention facilities, since they were the focus of special attention by both Estonian and international organisations.

The HRC would like to thank the East-Viru Integration Centre and Estonian Institute of Human Rights for their help in compiling the report. The authors would also like to thank everyone that helped collect and forwarded the necessary background information.

Please send your feedback on the report to the HRC at our e-mail address, aastaaruanne@humanrights.ee.

Marianne Meiorg

Discrimination

Discrimination prohibition was established by §12 of the Constitution:

> *Everyone is equal before the law. No one shall be discriminated against based on their nationality, race, colour, sex, language, origin, religion, political or other opinion, property or social status, or on other grounds.*

The same provision of the Constitution also prohibits the incitement of hatred:

> *The incitement of national, racial, religious or political hatred, violence, or discrimination shall, by law, be prohibited and punishable. The incitement of hatred, violence, or discrimination between social strata shall, by law, also be prohibited and punishable.*

This is also confirmed by §151 of the Criminal Code that specified a fine of up to three hundred fine units or detention as punishment.

In addition, the legal instruments regulating specific spheres of life (e.g. in the Employment Contract Act) include provisions that prohibit discrimination or require the promotion of equal treatment. In 2007, the discussion gained momentum regarding the passage of an Equality of Treatment Act, which would establish discrimination prohibition and obligations and rights related thereto. However, the given law was not passed and it dropped out of the proceedings of the parliament of Estonia during the current year.[1]

The principal legislation regulating the inequality of treatment is the Gender Equality Act.[2] Pursuant to this, the institution of a Gender Equality Commissioner has been created, who has adopted a strict interpretation in the implementation of the law and rejected all petitions that do not deal with gender equality.

The Supreme Court has defined the concept of equal treatment in legislative drafting, which was confirmed in 2007 in the settlement of two cases on the topic of unequal treatment:

> *"Equality of legislative drafting requires that laws also substantively treat all people in similar situations in the same manner. The idea of substantive equality is expressed in this principle: equals must be treated equally and those that are not equal unequally. However, not all unequal treatment of equals is a violation of the right of equality. The prohibition of treating equals unequally is violated when two persons, groups of persons, or circumstances are arbitrarily treated unequally. Unequal treatment can be considered arbitrary if no good reason can be found. If there is a good and relevant reason, unequal treatment in legislative drafting is reasoned."*[3]

The year 2007 was declared the Year of Equal Opportunities throughout the European Union. Within its framework, several events that were mostly co-ordinated by the Ministry of Social Affairs

[1] Parliament of Estonia, shorthand notes of the XI Parliament of Estonia, Session III, 7.05.2008, cl. 1.

[2] RTI, 21.04.2004, 27, 181.

[3] Supreme Court case 3-4-1-12-07 (26.09.2007) cl. 19. See also case 3-4-1-14-07 (1.10.2007).

took place. Conferences, seminars, forums and cultural festivals were organized, the compilation of many study materials was financed, and studies and questionnaires were conducted.[4]

The Ministry of Justice published a study on the Estonian population's legal awareness. In the course of the study, the question of discrimination was also covered. Among other things, the following question was posed: "How much do you agree or disagree that in today's Estonia the fundamental rights of all people are equally protected regardless of their gender, nationality, age, financial status, social status, physical or mental disability, residence, or political views?"[5]

Table 1. How much do you agree or disagree that in today's Estonia the fundamental rights of all people are equally protected regardless of their…?

	Totally agree	Rather agree	Rather disagree	Totally disagree	Can't say
Gender	43%	32%	21%	3%	2%
Nationality	34%	32%	25%	5%	4%
Age	38%	36%	22%	4%	1%
Financial status	24%	28%	35%	11%	2%
Health status	30%	30%	31%	6%	3%
Physical or mental disability	22%	28%	34%	9%	7%
Residence	40%	32%	22%	4%	3%
Political views	30%	30%	22%	7%	11%

Source: Study of the Estonian Population's Legal Awareness, Ministry of Justice

Therefore, according to this study, the majority of people think that fundamental rights are "relatively equally guaranteed for men and women, young and old, and for Estonians and the representatives of minority nationalities".[6]

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[4] See the website of the Ministry of Social Affairs at http://www.sm.ee/est/pages/goproweb1556 (last visited on 12 July 2008).

[5] Ministry of Justice, Study on the Estonian population's legal awareness, Tallinn 2007, available on the Ministry of Justice website: http://www.just.ee/orb.aw/class=file/action=preview/id=30815/Eesti+elanike+%F5igusteadikkuse+uuring.pdf (last visited on 16 July 2008), pg. 36.

[6] Ibid, pg. 36

Gender discrimination[7]

A memorandum from the Commissioner for Human Rights of the Council of Europe with recommendations for implementation was published in 2007.[8] This included an overview and recommendations regarding topics related to discrimination.

In 2007, a discussion about the Estonian report also took place in the Committee on the Elimination of Discrimination against Women (CEDAW), the function of which was to execute the monitoring of the implementation of the Convention for the Liquidation of All Forms of Discrimination against Women in the contacting parties.

Both the Commission and CEDAW praised the institution of the Gender Equality Commissioner (GEC).[9] According to Estonia's written answers to the questions of the CEDAW, the GEC office has one employee in addition to the representative, and the 2007 budget for the institution totalled 887,550 EEK.[10] Based thereon, the Commissioner was worried about how the effectiveness of the work of the GEC would be guaranteed.[11] The CEDAW was also sceptical about whether the GEC has "sufficient economic and human resources to effectively fulfil the tasks assigned to it by the Gender Equality Act".[12] The Committee has similar doubts about the Gender Equality Department of the Ministry of Social Affairs:

> *"The Committee expresses concern that the state institution for improving the situation of women, i.e. the Gender Equality Department of the Ministry of Social Affairs, may be lacking sufficient authority, decision-making power and monetary and human resources to effectively co-ordinate the work of the government in the promotion of gender equality and the total implementation of the Convention."*[13]

They were also concerned that, although the Gender Equality Act provides for the creation of a Gender Equality Council, the purpose of which would be to advise the government, this council has

[7] The overview does not cover violence or crimes caused by a person's gender. This would require a thorougher approach than was possible within the framework of this human rights review.

[8] Commissioner for Human Rights of the Council of Europe, Memorandum to the Estonian Government—Assessment of the Progress Made in Implementing the 2004 Recommendations of the Commissioner for Human Rights of the Council of Europe, CommDH(2007) 12 (11 July 2007), available on the Internet at: https://wcd.coe.int/ViewDoc.jsp?id=1163131&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679> (last visited on 2 July 2008).

[9] Ibid, cl. 76; UN Committee for the Elimination of Discrimination against Women, summary comments: Estonia, CEDAW/C/EST/CO/4 (10 August 2007), cl. 4.

[10] UN Committee for the Elimination of Discrimination against Women, Answers to Problems and Questions related to the Discussions on the Fourth Periodic Report – Estonia, CEDAW/C/EST/Q/4/Add.1 (27 April 2007), page 4.

[11] Memorandum of the Human Rights Commissioner, cl. 76.

[12] UN Committee for the Elimination of Discrimination against Women, summary comments: cl. 10.

[13] Ibid, cl. 14

not yet been created.[14] In discussions with the CEDAW, the Estonian delegation confirmed that they hope to arrive at the council during the first half of 2008.[15]

In addition, the CEDAW criticised Estonia because the optional protocol of the Convention has not yet been ratified, according to which individuals would be able to submit complaints directly to the Committee.[16] Here too, the Estonian delegation confirmed that this question is already in domestic proceedings and will soon be submitted to the government and then to the parliament of Estonia, after which it will be ratified at the first opportunity.[17]

The Commissioner of the Council of Europe, in turn, reminded the government that Estonia has not ratified Protocol 12 of the European Human Rights Convention, which provides for a general discrimination prohibition, and has also not acceded to the Additional Protocol of the European Social Charter.[18] The Estonian delegation to the CEDAW agreed with the criticism, but noted that since the last report, the situation in Estonia in all spheres of life has improved and this development should continue in any case.[19]

In Estonia, it is possible to petition the GEC and the Chancellor of Justice regarding equality issues, whose work is firstly to prevent, although also to process complaints and to demand the cessation of identified discrimination.[20] In addition, it is also possible to petition the court for the protection of one's rights, because the right to equal treatment is provided by numerous legislation (e.g. the Constitution and the Employment Contracts Act).

Although studies have shown that 31% of women and 19% of men have experienced sexual harassment,[21] the law enforcement authorities have not dealt with any violations of gender equality. To date, the courts have not heard any cases the content of which are gender discrimination or sexual harassment.[22] The Chancellor of Justice's practice also lacks any examples of violations of gender equality. One person petitioned the Chancellor of Justice to start a conciliation procedure, but since the deadline for submitting the complaint had passed, it was not

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[14] Memorandum of the Human Rights Commissioner, cl. 76; UN Committee for the Elimination of Discrimination against Women, summary comments: cl. 10..

[15] UN Committee for the Elimination of Discrimination against Women, the discussion of the reports submitted based on Article 18 of the Convention of the Contracting Parties, New York, 24.07.2007, CEDAW/C/SR.793 (B) (7.08.2007) (hereinafter the UN Committee for the Elimination of Discrimination against Women, discussion of the report 1), cl. 25.

[16] UN Committee for the Elimination of Discrimination against Women, summary comments: cl. 6

[17] UN Committee for the Elimination of Discrimination against Women, discussion of the report 1, cl. 26

[18] Memorandum of the Human Rights Commissioner, cl. 77

[19] UN Committee for the Elimination of Discrimination against Women, discussion of the report 1, cl. 18

[20] Margit Sarv, "*Võrdsusõiguste kaitse, diskrimineerimise keeld ja võrdse kohtlemise edendamine*", Sotsiaaltöö no. 4/2007, pp. 15-18

[21] UN Committee for the Elimination of Discrimination against Women, the discussion of the report submitted based on Article 18 of the Convention of the Contracting Parties, New York, 24.07.2007, CEDAW/C/SR. 794(B), (10.08.2007) (hereinafter the UN Committee for the Elimination of Discrimination against Women, discussion of the report 2), cl. 39 and the UN Committee for the Elimination of Discrimination against Women, discussion of the report 1, cl. 5.

[22] UN Committee for the Elimination of Discrimination against Women, discussion of the report 1, cl. 5.

possible for the Chancellor of Justice to start proceedings and he directed it to the Gender Equality Commissioner.[23]

The CEDAW has also been concerned that "women do not sufficiently use legal remedies in the case of violations of their rights, including the possibility of judicial remedies or the possibility of petitioning to the Chancellor of Justice." Based thereon, the CEDAW recommended that a campaign should also be carried out among judges, prosecutors, and jurists.[24]

As of April 2007, 72 written petitions have been received by the GEC.[25] Unfortunately, the representative does not maintain a public database regarding the complaints that it has processed. Therefore, this review must rely on its review of activities in 2005/2006 that was published in 2007. The 2007 review of activities has not yet been published.

At the legislative level, general equality is guaranteed at a minimal level, but the low level use of all the opportunities demonstrates the unsuccessful implementation of the laws, which is caused by problems with the laws itself, with social attitudes, or insufficient awareness of one's rights. The state must take several practical steps to guarantee an implementation that serves the objectives.

Awareness and activities for increasing awareness

One of the principal tasks of the Gender Equality Commissioner is increasing awareness. To achieve this, the Representative makes use of the received petitions, by forwarding its recommendations to the parties and providing consulting to governmental agencies, as well as public appearances at conferences, seminars, and other similar events.[26]

In its summarising the comments about the Estonian report, the UN Committee for the Elimination of Discrimination against Women noted, "The Committee continues to be concerned about the persistence of patriarchal attitudes and deeply rooted stereotypes in Estonian families and society regarding the roles and responsibilities of men and women, which is expressed in women's educational choices, their situation in the job market and their underrepresentation in political and public life as well as by their right to make decisions at their jobs."[27] In connection therewith, the CEDAW recommended that "a campaign be directed to women and men to increase awareness and the contracting party be helped to develop a positive image of women, as well as the equal status and equal responsibilities of women and men in the private and public sector, in the media of the contracting party."[28]

In 2007, the GEC and the Ministry of Social Affairs carried out several campaigns, with the goal of increasing awareness about discrimination issues. For example, the Representative participated in the project entitled "The intensive expansion of gender equality in local governments."[29] In 2007-2008, the Ministry of Social Affairs carried out an Estonian-French project entitled "Gender equality of men and women—the principle and objective of productive and sustainable

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[23] Chancellor of Justice, 2006 Report on the Activities of the Chancellor of Justice, Tallinn 2007, pg. 393.

[24] UN Committee for the Elimination of Discrimination against Women, discussion of the report 1, cl. 14.

[25] UN Committee for the Elimination of Discrimination against Women, answers to questions, pg. 4

[26] Ibid, pg. 4.

[27] UN Committee for the Elimination of Discrimination against Women, summarizing comments, cl. 12.

[28] bid, cl. 13

[29] See also http://www.dpa.ee/svv/ (last visited on 12 July 2008).

companies", which is being partially financed by the European Union Transition Fund. [30] In 2006-2008, an international project is taking place, in which also the Association of Estonian Cities will participate. During the course of this project, there are plans to introduce the "Charter of the Equal Treatment of Men and Women in Local Life" to the local governments and to call them up to accede thereto. It is noteworthy that introducing the project, the Association of Estonian Cities admitted that, although already in the EU's initial treaty, "the role of the local governments…in the decision-making process of equal participation and in social life…and in guaranteeing the fight against stereotypes was specified", it has not been possible to fulfil these objectives. "According to the papers, we should have achieved equality a long time ago, but unfortunately, in reality this is not true."[31]

An aspect here is that the CEDAW found that public opinion must not always be considered to the full extent. The question deals directly with the implementation of a quota system to achieve equality. Namely, the CEDAW members were aware that the Estonian public does not support the use of such a system to increase, for instance, the proportion of women at the parliamentary and local government levels. The Committee members thought that although such information is valuable, the state should not use this as an argument, in order not to fulfil the obligations resulting from the Convention to implement a temporary measure, if it is necessary to get over the discrimination of women, which results from deeply rooted historical templates.[32] Equal opportunities and treatment may not necessarily result in equality, which is why the different treatment of men and women may be necessary in order to achieve gender equality.[33]

The GEC also favours using temporary measures in certain questions. In the processing of several petitions, it has been confirmed that a different treatment can be justified in order to promote the underrepresented gender.[34]

In respect to increasing awareness, the government lacks a systematic plan of action, single projects are supported or participated in, the productivity of which is difficult to assess. Based on the extremely limited resources that are allocated to the GEC, they are not able to influence the attitudes of society more broadly and, therefore, to fulfil their assignments effectively.

Labour market and work relationships

The labour market, concerning recruiting, remuneration, and working conditions, has become one of the most problematic fields of activity regarding the guaranteeing of gender equality,[35] regardless of the fact that, in addition to the Gender Equality Act, the principle of equality is specifically mentioned in the legislation regulating work relationships, such as the Employment Contracts Act and the Wages Act.[36]

Two large-scale studies on the position of women in the workplace were carried out in the field of work relationships in 2007. AS Emor conducted a questionnaire among private enterprises, in

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[30] See also http://www.sm.ee/est/pages/index.html (last visited on 12 July 2008). See also UN Committee for the Elimination of Discrimination against Women, Answers to questions, pg. 2.

[31] See also http://www.ell.ee/index.aw/section=10829 (last visited on 12 July 2008).

[32] UN Committee for the Elimination of Discrimination against Women, discussion of the report 1, cl. 42

[33] Ibid, cl. 58

[34] Gender Equality Commissioner, 2005/2006 Review of Activities, Tallinn 2007, pg. 26.

[35] Ibid, pg. 8.

[36] Ibid, pp 8-9.

which the awareness of entrepreneurs and workers was examined. The results of the study showed that "55% of the respondents thought that the status of women on the labour market is low." (See table 2). Whereas, "52% of the respondents…thought, that Estonian entrepreneurs should turn more attention to the issue of the equal treatment of women and men in companies", while "28% did not think this necessary."[37]

Table 2. Awareness of gender equality

	Reason	%
1.	Women are more occupied with domestic problems	15
2.	Women are offered less pay for the same jobs	13
3.	Opinions that have historically developed	7
4.	What has appeared in the press and media	7
5.	Women are physically weaker	5
6.	Men are preferred for leading positions	3
7.	Women are more accommodating and underestimate themselves	2

Ruth Alas, The awareness, practices and attitudes of private-sector managers towards equality norms and their promotion, presentation at the training during the project "Gender equality of men and women—the principle and objective of productive and sustainable companies", 3 April 2008.

In connection with the Year of Equal Opportunities, Praxis conducted a study entitled "The Situation of Women from Minority Nationalities in the Estonian Labour Market". According to the study, in the case of women from minority nationalities, a role is played by the so-called "dual factor" of gender and nationality (ethnic heritage). For instance, it was discovered that there are salary differences between Estonian women and those from minority nationalities, although their jobs are located in the same region.[38]

Recruitment process

The GEC has acknowledged that many petitions that have reached them are "very illustrative" and helped to ascertain those aspects that need to be clarified for the public the most. One such aspect is the implementation of the principle of equality already at the first contact of the recruitment process, when the work relationship between the individual and employer has not yet started.[39]

In the recruitment process, most problems develop for women who are pregnant or who have small children.

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[37] Ruth Alas, The awareness, practices and attitudes of private-sector managers towards equality norms and their promotion, presentation at the training during the project "Gender equality of men and women—the principle and objective of productive and sustainable companies", 3 April 2008.

[38] Piia Tammpuu, "How to Analyze Discrimination and Unequal Treatment? Data Sources and Research Perspectives" a presentation at the "Social Forum—The Right to Equal Treatment in Estonia", 30 November 2007.

[39] Review of the GEC's activities, pg. 7.

In its activities report, the GEC describes a case where, as a result of an employment interview, a woman was offered a higher position than the one she had initially applied for. A larger salary was also mentioned. After she told them about her pregnancy, the offer of the better job was rescinded and the salary that was offered was reduced by more than 50%, which was 64% less than other people working in similar jobs.[40] In another case, after becoming aware of a pregnancy, the person was offered a fixed-term contract instead of a contract without a term.[41]

The GEC adopted an explicit stand in these cases—"Since only women become pregnant, differentiating on this basis is based on gender in any case" and, therefore, is potentially seen as gender discrimination.[42] Pursuant to the law, pregnant women are under special protection, that companies must guarantee and that they can broaden themselves. At the same time, "protection related to pregnancy and giving birth must not lead to the discrimination of women in the labour market under any conditions". A company may not rescind an offer upon finding out about a pregnancy by using the justification that this is being done in order to protect the interests of the pregnant woman. In this case, this would not be a case of providing an advantage to the pregnant person, but rather putting her in a less advantageous position, which is classified as gender discrimination. "If the employer already considered the candidate to be suitable for the position, the (subsequent) decision … is for the job applicant to make."[43]

Moreover, on quite a few occasions, when women return to work after the birth of their child, they discover that they are "forced to agree to lower job offers".[44] The GEC handled two cases in which the woman did not get the job—the companies justified their decisions by stating that the woman had a small child and, therefore, she apparently would not be able to dedicate herself totally to her job without her family life suffering.[45]

The GEC's position is that such cases, in addition to being direct gender discrimination, this is also unequal treatment based on being a parent, which is often blended together for companies. Pursuant to both the Constitution (§27 (3)) and the Family Act (§59 (1)), both parents have the equal right and obligation to raise their child and care for him or her, which is why the assumption that a woman who has a child is less able to be dedicated to her work than a man who has a child is the case of directly making differences based on gender, which is "based on … gender stereotypes". This also contradicts the principle of the inviolability of family and private life (Constitution §26). "The decision of whether or not to go to work when one has a small child is for the job applicant to make. Therefore, reasons based on private life made by the employer regarding the selection of a person for a job are irrelevant."[46]

The GEC confirmed that "the employer has the right to select the most competent and suitable person. When making the decision, the person's employment history, education, work experience, and other skills that are necessary for the job, as well as other skills and reasons that may provide clear advantages are taken into account." Other circumstances must not influence hiring. Pursuant to the Gender Equality Act, the company has "a positive obligation, while promoting gender

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[40] Ibid, pp. 10-16.

[41] Ibid, pp. 21-23

[42] Ibid, pp. 21-23

[43] Ibid, pp. 10-16

[44] Margit Sarv, *Võrdsusõiguste kaitse*, pp. 15-18.

[45] Review of the GEC's Activities, pp. 23-24, and the GEC website http://www.svv.ee/index.php?id=522 (last visited on 15 July 2008). Also see Hanneli Rudi, "Employers Discriminate against Young Mothers", Postimees.ee, 30.11.2007.

[46] GEC website http://www.svv.ee/index.php?id=522 (last visited on 15 July 2008).

equality, to make the combination of work and family life more effective, and to also take the employee's needs into account."[47]

The aforementioned cases are understandable in light of why one of the petitioners approached the GEC with the question of whether the compulsory fields on the CV applications submitted electronically through the job search portal that ask for the gender of the person, number of children, and family status are not gender discrimination. The GEC found that in the given case, this is not gender discrimination, because male job applicants must also fill out the same fields and the given portal treats everyone equally, regardless of their gender, family status, or number of children. If the information entered in these fields affects the companies in their choices, then the discriminator is the company and not the job search portal.[48]

Wages

The principle of gender equality in paying wages is separately established in the Wages Act, although this aspect of the work relationship is still problematic. The GEC has noted:

> *"According to the principle of equal pay, different conditions for paying for the same or equal work may not be established due to gender … Work assignments and other conditions affecting payments [need not] be similar or identical … The equality of different jobs are assessed based on four criteria: (1) qualification, (2) work results, (3) work assignments (including responsibilities) and (4) work conditions."*[49]

In its summary of comments, the UN Committee for the Elimination of Discrimination against Women expressed its concern about the continued "differentiation between men and women in the labour market and the disparity in wages."[50] The GEC is of the same opinion.[51] These opinions are supported by statistics, in which the disparity in wages paid to men and women is apparent. The disparity also persists in a situation where the level of unemployment among men and women is equalised.[52]

The GEC considers one of the most cases in its practice to be a petition that demonstrated that outwardly equal pay might turn out to be unequal when certain working conditions are established.[53] The case dealt with the compilation of a working schedule so that the female worker ended up with lower wages than her male colleagues because the latter were given more night work and overtime. Here too, as in a few of the job recruitment cases, the employer justified their activity with the desire to protect and help the workers, because the latter took care of a disabled child and sick husband. The employer knew that in such a situation, the agreement of the person is required for the assignment of night work or overtime. At the same time, the GEC found that the employer did not actually ask for this agreement, but automatically assumed it would not be forthcoming. "The decision that the worker requires special protection is for the worker, not the employer, to decide. Otherwise, the employer's knowledge about the person's familial

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[47] Review of the GEC's Activities, pp. 23-24.

[48] Ibid, pp. 24-26.

[49] Ibid, pp. 10-16.

[50] UN Committee for the Elimination of Discrimination against Women, summarizing comments, cl. 22.

[51] Kaire Uusen (editor), "Gender Equality Commissioner: Women Ask for Lower pay", Tarbija24.ee, on 25 January 2007.

[52] UN Committee for the Elimination of Discrimination against Women, discussion of the report 1, cl. 10.

[53] Review of the GEC's Activities, pg. 7.

responsibilities hinders self-determination and limits the right to equal treatment." Although a worker cannot demand overtime, if a need for overtime develops, she/he must be considered on an equal basis with her colleagues.[54]

Table 3. The relationship of women's hourly wages with men's hourly wages (unit of measurement: percentage)

	2000	2001	2002	2003	2004	2005
Legislators, high-level officials, and managers	76.5	83.5	78.3	79.6	81.9	80.7
Senior specialists	71.1	74.3	72.8	73.1	75.4	76.2
Middle-level specialists and technicians	70.7	69.6	70.6	68.5	68.1	67.2
Officials	78.3	74.3	73.8	73.1	77.6	81.8
Service and sales workers	68.4	73	66.7	72.7	75	78.8
Skilled agricultural and fishery workers	91.4	91.6	86.7	79.6	84.4	93.4
Skilled and manual labourers	84.1	78	77.1	76.3	74.9	67.6
Equipment and machinery operators	90.6	84.8	90.4	86.1	82.1	79.8
Unskilled labourers	74.6	71.6	75.7	74.2	76.2	73.2

Source: Statistical Office

Parental leave

Parental leave has brought about many questions. In 2007, it turned out that the Public Service Act provides less protection to fathers on parental leave than the Employment Contracts Act, which prohibits the parent being dismissed from work. The equal provision is lacking from the Public Service Act.[55]

A mother on parental leave approached the GEC with a complaint that in the case of acquiring professional qualification, parental leave is not equated with other forms of leave. As a result, the work experience of a parent on parental leave is interrupted and when returning from leave, he/she must restart the acquisition of experience, which puts her/him in a worse position when compared to others. According to the GEC, the worse treatment of a person in connection with being a parent is considered gender discrimination based on the Gender Equality Act.[56]

Termination of the work relationship

In 2007, a separate question arose about the provision of the Employment Contracts Act, according to which the mothers of small children may terminate employment contracts at their own initiative under special conditions. The contract lacks an equivalent provision regarding fathers.

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[54] Ibid, pp. 26-30.

[55] Aivar Õepa (edit.), "The Public Service Act Does Not Protect Fathers on Parental Leave", Postimees.ee, 29.10.2007.

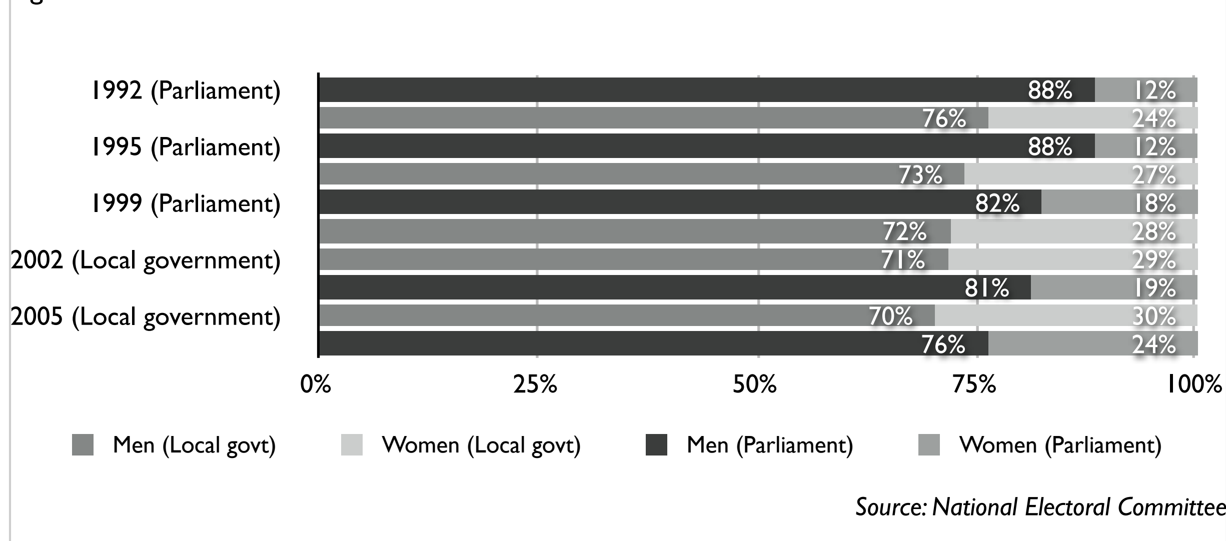
[56] GEC website http://www.svv.ee/index.php?id=523 (last visited on 15 July 2008).

The GEC confirmed that this is a vestige and in reality, the provision expands to cover to both parents.[57]

Public life and politics

The same gender stereotypes also dominate in public and political life. The Estonian delegation to the CEDAW admitted that recent studies have shown that it is less likely that women will be elected in local and national elections. The media fixes the stereotype that has developed, and top female politicians continue to feel that their position is weaker compared to their male colleagues.[58]

At the same time, statistics confirm that the ratio of women in elections has increased and more women have been elected in the last few years than in previous elections.[59] (See figure 1).



There is a higher ratio of women than men who work at governmental agencies—women 62.9% versus men 37.1%. 55.1% of these women are higher officials, 64.8% senior officials, and 65.8% junior officials.[60] That is why it is even more surprising that only three ministers are female, and only 24% of the Parliament of Estonia is female. There are not nearly enough women in leading positions in the Parliament of Estonia committees. The Estonian delegation to the CEDAW admitted that women should be given more encouragement to run for leading positions.[61]

In their review of activities, the GEC stressed the important role of women in political life along with men:

> *"The balanced participation of the genders in politics makes the decision-making process more representative. The formation of one's political identity, principles and value*

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[57] Rudi.

[58] UN Committee for the Elimination of Discrimination against Women, discussion of the report 1, cl. 9.

[59] National Electoral Committee data, on the Internet at www.vvk.ee/stat_kand_valitud.html (last visited on 15 July 2008). Also see UN Committee for the Elimination of Discrimination against Women, Answers to question, pg. 7

[60] Information from the website http: www.avalikteenistus.ee (last visited on 15 July 2008)

[61] UN Committee for the Elimination of Discrimination against Women, discussion of the report 2, cl. 13-14.

judgements consist of various components—urban or rural roots, social status, old or young, educational level and profession, experience as a family person or pensioner, entrepreneur or unemployed, etc.—which also includes experience as men and women. The more varied decision makers' backgrounds are, the more these differences are taken into consideration in decision making and this diversity strengthens democracy. A democracy, or the execution of the people's power by the people and for the people, must take the opinions of societal members into account and provide the possibility for everyone to be involved."[62]

Marriage and family life

According to the 2007 statistics as highlighted by the GEC, gender stereotypes also pervade marriage and family life.[63]

In families where children have been born, a special role is played by parental benefits and other monetary benefits, which accompany the birth and rearing of children. Just as in how the Constitution requires the equality of the parents in respect to the rearing of children, there must also be equality in respect to the benefits that are paid to the parents. On 1 September 2007, an amendment to the Parental Benefits Act came into force, the goal of which was to make the regulation more equal concerning fathers. If previously, fathers did not develop the right to benefits until six months after the child's birth, then now this develops 70 days after the child's birth. A certain inequality was preserved based on the dominant understanding that from the viewpoint of a mother and child's health, "close emotional contact is important" between them as well as the breastfeeding regime that develops during the first three months. However, the given law provides families with more possibilities for organising their lives.[64]

The topic of an infant's childbirth allowance was treated by the Chancellor of Justice, although this only dealt directly with the childbirth allowance that is paid by the City of Tallinn.[65] At first, only a child's mother could apply for this allowance. According to the city, the goal of this restriction was "to protect the child's interests in the best possible way and to prevent a situation where fathers could satisfy only their rights in regards to the child, while not fulfilling their obligations to the child." The Chancellor of Justice found that this violates the equality between spouses and parents based on the Constitution and the Family Act. "It is improper to assume that the child's interests are only represented by the mother, while the father's primary interest is only related to the acquisition of rights related to the child (such as the right to parental leave, allowances, etc.). Assuming that a person is acting in bad faith and justifying the creation of inequality, with this criterion it is not permissible in a democratic system of government."

Based on the opinion of the Chancellor of Justice, Tallinn changed the procedure for paying allowances, so that both parents can now apply.

A separate question was raised by the concern of the CEDAW regarding the lack of regulation regarding unregistered cohabitation, whereby the rights of women may suffer.[66] The Estonian

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[62] Review of the GEC's Activities, pg. 69.

[63] Margit Sarv, "About Comparative Statistics", at the Fourth Training Seminar of the Equality for Local Development Gender Mainstreaming in Municipalities Project on 2 July 2007.

[64] Parliament of Estonia, Explanatory memorandum to the draft law amending the Parental Benefits Act (1085 SE I).

[65] Case no. 6-4/060026, 2006 Activity Report by the Chancellor of Justice.

[66] UN Committee for the Elimination of Discrimination against Women, summarizing comments, cl. 30.

delegation confirmed that the Ministry of Justice is planning to regulate the ownership rights of people in these relationships.[67]

Educational life and hobby activities

Education is one of the most important topics covered by the discussion of the Estonian report at the CEDAW. The committee members were primarily interested in school textbooks and study materials, in respect to which the Minister of Education and Research issued a regulation in 2005, which required the elimination of stereotypes. In its summary, the CEDAW expressed its concern that this regulation has still not been implemented.[68] The CEDAW also recommended that Estonia pay more attention to the training of teaching personnel in issues related to gender equality, because they found that it would be most effective to promote gender equality through the educational system.[69]

The concern of the CEDAW seems to be very appropriate in light of the GEC's practices. The Representative's attention was attracted by a case in which a secondary school organised entrance exams for three science-based classes, whereas two of them were reserved for boys and one for girls, regardless of their exam results.[70] A similar situation occurred with the "Boys' Day" that was promoted by an institution, in which the invitation indicated, "the event is for all small and big boys", where the "smaller boys could make matchbox cars and paper busses".[71] The GEC's attention was also directed towards a kindergarten that advertised diversified activities for children, whereas woodworking and wrestling was provided for the boys and rhythmic gymnastics for the girls.[72]

Undoubtedly, we are dealing with gender discrimination if girls are not allowed to learn or take part in activities since these are intended for boys and vice versa. Pursuant to §8 of the Gender Equality Act, "the discriminatory provision of work or training that is directed at only one gender is also prohibited." Pursuant to §10 of the same law, "educational institutions must guarantee equal treatment for men and women (and also boys and girls) when obtaining an education". In addition, they must also promote gender equality. The GEC's position is that, if one class or group unintentionally becomes gender-centred, then one should make sure that this situation does not foster the total exclusion of the other gender, if interest exists.[73]

Based on the petitions, the GEC has treated the given issue in depth, and highlighted the short- and long-term consequences of such segregation:

> *"When teaching based on gender differences, one must keep in mind that the differences between men and women result, on the one hand, from biology, and on the other hand, from social structure.*
>
> *Biological gender includes biological differences, based on which human beings are differentiated into male and female individuals. Social gender means the traits and gender*

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[67] UN Committee for the Elimination of Discrimination against Women, discussion of the report 2, cl. 56.

[68] UN Committee for the Elimination of Discrimination against Women, summarizing comments, cl. 12

[69] Ibid, cl. 13

[70] Margit Sarv, *Protection of Equality*, pp. 15-18.

[71] GEC website at http://www.svv.ee/index.php?id=524 (last visited on 16 July 2008)

[72] Review of GEC's Activities, pp. 31-35.

[73] Ibid, pp. 31-35.

roles assigned to the male and female genders. Gender roles are a socially learned behaviour that determines which activities, jobs, and obligations are perceived as belonging to men and women. If biological gender is a constant trait, then gender roles change in time in connection with changing economic and political circumstances, as well as in connection with the social development of society. Therefore, the implementation of gender roles should not hinder free self-determination.

It is very sad to instil the idea in children at an early age that there are activities that are, or are not, suitable for them, depending on whether they are boys or girls. Being forced into such roles inhibits the harmonious development of children. The task of education must be to ascertain every person's individual abilities and skills (independent of gender) and the areas that he or she is interested in. …

However, by reproducing the archaic gender roles in the teaching process, every educational system helps to preserve gender inequality in society. Although, according to the law, men and women have equal opportunities for acquiring education and studying various subjects, the choices of young people are actually much more limited due to the expectation placed on them due to gender. The result is gender segregation in vocational and higher education, and later on in the labour market. …

[The result in turn is a situation in which we must]intensively search for capable male teachers even after twenty years, who would be able to make education and the provision of examples more balanced and diversified and who are missed even in kindergarten."[74]

The Estonian delegation confirmed for the discussion of the Estonian report in the CEDAW that new textbooks are being prepared that will pay more attention to the issue of gender.[75] In the written answer to the CEDAW's questions, it was noted that the national curriculum for basic and secondary schools is being reworked. The chapters on human, environmental and social studies deal with prejudices and discrimination. An important part of the new curriculum is the training of teaching staff in the given topic.[76] At the same time, it was added that in March 2007, the Minister of Education and Research issued a regulation that prohibits stereotypes based on gender, nationality, culture, race, and other prejudices.[77]

In addition to general education schools, the CEDAW was also concerned about the universities, where the committee members felt the number of female faculty members was disproportionately small.[78] According to the information provided by the Estonian delegation, that number has increased, and instead of the 16% in 2003/2004, the percentage is now 17%.[79]

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[74] Ibid, pp. 31-35. See also Margit Sarv, Protection of Equality, pp. 15-18; or the case on the GEC website at http://www.svv.ee/index.php?id=524 (last visited on 16 July 2008).

[75] UN Committee for the Elimination of Discrimination against Women, discussion of the report 2, cl. 32.

[76] UN Committee for the Elimination of Discrimination against Women, answers to questions, pg. 12.

[77] UN Committee for the Elimination of Discrimination against Women, discussion of the report 1, cl. 41. See the Minister of Education and Research regulation no. 31 dated 4 April 2007, entitled "Conditions and procedure for confirming the conformity of textbooks and other study materials with vocational or specialized national curriculum and requirements for textbooks and other study materials."

[78] UN Committee for the Elimination of Discrimination against Women, summarizing comments, cl. 12.

[79] UN Committee for the Elimination of Discrimination against Women, answers to questions, pg. 12.

Miscellaneous

In addition to the aforementioned, in the GEC's practice, other questions have also arisen. A person approached the representative who wanted to know whether the practice of allowing women free admission into clubs, when men must pay, is gender discrimination. The GEC found that this is actually gender discrimination, since night clubs are public spaces "which the public has the right to enter and receive equal treatment related to gender". This is similar to the position taken in many other countries.[80]

The GEC was also approached with the question of whether compulsory military service for men could be considered gender discrimination. The representative had to admit that according to the Gender Equality Act, this is not discrimination. This has also been confirmed by the Chancellor of Justice, who found that unequal treatment is based on good reasons and, therefore, is also not in violation of the Constitution.[81]

[80] Review of the GEC's Activities, pp. 36-37.

[81] Ibid, pp. 43-44.

Discrimination based on nationality

Estonia is a small country, but over 100 nationalities live here, whether they are immigrants or those who have historically lived here.[82] The national programme approved by the government entitled "Integration into Estonian Society 2000-2007" has concretised the concepts of "national minorities" and "ethnic minorities" based on historical origins:

> *"Since the concept of national minorities is applied in population studies to those national communities that have constantly lived in a given territory for a long time, then a differentiation should be made between the larger national communities that have traditionally lived in various regions of Estonia (in 1934, 92,600 Russian, 16,300 German, 7,600 Swedes, 5,400 Latvians, and 4,400 Jews) as national minorities and the representatives of those nationalities that came to live in Estonia as the result of post-WW II immigration as ethnic minorities."*[83]

A separate societal group that has come to Estonia from elsewhere (from the European Union and third countries) who have lived in Estonia for less than three years are considered new immigrants.[84]

A National Minorities Cultural Autonomy Act is valid in Estonia, which was passed by the Parliament of Estonia on 12 June 1993, based on the right provided by §50 of the Constitution "to create self-government based on national cultural interests". The National Minorities Cultural Autonomy Act defines the concept of "minority nationality" and gives the people included under this concept the right "to form cultural self-governments for realising the culture-related rights provided by the Constitution".[85] It also narrows the circle of individuals who can form such governments, by giving this right only to people from the German, Russian, Swedish, and Jewish national minorities and to those that have over 3,000 members (§2 (2)).

Pursuant to §4 of the National Minorities Cultural Autonomy Act, the minority nationalities have the right to form and support national cultural and educational institutions and religious congregations; to create national organisations; to perform national traditions and religious customs, if they do not damage public order, health, or morality; to use their native language in conducting their affairs within the limits as established by the Language Act; to publish printed materials in their national languages; to conclude co-operation agreements between national cultural and educational institutions and religious congregations; to distribute and exchange information in their native language.

In 2007, the cultural self-government of the Estonian-Swedes was added to the cultural self-government of Ingerian Finns, which was established in 2004 and was the only one operating to date—the elections for the cultural council for the Swedish minority was held on 2-4 February 2007.[86] Cultural self-government provides "ethno-cultural minority groups with legal status in its

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[82] The national program "Integration into the Estonian Society 2000-2007" was approved by the Government of the Republic on 14 March 2000, available on the Internet at http://www.rahvastikuminister.ee (last visited on 22 September 2008), pg. 44.

[83] Ibid, pg. 44.

[84] Estonian Integration Plan 2008-2013, approved by the Government of the Republic on 10 April 2008 with order no. 172, pg. 4.

[85] The National Minorities Cultural Autonomy Act, RT I 1993, 71, 1001, §1 and §2(1).

[86] Website of the Swedish minority nationality: http://www.eestirootslane.ee (last visited on 2 July 2008).

direct relations with the state and also the right to apply for support for their activities from the national budget."[87]

In addition, the situation of national minorities in Estonia is affected by the Council of Europe Framework Convention for the Protection of National Minorities that was passed in Strasbourg on 5 November 1992 and entered into force in Estonia on 1 February 1998. Since this is an international agreement, then pursuant to §3 and §123 of the Constitution, it is a part of the Estonian legal system and is placed higher than ordinary laws in the legal hierarchy.[88] Pursuant to the Framework Convention, Estonia is obligated to regularly submit reports on its fulfilment. To date, two reports have been submitted and the Advisory Committee on the Framework Convention has made recommendations to Estonia based thereon.[89]

The Advisory Committee on the Framework Convention for the Protection of National Minorities continues to criticise the National Minorities Cultural Autonomy Act and its implementation. In its second opinion regarding Estonia, the committee noted that "Estonia has made changes to the legislation related to national minorities in important areas of activity, but the legislation that has been compiled directly for national minorities has remained unchanged to a great extent. For instance, the National Minorities Cultural Autonomy Act has not been amended, although it is generally considered ineffective and impractical…".[90]

In addition, the committee recommended that Estonia review the definition of national minorities and "weigh the application of the Framework Convention to the people belonging to the remaining minorities, first of all to non-citizens."[91] The Advisory Committee also recommended that "Estonia should continue making citizenship more accessible, by, among other things, exempting older applicants from the language requirement of the Citizenship Act [,] … to provide more free Estonian language instruction to people with limited financial means, who plan to take their citizenship exams or who want to improve their state language proficiency for other purposes that support integration."[92]

In 2007, several proposals to amend the Citizenship Act were made, in which the simplification of the proceedings to acquire citizenship were suggested. All of the proposals made to the Parliament of Estonia to date have been rejected.[93] The Government of the Republic passed a regulation that, among other things, provided conditions for being exempted from the examination on the

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[87] Integration Foundation, National Minorities and National Culture in Estonia, published on the Internet at http://www.meis.ee/est/etnilinevahemus (last visited on 22 September 2008)

[88] Ilmar Tomusk, "About Integration in the Context of the Language Rights of National Minorities", Õiguskeel no. 4, 2005, also available at http://www.keeleinsp.ee/?menu=34&news=357 (last visited on 22 September 2008).

[89] All available on the Ministry's of Foreign Affairs website at http://www.vm.ee/est/kat_475/4501.html (last visited on 22 September 2008)

[90] The Advisory Committee on the Framework Convention for the Protection of National Minorities, second opinion regarding Estonia, 24 February 2005, doc. no. ACFC/OP/II(2005)001, available in Estonian at http://web-static.vm.ee/static/failid/051/2nd_OP_Estonia_est_24.02.105.pdf (last visited on 2 July 2008), cl. 8.

[91] Ibid, cl. 24.

[92] Ibid, cl. 50-51.

[93] Draft law to amend §9 of the Citizenship Act (113 SE), available on the Estonian parliament's website at http://www.parliament of Estonia.ee/?page=en_vaade&op=ems&eid=143166&u=20081006163452, and draft law to amend §5 of the Citizenship Act (126 SE), available on the Estonian parliament's website at http://www. parliament of Estonia.ee/?page=en_vaade&op=ems&eid=154459&u=20081006163540 (both last visited on 22 September 2008).

Citizenship Act and Constitution. However, the change is not based directly on belonging to a national minority, but rather the person's state of health.[94]

In addition to the aforementioned, the Advisory Committee on the Framework Convention for the Protection of National Minorities noted the lack of an Equality of Treatment Act as an additional shortcoming.[95] In 2007, this law was actively processed based on pressure from European institutions, without arriving at the passage of the law. At the end of 2006 and the beginning of 2007, the European Commission sent two official letters, in which it refers to the fact that directives 2000/43/EC (29 June 2000) and 2000/78/EC (27 November 2000) that deal with the prohibition of discrimination in the workplace, have not been correctly adopted by Estonia. The purpose of the Equality of Treatment Act is the introduction of these directives into Estonian law. Since the official letter from the European Commission "marks the first formal step in the infringement proceedings pursuant to article 226 of the Treaty establishing the European Community" then, based thereon, the passage of the draft of the Equality of Treatment Act is extremely important.[96] Despite the constant changes in the draft and the fact that the third version of this draft is being processed in 2008, it still has not been passed.

The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions[97] which came into force in 2007, also deals with the situation of national minorities. The Ministry of Culture was assigned to be the monitoring institution in respect to the implementation of the Convention.[98] In connection with the implementation of the Convention, the position of Deputy Secretary General for Cultural Diversity was created at the Ministry of Culture.

No important changes took place in 2007 in the regulations related to the rights of national minorities.

At the same time, the passage of the Estonian Public Broadcasting Act should be noted, which in §5(8) specifies that one of the assignments of the Estonian Public Broadcasting (EPB) is to broadcast programmes that "within the limits of the Estonian Public Broadcasting's possibilities, correspond to the information needs of all population groups, including minorities."[99] The EPB has one Russian-language radio station (Raadio 4) and one Russian-language news portal Novosti.

Support for the culture of national minorities

Support for the culture of national minorities continued primarily with financial resources. This is also noted in the report on the fulfilment of the Framework Convention for the Protection of National Minorities. Activities also continued to increase the involvement of national minorities and their organisations in decision-making processes.[100] However, the Advisory Committee on the

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[94] Government of the Republic regulation no. 247 dated 13 December 2007, RTI, 19.12.2007, 68, 422.

[95] The Advisory Committee on the Framework Convention for the Protection of National Minorities, second opinion regarding Estonia, cl. 33-36.

[96] Parliament of Estonia, Explanatory memorandum to the draft of the Equal Treatment Act (67 SE III), available on the Internet at http://www.parliament of Estonia.ee/?page=en_vaade&op=ems&eid=96268&u=20080820192134 (last visited on 22 September 2008, pg. 1.

[97] Order no. 637 of the Government of the Republic dated 23 November 2006, RTL, 05.12.2006, 85, 1553.

[98] Ministry of Culture, "Kultuuriline mitmekesisus", last updated on 29 August 2008. Available on the Internet at http://www.kul.ee/index.php?path=0x2x1424 (last visited on 22 September 2008).

[99] RTI, 06.02.2007, 10, 46.

[100] The Advisory Committee on the Framework Convention for the Protection of National Minorities, second opinion regarding Estonia, cl. 58.

Framework Convention for the Protection of National Minorities still emphasised that continual financing, which is not dependent on individual projects, is also important.[101] A positive example is the financing of the Sunday schools of national minorities, which the Ministry of Education and Research has financed since 2004 through the Integration Foundation.[102] According to the Integration Foundation, Sunday schools of the national cultural societies of 14 different nationalities were registered in 2007.[103]

The Advisory Committee on the Framework Convention for the Protection of National Minorities provided suggestions as to how to more effectively finance the organisations of national minorities. According to the Committee, all the materials related to the financing of projects, primarily those that "are related to the European Union financing plans for this area of activity", should be made available to the national minorities in their native language. Here, the East-Viru and Lake Peipsi region were emphasised.[104]

The information directed towards the national cultural societies about the project competitions and informational days of the Integration Foundation are easily accessible to the societies. In addition, consultations related to enterprise are also available from the East-Viru County Enterprise Centre on an individual basis. The corresponding information from Enterprise Estonia is available on the Internet in both Estonian and Russian. Information about other funds is not as accessible to the Russian-speaking population in their native language. Information on governmental agencies is available in Russian on the Internet, although, due to insufficient publicity, the existence of this information is not generally known

Educational opportunities for non-Estonian-speaking children in Estonia

Via international agreements (for example article 28 of the Convention on the Rights of the Child) and domestic legal instruments, Estonia has accepted the obligation to guarantee access to elementary education to all children that live in Estonia. This right and obligation is established by §37 of the Constitution and §8 of the Education Act.[105] Pursuant to the latter, education is compulsory for all children from the age of 7 until they acquire a basic education or become 17 years old. This obligation applies to all children that live in Estonia, regardless of their citizenship, except for the children of the representatives of foreign countries. This state obligation does not cause any problems if the child speaks sufficient Estonian or speaks Russian.

Estonia's public educational institutions are currently in a transition phase, according to which the schools that have had Russian-language curriculum to date must adopt an Estonian-language curriculum. §52(2) of the Basic and Upper Secondary School Act[106] specifies that all public schools must start the transition to Estonian-language teaching as of 1 September 2007. The gradual transition was started based on the Development Plan for the General Education System for

[101] Ibid, cl. 20

[102] A. Koik, "Rahvusvähemuste pühapäevakoolid said riigilt toetust" Ministry of Education and Research, available on the Internet at http://www.hm.ee/index.php?049519 (last visited on 22 September 2008)

[103] E. Müüripeal, "Rahvuskultuuriseltside pühapäevakoolid – emakeele ja kultuuriõppe toetajad" Integration Foundation, available on the Internet at http://www.meis.ee/est/etnilinevahemus/pk (last visited on 22 September 2008

[104] The Advisory Committee on the Framework Convention for the Protection of National Minorities, second opinion regarding Estonia, cl. 64.

[105] Estonian Education Act, RT 1992, 12, 192.

[106] RT I 1993, 63, 892.

2007-2013, according to which the process must be completed by 2012.[107] Gradually, Estonian literature, social studies, geography, music, and Estonian history will start to be taught in Estonian. In addition to these five subjects, the school must choose two more subjects. The transition started with the teaching of one subject in Estonian, to which an additional subject is added during the subsequent academic year. It is possible to transfer to Estonian language instruction faster than the law demands, assuming that the school, students, and teachers are ready for this.[108] For the most painless possible start for the process, and to increase the competitiveness of teachers that have taught based on a Russian-language curriculum under the conditions of an Estonian-language curriculum, numerous informational days, conferences and training programmes were carried out in 2007.[109] These compulsory changes only affect public educational institutions and not private schools.

In the case of children that do not speak Estonian or Russian at a level that would allow them to participate in studies, the state itself has difficulties in fulfilling its obligations. A separate system should be created for these children that would enable a large part of the teaching to be translated into a language that they understand. In Estonia, this possibility exists only for two or three languages, due to both financial and human resources limitations.[110]

In 2007:

… 65% of Estonians and 39% of those of other nationalities have practically no contact and 12% of Estonians and 1% of those of other nationalities belong to nongovernmental organisations;
… people with undefined citizenship comprise 9% of the Estonian population;
… the percentage of managers and senior specialists among Estonians is 31% and among other nationalities 19%; the percentage of skilled and unskilled workers among Estonians is 35% and among other nationalities 53%;
… 75% of children whose native language is not Estonian had the opportunity to participate in Estonian-language study;
… 153 non-Estonian cultural societies and other organisations were supported by the government;
… 72 people participated in a labour exchange, and a total of 1,009 people participated in language and professional courses;
… 60% of non-Estonians listened to Radio-4 every week and/or watched ETV;
… 1,800 people successfully completed the examination on the Constitution and Citizenship Act.

Source: Estonian Integration Plan 2008-2013

The topic of ethnic relations in research and through the eyes of outside observers

The events that broke out in April 2007, in connection with the removal of the Bronze Soldier, notably increased the attention paid to the ethnic relations situation in Estonia. Numerous studies were conducted and the international public expressed their interest.

In 2007, the Office of the Minister for Population and Ethnic Affairs ordered two sociological studies to be conducted, the principal topic of which was ethnic relations and integration after the April events. From May to June, Saar Poll and the researchers at the University of Tartu conducted a study entitled "Challenges of Ethnic Relations and Integration Policies after the Bronze Soldier

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[107] Government of the Republic, Vene õppekeelega munitsipaal- ja riigikoolide gümnaasiumiastme eestikeelsele õppele ülemineku tegevuskava aastateks 2007-2012 http://www.hm.ee/index.php?popup=download&id=6953 (last visited on 22 September 2008).

[108] More detailed information on the process is available on the Ministry's of Education and Research website at http://www.hm.ee/index.php?047953 (last visited on 22 September 2008).

[109] Integration Foundation, "Õpetajate konkurentsivõime tõstmine muukeelses koolis" available on the Internet at http://www.meis.ee/est/2007/konkurents (last visited on 22 September 2008)

[110] Ministry of Justice, Ministry of Social Affairs, Ministry of Foreign Affairs, and Ministry of the Interior, Answer to the inquiry from the Human Rights Institute of 30 May regarding child trafficking, 7.07.2008.

Crisis" wherein 1,487 people aged 15 to 74 participated.[111] At the same time, upon the order of the Minister for Population and Ethnic Affairs, the social scientists at Tallinn University conducted a study entitled "The Feasibility of the Integration of Estonian Society after the Bronze Night".[112]

The Estonian Human Development Report for 2007[113] also includes information about the ethnic relations in Estonia. The chapter devoted to the situation involving non-Estonians approaches these issues from the economic aspect and they arrive at the conclusion that, despite economic growth, the salary differences between Estonians and non-Estonians is becoming increasingly great. At the same time, the "glass ceiling" effect is appearing in the labour market, in which the position of non-Estonians is worse than that of Estonians with the same level of education, and they have fewer opportunities to find work in their field of specialisation. This in turn negatively affects the social status of non-Estonians and their self-esteem. Professor Marju Lauristin, who is the author of the chapter devoted to the situation of non-Estonians, has acknowledged that a large percentage of the Russian-speaking population has experienced discrimination. At the same time, Professor Lauristin notes that "if we start to dissect the situation in more detail, it turns out that it is not discrimination in the legal sense, although people perceive aversion, distrust, and the drawing of boundaries between "us" and "them" as discrimination."[114]

At the international level, the situation in Estonia was under discussion in several organisations. In 2007, Estonia was visited by René van der Linden, the President of the Parliamentary Assembly of the Council of Europe (September 2007) and Human Rights Commissioner Thomas Hammarberg (June 2007) and UN Special Rapporteur on Racial Discrimination Doudou Diène (September 2007). All of them gave their assessment of integration to date and commented the April events. The international observers noted that Estonia's politicians, society, and mass media appreciate the developed situation with sufficient seriousness and a sense of responsibility. For instance, Special Rapporteur on Racial Discrimination Doudou Diène, whose critical assessments during his visit to Estonia caused sharp feedback and commentaries in the media, acknowledged in his report on his visit to Estonia that positive changes are taking place in Estonia and noted the increasing tolerance in Estonian society.[115]

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[111] Saar Poll OÜ, Rahvussuhted ja integratsioonipoliitika väljakutsed pärast pronkssõduri kriisi, July 2007, available on the Internet at http://www.rahvastikuminister.ee/public/Integratsioonipoliitika_valjakutsed.pdf (last visited on 22 September 2008).

[112] Study "Eesti ühiskonna integratsiooni võimalikkuest peale pronksööd", see more at http://rto.tlu.ee/TEADUS/default.asp?sisu=uurimisraportid (last visited on 22 September 2008).

[113] Estonian Cooperation Assembly, Estonian Human Development Report 2007, Tallinn 2008

[114] "Non-Estonians in Unequal Position on the Labour Market" Postimees 17.03.2008, in Russian.

[115] UN Special Rapporteur on Contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Racism, Racial Discrimination, Xenophobia and Related Forms of Intolerance, follow-up to and implementation of the Durban Declaration and Programme of Action, UN doc. No. A/HARC/7/19/Add.2 (17.03.2008).

Discrimination based on sexual orientation

In 2007, significant progress was not made in respect to the protection of the right of LGBT persons. At the beginning of 2008, with the help of HRC experts and based on an order from the European Union Agency for Fundamental Rights, a legal study on the topic of homophobia and discrimination based on sexual orientation was carried out.[116] From the results, it turned out that Estonian agencies do not pay enough attention to combating discrimination based on sexual orientation, and that both statistics and practices are inadequate, from which it can be concluded that sexual minorities do not feel sufficiently secure in Estonia to stand up in defence of their rights.

In respect to combating discrimination based on sexual orientation, Estonia still needs to take several steps in order to comply with the minimum European requirements related to human rights, including the European Union acquis. European Union Council Directive 2000/78/EC,[117] which was supposed to be transposed at the latest by Estonia's accession to the European Union (i.e. 1 May 2004), was still not totally implemented by the end of 2007. The draft of the Equality and Equal Treatment Act, which significantly improves the protection provided against discrimination based on sexual orientation and that was accepted by the Parliament of Estonia on 25 January 2007, still had not passed by the end of 2007 due to political dissension.

Marriages between people of the same sex are still not contracted in Estonia, and the recognition of same-sex marriages contracted in foreign countries is also doubtful.[118] The state also does not recognise the cohabitation between same-sex couples, and social and other guarantees that legally accompany marriage do not include them.[119] This also leads to possible problems with the implementation of the principle of the free movement of people in the European Union: the rights of same-sex couples that have legally registered their cohabitation in their country of origin are not recognised by the Estonian authorities. The implementation of the requirement provided by article 3(2) (b) of Council Directive 2004/38/EC[120] to facilitate entry into EU member states and living in EU member states for the partners of persons "who have a constant and properly verified relationship with a citizen of the Union" by the Estonian legal system is doubtful.

In 2007, the issue of sexual orientation arose more broadly in connection with the organisation of the Gay Pride event. The organisers and Amnesty International were quite critical of the activities of the Estonian authorities in respect to the similar events in previous years that ended in violence, especially as related to the control of the homophobic counter demonstrators.[121]In respect to the 2008 parade, the organisers of the event blamed both the city authorities as well as the police for

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[116] European Union Fundamental Rights Agency, *Thematic Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation (Estonia)* February 2008, available on the Internet at http://fra.europa.eu/fra/material/pub/comparativestudy/FRA-hdgso-NR_EE.pdf (last visited on 17 July 2008).

[117] Available on the Internet at http://eur-lex.europa.eu/LexUriServ/LesUriServ.do?uri=DD:05:04:32000L0078:ET:PDF (last visited on 22 September 2008).

[118] Pursuant to §1(1) of the Estonian Family Act, marriage is contracted between a man and a woman. No other officially recognised forms of cohabitation (including common-law marriage) that are comparable to marriage exist in Estonia.

[119] The organisation of cohabitation based on a contract of partnership under the law of obligations sometimes mentioned by the Ministry of Justice is insufficient and does not guarantee any governmental benefits or guarantees that accompany marriage.

[120] Available on the Internet at http://eur-lex.europa.eu/LexUriServ/LesUriServ.do?uri=DD:05:05:32004L0038:ET:PDF (last visited on 22 September 2008).

[121] Amnesty International, "Estonia: The Right to Freedom of Peaceful Assembly Must be Protected", 15 August 2006, available on the Internet at http://www.amnesty.org/en/library/info/EUR51/001/2006 (last visited on 14 February 2008).

placing bureaucratic barriers and refusing co-operation.[122] In the recommendation that was sent to Police Prefect Raivo Kütt for the observation of legality and good administrative practices, the Chancellor of Justice found that, although the requirement to involve a security company was lawful, this could not have a legally binding effect on the granting of the permit for the organisation of the event.[123]

§151 of the Criminal Code also criminalises homophobic declarations:

> *"For activities that have publicly incited hatred, violence or discrimination in connection with nationality, race, skin colour, gender, language, heritage, religion, **sexual orientation,** political convictions or financial or social standing, if this has caused a threat to the life, health or property of a person, …"*

At the same time, the given provision regarding hatred, violence and discrimination related to sexual orientation has not been implemented in practice, which is why its effectiveness cannot be adequately assessed or the provision lacks any effect.

Problems related to transgender persons have not attracted attention or been dealt with in Estonia. The legal regulation dealing with the rights of transgender persons and changing gender are dispersed among several different laws and regulations, which is why these persons lack an overview of their rights and obligations.

In December 2007, the final report of the study entitled "The Unequal Treatment of GLBT Persons in Estonia", was published by the research fellows of the University of Tartu Institute of Sociology and Social Policy and carried out upon an order from the Ministry of Social Affairs and support from the European Commission.[124] Among other things, the study shows that unequal treatment appears at the state, society and individual level and that "contradictions occur in the laws: one law declares equal rights and the right of the equality of treatment, while other laws restrict these rights and even differentiate certain groups of people."[125] In addition, it was found that GLBT people are themselves often not aware of their rights.

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[122] Society for the Protection of Estonian Sexual Minorities (NGO), "Pöördumine seoses Tallinna Pride 2007 korraldamisega seonduvalt, 12 July 2007, available on the Internet at http://www.epl.ee/?arvamus=392837 (last visited on 22 September 2008)

[123] Office of the Chancellor of Justice, "Soovitus õiguspärasuse ja hea halduse tava järgmiseks", Letter to Police Prefect Raivo Kütt, September 2007.

[124] Judit Strömpl, et al. "GLBT-inimeste ebavõrdne kohtlemine Eestis" Final Report, Tartu 2007, available on the Internet at http://213.184.49.171/www/gpweb_est_gr.nsf/HtmlPages/GLBT-inimesteebavõrdnekohtlemineEestis/$file/GLBT-inimeste%20ebavõrdne%20kohtlemine%20Eestis.pdf (last visited on 22 September 2008).

[125] Ibid, pg. 53.

Proposals of the research fellows to the policymakers:

•The situation of GLBT people requires further study.
•The legislation of the Republic of Estonia and the European Union regarding equal rights and equal treatment needs to be thoroughly analysed.
•Decisions must be made based on the opinions and needs of the target group, not the assessments of the wider public, who are not actually affected by the decisions.
•Before decisions are made, international experience must be examined, in order to learn from the mistakes of others (see the experiences of the Norwegians, Czechs and others).
•Decisions must be based on scientific bases and competent analysis.
•The functioning of the law prohibiting the incitement of hatred must be monitored in all areas of life, especially in the media.
•In society, attitudes that propagate tolerance must be constantly and systematically promoted.
•Specialists that deal with people (health care workers, teachers, police officers, officials, journalists, social workers) must receive the corresponding education in order to prevent unequal treatment in everyday practice.
•The cases of discrimination and incitement of hatred committed by the aforementioned specialists must be especially stringently punished.
•Awareness must be increased among GLBT persons of their rights, which correspond to general human rights.

Source: Judit Strömpl, et al. "The Unequal Treatment of GLBT Persons in Estonia", The final report of the study. Tartu 2007.

The situation in detention facilities[126]

In May 2007, a delegation from the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment – CPT visited Estonia.[127] The fourth visit of the Committee focused on the developments that took place since the previous visit. In addition, the treatment by the police of the participants in the disturbances that took place in Tallinn in April was examined as was the situation of juvenile prisoners and those serving life sentences. Pursuant to the rules of the CPT, the results of the visit are confidential.

Estonia was also visited by the Council of Europe Human Rights Commissioner,[128] in order to discuss the fulfilment of the recommendations made by the Commissioner in the memorandum published on 11 July.[129] Among other things, the memorandum includes an overview along with recommendations regarding detention facilities.

In 2007, other international organisations that have discussed the situation in Estonia's detention facilities included the UN Committee against Torture (CAT) in connection with the Estonian report on the fulfilment of the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment.

On 18 February 2007, an important amendment to the Chancellor of Justice Act came into force.[130] Pursuant to the amendment, one of the tasks of the Chancellor of Justice is to act as a preventive institution as defined by the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment. Within its framework, one of the most important activities of the Chancellor of Justice is to monitor the activities in prisons and detention centres. At the same time, the Chancellor of Justice dealt with this area of activity before the law was amended.

As of 2008, there are five prisons under the jurisdiction of the Ministry of Justice—Harku, Murru, Tallinn, Tartu and Viru.[131] The Ämari Prison was closed in 2007 in connection with the opening of

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[126] Within the framework of this review, the only detention facilities that were examined are prisons and detention centres. Psychiatric institutions, primarily in respect to coercive treatment, were outside the scope of the review although there are problems and topics that need to be considered. The Citizenship and Migration Board's expulsion centres are also outside the scope of this review.

[127] Council of Europe: Committee for the Prevention of Torture, Press Release— Council of Europe Anti-Torture Committee visits Estonia, 24.05.2007, available on the Internet at http://www.cpt.coe.int/documents/est/2007-05-24-eng.htm (last visited on 2 July 2008).

[128] Council of Europe, Press Release—Human Rights Commissioner Visits Latvia and Estonia, 01.10.2007, available on the Internet at http://www.coe.int/t/commissioner/News/2007/071001Latvia-Estonia_en.asp (last visited on 2 July 2008).

[129] Memorandum of the Human Rights Commissioner.

[130] Law to amend the Chancellor of Justice Act, RTI, 08.02.2007, 11, 52.

[131] Ministry of Justice, *Vanglate ja kriminaalhoolduse aastaraamat*, Tallinn 2008, pg. 21.

the Viru Prison at the beginning of 2008.[132] According to the information on the Estonian Police website, there are 16 detention centres under the jurisdiction of the Ministry of Justice.[133]

Currently, the prison system is being modernised in Estonia, during which two prisons that conform to today's standards have been opened: the Tartu Prison in 2002 and the Viru Prison in 2008. There are plans to build a new Tallinn Prison by 2012 (in Maardu). In addition to the significant improvement in living conditions, the changes involve a transition from Soviet-era dormitory prisons to cell-type prisons.[134] The detention centres, where conditions have continued to be the subject of international criticism, are also being modernised.[135]

International organisations have acknowledged the developments, including the improvement of living conditions and finding a solution to overpopulation.[136] For instance, on 8 November 2005, the European Court of Human Rights found that living conditions at the Central Prison (Patarei Prison) and the Jõgeva Detention Centre amounted to treatment that was deemed to degrade human dignity (Alver vs. Estonia). In 2007, the Council of Europe's Committee of Ministers found that Estonia has fulfilled the obligations resulting from the given case and the situation has significantly improved, referring to the shutdown of the Central Prison and the planned shutdown of the Jõgeva Detention Centre and the opening of a new detention centre.[137] In addition, the Committee also referred to the programme of the Ministry of the Interior to improve the living conditions at the detention centres, and considered the development to suffice for ending the case.

At the same time, the Council of Europe Human Rights Commissioner has criticised the reconstruction plans. The Commissioner noted that in anticipation of new buildings, the detention centres currently in use have been neglected and their situation has even deteriorated in recent years.[138] "The planned opening of new detention facilities cannot be an excuse to legalise intolerable conditions."[139] The Chancellor of Justice is of the same opinion, whose assessment is that "the transition phase must progress smoothly, and throughout attention must be paid to make sure that prisons are not closed before the number of detainees and the capacity of the remaining prisons truly allow for this."[140]

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[132] According to the Development Plan of the Ministry of Justice until 2012, (approved by Directive no. 8 of the Minister of Justice from 2008), the plan is to have four prisons in Estonia in 2012: Tallinn, Tartu, Viru and Murru Prisons. By 2015, there are also plans to close the Murru Prison (pg. 26).

[133] Tartu, Võru, Põlva, Valga, Viljandi, Jõgeva, Tallinn (Northern Police Prefecture Detention Centre), Pärnu, Kärdla, Paide, Rapla, Haapsalu, Kuressaare, Kohtla-Järve, Narva, and Rakvere Detention Centres.

[134] Development Plan of the Ministry of Justice until 2012, pp. 26-27. Prison yearbook, pg. 3.

[135] Development Plan of the Ministry of the Interior 2008-2011, pp. 10-11; UN Committee against Torture, Written answers to explanatory questions (CAT/C/EST/Q/4), which have arisen in connection with the review of Estonia's fourth periodic report (CAT/C/80/Add.1), UN document no. CAT/C/EST/Q/4Add.1 (30.10.2007), cl. 91.

[136] UN Committee against Torture, Conclusions and recommendations, UN document no. CAT/C/EST/CO/4 (22.11.2007), cl. 6.

[137] Council of Europe's Committee of Ministers, resolution CM/ResDH(2007)32—Information on the measures taken to comply with the judgment in the case of Alver against Estonia.

[138] Memorandum of the Human Rights Commissioner, cl. 36-39—referring primarily to the Rakvere and Kohtla-Järve Detention Centres, although adding that based on the collected information, similar circumstances can also be concluded to exist in other detention centres throughout Estonia.

[139] Memorandum of the Human Rights Commissioner, cl. 45 – "The planned opening of new detention centres cannot be seen as an excuse to legitimise intolerable conditions".

[140] 2006 Report of the Chancellor of Justice, pg. 124.

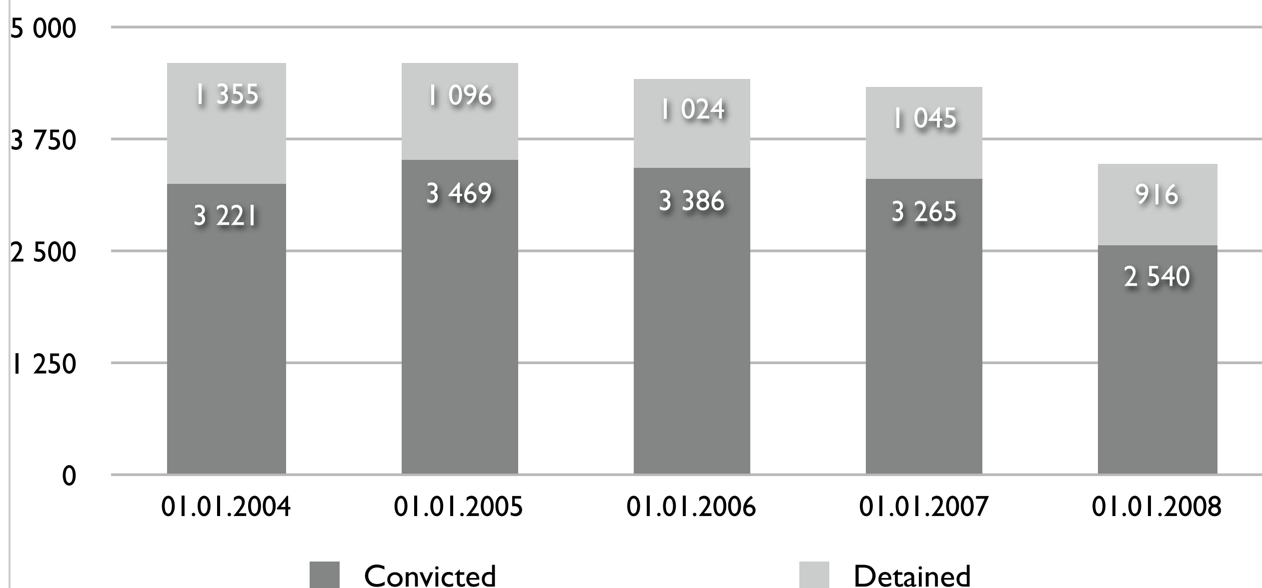
Population of detention facilities

One of the reasons for modernising the system of prisons and detention centres is their overpopulation, which has created concerns for the officers themselves and for various international organisations. Overpopulation affects the general living conditions, including hygiene and discipline and, therefore, finding a solution is a priority.

In addition to the living conditions of the detainees, the problem has a wider impact on the whole society.

> *"The overpopulation of the detention centres and the shortage of places has caused a situation where the actual fulfilment of the arrests ordered by the court are not enforced and the conviction that the legal system is incapable of carrying out the sanctions established by the law becomes ingrained in the people that have committed offences… However, the aforementioned reduces the belief of the population in the validity of the standard and does not guarantee sufficient protection of law and order, because punishment can be avoided by individuals or the time between the act and the punishment is so long that the impact of the punishment is not effective."*[141]

Figure 2. Number of detainees in 2004-2008



Source: Criminal Police studies no. 8, pg. 128

In the review of human rights in Estonia compiled in the US, the majority of prisons continue to be classified as overpopulated.[142] According to the Annual Report on Prisons and Probation Supervision, as of 1 January 2008, there were 3,456 prisoners in Estonian prisons: 2,540 convicted and 916 detainees.[143] (See figure 2). According to the statistics of King's College

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[141] Development Plan of the Ministry of Internal Affairs 2009-2012, Annex 1.

[142] Bureau of Democracy, Human Rights, and Labour, Estonia—Country Reports on Human Rights Practices—2007, 11.03.2008, available on the Internet at: http://www.state.gov/g/drl/rls/hrrpt/2007/100557.htm (last visited on 26 May 2008).

[143] Prison yearbook, pg. 38.

London, the number of Estonian prisoners per 10,000 residents put it at 44th place among the world's 217 countries and sixth among the 56 European countries.[144]

In 2007, several amendments to legislation came into force (the establishment of electronic surveillance, fines instead of imprisonment for the theft of items of little value, the procedure for processing applications for early release, etc.) which caused the sudden decrease in the number of detainees, which is shown in figure 2.[145] International organisations have acknowledged what has been done, but noted the need to continue these developments.[146] According to the development plan of the Ministry of Justice one of the priorities continues to be the reduction of the prison population by shortening prison terms, as well as reducing the ratio of imprisonment and the risk of repeated criminal offences.[147] It is hoped that by 2015, the number of detainees will be reduced to 3,000.[148]

In respect to overpopulation, the situation in the detention centres is worse that in the prisons. For instance, the Chancellor of Justice in his control visit to the Northern Police Department of the Northern Police Prefecture discovered that notably more people were placed in cells than allowed on average.[149] On average 7-8 people were being held in cells that could maximally house up to three people, and on average 1-2 people were being held for a long term in cells that should be used for up to one hour in emergency situations. In the documents from the Kohtla-Järve Detention Centre, the Chancellor of Justice discovered that 47-53 detainees were being held instead of the allowable 32 people.[150] The aforementioned shows that the Ministry of the Interior significantly lags behind the Ministry of Justice in respect to its development.

Hygiene

Hygiene is a greater problem in detention centres than it is in prison, although the situation in the prisons that have not been renovated is unsatisfactory and "in some places extremely unsanitary".[151] The Human Rights Commissioner of the Council of Europe was concerned by the lack of hot water at the Tallinn Prison. The detainees in provisional custody have access to hot water once a week when taking showers. The Ministry of Justice justified the shortcoming with the completion of a new prison building planned for 2010. The Commissioner found that this cannot be

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[144] King's College London, World Prison Brief 2008, available on the Internet at http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/ (last visited on 22 September 2008). The given statistics are quoted in the Ministry of Justice Criminal Policy Studies no. 8—Crime in Estonia (Tallinn 2008), pg. 128, although Estonia's position is noted as 41.

[145] Criminal Policy Studies, pg. 159. Also see the Prison yearbook, pg. 25. Pursuant to the Development Plan of the Ministry of Justice until 2012, "as of 26 October 2007, 132 persons had been transferred to electronic surveillance, of whom … 3 persons have been sent back to prison as a result of violating the electronic surveillance rules. Compared to previous years, the number of those on early release has doubled…" (pg. 20).

[146] Conclusions and recommendations of the UN Committee against Torture, cl. 19.

[147] Development Plan of the Ministry of Justice until 2012, pp. 24-25..

[148] Ibid, pg. 27.

[149] Summary of the control visit of the Chancellor of Justice, 01.2008 no. 7-7/071756/0800030.

[150] Chancellor of Justice, Proposal for eliminating violations, 07.2007 no. 7-4/070176/00705422.

[151] Chancellor of Justice, Control visit to the Murru Prison 16.04.2007—summary.

a justification for unsatisfactory conditions.[152] The Chancellor of Justice ascertained that hot water was also lacking in the cells at the Pärnu Detention Centre.[153]

In connection with the opportunities for taking showers in prisons, the Chancellor of Justice has noted in the summaries of several of his control visits that although “the Imprisonment Act provides for the use of washing facilities once a week as a minimum, and this is certainly only a minimum”. At the same time, “in today’s society, most people think it is normal to have the opportunity to take a shower every day or every other day /sic!/ and cannot imagine less” and, therefore, “based on the principle of human dignity, prisons should try to guarantee more frequent washing opportunities.”[154]

A greater problem has been fulfilling the requirement for the existence of a hygiene corner separated from the rest of the space in each cell. In the Northern Police Department of the Northern Police Prefecture, the hygiene corners are totally missing, and when the detainees need to use the toilet, they must notify the “the worker in charge of surveillance, who, if necessary, will order the arrival of the patrol serving the region, because during the night, the worker is in the Police Department alone, and based on security considerations, is not allowed to open the cell alone.”[155] In some places, where a hygiene corner exists, the detainees must “satisfy their bodily functions in view of their cellmates” and are watched by police officers.[156] In the Kuressaare Detention Centre, the cells contain “a plastic pail, which the detainees empty out once or twice a day.”[157] According to the Chancellor of Justice, this situation violates §26 of the Constitution, which deals with the protection of private life and the CPT has also criticised this situation.

In summary, the Chancellor of Justice has found the conditions in five places of detention to be so unsanitary that he called them “inhuman and degrading”. For instance, the living conditions at the Kuressaare Detention Centre are “in some places catastrophic” and “comparable to the conditions at the Narva and Kohtla-Järve Detention Centres that the CPT has repeatedly sharply criticised.” According to the Chancellor of Justice, detainees should not be placed in the Kuressaare Detention Centre at all to the extent that this can be avoided.[158] In respect to living conditions, the Chancellor of Justice places the detention cells at the Northern Police Department of the Northern Police Prefecture in the same category.[159]

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[152] Memorandum of the Human Rights Commissioner, cl. 28.

[153] Chancellor of Justice, Control visit to the Pärnu Detention Centre 22.05.2007, cl. 3.2

[154] Chancellor of Justice, Control visit to the Harku Prison 6.02.2007; and Chancellor of Justice, Control visit to the Pärnu Detention Centre. 22.05.2007.

[155] Summary of the control visit of the Chancellor of Justice, 01.2008 no. 7-7/071756/0800030.

[156] Chancellor of Justice, Proposal for eliminating violations, 07.2007 no. 7-4/070176/00705422, deals with the Kohtla-Järve Detention Centre; Summary of the control visit, 11.2007 no. 7-7/071415/00707664, Kärdla Detention Centre; Summary of the control visit, 11.2007 no. 7-7/071415/00707663, Põlva Detention Centre. The same problem was also discovered by the Chancellor of Justice on his control visit to the Murru Prison, 16.04.2007, and the Psychiatric Department of the Tartu Prison, Case no. 7-2/060237, 2006 Report of the Chancellor of Justice, pp. 200-204.

[157] Chancellor of Justice, Summary of the control visit, 11.2007 no. 7-7/071415/00707664.

[158] Ibid and Chancellor of Justice, Proposal for eliminating violations, 07.2007 no. 7-4/070176/00705422: “The Chancellor of Justice and the CPT have ascertained on several control visits that the detention conditions at the Kohtla-Järve Detention Centre are inhuman and degrading.”

[159] Summary of the control visit of the Chancellor of Justice, 01.2008 no. 7-7/071756/0800030.

Food

The Human Rights Commissioner criticised the conditions for allowing special diets. The detainee must obtain approval for a special diet from the medical personnel or prison cleric. Therefore, vegetarian prisoners cannot get a special diet, because vegetarianism is not a religion. In addition, such an approval system is problematic from a freedom of religion viewpoint, since the detainee must prove his/her religion.[160]

In its final conclusions, CAT has stated that “contracting parties should provide sufficient food to all detainees.”[161]

The Chancellor of Justice’s control visit to the Pärnu Detention Centre confirmed the relevance of this criticism. In Pärnu, it turned out that the detainees are only provided hot food once a day. “In the morning and evening, the detainees are given hot sweet tea.” Anything else, the detainee must save from lunch. However, this procedure violates Regulation no. 150 of the Ministry of Social Affairs dated 31.12.2002, entitled “Food norms in detention facilities”, “according to which, detainees will be given food conforming to the food norm in three parts, at least three times a day and at definite times. The daily food norm must cover the necessary food consumption for the detainee’s daily activities…”[162] In addition, in 2007, the Chancellor of Justice was petitioned by a detainee who complained that on the day that he is transported between prisons or between the prison and the detention centre, he misses lunch. The Chancellor of Justice condemns this situation and found that “a situation in which the person is not fed must be prevented.”[163]

Health care and health protection

§28(1) of the Constitution guarantees everyone, including detainees, the right to health protection. Based thereon, according to the Ministry of Social Affairs Development Plan for 2008-2011, one of the priorities of the Ministry of Social Affairs for this period is to make health care services available to all detainees in detention centres.[164] The Ministry of Justice has also set an objective of guaranteeing a proper health care system in prisons.[165]

The health care system in detention facilities is a part of the state health care system and they are financed through the corresponding ministries. According to the Prisons and Probation Yearbook, in “2007 … the reorganisation of the prison health care system was completed.” Based thereon, there is a medical department in every prison, where general in-patient medical care is provided.[166]

However, there are still problems in the field of health protection. This is also demonstrated by the CAT’s final conclusions, in which there is an expression of “concern regarding the practical implementation of the fundamental legal guarantees for the detainees, including the access to

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[160] Memorandum of the Human Rights Commissioner, cl. 29.

[161] Conclusions and recommendations of the UN Committee against Torture, cl. 19.

[162] Chancellor of Justice, control visit to the Pärnu Detention Centre. 22.05.2007.

[163] Case no. 7-1/051113, 2006 Report of the Chancellor of Justice, pp. 196-199.

[164] Pg. 10. See also Development Plan of the Ministry of the Interior 2009-2012.

[165] Development Plan of the Ministry of Justice until 2012, pg. 26.

[166] Ibid, pg. 10.

independent doctors…" The Committee finds that Estonia should guarantee that all detainees have access to medical examinations.[167]

Upon arrival in a prison or detention centre, the detainees must undergo an initial health checkup.[168] Thereby, the condition of the detainee's health is determined upon the detainee's arrival in the detention facility. This is necessary in order to assign treatment for existing health problems (e.g. various contagious diseases) and to protect the staff of the detention facility from accusations of abuse. Therefore, Estonian law also requires that this health checkup be carried out by a doctor. Unfortunately, this procedure is not followed in many detention centres and the initial checkup is conducted by an officer who happens to be present in the detention centre, who does not have the necessary medical training.[169] This discredits the independence of the health checkup that is carried out.

There should be 24-hour access to medical care in all detention facilities. "By depriving a person of his/her liberty, the state is obligated to guarantee the protection of his/her health, including the possibility of summoning help. Based thereon, the prisons are obligated to constantly monitor the condition of the prisoner's health, and if necessary, to organise in-patient care for the prisoners under the constant supervision of medical workers."[170] This does not necessarily mean that all health care services must be guaranteed in all detention facilities—it suffices if the detainees can be taken from the detention facility to the corresponding medical service provider. In this case, a provision should be made "in the budget to cover the costs for transferring the detainees, arrestees and prisoners." However, basic general medial care must be available in detention facilities.[171]

During his control visits to detention facilities, the Chancellor of Justice has come in contact with circumstances where the necessary medical supervision is not guaranteed. For instance at the Pärnu Detention Centre "it turned out that, in case the medical worker is sick or on vacation, there is not a replacement." In this case, the detainee's initial health checkup is not conducted and the provision of medical care is also disrupted.[172] At the same time, the only one to carry out regular examinations at the Narva Detention Centre was a medical assistant, who did not even have the right to write prescriptions.[173]

Psychiatric treatment in prisons is a separate issue. On his control visit to Tartu Prison, the Chancellor of Justice discovered that in order to have access to a psychiatric examination the prisoners must initially visit "a general practitioner or psychologist, which clarifies the need for treatment." Pursuant to the Health Insurance Act, an explanatory letter or other preliminary medical checkup is not necessary for getting psychiatric care.

> *"The reason for the given standard is the fact that society is significantly more sensitive about certain health disorders. For instance, patients with psychiatric disorders are often more vulnerable and the problems related to the disorders are very personal. By providing for direct access in case of psychiatric problems, the stress related to the seeing a psychiatrist is reduced and stigmatisation is avoided. Therefore, it is very important to promote the*

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[167] Conclusions and recommendations of the UN Committee against Torture, cl. 9.

[168] Prison yearbook, pg. 10.

[169] Chancellor of Justice, Summary of control visits, 11.2007 no. 7-7/071415/00707663.

[170] Supreme Court case 3-3-1-70-07 (12.12.2007), cl.13.

[171] Chancellor of Justice, Proposal for the eliminating violations, 03.2007 no. 7-4/070146/00701708.

[172] Chancellor of Justice, Control visit to the Pärnu Detention Centre, 22.05.2007, cl. 1.3.

[173] Chancellor of Justice, Proposal for the eliminating violations, 03.2007 no. 7-4/070146/00701708.

> *diagnosis and treatment of mental health disorders at an early stage and this should not be obstructed."*[174]

The obligation to guarantee medical care also includes making the medicines permitted in Estonia available to prisoners.[175] The Chancellor of Justice has reproached the Pärnu Detention Centre, where the availability of the necessary medicines to detainees has been hindered by the improper preparation of the budget. The Chancellor of Justice found that "the financing of the medical care of the detainees, officers and employees all took place from the same 'budget item'." At the same time, it turned out that the necessity for medicines and other medical care is decided by a "person without special medical knowledge (so-called 'cost manager')". Therefore, the detainees are sometimes left without the necessary medical care.[176] According to the Chancellor of Justice, the situation is even more drastic at the Narva Detention Centre, where the detainees "are not guaranteed the availability even elementary … health care services such as examination by a doctor or in-patient care in a hospital …" and "as a rule, the choice of (medicine) is limited to inexpensive over-the-counter medicines."[177]

The existence of a high-technology call system in every cell for announcing unexpected health-related alarms is not necessary, if there are other means of attracting the attention of the supervisory personnel. In its decision 3-3-1-70-07, the Supreme Court confirmed that the criterion is "a sufficiently simple and effective possibility" of summoning supervisory personnel, "who will ascertain the reason for the call, and if necessary, organise the provision of medical care to the detainee.[178] In addition, pursuant to the law, the officers must provide first aid to the detainee if necessary. "In reality, the fulfilment of this obligation assumes that the officers of the detention centre have received the necessary training."[179] At the same time, the CAT was concerned that "specialised training" has not been organised for medial personnel in order to identify signs that point to torture and mistreatment."[180]

HIV/AIDS

The HIV/AIDS situation in detention facilities, the measures for preventing their spreading and the effectiveness of medical care is under special attention.

According to the Prison and Probation Yearbook, there are "initial HIV laboratories" at all the prisons and "voluntary testing/consulting takes place… Thanks to the health care system, HIV is not spread in prisons."[181] Despite this, the CAT expressed its "continued concern" about the "insufficient HIV-specific health care" at the local detention facilities.[182] The Ministry of Justice has also admitted some shortcomings and set a goal of "preventing the spread of HIV and other

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[174] Case no. 7-2/060237, 2006 Report of the Chancellor of Justice, pp. 200-204.

[175] Chancellor of Justice, Proposal for the eliminating violations, 03.2007 no. 7-4/070146/00701708; Chancellor of Justice, Control visit to the Pärnu Detention Centre, 22.05.2007, cl. 2.1.

[176] Chancellor of Justice, Control visit to the Pärnu Detention Centre, 22.05.2007, cl. 2.1.

[177] Chancellor of Justice, Proposal for the eliminating violations, 03.2007 no. 7-4/070146/00701708, where the Chancellor of Justice found that this conditions is not fulfilled at the Narva Detention Centre.

[178] Supreme Court case no. 3-3-1-70-07, cl. 12.

[179] Chancellor of Justice, Proposal for the eliminating violations, 03.2007 no. 7-4/070146/00701708.

[180] Conclusions and recommendations of the UN Committee against Torture, cl. 14.

[181] Prison yearbook, pg. 10.

[182] Conclusions and recommendations of the UN Committee against Torture, cl. 19

contagious diseases inside the prisons, by guaranteeing the availability of HIV-related training and informational materials, HIV testing and consulting services, means of protection, as well as diagnostics and treatment."[183]

The Council of Europe's Human Rights Commissioner referred to the Estonian UNAIDS report, according to which the lack of a needle exchange programme in prisons continues to be problematic, because the reuse of needles continues to be frequent. About 30% of prisoners in Estonia inject narcotics. Therefore, the risk of transmitting HIV/AIDS and hepatitis B and C continues to be high.[184]

Narcotics and narcotics prevention

The memorandum of the Council of Europe's Human Rights Commissioner issued in 2007 reproaches the Ministry of Justice for the fact that there was no treatment for narcotics addicts at the prisons. Replacement therapy has been terminated in order to be replaced by deprivation treatment, although the latter was not yet functioning, since the training of the doctors had not been completed. Due to the reorganisation, in addition to the new arrivals, treatment was also not available for those already in prison who had previously received treatment.[185]

The Development Plan of the Ministry of Justice until 2012 has set the goal of implementing narcotics prevention and rehabilitation measures.[186] According to the plan, the Tartu Prison will specialise in offenders that are drug addicts. They will be guaranteed deprivation and replacement therapy, from which it can be concluded that the Ministry of Justice has decided to provide both treatments.

Discipline and security in prison

The measures for guaranteeing discipline have formed the basis for several legal court actions in 2007. The Chancellor of Justice also dealt with this issue in connection with received complaints and control visits to detention facilities.

One subject for dispute was the practice of searching cells. The Supreme Court found that the necessity for searching cells is justified by the security interests of the prisons.

> *"The factual and legal basis of the complaint has not convinced the court that the unpleasantness that the appellant had to endure during the search did not exceed the boundary that differentiates the unpleasantness related to the search from torture, cruel or degrading treatment."*[187]

The Chancellor of Justice thoroughly dealt with the search operation at the Murru Prison, during the course of which the prisoners were sent outside for 90 minutes, where the temperature was -3.4°C to +1.5°C.[188]

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[183] Development Plan of the Ministry of Justice until 2012, pg. 26.

[184] Memorandum of the Human Rights Commissioner, cl. 34.

[185] Ibid, cl. 35.

[186] Pg. 26. See also Criminal Policy Studies, pg. 163.

[187] Case 3-3-1-40-07 (6.09.2007), cl. 12.

[188] Case no. 7-1/050545, Report of the Chancellor of Justice, pp. 180-184.

The Chancellor of Justice stated that in order to search a cell, it is possible to establish a danger zone around the officer and "other people or objects, which cannot be entered without the officer's permission." The officers have the right to weigh and decide the necessity of doing so, which they must do purposefully in order to guarantee safety. Based thereon, it is possible "to establish a danger zone that includes the entire living area", although taking into account "the intensity of the restrictions on the prisoners' freedom of movement that accompany this", it must be an exception. The Chancellor of Justice stressed that "the Imprisonment Act does not specify a legal basis for restricting the prisoners' freedom of movement in order to guarantee the efficiency of searches, i.e. in order to reduce the direct obstruction of searches, the opportunities for hiding prohibited items, to save time, etc." If this legal basis is necessary, it must be written into the law.

In order to guarantee discipline, the constitutional right of the prisoners to health protection must not be violated.

> *"Pursuant to Constitution §18, a detainee... may not be placed in a place where his/her dignity is degraded. At the same time, §28(1) of the Constitution must be considered, pursuant to which everyone has the right to health protection. From this it follows that prisons in the performance of their functions must ensure the health protection of the prisoners in the best possible way within the limits of its possibilities and avoid placing prisoners in health-threatening conditions."*[189]

The Chancellor of Justice found that there was sufficient time to prepare for the operation and all its aspects could have been reckoned with without making the operation too complicated. However, in the given case, the limits of the law were exceeded and the prisoners' right to health protection was violated.

The Supreme Court confirmed the obligation of detainees to submit to the orders of the prison officers even when they do not agree with the prison officers' interpretation of the provisions of the law on which the order is based.

> *"[If] it is ascertained that the order given to the prisoner by the prison officer did not conform to the law, this does not mean that the prisoner who did not submit to the order did not violate the obligation to submit provided by §67(1) of the Imprisonment Act. The non-fulfilment of the order by the prisoner can be justified only if the order of the prison officer corresponds to the traits for an annulled administrative act as defined by §63(2) of the Administrative Procedure Act and the nullity of the order is clear. Pursuant to §63(1) of the Administrative Procedure Act, an annulled administrative act is invalid from the start and no one is obligated to fulfil it. …Only the different understanding of the law by the prisoner and the related opinion regarding the unlawfulness of the prison officer's order does not grant the prisoner the right to refuse to fulfil the order. … the opposite position would render the guarantee of discipline in prisons significantly more difficult."*[190]

The routine use of handcuffs in the transport of prisoners serving life sentences was treated as a separate issue. This practice does not conform to §20(1) of the Constitution, which establishes everyone's right to freedom and the security of person, which the use of handcuffs restricts. Before using such measures, their necessity should be thoroughly weighed in each specific case.[191]

The use of rooms that do not correspond to the requirements for cells in a detention facility in order to guarantee discipline is not lawful. During his control visit, the Chancellor of Justice discovered

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[189] Ibid.

[190] Court case no. 3-3-1-103-06 (01.03.2007), cl. 14.

[191] Case no. 6-10/060972, 2006 Report of the Chancellor of Justice, pp. 160-161.

that “a small metal structure with a rectangular floor surface, which resembled a closet more than a cell” was located at the Murru Prison. “Through a hole that was made in the ceiling a limited amount of sunlight and fresh air” entered the room. At the same time, there was no “possibility to sit, although the existence of a chair or bench would not necessary allow the prisoner to sit due the limited space in the structure.” The Chancellor of Justice supported the ruling of the Tallinn Administrative Court, by describing the use of the closet as a detention cell “as inhumane and degrading treatment.” According to the Chancellor of Justice, in certain cases, the “short-term placement of a prisoner in a room that does not totally conform to the requirements for a cell” may be justified. “However, the corresponding room must conform to the elementary requirements…” and the placement must not last for more than one hour. “At the same time, the use of the described temporary places of detention must be ruled out for the purposes of punishment or to pacify aggressive prisoners” since requirements have already been set for the cells to be used on these occasions.[192] Similar cells or closets were also found by the Chancellor of Justice at the Pärnu Detention Centre.[193]

In its final conclusions, the CAT calls attention to the violence between prisoners, which continues to occur at detention facilities, and the insufficiency of the measures instituted for preventing and investigating this violence. The Committee recommended that all the incidents must be investigated, even the ones in which officers are supposedly involved.[194] The US report on the situation on human rights in Estonia also calls attention to the multitude of violent incidents both between the prisoners themselves and between the prisoners and the officers.

One aspect of the issue of security in detention facilities is the security of the individual. The Chancellor of Justice is of the opinion that, in this case, measures should be employed that violated a person’s rights as little as possible, whether the restriction of the freedom of movement or the restriction of the right to one’s private life.

The Chancellor of Justice was approached by a person that had been placed in an isolated locked cell for half a year. The prison’s justification was that this was to guarantee the safety of the person. The Chancellor of Justice found that the measure did not have a legal basis.

> *“If the prison identified a danger to the safety of a prisoner, it had to implement other measures. Among other things, the prisoner could have been relocated within the prison (without restricting the prisoner’s right to move within the limits of the department), or according to §19(1) of the Imprisonment Act, the prisoner could have been relocated to another prison based on security considerations. Only prisoners that are a danger to the prison or to the security of the other prisoners can be placed in an isolated locked cell.”*[195]

Another example is the Chancellor of Justice’s visit to the Tartu Prison, where he discovered that in the psychiatric department, the prisoners were being monitored by security cameras in their cells, through which the exposed hygiene corner can also be observed. “The head of the medical department justified the monitoring of the psychiatric department prisoners in their hygiene corners by the fact that according to statistics many suicides take place in the hygiene corner.” However, the Chancellor of Justice found that this is an unwarranted invasion into the person’s private life. Suicidal tendencies must be assessed in the case of each prisoner separately and measures must be employed that violate as few of the person’s rights as possible. In addition, the Chancellor of Justice thought it necessary to stress that security measures are only short-term measures.

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[192] Chancellor of Justice, control visit to the Murru Prison, 16.04.2007 – summary.

[193] Chancellor of Justice, control visit to the Pärnu Detention Centre, 22.05.2007, cl. 5.1 and 5.2

[194] Conclusions and recommendations of the UN Committee against Torture, cl. 16.

[195] Case no. 7-1/060395, 2006 Report of the Chancellor of Justice, pp. 171-174.

Attention must be turned to "the problems (mostly [mental]) that have resulted in the suicide attempt and to their solution."[196]

Personal items and other property

The majority of the issues concerning the personal items of the detainees dealt with the restrictions on their possession during the time spent in the punishment cell, as well as during long-term visits.

In its memorandum, the Council of Europe's Human Rights Commissioner pointed out the rule that prisoners may only take their toilet articles to the punishment cell. In this connection, it recalled the CPT recommendation from the 2003 report, in which it recommended that the detainees have access to more books and reading materials than the allowable prison regulations and the Bible. Although the officers justified this rule with the law, the Commissioner found that this is too strict and requires changing.[197]

The prohibition on taking writing supplies into the punishment cell is also problematic from the standpoint of human rights protection. In the opinion of the Chancellor of Justice, this results in the restriction of various rights guaranteed by the Constitution such as the right of recourse to the courts in order to protect one's rights, because a written complaint is necessary or at least the opportunity to communicate with one's defence counsel. At the same time, this affects the prisoner's right to the inviolability of family and private life, since this restricts the opportunity to communicate with one's family. Pursuant to the Imprisonment Act, correspondence may only be restricted if "it threatens the security or internal order of the prison or damages the goals of the implementation of the imprisonment". Other restrictions exceed the permissible limits. The Ministry of Justice changed this regulation, by allowing writing supplies in the punishment cell, and thereby bring it into conformity with the Constitution.[198]

The prohibition on the prisoner taking personal items on long-term visits was discussed by the Supreme Court.[199] The Supreme Court took the position that "the interest of the prisoner in using his/her property, including personal items, everywhere in the prison's territory is not included in the area protected by §32(2) of the Constitution [(right of ownership)]. … [I]n order to achieve the objective of imprisonment and guarantee the security of the prison, it [is] possible to specify different incarceration conditions in different parts of the prison. Therefore, the list of items allowed in the visitors' room used for long-term visits need not coincide with the list of items allowed in the punishment cell."[200] At the same time, the court found that the restrictions on the items that can be taken along on long-term visits are based on the goal of "guaranteeing that after the end of the visit, the prisoner does not gain possession of items that he/she did not have when first arriving at the prison and which are not acquired through the prison."[201] Any restrictions must be reasonable and purposeful.[202]

The Human Rights Commissioner also raised the question of the funds on the prisoner's personal account. The prison administration deposits all withheld monies in this account. Of the funds in the

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[196] Case no. 7-2/060237, 2006 Report of the Chancellor of Justice, pp. 200-204.

[197] Memorandum of the Human Rights Commissioner, cl. 30.

[198] Cases no. 7-1/050670, 7-1/051659, 7-1/060507, 2006 Report of the Chancellor of Justice, pp. 157-160.

[199] Court case no. 3-3-1-29-07 (21.06.2007).

[200] Ibid, cl. 19.

[201] Ibid, cl. 14.

[202] Ibid, cl. 12.

account, 50% goes to compensate victims and 20% is placed in a savings account that is given to the prisoner upon release. The prisoner has the free use of the remaining funds while in prison. The Commissioner acknowledges the positive objective of this rule, but was concerned that the funds sent by the prisoner's family to improve his/her living conditions are deposited in this same account because the detainee can only use 30% of those funds. The Commissioner recommended that this system be changed.[203]

Education

It is possible to acquire a basic, upper secondary and vocational education in prison. In its written answers to the CAT's questions, the Estonian government admitted that they have had problems guaranteeing the necessary space. In the new prisons, the space exists. The non-Estonian prisoners have the opportunity to take Estonian courses. In 2007, a fee started to be paid in order to motivate the prisoners.[204]

Under-aged detainees in provisional custody are guaranteed basic and upper secondary education if they are detained for more than one month.[205] During visits to detention centres, the Council of Europe's Human Rights Commissioner discovered that detainees under 15 years old were not provided access to entertainment activities or schoolbooks. They also did not have a teacher, despite the fact that they had been held for several weeks.[206]

Correspondence and other communication with the outside world

On 1 February 2007, an amendment to the law came into force whereby detainees were provided with unrestricted rights to meet with legal representatives in addition to clerics, defence counsels and notaries.[207] This was previously problematic.

However, the restriction on using the phone may significantly restrict the right to meet with representatives. In answering a petition in the year prior to the amendment to the law coming into force, the Chancellor of Justice referred to the fundamental right to the help of defence counsel based on the Constitution, as well as article 6(3) (b) of the European Convention on Human Rights, pursuant to which "the accused must at least have the right to sufficient time and opportunity to prepare his/her defence."[208] Restrictions on the right must "be necessary and preserve the right to make calls to a reasonable extent" and not to distort "the nature of the detained person's right to make calls so that it may essentially make communications with the official of the institution or with defence counsel impossible".[209] The established restrictions must

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[203] Memorandum of the Human Rights Commissioner, cl. 31.

[204] UN Committee against Torture, Written answers, cl. 96. Prison yearbook, pg. 9

[205] UN Committee against Torture, Written answers, cl. 93.

[206] Memorandum of the Human Rights Commissioner, cl. 43.

[207] Report of the Chancellor of Justice, pg. 125. In its case 3-3-1-46-07 (13.11.2007), the Supreme Court specified that the defence counsel in the meaning provided below primarily means "a defence counsel in the context of a criminal or misdemeanour proceeding" and "in the case of a representative in the context of a civil or administrative proceeding, the importance of the making the call should be assessed and there should be a good reason for calling outside the schedule.

[208] Case no. 7-4/060144, 2006 Report of the Chancellor of Justice, pp. 189-191.

[209] Supreme Court case 3-3-1-54-07 (31.07.2007), cl. 9.

be temporary and be based on extraordinary events ("for instance, disorders on the prison territory, problems with the telephone network").[210]

The Supreme Court found that in the application for telephone use, the detainee may be required to name the person whom he/she wishes to call outside the schedule, in order to make sure that the person is one with whom the detention facility cannot restrict communications. The detainee cannot be required to explain the purpose of the phone call, since this violates the right to the confidentiality of messages, which is based on §43 of the Constitution.[211] This principle has also been confirmed by the Supreme Court.[212]

Both the Chancellor of Justice and the Supreme Court have had to deal with the right to the confidentiality of messages on several occasions. For instance, in the course of a control visit to the Harku Prison, the Chancellor of Justice discovered that prison officers only accepted letters to be sent to the Chancellor of Justice in unsealed envelopes and that their contents were checked visually in the presence of the prisoners. "The letters received by the prisoners from the Chancellor of Justice were also opened in the presence of the prisoners in order to check the contents of the envelopes and the possible existence of prohibited items." [213] This violates the rule whereby the correspondence and phone conversations of the prisoners with defence counsels, prosecutors, courts, Chancellor of Justice and the Ministry of Justice may not be checked.[214]

The question of paying for phone calls is related to the right to use the phone. In its case, the Supreme Court's departure point for this issue has become the objective of extra-prison communications, which is "to promote contacts between the detainees and their families, relatives and other people close to them, in order to prevent the cessation of the detainees' social ties." At the same time, the detainees cannot demand that the state pay for the phone calls, while connecting this obligation to the detainees' person accounts is wrong. Such "an interpretation would prohibit collect calls as well as the use of 'chargeable' pre-paid calling cards (e.g. Voicenet calling cards) and would unreasonably prevent … the opportunities of detainees that have no money on their personal accounts for extra-prison communications (including communications with defence counsel)."[215] The Chancellor of Justice came to a similar conclusion,[216] adding that "when choosing a calling service provider, [the prison] must give priority to a service provider whose service allows the requirements pursuant to the Imprisonment Act to be fulfilled (including the making of collect calls). The prison may not justify its activities in respect to a service provider by the fact that the actual opportunities of the detainees to communicate with those close to them are restricted to a greater extent than the law allows."

Access to books and other reading materials, as well as to television and radio is a separate topic. The Council of Europe's Human Rights Commissioner was concerned that these possibilities were

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[210] Supreme Court case 3-3-1-46-07 (13.11.2007), cl. 10.

[211] Ibid, cl. 11. See also Supreme Court case 3-3-1-46-07 (13.11.2007), cl. 11.

[212] Supreme Court case 3-3-1-103-06 (01.03.2007). See also case no. 3-3-1-69-07 (12.12.2007).

[213] The control visit of the Chancellor of Justice to Harku Prison 6.02.2007. See also Supreme Court case 3-3-1-103-06 (01.03.2007), cl. 11.

[214] Imprisonment Act, RT I 2000, 58, 376, §29(4).

[215] Supreme Court case 3-3-1-103-06 (01.03.2007), cl. 9.

[216] Recommendation of the Chancellor of Justice no. 7-4/070094/0701851 (03.2007). This was also confirmed by the Supreme Court in case 3-3-1-46-07 (13.11.2007), cl. 9.

restricted or lacking in some of the detention centres that he visited. Such a situation is not acceptable.[217]

The Supreme Court also dealt with a case related to the access to information that involved the possibility to use the electronic edition of the Riigi Teataja and the electronic database of the cases of the European Court of Human Rights. The Supreme Court is of the opinion that everyone, including detainees, must have the opportunity to become acquainted with legal provisions, which among other things, allows a person to effectively protect his/her rights.[218] Whereas the court found "that the opportunity to become familiar with legal provisions cannot be considered sufficient if this is possible only be applying for specific legislation from the prison. [This primarily because] the detainee need not know which legislation regulates the area of activity he/she is interested in, and it cannot be assumed or demanded that he/she be able to name the necessary legal instruments." Although the court admitted that the electronic version of the Riigi Teataja would probably be most practical for this purpose, it is sufficient "if the detainee can freely examine the printed version and use a dictionary of keywords to find the legislation."[219]

In connection with the database of decisions of the European Court of Human Rights, the Supreme Court referred to §44(1) of the Constitution, which establishes everyone's right to receive freely distributed information. This is an unlimited right, "and therefore this right can be restricted only on the basis of other provisions of the Constitution." In any case, such a restriction must be clearly expressed, which cannot be said about the provisions of the Imprisonment Act. Therefore, at this time, unrestricted access to the decisions of the European Court of Human Rights must be guaranteed.[220]

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[217] Memorandum of the Human Rights Commissioner, cl. 42.

[218] Court case 3-3-1-20-07 (31.05.2007), cl. 9.

[219] Ibid, cl. 10.

[220] Ibid, cl. 14.

Protection of personal data

In 2007, notable development occurred in the field of legislative drafting regarding the protection of personal data. On 15 February 2007, the Parliament of Estonia passed the Personal Data Protection Act, which, in full extent, came into force on 1 January 2008. The new law better conforms to the European Union acquis, including directive 95/46/EC, by introducing the concept of sensitive personal data instead of private personal data into the domestic judicial area. Pursuant to the law, sensitive personal data will also include biometric data. The new law allows persons to decide on the future use of the data after it is made public. It will be possible to more exactly assess the effect and functioning of the new law in the report for 2008, when the law has fully entered into force.

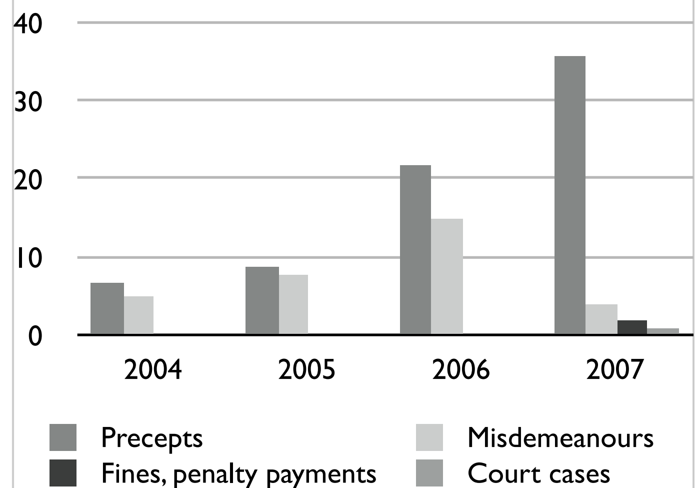

Figure 3. Activity of the Estonian Data Protection Inspectorate: infringement proceedings 2004-2007

Source: Estonian Data Protection Inspectorate

The Estonian Data Protection Inspectorate (PDI) is the governmental institution that monitors the processing of personal data. As of 14 February 2007, the PDI became an agency under the jurisdiction of the Ministry of Justice (previously it operating under the administration of the Ministry of the Interior). In its annual report for 2007[221] , the PDI has highlighted the following as its priorities:

- Forwarding personal data to foreign countries;
- Risks or opportunities in the work of web searches;
- Permissibility of wiretaps;
- Processing of personal data within the framework of the ID-ticket project;
- Children and their rights in the processing of personal data;
- Composition of personal data for the issuance of client cards.

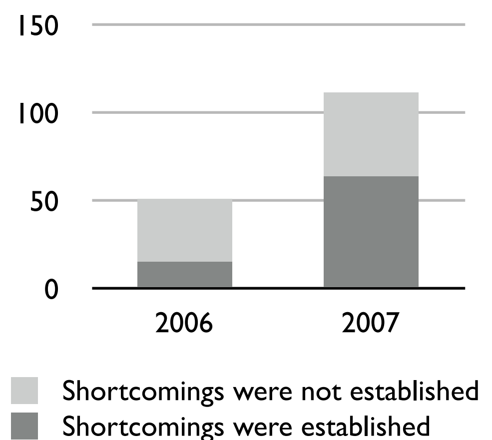

Figure 4. Activity of the Estonian Data Protection Inspectorate: establishing shortcomings 2006-2007

Source: Estonian Data Protection Inspectorate

In the field of personal data, increasing public awareness is also important. In its annual report[222] , the PDI has highlighted its activities in this area. The publication of recommended guidelines for the interpretation of the Personal Data Protection Act can be pointed out.

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[221] Estonian Data Protection Inspectorate, Estonian Data Protection Inspectorate report 1 January 2007-31 December 2007, 1 April 2008, available on the Internet at http://www.dp.gov.ee/document.php?id=696 (last visited on 22 September 2008).

[222] Ibid, pp. 14-16.

In 2007, there was one court action in the field of personal data protection in which the PDI participated, which comprised AS Hansapank's dispute of the PDI precept to terminate the publication of Ego credit cardholders' data on the website of AS Krediidiinfo after the clients had paid their debts. The PDI maintained that the publication of the clients' data by the bank was unlawful, based on the principle that in the case of a dispute, it is assumed that the data subject did not grant permission for the publication of the data. In its decision of 17 April 2007, the Tallinn Administrative Court found that the precept was substantively justified and in its final judgement legitimate. AS Hansapank filed an appeal and the hearing was assigned to April 2008.[223]

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[223] Ibid, pg. 44.

Freedom of the press

In 2007, an amendment was made to the Personal Data Protection Act in order to better protect the freedom of the press.[224] Pursuant to the draft, personal data may be disclosed for journalistic purposes without the permission of the owner of the data, if there is overriding public interest and the publication corresponds to the principles of journalistic ethics. The primary argument in the case of media representatives was that "such wording allows the press to publish materials related to personal data without registering as a processor of personal data."[225] The law entered into force on 1 January 2008.[226]

In respect to the topic of freedom of the press, it is important to analyse the activities of the self-regulatory media organisations. There are two—the Estonian Press Council (EPC)[227] and the Estonian Press Council of the Estonian Newspaper Association.[228]. The cases that deal with constitutional topics and that have resulted in condemnatory decisions or decisions for which positions have been given or statements made [229] can broadly be divided as follows:

- Providing misleading information, essentially not providing the opportunity for a rebuttal;
- Damaging a reputation by using an out-of-context photo, refusing to publish clarification;
- Disregarding the principles of journalism, a wish to hinder information getting on the air;
- Institutional restriction of the freedom of speech;
- Presenting accusations without factual proof, slander, labelling;
- Writing articles based on private conversations, factual errors, vulgar language;
- Disparagement of children out of context, causing unfounded suffering.The existence of two competing self-regulatory organisations may not be the best solution, because it may cause confusion among potential complainants and thereby reduces the efficiency and purposefulness of both organisations.

Epp Lauk, a media critic who has written on the topic of self-regulation, warns that "every attempt at regulation is immediately interpreted as censorship and the endangerment of the freedom of

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[224] See also Tuuli Koch, "Andmeid kaitsvat seadust muudeti", Postimees, 13.02.2007.

[225] Ibid.

[226] Personal Data Protection Act, RT I 2007, 24, 127, cl. 11(2) – attached is also the protection clause "The disclosure of personal data must not unduly damage the rights of the data subject". Also see the Eesti Päevaleht editorial "Kraane keeratakse ka Eestis", 03.05.2008, which criticises the amendment to the law, maintaining that the term "overriding public interest" included in the law could potential restrict the freedom of the press.

[227] Website at www.asn.org.ee (last visited on 22.09.2008). Its activities are based on the Estonian code of journalistic ethics (available on the website).

[228] Website at www.eall.ee/pressinoukogu/ (last visited on 22 September 2008).

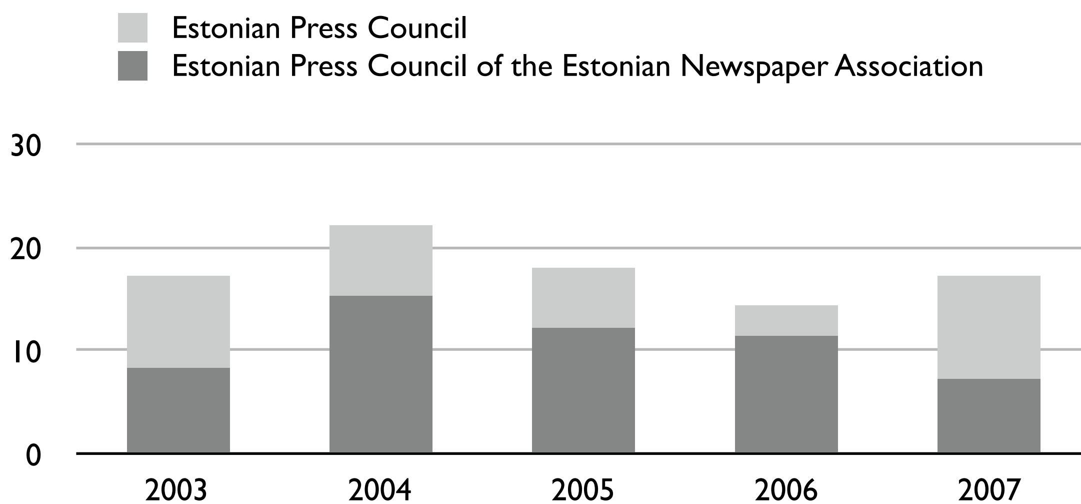
[229] The Estonian Press Council, EPC table of contents of decisions, available on the Internet at www.asn.org.ee/asn_lahendid.php (last visited on 22 September 2008).

speech." At the same time, the author finds that it is more dangerous "when media organisations agree to totally muffle some voices in society."[230]

Figure 5. Complaints received by the self-regulatory journalistic organisations 2003-2007.

Sources: Estonian Press Council of the Estonian Newspaper Association, Estonian Press Council

Figure 6. Condemnatory decisions of the regulatory journalistic organisation 2003-2007.



Sources: Estonian Press Council of the Estonian Newspaper Association, Estonian Press Council

The freedom of press is also analysed on the Ethics Web created at the University of Tartu.[231] Another important problem is the relationship between bloggers and the press, which has also

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[230] Epp Lauk, "Eneseregulatsioon või iseregulatsioon?", available on the Internet: www.asn.org.ee/meediakriitika.php?action=view&id=25 (last visited on 22 September 2008).

[231] See the ethics-related documentation, information and communications portal Ethics Web at www.eetika.ee/meediaeetika/ajakirjandusvabadus (last visited on 22 September 2008).

been raised by several bloggers.[232] Prof. Varul believes that the current regulations should apply in respect to the liability of bloggers, but the peculiarity of the Internet should be considered.[233]

Several important judicial decisions were made in 2007, which associate the freedom of speech, freedom of the press, and the right to privacy. Some of them have reached the highest court. The decision of the Tallinn Circuit Court in the action of V.R. against AS Postimees to overturn erroneous data and publish a correction, as well as the compensation of moral damages along with the publication of an apology was contested in the Supreme Court.[234] The content of the appeal in cassation is the claim that "by publishing incorrect statements, the respondent caused moral damages to the plaintiff by damaging his trustworthiness and reputation as a politician and Minister of the Environment."[235]

The Supreme Court supported the opinion of the circuit court, by recognising that it had "correctly found that the contents of the articles that include, among other things, legal understandings of the organisation of environmental protection in Estonia and the legal-style understandings of the competence and obligations of state institutions in the exercise of state authority contained in the articles, represent judgements that cannot be overturned on the basis of the provisions that regulate the overturning of incorrect data". The Supreme Court also found that in the case of value judgements and also legal judgements, even if they rely on incorrect assumptions (factual allegations), one cannot seek to overturn judgements.[236] Although, human rights were not specifically discussed in the court, the court judgment is a determining border post in finding solutions related to the aforementioned topics in Estonia.

From the viewpoint of the freedom of the press, the judgement of the Civil Chamber of the Supreme Court,[237] in which the action of G.G. against the Ekspressi Kirjastuse AS for the publication of a correction, was noteworthy. At first, the Supreme Court confirmed the consistency of its decisions and concordance with the judicial practice of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

> *"Obligating the publisher of an article to publish a correction is one of the invasions of the freedom of press based on the co-effect of §44 and §45 (of the Constitution), which must be reasoned and proportional. The Supreme Court has previously found that the principle of the freedom of expression, including the freedom of the press, provided by §45(1) of the Constitution and article 10(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms or the European Human Rights Convention (EHRC)is an indispensible guarantee of the democratic management of society and therefore one of the most important social values (3-1-1-80-97). Guaranteeing the presumption of innocence is the obligation of the state and the local governments and this obligation does not extend in totality to the mutual behaviour of private persons."*[238]

The court also explained the consequences of using incorrect information:

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[232] For instance, see http://vasak.blogspot.com/2007/10vaba-ajakirjandus-mai-ss.html (last visited on 22 September 2008).

[233] Marti Aavik, "Paul Varul: solvangute eest peavad vastutama nii ajalehed kui ka blogid", Postimees.ee, 30.06.2008.

[234] Civil Chamber of the Supreme Court 10 October 2007 decision in civil case 3-2-1-53-07.

[235] Ibid, cl. 19.

[236] Ibid, cl. 19.

[237] Civil Chamber of the Supreme Court 19 February 2007 decision 3-2-1-145-07.

[238] Ibid, cl. 7.

> *"In and of itself, the respondent's statement is correct that the plaintiff's demand to have an incorrect statement of fact overturned is an infringement on the freedom of the press. It is the opinion of the Civil Chamber that obligating the publisher to overturn or correct incorrect information is one of the proportional invasions of the freedom of the press. The freedom of expression (freedom of speech) is contrasted with a person's personal right not to have incorrect information published about him/her, including the right to honour and a good name. In the current dispute, the courts have ascertained that an incorrect statement about the plaintiff follows from two statements published in the article that are referred to in the action, and therefore, requiring a correction to be published regarding incorrect factual statements is justified. This conclusion is based on §1047(4) of the Law of Obligations Act, according to which the overturning or correcting of the information can be demanded from the person responsible for publishing the information with the cost being borne by the publisher, regardless of whether the publication of the information was unlawful. It is not important whether the statement supports one's honour and good name. It is only important that the statement is incorrect. This conforms to the second sentence of Constitution §45(1), which allows freedom of speech to be restricted by law, among other things, for the protection of other human rights, including the protection of honour and good name."*[239]

The freedom of the press is important in Estonia as an object of discussion. The searches for a balance between value judgements and fundamental freedoms are substantive and groundbreaking.

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[239] Ibid, cl. 14.

Freedom of religion

The interests of churches and congregations are sufficiently protected in Estonia. The largest association dealing with this issue is the Estonian Council of Churches (ECC),[240] which promotes theological dialogue between the member churches and organises ecumenical services. Estonian Radio and Estonian Television broadcast important church services. The ECC is represented in the Estonian Press Council. Ecumenicalism seems to be an important resource of the prevailing Christianity, which guarantees the principles of the freedom of religion, since in addition to Christianity ecumenicalism involves all the most important religions. The ECC's platform of religious teaching (last revised in 2006) is based on the idea that religious teaching proceeds from the principle of the freedom of religion as worded in the UN Universal Declaration on Human Rights (possessing knowledge about religions is compulsory not religion itself). The issues that developed in society primarily in 2006 regarding religious teaching in the schools were resolved in 2007. Today, a working version of the new concept for religious teaching exists.[241]

Forums and portals are operating that introduce various religions and beliefs (for instance, www.islam.ee that introduces Islamic values).

The opening of the Tallinn synagogue is considered an important symbol of the guarantee of religious freedom.[242]

This area of activity was only affected by one judgement of the Supreme Court, in which the Härjapea Taara and Earth Believers Society challenged the resolution of the Kunda Town Council,[243] which restricted the access of the appellants to the hill with a sacred forest, where a wind park was planned. The Härjapea Taara and Earth Believers Society's appeal in cassation was satisfied because the representatives of the appellants were not involved in the public discussions related to the detailed planning by the local government.[244]

There was also only one lower court decision.[245] The Tartu County Court made a ruling in regard to the application for provisional legal protection in R.K.'s complaint to have a Tartu Prison directive declared partially unlawful and the activities of the Tartu Prison declared unlawful. R.K. submitted the appeal against the court ruling that asked for the annulment of the part of the Tartu Administrative Court ruling whereby the court did not provide provisional legal protection to allow the continued use of incense candles in the cell.

According to the appeal against the court ruling:

- Tartu Prison violated §40 of the Constitution (freedom of religion) by prohibiting the use of incense sticks for the execution of religious ceremonies;

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[240] See www.ekn.ee (last visited on 22 September 2008).

[241] Curriculum Committee for Religious Teaching, curriculum, available on the Internet at www.religiooniopetus.ee/index_files/ainekava.htm (last visited on 22 September 2008).

[242] See "Usuvabaduse sümbol" 19.05.2007: "Kas ei ole juudi sünagoog selge märk, et eri usku inimesed on vabad siin maal oma veendumusi järgima?"

[243] Administrative Law Chamber of the Supreme Court 17 October 2007 decision 3-3-1-39-07.

[244] Ibid, cl. 26.

[245] Ruling of the Tartu Circuit Court in administrative matter 3-07-701 (2.05.2007).

- The appellant has never been prohibited from using incense candles to carry out his religious ceremonies. The fragrance emitted by the incense candles is minimal and disappears in about 10-15 minutes and, therefore, does not disturb the work of the prison officers;
- The subsequent fulfilment of the court judgement would restore the rights of the appellant, but would not compensate for moral damages.

The Circuit Court found:

> *"From the materials of the matter, it has not been proven that prohibition on burning incense candles in the prisoner's cell would be a circumstance that would provide grounds to claim that the prison has not guaranteed the satisfaction of the prisoner's religious needs and degraded his human dignity. The burning of candles is among the rituals of Buddhism (to care for altars candles are lit among other things, candles are lit in temples, etc.) but Buddhism does not assume that the prisoner should definitely be able to burn incense candles in his cell and if he is not allowed to do so that this would have damaging consequences and that subsequent compensation would not be possible in case of a decision in his favour."*[246]

[246] Ibid, pg. 3.

Administration of justice

Access to the administration of justice

Constitution §15 establishes that everyone has the right to have recourse to the courts in case of violations of their rights and freedoms. The feasibility of this provision depends on the people's resources and knowledge.

On 1 March 2005, the National Legal Aid Act came into force in Estonia, the goal of which is to guarantee the timely and sufficient availability of competent and reliable legal assistance to everyone.[247] The practice of the Estonian Institute of Human Rights has shown that achieving this goal has been problematic. Essentially, in many cases, an instalment system for legal aid has been created, which does not satisfy various parties, especially those needing assistance. According to the testimony of those who have approached the Human Rights Institute, those needing assistance have encountered problems related to the quality of legal aid, which is why there is dissatisfaction with the access to the administration of justice by the police and courts.

In 2007, the Ministry of Justice published the Study of the Estonian Population's Legal Awareness, the goal of which was to determine the awareness of the Estonian population of their fundamental rights. This study showed that one of the greatest problems in realising the right provided by §15 of the Constitution is the low legal awareness in the field of human rights. As a result, people have difficulties protecting their rights.[248] According to the study, for instance in employment relationships, the majority of respondents (63%) tried to resolve disputes themselves rather then seeking help from a competent person or institution. "Therefore, people usually do not act in the name of asserting their rights; they try to resolve their problems on their own or are reconciled to problems as inevitability."[249] People perceive the need to turn to the courts for assistance depending on their awareness of their rights:

> *"The more aware the respondents are the more often they had perceived the need to turn to the court for assistance, but they had not or were not able to realise this need. Apparently, less aware citizens often did not see that their rights were being violated, while it was also possible that due their limited participation in community life situations did not develop in which their rights were significantly violated."*[250]

At the same time, 78% of the respondents found that "everyone is guaranteed equal opportunities to turn to the courts for assistance", while only 20% of the respondents found that "the administration of justice is not equally available to everyone."[251]

Those who have participated in court proceedings "have mostly made use of two possibilities—defended themselves (42%) or used the help of a lawyer (44%)." The National Legal Aid Service, which is provided based on the National Legal Aid Act, has only been used by 9% of the

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[247] National Legal Aid Act, RTI, 56, 403.

[248] Ministry of Justice, Study of the Estonian Population's Legal Awareness, pg. 13.

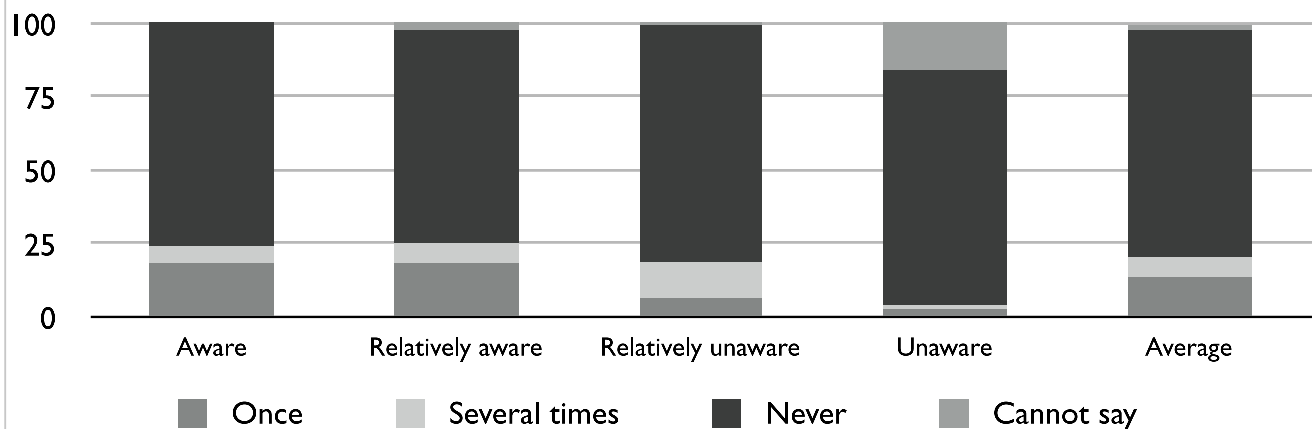
[249] Ibid, pg. 45.

[250] Ibid, pg. 48.

[251] Ibid, pg. 48.

respondents.[252] At the same time, 24% of the respondents said that if they needed to participate in court proceedings in the future, they would use the National Legal Aid Service.[253]

Figure 7: Have you every been in a situation where you would have needed to have justice administered by the courts, but you still did not turn to the courts for assistance? (%)



Source: Ministry of Justice, Study of the Estonian Population's Legal Awareness, 2007

From the study, it became clear that "a large elite group that have a monopoly on the administration of justice (if we leave out those people that possess a law education) cannot be identified in society, although there is a group of those who lag behind and are totally lacking legal knowledge."[254]

Fair administration of justice

In 2007, three decisions were made in the European Court of Human Rights in area of the fair administration of justice:

- Pello vs. Estonia:[255] violations of articles 6(1) and (3)d of the European Convention on Human Rights and Fundamental Freedoms were ascertained. In the given case, the issue of the impossibility of getting answers from witnesses who have testified against the accused. The European Court of Human Rights explained that articles 6(1) and (3)d require that the accused must have the corresponding and appropriate opportunity to get answers from persons testifying against them. The court found that the proceeding of evidence is under the jurisdiction of the courts of the member states, but each court has the obligation to weigh the significance of the evidence. The accused must not always be present when the testimony is given, but must have the right to question these witnesses under the same conditions as any others. The court found that Estonian courts did not demonstrate sufficient will to involve the two witnesses, but substantiated its opinion based on the materials received by mail from the latter. Therefore, an important principle of the fair and impartial administration of justice was violated.

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[252] Ibid, pg. 50.

[253] Ibid, pg. 51.

[254] Ibid, pg. 73.

[255] Complaint no. 11423/03 (10.12.2007).

- Saarekallas OÜ vs. Estonia:[256] the violation of article 6(1) of the ECHR was ascertained. The appellant asserted that the proceeding was not carried out within a reasonable period of time. The court supported the appellant: the proceeding took place during slightly more than seven years and two months at three judicial levels, and this was sufficient to ascertain a violation of the ECHR. As an additional argument, the court pointed to a violation of article 13, since the Estonian courts did not demonstrate any intention of giving reasons as to why the time for the proceeding dragged out.

- Shchilitsov vs. Estonia:[257] violation of article 6(1) of the ECHR was ascertained. This was also a proceeding regarding the violation of the principle of reasonable duration (five years and three months in the given case). Although the explanation of the Estonian government was that the court had a great workload during this period and the proceeding only dragged on in the court of first instance, the European Court of Human Rights found that the rights of the ECHR had been violated.

Discussion was caused by the website created by the Police Board for the identification of people in the case of the April riots. The Chancellor of Justice sent the Police Board a recommendation for the observation of legality and good practices,[258] in which he noted that the police had a legal right to publish the photos of the persons related to the riots (i.e. it corresponded to the principles of purposefulness and minimalism). At the same time, the Chancellor of Justice condemned the naming of all the people in the photos on the website as participants in acts of vandalism

In 2007, the Chancellor of Justice also made a recommendation about the observance of legality to the Northern Circuit Prosecutor's Office,[259] in which reference is made to the fact that officials did not draw up written regulation, although when compiling a correct written answer with a regulation, the guarantee of the right of appeal is of determinative importance. The Chancellor of Justice recognised that "in oral conversations, a person may not correctly and completely understand the details, including the legal nuances. This especially in cases when a person that lacks a thorough knowledge of the legal field is involved…"[260]

The court judgements made in 2007 do not contain general problems regarding the fair administration of justice. The invasions of fundamental rights or the protection of personal rights have been raised but not as procedural problems. An exception, one could note the decision of the Tallinn Circuit Court[261] in which the judicial panel found that the term of punishment applied for by the prosecutor and ordered by the court of first instance was not reasoned.

The judicial panel also referred to the Supreme Court decision of 2005.[262]

> *Pursuant to §22(2) of the Constitution, no one can be forced to testify against themselves or their intimates. According to the idea of the given provision, no one is obligated to help to prove crimes that they (or their intimates) have committed. Although the European Convention on Human Rights and Fundamental Freedoms (ECHR) does not directly*

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[256] Complaint no. 11548/04 (08.02.2008).

[257] Complaints no. 35062/03 and 35062/03 (18.04.2007).

[258] Chancellor of Justice, 07.2007 no. 7-4/070858/00705276.

[259] Chancellor of Justice, 01.01.2007 no. 7-4/061544/0700591.

[260] Ibid.

[261] Tallinn Circuit Court, decision no. 1-06-7211 (8.02.2007).

[262] Supreme Court case no. 3-1-1-39-05 (1.06.2005), cl. 13-14.

establish this fundamental right, in its practice, the European Court of Human Rights consistently expressed the position that the right to silence and the privilege of not incrimination oneself is a central component of the fair administration of justice pursuant to the requirements of article 6 (1) of the Convention, being closely related to the principle of the presumption of innocence established by article 6 (2) (for example, see cl. 45 of the decision dated 8 February 1996 in the case of John Murray vs. the United Kingdom; cl. 68-69 of the decision dated 17 December 1996 in the case of Saunders vs. the United Kingdom; and cl. 64 of the decision dated 3 May 2001 in the case of J.B. vs. Switzerland). The Court of Human Rights has also found that ECHR article 6 (1) has been violated if a person is forced to hand over documents in a situation where it is not precluded that he/she could be accused of committing a crime based on these same documents (e.g. J.B. vs. Switzerland, cl. 66). …

The Criminal Chamber stated that the right to rely on the privilege of not incriminating oneself is not dependent upon the person's formal procedural state or on whether a criminal proceeding has been started in regard to the circumstances for which proof is being demanded from the person. What is important is the factual nature of the evidentiary information being demanded from the person—does it refer to a crime committed by the person or not."

The importance of the principle of the fair administration of justice as a topic is also apparent in the training and development activities of the Estonian Association of Lawyers and the Estonian Association of Judges.

Rights of the child

In legislation during 2007, no progress took place in respect to guaranteeing the rights of the child. The preparation of a new draft of the Child Protection Act was started in 2005, the primary objective of which was to make law applicable by specialists, children and parents.[263]By 2007, no progress had been made in the proceeding of the draft, and the last public information about the status of the preparation of the draft date from 2005.[264] Moreover, no changes have been made to the provisions of §68 of the Child Protection Act[265], pursuant to which the details of this law are regulated by the government. The 2007 implementation plan for the Strategy for Guaranteeing the Rights of the Child cannot form the basis for legal protection since it is plan of action.[266]

In 2007, the topic of school violence became the centre of public attention. The youth film *Klass* and the public debate based thereon dealt with several sub-topics related to schoolchildren: school violence, students' relations with parents and teacher, punishment and revenge. The practices of the Human Rights Institute have shown that, in connection with school violence, the protection of the rights of children has been raised in schools, along with the protection of the rights of teachers.

School administrations have discussed the case of the school shooting that took place at the Jokela School in Finland, and the majority think that the occurrence of similar serious events in Estonia cannot be totally excluded and some found that the reason may have been school persecution. According to the school leaders, the entire society must deal with the topic of safe schools, because according to the Constitution and international human rights conventions, every child has the right to life and education.[267]

The problems of human trafficking, about which several international organisations have expressed their concern, are closely related to the rights of the child.[268] The Ministry of Justice has compiled a development plan for combating human trafficking that also includes specific steps regarding trafficking with children.[269] Co-operation was planned with various international programmes as well as the organisation of promotional events for the public and specialists. According to the report on the fulfilment of the development plan, the tasks planned for 2007 based on the development plan have been fulfilled:

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[263] Ministry of Social Affairs, "Lastekaitse seadus valmib koostöös partneritega", 22.09.2005, available on the Internet at: http://www.sm.ee/www/gpweb_est_gr.nsf/pages/news0478 (last visited on 22 September 2008).

[264] A separate Internet page is devoted to the preparation of the draft http://www2.sm.ee/lastekaitse/ (last visited on 22 September 2008).

[265] Child Protection Act, RT 1992, 28,370.

[266] Ministry of Social Affairs, 2007 Implementation Plan for the Strategy to Guarantee the Rights of the Child, available at on the Internet at http://www.sm.ee/HtmlPages/LÕS_2007tegevuskava/$file/LÕS_2007tegevuskava.rtf (last visited on 22 September 2008).

[267] See Postimees, Koolijuhid muretsevad Eesti koolide turvalisuse pärast, 22.11.2007, available on the Internet at http://www.postimees.ee/021207/esileht/siseuudised/297002.php (last visited on 22 September 2008).

[268] See, for example, the conclusions and recommendations of the Committee against Torture.

[269] Ministry of Justice, Development Plan to Combat Human Trafficking 2006-2009, available on the Internet at http://www.just.ee/orb.aw/class=file/action=preview/id=28017/T%E4iendatud+inimkaubanduse+arengukava.pdf (last visited on 22 September 2008).

> *"The development plan can be considered successful, since the network for combating human trafficking and co-operation with various organisations are operating ever more smoothly, which guarantees the better processing of human trafficking cases and the assistance for victims. Ever more specialists in different areas of activity have been trained, which has helped to raise awareness in the field of human trafficking."*[270]

The Ministry of Justice considers one of the most important developments in 2007 to be the amendment to the Penal Code, whereby the composition of enslavement stipulated in §133 was supplemented to include the exploitation of a person in an unprotected situation.[271] Also important was an amendment to the Aliens Act that added a separate chapter, pursuant to which it is possible to issue temporary residence permits to possible victims of human trafficking.[272] Estonian legislation still lacks the concept of human trafficking and the nature and content of human trafficking abased on international understanding has not been interpreted.

The practices of the Human Rights Institute have demonstrated that the collateral protocols of the UN Convention on the Rights of the Child regarding the sale of children, child prostitution and pornography have not been sufficiently introduced or taken into account in various development and action plans and studies in Estonia.

The topic of children's rights is also dealt with in the Development Plan for Reducing Crimes by Minors for 2007-2009.[273] The 2007 report on its fulfilment provides a general assessment of the plans specified in the Development Plan for 2007.[274] According to the report, in 2007, there were "2,111 minors suspected of crimes and 2,867 crimes committed by minors were registered, the most often of which were theft and breaches of public order." At the same time, the trend that started in previous years of a reduced number of crimes being committed by juveniles continued. The crime prevention work that is carried out in co-operation between the Ministry of Justice, the Ministry of Education and Research, the Police and several non-profit associations plays an important role in the reduction of criminal activities by juveniles. According to the report, the juvenile committees "discussed 4,169 violations of the law by minors in 2007, [of which the majority] were related to various offences (78%) and the remainder were related to the non-fulfilment of compulsory school attendance." According to the report, there were no significant changes or developments related to private schools. In connection with the agreement between the Minister of Justice and the Minister of the Interior to monitor the duration of the pre-trial proceedings involving minors, the average duration of proceedings achieved in 2007 was 3.8 months.

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[270] The Ministry of Justice, 2007 Report on the Fulfillment of the Development Plan to Combat Human Trafficking, available on the Internet at http://www.just.ee/orb.aw/class=file/action=preview/id=35057/Inimkaubanduse+vastu+v%F5itlemise+arengukava+t%E4itmise+aruandlus+2007+a++kohta.pdf (last visited on 22 September 2008).

[271] Penal Code, RT I 2001, 61, 364.

[272] Aliens Act, RT I 1993, 44, 637.

[273] Development Plan for Reducing Crimes by Minors for 2007-2009, available on the Internet at http://www.just.ee/orb.aw/class=file/action=preview/id=35839/Alaealiste+kuritegevuse+vahendamise+arengukava+aastateks+2007-2009.pdf (last visited on 22 September 2008).

[274] Ibid.

Law enforcement agencies

In the context of constitutional protection of law order, the most feedback from society was caused in 2007 by the so-called Bronze Soldier crisis, when the Estonian law enforcement agencies came into contact for the first time with massive street disturbances.

In the course of the unrest on 26 and 27 April 2007, one person died. Criminal charges were brought against 125 people that participated in the disturbances. The assessment is that during the crisis the Estonian Police acted according to the situation that developed, although they lacked prior experience with suppressing similar unrest.[275] Although after the events, many accusations about police brutality were presented in the media,[276] but to date no accusations of the use of excessive force by the law enforcement agencies has been proven. In the context of the events, a packet of amendments was initiated to amend the following laws: the Police Act, Surveillance Act, Border Guard Act, Public Assemblies Act, Emergency Preparedness Act, Electronic Communications Act, State Secrets and Classified External Information Act, Police Service Act, Traffic Act and Security Act. The packages of amendments may be accompanied by excessive invasions of individuals' rights, and the legal amendments that came into force in 2008 require separate analysis from a human rights viewpoint.

In 2007, the fight against corruption in law enforcement agencies resulted in new developments. In criminal matters related to the activities of police officials, charges were presented in 2007 against an official of the East-Viru County Police Prefecture (the unlawful handling of a firearm, its essential part and ammunition, accepting a bribe, falsification of official documents, acquisition of someone else's property, and violation of the obligation to keep information that became known in the course of occupational and official activities confidential) and an official of the Western Police Prefecture (accepting a bribe, giving a bribe, arranging a bribe and falsification of official documents). In 2007, a decision was reached in the court case of Sergei Belov, the senior clerk of a sworn advocate working in Kohtla-Järve, who was punished by a pecuniary punishment for instigating bribery and the fraud. Progress was also made in the fight against corruption in the customs sector, when a decision was made in connection with the bribery cases of customs officials in Northeast- and Southeast-Estonia.[277]

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[275] Security Police Board, 2007 Yearbook of the Security Police Board, available on the Internet at http://www.kapo.ee/Aastaraamat_2008_EST_27.05.2008.swf (last visited on 22 September 2008), pg. 8.

[276] For example, see Jan Jõgis-Laats, "Politsei suhtes on alustatud kaheksa kriminaalmenetlust", epl.ee, 24 May 2007, available on the Internet at: http://www.epl.ee/artikkel/387052 (last visited on 22 September 2008).

[277] 2007 Yearbook of the Security Police Board, pp. 27-30.

Civil society and human rights

The total number of non-profit organisations and foundations in Estonia as of 1 January 2008 was 26,363, the majority of them dealt with fields of real estate, rental and business activities (12,057) and other fields of community, social and personal services (12,822).[278]

In 2007, the Network of Estonian Non-profit Organisations published the Declaration of Estonian NGOs.[279] In the declaration specific proposals were made to the Parliament of Estonia, on how to improve the participation of NGOs in the decision-making process and to increase their administrative capacities and financial capabilities.

One of the proposals made in the Declaration, for the establishment of the National Foundation of Civil Society, was accomplished in 2007. By order of the Government of the Republic on 20 December 2007, the foundation was established under the jurisdiction of the Ministry of the Interior and a budget of 20 million EEK was assigned to it.[280] The goal of the Foundation of Civil Society is to "assist in increasing the capacities of the non-profit associations and foundations operating in the Estonian public interest for shaping of society that promotes civil activism and the development of a civil society."[281] The foundation bases its allocations of support on the Estonian Civil Society Development Concept[282] and the Concept of the National Foundation of Civil Society.[283]

Estonia does not have an institution for the promotion of national human rights and the protection of human rights, the activities of which would be in conformity with the Paris Principles[284] and has not made the resources necessary for the execution of the mandate available to the given institution. The Human Rights Institute has repeatedly approached the Parliament of Estonia and the Government of the Republic with the corresponding proposal to create an internationally recognised institution that would be financed by Estonia. According to the official government positions presented by the Ministry of Justice, the protection of human rights in Estonia is sufficiently guaranteed by existing institutions, such as the Chancellor of Justice and the Gender Equality Commissioner.

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[278] Centre of Registers and Information Systems, Commercial and Register of NGOs and Foundations by principal activity, 1 January 2008, available on the Internet at http://www.rik.ee/stat/8_1tg.phtml (last visited on 22 September 2008).

[279] The Declaration of Estonian NGOs. Network of Estonian Nonprofit Organizations. Available on the Internet at http://www.ngo.ee/11830 (last visited on 26 September 2008).

[280] Ministry of the Interior, Press Release no. 7, 21 January 2008, "Regionaalminister Vallo Reimaa allkirjastab Kodanikuühistu Sihtkapitali asutamisotsuse", available on the Internet at http://www.siseministeerium.ee/public/Pressiteade_21.01.08_K_SK_asutamine.doc (last visited on 22 September 2008).

[281] National Foundation of Civil Society, "Kodanikuühiskonna Sihtkapital käivitab analüüsi-, uuringute ja uuenduslike tegevuste programmi", available on the Internet at http://www.kysk.ee/?s=38 (last visited on 22 September 2008).

[282] Parliament of Estonia, Concept for the Development of Estonian Civil Society, 12 December 2002, available on the Internet at http://www.siseministeerium.ee/?id=30410 (last visited on 22 September 2008).

[283] Agu Laius and Urmo Kübar, Concept of the National Foundation of Civil Society, available on the Internet at http://www.siseministeerium.ee/public/Kodaniku_hiskonna_Sihtkapitali_kontseptsioon_veebi.pdf (last visited on 22 September 2008).

[284] Resolution of the UN General Assembly, 4 March 1994 UN document no. A/RES/48/134.

Summary

The human rights situation in Estonia can be characterised as uneven and lagging behind the European average. In some areas the developments have been faster than in others. The protection of human rights is divided by areas of activity between various ministries and institutions, and uniform, co-ordinated activity is lacking. In some areas, examples can be provided as to how Estonia is proceeding from minimum international standards in the protection of human rights and in a few areas, even minimal protections have not been instituted. Therefore, protection is uneven.

At the same time, it would be unfair to state that positive developments have not occurred in the field of human rights. A positive aspect that can be highlighted is the progress that has been made in the renovation of detention facilities, and the establishment of the National Foundation of Civil Society is also welcome in order to increase the capacities of NGOs.

- In the field of **discrimination**-related protection, the Equality of Treatment Act was not passed in 2007, despite the fact that 2007 was declared the Year of Equal Opportunities and pressure was exerted by the European Commission.detention facility
- Activities related to **gender inequality** continue to be underfinanced and not sufficient enough to have any notable effect on society. The total budget for the Gender Equality Commissioner, who has been functioning for three years, was less than a million EEK in 2007. The state continues to lack a systematic plan of action to promote gender equality, despite the fact that studies and reports from international institutions show that inequality between men and women in Estonia is relatively great.
- In 2007, the greatest talking point was **nationality-based discrimination**, primarily due to the so-called April disturbances. National minorities have the opportunity to form cultural autonomies, but unfortunately, this opportunity is not widely used due to the complexity of the regulation and difficulty of the requirements for their establishment. International human rights protection institutions also paid attention to the massive turmoil that took place on April 2007, but they did not observe any major infractions by the Estonian officials. The situation of people of Russian nationality living in Estonia is still worrisome since a large number of them did not have Estonian citizenship or that of any other country in 2007 (the number of people without citizenship formed 9% of Estonia's population in 2007).
- Compared to other fields of activity, **discrimination based on sexual orientation** has received less attention in Estonia. The situation is problematic primarily due to the lack of the concept and regulation of the cohabitation of partners, which is why same-sex couples are treated differently than heterosexual ones. Both the local authorities and police created many obstacles for the Gay Pride Parade that took place in 2007.
- The human rights situation in **detention facilities** has improved, but not sufficiently. In Estonia, prisons and detention centres continue to exist that do not correspond to the minimum international standards. Despite the fact that detention facilities are being modernised, ignoring the situation in the institutions that have not been renovated is not acceptable because there are also possibilities to improve conditions there. At the same time, the reduction in the number of detainees generally can be named as a positive development in 2007.
- In the field of **personal data protection**, legislation was amended and concretised in 2007. The Data Protection Inspectorate, which monitors the observation of rules related to data protection, accelerated its activities.

- No great legislative changes took place in regard to the **freedom of the press** and two competing self-regulatory organisations continue to exist. The Supreme Court has concretised certain nuances of the freedom of the press, but larger problems did not appear in this field during 2007.
- In the field of **religious freedom**, there were no significant changes. In 2007, one of the most important symbolic events was the opening of the synagogue in Tallinn.
- The availability of high-quality legal assistance continued to be problematic in the area of the **administration of justice**. The current legal aid system does not guarantee the best possible protection.
- In 2007, there were no important developments in the field of guaranteeing the **rights of the child.** Provisions of the Penal Code were concretised in an effort to improve the effectiveness of the fight against human trafficking.
- In activities related to **law enforcement agencies**, the principal attention was centred on the suppression of the massive disturbances by the police at the end of April 2007. Taking into account the extraordinary circumstances, the general assessment of police activities was positive and no major incidents of police brutality were ascertained. Corruption continues to be a problem, while it is also being combated with increased efficiency.
- The establishment of the National Foundation of Civil Society was an important event in the development of **civil society** in 2007, whereby for the first time resources will be constantly channelled in order to increase the capacities of the non-profit sector. There are a few non-profit organisations in the field of human rights protection and promotion, and they address the problems regarding sustainability; some function as project-based organisations.

Annex I: Summary of media monitoring

In 2007, the Human Rights Centre carried out the monitoring of Estonian new media, from the viewpoint of reporting on human rights (September-December 2007). The monitoring was carried out by Jean Monnet Professor Tanel Kerikmäe (leading specialist), Marianne Meiorg (expert) and Marina Novozilova (assistant).

The objective of the monitoring was to determine how, in what amount, and how balanced is the protection of human rights reflected by Estonian new media (including the Russian-language media). The main focus was on the professional level of the articles (based on factology and the law), as well as the level of generalisation and objectivity related to the topics, the reasons for the development of the topics and their connection to specific human rights (or their violation).

Reviews of the following Estonian-language news publications and web portals were conducted: Postimees, Eesti Päevaleht, SL Õhtuleht, etv24.ee (in Estonian), Delfi (in Estonian) and tarbija24.ee. The following Russian-language publications were also analyzed: Postimees (in Russian), Den za Dnjom, etv24.ee (in Russian) and Delfi (in Russian). The study did not include publications produced by political parties or local governments, or the assertion about the protection of human rights in Estonia made by the foreign press. The objective of the study also did not include the examination of information forwarded by television or radio that was not reflected in written or electronic information carriers.

Summary

- Journalists report primarily on subjects that are initiated by foreign experts or human rights organisations; foreign sources are relied on; references to human rights in articles dealing with other topics are incidental or artificial;
- The topic is primarily related to policies, and only thereafter to the law; human rights are often reported in a fragmented manner; the range of topics (rights) is narrow or generalised;
- Journalists do not enlist the help of experts and often just pass on factology and press releases; the arguments of officials and representatives of governmental authority of relied on without providing assessments;
- Journalists lack background knowledge on human rights, and the relationship between human rights and fundamental rights;
- Investigative journalism does not deal with human rights; many journalists deal with the same topic, there is no specialisation;
- As a rule, there are not references to legislation; if it is presented, the background remains unclear for the ordinary reader, since the information is apparently received from specialists and passed on by the journalist;
- The range of topics is small (discrimination, criticism of Estonia);
- Co-operation between Estonian- and Russian-language media could improve;
- Little attention is paid to the permissibility of human rights restrictions imposed by the state;
- Substantive articles are authored by non-journalists;
- Several important developments have not been covered (e.g. the EU Charter of Fundamental Rights);

- In case of a controversy, good journalistic practices are followed; as a rule all the opposing parties have their say;
- The topic seems to interest journalists; the development compared to previous years is noticeable.

The full text of media monitoring is available on the Human Rights Centre website at www.humanrights.ee.