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HUMAN RIGHTS CENTRE
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HUMAN RIGHTS IN ESTONIA 2011

Annual Report of the Estonian Human Rights Centre

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Trükitud taastoodetud paberile looduslike trükivärvidega. ©Ecoprint

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Dear Reader!

Human rights are universal and inalienable and belong to everyone equally, regardless of nationality, place of birth and other circumstances, according to the Universal Declaration of Human Rights. However, when we assess the situation of human rights, we cannot help, but consider the environment, the state, cultural and historical basic system, and we might not even be aware of this. So it could be that we do not even notice, when we are assessing the situation of our own human rights, that by world standards, and especially in the context of post-communist states, the situation of human rights in Estonia is relatively very good, even great.

The protection of political rights, elementary personal rights and freedoms, including freedom of speech, are now taken for granted. Reporters without Borders' index for freedom of expression places Estonia on third place in the world, behind Finland and Norway. We also take it for granted that the police does not overstep its authority, persons are not arrested arbitrarily, they are not tortured in questionings – all this has become so normal that especially younger generations could easily forget that it was not so just a generation earlier – and is still not the case in many post-soviet states.

On the other hand this does not mean that the situation with human rights is so good that no improvement could be made. Respect for rights is a perk that does not come about automatically, and it has the danger of being forgotten amidst passivity and carelessness if not monitored, or if it is taken for granted too much. This must be kept in mind while reading this report. We no longer have a reason to worry about a secret service overstepping its boundaries and forcing confessions for invented crimes in cellars filled with horrors – but we do have to worry about situations which result in people being placed in circumstances where what they experience can be comparable to torture.

Estonia has institutions that democratically create legislation and protect the rights of individuals, we have joined international treaties protecting human rights and are on our way to becoming members of UN Human Rights

Council. But there is still work to be done on implementing the adopted principles in practice. It takes more than one generation in order to implement the general behaviour and attitude that is in accordance with the rules of the free world that respects human rights, not just the legal practice.

Because of our complicated history it has been easier to implement the legal principles that limit the opportunities of the representatives of state authority to limit our rights. It is more difficult to teach people to treat each other with dignity. Persons' right to equal treatment means a prohibition of discrimination, which can be interpreted in many ways, but this must certainly be addressed. A single official language does not constitute discrimination of its citizens in any country, however, treating people differently solely because of nationality, mother tongue or gender does. Discrimination is also present when persons with different sexual orientation lack equal opportunity to officially recognise their private lives, and a more indirect case of discrimination takes place when belonging to a group, regardless of level of education, is reflected in economic situation and income of the group.

If we were to identify the most important factor standing in the way of perfect execution of human rights in Estonia it would be carelessness. Carelessness as a world view is not in itself criminal, but if it means lack of care for the elderly or the ill, not noticing rights of children, turning a blind eye to human trafficking and discrimination, persons' primary and specific rights will suffer. Human rights should never be just a turn of phrase. Neither should they be merely means of propaganda to accuse political opponents of when superficial offences occur. The work for implementing rights must go on. The interpretation and meaning of rights should also be widely discussed in society so that we understood, recognised and respected the meaning of culture based of rights – the culture we were ripped out of for decades. We should also respect our mutual rights when the eye of law is not upon us. This should be considered when reading this report. But this report also contains many positive things. It is a positive matter that we have come so far in such a short time.

An important part of Estonian human rights work is to help people all over the world, help those whose most elementary rights are still not recognised. And let this be a reminder that there is no reason to stop and rest on laurels. Human dignity cannot be measured in money – it is a value that is a base for a society worth living in.

Iivi Anna Masso
member of the supervisory board of Estonian Human Rights Centre

Prohibition of torture, inhuman or degrading treatment and punishment

THE AUTHOR

Kristi Rekand

Kristi Rekand has been employed with the national legal system. She is currently working as a lawyer at the Estonian Patient Advocacy Association where she primarily specialises on the protection of rights of persons with mental disorders. She has cooperated with FRA and CPT on human rights. Kristi Rekand took part in the centre's legal clinic program offering asylum seekers legal help. She considers it important that there are appropriate national structures and acts in place in order to guarantee human rights and fundamental freedoms.

RIGHTS

ECHR Article 3 – Prohibition of torture

- No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

CHAPTER 1

Prohibition of torture, inhuman or degrading treatment and punishment

Torture and other inhuman or degrading treatment is prohibited by § 18 of the Constitution of the Republic of Estonia. This prohibition is also supported by the European Convention for the Protection of Human Rights and Fundamental Freedoms[1] and the UN Convention against Torture[2]. All persons are protected against torture and other similar treatment, including those who are imprisoned, people with mental disability and patients.[3] This prohibition, therefore, includes degrading detention and living conditions.[4]

Torture is a form of abuse – the severest form of abuse. Other forms of abuse include cruel, inhuman or degrading treatment or punishment. The definition of "torture" consists of the following three elements: inflicting physical or psychological distress or suffering; intention and a specific purpose; the offender's connection with public authority.[5] The abuse may not always reach

1 The European Convention on Human Rights. Signed in Rome 4 November 1950. Estonia signed it 14 May 1993. Ratified 16 April 1996.
2 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. New York. 10 December 1984.
3 Maruste, Rait (2004). Konstitutsionalism ning põhiõiguste- ja vabaduste kaitse [Constitutionalism and the protection of basic rights and freedoms]. Tallinn 2004. Page 335.
4 European Court of Human Rights. 21 January 2011 judgment M.S.S v. Belgium and Greece. Application no. 306969/09.
5 Õiguskantsleri 2010.aasta ülevaade [Chancellor of Justice's review of 2010]. Available at https://www.riigiteataja.ee/aktilisa/3141/0201/1001/Ylevaade%202010.pdf.

the severity of torture or manifest itself solely in beating or inflicting pain on a person by a representative of public authority. The heads of closed institutions allowing violence between the persons detained there, unjustified round the clock video surveillance, inhuman living conditions etc may also be considered abuse.[6]

Perhaps the most attention in association with abuse in 2011 was paid to the conditions in nursing hospitals. In 2011 there were also significant changes in legislation regarding nursing homes[7] – the new wording of the Social Welfare Act was adopted.

Political, institutional and legislative developments

The amendment of the Social Welfare Act brought on several changes for general care homes and special care homes alike (the general care homes are for the elderly and for people with disabilities to live in, they receive care but no health services there; special care homes are for people with psychological special needs to live in, they receive care and rehabilitation there). The Social Welfare Act prescribes different requirements and obligations on the general and special care homes according to their differences.[8] To a larger extent the amendments to the Social Welfare Act had to do with the right to liberty (see the chapter on right to liberty). The new wording of the Social Welfare Act changes the principle of providing special welfare services to be on a more necessity basis, so that people may receive the service they need regardless of the severity of their disability or the percentage of loss of their incapacity for

[6] Parrest, Nele. „Väärkohtlemine on ka tänase Eesti mure" [Abuse is concern for Estonia today]. Maaleht 26.10.2010. Available at: http://www.maaleht.ee/news/uudised/arvamus/vaarkohtlemine-on-ka-tanase-eesti-mure.d?id=31819835.

[7] The health insurance fund explains the differences in more detail on its website (in Estonian): http://www.haigekassa.ee/kindlustatule/tervishoid/taastus/hooldus.

[8] The provider of the 24-hour special care service is also required, in addition to supporting in everyday activities, to: ensure the security of the person receiving 24-hour special care service, assist the person in taking care of himself or herself, adhere to the treatment schedule prepared for the person by a health care provider, create possibilities for the person place in social welfare institution by a court ruling for working or for an activity similar to working on the service provider's territory and carry out other activities required to achieve the objective of 24-hour special care service. (Social Welfare Act, §1149 subsection 2).

work.[9] It also sets higher educational requirements for the activity instructors, which supposedly helps to increase the quality of the special welfare service.[10] The wording of the Social Welfare Act that came into force in April of 2011 adopts the data register of social services and benefits (STAR) and dissolves the national social register (SIS). STAR is supposedly better able to apply a personal approach to assisting a person in welfare services.[11] The new register needs breaking in and it is therefore too early to appraise its functionality.

Noteworthy public discussions

In spring of 2011 the television program "Pealtnägija" raised the issue of quality of welfare services provided in Keila nursing hospital, which turned into a public debate. The relatives of a patient accused the hospital's staff of negligence.[12] After the story was published several patients in nursing hospitals across Estonia submitted complaints and claims regarding various problems in nursing hospitals. These complaints were gathered into a summary report by the Estonian Patient Advocacy Association in the spring of 2011 which demonstrates the following general problems with welfare services:[13]

- Patients or their relatives are not given information about the treatment, care or the prognosis. The requests for this information are ignored and the patient and his or her relatives are left uninformed.
- Patients and their relatives are treated without dignity, in a demeaning manner, at times crudely. The service providers cause the patients intense suffering with the following activities: the patients are not given the required care (causing bedsores), the bedridden patients are not fed, given drink or given help if they need it to go to the toilet, the patients

[9] See the wording of Social Welfare Act that came into force in 13.03.2011.
[10] Special care service may be provided directly by a natural person (activity supervisor), who complies with at least one of the following requirements (Social Welfare Act, 1134 subsection 1 point 1).
[11] See explanatory memorandum to the draft act of Social Welfare Act. Available at: http://www.riigikogu.ee/?page=en_vaade&op=ems&eid=819652.
[12]
[13] Estonian Patient Advocacy Association. Kokkuvõte hooldusravi juhtumitest Eestis näidetega [Summary report of welfare service cases in Estonia with examples]. Available at: http://www.epey.ee/public/files/KOKKUVÕTE%20HOOLDUSRAVI%20JUHTUMITEST%20NÄIDETEGA.pdf.

are neglected and treated in a demeaning manner, the so-called problem patients are restrained illegally, patients are left without care for a long time, patients are left alone for long periods of time without checking up on their condition often enough, their pains are not relieved, medications or technical aids are not provided, the rooms' conditions are neglected (temperature), patients are restrained physically and given sedatives without informing them of it, patients and their relatives are verbally abused by the staff, the patients are not provided so-called by-services (grooming, exercising, going outdoors etc).

- Service providers try to knowingly induce patients' death by overdosing them on sedatives or by not giving them the necessary medications, by knowingly letting them catch a cold etc.
- The relatives of patients are pressured into paying bribes for continuation of the service or for a better service.
- The patients' possessions are not attended to, personal belongings are being stolen.
- Complaints of patients and their relatives about the services provided are not taken seriously. Sometimes the nursing hospitals admit that the quality of the service is poor and claim that this is the way it should be.

The head of the Estonian Patient Advocacy Association explained that the summary report was essentially a patients' version that hadn't gone through official investigation, but since there were so many complaints (50 complaints from 16 different welfare institutions) and they were relatively similar, some conclusions can still be made.[14] On May 11th a member of the Social Affairs Committee of Riigikogu asked the Prime Minister a question about welfare services and hospitals.[15] Prime Minister Andrus Ansip replied that making conclusions based on one case is wrong, as just one specific case had been

[14] Kukemelk, Epp-Mare (ed. 2011). Patsientide esindus on saanud hooldusravi kohta poolsada kaebust [The patients' representative organ has received 50 complaints about welfare services]. Delfi. Available at: http://www.delfi.ee/news/paevauudised/eesti/patsientide-esindus-on-saanud-hooldusravi-kohta-poolsada-kaebust.d?id=46746588.

[15] Riigikogu (2011). 12th Riigikogu shorthand notes for the 1st session. 11.05.2011. Available at: http://www.riigikogu.ee/?op=steno&stcommand=stenogramm&date=1305108300&pkpkaupa=1&paevakord=8454.

made public. The Prime Minister also said that in his appraisal the system for processing complaints in Estonia is not faulty. The North Estonia Medical Centre (PERH) instigated internal investigation in the spring to find out whether the case described in ETV's program "Pealtnägija" contained mistakes in welfare service and whether there had been instances of negligence towards patients. On May 17th PERH provided an overview of the events at Keila hospital, which conceded that "according to the commission that appraised the work of the welfare and after care clinic the main problems that need solving are the shortcomings in the arrangement of work, management mistakes, the unorganised exchange of information with the relatives, the stress of the staff and the lack of staff, but also lack of feedback from patients and their relatives, more precisely fear of giving feedback. As it is, the hospital does not receive much feedback from patients or their relatives. Any feedback is essential to the hospital to improve their processes. I emphasise that we want a dialogue between the patients and their relatives as well as representative organs of the patients."[16] The members of the Social Affairs Committee of Riigikogu submitted an interpellation to the Minister of Social Affairs on May 30th.[17] The Minister of Social Affairs' reply revealed that there are plans to specify the regulation of welfare services and that among other things there are intentions to establish requirements for the service providers. The requirements to equipment and the interiors of hospitals need to be supplemented and the number of staff has to be increased depending on the number of beds in the establishment. The preparations to the health services draft act are being made, which regulates providing nursing care in general care homes in a more flexible manner, thereby improving the availability and expected quality of nursing care.[18] The Estonian Patient Advocacy Association submit-

[16] Regionaalhaigla (2011). Põhja-Eesti Regionaalhaigla annab ülevaate Keila haiglas toimunust [The North Estonia Medical Centre gives and overview of events at Keila hospital]. Available at: http://www.regionaalhaigla.ee/?op=body&id=30&art=237. 15.01.2012.

[17] Interpellation. Regarding welfare services. Available at: http://www.riigikogu.ee/?page=pub_ooc_file&op=emsplain&content_type=application/pdf&u=20110918140339&file_id=1360331.

[18] Riigikogu (2011). 12th Riigikogu shorthand notes for the 2nd session. 19.09.2011. Available at: http://www.riigikogu.ee/?op=steno&stcommand=stenogramm&date=1316433900&pkpkaupa=1&paevakord=8834#pk8834.

ted an official inquiry to Riigikogu on October 5th, which demanded essential and specific decisions in regard to improving the quality of health and social services and objective assessment.[19] Specific propositions included a recommendation on changing the model for funding health care, establishing efficient and independent supervision as well as a procedure for complaints, creating a Patient Act and creating new and efficient quality systems.

Good Practices

The Ministry of Social Affairs has in previous years compiled an "Estonian nursing care network development plan 2004–2015" [20] and a "Handbook for caring carers"[21]. Both of these documents are a very good example and guideline to how the target group could and should be approached and how to improve the situation. The promotion of an approach that focuses on the person rather than the service is remarkable. As a positive example the carers' handbook emphasises orientation on a scheme that focuses on the personality of the elderly and on providing services in an integrated manner. The various methods and administrative models of nursing care as well as health sectors are not posed as opposing, but they form a base for providing various services (personal assistance) as an integrated system, which guarantees specific persons the selection of services and personal assistance that best suits his or her condition and coping abilities. After the problems that had arisen in public the Ministry of Social Affairs gave the Health Board the order to check on organisation of nursing care hospitals. As of writing of this chapter the results of the analysis have not yet been published, which means we can only rely on

[19] Estonian Patient Advocacy Association (2011). [Official inquiry to Social Affairs Committee of Riigikogu and the members of Riigikogu]. Available at: http://www.epey.ee/public/files/AVALIK%20PÖÖRDUMINE%20(HOOLDUSRAVI)%202011.pdf.

[20] Ministry of Social Affairs (2001). Eesti hooldusravivõrgu arengukava 2015 [Estoniana nursing care network development plan 2004–2015]. Available at: http://rahvatervis.ut.ee/bitstream/1/2048/1/Sotsiaalministeerium2001.pdf.

[21] Ministry of Social Affairs (2009). Hooliva hooldaja käsiraamat [Handbook for caring carers]. Available at: http://www.sm.ee/fileadmin/meedia/Dokumendid/Sotsiaalvaldkond/Eakad/hooldaja_kasiraamat.pdf.

the article published in the press.[22] The article states that 50% of service providers have received a notice regarding partial deficiencies in the services provided. The deficiencies are identified as tying up of patients, absence of a system for summoning nurses, over crowdedness of wards, disregard for hygiene requirements etc. The analysis also states that small nursing care hospitals are incapable of offering a quality service due to being insufficiently funded. The article also provides the appraisal of the representative of the Ministry of Social Affairs, which states that the Ministry of Social Affairs acknowledges the shortcomings that were pointed out in the analysis of the Health Board, but nevertheless takes them lightly. In the opinion of the representative the general review of the Health Board had been a positive one and had not confirmed the image portrayed of the nursing care providers by the media. The representative claims that the fact that no service provider's licence had to be revoked was a positive sign.

Court Practice

At the moment there is no court practice creating precedent in this field. However, based on the specific Keila case that caused the major discussion in 2011 and the numerous complaints filed with the Estonian Patient Advocacy Association after that, it can be concluded that there are problems. Therefore, the fact that claims concerning nursing care services filed against the service providers is rather more likely a sign that denotes that filing complaints with the court is something people are afraid of or that turning to court is considered useless.

Conclusion

Depending on the circumstances, it could be said that there may be cases of the most severe form of abuse – torture –in nursing care of welfare services in Estonia. There may also be cases of demeaning or inhuman detention or

[22] Jõesaar, Tuuli (2012). „Terviseameti analüüs: vigu on enam kui pooltes hooldusravihaiglates" [The analysis of the Health Board: mistakes have been made in more than half of the nursing hospitals]. Eesti Päevaleht. Available at: http://www.epl.ee/news/eesti/terviseameti-analuus-vigu-on-enam-kui-pooltes-hooldusravihaiglates.d?id=63733344.

living conditions, disproportionate restriction of movement, degrading treatment, restraint and lack of complaint mechanisms in nursing care establishments. The fact that there are people who have been treated in a demeaning manner or who have been abused, but who clearly do not dare turn to the management of the establishment or to some other institution indicates that the system for complaints in place at the moment is not the best and/or that this right to file complaints has not been acknowledged and/or that people do not believe they could benefit from it. A so-called pre-court organ for efficiently investigating, processing and analysing patients' complaints has to be established, and the quality mechanisms have to be improved in general.

Recommendations:

Review the quality of welfare services in all nursing hospitals and bring it into concordance with human rights. All organisations providing welfare services need to have an in-house quality system, a procedure for solving complaints and disputes and methods for receiving feedback from clients / receivers of the service.

A precise, uniform and effective order for processing complaints and for investigation and procedure has to be established. The clients of the welfare establishments need to be informed of this, they have to be explained in a clear and understandable manner what the in-house order is and of the options and the order of making external complaints.

Prohibition of slavery and forced labour

THE AUTHOR

Merle Albrant

Merle Albrant has graduated from law programme of the social sciences at the Tallinn University of Technology. She has also participated in various conferences and training courses. Merle is a lawyer of the Järva Women's Shelter, a consultant to the NGO Women's Shelters Union and the Estonian Women's Associations' Round Table. In addition to that she provides counselling on topics of discrimination at the Estonian Human Rights Centre.

RIGHTS

ECHR Article 4 – Prohibition of slavery and forced labour

- No one shall be held in slavery or servitude.
- No one shall be required to perform forced or compulsory labour.

CHAPTER 2

Prohibition of slavery and forced labour

Even though slavery and forced labour are prohibited they still exist in the modern world in a clandestine form in areas, which are not instantly thought to be associated with this topic. Human trafficking is one of the forms of modern slavery. One of the most significant developments in this area in 2011 took place in legislation – a draft act on human trafficking was drafted.

Political and institutional developments

The Ministry of Justice has drawn up a development plan for reducing violence for years 2010–2014, which has as one of its objectives the intent of preventing and decreasing human trafficking. A report on the execution of the first year of the development plan was published in 2011, which provided an overview of the fulfilment of goals set in the development plan.[1] According to the report the main attention in the human trafficking field in 2010 was concentrated on charting the situation of forced labour and exploitation of labour as well as on training the specialists who come into contact with human trafficking. In several instances supranational research groups have been set up to tackle proceedings of human trafficking cases in cross-

[1] Ministry of Justice (2010). Vägivalla vähendamise arengukava aastateks 2010–2014: 2010. aasta täitmise aruanne [Final report of 2010 on execution of the development for reducing violence for 2010–2014]. Available at: http://www.just.ee/orb.aw/class=file/action=preview/id=54162/V%E4givalla+v%E4hendamise+arengukava+2010.+aasta+t%E4itmise+aruanne.pdf.

border cases. In addition the Ministry of Social Affairs in association with the NGO Omapäi started work on drawing up a guardianship system for children without escort who have been trafficked: the current situation was mapped out, a more detailed guardians' professional profile and a description of duties was drawn up, potential guardians were sought out and gathered, training materials were prepared.

Legislative developments

The most remarkable development in 2011 took place in legislation – the draft act criminalising human trafficking was drawn up, which will be incorporated into the Penal Code. Necessary elements of an offence of human trafficking carried out for various purposes will be included. Riigikogu will hopefully approve these amendments in 2012. The draft act amending the Penal Code will change the wording of the necessary elements of the offence and add additional necessary elements carried out for various purposes. The new wording of section 133 of the Penal Code prescribes the necessary elements of an offence for enslaving, which entails these forms: 1) placing a human being in enslavement; 2) placing a human being in a situation where he or she is forced to work or to provide a service, engage in prostitution or in other activities enabling sexual abuse, carry out other degrading tasks or to commit a crime; 3) keeping a human being in one of the aforementioned situations; selling or buying a human being.

The Penal Code will be amended with a new provision – section 133^2 – which prescribes a punishment for acts, which have been committed for the purpose of enslaving a human being if there are no necessary elements of an offence or the purpose of sexual abuse present. The different types of enslaving a human being are the following: 1) recruitment, 2) transportation, 3) transfer, 4) sending, 5) receipt, 6) harbouring, 7) provision of premises. The act must be committed through deprivation of liberty, violence or deceit, through abuse of power or a position of vulnerability or some other inescapable situation, or by giving or receiving payments or benefits to achieve the consent of a person having control over another person. The amendments should bring the Penal Code into accordance with the requirements of the

international law, including the obligation of criminalisation of all types of human trafficking within the national law. Such requirements stem from the Council of Europe Convention on Action against Trafficking in Human Beings (Article 18), EU Council Framework Decision 2002/629/JHA of 19 July 2002, Directive 2011/36/EU of the European Parliament and of the Council, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.[2] The new draft act is a huge step forward in the development of Estonian legislation regarding helping the victims of human trafficking and in providing the victims a legislative protection; particularly because the necessary elements of an offence of human trafficking no longer require proof of the lack of will or intent on the part of the victims. The Minister of Justice also emphasised that: "such an amendment means that in order to charge someone with the offence of human trafficking the requirement of proof that the victim did not agree to carrying out of the crime is not needed, thereby precluding situations where the accused could produce a weighty contract in court, which would then mean the victim agreed to his or her exploitation."[3] In addition, the amendment to the Penal Code will facilitate gathering statistics about human trafficking. The current legislation lacks the necessary elements of an offence of human trafficking, which makes it difficult to get an overview of the cases and victims of human trafficking. The ratification of the draft in Riigikogu should statistically provide an adequate overview of cases related to human trafficking, if these cases are being proceeded and proceeded according to the necessary elements of an offence described in the draft act. This, in turn, will help provide an overview of the situation of human trafficking in Estonia, its victims and their needs.

[2] Riigkogu. Karistusseadustiku ja sellega seonduvate seaduste muutmise seaduse eelnõu seletuskiri [The explanatory memorandum to the draft of the act amending the Penal Code and the acts associated]. Available at: http://www.riigikogu.ee/?page=en_vaade&op=ems&eid=1454596&u=20120116175306.

[3] Ministry of Justice. Valitsus kiitis heaks inimkaubandust kriminaliseeriva seaduse eelnõu. Pressiteade. [Press release: the government improved the draft act criminalising human trafficking]. Available at: http://www.just.ee/55981.

Court practice

The 15th survey on criminal policy was published in 2011.[4] It stems from the publication that in 2010 four criminal groups involved with illegally transporting persons cross borders or with aiding prostitution were put on trial. In 2010 four persons were convicted of enslaving and were given a prison sentence of 1–3½ years; one of them served the sentence, the others were given a conditional sentence with a probationary period of 1–4½ years. All of these enslavement cases involved aiding prostitution by means of violence and coercion; the victims were women, some of them underage. For instance the court case no 1-07-8975, where "ten persons were given a conditional sentence of up to 2 years and 7 months for aiding prostitution at a bordello at the address: Tedre 3. The persons aiding prostitution were men in their forties who carried out various jobs in the course of keeping a bordello, for example: doorman, barman-administrator, driver, executive director. The barmen-administrators usually organised making payments to the girls and the taxi drivers as well as taking money from clients. Most of the people who were convicted had been active in the establishment for a year and had aided prostitution of at least eight women." A total of 26 persons were convicted for aiding prostitution in 2010, three of them were also convicted for enslaving.

The daily paper Eesti Päevaleht covered a case concerning human trafficking at lengths – "The enslaved woman of Lasnamäe", which also ended up in court.[5] A man rented out a mentally disabled woman who had come from a children's home as a prostitute, took the woman's money (including the bank card) and didn't allow her to leave the apartment by herself. Having been caught at aiding prostitution, the man registered marriage with the woman to escape the charge. The situation had been known to the social welfare department of

[4] Ministry of Justice. Kriminaalpoliitika uuringud 15 [Survey of criminal policy 15]. Kuriteguvus Eestis 2010. Available at: http://www.just.ee/orb.aw/class=file/action=preview/id=54601/KuritegevusEestis2010_web.pdf.

[5] Eesti Päevaleht. Mees orjastas Lasnamäel vaimupuudega naise ja müüs teda kui lapsprostituuti [Man in Lasnamäe enslaved a woman with a mental disability and pimped her out as a child prostitute]. 14.03.2011. Available at: http://www.epl.ee/news/eesti/mees-orjastas-lasnamael-vaimupuudega-naise-ja-muus-teda-kui-lapsprostituuti.d?id=51293492.

Lasnamäe for a year, but they did not see it as a problem. The social workers deemed things to be in order in that particular family. The criminal case made it into court in March of 2011, but the exact nature of the charge, whether it was aiding prostitution, enslaving or something else, is not known to the author of this article. Neither is there information as to whether the proceedings have been concluded. The article in the newspaper motivated the Ministry of Social Affairs to summon the representatives of Harju County Government and Tallinn Social and Health Board to discuss the case.[6]

The human trafficking cases do not involve only the sexual exploitation of women. There is an abundance of cases, where the victims of employers' exploitation are men who have gone to work in a foreign country. The court practice provides an example of five Russian speaking men from Estonia, who went to work at a building site in Ukraine. In Ukraine they were exploited by the employer: they had to live in a trailer on site with no hot water or a water closet. They also had to work overtime, including in the weekends, as well as for no pay. They filed a complaint, but due to cross-border problems with proceedings with Ukraine the case was closed. Because exploitation took place in Ukraine and the person exploiting them was a Ukrainian citizen the case could not be proceeded by Estonia without the permission of Ukrainian authorities.[7]

[6] Eesti Päevaleht. Sotsiaalministeerium uurib vaimupuudega naise orjastamise juhtumit [Ministry of Social Affairs is investigating the enslaving of a woman with a mental disability]. 16.03.2011. Available at: http://www.epl.ee/news/eesti/sotsiaalministeerium-uurib-vaimupuudega-naise-orjastamise-juhtumit.d?id=51293641.

[7] Report series 68. Trafficking for Forced Labour and Labour Exploitation in Finland, Poland and Estonia. Available at: http://www.heuni.fi/1290610598184.
Trafficking for Forced Labour and Labour Exploitation in Estonia. Available at: http://www.heuni.fi/Satellite?blobtable=MungoBlobs&blobcol=urldata&SSURIapptype=BlobServer&SSURIcontainer=Default&SSURIsession=false&blobkey=id&blobheadervalue1=inline; filename=Estonian report.pdf&SSURIsscontext=Satellite Server&blobwhere=1296728243676&blobheadername1=Content-Disposition&ssbinary=true&blobheader=application/pdf. 05.01.2012.

Statistics and surveys

In 2011 a final report on labour exploitation was published, which had been drawn up as a pilot project in cooperation with Tartu University, Warsaw University and HEUNI. It covered the situation in three states: Finland, Poland and Estonia.[8] The report uncovered that in human trafficking, especially in the forced prostitution of women (but also in forced labour of men and women) Estonia is rather the source country and to a lesser extent the destination country. Men and women have ended up in forced labour in Spain, Norway and Finland.[9] The risk of ending up in labour exploitation or in forced labour, based on statistics and the low point of the labour market, is considered to be very high. Already in 2008 the number of Estonian citizens with a permanent contract of employment in a foreign country was 10,000–15,000. The main reason for leaving was economic, mostly lack of jobs. A separate risk group is made up of the long term unemployed, who are usually either younger or older workers. They are even more vulnerable to the offers of human traffickers than those of low social standing, low level of education who have been unemployed for a short time. The United States' annual report on trafficking in persons has dropped Estonia's category to tier 2, which means that the Government of Estonia "does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so."[10] Estonia's category was reduced because Estonia had not indicated the will to undertake necessary legislative amendments, there is no specific law on human trafficking and the current law does not prohibit or adequately penalise all forms of human trafficking, including the transportation, aiding, use of coercion etc.

In 2011 the Ministry of Justice published "Survey of criminal policy 15", which pointed out that there have been 15 registered cases of enslaving in

8 Trafficking for Forced Labour and Labour Exploitation in Estonia.
9 United States Department of State, Trafficking in Persons Report 2010 – Estonia. Available at: http://www.unhcr.org/refworld/country,,,,EST,,4c1883f6c,0.html.
10 United States Department of State, Trafficking in Persons Report 2010 – Estonia. supra note 16.

Estonia in the past 8 years, one or two cases on average per year.[11] The enslaving cases might have constituted human trafficking in most cases, however, due to the absence of the necessary elements of a criminal offence in human trafficking in the Penal Code the precise number cannot be ascertained. Cases of unlawful deprivation of liberty have not been crimes of human trafficking according to the survey (there had been cases in 2010 where the victim was taken to the woods, tied to a tree and abandoned there).

Good practices

In the framework of good practices the ongoing work of various non-governmental organisations in prevention of human trafficking as well as helping the victims of human trafficking should be emphasised. The victims of human trafficking in Estonia receive assistance from the rehabilitation centre of the NGO Eluliin called Atoll and from the NGO Ida-Virumaa Women's Support Centre. Both of these centres offered assistance to a total of 57 victims of human trafficking in 2010.[12] There is also a national hotline for prevention of human trafficking operated by the NGO Living for Tomorrow, which in 2010 provided help to 643 persons, most of them Russian speaking persons from Tallinn, half of them men, half of them women.[13]

The NGO Living for Tomorrow

operates a national hotline for prevention of human trafficking 660 7320, which takes calls on workdays 10.00–18.00.
Counselling is also available via email (info@lft.ee) and via the website (www.lft.ee).

[11] Ministry of Justice. Kriminaalpoliitika uuringud 15.
[12] Ministry of Justice (2010). Vägivalla vähendamise arengukava aastateks 2010–2014: 2010. aasta täitmise aruanne.
[13] Ministry of Justice. Kriminaalpoliitika uuringud 15.

Trends in 2011

The level of awareness of the public of their rights, including the right not be involved in forced labour, is relatively low. This also became apparent in the survey published in 2011, which stated that several practicians and academics do not think that forced labour is a problem in Estonia. The same attitude was portrayed in the media, where human trafficking was mostly associated with cases of sexual exploitation.[14] The low level of public awareness makes spreading information essential and necessary. Therefore, the plan to organise awareness raising activities across Estonia that are aimed at the general public on forced labour in order to introduce safe methods for taking up employment in foreign countries, is a welcome one. The follow-up activity of drawing up a guardianship system for children without escort who have been trafficked is also a priority.[15]

Recommendations:

- Pass the amendment prohibiting human trafficking.
- Raise the awareness of the public in general on the topic of human trafficking and labour exploitation (including among associations of employers, the representative organs of employees, trade unions, organisations mediating labour).

[14] Report series 68. Trafficking for Forced Labour and Labour Exploitation in Finland, Poland and Estonia. Trafficking for Forced Labour and Labour Exploitation in Estonia.

[15] Ministry of Justice (2010). Vägivalla vähendamise arengukava aastateks 2010–2014: 2010. aasta täitmise aruanne.

Right to Personal Liberty

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RIGHTS

ECHR Article 5 – Right to liberty and security

- Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
  ... e the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants; ...

ECHR Protocol 4 Article 1 – Prohibition of imprisonment for debt

- No one shall be deprived of his liberty merely on the ground of inability to fulfil a contractual obligation.

ECHR Protocol 7 Article 3 – Compensation for wrongful conviction

- When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to the law or the practice of the State concerned, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

CHAPTER 3

Right to Personal Liberty

2011 was a year of activity in the field of right to personal liberty. Several amandments of acts were initiated, two of them were passed (the Mental Health Act and the Social Welfare Act). The Supreme Court also specified matters concerning compensation for unjust detention with its decision. The decision of the Supreme Court deeming the provisions that allow post-sentence preventive detention to be in contradiction with the Constitution can be pointed out as an important development. On the whole it can be said that the developments that occurred in 2011 increased the level of protection of right to personal liberty in Estonia.

Political developments

There were several political initiatives in 2011 regarding the Mental Health Act as well as detention and treatment of persons in closed institutions. The Government is currently discussing two draft acts that have not made it to Riigikogu yet. One of them foresees replacing part of the sentence of imprisonment of sexual offenders with treatment and the other supplies the option of placing an underage person in dependency treatment against his or her will.[1] The proceedings for amending the draft act amending the Mental Health Act were initiated in Riigikogu on September 12th; on February 15th, 2012 it was already passed in Riigikogu.[2] The explanatory

[1] Psühhiaatrilise abi seaduse, tervishoiuteenuste korraldamise seaduse ja tsiviilkohtumenetluse seadustiku muutmise seaduse eelnõu [draft act amending the Mental Health Act, the Health Care Services Organisation Act and the Code of Civil Procedure]. Available at: http://eelnoud.valitsus.ee/main#VkFdrg8R.

[2] Menetlusetapid Riigikogus [Stages of proceedings in Riigikogu]. Available at: http://www.riigikogu.ee/?page=eelnou&op=ems&emshelp=true&eid=1396981&u=20120209120223.

memorandum states that the act regulates matters concerning a person's right of ownership, it changes and implements the provisions on application of means of restraint and specifies matters pertaining to surveillance.[3] In the context of this specific human right the regulation concerning means of restraint relates most closely; it also concerns the topic of prohibition of inhuman treatment (also see the chapter on torture and other inhuman treatment).

The Mental Health Act gives the option of applying means of restraints on a person who has been placed in a closed institution.[4] Application of means of restraint constitutes as a limitation of right to liberty stated in section 20 of the Constitution of Republic of Estonia[5] and Article 5 of European Convention on Human Rights[6]. On the other hand, both provisions allow for detention of persons with mental disorders if the person presents a danger to himself or herself or to other persons. The amendments to the Mental Health Act that were recently passed in Riigikogu must adhere to these basic principles as well as to the relevant international standards.[7] The means of restraint, according to the Mental Health Act, are isolation and physical restraint. The former means placement of a person in an isolation room and the latter means the use of mechanical means (straps, special clothing) in order to restrict the liberty of movement of a person in an isolation room under supervision of medical staff (Mental Health Act, § 14 subsection 1 and 2). The explanatory memorandum to the recently passed draft act amending the Mental Health Act emphasises the principle of using minimal force on the patient and imposing as minimal a breach of the person's dignity as possible while not endangering his or her psychological

[3] See the explanatory memorandum to the draft act amending Mental Health Act. Available at: http://www.riigikogu.ee/?page=pub_file&op=emsplain&content_type=application/msword&file_id=1398249&file_name=(80)%20psühhiaatrilise%20abi%20muutmine%20seletuskiri.doc&file_size=136192&mnsensk=86+SE&fd=2012-03-07.

[4] RT I, 23.02.2011, 31.

[5] The Consitution of the Republic of Estonia. RT 1992, 26, 349.

[6] RT II 2000, 11, 57.

[7] Recommendation REC(2004)10 of the Committee of Ministers of the Council of Europe. Available at: https://wcd.coe.int/ViewDoc.jsp?id=775685&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) standard. Available at: http://www.cpt.coe.int/estonian.htm.

of physical health.[8] The explanatory memorandum refers to Chancellor of Justice's several verification visits to psychiatric departments where he has come across breaches of persons' basic rights in the application of means of restraint. Therefore the following amendments have been planned:[9]

- Legalisation of uniform principles of application of means of restraint (since means of restraint are usually set out in the hospital's internal provisions, which may significantly vary from hospital to hospital);
- Additional obligation of informing – it is important from the point of view of international standards that in regulation of application of means of restraint the least restrictive method for the patient is legalised. It is also essential to inform of the reasons for application of a means of restraint and the specific activities that are applied as a means of restraint. The Act is amended with an illustrative list of activities (conversation, persuasion and oral pacification), which have to be utilised before applying means of restraint, and only if these measures have not sufficed may the means of restraint be applied. In addition, the doctor has the obligation to have a conversation with the patient after the application of a means of restraint with the objective of avoiding it in the future and to notify the patient of his or her rights concerning the application of the mean of restraint;
- The obligation of keeping a register – the obligation of keeping an in-hospital register on application of means of restraint is necessary as it enables statistical appraisal of the number, extent and duration of the restraints. Keeping a register also enables prevention of abuse;
- Specifying the applier of means of restraint – it can be pointed out as a positive fact that the person applying a mean of restraint on someone with mental disability has to be the provider of the welfare service or in other words the doctor. The welfare service provider has presumably received suitable training. The draft rules out intervention by external help providers (police, security personnel) in the course of providing a welfare service;

[8] Explanatory memorandum to the draft act amending Mental Health Act, p 10.
[9] Explanatory memorandum to the draft act amending Mental Health Act, pages 10-13.

- Amendment of the list of means of restraint (physical restraint and restraint with medication or chemical restraint were added) as well as making the list more specific;
- Specification and documenting of surveillance over application of means of restraint.

The fact that in documenting the application of means of restraint the nature and compulsiveness of keeping the register have been omitted may be seen as a negative aspect of the adopted Act. This register system containing clear entries facilitates surveillance over application of means of restraint while providing an overview of their extent. The Chancellor of Justice has repeatedly remarked on his visits that the existence of the register of means of restraint has to be guaranteed in order to have an overview of the number of occasions of restraint specified by the type of restraint and their duration.[10] It is important to place the obligation of keeping the register on the welfare service providers by legislation stating the method of keeping a register, the necessary data and other details. The obligation of submitting periodic reports on restraints to a supervisory board (whether the Health Board and/or the Chancellor of Justice) should also be considered. As a good practice the recommendations/standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) could be the basis to regulation of the means of restraint.[11]

The right to personal freedom is being approached from a completely different aspect by the State Liability Act[12] that is currently under discussion in *Riigikogu* – it also deals with compensation for unjust deprivation of liberty. The new act would combine the current regulation of state liability and the Compensation for Damage Caused by State to Person by Unjust Deprivation of Liberty Act (AVVKHS). It would also change the scheme of

[10] Õiguskantsleri 2010. aasta aruanne [Chancellor of Justice's annual report for 2010]. Available at: https://www.riigiteataja.ee/aktilisa/3141/0201/1001/Ylevaade%202010.pdf. 22.01.2012, p 108.

[11] Council of Europe (2006). CPT standards.

[12] Riigivastutuse seaduse eelnõu (7 SE I) [draft act for the State Liability Act]. Available at: http://www.riigikogu.ee/?page=pub_file&op=emsplain&content_type=application/msword&u=20120209105213&file_id=1329971&file_name=(7)%20riigivastutuse%20seadus.doc&file_size=82944&mnsent=7+SE&etapp=07.04.2011&fd=08.06.2011.

paying compensation for unjust deprivation of liberty. The compensation so far amounts to a certain sum of money for each day (whether the damage can be proved or not), but in the amended version the damage that cannot be proved amounts to a fixed sum and the loss of profit is covered by the compensation.[13] Passing this act would certainly make the regulation of compensation much clearer as different types of state liability that result in a person's right to claim compensation are brought together into a cohesive act.

Legislative developments

The amendments of the Social Welfare Act that came into force in 2011 also concern the rights of the patients. In the context of right to personal liberty the relevant changes are the ones concerning the general and special care homes (also see the chapter on torture and other cruel treatment).[14] Social Welfare Act's § 202 states that restriction on freedom of movement may be used only on those persons who have been placed in the establishment by a court order and persons who receive 24-hour special care service.[15] One of the new additional requirements states demand for proof of immediate danger to the person or (as an addition by the amendment) other persons, physical integrity or physical freedom. It still hasn't been regulated who this immediate danger has to be caused by. The other additional requirements (which have remained the same) are the insufficiency of other methods and the fact that the doctor has not precluded the application of isolation for that particular person. Placing a person in an isolation room is the only mean of restriction of freedom of movement in this situation (Social Welfare Act § 202), application of other means is not permitted. Application of isolation is decided by a

[13] Hirvoja, Martin (2011). Õiguspoliitika arengutest ja justiitsministeeriumi rollist selles [Developments in politics of law and the role of the Ministry of Justice]. Available at: http://www.just.ee/orb.aw/class=file/action=preview/id=53346/%D5iguspoliitika+arengutest+ja+JMi+rollist+selles.pdf. 22.01.2012, pages 15-16.

[14] Sotsiaalhoolekande seaduse muutmise seadus [the act amending the Social Welfare Act].RT I, 03.03.2011, 3.

[15] Upon the provision of 24-hour special care services the service provider is required, in addition to supporting in everyday activities, to: ensure the security of the person receiving 24-hour special care service, assist the person in taking care of himself or herself, adhere to the treatment schedule prepared for the person by a health care provider, create possibilities for the person place in social welfare institution by a court ruling for working or for an activity similar to working on the service provider's territory and carry out other activities required to achieve the objective of 24-hour special care service. (Social Welfare Act, §1149 subsection 2).

reasoned written decision of the special welfare service provider and a report must be prepared about it (Social Welfare Act § 202). A provider of 24-hour special care service who is in possession of an isolation room must also have a special register on the use of it and the client has the right to access the entries made about him or her in the register, receive copies of it and add explanatory notes about the case in the register. This requirement stems from CPT's report on Estonia at its visit in 2003.[16] However, neither the CPT standards nor the current legislation state the form of the register. The Chancellor of Justice's report published in 2011 about the previous year states that the registers kept at welfare establishments vary to a great degree. Registers are kept in a digital form as well as in paper form and that in itself can be considered a threat to safety as there is no uniform system in place.[17]

Useful information

People are not always aware of the fact that persons have to be notified of the data that has been gathered about them (Personal Data Protection Act, § 19). According to § 35 of Social Welfare Act and § 6 of Personal Data Protection Act they also have the right to receive information concerning documents relating to social welfare as well as on the entries made about the person in the so-called isolation register. As an exception, this right is limited if disclosure of this information is contrary to the interests of the person receiving social welfare (Social Welfare Act § 35 subsection 2). In such cases there has to be a reasoned written decision and the person must be explained that it is possible to file a complaint or challenge this decision.

The Chancellor of Justice also referred to the special welfare provider's obligation to compile a brochure covering the rights of the person in his latest report.[18] § 1131 subsection 1point 1 of the Social Welfare Act foresees that in addition to the person his or her legal representative is also informed of the house rules of the welfare institution and the person's rights and limitations

[16] Council of Europe (2004). Raport. Eesti Valitsusele. „Piinamise ja Ebainimliku või Alandava Kohtlemise või Karistamise Tõkestamise Euroopa Komitee (CPT) Eesti külastuse kohta, mis toimus 23. – 30. septembril 2003" [Report to the Government of the Republic of Estonia on CPT's visit to Estonia 23.-30. September 2003]. Available at: http://www.vangla.ee/orb.aw/class=file/action=preview/id=11917/CPT_eesti.pdf.

[17] Õiguskantsleri 2010. aasta ülevaade.

[18] Õiguskantsleri 2010. aasta ülevaade.

to his or her personal freedoms while receiving the service. The brochure has to contain information about all kinds of possible complaint systems, including information about the opportunity to turn to other relevant institutions (Social Insurance Board, county governor, Health Board, Chancellor of Justice, the court).[19] The complaints play an important part in guaranteeing the quality, it is a means of offering feedback. Complaints are beneficial if they are processed and analysed according to principles of quality management.

Court practice

The Supreme Court made important decisions in 2011 concerning the system of compensation for unjust deprivation of liberty, which will contribute to better protection of personal liberty. The first case of V. Õiglane concerning unlawful arrest of 171 days was dealt with in the human rights' report of 2010.[20] The Supreme Court now found that since the Constitution demands just compensation for the person who had been unjustly detained and thereby caused damage to, the calculation set in the AVVKHS, which only includes the number of days detained and nothing else, may not be in concordance with the Constitution.[21]

In the second case the Supreme Court found that in compensating for damages the AVVKHS affords a different treatment to persons whose offences expire while they are detained during the pre-trial procedure or a preliminary hearing in criminal proceedings and those whose offences expire while they are detained for the duration of court hearings (following the pre-trial procedure).[22] In the former case the person is entitled to the compensation, in the latter case not. The court found that differentiating between people based on whether the reason for detention disappeared before or after the preliminary hearing is not justified according to the equality principle stated in the Constitution. One of the most remarkable developments in 2011 was the Supreme Court's

[19] Council of Europe (2004). Raport. Eesti Valitsusele.; Õiguskantsleri 2010. aasta ülevaade.
[20] Human Rights in Estonia 2010. Annual Report of the Human Rights Centre, Tallinn, 2011, pages 44-45.
[21] The Supreme Court en banc, resolution in the case no. 3-3-1-69-09 (31.03.2011).
[22] Constitutional Review Chamber of the Supreme Court case no. 3-4-1-3-11 (2.06.2011).

decision declaring post-sentence preventive detention to be in breach of the Constitution.[23] This topic was also discussed in the human rights report for 2008–2009[24] where the same conclusion (that such detention is probably not justified from the point of view of human rights) was also reached. The Supreme Court has taken the position that post-sentence preventive detention does not differ in its nature and regime from other types of imprinsonment. Neither differ the services and methods that the prison should offer considering the purpose of detentin – turning the person onto a more law-abiding behaviour and the protection of public order. The Supreme Court criticises the unclear nature and vagueness of the provisions regulating post-sentence preventive detention. Similarly to the criticism offered in the human rights report for 2008–2009 the Supreme Court finds that the prognosis that the judge would have to make about the person's criminal tendencies in the future to apply the post-sentence preventive detention is too much of a conjecture and therefore potentially a great danger to right to personal liberty. As a conclusion, the Supreme Court came to the decision that post-sentence preventive detention does not correspond to any legal basis for deprivation of liberty stated in the Constitution and is therefore in contradiction with the Constitution as well as invalid. This decision by the Supreme Court is undoubtedly a positive development in protection of human rights. It is regrettable that in a situation where the court of highest instance expressed doubt whether post-sentence preventive detention was in accordance with the Constitution already at the draft stage of the act the Ministry of Justice and later Riigikogu decided to adopt this amendment anyway. The Supreme Court referred in its opinion to the draft to the possibility that the amendment is likely to bring about court disputes and therefore refrained from a more detailed analysis in the stage of processing the draft act.[25] The draft act and the amendment that had come

[23] The Supreme Court en banc, resolution in the case no. 3-4-1-16-10 (21.06.2011). The Supreme Court later solidified its position in a later Criminal Chamber case no. 3-1-1-63-11 (5.10.2011).

[24] Human Rights in Estonia 2008-2009. Annual Report of the Human Rights Centre at the Tallinn Law School of the Tallinn University of Technology, Tallinn, 2010, pages 7-12.

[25] Allas, Mare (Chief specialist to the department of legal knowledge, Supreme Court), Karistusseadustiku, kriminaalmenetluse seadustiku ja vangistusseaduse muutmise seaduse eelnõu kohta, kiri justiitsministeeriumile nr 10-4-1-7 [a letter to the Ministry of Justice on the draft act amending the Penal Code, the law of criminal procedure and the Imprisonment Act]. 29.09.2008.

into force included several problems, which were addressed in the processing stage by several experts and which was referred to by the Supreme Court in its 2011 decision, which is why the amendment should never have been adopted in this form. Hopefully now the state will focus on changing the regime of imprisonment by adopting and increasing efficiency of measures for decreasing dangerousness of a person already at the time of the punishment, as the Supreme Court also advises to do in its decision.

Statistics and surveys

An overview of Tallinn and Tartu circuit court cases in administrative matters was published in 2011.[26] The overview concluded, among other things, that the court had a great leevay in deciding compensation for non-patrimonial damage accrued as a result of unlawful detention. The court has to consider in exercising this right "the severity of the offence, the insensity of suffering and pain caused to the person as well as the court practice in similar cases."[27] Whereas, according to the court practice, only those restrictions to personal liberty that intensified during the placing of the prisoner in the punishment cell are to be compensated for, in comparison to restrictions these rights were subjected to at the time of his or her imprisonment.

Conclusion

The greatest positive development in protection of human rights in 2011 was probably declaring post-sentence preventive detention to be in contradiction with the Constitution. Another important development had to do with the new draft act amending the regime of compensation for persons who were unjustly detained. The greatest number of amendments (those already passed and those that are being discussed) were made to legislation regulating

[26] Leppik, Marelle. Tallinna ja Tartu ringkonnakohtu otsuste ülevaade haldusasjades 2010. aasta II poolaastal [an overview of Tallinn and Tartu circuit courts' decision in administrative matters for the second half of 2010]. Kohtupraktika ülevaade, Rigikohus, õigusteabe osakond. Tartu 2011; Rätsep, Signe. 2010. aasta Tallinna ja Tartu ringkonnakohtute otsuste ülevaade tsiviilasjades [an overview of Tallinn and Tartu circuit courts' decisions in civil matters], Riigikohus, õigusteabe osakond. Tartu 2011.

[27] Leppik, Marelle, pages 20-21.

mental health services and social welfare; particularly specifications and amendments made to provisions regarding means of restraint. This, undoubtedly, is a step towards better protection of human rights. The draft act that is still being discussed in Riigikogu whereby sexual offenders have the option of receiving treatment as an alternative to imprisonment, which may, in case of thought out regulation and application improve their chances of reintegration into society once their sentence has been carried out, also has the chance of providing better protection of human rights.

Recommendations:

- Continuous training for staff of the special welfare services establishment who have the right to apply the means of restraint. Among other things the staff should receive training on how to handle excited or violent clients (for finding the method most suitable for the person).
- Adopt the obligation of keeping a register on application of means of restraint for providers of welfare services. This obligation has not been fulfilled properly and on uniform basis by the providers of welfare services or the providers of mental health services so far.
- Welfare establishments should compile understandable information about the house rules of the welfare establishment, the clients' rights and obligations as well as limitations to their rights.
- A precise, uniform and effective order of processing and investigating complaints and an order of proceedings must be established. The clients of the welfare establishment have to be notified of this by explaining clearly and understandably the order for filing in-house complaints as well as presenting the options and the order for filing complaints outside the establishment.
- All organisations providing welfare services must have an in-house quality system, an order of settling complaints and disputes and methods for gathering feedback from clients / receivers of services.
- Adopt the new State Liability Act while keeping in mind rules on human rights for compensation for unjust detention.
- Review rehabilitation services available during imprisonment and develop the efficiency of measures decreasing the level of dangerousness of the prisoner at the time of imprisonment.

Right to a fair trial

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RIGHTS

ECHR Article 6 – Right to a fair trial

- In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. ...

ECHR Article 13 – Right to an effective remedy

- Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

CHAPTER 4

Right to a fair trial

The fundamental right stated in article 6 of Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) concerns both access to court as well as hearing within a reasonable time. Access to court is to be understood as costliness for starting court proceedings – if the state fee is too high the person may not turn to protect his or her rights.[1] These topics received most attention in 2011.

Political and institutional developments

2011 was a memorable year for various discussions concerning the size of state fees. The Supreme Court as well as the Chancellor of Justice spoke out on this topic. In 2011 the Chancellor of Justice presented seven opinions to the Supreme Court, finding in six of them that the size of state fees and/or the limitation to aid for court proceedings are in contradiction of the Constitution.[2]

On September 27th, 2011 Indrek Teder, the Chancellor of Justice assumed the position that the high level of state fees was a hindrance to access to justice in Estonia.[3] The thought that most of the state fees cited in the Appendix 1 of the State Fee Act are in contradiction of the Constitution was preva-

[1] European Court of Human Rights has found in various cases that excessively high state fees may breach the fundamental freedom protected by Article 6. See for example judgment Weissmann and others v. Rumenia; Kreuz v. Poland. Application no. 28249/95.

[2] Chancellor of Justice. Ettekanne nr. 3 riigilõivude suurusest [Report no. 3 on size if state fees], p 2. 26.09.2011. Available at: http://www.oiguskantsler.ee/public/resources/editor/File/NORMIKONTROLLI_MENETLUSED/Ettekanded_Riigikogule/2011/Riigil_ivude_ettekanne_nr_3.pdf.

[3] Õiguskantsler: liiga kõrged riigilõivud rikuvad põhiõigust kohtusse pöörduda [Chancellor of Justice: excessively high state fees are an infringment on the fundamental freedom to have access to courts]. 27.09.2011. Available at: http://oiguskantsler.ee/et/oiguskantsler-liiga-korged-riigiloivud-rikuvad-pohioigust-kohtusse-poorduda.

lent.[4] In the Chancellor of Justice's opinion the state fee should pose a limit to access to justice in order to limit malevolent court cases, but it should not pose a hindrance to access to court. The Chancellor of Justice found that it is impermissible for a state based on the rule of law to stop carrying out checks on lawfulness of the activity of the state or from seeking protection for one's breached rights solely because of the excessive size of the state fees.[5]

The Minister of Justice has expressed contradictory views on this topic. He pointed out in his report presented before Court en banc that the state fees in Estonia are based on the cost principle.[6] And yet he conceded that the state fees in Estonia are among one of the highest in the European Union. But based on the viewpoints expressed in section 17 of the Supreme Court judgment no. 3-2-1-62-10 the Minister of Justice finds that the state fee rates do not contradict the Constitution.[7] In addition, the Minister of Justice promised to initiate an amendment in the near future to reduce the state fees.[8] The draft act made it into the Parliament on 15 March 2012.[9]

Legislative developments

A long term problem in Estonia has proved to be the unreasonably lengthy court proceedings. Several amendments to acts of law were adopted in 2011 to combat this problem.

The new Code of Administrative Court Procedure (HKMS)[10] was passed on 27 January 2011 and came into force on 1 January 2012. The Minister of Justice has referred to several measures in the HKMS which should significantly

4 Chancellor of Justice.
5 Chancellor of Justice.
6 Justiitsministri ettekanne kohtunike täiskogul 2011. aastal [Minister of Justice's report at Court en banc in 2011]. Available at: http://www.just.ee/53308.
7 Supreme Court en banc judgment no. 3-2-1-62-10 (12.04.2011).
8 Justiitsminister Kristen Michali 100 päeva [100 days of the Minister of Justice Kristen Michal]. Available at: http://www.just.ee/54685.
9 Riigilõive vähendav eelnõu saadeti valitsusse [the draft act reducing state fees was sent to the Parliament]. 15.03.2012. Available at: http://www.just.ee/56483.
10 Code of Administrative Court Procedure, RT I, 23.02.2011, 3.

shorten the length of proceedings. An example of this is shortening of time-limits of procurement proceedings by three times – to 45 days.[11]

Yet other provisions of HKMS allow the administrative matters to drag. § 173 of the HKMS states that the decision may be made public later than 30 days after the last session or in written proceedings after the passing of the date for presenting claims and documents only for a good reason. The HKMS that was in force until the end of 2011 stated that the decision had to be made public within 20 days after the session.[12] The new HKMS extends the period for making the decision public by 10 days, but sets the limitation that the longer period must be justified by a good reason.

As a new measure, there is the option for requesting a speedier proceeding should the administrative proceedings stall. § 100 of the HKMS states that if the administrative case has been in proceedings for more than 9 months the court may be filed an application. The important aspect about this provision is that the delay in court's work must have come about without a good reason and if the court finds the application to be justified the court has 30 days to apply the applicable measure from receiving the application.

The act amending the Code of Criminal Procedure and the Code of Civil Procedure came into force on 1 September 2011, which prescribed the speeding up court proceedings in criminal and civil matters if the criminal case had been in proceedings for more than 9 months.[13] The prerequisite is that the court hasn't made the necessary procedural act within 9 months.

The Language Act came into force on 1 July 2011.[14] According to the Language Act the language of public administration in state agencies and local government authorities is Estonian.[15] All the aforementioned acts state that the language of the court is Estonian. Such provision may somewhat limit the

[11] Minister of Justice's speech at the general assembly of the Bar Association. 06.05.2011. Available at: http://www.just.ee/54291.
[12] Code of Administrative Court Procedure (the version that was in force until 31.12.2011). § 28.
[13] Code of Criminal Procedure § 2741 and Code of Civil Procedure § 3331
[14] Language Act. RT I. 18.03.2011, 1.
[15] Language Act. § 10.

access to court of persons speaking other languages. Language Act § 9(1) has stated that in local governments where at least half of the permanent residents belong to a national minority everyone has the right to approach state agencies operating in the territory of the corresponding local government and the corresponding local government authorities and receive from the agencies and the officials and employees thereof the responses in the language of the national minority beside responses in Estonian.

Court practice

The Supreme Court made a founding decision on state fees made in court proceedings on 12 April 2011. The Supreme Court found that state fees' possible purpose of making extra revenue for the state and financing other expenses of the state, if the fee is greater than is needed to cover the costs of parties of the proceeding, cannot be legitimate.[16] The reasonability of the state fee must be assessed in the light of each single case.[17] The Supreme Court found that in this particular case the state fee was not in accordance with the Constitution.

Two days later the Constitutional Review Chamber of the Supreme Court discussed the question of state fees again. The Supreme Court judgment no. 3-4-1-1-11 in its paragraph 11 also referred to the opinion of the Constitutional Review Chamber of the Supreme Court, that the state fee payable in two court instances may be disproportional. The Supreme Court decided that State Fees Act § 56 subsections 1 and 19 and the last sentence of Appendix 1 in conjunction are in contradiction of the Constitution and is not to be applied in civil cases in value of over 10,000,000 kroons where the state fee is to be 3% of the value of the civil action, but no more than 1,500,000 kroons.

[16] Supreme Court judgment no. 3-2-1-62-10. Para 45.
[17] Supreme Court judgment no. 3-2-1-62-10. Para 45.

By the end of 2011 several provisions of the State Fees Act had been declared void, as the Supreme Court found that they were in contradiction of the Constitution.[18]

The European Court of Human Rights (ECtHR) made a decision about Estonia in two cases regarding Article 6. Raudsepp v. Estonia[19] deals with the length of proceedings in Estonia, which was an active topic in 2011. Even though this case had been in proceedings on the national level for six years the ECtHR found that there had been no breach of Article 6. The proceedings were more complicated than usually and had to do with essential political and legal questions (to do with property reform and its subjects who had allegedly left Estonia in 1941 based on contracts with the German state), which is why the decision took longer than usual to reach. The ECtHR also found that the appellant contributed to delays in proceedings to a certain extent. The ECtHR emphasised that the concept of reasonable time must be interpreted according to circumstances of the specific case.[20] The ECtHR also discovered a breach of Article 13 (right to effective legal remedy). Even though the Government of Republic of Estonia referred to the fact that the acts speeding up court proceedings are currently being prepared the ECtHR found that the applicant did not have access to a legal remedy that would have guaranteed court proceedings within a reasonable time.[21]

The ECtHR found in the case Andrejev v. Estonia that Article 6(1) had been breached as the applicant did not have access to the Supreme Court. The applicant had been afforded a defence lawyer as a state aid. The case no. 48132/07 dealt with state aid defence lawyer's unsatisfactory performance of duties, since the counsel had not filed the appeal in cassation in time. The ECtHR

[18] Also see Constitutional Review Chamber of the Supreme Court judgment no. 3-4-1-25-09 (15.12.2009), which declared the Appendix 1 of the State Fees Act to be in breach of the Constitution in so far as it states the size of the state fee for action of claim for cancellation of a building cooperative's decision. Supreme Court judgment no. 3-2-1-62-10. State Fees Act § 56(1) and (19), and the last sentence of Appendix 1 of the State Fees Act. Constitutional Review Chamber of the Supreme Court judgment no. 3-4-1-17-11 (1.11.2011) declared the State Fees Act § 57(1) and (22) and the last sentence of Appendix 1 invalid.

[19] Raudsepp v. Estonia. Applicaiton no. 54191/07. European Court of Human Rights.

[20] Raudsepp v. Estonia. Paras 71-76.

[21] Raudsepp v. Estonia. Paras 83.

assumed the position that it had been a breach of Article 6 and the person did not have access to court.[22] The ECtHR afforded the plaintiff 1000 euros as non-patrimonial damage.

Statistics and surveys

European Commission for the Efficiency of Justice published a survey on the lengths of proceedings in courts of appeal and the Supreme Courts in member states of the Council of Europe in 2011.[23] The survey was based on data from 2008 and 2010 but was published in 2011. It is possible to conclude based on the data from the survey that the lengths of proceedings in Estonia are medium in comparison to other member states of Council of Europe.

The Supreme Court prepared a survey on reasonable length of proceedings in civil cases.[24] The survey points out various ECtHR cases about this matter. The primary cause for delays in proceedings, according to the survey, have to do with delivering of court documents.[25] The state is advised to make a decision as to which measures best suit for meeting deadlines for proceedings and made well aware of the fact that an ineffective system will result in responsibility for the state. The survey also advises to set the goal of meeting the reasonable time acknowledged by the ECtHR, which is two years.[26]

On 9 May 2011 the Supreme Court's legal knowledge department's analysis on state fees was published.[27] It appears that the number of court cases concerning state fees increased in the beginning of 2011 and by the time the survey was published several provisions of the State Fees Act and the Code of Civil

[22] Andrejev v. Estonia. Application no. 48132/07 Paras 73-78.
[23] European Commission for the Efficiency of Justice, Study on Council of Europe Member States Appeal and Supreme Courts' Lengths of Proceedings. Available at: https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1965121&SecMode=1&DocId=1816850&Usage=2.
[24] Supreme Court. Mõistlik menetlusaeg tsiviilkohtumenetluses [Reasonable length of court proceedings in civil cases]. Available at: http://www.riigikohus.ee/vfs/1122/Moistlik_Menetlusaeg_Tsiviilkohtumenetluses.pdf.
[25] Supreme Court. Mõistlik menetlusaeg tsiviilkohtumenetluses.
[26] Supreme Court. Mõistlik menetlusaeg tsiviilkohtumenetluses, p 22.
[27] Supreme Court. Kõrge riigilõiv kui õigusmõistmisele juurdepääsu takistus [High state fees as hindrance to ccess to justice]. Available at: http://www.riigikohus.ee/vfs/1121/RiigiLoivud.pdf.

Procedure had been declared void.[28] The survey also stated state fees in some of the other states: for example, in Finland the state fee in a civil case is usually 72–156 euros, Sweden has a fixed rate of about 40–48 euros, Ireland 9–200 euros.[29] The survey emphasises the need to review state fees in Estonia to make them comply with the medium level in Europe.[30]

State fees in Estonia in 2008 and 2011		
Value of the action in kroons up to (including)	*State fee in 2008 In kroons (euros)*	*State fee in 2011*
5000	*250 (16 euros)*	*63.91 euros*
6000	*350 (22.37 euros)*	*76.69 euros*
7000	*450 (28.76 euros)*	*89.47 euros*
8000	*550 (35.15 euros)*	*102.25 euros*
11,000,000	*167,750 (10,721.18 euros)*	*3% of the value of civil action*
11,250,000	*170,250 (10,880.96 euros)*	*3% of the value of civil action*
11,500,000	*172,750 (11,040.74 euros)*	*3% of the value of civil action*
More than 11,500,000	*1,5% but not more than 750,000 kroons (47,934 euros)*	*3% of the value of civil action, but not more than 95,867.47 euros.*

Source: Appendix 1 of State Fees Act, the euros have been calculated to exchange rate 15.6466.

A brief analysis of the table of state fees reveals that the price of smaller cases has increased several times. If the state fee for a 5000 kroon (319.55 euro) case was 5% (250/5000´100) in 2008, the state fee in 2011 is 20% (63.91/319.55´100) of the cost of the case. Such rates of state fees may prove to be a hindrance to turning to court in cases of smaller value.

[28] Supreme Court. Kõrge riigilõiv kui õigusmõistmisele juurdepääsu takistus, p 12.
[29] Supreme Court. Kõrge riigilõiv kui õigusmõistmisele juurdepääsu takistus, p 13-14.
[30] Supreme Court. Kõrge riigilõiv kui õigusmõistmisele juurdepääsu takistus, p 28.

Essential public discussions

The best and worst act of law was chosen in 2011. The Estonian Lawyers Association nominated the act amending state fees as the worst law, reasoning its decision by the fact that the amendments took several persons' the right to defend their rights in a court of law and thereby realisation of a fundamental right, a right to court protection was hindered.[31]

Trends

The topic of state fees has gained a remarkable amount of attention in the recent years. The July press release of the Ministry of Justice mentioned that a new draft act had been prepared, which intended to reduce state fees.[32] On 15 March 2012 the draft act was finally sent to the Parliament. 2012 will be dedicated to processing this draft act.

The public has afforded much less attention to proceedings' deadlines and the rights of non-citizens to acquaint themselves with legal acts and also to their opportunities for accessing justice.

Recommendations

- The state has to pay attention to excessively lengthy court proceedings.
- The legislator has to make a decision about state fees. The situation with provisions that have been declared to be in breach of the Constitution by the Supreme Court that limit persons' access to courts is not in accordance with the European Convention on Human Rights.

[31] Juristide Liit: Kõrged Riigilõivud on probleem [The Bar Association: high state fees pose a problem]. Available at: http://arvamus.postimees.ee/653892/juristide-liit-korged-riigiloivud-on-probleem/.

[32] Justiitsminister Kristen Michali 100 päeva.

Right to respect for private and family life

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RIGHTS

ECHR Article 8 – Right to respect for private and family life

- Everyone has the right to respect for his private and family life, his home and his correspondence.
- There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

CHAPTER 5

Right to respect for private and family life

2011 brought on several important changes in the right to respect for one's private and family life, home and correspondence. However, most of these developments have not yet reached the final stages. Several of the draft acts that were initiated may change substantially before Riigikogu will approve them. Most significant change occurred in the field of surveillance activities. In 2011 a new regulation significantly amending the current rules was adopted, the act amending the new regulation which postponed the date of entry into force of the act was adopted and the act amending the act that amends the new regulation was initiated, as it was decided that the regulation passed in the beginning of 2011 had not been in consistence with the Constitution. The draft act enabling sexual offenders to receive treatment as an alternative to a portion of their imprisonment and the draft act specifying the regulation of short and long term visiting of prisoners had a less complicated history. In addition to the amendments that have already been initiated, it was found as a result of the analysis of the Data Protection Inspectorate that the act needs specifying and that the Data Protection Inspectorate's independence needs a more firm basis.

Political and legislative developments

Probably the most discussed topic in 2011 was the amendment of the regulation on surveillance activities. Updating of this regulation began a few years ago and on 17 February 2011 Riigikogu finally passed the act amending the

Code of Criminal Procedure and other acts.[1] As is always the case with extensive amendments to acts of law, the purpose of the amendments was to generally tidy and to modernise the system of surveillance activities.[2] Surveillance Act was dissolved and everything to do with surveillance activities was gathered into a single act – the Code of Criminal Procedure.[3] Previously the provisions on surveillance activities had been divided between the Surveillance Act (surveillance activities carried out outside of criminal procedures) and the Code of Criminal Procedure (surveillance activities carried out for the purpose of gathering evidence in a criminal procedure).[4] The amendments primarily intended the regulation to be updated and specified. The amendments were widely criticised, among others by the Chancellor of Justice; and the Ministry of Justice formed a working group which initiated a thorough analysis of the regulation of surveillance activities.[5]

On June 2nd Riigikogu decided to initiate the new amendment of the regulation in order to bring it into accordance with the Constitution, primarily based on the proposals of the Chancellor of Justice.[6] The amendment that was passed in the beginning of 2011 was to come into force on 1 January 2012, but as it became clear that an improved version would not be ready by that time, [7] Riigikogu passed an act on 8 December 2011 deferring the date of coming into force of the act – until 1 January 2013.[8] At the same time the Ministry

1 RT I, 21.03.2011, 2.
2 Kriminaalmenetluse seadustiku ja teiste seaduste muutmise seaduse eelnõu seletuskiri [explanatory memorandum to the draft act amending the Code of Criminal Procedure and other acts]. Available at: http://www.riigikogu.ee/?page=pub_file&op=emsplain&content_type=application/msword&file_id=328662&file_name=Kriminaalmenetluse..seletuskir%20(287)i.doc&file_size=142848&mnsensk=286+SE&fd=2011-05-16, p 1. Hirvoja, Martin (2011). Õiguspoliitika arengutest ja justiitsministeeriumi rollist selles [developments of legal policy and the role of Ministry of Justice]. Available at: http://www.just.ee/orb.aw/class=file/action=preview/id=53346/%D5iguspoliitika+arengutest+ja+JMi+rollist+selles.pdf. 22.01.2012, p 15.
3 RT I 2003, 27, 166 ... RT I, 29.12.2011, 1.
4 Hirvoja, p 15.
5 Kriminaalmenetluse seadustiku ja teiste seaduste muutmise seaduse eelnõu seletuskiri.
6 Chancellor Justice, Ettepanek nr 12 jälitustoimingust teavitamise ja selle kontrolli kohta [Proposal no. 12 on notification of surveillance activities and monitoring of surveillance activities]. 17.05.2011. Available at: http://oiguskantsler.ee/sites/default/files/field_document2/6iguskantsleri_ettepanek_nr_12_riigikogule_jalitustoimingust_teavitamine_ja_kontroll.pdf.
7 Kriminaalmenetluse seadustiku ja teiste seaduste muutmise seaduse eelnõu seletuskiri.
8 RT I, 22.12.2011, 3.

of Justice prepared a new draft act amending the acts and in the beginning of 2012, on February 2nd the government approved of this version.[9]

Surveillance activities present one of the most intense breaches of human rights as they have a direct effect on the person's dignity. In a situation where the person is under surveillance and not notified of it he becomes an "object of the authority of the state" and is completely defenceless against "violations committed against him".[10] In addition to dignity, which is the basis of all human rights and freedoms, the surveillance activities also have a direct contact with the right to inviolability of private life (Constitution § 26), inviolability of home (Constitution § 33) and to confidentiality of messages (Constitution § 43). From the point of view of European Court of Human Rights (ECHR) any surveillance activity is permitted "only insofar as it is necessary for the protection of democratic institutions".[11] The state has to set up a guarantee system, which would preclude misuse of powers and arbitrary action upon initiating and during the surveillance activities.[12] ECHR has emphasised on several instances how important a clear and particularly specific regulation on surveillance activities is.[13] Danger of state's arbitrary action in such a covertly carried out activity is obvious.

An accurate and unequivocal regulation provides the necessary information about the cases when state authority may carry out surveillance activities.[14]

[9] Agenda item no. 1 „Kriminaalmenetluse seadustiku muutmise ja sellega seonduvalt teiste seaduste muutmise seaduse" eelnõu [draft act amending the Code of Criminal Procedure and other associated acts]. Minutes of a parliament's sitting. 2.02.2012. Available at: https://dhs.riigikantselei.ee/avalikteave.nsf/documents/NT001826C2?open.

[10] Eesti Vabariigi Põhiseadus: kommenteeritud väljaanne [Constitution of the Republic of Estonia: commented version], Juura, 2008, p 113.

[11] Eesti Vabariigi Põhiseadus, p 239.

[12] Eesti Vabariigi Põhiseadus, p 239, 292, 332.

[13] European Court of Human Rights in 6 September 1978 judgment Klass and others v. Germany. Application no. 5029/71, 2 August 1984 judgment Malone v. United Kingdom. Application no. 8691/79, 24 April 1990 judgment Kruslin v. France. Application no. 11801/85, para 33. Also see Põhiseaduse kommenteeritud väljaanne, p 362; Maruste, Rait (2004). Konstitutsionalism ning põhiõiguste- ja vabaduste kaitse [Constitutionalism and protection of fundamental rights and freedoms]. Tallinn 2004, pages 392, 489, 535.

[14] Malone judgment. Also see Maruste, p 434.

The practice of ECHR sets minimal requirements, which would have to be guaranteed in a national regulation. There must be provisions on:[15]

- the circle of persons and the catalogue of offences, which warrant initiation and carrying out of surveillance activities – it has to be a serious crime,
- requirement of a suspicion of a specific substantiated crime – gathering information of a general nature is not allowed,
- ultima ratio as a preclusion for initiating surveillance activities, which means that combating a criminal offence or finding out the truth is not possible in any other way – the requirement of necessity is even more important than formal bases for initiating the surveillance activity, because if necessity cannot be proved, even the existence of the formal basis may render surveillance activities unlawful,
- time limit and stringent procedural requirements, including about compiling protocols, forwarding, use and storing information, precautions to be taken, and destroying records, especially in cases where charges have been dropped or the person has been acquitted,
- independent and efficient monitoring of activities of the executive power at the stage of giving the license for surveillance activities as well as during the activities and completion of the activities.

Independent and efficient monitoring plays an essential role in carrying out surveillance activities and preventing possible arbitrary actions of state authority. If in other cases it is enough to grant the person the right to turn to court then in case of surveillance activities it isn't enough as the person may not be aware that his or her rights are being breached and therefore cannot take any steps to protect him or herself.[16] Therefore ,the monitoring should take place in initiating phases and during the surveillance activity without the person's knowledge.[17] The ECHR has considered the combined effect of

[15] For example Malone, Kruslin, Klass, and 26 March 1987 judgment Leander v. Sweden. Application no. 9248/81. Also see Taavi Annus, Riigiõigus [Constitutional law]. Tallinn 2006, p 310; Põhiseaduse kommenteeritud väljaanne, pages 332, 362. Maruste, pages 392, 489.

[16] Maruste, p 535; Põhiseaduse kommenteeritud väljaanne, p 292.

[17] Maruste, pages 292, 392.

various monitoring systems during the surveillance activities to be important, including the "inclusion and monitoring carried out by the police monitoring commission, the Chancellor of Justice, the parliament's ombudsman and the legal affairs committee of the parliament."[18] The emphasis is usually placed on the monitoring by the court at the last stage of surveillance activities when the surveillance has been concluded and the person has been notified of it.[19] Yet it has been emphasised in specialist literature that there is also a need for an authorisation of a court upon initiating the surveillance activities.[20]

The current regulation as well as the regulation proposed as draft act both emphasise the principle of necessity upon planning the surveillance activities. At the same time, the formal basis for carrying out surveillance activities has received some criticism. Possibly the most scandalous aspect about the new draft act is that the query of ownership and the itemized calls overview from the communications companies has been omitted from the list altogether and is therefore outside procedural guarantees that have been placed on surveillance activities.[21] The catalogue of crimes that allows initiation of surveillance activities has also been criticised. Even though the draft act under discussion at the moment has shortened the list in comparison to the earlier version Estonian Bar Association still insists that the catalogues contains "necessary elements of a criminal offence which gathering evidence about through surveillance activities are not justified."[22] Dispute was caused by the fact that the

[18] Leander. Maruste, p 435.
[19] Maruste, pages 292, 392, 487.
[20] Põhiseaduse kommenteeritud väljaanne, pages 332, 239.
[21] Estonian Bar Association. KrMS ja teiste seaduste muutmise seaduse eelnõu seletuskiri [explanatory memorandum to the draft act amending the Code of Criminal Procedure and other associated acts], Appendix 4 (from now on referred to as Estonian Bar Association 2011a), point 1; Estonian Association of Information Technology and Telecommunications. KrMS ja teiste seaduste muutmise seaduse eelnõu seletuskiri, Appendix 4, point 1, 4-5; Chancellor of Justice. KrMS ja teiste seaduste muutmise seaduse eelnõu seletuskiri, Appendix 4. (from now on refferred to as Chancellor of Justice 2011a), points 5-6; Ministry of Economic Affairs and Communications; KrMS ja teiste seaduste muutmise seaduse eelnõu seletuskiri, Appendix 4, point 1. Also see Salu, M (2011) „Vaher: pealtkuulamine on liiga lihtsaks tehtud" [Vaher: wire tapping has been made too easy]. 9.04.2011. Available at: http://www.postimees.ee/416748/vaher-pealtkuulamine-on-liiga-lihtsaks-tehtud/.
[22] Estonian Bar Association. Eesti Advokatuuri nimel arvamus kriminaalmenetluse seadustikule [The opinion to the Code of Criminal Procedure in the name of Estonian Bar Association]. 27.12.2011. Available at: http://eelnoud.valitsus.ee/main#lyIpDm7V. (from now of referred to as Estonian Bar Association 2011b), p 2; Estonian Bar Association 2011a, point 3.

surveillance activities may be carried out "about preparation of a crime"; the Supreme Court found that the list should be restricted to only those offences where preparation itself is punishable.[23] The Ministry of Justice found that the surveillance activities should be allowed also when the preparation is not an offence and if "the purpose is to gather additional information, which would later enable starting criminal proceedings."[24] Also the circle of persons who the surveillance activities may be initiated about, has come under serious criticism. The current version of the draft act enables surveillance activities about persons other than suspects and victims who do not have anything to do with the particular criminal proceedings.[25]

In addition to several problems in regulation regarding monitoring, including the possibility of using one surveillance activity's results in several criminal proceedings,[26] the greatest problem was said to be the limited nature of monitoring and the judicial control. The Estonian Bar Association praised the improvement of judicial control in the stage of granting permission for surveillance activities. On the other hand, the requirement of authorisation of the Prosecutor's office upon initiating the surveillance activities, whereas all other activities require court's authorisation, was regarded as unfounded.[27] The Supreme Court criticised monitoring over surveillance activities saying that the planned emphasis on Prosecutor's office will bring about "too great a concentration of authority" to the executive power and that might not be in accordance with the principle of separation of powers.[28] The Ministry of Justice replied to the Bar Association's criticism saying that the ministry did not see a problem, however, the criticism from the Supreme Court received

[23] Supreme Court. KrMS ja teiste seaduste muutmise seaduse eelnõu seletuskiri [explanatory memorandum to thee draft act amending the Code of Criminal Procedure and other acts], Appendix 4 (from now on referred to as Supreme Court 2011a), point 2.4.

[24] Supreme Court. Riigikohtu arvamus kriminaalmenetluse seadustikule [Supreme Court's opinion on the Code of Criminal Procedure]. 13.01.2012. Available at: http://eelnoud.valitsus.ee/main#lyIpDm7V. (from now on referred to as Supreme Court 2011b) Punkt 2.4, Supreme Court 2011a, point 7; Chancellor of Justice, point 10.

[25] Supreme Court 2011b, point 2.4, Supreme Court 2011a, point 6.

[26] Supreme Court 2011b, point 3. Supreme Court 2011a, point 9; Estonian Bar Association 2011b, p 3; Estonian Bar Association 2011a, point 6.

[27] Estonian Bar Association 2011b, p 1-3.

[28] Supreme Court 2011b, point 2.5.

no substantial reply at all.[29] The greatest attention has been afforded to monitoring after the surveillance activities have been carried out.

The proceedings of the Chancellor of Justice, which was one of the reasons the already adopted amendment was reconfigured, centred primarily on the monitoring in the post surveillance activities phase. The Chancellor of Justice was particularly worried about the faulty regulation on non-notification of the surveillance activities.[30] Since notifying the person of the surveillance activities when they have ended is the prerequisite for judicial a posteriori monitoring – the person can only turn to court if he is aware of the fact his rights may have been infringed – this nuance is one of the most important about regulation on surveillance activities. One of the most problematic aspects in this field is monitoring over non-notification of the surveillance activities.[31] The new draft act has significantly improved on monitoring over non-notification of surveillance activities as it has in addition to the initial control of the Prosecutor's office also been made subject to the final control of the court. Theoretically it is still possible to conceal the surveillance activity from the person indefinitely, which still poses a problem in the opinion of the bar association and the Chancellor of Justice.[32]

The new draft act has been approved by the government, but it is yet to go through Riigikogu proceedings. It may still change significantly and it is impossible to predict in which incarnation or if at all it will be passed. Therefore, a more particular assessment about the current regulation (as it is about to be amended) as well as the forthcoming amendments (as it is not yet known which incarnation will be passed) should be refrained from at the moment. However, the processing of the draft act should be kept an eye on as it is a regulation, which affects particularly intimate aspects of persons' lives.

Similarly, the draft act concerns extremely delicate aspects, which propose treatment (the so-called chemical castration) as an alternative for a part of

[29] Supreme Court 2011a, point 7.
[30] Chancellor of Justice (2011). 12th Riigikogu shorthand notes for the 1st session. 2.06.2011. Available at: http://www.riigikogu.ee/?op=steno&stcommand=stenogramm&date=1306998300. (from now of referred to as Chancellor of Justice 2011b).
[31] Chancellor of Justice 2011b .
[32] Estonian Bar Association 2011b, p 3. Estonian Bar Association 2011a, point 7. Chancellor of Justice 2011b

imprisonment of sexual offenders.[33] According to the explanatory memorandum the draft act is based on the analysis compiled in 2009, which explores various treatment options and the international practice.[34] It is a new draft act, which was approved by the government on 2 February 2012[35] and similarly to regulation on surveillance activities may significantly change during the course of Riigikogu proceedings. It can still be considered a positive development. Turning to treatment depends directly of the agreement of the person, but unlike the earlier arrangement is compensated for by the state. The amendment assures that the person is not just punished, but that his or her disability is actively dealt with, thereby increasing the possibility that he or she will be able to control his/her disability upon release and integrate into society. From the point of view of inviolability of private life the proceedings, which result in the person being referred to treatment and distinctly voluntary nature of treatment are crucial, as the result of the treatment has a great effect on the person's physical functions.

The ministry of Justice is also planning to make changes in regulation of protection of personal data.[36] As a result of the analysis several problem areas were identified in the area of application, the definition of personal data, the rights of the data subject and above all processing of personal data without the agreement of the data subject. The Ministry of Justice has therefore suggested specifying the corresponding rules. As a separate problem the data entered

[33] 175 SE I Kriminaalmenetluse seadustiku muutmise ja sellega seonduvalt teiste seaduste muutmise seaduse eelnõu [draft act amending the Code of Criminal Procedure and the associated acts]. Available at: http://www.riigikogu.ee/?page=pub_file&op=emsplain&content_type=application/msword&file_id=1474084&file_name=175%20kriminaamenetluse%20jt%20muutm.doc&file_size=169472&mnsent=175+SE&fd=06.03.2012. Office of the Chancellor of Justice. Õiguskantsler: jälitustoimingust teavitamine peab toimuma vastavalt põhiseadusele ja vajab süsteemset järelevalvet [Chancellor of Justice: notification of surveillance activities has to correspond to the Constitution and needs systematic monitoring]. Press release. 17.05.2011. Available at: http://oiguskantsler.ee/et/oiguskantsler/suhted-avalikkusega/pressiteated/oiguskantsler-jalitustoimingust-teavitamine-peab.

[34] Karistusseadustiku, kriminaalmenetluse seadustiku, psühhiaatrilise abi seaduse, karistusregistri seaduse, kriminaalhooldusseaduse ja tervishoiuteenuste korraldamise seaduse muutmise seaduse eelnõu seletuskiri [explanatory memorandum to the draft act amending the Penal Code, the Code of Criminal Procedure, Mental Health Act, Punishment Register Act, Probation Supervision Act and the Health Care Services Organisation Act]. Available at: http://eelnoud.valitsus.ee/main#yFnuhmy0, p 1.

[35] Karistusseadustiku, kriminaalmenetluse seadustiku, psühhiaatrilise abi seaduse, karistusregistri seaduse, kriminaalhooldusseaduse ja tervishoiuteenuste korraldamise seaduse muutmise seaduse eelnõu. Available at: http://eelnoud.valitsus.ee/main#yFnuhmy0.

[36] Hirvoja, p 21.

into the register during a criminal investigation (such as DNA and fingerprints) was also mentioned.

The third initiative for an amendment, which has an effect on inviolability of private and family life, is at an even earlier stage than the previous ones. The draft act amending the Imprisonment Act, the Probation Supervision Act and the Penal Code was sent for coordination round on 27 December 2011.[37] As the purpose of the draft the explanatory note states act solving the problems that have occurred in practice, the amendments to the Imprisonment Act are especially important here. These have, above all, to do with personal belongings of prisoners and the illegal property as well as short and long term visits with prisoners.

Court practice

The Constitutional Review Chamber of the Supreme Court passed a judgment on regulation of long term visits with prisoners in 2011, which also influences the amendment that was initiated at the end of 2011. Tallinn Circuit Court turned to the Constitutional Review Chamber of the Supreme Court with its judgment no. 3-09-1840 of 30 September 2010 as it had declared § 94(1) of the Imprisonment Act to be partially in contradiction of the Constitution. This provision enables the prisoner short term visits with his or her spouse, but it does not allow for long term visits. The Chamber of the Supreme Court did not agree with the circuit court. It found in its judgment no. 3-4-1-9-10 of 4 April 2011 that even though it was a limitation on long term visits, the intense interference with inviolability of family life in a preliminary investigation prison was justified. Up until coming into effect of the judgment of conviction it has been established keeping in mind the purposes of "evasion of criminal procedure and continuous execution of offences".[38] After coming into effect of the conviction, but before bearing the status of the punished, the denial of long term visits is also justified. It is necessary for the purpose of "public order of the prison and the protection of rights and freedoms of others, also

[37] The draft acts are available at: http://eelnoud.valitsus.ee/.
[38] Constitutional Review Chamber of the Supreme Court judgment no. 3-4-1-9-10 (4.04.2011), para 68.

for combating offences".[39] This is the case because "generally the time period between the judgment of conviction and coming into effect of the conviction and enforcement of the punishment is not too long."[40] In both cases there are other options for communicating with the family.

The proposed draft making the coordination round in December of 2011 would significantly specify the regulation on short and long term visits. The positive fact is that the prison has to reason its decisions for denying the visits. Although some specification is needed for the amendment to § 24, which states that the visit may be refused on the grounds of questionable nature of the "reputation of the visitor". This wording is somewhat vague and may bring about several interpretations.

Statistics and surveys

Liina Kanger and Eve Rohtments have analysed the data protection regulation currently in force in Estonia in the light of the practice of European Court of Justice published in an article of the Journal of the Estonian parliament and have come to the conclusion that Estonia has not sufficiently specified and provided content for the rules stated in the Data Protection Directive.[41] They also come to the conclusion that the independence of the Data Protection Inspectorate should be guaranteed and that it should stand outside the control of all ministries "in the economic and organisational meaning, as well as being personally independent". This analysis is worth agreeing with. Directive 95/46 as a flexible target norm, which allows Member States to specify it with suitable measures, cannot be as effective as expected if the Member State utilises the same level of specificity in its acts of law as the directive itself.[42]

[39] Ibid, para 82.
[40] Ibid.
[41] Kanger, L. and Rohtmets, E. (2011) „Eesti andmekaitse Euroopa Kohtu praktika peeglis" [Estonian data protection in the view of ECtHR practice]. Journal of the Estonian parliament 23, 2011. Available at: http://www.riigikogu.ee/rito/index.php?id=14437&op=archive2.
[42] Similar approach in Estonia can be noted with the Equal Treatment Act, which also adopts the general wording of the directives on the minimum level, without additional content stemming from the local circumstances.

The Data Protection Inspectorate carried out several instances of monitoring in 2011. The most important of them was the checking of the registers duplicating population registers in local governments.[43] It yielded that half of the local governments that were monitored kept an alternative local register in addition to the national population register, as the national register was either too clumsy to use or the access to it was too complicated.

Good practices

As is customary, in 2011 the Data Protection Inspectorate published several nonbinding guidelines on rules of data protection, which help to somewhat alleviate the problem of non-specificity of the act. Advisory guidelines on protection of personal data in employment relationships[44] and on use of electronic contact information in direct marketing were published.[45]

Police and Border Guard set up a web constable (following the example of Finland) on 1 June 2011 in order to counsel people on the internet and in social media (such as Facebook and Rate).[46]

Essential public discussions

One of the topics in data protection that was covered in media was that officials often illegally use the population register for their personal needs and to satisfy their curiosity.[47] The topics that have caused a lot of discussion in other European states – Google Streetview or body scanners in airports –

[43] Data Protection Inspectorate (2011). Rahvastikuregistrit dubleerivate registrite kontrollid kohalikes omavalitsustes [Registers duplicating population registers in local governments]. Available at: http://www.aki.ee/download/1873/Dubleerivate%20registrite%20seire.pdf.

[44] Data Protection Inspectorate (2011). Isikuandmete töötlemine töösuhetes. Abistav juhendmaterjal. [Processing personal data in employment relationships. Advisory guidelines.] Available at: http://www.aki.ee/download/1818/Isikuandmed%20töösuhetes%20juhendmaterjal%20LÕPLIK.pdf.

[45] Data Protection Inspectorate (2011). Elektrooniliste kontaktandmete kasutamine otseturunduses. Abistav juhis. [Use of electronic contact information in direct marketing. Advisory guidelines.] Available at: http://www.aki.ee/download/2025/Elektrooniliste%20kontaktandmete%20kasutamine%20otseturustuses.pdf.

[46] Police and Border Guard (2011). „Veebikonstaabel annab internetis nõu." [Web constable giving advice on the internet] Available at: http://www.politsei.ee/veebikonstaabel/.

[47] Filippov, M. (2011) „Ametnikud kasutavad rahvastikuregistrit kui Google'it" [Officials use population register as if it was Google]. Postimees.ee. 18.09.2011. Available at: http://www.postimees.ee/566788/ametnikud-kasutavad-rahvastikuregistrit-kui-google-it/.

have not sparked public debate in Estonia. Body scanners are not used in airports in Estonia.

Conclusion

Several changes took place in the field of inviolability of private and family life of various different spheres. The particularity of this human right is that each breach may potentially play an essential part in the person's life. It is therefore essential that all legislative, political and judicial amendments were as cautious as possible and have been considered, taking various possibilities into account. The most worrying, from the point of view of human rights, is the renewal of the regulation on surveillance activities, which has been through a lot already, but is still to yield a result that everyone would be pleased with. Hopefully this does not turn out to be another amendment that is passed in Riigikogu only to end up at Supreme Court a few years later, where it is declared to be in contradiction of the Constitution, as was the case with post-sentence preventive detention.

Recommendations:

- Take into account the relevant comments, which aim to increase the protection of human rights and not merely to depart from convenience of the executive power, upon renewal of surveillance activities' regulation.
- Upon establishing treatment as an alternative for imprisonment of sexual offender guarantee that the treatment is strictly on a voluntary basis and accompanied by an effective psychiatric treatment.
- Review the regulation on personal data and guarantee that it is in accordance with the requirements of European Union, including the obligation to provide specific and clear standards.
- Specify the provisions on short and long term visits upon amending the Imprisonment Act and other relevant acts to rule out possibility of different interpretations.

Freedom of expression

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RIGHTS

ECHR Article 10 – Freedom of expression

- Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
- The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

CHAPTER 6

Freedom of expression

Generally the statement that freedom of expression in Estonia is guaranteed by legislation as well in practice is a correct one. There are no significant problems and the situation was no different in 2011. Rather the development was a positive one. Problems in the field of media have much rather to do with a faulty culture of communication that with acts of law or limitations set by authority of the state. In an international comparison Estonia is set as a good example of freedom of expression, especially in electronic media, as availability of internet is guaranteed by law and considered to be a fundamental right.[1]

Freedom of expression is essential as an independent right as well as a prerequisite for carrying out several other freedoms, and a prerequisite for a functioning democracy. Freedom of expression is stated in Article 10 of European Convention on Human Rights (ECHR) and in paragraphs 44–46 of Constitution of Republic of Estonia. This includes the freedom to express one's opinions and to impart information – whether in written form, verbally, as images or by other means – as well as the right to obtain information. Therefore, freedom of expression includes acts regarding media as well as access to information and data protection. As most fundamental rights, freedom of expression is not absolute, it may be limited in certain circumstances and on certain conditions. Such limitations are permitted in order to protect other rights (for example right to privacy), but also for security considerations. ECHR Article 10 also states that

[1] OSCE Representative on Freedom of the Media. Freedom of Expression on the Internet (2010), p 11. Available at: http://www.osce.org/fom/80723.

"this article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises".

Acts and institutions regarding freedom of expression and their development

Democratic states that respect freedom of expression do not usually have specific acts regulating print media. Printed publications (books, magazines, newspapers) do not need to be registered nor do they require a license to publish; the number of publications is dictated by market demands. Other limitations to media may stem from defamation in criminal or civil liability, from Data Protection Act or from the Penal Code (concerning incitement to hatred or violence). Such provisions apply to certain statements regardless of how they were made. States based on rule of law generally have a separate regulation for broadcasting, including the procedure for applying for a license along with the relevant board. As broadcasting utilises a limited natural resource (radio frequency), it has to be regulated to a certain extent; moreover, the frequencies only function if they are protected from disruptions.

The legal order regulating Estonian media is based on these particular principles. But as in the rest of the world, the basic principles of media regulation are no longer clear, as the internet and other types of modern technology have blurred the line between broadcasting and other types of media. The current situation, which almost demands separate rules for broadcasting, but not for the internet, is also questionable. The internet has been so rapid and unpredictable in its development that legislation has not caught up with it, which is why the internet has, to a large extent, remained unregulated. This problem is not particular to Estonia, but as the internet and internet media play a great role in Estonia, it has become an important question in Estonia. Several current questions related to media in Estonia, Europe and elsewhere have to do with the meaning of modern technology in the media regulation.

Estonia has a well built and effective system based on self regulation for filing complaints about false information disseminated in the press or for interfering with private life. Complaints may be filed with courts if there has been

a violation of law. In other cases, such as in cases of breach of ethics or good practice, the complaints can be filed with Avaliku Sõna Nõukogu or the Estonian Press Council. Complaints about advertisements can be filed with the advertising council that operates under the Consumer Protection Board.

Development of legislation

Incitement of hatred in § 151 of the Penal Code could be pointed out among rules about media stated in an act of law.[2] It was mentioned in the human rights report from the previous year that the provision in its current wording is too narrow, as it requires proof of real danger on the victim's life or health in order to convict a person. There have been no changes to the wording of this paragraph within a year.

The most important change in media legislation comes in the shape of the Media Services Act that came into force in January of 2011, which replaces the Broadcasting Act.[3] This change is not essential from the point of view of freedom of expression as it has to do with terminology and coordination of procedures about broadcasting with the new European Union media regulations (especially the Audiovisual Media Services Directive 2010/13/EU that came into force 5 May 2010), which was drawn up to address issues of new technology. The principles which will be the basis for licensing of broadcasting corporations and other essential principles will generally remain the same. The new act will make the system of broadcasting licensing simpler and more flexible, which in turn has a positive effect on diversity of media. Rules on protection of minors were also renewed. The term "media services" that is used in the name of the act is in accordance with the modern terminology in use in European Union and includes several different kinds of technology, not just the traditional broadcasting.

Media Services Act does not regulate print media or the media broadcast via the internet that is not comparable to television. This means that the current act does not regulate web blogs, websites, etc. As the aforementioned EU

[2] RT I 2001, 61, 364.
[3] RT I 06.01.2011.

directive, the Media Services Act extends to the internet only via services of television and on-demand television-like services and radio broadcasting, if they use internet to broadcast themselves.

Several changes in the field of media are connected to the new technologies. Not only in Estonia, but also elsewhere, the rapid development of electronic media makes it impossible for legislation and regulations to keep up and the old, to an extent no longer applicable rules, are being applied in already altered circumstances. This may also result in a threat to freedom of expression; for example, if control over content disseminated on the internet is demanded in order to protect intellectual property. It is appropriate to mention the Anti-Counterfeiting Trade Agreement (ACTA), which had the purpose of creating a global legal framework for protection of intellectual property rights and for combating against commerce in pirated goods. It has been claimed in the debate that ACTA may interfere with inviolability of private life.[4] In practice the planned system means a wide responsibility for the internet service provider, particularly that the internet service provider is obliged to control internet traffic. The status of the agreement is not yet known, as the European Union and its Member States have until March of 2013 to sign it.

The so-called Source Protection Act received a lot of attention in media in 2010, and was discussed at length in the previous human rights report. The act came into force 31 December 2010. The media did not discuss this act much in 2011, and on the occasions it did come up, it was rather agreed that the coming into force of the so-called Source Protection Act did not bring about any dramatic changes. Sulev Vaher, chairman of Estonian Press Council claimed in the beginning of 2012 that one might agree with the statement of the President of Republic of Estonia upon announcing the act that it would not create problems.[5] On the other hand, Vaher also mentioned that it is too early to give a final appraisal.

[4] Alas, Askur (2011). „Võltsimisvastane seadus ähvardab vaba internetti" [Anti-counterfeiting law a threat to free internet]. Eesti Ekspress. Available at: http://www.ekspress.ee/news/paevauudised/eestiuudised/voltsimisvastane-seadus-ahvardab-vaba-internetti.d?id=63700358.

[5] Delfi (2012). „Valner: allikakaitseseadus pole seni midagi dramaatilist kaasa toonud" [Valner: Source Protection Act has not yielded dramatic results yet]. Available at: http://www.delfi.ee/news/paevauudised/eesti/valner-allikakaitseseadus-pole-seni-midagi-dramaatilist-kaasa-toonud.d?id=63720270.

Court practice

There have been no significant court cases in the field of freedom of expression within 2011. Neither were there any cases against Estonia in European Court of Human Rights (ECtHR) that related to freedom of expression. The ECtHR judgment in the case of Delfi v. Estonia, which the court accepted 11 February 2011 is yet to be made.[6]

There is, however, one case that relates to freedom of expression – the Supreme Court judgment on data protection as a basis for limiting freedom of expression.[7] The topic for discussion between AS EMT and the Data Protection Inspectorate was: whether the data subject's agreement is needed for the purposes of gathering and forwarding data for assessing credit capabilities – whether according to Personal Data Protection Act § 11(7)2) the forwarding of data damages the justified rights of the data subject excessively or not?

First, the Supreme Court established that disclosure of data is made to an unspecified circle of people or in other words the public, since forwarding of data means making the data available to a specified circle of people and that forwarding requires fulfilment of certain prerequisites. Supreme Court disagreed with the circuit court's position that forwarding of data presupposes, in addition to the conditions stated, the agreement of the data subject. It was found, while referring to the Court of Justice of European Union that if processing of data is in accordance with the data protection directive's exhaustive and restrictive list of cases when processing of a person's data is lawful and with the provisions of Personal Data Protection Act, there is no room for additional requirements (such as the person's agreement).

The court referred to its earlier practice, which emphasises that "Estonia's acts of law should be interpreted as much as possible in consideration with the wording and purpose of European Union law. In case of a conflict between national

[6] Factsheet on the Court's case-law and pending cases on Estonia. Available at: http://www.echr.coe.int/NR/rdonlyres/6298BE53-5700-4B31-BF32-4BDFDAF1224B/0/PCP_Estonia_en.pdf.

[7] Administrative Law Chamber of the Supreme Court judgment of 12 December 2011. Application no. 3-3-1-70-11.

and European Union law the national law ought to be preferably interpreted as much in concordance with the European Union law as possible." The court stated that the rules contain discretion for assessing the extent of breach of rights of the data subject or that the circumstances of each individual case must be taken into account. The importance of rights stemming from Articles 7 and 8 of the Charter of Fundamental Rights of the European Union has to be taken into account while exercising discretion. The court judgment has thereby once more emphasised the importance of data protection as well as the fact that legislation and court practice of the European Union have to be considered in applying Estonian laws.

As mentioned, the self regulation of media in Estonia is executed via the Estonian Press Council. The number of application processed at the Estonian Press Council in 2011 was the highest in the last ten years. Sulev Valner, the chairman of the Press Council believes it refers to the good quality of self regulation of the press and persons' increased awareness rather than great problems with media.[8] The Press Council accepted 67 complaints and made 61 decisions. The figures in 2010 were respectively 42 and 34, a year before that 54 and 31. In 2011, 33 of the decisions were guilty and 28 were acquittals. The portion of guilty decisions had been greater in two previous years. The number of settlements at earlier point or revoked complaints remained at a relatively similar level (respectively 3 and 6).[9]

Public discussions

The public discussion about problems in the field of media has touched upon the inability of the institutions to take criticism, in addition to the faulty culture of communication and discussion. It is often brought up in the discussion that that the press is too superficial and entertainment-oriented. These topics are not new; neither did much change in 2011. It has perhaps been mentioned more than before that people who would be interesting to hear from increasingly avoid getting involved in public discussions due to the faulty culture of discussion.[10] As

[8] Judgment no. 3-3-1-70-11. 5.

[9] Estonian Press Council (2011). Statistika 2006–2011 (seisuga 31.12.2011) [Statistics for 2006–2011. As of 31.12.2011]. Available at: http://www.eall.ee/pressinoukogu/statistika.html.

[10] For example Madise, Ülle (2011). "Eesti 1991. – 2011. aastani läbi põhiseaduse prisma. Mõned mõtted." [Estonia 1991–2011 through the prism of Constitution. Some thoughts.] Available at: http://www.ngo.ee/ngo/8/article/1828.

for the internet comments, where the faulty culture of discussion is particularly apparent, the discussion on how to improve the situation is still ongoing. The forums are attempting to apply standards, but have so far been unsuccessful.

Other media related events worth mentioning in Estonia was the digitization of television in 2010. Estonia was one of the first in Estonia to do this. It was generally a success. As cable and internet television make up a rather large part in Estonia (and those consumers do not need to take any steps themselves), the smaller portion of viewers had to get new devices themselves. On the other hand, the population of rural areas and villages who find it hard to adapt to changes for various reasons, was predominantly the demographic that had to provide new devices themselves. There has been the need to reconfigure the installation of the devices on several occasions due to changes of frequencies. Even though it is a technical matter, it plays and important part from the point of view of freedom of expression, as the digitization poses the danger that it reduces access to broadcasting, particularly among the population that rely on broadcasting for participation in society and for receiving information. An interpellation was made in Riigikogu in the beginning of 2011 about digitization and the disappearance of some private television channels from free distribution.[11] Generally, the opinion on digitization has been split, but it is a global process and there have been no specific problems in Estonia with freedom of expression or access to information.

Another topic to cause a wide-spread debate was the use of tax payers' money to create a television channel for Tallinn City Government. Protest movements against creation of the channel and for using the money for another purpose were formed. It is a justified question in a society with free media whether the state or the local government should create television channels. Even though it is their obligation to impart information to the citizens, there are other ways to do this which cost less. It must also be kept in mind that if such channels are created they must never have the objective of political propaganda.

Statements of the Minister of Culture about the kinds of books the public libraries should loan gained the public attention in autumn of 2011. Even though it is

[11] 11th Riigikogu shorthand notes for the 9th session. 7.02.2011. Available at: http://www.riigikogu.ee/?op=steno&stcommand=stenogramm&pkpkaupa=1&date=1297090958&paevakord=8000.

a question of funding, rather than banning certain kinds of books, it still created a wide-spread debate about whether the Minister of Culture is trying his hand at censorship and prescribing what the people may or may not read. This cannot be considered a limitation on freedom of expression, but the debate also posed that question from the point of view of freedom of expression.

Trends

The particularity of Estonia is accessing information to a large extent through the internet and a lot of use through X-tee. Experience of Estonia in this is still an example for the rest of the world. Even though there have been cases of illegal access to information and authorities have had problems with data protection due to carelessness or for other reasons, these problems have been rare considering the volume of use of electronic information. There are less problems each year and no remarkable problems arose in 2011. It is also important that access to information is not just theoretical, but also practical. As different groups of citizens have different opportunities, it is important for the state to guarantee as diverse options for accessing information as possible. This may for example mean guaranteeing access to the internet in a public place or individual assistance with using internet or receiving certain services in some other way.

One problem in the field of media in Estonia that has not improved in the past year is that the media in Estonian and Russian language still has a different content to a large extent. Moreover, the Russian speaking population, to a large extent, follows Russian media, which means that there is a considerable gap between Estonian and Russian speaking population and that different media spheres are being followed. Therefore the messages from the Government and other such information does not always reach Russian speaking population in the right form. This situation cannot be altered with acts of law, nor should this be attempted. The change should come about through information and other "soft" measures. However, there has been no change in this in the past year.

Recommendations:

- Amend § 151 of the Penal Code in order to combat incitement of hatred more efficiently.

Right to freedom of peaceful assembly

THE AUTHOR

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RIGHTS

ECHR Article 11 – Freedom of assembly and association

- Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
- No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

CHAPTER 7

Right to freedom of peaceful assembly

A wide-spread debate on the topic of freedom of assembly and on organising assemblies took place in Estonia in 2011, which was sparked by mass demonstrations that took place all over the world – from anti-dictatorship Arabian spring with multiple fatalities to the economic crisis in Europe and to a wave of protests caused by capitalism and problems of the financial sector in general in the United States. There were some protests in Estonia in 2011, however, not comparable to the ones mentioned, neither of extent or the effect.

The Constitution grants everyone the right to assemble peacefully and to conduct meetings (§ 47). Organising public assemblies is essentially regulated by the Public Assemblies Act,[1] which was amended to an insignificant extent with the Code of Administrative Court Procedure[2] passed in 2011. Riigikogu passed the Maintenance of Law and Order Act[3] on 23 February, which will replace the current Public Assemblies Act once it enters into force.[4]

The author did not find any essential court judgments on the topic of freedom of assembly in 2011. Neither did the Chancellor of Justice handle any procedures pertaining to freedom of assembly in 2011. He was filed one application on the topic in question, but there were no procedures initiated on it. The

1 RT I 1997, 30, 472 ... RT I, 23.02.2011, 6.
2 Halduskohtumenetluse seadustik [Code of Administrative Court Procedure]. RT I, 23.02.2011, 3.
3 RT I, 22.03.2011, 4.
4 More on this in the chapter Legislative devlopments.

applicant was displeased as the publication "Õpetajate Leht" had not published information about organisation of the teachers' protest.[5]

Legislative developments

Riigikogu passed the new Code of Administrative Court Procedure 27 January 2011; chapter 30 "Amendments in other acts" of which amends § 141 of the Public Assemblies Act. The amended version that entered into force 1 January 2012 prescribes that "the Administrative court proceeds the complaints about failure to register a public assembly or about prohibition of holding a public assembly as simplified proceedings on the day of filing the complaint or on the working day following it." The author considers this to be a reasonable amendment as it enables a speedy revocation of a decision prohibiting holding a meeting.

Riigikogu passed the Maintenance of Law and Order Act, which had been in proceedings since 2007 on 23 February. Once it enters into force it will replace the regulation established by the Public Assemblies Act. Riigikogu has to pass the implementation act in order for the new Maintenance of Law and Order Act to come into force; but that had not been passed in 2011. This is why it is impossible to predict at the moment whether, in which shape and when the new regulation on public assemblies will come into force. There is one important amendment which, in comparison to the current provisions, has a negative effect on the freedom of assembly in the opinion of the author.

The 2nd part of the Maintenance of Law and Order Act regulates public assembly. § 67 states the order of notification of public assemblies:

> *§ 67. Prior notification of holding a public assembly*
>
> *(1) Holding a public assembly that requires redirection of traffic or that is intended to be held outside a building or a structure intended for holding assemblies and for which it is intended to:*
>
> *1) erect a marquee, stage, platform or any other large scale construction or*

[5] Source: recorded private coversation with Alo Heinsalu, Director of Chancellor of Justice's Office.

2) use sound or lighting devices, the holder of the assembly is to notify the place of the assembly to the police prefecture no later than four working days and no earlier than three months before the day of the assembly.

(2) If the assembly mentioned in subsection 1 of this section is intended to be held on several territories of police prefecture the notice will be given to at least one of these prefectures.

(3) Spontaneous assemblies need no prior notification.

(4) Assemblies mentioned in subsection 1 of this section, which cannot be notified of due to the urgent need to hold them within time frames set in subsection 1 have to be notified of immediately after the need for holding the meeting has arisen.

§ 7 of the current Public Assemblies Act states:

§ 7. Obligation of prior notification

(1) A public assembly that requires

1) redirection of traffic;

2) erection of a marquee, stage, platform or any other large scale construction or

3) use of sound or lighting devices,

must be notified of by the organiser of the assembly no later than four working days, but no earlier than three months before the day of the assembly by stating as provided in § 8:

1) to the municipality or town government, on which territory the public assembly is to be held;

2) to the county government, if the public assembly is to be held on several municipality or town territories of the county;

3) to the Government of the Republic of Estonia, if the public assembly is to be held of several county territories.

(2) Assemblies not mentioned in subsection 1 of this section must be notified of by the organiser no later than two hours prior to its beginning as provided in § 8 to the police either by a means of communication or directly.

The Maintenance of Law and Order Act has omitted the option of organising public assemblies on two hours' notice, but allows spontaneous assemblies. The explanatory memorandum to the draft act explains:

> *The purpose of this provision is to provide an opportunity to lawfully carry out spontaneous, unorganised public assemblies even if the assembly, due to its nature of obstructing traffic, would require prior notification by law. The option of having spontaneous public assemblies is directly linked to the basis of democratic society. As a spontaneous public assembly has come about by itself and as a rapid response to a topical problem in the society, this kind of assembly is not organised and therefore does not have an organiser who could notify of this meeting. Spontaneous assemblies have to be differentiated from public assemblies for which the need has arisen rapidly, for those are not spontaneous assemblies, but correspond to cases mentioned in subsection 3. Only public assemblies can be spontaneous, public events have to be notified of in case of disturbance to traffic in any case.*
>
> *An example of a spontaneous public assembly was the memorial meeting in Tallinn that came about unorganised after the death of rally driver Michael Park.*[6]

Spontaneous meeting is a new concept in Estonian legal system, which cannot, for obvious reasons, be illustrated with court practice. The explanatory memorandum describes a spontaneous assembly as an instinctive rapid response to a topical problem and an assembly that came about unorganised. A large portion of public assemblies are agreed upon through mediation of social networks[7] and there is no clear understanding whether such assemblies can be considered to be spontaneous assemblies.

The author is of the opinion that the amendment to the Public Assemblies Act that was passed in 2008, which allowed organisation of smaller assemblies

[6] Explanatory memorandum to the draft act on Maintenance of Law and Order Act. Riigikogu 16.05.2007. Available at: http://www.riigikogu.ee/?page=pub_file&op=emsplain&content_type=application/msword&u=20120205165151&file_id=282535&file_name=korrakseletuskiri%20%20(49).doc&file_size=639488&mnsensk=49+SE&etapp=16.05.2007&fd=13.04.2011.

[7] The author writes about the new challenges to freedom of assembly in the information age in the chapter Public discussions and trends.

with two hours' notification is much clearer and guarantees the protection of fundamental freedoms better. The author thinks it to be important that Riigikogu consider adding a subsection to § 66 of the Maintenance of Law and Order Act upon proceeding the implementing provisions

> *Organisers of assemblies not mentioned in subsection 1 of this section must notify the police no later than two hours prior to assembly's beginning as provided in § 68 either via email or directly.*

Public assemblies and demonstrations that have taken place

The author detected from the public database of the police[8] that 169 public assemblies were registered all over Estonia in 2011. However, it is not enough to make conclusions about activity of the citizens for the following reasons:

- A substantial portion of the public assemblies registered with the police was made up of various election events of political parties or religious gatherings. Events for expressing views, celebrating occasions or for gathering signatures in support accounted for 69 entries of the register at most, in the opinion of the author. Many of them had to do with specific historic dates (for example Tartu Peace Treaty) or topics (for example various union events), and the people organising events were shared, which could be enough to conclude that the activity of citizens and citizens' movements in organising public assemblies was rather small.
- The public database of the police is largely not identical to the Tallinn town database for public assemblies.[9] Estonia's largest local government database does not have entries on several events that are entered in the police database. However, there are more events in the Tallinn town

[8] Police and Border Guard Board (2012). Politseis registreeritud avalikud koosolekud [Public assemblies registered with the police]. Available at: http://www.politsei.ee/et/organisatsioon/avalik-teave/politseis-registreeritud-avalikud-koosolekud.dot.

[9] Tallinn town database for public assemblies. Available at: http://www.tallinn.ee/est/avalikud_yritused?filter_otsing_avalik_yritus_fraas=&tyhi_main_otsing=1&tyyp=avalik_yritus&laiendatud_otsing=1&filter_otsing_avalik_yritus_kuupaev=koik&_alates=&_kuni=&filter_otsing_avalik_yritus_kuupaev_alates=01.01.2011&filter_otsing_avalik_yritus_kuupaev_kuni=01.01.2012&filter_otsing_avalik_yritus_vorm=3&filter_otsing_avalik_yritus_korraldaja=&filter_otsing_avalik_yritus_valista_fraas=.

database for public assemblies that are not entered in the police database. It is not possible to compare all of the public assemblies' databases of the local governments at the point of making this analysis.

- The police database does not reflect protests that are registered as events as required by law. The greatest expression of views in 2011 can be considered the public appearance of the Dalai Lama at Vabaduse square on 17 August with thousands of people in attendance. Organisation of this assembly can only be found in the Tallinn town database for public assemblies.[10]

It is not possible to gather statistics or make quantitative studies that help to analyse citizens' activity, to point out important topics of protests or study trends without a public, manageable and central database for public assemblies and events.

The author is of the opinion that the state has to create a central and public database for events and public assemblies according to the principles of open data. [11]

Public discussions and trends

The lack of a reliable database for public assemblies does not allow for an objective analysis of the protests that took place in 2011. The author will now bring up a selection of protests that were covered in the media and give a subjective assessment on the use of freedom of assembly in Estonia. TIME selected the protestor as the person of the year 2011,[12] reasoning its choice by extensive protests that took place in the world. The mass demonstrations that began in Tunisia spread to nearly all Arabic states and brought about the fall of ruling regimes in Tunisia, Egypt, Libya, and extensive reforms in other states. Several European states saw mass demonstrations against budget cuts

[10] Avalikud üritused. Dalai-laama avalik esinemine. [Public assemblies. Public appearance of the Dalai Lama.] Available at: http://www.tallinn.ee/est/avalikud_yritused?id=3289&vorm_id=1.

[11] Open data is a practice that makes informationa vailable to all without limitations to access, patents and copyright. Open data is primarily to mean opening of all government and scientific research establishments' data. Available at: http://www.opendata.ee/mis-on-open-data/.

[12] TIME's Person of the year 2011. Available at: http://www.time.com/time/person-of-the-year/2011/.

and decrease of social guarantees. Occupy Wall Street protest movement that began in the second half of the year in New York spread across the United States and gained followers all over the world.

Estonia remained largely unaffected by these three trends. On the day of the global Occupy Wall Street protest day on 15 October a public assembly was registered in Estonia as well,[13] but according to Estonian Broadcasting, the short assembly in Tallinn was attended by a few hundred people and the one in Tartu by several dozen people.[14] In comparison, the gatherings in support of Andrus Veerpalu on 10 April in Tartu, Otepää and Tallinn had a larger attendance.[15] It is worth noting about this assembly that even though the support demonstration for the Estonian skier Andrus Veerpalu who had got involved in a doping scandal had not been registered, the police did not break up the crowds or punish the organisers of this assembly.

Guaranteeing the right to freedom of assembly did not come under threat on politically sensitive topics such as the memorial picket on 27 April of the 2007 Bronze Night,[16] the assembly against school reform on 5 November[17] or at the small demonstration supporting fair elections in Russia[18].

Estonian trade unions organised some peaceful and small public assemblies, but no remarkable strikes. Estonia has the smallest number of trade union members of any state in Europe and the trend of losing trade union members

[13] Tallinn town database for public assemblies. Available at: http://www.tallinn.ee/est/avalikud_yritused?id=1444&vorm_id=3.

[14] Koit, Riina; Rajalo, Priit (2011). „Tallinnas avaldas meelt paarsada, Tartus kümmekond inimest" [A few hundred people demonstrated in Tallinn, a few dozen people demonstrated in Tartu]. ERR news. Available at: http://uudised.err.ee/index.php?06236817.

[15] Pahv, Peep (2011). „Veerpalu dopingulugu - teadlased mõtlevad, inimesed piketeerivad" [Veerpalu's doping story – scientists are analysing, people are picketing]. Postimees. Available at: http://sport.postimees.ee/417120/veerpalu-dopingulugu-teadlased-motlevad-inimesed-piketeerivad/.

[16] Loonet, Teelemari (2011). „Galerii: pronksöö mälestuspikett D-terminali juures" [Gallery of photos: memorial picket for the Bronze Night near the D terminal]. Postimees. Available at: http://www.tallinna-postimees.ee/425884/galerii-pronksoo-malestuspikett-d-terminali-juures/.

[17] Rudi, Hanneli (2011). „Sadakond inimest protesteeris eestikeelse hariduse vastu" [A hundred persons protested against Estonian language education]. Postimees. Available at: http://www.postimees.ee/623822/sadakond-inimest-protesteeris-eestikeelse-hariduse-vastu/.

[18] Postimees (2011). „Tallinnas toimus miniaktsioon ausate valimiste toetuseks Venemaal" [A small demonstration took place in Tallinn in support of fair elections in Russia]. Available at: http://www.postimees.ee/664534/tallinnas-toimus-miniaktsioon-ausate-valimiste-toetuseks-venemaal/.

is continuing.[19] Epp Kallaste, doctor of finance with Tartu University explains the small number of trade union membership in the following way: "…one's attitude to one's working conditions and pay and the opportunity to hold meetings about it is seen either as an individual or a collective matter".[20] She predicts in the same article that if the preconditions for a strike have been fulfilled, Estonians will also hold strikes.

The largest demonstration of 2011 in Estonia was the performance of His Holiness the 14th Dalai Lama, Tenzin Gyatso to thousands of people at Vabaduse square in Tallinn on 17 August.[21] In addition to this demonstration there were dozens of peaceful assemblies across Estonia from July to September in connection to Dalai Lama's visit; some of these held the purpose of bringing the breach of human rights committed by the People's Republic of China and the Tibetans' condition to the public's attention.[22]

On 25 October a demonstration for a higher pay for teachers was held in front of the Riigikogu building, which was taken part of by more than 1500 people.[23] A month earlier, on 19 September there were ten times less people at a demonstration with the same message,[24] which once again sparked a public debate on why Estonians do not have the courage, the knowledge or the will to protest publicly. After the demonstration that was held in October the journalist Anneli Ammas wrote: "It has always been marvelled that Estonians are so patient and do not protest when they're not happy with their rulers. Now

[19] Salu, Mikk (2011). „Kas Eesti ametiühinguid saab veel päästa?" [Can Estonian trade unions be saved?] Postimees. Available at: http://www.postimees.ee/598390/kas-eesti-ametiuhinguid-saab-veel-paasta/.

[20] Aavik, Marti (2012). „Epp Kallaste: kui põhitingimused on täidetud, streigivad ka eestlased" [If the basic conditions are met, the Estonians will also have strikes]. Postimees. Available at: http://arvamus.postimees.ee/720218/epp-kallaste-kui-pohitingimused-on-taidetud-streigivad-ka-eestlased/.

[21] Dalai Lama's speech at Vabaduse square. The official website of the month of Dalai Lama's visit. Available at: http://www.dalailama.ee/2011/08/17/dalai-laama-kone-vabaduse-valjakul/.

[22] The schedule for the month of Dalai Lama's visit. Available at: http://www.dalailama.ee/events/kava/.

[23] Tooming, Urmas; Teder, Merike (2011)."Õpetajate miiting lõppes riigikogu „vallutamisega"" [The teachers' assembly ended with taking over Riigikogu]. Postimees. Available at: http://www.postimees.ee/609952/opetajate-miiting-loppes-riigikogu-vallutamisega/.

[24] Delfi (2011). „Õpetajad nõudsid raadiomaja ees kõrgemat palka" [Teachers demanded for a higher pay in front of the radio building]. Eesti Päevaleht. Available at: http://www.epl.ee/news/online/opetajad-noudsid-raadiomaja-ees-korgemat-palka.d?id=58082090.

we finally had a real demonstration, one we couldn't even see at the darkest moments of the recession."[25]

Several community-related demonstrations also took place in 2011, which intended to stop the founding of a mine, receive financial support for road-building or to demand cancellation of a local level decision. The community of parents of the Pühajärve basic school[26] in Otepää municipality deserve a special mention. They managed to work together and force to cancel the decision of the rural municipality government not to open the first form with the protest that took place on 24 March.[27] When the rural municipality government suddenly decided to close the school in autumn of 2011 the community once again protested[28] and sued the decision of the municipality.[29]

In author's opinion it is still too early to tell whether there is a growing trend for Estonians to demonstrate their views at public assemblies and to make more use of the freedom of assembly. But his statement that people are willing to use internet petitions and social media networks to publicise their viewpoints was once again confirmed in 2011. The Facebook page created in support of Andrus Veerpalu had 60,000 joins, the page in support of worthy pay for teachers had more than 10,000 joins.

In author's view, in order to guarantee the freedom of assembly, it is more important to consider the increasing trend that shows the public assemblies are agreed via internet-based social networks. Frank La Rue, the special rapporteur of the UN Human Rights Council states in his report of 16 May: "Thus, acting as a catalyst for individuals to exercise their right to freedom of

[25] Ammas, Anneli (2011). „Protestiv suunanäitaja" [Protesting trend-setter]. Postimees. Available at: http://arvamus.postimees.ee/615182/protestiv-suunanaitaja/.
[26] Friends of Pühajärve basic school. Available at: http://puhajarve.blogspot.com/.
[27] Kanal 2 (2011). Pühajärve kooli sulgemise katse kukkus läbi [The attempt to close Pühajärve school failed]. Available at: http://www.reporter.ee/2011/03/24/puhajarve-kooli-sulgemise-katse-kukkus-labi/.
[28] Kond, Ragnar (2011). „Pühajärve põhikool suletakse rahva vastuseisust hoolimata" [Pühajärve basic school will be closed despite public's opposition]. ERR news. Available at: http://uudised.err.ee/?06239639.
[29] Väikenurm, Marge (2011). „Endine õiguskantsler esindab kohtus Pühajärve kooli lastevanemaid" [The former Chancellor of Justice represents the parents of Pühajärve school in court]. Valgamaalane. Available at: http://www.valgamaalane.ee/681210/endine-oiguskantsler-esindab-kohtus-puhajarve-kooli-lastevanemaid/.

opinion and expression, the Internet also facilitates the realization of a range of other human rights."[30]

The author is of the opinion that it is the obligation of each state that respects human rights to guarantee access to internet in the whole territory for a reasonable fee. In order to guarantee the freedom of assembly and expression the states have to guarantee that no obstacles or limitations are set for gathering information from the internet, for imparting opinion via the internet and for creating social networks via the internet.

Recommendations:

- Specify the new regulation of public assemblies. The term "spontaneous assembly" has not been defined yet, and this cannot be explained with court cases for obvious reasons.
- Add a subsection to the new Maintenance of Law and Order Act concerning public assemblies stating an option for an assembly with two hours' notice; this is still allowed under the current regulation.
- Create a central and public database for public assemblies and events on the principles of open data, which would enable an analysis of held demonstrations.

[30] UN General Assembly (2011). Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. Available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf.

Prohibition of discrimination

THE AUTHOR

Merle Albrant

RIGHTS

ECHR Article 14 – Prohibition of discrimination

- The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

CHAPTER 8

Prohibition of discrimination

Discrimination as a topic has been taken up in recent years in Estonia more in media and in Riigikogu. The impression one gets from following discussions on equal treatment is that awareness of essence of discrimination is still low and it is confused with other problems that people have come into contact with. Therefore, it is good to see that the Gender Equality and Equal Treatment Commissioner made several appearances in the media in 2011 as it helps improve people's awareness of their rights and the ways of protecting them.

Political and institutional developments

Remarkable developments in gender equality in 2011 took place on a political level. Riigikogu passed the decision which proposed the government develop an action plan for reduction of the pay gap between men and women.[1] This decision was passed on 20 May with 77 votes in favour, just three undecided and no votes against it. The statements made by members of Riigikogu during the discussion phase of the proposal, which show a certain increase in awareness (see the text in a box) should definitely also be paid attention to.[2]

> **Marianne Mikko:** *"It is without a doubt the obligation of the government to solve the problem of this gaping pay gap between men and women in Estonia.*

[1] Making a proposal to the Government of the Republic of Estonia. 20.09.2011. RT III, 26.09.2011. 06.01.2012.

[2] Riigikogu shorthand notes 20.09.2011. First reading of Riigikogu decision draft act „Ettepaneku tegemine Vabariigi Valitsusele" [making proposals to the Government of Republic of Estonia] (44OE). Available at: http://www.riigikogu.ee/?op=steno&stcommand=stenogramm&date=1316502300.

Whether the solution is called an action plan or a strategy, the important thing is that the measures are specific and the results can be measured."

Rait Maruste: *"In order to get a clear overview about how pay gap has come about, its essence and ways to eliminate it, it would be reasonable to raise the level of dealing with the problem from ministerial level to the government's level and to propose the government prepare an action plan regarding this matter. It would be a political guideline for executive action, which would contribute to a feeling of unity in our society, to equal treatment and to improving Estonia's international reputation. It is up to the government what kind of steps to take."*

The Gender Equality Act states the obligation to create a Gender Equality Council.[3] Eesti Naisliit (Estonian women's union) drew attention to the fact that the council had still not been established in 2011 by sending a memorandum to the Chancellor of Justice in regard to failure to completely implement the Gender Equality Act.[4] Eesti Naisliit pointed out that it has repeatedly turned to the Government of the Republic of Estonia and Riigikogu with this issue, but has received no feedback.

The problem of scarcity of resource of the Gender Equality and Equal Treatment Commissioner has not been solved either. The budget of the commissioner for 2011 is made up of 56,248 euros for personnel expenses and 3538 euros for economic expenses, which is not enough for a well-rounded and successful development of the commissioner's office. There is still no political will to increase the financial assets of the commissioner. Great expectations have been placed on the aid from state of Norway to finance the activities of the next three years.[5] The lack of political will can only be explained by the fact that politicians are not sufficiently aware of the institution of the commissioner, her activities and her impact of the society. This was confirmed by the Minister of Finance Jürgen Ligi at the discussion that took place 26

[3] RT I 2004, 27, 181 ... RT I 2009, 48, 323.

[4] Oviir, Siiri (2011). „Eesti Naisliit otsib soolise võrdõiguslikkuse seaduse rakendamiseks abi õiguskantslerilt" [Eesti Naisliit seeks help from the Chancellor of Justice in implementing the Gender Equality Act]. Eesti Päevaleht 17.11.2011. Available at: http://www.epl.ee/archive/article.php?id=61779556.

[5] 12th Riigikogu shorthand notes for the 2nd session. 16.11.2011. Rahanduskomisjoni esimehe Sven Sesteri sõnavõtt [speech made by Sven Sester, chairman of the Finance Committee]. Available at: http://www.riigikogu.ee/?op=steno&stcommand=stenogramm&date=1321444800.

October 2011 in Riigikogu on the topic of state budget and priorities: "I have not really understood what this man's, I apologise, this woman's activities consist of. I do not know what it is she does."[6]

Legislative developments

Ministry of Justice initiated drawing up of the new Public Service Act in 2011.[7] The draft act went for a coordination round in December. The draft contained some positive examples from the point of view of equal treatment as well as some unsolved questions.

The current act contains no principle of equal treatment, but the draft act of the Public Service Act states it in the general provisions: "The agencies stated in § 5 of this act must guarantee protection from discrimination of persons applying for employment and of officials, and follow the principle of equal treatment as well as promote equality" (§ 11). It remains unclear whether the list of bases for discrimination stated in the Constitution or the lists in specific acts (Gender Equality Act and the Equal Treatment Act)[8] are to be followed. The current Public Services Act states specific traits that cannot be discriminated on upon application (§ 36^1). The draft act has no such provision.

A positive development from the point of view of positive development is the provision that was added in the draft act that regulates the release of an official upon breach of principle of equal treatment.[9] Removal from office in such manner means that the upper limit of compensation is not applicable and a compensation may be demanded that seems most suitable considering the circumstances.

The draft act pays special attention to reduction of inequality upon paying the spousal support. The current Public Service Act provides no support for

[6] 12th Riigikogu shorthand notes for the 2nd session. 26.10.2011. Rahandusminister Jürgen Ligi vastus Marianne Mikko arupärimisele voliniku kantselei rahastamise kohta [Minister of Finance Jürgen Ligi's reply to interpellation made by Marianne Mikko about financing of the Commissioner's Office]. Available at: http://www.riigikogu.ee/?op=steno&stcommand=stenogramm&date=1319627100.
[7] Draft act to Public Service Act. 05.12.2011. Available at: http://eelnoud.valitsus.ee/main.
[8] RT I 2008, 56, 315 ... RT I, 10.02.2012, 1.
[9] Draft act to Public Service Act § 103(7).

the non-working spouse accompanying a public servant on business travel abroad, but the draft act does prescribe spousal support.[10] The non-conformity of the current situation to § 12(1) of the Constitution was drawn attention to by the Chancellor of Justice already in the 31 August 2007 address to the Ministry of Justice and the Ministry of Defence.[11] Chancellor of Justice found that business travel as a non-staff public servant based on the Foreign Service Act and a more than six month business trip as an Estonian public servant are comparable from the aspect of travelling with one's spouse. The draft act builds on that principle. The draft act separately states differences between citizens of Estonia and citizens of the European Union. Citizens of European Union Member States can also be appointed,[12] if they meet the requirements stated in the act and the requirements based on the act (has at least secondary education, has active legal capacity, speaks Estonian in the extent stated in the act or based on the act). The draft act points out cases when unequal treatment of Estonian and European Union citizens upon application for service is justified, if it has a reasonable basis. There is a separate list of posts that only citizens of Republic of Estonia can be appointed (§ 12(2)). These posts have to do with management, state supervision, national defence, exercise of judicial power, state secret, processing of classified foreign information, representation of public prosecution or diplomatic representation of the Republic of Estonia.

Court practice

Two court judgments related to equal treatment and discrimination came into force in 2011.

Supreme Court en banc case no. 3-4-1-12-10 required interpretation of § 12(1) of the Constitution and answers to these questions: for what purposes does § 12(1) of the Constitution allow unequal treatment of persons, what is

[10] Draft act to Public Service Act § 45(1).
[11] Draft act to Public Service Act 05.12.2011 explanatory memorandum. Available at: http://eelnoud.valitsus.ee/main.
[12] Draft act to Public Service Act § 12(2).

the relationship of the first and second sentence of § 12(1) of the Constitution, and whether age can be considered to be "other grounds" mentioned in the second sentence of § 12(1) of the Constitution, on which no one shall be discriminated against.[13] Supreme Court also had to decide whether, upon checking the accordance of unequal treatment to the Constitution, the Supreme Court has to, based on § 11 of the Constitution, assess proportionality of the unequal treatment or whether there is an applicable and reasonable cause for unequal treatment. Supreme Court en banc considered unequal treatment based on age to be in breach of the principle of equality stated in § 12(1) of the Constitution, or to be an unequal treatment not mentioned in the provision. Supreme Court en banc declared § 57(6) of the Health Insurance Act to be in breach of the Constitution and void in the part where insured persons of at least 65 years have the right to receive sickness benefit for no more than 90 calendar days a year in total, and in the part where insured persons of at least 65 years have the right to sickness benefit for no more than 60 consecutive calendar days in case of illness or injury.

The Labour Dispute Committee made its first decision in a harassment case, as far as the author knows, on 3 March 2011.[14] In that case the employer taunted and mocked the female employees and didn't value their family lives and them raising children. The employer also physically assaulted a female employee and shook her with anger. Then again, if the employer was in a good mood, he pinched and hugged the female employees. The Labour Dispute Committee found that the employer had sexually harassed the employee, demanded him to stop the harassment, and awarded 2000 euros in damages in favour of the applicant.

[13] Supreme Court Riigikohus üldkogu. Judgment no. 3-4-1-12-10, (07.03.2011). Available at: http://www.riigikohus.ee/?id=11&tekst=222532575.

[14] Tööinspektsioon (2011). „Eestlane ei teadvusta töövägivalda, kiusamist ja ahistamist". 07.10.2011. Available at: http://www.ti.ee/index.php?article_id=1923&pages=510&action=article&.

Statistics and surveys

The EU Report on Progress on Equality between Women and Men was published in 2011.[15] The report indicates that the pay gap between men and women in Estonia is the greatest among the EU Member States – 31%, while the EU average is 17.5%. The report also shows that the women are more likely to face poverty as they reach pension age. At-risk-of-poverty rate of Estonian women is 41.3%, while the EU average is 20.1%. This figure for Estonian men is 18.9%, while the EU average is 14.9%. This statistical data clearly points to inequality in the society, which results in lower pay and a greater risk of poverty for women.

European Agency for Safety and Health at Work published a report in February of 2011, which stated that 5–20% of European employees have experienced violence and harassment at workplace.[16] The same report also states that just 8% of Estonian employers see a problem with violence and threat of violence; the EU average is 37%. There is an even greater difference in the opinion of the employees. Just 5% of representatives of employees in Estonia see a problem with violence, while 53% of employees in European Union consider it a problem. The difference there is more than tenfold.[17] The same survey states discrimination as one of top concerns among factors causing psychosocial risks for just 2% of representatives of Estonian employees, while an average of 11% of EU employee representatives consider it a concern.[18]

Discrimination does occur in Estonia and people do fall victim to unequal treatment. This is proved by a relatively high number of discrimination complaints lodged with the commissioner. Already in the interview on 9 November

[15] European Commission, DG Justice (2011). Report on Progress on Equality between Women and Men in 2010. The gender balance in business leadership. Available at: ec.europa.eu/social/BlobServlet?docId=6562&langId=en.

[16] Report of European Agency for Safety and Health at Work on new and future risks in European companies ESENER (2010): Eesti Positisioon uuringus [Estonia's poisition]. 25.11.2010. Available at: http://osh.sm.ee/partnerlusseminar2010.html.

[17] Laas, Maiu (2011). Töövägivald vajab teadvustamist [Violence at work needs to be acknowledged]. 13.10.2011. Available at: http://teinevoimalus.ee/et/paevateemad/310-T%C3%B6%C3%B6v%C3%A4givald-vajab-teadvustamist.

[18] Report of European Agency for Safety and Health at Work.

2011 the commissioner conceded that 288 complaints had been filed in 2011, about 50 of them concerning discrimination.[19]

In 2011 Ülle-Marike Papp and Riina Kütt carried out an analysis on the situation of the LGBT[20] persons in association with the "Diversity Enriches" project of the Human Rights Centre at the Tallinn Technological University. The purpose of the survey was to gain an overview of surveys done on the last ten years of Estonian LBGT community, to chart the problems of LGBT persons and to establish further theses for analysis. The analysis reports that the number of cases based on alleged discrimination on the basis of sexual orientation that have reached the Gender Equality and Equal Treatment Commissioner is still rather small. The number of cases that have been processed is also small (six cases concerned sexual orientation in 2011). It also became apparent that the LGBT persons themselves sorely sense the internalised phobias of the Estonian society as well as of the LGBT community, and the reluctance of all kinds of instances, whether public or the business sector, to deal with the topic.

Good practices

An example of a good practice is the "Diversity enriches" project of the Human Rights Centre at the Tallinn Technical University, which aims to increase the awareness of Estonia's society about equal treatment and combat intolerance. In 2011 the focus was placed on the fight against homophobia and the advancement of social status of people with disabilities. Several activities were carried out in association with the project in 2011; which is a positive example of how much can be done to increase the awareness of the society:[21]

An international conference on LGBT topics, which approached the themes of sexual minorities from various aspects, was held in June of 2011.

[19] Krjukov, Aleksander (2011). „Sepper on tänavu tuvastanud kuus diskriminimeerimise juhtu". [Sepper has already detected six cases of discrimination this year] 09.11.2011.
Available at: http://uudised.err.ee/index.php?06238595.

[20] LGBT – lesbian, gay, bisexual and transgender.

[21] Erinevus rikastab. 2011 aasta projekt. [Diversity Enriches. Project of 2011]
Available at: http://www.erinevusrikastab.ee/et/projektist/2011-projekt.

Seminars on equal treatment and non-discrimination were held in Tallinn and Tartu in December of 2011. The purpose was to explain the nature of discrimination in theory and in practice, and to provide an overview of legal acts and the opportunities those acts provide.

A conference on accessibility to the culture of special needs persons was held.

Two out-door media campaigns were held. The first campaign drew attention to ostracizing of persons with disabilities in Estonian society, and the second one to LGBT topics.

In order to draw attention to topics of discrimination in the Estonian media in 2011, the larger daily newspapers published annexes on the topics of LGBT and disabled persons.

Another example of a good practice is the training organised by the Estonian Women's Association Round Table in 2011.[22] Estonian Women's Association Round Table organised a total of eleven training events for the educational personnel in various regions in Estonia on the topic of advancement of gender equality and prevention of discrimination in education, which was taken part of by 238 participants. Estonian Women's Association Round Table organised three events on the topic of increasing the gender balance in politics in 2011 with 95 people participating. Four events were held in 2011 by the association on the topic of reduction and elimination of violence against women, which were taken part of by 114 persons. A special mention should be given the eleven day long training aimed at young girls on prevention of violence – empowering trainings, which were taken part of in full by 50 participants.

Essential public discussions

The Gender Equality and Equal Treatment Commissioner became more visible in the media in 2011. She made statements far more often than in previous years and her activities have therefore been given more coverage through various media outlets.

[22] Reitlemann, Eha. 14.01.2012.

There has been positive and negative media coverage about the commissioner. The commissioner's activities have been reported on more, as well as when to turn to the commissioner.[23] An example of negative press is the statement of the representative of a religious community, Estonian Evangelical Lutheran Church dean of Saarte deanery, where he demanded the commissioner quit her post as he believed she was abusing her authority and demeaning the citizens.[24] In the author's opinion, such public statements reflect society's ignorance of the commissioner's jurisdiction and of persons' right to equal treatment. Therefore, it is essential that the commissioner continued to actively work with the media.

Trends

The defining characteristic of 2011 could be the fact that there is still not enough acknowledgment of everybody's right not to be discriminated against. This was also confirmed by Katrin Kaarma, Director General of the Labour Inspectorate: "The problem in Estonia is that harassment is not acknowledged. What is considered harassment elsewhere in Europe is common behaviour for us."[25] There are still instances of direct discrimination by the employers already at the point of recruitment, even in advertisements published in newspapers. Some examples:

- Hiring a single young woman to look after the garden, to clean rooms, as a carer for a person and as a masseuse. Training and accommodation available.[26]
- Shop hiring security personnel from the age of 19.[27]

[23] Krjukov, Aleksander (2011). „Sepper on tänavu tuvastanud kuus diskriminimeerimise juhtu".
[24] Krjukov, Aleksander (2011). „Saarte praost esindab isiklikku seisukoha" [Dean of Saarte deanery represents his own personal opinion]. 07.11.2011. Available at: http://uudised.err.ee/index.php?06238453.
[25] Labour Inspectorate (2011). „Eestlane ei teadvusta töövägivalda, kiusamist ja ahistamist" [Estonians do not acknowledge violence, taunting and harassment at work].
[26] Järva Teataja. 10.09.2011.
[27] CV-online. Tööpakkumised [Job offers]. Available at: http://www.cv.ee/too/tallinna-kaubamaja-as/turvatootajaid-d266206.html?index=4d74df11917e92ddfb54243cebad77e7717f5966.

On the other hand, it can be said that the public has started to discuss the topics of gender equality and equal treatment in 2011, but the general awareness of the society about these topics is still low.

Recommendations:

- Increase the opinion leaders', political decision makers' and public servants' awareness of negative effects of discrimination and of the advantages of equal treatment.
- Reach the stage of devising an action plan for reduction of pay gap between men and women at the Parliament of the Republic of Estonia.
- The political parties should define and clearly express their views on questions of non-discrimination and equal treatment.
- The commissioner should continue to actively work with the media for the purpose of increasing the general awareness of the society on discrimination.

Right to education

THE AUTHOR

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Tanel Kerikmäe has a reputation in the field of European and International law. He is a member of several law associations, a member of the editorial office of the Baltic Yearbook of International Law and other scientific publications and an author of more than 50 articles and publications. Tanel has acted as an expert in European law, constitutional law and human rights law for international organisations and the Government of the Republic of Estonia. He has also lectured at several foreign universities. Tanel is currently the Acting Director of Tallinn Law School at Tallinn University of Technology and a Professor of European Law at the Jean Monnet Chair of European Law of Tallinn Law School at Tallinn University of Technology.

RIGHTS

ECHR Protocol 1 Article 2 – Right to education

- No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

CHAPTER 10

Right to education

Availability of systematic information is essential in the information age. This also includes the right to education. A good overview of information relating to education is provided on the website of the Ministry of Education and Research, but also on the youth portal NIP.[1] The Ministry of Foreign Affairs publishes synopses of cases at the European Court of Human Rights in Estonian, which also concern right to education.[2] Estonia's views on education are also explained on the Archimedes website.[3] Right to education is supported by the strategy principle: "Estonia's educational policy is based on the principle of inclusive education, which states that every student has the right to receive education according to his or her abilities and needs. Estonia has acceded to all essential documents related to international human rights or rights of disabled persons, which also deal with the right to education."[4] Archimedes website has listed these conventions and other legally binding normative documents, and the rights contained in them have been explicated. Unfortunately the journal "Haridus" stopped publishing, which certainly will decrease the number of discussions on an academic level in Estonian media.

1 NIP. Hariduse toetamine [Supporting education]. Available at: http://www.nip.ee/page/171/15.

2 For example European Court of Human Rights. 12. January 2011judgment Ali v. United Kingdom. Application no. 40385/06. http://www.vm.ee/?q=node/10585, or ECtHR, 18. March 2011 judgment Lautsi and others v. Italy. Application no. 30814/06. http://www.vm.ee/?q=node/11286.

3 See http://archimedes.ee/.

4 Kikkas, K jt (ed.), Takistusteta kõrgkooliõpe. Erivajadusega õppija toetamine ja õpikeskkonna kohandamine Juhend kõrgkoolidele, õppijatele, õppejõududele, tugitöötajatele [Higher education without hindrances. Supporting students with special needs and adapting the learning environment. Guidelines for institutions of higher education, students, teaching staff and support staff]. Available at: http://primus.archimedes.ee/takistusteta/7.html.

Legislative developments

Two regulations of the Government of Republic of Estonia came into force in the beginning of 2011: "Basic schools' national curriculum"[5] and "Upper secondary schools' national curriculum".[6] The version of "Basic schools' simplified national curriculum" also came into force, which establishes the standard of basic education for students with intellectual disabilities, who study in simplified, coping or nursing classes on the recommendation of the counselling committee.[7] There is also the opportunity to complete a so-called individual curriculum, which means that "the student can learn in the extent and tempo that is suitable for him – usually longer than prescribed".[8] This guarantees the right to education to students with different abilities. There have been compelling arguments in favour of the new curriculums[9] (for example that more specific assessment criteria increase legal clarity), but the problem has been the lack of educational literature upon coming into force of the curriculum, which has clearly obstructed the smooth implementation of the educational process and therefore is a breach of right to education. Web-based materials have been used to try to ease this situation. The Ministry of Education and Research has explained[10] that the nine books for field of study and the three subject books, or in other words a total of nearly 3000 pages of material necessary for implementation of the basic schools' level is available on the website www.oppekava.ee. The Ministry of Education and Research emphasises that "each field of study or subject book contains several articles on where teachers may find recommendations on how to conduct study in a subject, no matter

[5] Põhikooli riiklik õppekava [Basic schools' national curriculum]. Regulation of the Government of Republic of Estonia no. 1 (6.01.2011). RT I, 14.01.2011, 1.

[6] Gümnaasiumi riiklik õppekava [Upper secondary schools' national curriculum]. Regulation of the Government of Republic of Estonia no. 2 (6.01.2011). RT I, 14.01.2011, 2.

[7] Põhikooli lihtsustatud riiklik õppekava [Basic schools' simplified national curriculum]. Regulation of the Government of Republic of Estonia no. 182 (16.12.2010), RT I, 28.12.2010, 14.

[8] Kerb, A. „Riiklik õppekava ühtlustab taset" [A national curriculum levels the quality of education], Õpetajate leht, 23.09.2011.

[9] Vt näiteks E. Värä, „Kas jälle uued riiklikud õppekavad? Milleks?" [New national curriculums again? Why?], Õpetajate leht, 14.01. 2011.

[10] Ministry of Education and Research. Pressiteade: Põhikooli riikliku õppekava rakendamiseks valmisid veebipõhised juhendmaterjalid [Press release: web-based guidelines now ready for implementation of basic schools' national curriculum]. 9.02.2011. Available at: http://www.valitsus.ee/et/uudised/pressiteated/haridus-ja-teadusministeerium/23852/pohikooli-riikliku-oppekava-rakendamiseks-valmisid-veebipohised-juhendmaterjalid.

which field of study it belongs to."[11] The literature has clearly been insufficient in the upper secondary school level, as the ministry made a statement after the curriculums came into force that the subject books and other guideline materials necessary for implementation of the upper secondary schools' national curriculum are still being prepared and that they should be ready by the end of 2011.[12] This goal was partially met, but the work on renewal of curriculums, including perfecting the study literature, is still ongoing.[13]

Political developments

Most problems in the field of education in the previous year were caused by the reform of the higher education.[14] Several interest groups have contested its accordance to the Constitution.[15] Members of the European Union have attempted to include private financing in their strategies, and the concept of "free higher education" has caused heated dispute in generally as well as regarding implementation of certain details. The general public also has the impression that the proposed reform contradicts, at least partially, several points of the practice of good legislative drafting:[16]

- The purpose of executing legislating power has to be in concordance with the public interest, not serve the narrow interest of a party, its party or supporters.
- The decisions made in the course of legislative drafting have to be transparent and reasoned. The more important the change, the more thorough the reasoning.

[11] Ministry of Education and Research. Pressiteade: Põhikooli riikliku õppekava rakendamiseks valmisid veebipõhised juhendmaterjalid.

[12] Ministry of Education and Research. Pressiteade: Põhikooli riikliku õppekava rakendamiseks valmisid veebipõhised juhendmaterjalid.

[13] See the information in explanatory memorandum to the basic and secondary schools' national curriculum draft act: https://www.oppekava.ee/pohikooli_riikliku_oppekava_eelnou_seletuskiri ja https://www.oppekava.ee/guemnaasiumi_riikliku_oppekava_eelnou_seletuskiri.

[14] An overview of documents relating to reform of higher education (act 89 SE II-1amending the University Act, Institutions of Professional Higher Education Act and other acts) can be found on the website of Ministry of Higher Education and Research: http://www.hm.ee/index.php?046460.

[15] An exhaustive list of opinions of universities, student councils, political parties and experts can be found on the Riigikogu website: http://www.riigikogu.ee/?page=eelnou&op=ems&eid=1396996&emshelp=true&u=20111223194717.

[16] Teenusmajanduse Koja poolt välja töötatud Hea Õigusloome Tava [Practice of good legislative drafting worked out by Estonian Service Industry Association]. Available at: http://www.teenusmajandus.ee/uudised/hea-oigusloome-tava-2011.

- The act must fit into Estonian legislative system and be competitive on an international level. Imposing legally isolated solutions should be avoided.
- The act must be clear and understood unambiguously, which is why the acts must contain simple language, be clear and precise, and keep the main focus groups of the act in mind. There should be ample time to bring the act into force.

The reform plan of higher education is currently being processed, which is why it cannot be given a final appraisal. There has been a lot of discussion of other directions and choices of education policy aside from acknowledging the legislative problems. One of the problems is the state's vision of preferring to develop certain fields of study. The Minister of Education claims: "The modern society needs specialists in hundreds, if not thousands, fields of study, which a small state definitely cannot provide. There has long been a division of academic work among the Nordic countries, and most states the size of Estonia as well as smaller states have given up teaching not only several fields of study, but their own national educational system altogether."[17] Claims such of ilk and denigration of any kind of national competition under the label of "duplication" needs more discussion before implementation of national curriculums, as well as analysis of its effects – as is customary in a state based on rule of law. Analysis is also needed of legality of different treatment. The reform plan contains the principle of applying tuition fee to international students in addition to the plan of free higher education for Estonian citizens. The immigration policy in Estonia is rigid as it is and the application of this principle will increase isolation and protectionism even more. It can also lead to direct unequal treatment in education.

The changeover assessment of Estonia's institutions of higher institution that had lasted two years ended in 2011 – the purpose of this was to come to the point in organisation of Estonian higher education that all institutions of higher education have the right to emit nationally recognised diplomas in the fields that they teach. The particularity of the changeover assessment lies in the fact that the competence in the field was assessed through groups of study programme. The

[17] Aaviksoo, J. „Jaak Aaviksoo: õigus haridusele või saapavabrik?" [Jaak Aaviksoo: right to education or a shoe factory?]. Postimees. 4. 05.2011.

assessment was carried out by the EKKA Quality Assessment Council, but the teaching staff of competing universities was included in the expert commissions. Therefore, the objectivity of preliminary assessments can be set up to be questioned. Estonian Institute of Humanities (Sotsiaal- ja Humanitaarinstituut) had to stop its activity as a result of the changeover assessment, as well as Euroacademy (Euroakadeemia) after its court battle with the Ministry of Education and Research. There is no reason to claim in these cases that the decisions of EKKA in assessing curriculums were biased. Changeover assessment of the new curriculums (Doctoral curriculums of Tallinn University of Technology and Tallinn University) is a different problem as these were new curriculums, which could not be assessed according to the criteria of the existing curriculums, even though EKKA agreed to the proceedings of changeover assessment. Clearly the greatest problem in the already mentioned discussion on free higher education is the general definition of the term, which could include basic and secondary levels. Anu Uritam has justly claimed in her article that: "…the question how to interpret 'free education' deserves a wider discussion in Estonia. The more limited the financial possibilities of the state and the more complicated the economic state of local governments, the more precise should the knowledge be on what the basic requirements are that the state and the local government have to meet in order to provide children the education in the modern democratic society."[18] The author summarises the recent discussions regarding general funding of the education system as well as division of obligations between the state and the local governments as follows: "So far the free education is still provided by municipal and state schools. However, there has been "a covert privatisation" of the educational system in recent years, which allows for everything turning fee-based that strictly doesn't have to be free according to the legislation. Such "covert privatisation" is not in the interest of the children and the parents, although it can result in significant savings for the local governments."

The discussion on switching from education in Russian language to Estonian continued in 2011. According to the Basic Schools and Upper Secondary Schools

[18] Uritam, A. „Õigus haridusele – kas tasu eest või tasuta?" [Right to education – for a fee or for free?]. The Journal of Estonian Parliament. 21, 2011.

Act[19] the upper secondary schools that taught in Russian language started transferring to teaching in Estonian five years ago, and the qualification of the teachers in these schools and the knowledge of Estonian of the students gained in basic schools was sufficient to proceed with the transition, in the opinion of the Government.[20] The Government made no allowances for exceptions. The interest groups have interpreted this as a limitation to education (also see the chapter on national minorities). Right to education is also associated with the topic of schools of one's residence. The Deputy Mayor's reply to Chancellor of Justice's memorandum about the accordance to Constitution of the order of determining the school of one's residence contains a call to include the employees of the Ministry of Education and Research to find the best solution.[21] The letter agrees with the Chancellor of Justice in that "the wishes of all parents were considered too much in the preparation stage of the regulation, but I cannot agree with the fact that the regulation is not in accordance of the will of the regulator."[22] Tallinn Education Authority found the memorandum contradictory, but the Ministry of Education and Research claimed that the position of the ministry is this: each child must be accepted to the school of his or her residence without entrance trials and the school must be known to the parent early on.[23]

Chancellor of Justice has carried out monitoring visits to schools and found problems associated with right to education. Chancellor of Justice has turned to the Ministry of Education and Research as the administrator of schools with the question: "which steps and when does the ministry intend to take to assure

[19] RT I 2010, 41, 240.

[20] Ministry of Education and Research. Pressiteade: Valitsuse hinnangul on vene õppekeelega gümnaasiumid eestikeelseks aineõppeks valmis [Press release: in the opinion of the Government the Russian language secondary schools are ready to transfer to study in Estonian]. 22. 12.2011. Available at: http://www.hm.ee/index.php?0512762.

[21] Tallinn City Government. „Pressiteade: Tallinna abilinnapea Mihhail Kõlvart saatis vastuse õiguskantsler Indrek Tederi märgukirjale elukohajärgse kooli määramise korra põhiseaduspärasuse kohta" [Press release: Deputy Mayor of Tallinn Mihhail Kõlvart sent the reply to Chancellor of Justice Indrek Teder's memorandum about the accordance to Constitution of order of determining the school of one's residence]. 18. 10.2011. Available at: http://www.tallinn.ee/est/haridus/Abilinnapea-saatis-oiguskantslerile-vastuskirja.

[22] Tallinn City Government. Pressiteade: Tallinna abilinnapea Mihhail Kõlvart saatis vastuse õiguskantsler Indrek Tederi märgukirjale elukohajärgse kooli määramise korra põhiseaduspärasuse kohta.

[23] Teder, M. „Haridusamet: õiguskantsleri arvamus on täis vastuolusid" [Educational Authority: the opinion of Chancellor of Justice is full of contradictions]. 20.09.2011. Available at: http://www.tallinnapostimees.ee/570250/haridusamet-oiguskantsleri-arvamus-on-tais-vastuolusid/.

Raikküla school gets a school and dorm building suitable for the needs of students with special needs that would be in accordance with the requirements set in legislation, especially the requirement of safety of all the people in the school."[24] The monitoring visit to Lahmuse school yielded that "it is nearly impossible for persons with reduced mobility to move between different floors of the building. It would be completely impossible with a wheelchair."[25]

Essential public discussion

The topic of school violence continues to be on the radar for the media; for example for bullying of children with disabilities.[26] The students themselves consider it to be the most serious problem in school life.[27] School violence can result in reduction of quality of education, poor grades and interruption of educational careers. Hopefully the institution of ombudsman for children which is being filled by the Chancellor of Justice since 2011 (also see the chapter on children's rights) can offer help in solving these problems.

A new topic of discussion in media is the relationship between religion and school.[28] The reply of teacher Lembit Jakobson to Andrus Kivirähk, where he refers to wording of § 37 of the Constitution according to which "everyone has the right to education. Parents shall have the final decision in the choice of education for their children" has to be agreed with. Jakobson claims: "This means that Christian schools are allowed in Estonia and so far this requirement of the Constitution has been implemented. Schools of different religions (Vanalinna

[24] Chancellor of Justice. Kontrollkäik Raikküla Kooli 27.04.2011. Kokkuvõte. [Monitoring visit to Raikküla school. Summary.] Available at: http://www.oiguskantsler.ee/public/resources/editor/File/OMBUDSMANI_MENETLUSED/Kontrollkaigud/2011/Kontrollk_igu_kokkuv_te_Raikk_la_Kool.pdf.

[25] Chancellor of Justice Õiguskantsler. Kontrollkäik Lahmuse Kooli 31.05.2011. Kokkuvõte. [Monitoring visit to Lahmuse school. Summary] Available at: http://www.oiguskantsler.ee/public/resources/editor/File/OMBUDSMANI_MENETLUSED/Kontrollkaigud/2011/Lahmuse_Kool__kontrollk_igu_kokkuv_te.pdf.

[26] Paulus, S. „Koolivägivald puudelisuse tõttu" [School violence because of disability]. Puutepunkt. Available at: http://www.vedur.ee/puutepunkt/?op=body&id=7&cid=184.

[27] Kõiv, K. „Koolivägivald sünnitab heidikuid" [School violence breeds outcasts]. Koolielu. 3. mai 2002. Available at: http://arhiiv.koolielu.ee/pages.php/020508,3410.

[28] Kivirähk, A. „Ettevaatust – kristlik kool!" [Watch out – christian school!] Õpetajate leht.17.06.2011. and L. Jakobson, „Kui meil Jumalat ei oleks" [If we didn't have God]. Õpetajate leht. 19.08.2011.

Hariduskolleegium, Tartu Katoliku Kool, Tartu Kristlik Kool) have been active for years and the public has never questioned the education they provide."[29]

It is good to know Estonia is protecting fundamental rights all over the world as a participant of international society. Jüri Seilenthal, Estonia's representative with the UN gives a general overview of Estonia's involvement in international projects and programmes, which support the right to education.[30] Support has been given, for example, to Haiti, Somalia, Afghanistan and Georgia.

Conclusion

It could be said as a conclusion that the right to education has been protected in Estonia and that the problem areas are being addressed. Greater reforms, however, need to be thought out more thoroughly, and an analysis of the effects has to be carried out. Education is an important topic of discussion in Estonia; the lack of real involvement of interest groups is an issue. It seems the state is trying to gain more control over all levels of education without having carried out a thorough analysis, which has been made available to the society. I would recommend the Ministry of Education and Research carried out an analysis of the effects of the reform of higher education, which would be able to tell whether the planned Study Allowance Act which is being drawn up at the moment is sufficient to implement the goals of reform of higher education. I would also expect enabling of a constructive dialogue between the decision makers and the interest groups (teachers, students).

Recommendations:

- In the course of carrying out bigger reforms: rely on prior analysis of effects, which would determine that the goals intended to achieve with the reforms can actually be achieved.
- Continue work on increasing the efficiency of battle against school violence.
- Make sure the quality of education does not decrease when switching over from education in Russian to education in Estonian.

[29] Kivirähk, A; L. Jakobson.

[30] Statement by the Republic of Estonia at the Economic and Social Council Substantive session 2011, High. level segment, July 5, 2011. H.E. Mr. Jüri Seilenthal. Permanent Representative of Estonia to the UN in Geneva. Available at: http://www.un.org/en/ecosoc/julyhls/pdf11/20general_debate_republic_of_estonia.pdf.

Right to free elections

THE AUTHOR

Kari Käsper

RIGHTS

ECHR Protocol 1 Article 3 – Right to free elections

- The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

CHAPTER 10

Right to free elections

Political developments

Estonia held Parliamentary elections in 2011. These were the second parliamentary elections in Estonia where voting could be conducted via the internet. The elections passed without major problems and can be considered to be in accordance with general international requirements. The Office for Democratic Institutions and Human Rights (ODIHR) compiled a report on the elections.[1] According to the report the elections had been professional, effective and transparent.

Even though there are generally no problems with taking part in elections, there are still two groups of people who cannot participate in parliamentary elections in Estonia. One group is made up of stateless persons who are long term residents (another term used in Estonia is 'a person of undetermined citizenship'). The make up roughly 7% of the population. The stateless persons who are long term residents can vote in local government elections, but cannot be held up as candidates. ODIHR also reports on the fact that stateless persons are prohibited from joining political parties. Such prohibition contradicts international regulations on human rights.[2]

The other group who cannot vote in elections consists of prisoners. Restriction of prisoners' right to vote contradicts European human rights

[1] OSCE/ODIHR Estonia. Parliamentary Elections. 6 March 2011. OSCE/ODIHR Election Assessment Mission Report. Availabile at: http://www.osce.org/odihr/77557.
[2] OSCE/ODIHR Estonia. Parliamentary Elections.

regulations. This topic was already handled with in detail in the previous human rights report "Human Rights in Estonia 2010" and 2011 did not bring any changes in this area. The ODIHR report states that 1416 persons were removed from the list of persons who were eligible to vote at the parliamentary elections of 2011 due to serving a prison service. The adviser at the legal and analysis department of Chancellery of the Riigikogu Katre Turbo concedes that "in Estonia, like in Great Britain, solving this problem has been deferred for a long time, even though it should be clear that this cannot be done indefinitely."[3]

Legislative developments

The amendment of regulation on funding political parties constituted an important change in the organisation of elections. A committee consisting of representatives of parties in Riigikogu, the National Audit Office, Chancellor of Justice and of the National Electoral Committee was formed to monitor the funding of political parties. Election expenditures of the parties and the independent candidates, and the transparency and lawfulness of financial sources have always been an issue. The National Electoral Committee and other Constitutional institutions have so far been reluctant of getting involved in this topic in order to avoid accusations of pursuing an agenda of one or another political party.[4] This is why a suitable committee was formed with Riigikogu. The committee has the right to request supplementary documents, to make prescriptions and determine penalty payments.[5]

The committee, having started work in November of 2011, made a proposal to specify the provisions on monitoring financing of political parties,

[3] Turbo, Katre (2011). „Vangide valimisõigusest" [On prisoners' right to vote]. RiTo [the Journal of the Estonian Parliament] 23. Available at: http://www.riigikogu.ee/rito/index.php?id=14442&op=archive2.

[4] See for example „Madise: valimiskomisjonil ei ole erakondade rahastamise kontrolliks piisavaid volitusi" [Madise: National Electoral Committee does not have sufficient jurisdiction to monitor the parties' funding]. Postimees.ee. 29.12.2009 Available at: http://www.postimees.ee/205843/madise-valimiskomisjonil-ei-ole-erakondade-rahastamise-kontrolliks-piisavaid-volitusi/.

[5] Erakonnaseaduse muutmise ja sellega seonduvalt teiste seaduste muutmise seadus [The act amending the Political Parties Act and other acts concerned]. RT I, 10.12.2010, 1.

particularly concerning the reporting of financing.[6] The committee considers it important to provide a new content to the chapter on funding of political parties in the Political Parties Act.

Court practice

The court decisions concerning elections primarily have to do with the opportunity to vote electronically at the 2011 Riigikogu elections. According to the appeal submitted with the Supreme Court by Paavo Pihelgas, a third party could install a surveillance software in the voters' computers to determine the person of the voter and the vote he has given; therefore, the voter cannot be sure that a third party is not recording his decision. The technical solution of e-election also allegedly enables a virus to alter the results of voting in an undetectable manner, and the mistake cannot be rectified. The Supreme Court disallowed the appeal because the appellant had knowingly put himself in a situation where his electronic vote might not have reached the National Electoral Committee. The hypothetical possibility that the results of e-elections can be influenced was not sufficient to abrogate the election results.[7]

Henn Põlluaas, an independent candidate submitted an appeal to the Supreme Court requesting abrogation of the e-election results as not all voters in electoral district no. 3 (in Mustamäe and Nõmme) were able to vote for him in electronic elections due to technical reasons. The National Electoral Committee confirmed that: "in the letter of 2 March 2011 that the programme used for elections has a problem with operating system Windows 7 using certain resolutions and fonts, which renders the names of candidates only partially visible on the computer screen – the names of independent candidates at the end of the list (in electoral district no. 3 H. Põlluaas and R. Nurmik) remained hidden." The Supreme Court disallowed the appeal due to exceeding the time-limit

[6] Erakondade rahastamise järelevalve komisjon. Kiri. [The committee monitoring funding of parties. Letter] Available at: http://www.riigikogu.ee/public/ERJK/2011.11.11_EKS_muutmisettepanekud.pdf.

[7] Constitutional Review Chamber of the Supreme Court judgment in case no. 3-4-1-4-11 (21.03.2011).

of proceedings, but noted that "it is the obligation of the state to guarantee the compatibility of the software used at elections with the prevalent hardware, operating systems, screen resolutions or fonts." The court also claimed that "if the technical problems occurring at e-elections cannot be resolved in singular instances, the voter has the option of voting with a ballot paper."[8] It is not apparent from the interpretation of the court what the obligation of the National Electoral Committee is in practice regarding guaranteeing compatibility with hardware and operating systems that may be used for voting.

The Estonian Centre Party submitted an appeal of its own against the National Electoral Committee, which essentially repeated the aforementioned appeals. The Supreme Court disallowed the Centre Party's appeal.[9]

Statistics and surveys

The legal and analysis department of the Chancellery of the Riigikogu published two summarising papers on the topic of elections in 2011. The first one was on the subject of electronic voting.[10] It conceded that Estonia is so far the only state that has implemented electronic voting that is binding as to the results. The second summarising paper was on the topic of implementing gender quotas at parliamentary elections.[11] The paper analyses gender quotas all over the world, sets out the for and against arguments, and concludes that even though all parliaments in the world have a majority of men, some of them have "still managed to adopt acts establishing gender quotas, which thereby attempt greater inclusion of women,"[12] although these developments have been preceded by years of discussion.

[8] Constitutional Review Chamber of the Supreme Court judgment in case no. 3-4-1-6-11 (23.03.2011).
[9] Constitutional Review Chamber of the Supreme Court judgment in case no. 3-4-10-11 (31.03.2011).
[10] Sillajõe, Siiri. Elektrooniline hääletamine valimistel [Electronic voting in elections]. Teemaleht no. 3 / 28.04.2011. Riigikogu kantselei õigus- ja analüüsiosakond. Available at: http://www.riigikogu.ee/doc.php?87072.
[11] Väli, Mari. Sookvootide rakendamisest parlamendivalimistel [Application of gender quotas at parliamentary elections]. Teemaleht no. 4 /05.05.2011. Riigikogu kantselei õigus- ja analüüsiosakond. Available at: http://www.riigikogu.ee/doc.php?87072.
[12] Väli.

The National Electoral Committee has published statistics regarding the presidential elections of 2011 on its website.[13] It stems from the statistics that there has been a certain regress regarding representation of women in Riigikogu. 24 women were elected at the elections of 2007 compared to just 20 in 2011. The largest percentage of women were elected among the Centre Party candidates (approximately 26.9% of the elected candidates), the smallest percentage among the Reform Party candidates (15.2% of the elected candidates).

Good practices

The option of electronic voting is one of the success stories of Estonian technology. 140,846 persons made use of the option to vote over the internet at the 2011 Riigikogu elections, which amounts to 15.4% of all the voters.[14] Even though the organisation of e-elections has been criticised[15] and contested, neither the Chancellor of Justice nor the Supreme Court have detected a breach of the Constitution in organisation of the e-elections. The ODIHR report on the 2011 Riigikogu elections points out that electronic voting ought to be regulated better, and the monitoring needs to be enhanced, as well as the liability and certain technical aspects.[16]

Essential public discussions

A large portion of the debate on right to vote concerned e-elections, but also funding of the political parties. Electronic elections have been criticised mainly on the initiative of the Centre Party and the Tallinn City Government, which is ruled by the Centre Party, as well as in publications. At the end of the year the discussion centred around the so-called foundations for developing democracy that were intended to be established with

[13] National Electoral Committee. Riigikogu valimised 2011 statistika [Statistics about 2011 Riigikogu elections]. Available at: http://www.vvk.ee/riigikogu-valimised-2011/statistika-2011/.
[14] National Electoral Committee. Riigikogu valimised 2011 statistika. Elektroonilise hääletamise statistika. [Statistics about 2011 Riigikogu elections. Statistics about electronic voting.] Available at: http://www.vvk.ee/riigikogu-valimised-2011/statistika-2011/.
[15] The criticism can be found of the website veebisait www.evalimised.net.
[16] OSCE/ODIHR Estonia. Parliamentary Elections.

the political parties, which would be funded from the state budget, and for which 900,000 euros had already been procured via the budget of Ministry of Foreign Affairs.[17]

Recommendations

- Remove the blanket ban of participating in elections of persons serving prison sentences.
- Continue the discussion for increasing transparency of funding of political parties and for increasing the efficiency of monitoring.
- Continue the work on specifying the legislative regulations on electronic elections and guarantee independent monitoring of e-elections.
- Pay more attention to percentage of women in parties' lists of candidates, starting with voluntary measures on the party level.

[17] A summary of developments on the topic of foundation for developing democracy can be found on the website www.ngo.ee/dasa.

Situation of national minorities

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CHAPTER 11

National minorities and integration policy in Estonia

2011 was a rather eventful year in terms of national minorities and integration politics in Estonia. This topic was the centre of public discussion on a few instances: in debates held during the Riigikogu elections and in connection to the debate surrounding the reform of schools teaching in Russian. As there have been several developments as well as regressions in this field during the last twenty years – the Bronze night events for example – the topic of national minorities has never subsided and deserves continuing attention.

Political and institutional developments

One of the most important topics regarding national minorities in 2011 was the transfer of schools that teach in Russian to teaching in Estonian, which was concluded in September. The transfer means that the youths starting tenth grade in the school year of 2011/2012 have to study 60% of the subjects in Estonian during the next three high school grades. The reform has received harsh criticism from several administrations of schools that teach in Russian as well as the members of Riigikogu. Ten members of the union of national minorities in Riigikogu sent the Prime Minister and the Government a memorandum, which claims that forcing schools that teach in Russian to transfer to teaching in Estonian to be in breach of the Constitution.[1] The non-profit association Russian School in Estonia held a demonstration against

[1] Aasaru, Heiki (2011). „Kümme riigikogu liiget kaitseb venekeelset õpet" [Ten members of Riigikogu defend tuition in Russian], ERR news. 17.06.2011.

the reform at Toompea; [2] they also filed an inquiry with the OSCE High Commissioner on National Minorities and Council of Europe Commissioner for Human Rights regarding the situation with Russian schools in Estonia.[3]

17 Russian upper secondary schools (11 in Tallinn and 6 in Narva) applied for a time extension for the changeover in relation to the reform. Two of them (upper secondary schools for adults) were afforded the time extension on the condition that the schools will continue with intensive tuition of Estonian language in the next three years.[4] The Government did not support making exceptions for the other schools.

It is still early to assess the changeover of schools that teach in Russian to teaching in Estonian as it depends of several factors, from preparation of the teachers to existence of proper methodological materials. The attitude of the parties also has an effect on the success of the school reform. The latest survey to that effect indicates that the most positive attitude, and the attitude agreeing to necessity of teaching in Estonian among the group of non-native Estonians is the group with the most direct link to the changeover – the students and the youths.[5] However, considering the current situation, it could be presumed that the dissatisfaction surrounding the reform will not abate any time soon and is likely to carry on in the following years.

The 2011 Riigikogu elections also touched upon the topic of national minorities and integration, although there was limited debate on the merits of this topic.[6] Mati Heidmets deduced from the analysis of discussions held during the

[2] Randlaid, Sven (2011). „Vene noored kogunesid Toompeale eesti õppekeele vastu meelt avaldama" [Russian youths gathered in Toompea to protest against tuition in Estonian], ERR news. 11.10.2011.

[3] NGO Russian School in Estonia (2011). „Pöördumine OSCE Rahvusvähemuste Ülemkomissari hr. Vollebæki ja Europa Nõukogu Inimõiguste Komissari hr. Hammarbergi poole" [Appeal to the OSCE High Commissioner on National Minorities mr. Vollebæk and Council of Europe Commissioner for Human Rights mr. Hammarberg].

[4] Koppel, Karin (2011). „Kaks täiskasvanute kooli said loa venekeelseks õppeks [Two schools for adults received permission for tuition in Russian]. ERR news. 14.07.2011.

[5] TNS Emor (2011). „Eestikeelne aineõpe vene õppekeelega koolide gümnaasiumiastmes: mitte-eestlaste teadlikkus ja suhtumine" [Estonian tuition in Russian tuition secondary schools: awareness and attitude of non-Estonians].

[6] Also see the address of the Estonian Cooperation Assembly Roundtable before the elections made to Estonian parties, independent candidates and the general public suggesting people are valued regardless of their ethnicity and not to see a problem in non-Estonian speaking communities, but a strategic resource. Available at: http://kogu.ee/public/Rahvuste_Umarlaua_poordumine.pdf.

election debates that the ideas of coalition parties on increasing the efficiency of integration politics are relatively vague; however, the further the party is from position of power, the more specific their viewpoints on the topic.[7] For example, one of specific viewpoints of the Estonian People's Union was to end the system of undetermined citizenship and easing of the naturalisation conditions, and the viewpoint of the Russian Party in Estonia was to abolish the Language Inspectorate, however, the Pro Patria-Res Publica Union set a relatively general goal of focusing on education politics and the Reform Party planned on increasing the competitiveness of national minorities in Estonia and increasing the interaction between different groups of the society.[8]

The position of parties that formed a coalition in April – the Reform party and the Pro Patria-Res Publica Union – remained similar to that of previous years: according to the agreement the fundamental principles of citizenship politics will not be changed.[9] The draft act (68 SE I) amending the Citizenship Act initiated by the fraction of Social Democrats which was rejected at the first reading in Riigikogu is also worth mentioning. It would have automatically granted Estonian citizenships in naturalisation to children younger than 15 years old born after 1992 without their parents' application, if his or her parents are stateless persons and have legally lived in Estonia for at least five years.[10]

An example of a positive example is the integration implementation plan for 2011–2013 that the Government confirmed in June.[11] The priorities of the implementation plan are increasing efficiency of teaching Estonian language in schools and in non-formal environments, and facilitating contacts and cooperation between persons with different mother tongues in order to increase the activity and involvement of young persons especially in Estonia's society. The implementation plan also pays attention to supporting citizens'

[7] Kahu, Oliver (2011). „Erakondade küsitlus: lõimumispoliitika" [Survey of parties: integration policy]. ERR news. 16.02.2011.
[8] Kahu, Oliver (2011).
[9] Coalition agreement (2011). „Erakonna Isamaa ja Res Publica Liit ning Eesti Reformierakonna valitsusliidu programm aastateks 2011-2015" [Coalition program of the Pro Patria-Res Publica Union and the Reform Party for years 2011–2015].
[10] Riigikogu. Kodakondsuse seaduse muutmise seadus 68 SE I. Algatatud 09.06.2011. [The draft act 68 SE I amending the Citizenship Act initiated 09.06.2011.]
[11] Reimaa, Anne-Ly (2011). „Kultuurilise mitmekesisuse osakonna infokiri 8/2011" [Information letter of the department of cultural diversity]. Ministry of Culture.

associations and career counselling of young persons. Another important goal is to support a common Estonian information space.[12]

Statistics and surveys

The introduction of results of the Migrant Integration Policy Index (MIPEX) [13] of European states in Estonia set the attention of Estonian media on the citizenship politics. The survey states that Estonia's integration politics is generally average in Europe in terms of liberality and openness, in some areas (such as immigrants' access to job market and regulations on long term living permits) even more lenient than the European average. On the other hand, the citizenship politics in Estonia is one of the most conservative in Europe.[14] The main problems in Estonia in comparison to other European states are the strict language tests, stateless children and not affording them automatic citizenship.[15]

A think tank in the United States, the Center for Strategic and International Studies published a report in October, which pointed out the danger of an ethnic divide in Estonia.[16] The report described the relations between Russia, Estonia and ethnic Russians living in Estonia, and also focused on Russia's so-called nationals' politics.[17] The report suggested applying various measures to soothe tensions and solve problems between ethnic groups: adapt the labour market training to the needs of Russians, implement teaching history in schools so that students can get to know different interpretations of history (for example of the Soviet occupation), advance the naturalisation process for stateless persons and solidify the civil society via Estonian and Russian language organisations.[18] Additionally Estonia was advised to pay attention to Russian nationals' politics, pointing out that the state of Estonia should not hinder the activity of organisations in Estonia acting

[12] The preparation of the new development plan in the field for years 2014–2020 also includes a widespread monitoring of integration in Estonian society, which was initiated in 2011. The reults will be revealed in the beginning of 2012.
[13] Also see the Migrant Integration Policy Indexit. Available at: http://www.mipex.eu/.
[14] Kallas, Kristina (2011). „MIPEX uuring: Eesti kodakondsuspoliitika on üks rangemaid Euroopas" [MIPEX study: Estonia's citizenship policy one of the strictest in Europe]. Institute of Baltic Studies.
[15] Toom, Uku (2011). „Eesti immigrandid ei pääse poliitikasse, küll aga tööturule" [Estonian immigrants cannot break into politics but they can penetrate the labour market]. ERR news. 03.06.2011.
[16] Conley, Heather ja Theodore Gerber (2011). „Russian Soft Power in the 21st Century". CSIS.
[17] For example, the report points out that 34% of young Estonians feel hostility or fear towards Russians, while this applies to 8% of young Russians.
[18] Conley, Heather ja Theodore Gerber (2011).

on the Russian nationals' politics, but should rather concentrate on and advance the current integration politics and measures that are already functioning.

Council of Europe's Advisory Committee on the Framework Convention for Protection of National Minorities published its third report about Estonia in November.[19] It pointed out as one of the main problem areas the situation where even highly qualified Russians with good Estonian language skills who are Estonian citizens believe that there is a glass ceiling in their work-related development, that they are in the position where, despite their efforts, their further development is hindered because of their ethnic background. One of the main proposals of the report claims that ethnic Estonians are preferred at the labour market even if all conditions for candidates of different ethnicity are comparable, and that this situation must be fought against. The unequal situation on Estonian labour market is manifested by the fact that persons of Russian ethnicity are paid on average 10–15 per cent less than Estonians.[20] There are other factors creating a pay gap in addition to citizenship: ability to speak the official language, level of education and the geographic location.

In the effort of granting integration politics and equal treatment, attention should also be paid to integration of persons who have been granted asylum in Estonia, which has so far been faulty. The survey of the Institute of Baltic Studies conducted among the asylum seekers in 2011 states that the order of acceptance of persons enjoying international protection stated by the Act on Granting International Protection to Aliens no longer applies. Just one in twenty of the interviewed persons that had been granted international protection had taken part in a free language course; none of the persons interviewed had received help from the local government in finding accommodation, or help with social or health services, or information about his rights and obligations.[21] Since the integration plan for aliens (the so-called new immigrants) is in force in Estonia, which also entails the adaptation program for aliens (citizens of third states),

[19] Council of Europe (2011). „Third Opinion on Estonia, Advisory Committe on the Framework Convention for the Protection of National Minorities".
[20] Salu, Mikk (2011). „Vene meestel ei tasu eesti keele õppimine ära" [Russian men don't benefit from learning Estonian]. Postimees. 06.06.2011.
[21] Institute of Baltic Studies (2011). „Eestis rahvusvahelise kaitse saanud isikute hetkeolukord ning integreeritus Eesti ühiskonda" [The situation of person who have been granted international protection in Estonia and their level of integration into Estonian society].

one option would be to organise integration of persons who have been afforded international protection in the course of this program: for example their integration in the labour market and the language training.

There were no recorded instances of racial violence in Estonia in 2011 according to the official statistics of the Ministry of Justice, neither were there court practices in this field.[22] The media, however, did draw attention to a case where a person was fined for inciting hatred in his blog.[23] Federation of Estonian Student Unions also drew attention to a case where an exchange student from Republic of Cameroon was assaulted in Tartu.[24] European Network Against Racism (ENAR) also mentions the assault on a black student in Tartu. The report of ENAR states that Estonian police does not have special instructions on how to behave in cases where the cause of an attack is racially motivated.[25] OECD's report also drew attention to problems with tolerance in 2011, which stated that Estonia was in the last place in tolerance to minorities among the OECD states.[26]

Good practices

A good practice in national minorities can be considered the competition for multicultural corporations and work environments lead by Äripäev and supported by the European Fund for the integration of third-country nationals, the Integration and Migration Foundation and the Ministry of Culture. The goal was to acknowledge Estonian companies and organisations that value and promote multicultural work environments. In 2011 the first prize in the category of companies was awarded to the producer of containers, Estanc AS, which is based on Estonian capital, and the best multicultural public sector organisation was kindergarten Rukkilill in Kohtla-Järve.[27] In previous years Skype has won the prize for an ethnically diverse company.

[22] Ministry of Justice (2011). E-mail conversation. 21.09.2011.
[23] Kuul, Marek (2011). „Vaenuõhutajast Lasnamäe blogijat trahviti 100 euroga" [The hate inciting Lasnamäe blogger was fined 100 euros]. ERR news. 11.08.2011.
[24] Loonet, Teelemari (2011). „ Mälzer: vahetustudengite ründamine on Tartus ammune probleem" [Mälzer: attacks on exchange students an old problem in Tartu]. Tartu Postimees. 1.06.2011.
[25] Also see: Kovalenko, Julia (2011). Racist Violence in Estonia. March 2011. Available at: http://www.lichr.ee/main/assets/Racist-Violence-Report-Estonia-online.pdf.
[26] OECD (2011). „Society at a Glance 2011 - OECD Social Indicators".
[27] Sarapik, Raivo (2011). „Selgusid mitmekultuurilise organisatsiooni ja töökeskkonna konkursi võitjad" [Winners of competition of multicultural organisations and work environments announced]. Äripäev. Press release. 28.04.2011.

Essential public discussions

The main topic of discussion regarding national minorities that was awarded attention to in public in 2011 was the transfer of schools teaching in Russian to teaching in Estonian.[28] Topics concerning migration were also discussed in the second half of 2011 – from the scandal surrounding the sale of residence permits to discussion about the necessity of immigration quotas and arguments against immigration. Even though 71% of Estonian population favours a conservative policy preventing immigration according to the Saar Poll of 2010,[29] the analysts and entrepreneurs speaking on this topic state unanimously that Estonia will not manage without immigrants and increasing immigration is inevitable in guaranteeing Estonia's progress.[30] So far there has been a very modest public discussion about migration policy in Estonia, which makes it necessary to initiate a widespread inclusive debate involving all groups of the society to reach a consensus and to establish the various viewpoints. The politicians, entrepreneurs, employers, trade unions as well as regular citizens should be asked to express their opinions.

Trends

One of the indicators of the integration process is often considered to be the proportion of stateless persons among Estonia's population.[31] 2011 was remarkable in that the number of stateless persons in Estonia fell below 100,000 for the first time.[32] However, it must be said that the rate of naturalisation has

[28] The topic of education and language policy of national minorities has been written about in more length in the Estonian Human Development Report 2010/2011. Available at: http://www.kogu.ee/eesti-inimarenguaruanne/.

[29] Pors, Merje (2011). „Suurem osa eestimaalastest pooldab sisserände takistamist" [Majority of Estonians favours preventing immigration]. Postimees. 15.03.2011.

[30] See for example: Valge, Jaak (2011). „Jaak Valge: sisseränne tagant- ja eestpoolt" [Jaak Valge: about immigration]. Postimees. 04.12.2011; Roots, Lehte (2011). „Elamislubadest, kvootidest ja ärist" [About residence permits, quotas and business]. Eesti Päevaleht. 8.12.2011; Rainer Kattel in the article of Tamm, Merike (2011). „Kas sisseränne on Eestile lahendus?" [Is immigration a solution for Estonia]. Postimees. 15.07.2011; Jüri Mõis in the article „Jüri Mõis: avaliku sektori töötajad erasektorisse, immigratsioonipoliitika liberaalsemaks" [Jüri Mõis: public sector workers in to private sector, liberalise immigration policy]. 2011. Eesti Päevaleht. 19.10.2011.

[31] Attention should be drawn to the fact that the Government's action plan measures meeting the goals of integration only by reducing the number of stateless persons to 89,700 in 2015. Also see: http://valitsus.ee/et/valitsus/tegevusprogramm/loimumine.

[32] Ministry of Internal Affairs (2011). „Siseministeerium kutsub määratlemata kodakondsusega inimesi Eesti kodakondsust taotlema" [Ministry of Internal Affairs is calling for statelss persons to apply for Estonian citizenship]. Press release. 25.04.2011.

slowed down in recent years – the number of naturalisations in 2005 was 7072, in 2006 it was 4753, but in 2011 it was just 1498.[33] The issue of stateless persons was also raised in the campaign of United Nations High Commissioner for Refugees (UNHCR) against global statelessness, when Estonia was advised to grant automatic Estonian citizenship to all children born in Estonia after 1991.[34] In the words of a politician belonging to a governing party the current acts of law already enable the children of stateless persons to obtain citizenship without additional conditions, and the important thing should be not the automatic granting of citizenship, but the fact that the parents' will to obtain a certain citizenship is clearly recorded.[35]

Recommendations:

- More information should continuously be given bout the transfer to teaching in Estonian in order to improve the attitude of the parties and to alleviate fears; the teachers should also be given plenty of support (methodological as well as emotional).
- Implementation of measures of integration on persons who have been afforded international protection must be made more systematic; the Integration and Migration Foundation should be included in the integration process more actively by, for example, enabling the protected persons to participate in adaptation programs intended for the new immigrants.
- Cultivating naturalisation is still necessary, but it must also be kept in mind that adoption of citizenship does not automatically bring about greater involvement or activity in the society.
- Undertakings affording positive recognition should be continued, such as the competition for multicultural companies and work environments, but also conducting of citizenship ceremonies.
- A debate involving all groups of the society on the topic of immigration must be initiated to discuss how the state can benefit from immigration and what are the problems and possible dangers of it.

[33] Police and Border Guard Board (2012). Kodakondsus-ja migratsioonivaldkonna statistika [Statistics of citizenship and migration fields].

[34] UN High Commissioner for Refugees (2011). „Handbook on Statelessness for Parliamentarians goes Estonian". Press release. 25.08.2011.

[35] Randlaid, Sven (2011). „Nutt: kodakondsuseta lapsed ei ole Eestis probleem" [Nutt: stateless children are not a problem in Estonia]. ERR news. 30.08.2011.

LGBT situation in Estonia

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CHAPTER 12

Situation of lesbian, gay, bisexual and transsexual persons in Estonia in 2011

2011 could be considered an important year from the point of view of LGBT[1] persons in many ways – Tallinn hosted the Baltic Pride festival for the first time (under the name OMA festival), Chancellor of Justice published his opinion,[2] which stated that the situation where same sex couples do not have the opportunity to register their cohabitation is in breach of the Constitution and the LGBT information centre was opened in Tallinn in September. In addition to that several known and respected persons published a manifest in support of a happier Estonia and the Civil Partnership Act, which called for support in enabling cohabitation law for same-sex couples.[3]

Political and institutional developments

The previous year has been important in regards to visibility of institutions concerning the topic of LGBT persons. The most important institutions that have dealt with the topic of LGBT persons on a state level are the Ministry of Justice, the Ministry of Social Affairs, the Gender Equality and Equal

[1] LGBT – international abbreviation signifying lesbian, gay, bisexual and transgender persons.
[2] Chancellor of Justice (2011). Seisukoht vastuolu mittetuvastamise kohta [Statement about non-detection of breach]. 6-1/100737/1102413 (23.05.2011). Available at: http://oiguskantsler.ee/sites/default/files/field_document2/6iguskantsleri_seisukoht_vastuolu_puudumine_samasooliste_isikute_abielu_tuhisus.pdf.
[3] Available at: http://petitsioon.ee/onnelikuma-eesti-ja-partnerlusseaduse-toetuseks#btn-more.

Treatment Commissioner and the Chancellor of Justice. The table below points out the main fields of involvement of the institutions in the LBGT topic.

Institution	Field of involvement
Chancellor of Justice	Discussions on discrimination between private persons, assessments of legislative acts and accordance to Constitution. Protection of constitutional rights and freedoms.
Gender Equality and Equal Treatment Commissioner	Expressing opinion on possible cases of discrimination.
Ministry of Social Affairs	Coordinating work according to the Equal Treatment Act, LGBT policies (raising awareness, surveys)
Ministry of Justice	Legislation (drafting a possible cohabitation act)

Table 1. Institutions involved with the LGBT topic

One of the most important developments in 2011 could be considered the address of the Chancellor of Justice to the Ministry of Justice regarding the issue of legally regulating family relations between same-sex persons. Chancellor of Justice began the analysis on concordance of § 10(1) of the Family Law Act with the Constitution based on the petition of the NGO Sexual Minorities Protection Union. The Chancellor of Justice is of the opinion, based on the analysis, that a consistent cohabitation of same-sex persons belongs in the remit of fundamental freedom of protection of family life, and due to the principle of guaranteeing fundamental rights requires a legal framework to regulate these legal relationships. Chancellor of Justice suggested preparing a draft regulating same-sex partnerships and legal relationships related to it in his address to the Ministry of Justice.

The Ministry of Justice asked the opinion about the cohabitation act from all parties represented in the parliament, then presented its own vision to carry

on with this question.[4] Estonian Social Democratic Party, the Reform Party and the Centre Party found that the question of regulating non-marital cohabitation needs to be worked on further. The two first parties, the Reform and Social Democratic Party preferred creating a gender neutral cohabitation act. Pro Patria-Res Public Union was of the opinion that the current situation was already satisfactory and that no additional regulation was needed.

In this letter the Ministry of Justice also announces that drafting a cohabitation act will be adopted into the work plan of 2012.[5] The Ministry of Justice also offers its own regulation models, which will come under further discussion:

- Contractual approach – the existing regulations will be updated, a so-called package of contracts to regulate circumstances stemming from cohabitation will be drafted;
- Prerequisite based approach – the circumstances will be regulated considering de facto cohabitation, the couples do not need to register their cohabitation, but they have to be able to prove their cohabitation;
- Register based approach – requires the couple to register their relationship.

The first approach can be considered unsuitable for non-married cohabitating couples as it is inconvenient (various contracts will have to be notarised) and expensive (due to notary and state fees of concluding several contracts). The disadvantage of the prerequisite based approach is the complication of defining a relationship and providing proof in possible disputes. Therefore, the preferred approach for same-sex couples would be the register based approach, which affords the couples better defined rights and obligations.

The activities of the Ministry of Social Affairs in 2011 in the LGBT topics had mostly to do with raising awareness and supporting its cooperation partners. The Ministry of Social Affairs compiles a framework document on

[4] Document register of the Ministry of Justice. Kooseluseaduse loomine [Creation of co-habitation act]. Available at: http://www.just.ee/jdocs/menetlus.aspx?doc_id=%7bA3B3D641-BB4F-4490-9FAB-F4DECAD221B8%7d.

[5] Document register of the Ministry of Justice. Kooseluseaduse loomine.

non-discrimination each year, which defines the main trends of action for the following year. Various representative organisations (including LGBT representative organisations), human rights organisations and state authorities are included in this process. Special attention has been given the LGBT topic in 2010, 2011 as well as in 2012. The main cooperation partner for the Ministry of Social Affairs has been Tallinn Law School at Tallinn University of Technology through the "Diversity enriches" campaign, which the Ministry of Social Affairs co-funds.

Ministry of Social Affairs also supported the NGO Estonian Gay Youth in their preparation of the Baltic Pride in the sum of 2380 euros in 2011. The Ministry of Social Affairs also organised a thank you reception for the organisers and supporters of the Baltic Pride.

Statements of leading politicians and state officials made during the Baltic Pride should also be considered to be important. Several politicians (including the Minister of Culture, Rein Lang, the former member of European Parliament and the former Minister of Foreign Affairs Kristiina Ojuland, the member of Riigikogu Eiki Nestor and others) signed an address supporting creation of partnership act.[6] Various embassies in Estonia also did their part to support the Baltic Pride by supporting the Pride financially as well as making a joint declaration.[7]

Positive changes can be detected by observing the activities of LGBT representative organisations in 2011 – the existing organisations have become more visible in their activities as well as more articulated; a new non-profit organisation representing the interests of transgender persons was also created.

[6] Postimees (2011). „Kuulsused kutsuvad üles sallima seksuaalvähemusi" [Celebrities calling for tolerance for sexual minorities]. Available at: : http://www.postimees.ee/466206/kuulsused-kutsuvad-ules-sallima-seksuaalvahemusi/.

[7] Kaljuvee, Ardo (2011). „Suursaadikud OMA festivali toetuseks" [Ambassadors in support of the OMA festival]. Available at: http://www.epl.ee/news/arvamus/suursaadikud-oma-festivali-toetuseks.d?id=51298250

Organisation	Activity in 2011
NGO Estonian Gay Youth	Organisation of the Baltic Pride Festival (OMA festival), creation of OMA centre
NGO Sexual Minorities Protection Union	Providing legal help, political lobby, international project NISO aimed at schools
NGO Association of Gay Christians	Church events at OMA centres, discussion groups, spiritual support
NGO Gendy	Representative organ for transgender persons, created end of 2011.

Table 2. Representative organs of LGBT persons

Legislative developments

Even though there were no legislative developments that were directly aimed at LGBT persons in 2011, the Chancellor of Justice's address and the Ministry of Justice's reaction must still be considered important as preparing the cohabitation act has been switched to the 2012 work plan of the Ministry of Justice,[8] and this can be a basis for possible legislative amendments.

There is an ongoing discussion in the Ministry of Social Affairs about allowing gay and bisexual men to donate blood. Even though the Blood Act does not prevent gay and bisexual men from donating blood, the blood centres have set these limitations in practice, citing the necessity of safety.[9] No decisions were made in this question in 2011 and the discussion on this topic will proceed in 2012.

[8] Ministry of Justice's work plan for 2012. Available at: http://www.just.ee/orb.aw/class=file/action=preview/id=56077/Justiitsministeeriumi+t%F6%F6plaan+aastaks+2012.pdf.

[9] Verekeskus. Nõuded doonorile [Donor requirements]. Available at: http://www.verekeskus.ee/?op=body&id=11.

Court practice

Representative of NGO Sexual Minorities Protection Union Reimo Mets[10] filed three court petitions in 2011 regarding the topic of LGBT persons. Below is a short overview of circumstances of these cases.

The first case concerns not receiving the document proving there are no impediments to marriage. Appellant Reimo Mets filed a petition to Tallinn Administrative court regarding refusal to issue a certificate proving capacity to marry. Appellant wished to obtain a certificate from vital statistics office about absence of impediments to marrying, wishing to marry a same-sex person in Swedish Kingdom who is not EU citizen. He was refused the certificate as Estonian national law states that same-sex persons cannot marry. The proceedings are currently still ongoing.

The second Reimo Mets case in 2011 concerns making comments inciting hatred in internet commentaries. Reimo Mets filed a petition to Harju County Court for initiating pre-trial taking of evidence to find out the IP addresses of the authors of comments inciting hatred about him on the internet.

The court accepted the petition and demanded the media publication where the comments were published to give it the IP addresses where the comments were sent from. The court then turned to telecommunication companies and demanded information of the owners of the IP addresses at the time and date of the posted comments. The court issued Reimo Mets this information and the petitioner forwarded a letter of request to all the owners of the IP addresses demanding compensation for moral damage in the sum of 1000–1500 euros. Some of the authors of comments issued apologies, but no one paid the compensation for moral damages.

The third case that is still being proceeded in the Harju County Court has to do with division of assets after the ending of a de facto cohabitation. A same-sex couple who had lived in a residence that belonged to one of the partners

[10] Interview with Reimo Mets. 02.02.2012.

broke up. The other partner made remarkable financial investments in the residence over the course of cohabitation. The owner of the residence refused to reimburse the expenses of the partner. This case could be considered important as it handled questions stemming from same-sex cohabitation and breaking up of the relationship. The legal clarity would have been better guaranteed with a gender neutral cohabitation act stating the rights and obligations of both partners.

Statistics and surveys

The Gender Equality and Equal Treatment Commissioner was presented eleven inquiries concerning sexual orientation in 2010,[11] three of them complaints, in 2011 nineteen inquiries concerning sexual orientation were made, five of them complaints. Last year the commissioner found that one of them could be a case of discrimination based on sexual orientation, and in four instances she was unable to give assessment due to lack of jurisdiction (as a comparison, in 2010 no cases of discrimination were identified and in two instances assessment couldn't be given due to lack of jurisdiction).

The number of inquiries has risen somewhat compared to the previous years, which may, on one hand, refer to increased knowledge of the institution of the commissioner and persons' courage to stand for their rights, but is, on the other hand, still small enough to presume low level of knowledge about persons' right to legal protection.

There were no public opinion polls on population's tolerance of LGBT person in 2011 and therefore there is no overview of changes that might have occurred in the previous year. The main source of attitude of Estonia's population of LGBT persons is still the Eurobarometer[12] survey from 2007.

An overview of polls relating to the topic of LGBT persons and the community was put together in 2011 by the Tallinn Law School at Tallinn

[11] Reply to inquiry. E-mail from the office of the Gender Equality and Equal Treatment Commissioner. 20.01.2012.

[12] Commission of the European Communities (2007). Discrimination in the European Union. Available at: http://ec.europa.eu/public_opinion/archives/ebs/ebs_263_sum_en.pdf.

University of Technology.[13] In addition to overviews of existing polls, this project also included carrying out in-depth interviews to chart the problems and needs of LGBT persons. The survey points out that the interviewees stated that there is insufficient information of the community itself, that it is uncharted. Reaching the LGBT community is a great problem, as is the wish or reluctance of the members of the community to be visible. The survey also points out that the main issues for LGBT persons are the homophobic attitude of the society, guaranteeing legal protection, feelings of security and stability (including social guarantees), discrimination at work, physical and mental health, lack of specialised services, access to information, exchange of information and an environment advancing the LGBT issues.

Good practices

A good practice in the field of LGBT issues are the activities of the campaign "Diversity enriches", where a common goal unites the public sector (Ministry of Social Affairs), an institute of higher education (Tallinn University of Technology) and the non-profit sector (foundation Human Rights Centre).

The main role of the Ministry of Social Affairs has here been the provision of guidelines and wider coordination of non-discrimination activity. The ministry has also been included in the preparation of various activities of the campaign. Tallinn University of Technology, the executor of the project, has handled the administrative side, and their involvement has guaranteed wider attention, as it is a public university. The role of the foundation Human Rights Centre has been to execute practical activities as well as the so-called field work.

Trends

Continuation of state's support in 2011 and the generally more positive tone in handling the LGBT topics in the media can be considered a positive trend.

[13] Tallinn Law School at Tallinn University of Technology (2011). LGBT inimeste olukorra uuringute analüüs [Analysis of the situation of LGBT persons]. Available at: http://www.erinevusrikastab.ee/files/LGBT_uuring/LGBT_aruanne_2011.pdf.

However, the internet comments expressing intolerance and hatred have not disappeared.

It must be emphasised that there is still no coherent vision on the state level for handling the issues of LGBT persons. The goal to "promote general openness and tolerance in Estonian society" is stated in the development plan of the Government of Republic of Estonia for 2011–2015,[14] but the measures have been worded vaguely in the Ministry of Social Affairs development plan, through the framework of equal treatment,[15] without any specific purposes stated. The tendency on the national level to prefer an abstract approach to this topic through the general openness and tolerance prism, without defining various target groups, becomes apparent. However, this approach leaves a great deal to be interpreted.

Recommendations:

- Define national policies and goals regarding LGBT persons (including in the field of Ministry of Social Affairs and the Ministry of Justice);
- Stem from the needs and wishes of the target group in drafting of the cohabitation act, and not from the pressure of the general public;
- Consider the tendencies in several other democratic Western countries, also discuss the topic of marital equality;
- Research and analyse homophobic attacks and their spreading in Estonian society in general as well as in specific contexts (including schools).

[14] Valitsuse tegevusprogramm [Development plan of the Government of Republic of Estonia]. Available at: http://www.valitsus.ee/et/valitsus/tegevusprogramm.

[15] Ministeeriumi arengukava [Development plan of the ministry]. Available at: http://www.sm.ee/meie/ees-margid-ja-nende-taitmine/ministeeriumi-arengukava.html.

Rights of refugees and asylum seekers

THE AUTHOR

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Kristi Toodo has participated in several European Union and Council of Europe expert groups on the issue of refugees since 2006. She has also compiled numerous research papers for European Commission. Kristi has also been a Project Manager in many projects on refugees. As of 2011 she is the leader of a project in Estonian Human Rights Centre establishing a legal clinic for providing legal help to asylum seekers.

RIGHTS

ECHR Protocol 4 Article 4 – Prohibition of collective expulsion of aliens

- Collective expulsion of aliens is prohibited.

ECHR Protocol 7 Article 1 – Procedural safeguards relating to expulsion of aliens

- An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:
  1. to submit reasons against his expulsion,
  2. to have his case reviewed, and
  3. to be represented for these purposes before the competent authority or a person or persons designated by that authority. ...

CHAPTER 13

Asylum seekers and persons enjoying international protection

Compared to the year before the number of asylum seekers in 2011 rose 50% in Estonia. There were 33 asylum applications filed in 2010,[1] in 2011 the number of applications was 67 (see the table).[2] The largest number of applications came from persons from the Democratic Republic of Congo (eleven) and from Afghanistan (eight).[3] In 2011 eight persons were given asylum or the status of a refugee (this means three years' residence permit) and three persons were given supplementary protection[4] (this means one year's residence permit); six members of the family of persons who'd been afforded international protection were also given residence permits.[5]

1 Varjupaigastatistika [Asylum statistics]. Available at: http://www.politsei.ee/et/organisatsioon/avalikteave/statistika/index.dot.

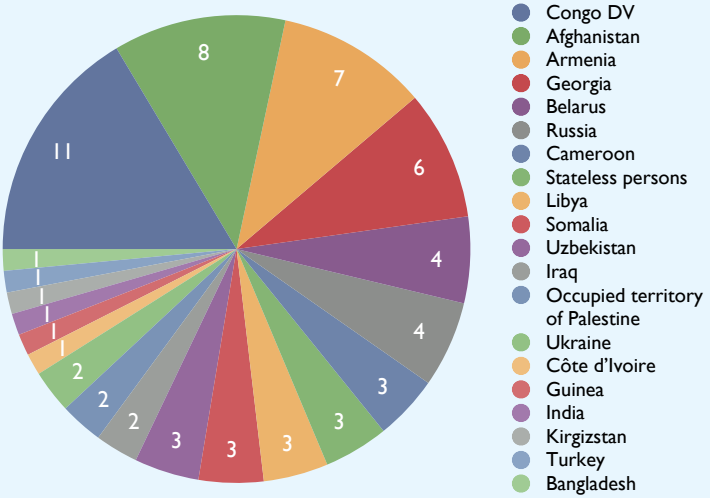
2 Statistics from analysis department of citizenship and migration bureau of the Police and Border Guard Board. 19.01.2012.

3 Statistics from the head specialist of international protectin department of citizenship and migration bureau of the Police and Border Guard Board. 22.12.2011.

4 According to § 4(3) of the Act on Granting International Protection to Aliens (RT I 2006, 2, 3 ... RT I, 09.12.2010, 1): Person enjoying subsidiary protection is an alien who does not quality as a refugee and with regard to whom no circumstance exists which would preclude granting of subsidiary protection and in respect of whom substantial grounds have shown for believing that his or her return or expulsion to his or her country of origin may result in a serious risk in the specified country, including: 1) imposition or execution of death penalty to him or her, or 2) torture or inhuman or degrading treatment or punishment of him or her, or 3) individual threat to his or her life or civilians' life or violence towards him or her or civilians by reason of international or internal conflict.

5 Statistics from the head specialist of international protectin department of citizenship and migration bureau of the Police and Border Guard Board.

67 asylum application were filed 01.01-31.12.2011, which were divided in terms of citizenship as follows:



There were no important changes in the relevant legislation and the relatively conservative migration policy in 2011. Ministry of Social Affairs prepared an in-house work plan regulating activities and cooperation of various governmental authorities in case of a possible vawe of mass immigration.[6]

Reception of asylum seekers

Illuka Reception Center for Asylum Seekers under the administration of the Ministry of Social Affairs, which opened in 2000 is the only such centre in Estonia. Its remote and isolated location is the reason the centre comes under the criticism of the media, the United Nations High Commissioner

[6] Pors, Merje (2011). „Riigil valmis plaan massilise sisserändega toimetulekuks" [The state prepared a plan for coping with a mass vawe of immigration]. Postimees. 03.08.2011. Available at: http://www.postimees.ee/518750/riigil-valmis-plaan-massilise-sisserandega-toimetulekuks/.

for Refugees (UNHCR) and non-governmental organisations dealing with asylum seekers, year in and year out.[7] No essential changes or amendments to reception conditions were made in 2011. The poor bus connection with the nearest town Jõhvi is still a problem, as is the irregularity of Estonian language lessons and dearth of hobby/free time activities and the availability of medical help. Estonian Human Rights Centre has made an inquiry about the medical help to the Ministry of Social Affairs, and the Office of Chancellor of Justice was informed of a specific case. The biggest change in 2011 came in the form of an Estonian Human Rights Centre pilot project on providing asylum seekers legal help, which is cofunded by the Ministry of Interior Affairs and the European Refugee Fund. This project provided asylum seekers with primary legal counselling and a lawyer to represent them in court if needed.[8] Councelling and representation was provided to a total of fifteen asylum seekers in the first four months and there was a great need for this service. This project will continue in 2012. Institute of Baltic Studies prepared a report on services provided to asylum seekers with special needs in 2011, which confirmed the shortcomings regarding reception circumstances that had already been mentioned before and the poor accesibility and irregularity of the services.[9] The report also pointed out the language barrier as a great general problem, which results in difficulty of expression for the persons who have been granted international protection, problems with filling out applications in Estonian and problems in communication with representatives of official authorities and non-governmental organisations. Similar problems are also stated by all auxiliary organisations that have contact with the target

[7] Also see, for example: A. Raun. „Eesti oma Siber?“ [Estonia's own Siberia?]. Postimees. 04.06.2011. Available at: http://arvamus.postimees.ee/459920/alo-raun-eesti-oma-siber/. And A. Raun. „Sotsiaalministeerium: plaanime parandada Eestisse põgenenute elutingimusi“ [Ministry of Social Affairs: we are intending to improve living conditions of refugees in Estonia]. Postimees. 27.05.2011. Available at: http://www.postimees.ee/451718/sotsministeerium-plaanime-parandada-eestisse-pogenenute-elutingimusi/.

[8] See the website of the Human Rights Centre for more information on this project: http://humanrights.ee/keskus/projektid/pagulasabi-projekt/.

[9] Report can be browsed here: http://www.ibs.ee/et/publikatsioonid/item/105-erivajadustega-varjupaigataotlejatele-pakutavad-teenused.

group. In 2011 there have been asylum seekers who communicate in languages that are very difficult to find an interpreter for in Estonia. This has further complicated communication with the asylum seekers. Years of criticism resulted in the preparatory actions for reorganising the reception centre making it into the work plan of the Ministry of Social Affairs in 2011.[10] The analysis gathered the opinions about the circumstances of the reception centre of everybody involved as well as international practice. The inquiry of the Human Rights Centre to the Ministry of Social Affairs yielded that preparatory actions were taken in 2011 and that procurement for finding the provider of services offered at the reception centre would be carried out in the first half of 2012.

Asylum seekers at Harku Expulsion Centre

An alien is placed at Harku Expulsion Centre until his expulsion if his expulsion cannot be carried out within 48 hours.[11] According to the Act on Granting International Protection to Aliens, an applicant who has submitted an application for asylum during his or her stay at the expulsion centre, in a prison or house of detention, or in the course of execution of the expulsion procedure shall not be placed in the initial reception centre.[12] Such applicant shall remain at the expulsion centre, in the prison or house of detention until termination of the asylum proceedings. This situation poses a problem from the point of view of human rights. Expulsion proceedings about the asylum applicant have been terminated and the asylum proceedings have been initiated, which means that his detention for the purpose of expulsion is not justified, as an applicant in asylum proceedings cannot be expulsed from the state. In actuality it is not clearly know how long the asylum proceedings of a person may take and therefore the length of his detention is also not known. The situation where the asylum seeker does not know the length of his detention is not permissible, neither is it proportional

[10] Raun, A. „Sotsiaalministeerium: plaanime parandada Eestisse põgenenute elutingimusi".
[11] Obligation to Leave and Prohibition on Entry Act, RT I 1998, 98, 1575 ... RT I, 22.12.2011, 3, § 33.
[12] Act on Granting International Protection to Aliens. § 33.

according the experts of Estonian Human Rights Centre. The lawyers of the Human Rights Centre's pilot project have attempted to transfer the asylum seekers from Harku Expulsion Centre to Illuka Reception Centre on three occasions in court, whereas, in one case the applicant was a minor, but the court dismissed this request referring to the paragraph, which allows to detain the applicant until the end of asylum proceedings.[13] A month later the court decided to release the minor and to place him in an appropriate social welfare institution.[14] One of the reasons for detaining asylum seekers at expulsion centres is that § 12 of Act on Granting International Protection to Aliens foresees initial reception centres for detaining asylum seekers in cases stated by law, but such centres do not exist and therefore the asylum seekers are held at reception centres. Detention of asylum seekers has also been criticised by UNHCR, which referred to provisions of the 1951 Convention Relating to the Status of Refugees banning detention and punishment of asylum seekers on the grounds that the refugee has no legal basis for staying in the country.[15] Estonian Human Rights Centre will continue to request in 2012 that the court move the asylum seekers to Illuka Reception Centre or some other appropriate accommodation (for example that minors without accompanying adults are moved to appropriate welfare institutions) until the end of asylum proceedings, which may take years in some instances.

Persons who have been granted international protection – refugees and persons who have been granted supplementary protection – and their lives in Estonia

In case of establishing refugee status the person is given a residence permit for three years, a residence permit for one year is given in case of

[13] Information gathered in the course of Estonian Human Rights Centre's pilot project for providing asylum seekers legal help.
[14] Ibid.
[15] Ibid.

supplementary protection.[16] The Ministry of Social Affairs or an agency within the area of government of the Ministry shall organise the settlement of persons enjoying international protection into territories of local government in agreement with local governments in four months starting from the moment of being afforded protection.[17] It must be done while taking into account the state of health of the persons enjoying international protection, the location of the residence of the relatives by blood or marriage and other significant circumstances, and considering the housing and employment opportunities, including the proportional allocation of persons enjoying international protection among the local governments. Reality, however, proves that it is largely up to the persons enjoying international protection to move out of the reception centre and find a job. In some cases some of the organisation in touch with the target group have managed to help them with this. Chancellor of Justice reached a similar conclusion in his proceedings that took place in 2011 regarding two applications concerning the activity of Ministry of Social Affairs in organising the settlement of persons enjoying international protection in local government units and providing them services. Chancellor of Justice found that the Ministry of Social Affairs has not fulfilled its obligation set by the Act on Granting International Protection to Aliens to organise the settlement into a local government unit of a person who has requested help after being granted international protection. Neither had the Ministry of Social Affairs provided the petitioner several services prescribed by law. Therefore, the Chancellor of Justice had reached the conclusion that the inactivity of the Ministry of Social affairs had been unlawful in that regard.[18] Estonian Refugee Council became active again in 2011. The council deals with day to day assistance of persons enjoying interna-

[16] Act on Granting International Protection to Aliens. § 37-38.
[17] Act on Granting International Protection to Aliens. § 73.
[18] Chancellor of Justice. „Soovitused õiguspärasuse ja hea halduse tava järgimiseks ning märgukiri õigusaktide eelnõude algatamiseks" [Recommendations for following good practice of administration and a memorandum for initiating draft acts]. 6-2/111418/1105245 (09.01.2012). Available at: http://oiguskantsler.ee/sites/default/files/field_document2/6iguskantsleri_soovitus_rahvusvahelise_kaitse_saanud_isikute_vastuvotmine.pdf.

tional protection and helps them settle into their lives in Estonia. "Since May of 2011 we have helped five persons find a job or a place to live, to get an oculist appointment or sort out the documents of their family members or their own in Estonia. We will carry on with these activities in the future and try to help as much as we can."[19] Similar support services are also being offered by the Johannes Mihkelson Centre and together they are trying to afford these persons the rights stated by law and to better integrate them into Estonian society. In addition to observations and recommendations of the Chancellor of Justice, the Institute of Baltic Studies has also written down its conclusions and propositions in its 2011 survey on the current situation of persons enjoying international protection in Estonia and the level of their integration into Estonian society.[20]

Conclusion

It can be said as a conclusion that 2011 went by with few changes taking place. No material chances took place in legislation or the circumstances of persons enjoying international protection. The organisations dealing with the target group are continuing with their day to day work on a project basis, trying to improve the reception conditions at Illuka Reception Center as well as the leaving and integration process. Estonian Human Rights Centre's legal councelling, even though it has been active for a relatively short time, has already revealed several contradictions between Estonian legislation and universally accepted international norms. Yet most of the court cases have not been decided yet and it is therefore early to make any conclusions. Even though Chancellor of Justice did not permorm any monitoring visits to Illuka Reception Center in 2011, he did process several petitions from the target group as well as auxiliary organisations.

[19] NGO Estonian Refugee Council http://www.pagulasabi.ee/tegevus/.

[20] Eestis rahvusvahelise kaitse saanud isikute hetkeolukord ning integreeritus Eesti ühiskonda [The current situation of persons enjoying international protection and the level of their integration into Estonian society]. Available at: http://www.ibs.ee/et/publikatsioonid/item/106-rahvusvahelise-kaitse-saanud-isikute-integreeritus.

Recommendations:

- Continue with the efforts to bring Illuka Reception Center closer to Tallinn as the state authority carrying out the asylum proceedings is located in Tallin. Also guarantee consistency, quality and precision of the required services.
- Introduce necessary amendments into legislation which would allow for transfer of asylum seekers from Harku Expulsion Centre to Illuka Reception Center.
- Increase efforts to enable persons enjoying international protection to leave Illuka Reception Center and to live elsewhere, find a job and entirely integrate into Estonian society.

Rights of the child

THE AUTHOR

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Malle Hallimäe graduated from the Estonian National Art Institute in 1985. She continued her studies in the field of human rights, including children's rights at Ghent University and the John Abbot College in Canada. Malle has been working for the Estonian Union for Child Welfare since 1997. She has coordinated the drafting of the 2002 supplementary report of non-governmental organisations to the UN Committee on the Rights of the Child, and has drafted information material on rights of children and acted as a lecturer.

CHAPTER 14

Rights of the Child

Twenty years passed from Estonia's joining the UN Convention for the Rights of the Child in 2011. Convention for the Rights of the Child was one of the first international human rights documents ratified by the Republic of Estonia after regaining independence and it expressed the will to contribute to better life quality of children. According to the convention the Member States have the obligation before children to guarantee Committee on the Rights of the Child regularly monitor carrying out obligations under the convention.[1] In order to do this the Member State has to file regular and timely reports. The Republic of Estonia filed its first report on implementing the convention in 2001. Committee on the Rights of the Child states in its concluding observations of Estonia (31.01.2003) that since the first report was filed, regrettably, with an eight year delay, the committee proposes the Member State file the second, third and fourth report jointly by 1 November 2008 to give the member state time to fulfil the obligations stemming from the convention.[2] Despite the fact that Estonia has started work on compiling a report,[3] the report was not filed in 2011. Assessment of developments in the field of children's rights in 2011 yields that the positive changes have to do with matters that were already mentioned in the previous, 2010 human rights report, namely handing the Chancellor of Justice the jurisdiction of children's ombudsman, establishment of children's rights division in the Office of Chancellor of Justice, this division starting work, and

[1] Committee on the Rights of the Child. Concluding observations: Estonia. CRC/C/15/Add.196 31.01.2003 (unedited version).
[2] Committee on the Rights of the Child. Concluding observations: Estonia.
[3] The preliminary working version was compiled under direction of the Ministry of Social Affairs in 2008.

the development plan for children and families for 2012–2020 that was approved by the Government. It should also be pointed out that the Supreme Court judgments acknowledge children increasingly often as a subject of law and emphasise the importance of court's investigative principles in such matters. For example, the Civil Chamber of the Supreme Court has found in a case determining the place of residence of children and the duty to pay alimony that the lower level courts have not paid attention to § 230(3) of Code of Civil Procedure, which allows the court to gather evidence in a case involving interests of the child on its own initiative.[4] The Civil Chamber has expressed the opinion in a Civil Chamber of the Supreme Court judgment in removing the right to care for a child and for appointing a guardian for a minor that the carer's financial situation cannot be the basis for refusal in appointing a guardian, the interests of the child are more important.[5]

Ombudsman for children in Estonia

The will of the legislator to value children and their rights in Republic of Estonia must be noted in 2011 first of all. It was decided to give the Chancellor of Justice the authority of children's ombudsman at the plenary assembly of the Riigikogu on February 2nd, and to amend § 1 of the Legal Chancellor Act with subsection 8 stating that the Chancellor of Justice fulfils the obligations concerning the protection and promotion of children's rights stemming from Article 4 of the Convention for the Rights of the Child.[6] The explanatory memorandum to the act amending the Legal Chancellor Act initiated by the Constitutional Review Chamber of the Supreme Court states that children's rights are one of the many areas of activity of the Chancellor of Justice. Now the Chancellor of Justice has the singular authority to act as an ombudsman for children, which prescribes the right but also the obligation to fulfil the tasks of ombudsman for children recommended by the UN Committee on the

[4] The Civil Chamber of Supreme Court. Judgment in a civil matter no. 3-2-1-125-11, 13.12.2011.
[5] The Civil Chamber of Supreme Court. Judgment in a civil matter no. 3-2-1-98-11, 23.11.2011.
[6] RT I, 09.03.2011, 1.

Rights of the Child.[7] Both adults and children need independent institutions to protect their rights, however, there are several additional reasons to grant the human rights of children special attention. Children have rights but they depend on adults to execute these rights. This new authority of Chancellor of Justice increases the institutional role of national protection of fundamental rights. Granting of authority of the ombudsman is necessary to give a clear signal in the country that children and their rights are valued in the country and that the state takes the protection of children's rights seriously.[8]

Children's rights division carrying the function of ombudsman for children

Chancellor of Justice Indrek Teder established a children's rights division in the Office of Chancellor of Justice to carry out the tasks of ombudsman for children. Chancellor of Justice sees the function of the ombudsman for children to primarily be an independent analyser and draw attention to problems, to monitor, speak for the children, but also coordinate, look at the children's protection system as a whole and promote cooperation between institutions and organisations concerning protection of children.[9] The priority of the department is to find out the wishes, wants and problems of children, to notify of rights and obligations of children and to react to breaches of children's rights.[10] The department carried out several activities in 2011 to fulfil these tasks, for example, the drawing competition "I have the right" for kindergarten and basic school children. The remarkably resourceful 1008 drawings that were entered showed a surprisingly great awareness of their

7 Õiguskantsleri seaduse muutmise seadus 915 SE III [Act amending the Legal Chancellor Act]. Available at: http://www.riigikogu.ee/?page=en_vaade&op=ems&eid=1275747.

8 Õiguskantsleri seaduse muutmise seadus 915 SE III.

9 Õiguskantsleri laste õiguste osakonna esialgsed prioriteedid [Primary priorities of the children's rights division]. Available at: http://oiguskantsler.ee/et/Prioriteedid%202010-2011. http://www.oiguskantsler.ee/public/resources/editor/File/OIGUSKANTSLERI_KANTSELEI/prioriteedid/_IGUSKANTSLERI_LASTE__IGUSTE_OSAKONNA_ESIALGSED_PRIORITEEDID.pdf

10 Õiguskantsleri laste õiguste osakonna esialgsed prioriteedid.

rights in the opinion of the ombudsman for children.[11] A guideline was prepared towards the end of 2011 on notification of a child to specialists working with children.[12] The goal of the guideline is to encourage anyone to report of child abuse and endangerment of wellbeing to the children's workers in municipalities or towns, and if need be to the police; they have the legal right to interfere and offer help when needed. Early detection and network work are essential basics of child protection. Early detection and reporting makes it possible to operatively interfere with the problems of the child and his or her family and offer necessary help and support. Offering early assistance helps prevent building up of problems and the increased need for help of the child. The guideline also emphasises that the principles of data protection are not a hindrance in notifying of a child that needs help.

Development plan for children and families for 2012–2020

The Government approved "The strategy for guaranteeing children's rights for 2004–2008" in 2003. It was the first national initiative to strategically plan the activities, acknowledge and guarantee the rights of children outside the field.[13] In 2010 the UN Committee on the Rights of the Child recommended Estonia draft a new national strategy document after having heard Estonia's report "On implementation of Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography".[14] The Ministry of Social Affairs started work on drafting a new strategy document on wellbeing of children and guaranteeing of children's rights in 2010

[11] Lasteombudsmani korraldatud joonistusvõistluse võidutööd [Winners of the drawing competition organised by the ombudsman for children]. Available at: http://oiguskantsler.ee/et/oiguskantsler/suhted-avalikkusega/uudised/lasteombudsmani-korraldatud-joonistusvoistluse-voidutood.

[12] Abivajavast lapsest teatamine ja andmekaitse. Juhend. [Notification of a child in need. Guidelines.] Ombudsman for Children 2011. Available at:http://lasteombudsman.ee/sites/default/files/juhend_-_abivajavast_lapsest_teatamine_ja_andmekaitse_1.pdf .

[13] Lapse õiguste tagamise strateegia [Strategy for guaranteeing children's rights]. Available at: http://www.sm.ee/tegevus/lapsed-ja-pere/lastekaitse-korraldus.html.

[14] „Consideration of reports submitted by States parties under article 12(1) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. Concluding observations: Estonia". 29.01.2010. Available at: http://www2.ohchr.org/english/bodies/crc/docs/CRC-C-OPSC-EST-CO-1.pdf.

from the point of view that since the child's wellbeing is influenced by the environment (family, institutions), the environment should be considered on the whole, and a logical continuation of this would be a development plan on children's rights and wellbeing of families. "The development plan for children and families for 2012–2020" was approved by the Government 10 October 2011. The development plan is based on the principle that each child is a value of its own. Therefore, the state is putting children and their interests, needs and wellbeing first in all issues and undertakings related to children and families with children, and guaranteeing all the children in Estonia equal rights and opportunities.[15] The overall goal of the development plan is to increase the wellbeing and quality of life of children and families, thereby facilitating a higher birth rate. Five strategic goals have been set in order to achieve the main goal:[16]

- Estonia's children and family policy is knowledge based and uniform in order to support sustainability of the society;
- Estonia as a state supports positive parenting, offering necessary support in raising children and for being a parent to improve the quality of life and future prospects of children;
- Children's rights have been guaranteed and there is a functioning system of child protection, valuing every child in the society, valuing a safe environment supporting children's development;
- Estonia has a system providing support and services in support of adequate economical coping of families, offering a steady sense of security;
- Men and women have equal opportunities for combining work, family and private lives in order to facilitate a good quality everyday life that meets the needs of each member of the family.

[15] Minstry of Social Affairs (2011). Laste ja perede arengukava 2012–2020 [Development plan for children and families for 2012–2020]. Available at: http://www.sm.ee/fileadmin/meedia/Dokumendid/Sotsiaalvaldkond/kogumik/Laste_ja_perede_arengukava_2012_-_2020.pdf.

[16] Ministry of Social Affairs (2011). Laste ja perede arengukava 2012–2020.

Two implementation plans will be established based on the development plan. The first implementation plan (for 2012–2015) is available on the website of the Ministry of Social Affairs.[17] It is commendable that the custom of good practice was followed in drawing up of this development plan and that the preparation had a wide base: it included more than a hundred experts and representatives of ministries, local governments, their subdivisions, non-profit organisations, the private sector and scientific institutions. The development plan emphasised the participation of children in each activity that concerned them. Therefore it is worth noting that minors of under 18 years of age were included in preparation of the development plan. It is essential that young people are involved in the yearly assessment of activities stated by the implementation plan and that their opinions are heard before making the necessary changes. The development plan state that an important part of guaranteeing children's rights consists of consistent monitoring of their rights. The Ministry of Social Affairs, as the institution coordinating implementation of the development plan intends to cooperate with the children's rights division at the Office of Chancellor of Justice that functions as the ombudsman for children. The development plan also prescribes assessing the implemented activities. It is important that this will not be restricted to merely quality assessment of the activities, but that the impact on the children and families is taken into account as well. The need for effects analysis on the legislative level has also been emphasised by Andra Reinomägi, the adviser at children's rights division at the Office of Chancellor of Justice.[18]

It must also be pointed out that the Ministry of Social Affairs initiated work on a new draft act for Child Protection Act at the end of 2011. The long-awaited new Child Protection Act was initiated pursuant to executing the tasks of the framework of the development plan for children and families.[19]

[17] Ministry of Social Affairs. Laste ja perede arengukava rakendusplaan 2012–2015 [Implementation plan for development plan for children and families]. Available at: http://www.sm.ee/fileadmin/meedia/Dokumendid/Sotsiaalvaldkond/lapsed/lastekaitse/Laste_ja_perede_arengukava_rakendusplaan_2012-2015.pdf.

[18] Reinomägi, Andra (2011). „Õigusloome mõjutab igaühe inimõigusi" [Legislative drafting influences everyone's human rights]. Postimees. 09.12.2011.

[19] Ministry of Social Affairs. Laste ja perede arengukava rakendusplaan 2012–2015.

Children's rights in media

The availability of internet in Estonia as well as the ease of use and its speed has increased over the years. Children and young people in particular are the users of the new media technology, taking part in the new opportunities that the internet chat environments, web-based games and mobile communication, etc have to offer. The youth in Estonia is generally aware of the possible dangers on the internet. This is also supported by the "EU Kids Online 2010" survey, which states that children in Estonia are one of the most digitally literate in Europe: Estonian children were able to name 5 out of 8 skills related to safe use of internet. On the other hand, children in Estonia are one of the most endangered in facing danger on the internet due to high usage of the internet. Similarly to Romania, every seventh child in Estonia has had contact with internet bullying.[20] Children's and youths' safe internet usage is promoted, in addition to schools, by several authorities and non-profit organisations. The Tiger Leap Foundation, the children's helpline 116 111, the Ministry of Social Affairs and the Police and Border Guard Board are cooperating under the coordination of the Estonian Union for Child Welfare for the European Union co-funded project "Safer Internet" as of autumn 2010. Information days were held in general education school all over Estonia in 2011 and teaching and information material on safer use of internet was prepared according to the project.[21] The children's helpline 116 111 offers children and parents advice and assistance on what to do when a child has run into trouble on the internet. The website of the children's helpline www.lasteabi.ee offers help and advice also via Skype and msn messenger. The web environment www.vihjeliin.ee was also opened according to the project. It allows internet users forward information about material depicting sexual abuse of children. According to "the development plan for reduction of violence for 2010 – 2014" and on the initiative of the Police and Border Guard Board the virtual police was established in June of 2011, which also supports children's safer internet usage. There

[20] Riskid ja turvalisus internetis: Euroopa laste vaatenurk [Risks and safety on the internet: point of view of European children]. EUKids Online 2010.
[21] Website of project Targalt internetis (safe internet) www.targaltinternetis.ee.

is, unfortunately, a negative trend concerning television broadcasting, as the reality shows do not take the effect of publicly broadcast information on the children into account. Several specialists have drawn attention to this fact.[22]

Recommendations:

- A yearly overview of the situation of children's rights should be drawn up on a national level. It should be publicly available and discussed in Riigikogu. These reports would also help the state draw up the report on implementing the convention on children's rights;
- Spread information about children's rights. When there is awareness, it is also possible to notice the absence of the rights as well as breach of these rights. In order to raise the public's awareness it is necessary to pay more attention to the issue of children's rights in various levels of education (including in refresher courses of specialists).

[22] Juha, Maris (2011). „Ärimaitseline heategevus" [Business-tinged charity]. Postimees. 08.12.2011.

Situation and rights of persons with disabilities

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CHAPTER 15

Situation and rights of persons with disabilities

As of beginning of 2011 the persons who have been afforded a degree of severity of disability make up 9.6% of the population or a heterogeneous group of 128,087 persons:

- 59% of them are female, 41% male;
- 53% of them are old age pensioners (at least 65 years old), 41% working age (16–64 years old), 6% are children (0–15 years old).[1]

Persons with disabilities make up a remarkably large group of the population, which causes the need to take steps to promote the protection of rights of persons with disabilities and establishment of equal circumstances. Therefore, taking the aforementioned into account, there is an increasing need for protection of rights of persons with disabilities on all levels – national, local government, individual as well as international. The attitude towards persons with disabilities is slowly changing in Estonia, the focus in no longer on the presumed "fault" of the person, and the disability is no longer seen as a shortcoming or an illness. On the contrary, the disability should be viewed as "the pathology of the society" – the society itself is incapable of including persons with disabilities and dealing with their differences. In order to include persons with disabilities in many facets of the society it is necessary to invest

[1] Sotsiaalkomisjon arutas puuetega inimeste õigustega seotud küsimusi [The social commission discussed the matters concerning rights of persons with disabilities]. Available at: http://www.riigikogu.ee/index.php?id=171867

in all levels horizontally. It is essential to pass on the message in the society that persons with disabilities have rights equal to all others and these rights must be protected, not only in words, but also in everyday reality.

Political and institutional developments

In 2011 a big step was taken in protection of rights of persons with disabilities that had been prepared for four years. The UN General Assembly adopted the Convention on the Rights of Persons with Disabilities and its Optional Protocol on 13 December 2006, which was opened for signature on 30 March 2007.[2] The goal of the convention is to promote, protect and guarantee complete and equal execution of all human rights and fundamental freedoms by persons with disabilities and promote respect for their natural dignity.[3] The ratification of the convention by Estonia has been awaited since the President of the Republic of Estonia signed it on 25 September 2007. From the point of view of protection of rights of persons with disabilities the convention can be considered and important international agreement, which obliges states to implement and introduce measures to promote the rights of persons with disabilities without discriminating against them. These measures include: adoption of anti-discriminatory legislation when necessary, elimination of legislation and practice discriminating against persons with disabilities, and also inclusion of persons with disabilities in drafting of new policies and programmes. On 29 December 2011 the Government of Republic of Estonia approved the draft act ratifying the convention and the optional protocol and presented it to Riigikogu for discussion. According to the explanatory memorandum in 2012 work will begin on national strategy on improving rights and independent coping of persons with disabilities and its yearly action plans. Priority concerns and necessary budgets for specific years will be clarified during drafting of the strategies. Such developments can be considered progress as there has been a shift in attitude towards disability and persons with disability on

[2] Convention on the Rights of Persons with Disabilities. Available at: http://www.un.org/disabilities/default.asp?navid=14&pid=150.

[3] Convention on the Rights of Persons with Disabilities.

a national level. Nevertheless, there is still no document concerning development of lives of persons with disabilities on a national level. Therefore, the social, economic, political and environmental circumstances that pose obstacles before complete inclusion of persons with disabilities must be identified and removed. Persons with disabilities are increasingly viewed as persons with all the rights rather than subjects of charity, or objects of decisions made by others and that is certainly a progress from the point of view of human rights. The rights based approach in Estonia must increasingly focus on considering and supporting persons' peculiarities by creating conditions to completely include persons with disabilities. Promotion and advancement of rights does not mean just providing (social) services, but also taking wider measures to change negative and marginalising attitude and customs towards persons with disabilities. The Estonian legislative environment is in accordance with the provisions of the convention and therefore there are no significant legislative problems with complete inclusion of persons with disabilities. However, there are problems with implementation of national acts and with monitoring, which allows for situations where persons with disabilities experience obstacles and hardship in coping with everyday life. "The development plan for children and families for 2011–2020" was also published in 2011, which deals with protection of rights of children, including children with disabilities. The development plan includes activities aimed specifically for children with disabilities, which help satisfy special needs of children with disabilities and their families, for example better availability to children with disability of services that are available for everyone in healthcare, education and social areas (including organising the system of early detection and counselling, increasing parents' skills and knowledge, training specialists, etc).

Legislative developments

There were no essential legislative changes in the area of persons with disabilities in 2011, but some minor amendments were made. The Ministry of Social Affairs prepared advisory guidelines to social welfare services in Estonian and

Russian language (a total of 12 guidelines) at the end of 2011.[4] The purpose of the guidelines is to describe advisory requirements, which to consider while providing services. The guidelines enable the service providers and the consumers or their kin to understand the content of the service, develop and assess expectations of the services and to know their rights and options in using the service. The local governments can take the guidelines into consideration in providing services or in delegating them to the private or the third sector. The guidelines are necessary for the consumers or their kin in understanding the content of the service and developing their expectations of the service and knowing their rights and options in the process of being referred to the service as well as during provision of the service. As the client is in a weaker position and requires help in guaranteeing his fundamental rights, it is the obligation of the public sector to guarantee the client at least the minimum standard of the service. If the requirements are not regulated there is a risk that the client does not receive the service and help that suits his needs.[5] Unfortunately the guidelines could not be legalised in the Social Welfare Act due to the opposition of the partners, which means that the actual benefit of the guidelines to the consumers of the service may be limited and depend on the will of the service provider. European Parliament adopted Regulation 181/2011 on the rights of bus passengers on 16 February 2011. The regulation comes into force in Estonia on 1 March 2013. The regulation states that persons with disabilities and limited mobility should be able to use bus services like all other persons, regardless of whether the limited mobility has been caused by disability, age or some other factor. The Traffic Act that came into force on 1 July 2011 stated special requirements for visually impaired persons and for persons with mobility disability, including for movement of persons in wheelchairs and of visually impaired persons on pavements, as well as special

[4] Kohalike omavalitsuste sotsiaalteenuste soovituslikud juhised [Advisory guildelines to social welfare services of local governments]. Available at: http://www.sm.ee/tegevus/sotsiaalhoolekanne/kohalike-omavalitsuste-sotsiaalteenuste-soovituslikud-juhised.html.

[5] Communication from the commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions accompanying the Communication on „A single market for 21st century Europe" Services of general interest, including social services of general interest COM(2007) 724 final. Available at:
ht tp://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0725:FIN:EN:PDF.

rights of vehicles serving persons with mobility disability or blind persons (to parking, parking spaces, stopping in no stopping zones). Regulation no. 90 of the Minister of Social Affairs on conditions for issuing parking cards for vehicles serving persons with mobility disabilities or blind persons also came into effect at the same time. The Government Regulation no. 1 of 6 January 2011 "National curriculum of basic schools" and the Government Regulation no. 2 of 6 January 2011 "National curriculum of secondary schools" also regulate questions concerning individual curriculums. For example, they establish standards for students with mental disabilities, who study in simplified, coping or nursing classes on the recommendation of the counselling committee. The Equal Treatment Act holds a great meaning for persons with disabilities as it aims to guarantee persons', including persons with disabilities, protection from discrimination. However, § 2 of the Equal Treatment Act cannot be considered to be satisfactory, as the protection of rights of persons with disabilities seems to be guaranteed to a much smaller extent than the protection afforded on the basis of nationality, race or colour. One cannot help but ask whether discrimination of persons with disabilities, unlike the aforementioned groups, in education, social welfare, healthcare, in social security services, including in receiving social benefit and goods and services for the public, including availability of accommodation is allowed? § 12 of the Constitution states that everyone is equal before law and no one shall be discriminated against on any basis, yet the general protection may not be enough and the persons with disabilities need additional legal protection, which emphasises the rights and creates favourable conditions also through "positive" discrimination in order to realise their rights.

Statistics and surveys

It is the obligation of the state to gather more and more relevant information, including statistics and survey data enabling wording and implementation of necessary policies for persons with disabilities. Important surveys referring to problem areas have been carried out in recent years, the availability of the statistical data has been improved and new places for gathering and publishing data have been implemented. Statistics Estonia, for example, publishes data

on severity of disability, permanent incapacity for work and self assessment on limitations caused by health, which is found out from data on persons and households. The National Audit Office published a report at the end of 2010 on state's activity in supporting persons with disabilities and persons receiving pension for incapacity for work.[6] The National Audit Office assessed whether the benefit system for persons with disabilities and persons with incapacity for work is sparing and guarantees that only those persons are supported whose expenses stemming from disability need covering or who are not capable of earning a living. The National Audit Office discovered that the current system is not operating in a reasonable manner – it does not guarantee diverse help and that it reaches those who really need it. And yet considerable sums are spent on support of persons with disabilities and for pensions for incapacity to work. It was also established that the state does not facilitate the persons who have lost capacity to work to return to the labour market.

The state support for persons with disabilities in the target group of children and the elderly have stayed the same for years and no longer suit the present situation and actual needs. The Praxis Center for Policy Studies published a survey on options for sustainable funding of Estonia's social security system[7] at the end of 2011, which aimed to give an assessment of sustainability of Estonia's current system of social security. Age, unemployment, illness and incapacity to work were seen as social risks. Both surveys came to the conclusion that the current social security system is not sustainable nor does it cover the actual needs of persons, which means that persons' rights are not protected.

[6] Mattson, Toomas (2011). „Puuetega inimeste ja töövõimetuspensionäride toetamise süsteem ei toimi mõistlikult" [Benefit system for persons with disabilities and persons with incapacity for work is not reasonable]. Available at: http://www.riigikontroll.ee/Suhtedavalikkusega/Pressiteated/tabid/168/ItemId/574/amid/557/language/et-EE/Default.aspx.

[7] „Eesti sotsiaalkindlustussüsteemi jätkusuutliku rahastamise võimalused" [Options for sustainable funding of Estonia's social security system]. Available at: http://www.praxis.ee/fileadmin/tarmo/Projektid/Tervishoid/Eesti_tervishoiu_rahastamise_jatkusuutlikkus/Eesti_sotsiaalkindlustussuesteemi_jaetkusuutliku_rahastamise_voimalused_taeisversioon.pdf.

Good practice

Estonian Chamber of Disabled People with its member organisations has become a more serious partner to the state and the local governments over the years. The fact that the relevant legislation is sent to the chamber for coordination is a testament to this and that there is a desire to include representing organisations and to take their opinions into account. Inclusion in decision processes improved in 2011 from the level of Riigikogu until the local governments. Organisations for persons with disabilities, local governments, their representative organisations and service providers were included in drafting of the social services guides. There was also an inclusion seminar for introducing the guidelines and for making recommendations.

Trends

The number of persons with disabilities has risen by 38% in the last nine years, the number of person receiving pension for incapacity for work has risen by 75%. The state's expenses on social benefits and pensions have risen each year, whereas the situation of the person does not change, in fact, things have rather got worse due to rise in living expenses. The scheme for incapacity for work benefits is ineffective and fragmented on state level; persons are only offered passive measures. The scheme for incapacity for work benefits does not motivate persons to return to labour market as they are not offered rehabilitating work and health care services, the rehabilitation is offered too late and in too small dosages, neither is it connected with incapacity for work. Moreover, the state sees a person's incapacity for work, not the ability to take on other kinds of jobs or learn a new trade. Therefore, it is highly likely that persons with disabilities and persons with incapacity for work will never leave the system once they have entered it. Once the person has been declared incapable for work he will be incapable for work for ever and become increasingly dependent on aid measures, which do not guarantee a dignified life. In addition, the state has not been consistent in guaranteeing capacity for work of the work age population. The state has not taken significant steps to make the work environment safer. The local governments play an equally important

role in guaranteeing coping of persons with disabilities, as it is their obligation to offer support services, benefits, as well as auxiliary measures.

Conclusion

The protection of rights of persons with disabilities has been well guaranteed in Estonia if one were to consider just the legislative level – our legislative environment is in accordance with the internationally approved level. But the implementation of rights regulated on the level of the Constitution as well as specific acts in everyday life is less than satisfactory. Even though persons with disabilities have the right to education, social services, adequate standard of living and social protection, work and health care, each area contains shortcomings and persons with disabilities cannot exercise their rights on the same basis as other persons. For example, the opportunities of a young blind/death person or a person with a mobility disability to obtain equal education are scarcer as support services which are specific to the disability are needed, as well as customisations, knowledge, a level of preparation, etc. The queues for vitally necessary social and health care services are also long, the quality of services poor and the availability fluctuating; people lack information about necessary services and benefits; the help on hand is not sufficient, etc. Lack of funds stands in the way of exercising several rights and there are no sanctions on the local government level to change the situation; neither is any monitoring carried out. Estonia is a small country where every person matters, therefore, also persons with disabilities must be valued more than they are currently valued. In order to decrease the expenses of the state in the long run and to increase the independence of persons with disabilities so that persons with disabilities can be contributors, the early detection of special needs, quick and needs-based reaction and offering of auxiliary measures, increase of the public's awareness and change of attitude are necessary. Things have got better over the years and increasingly more young persons with disabilities are able to have a good education, participate in the labour market, live independently and move freely on streets, but there are still a number of obstacles, which do not allow them to participate in everyday life or make it strenuous. There are reason to be mildly optimistic due to the increasing number of persons with

disabilities, increasing expenses and in anticipation of the ratification of the convention and hope that the topic of persons with disabilities becomes a priority in Estonia and that it will be studied broadly by involving all ministries according to their jurisdiction, as there still is no plan guaranteeing rights of persons with disabilities. The rights of persons with disabilities are divided between many acts of law; they're often general and declarative and offer no actual protection. General measures aimed at all persons are not enough to guarantee rights of persons with disabilities, because special measures and the so-called positive discrimination or making allowances are often necessary.

Recommendations:

- Draw up a national action plan and strategies for protection of rights of persons with disabilities;
- Carry on with attempts to harmonise and regulate availability of social services on legislative level;
- Increase the awareness of persons with disabilities of their rights and the ability to stand up for their rights. There should be constant training of specialists who come into contact with persons with disabilities and the public's awareness of issues of persons with disabilities should be increased;
- Consider expanding jurisdiction of the Gender Equality and Equal Treatment Commissioner or creating the institution of ombudsman for persons with disabilities for better protection of rights;
- Amend § 2 of the Equal Treatment Act so that the prohibition of discrimination applies on all grounds equally.

About the Estonian Human Rights Centre

Estonian Human Rights Centre is an independent public foundation for promotion of protection of human rights in Estonia and elsewhere. The mission of the centre is to actively promote the protection of human rights in Estonia through development of policies and legislation concerning human rights by employing raising awareness of the public, public discussions, counselling, lobby work and strategic litigation. The centre is a point of contact concerning the situation of human rights in Estonia as well as outside of Estonia.

The vision of the centre is to become a comprehensive, effective and sustainable non-governmental organisation promoting human rights while being an independent, reliable and professional partner to private persons, the state (including local governments), companies and non-governmental organisations in Estonia as well as outside Estonia. The centre organises its activities according to the needs of the society in the framework of thematic programs.

These programs are:

- Program for equal treatment and non-discrimination, which offers free regular counselling for private persons, provides training, carries out analyses and uses lobby work to obtain goals, strategic litigation or other methods for protecting relevant interests.
- Refugee program, which offers asylum seekers legal help and representation in court and asylum proceedings in the form of a legal clinic. The program also participates in public discussions involving rights of asylum seekers and other immigrants.
- Human rights education program, which includes activities raising awareness, such as the human rights special program under the Black Nights Film Festival, training and increasing of the role of human rights in education (in cooperation with Tallinn University of Technology).

- Program relating to access to justice will be established in 2012 in order to monitor and promote availability of access to justice in Estonia, including state help and other aspects of proceedings. Special attention will be given to availability of access to justice among persons who do not speak Estonian.

Our activities also include horizontal activities relating to general situation of human rights.

- Monitoring of the human rights situation in Estonia. This includes publishing a yearly human rights report. The centre (in consortium with the Institute of Baltic Studies) gathers data and compiles analyses about Estonia to the European Union Agency for Fundamental Rights since 2011. We have also compiled an analysis of legal situation of Seto and Võra languages in Estonia under the European Language Diversity for All framework to the Åland Peace Institute, for which the centre received a reward.
- Exchange of information between different parties – the centre comments on the reports that stem from the state's international responsibilities, cooperates with and supports the activities of specified human rights organisations.

Financiers

The activity of the Centre in 2011 was financed by the Ministry of Culture in the sum of 19,174 euros and the Open Estonia Foundation in the sum of 31,959 euros. We have also applied for and have been given support by the European Refugee Fund and the Ministry of Interior Affairs in 2011 for establishment of the legal clinic, and from the Open Estonia Foundation and the Ministry of Culture for the drawing up and publishing of the 2010 human rights report, and from the Open Estonia Foundation for promotion of international cooperation.

Management and staff

The long term goals and other obligations stemming from the Foundations Act and the Articles of Association are executed by the Supervisory Board. The day to day work of the centre is run by the Director of the centre Kari Käsper. The centre employs a staff of nine persons on a part or full time basis.

Contacts and location

The office of Estonian Human Rights Centre is located in Tallinn at the address: Tartu mnt 63 (4th floor of B-section of the building). Phone 644 5148, fax 646 5148, email info@humanrights.ee, website www.humanrights.ee.

If you would like to contribute to promotion of human rights you may do so through:

- your skills and knowledge – participate in an activity/program/project – whether on a single occasion or regularly. Please contact us to discuss it further.
- by making a financial contribution – a one off or a direct automatic payment to the bank account of the Estonian Human Rights Centre 221048377862. From out of the country: Swedbank, Tallinn, Liivalaia 8, 15040 (SWIFT/BIC: HABAEE2X, IBAN: EE362200221048377862). Estonian Human Rights Centre is registered in the non-profit associations and foundations register with income tax incentive.

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