

HUMAN RIGHTS IN ESTONIA

2014
2015

Annual Report of the Estonian Human Rights Centre



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Contents

Foreword.....	4
Ahto Lobjakas	
Prohibition of torture, inhuman or degrading treatment and punishment	7
Epp Lumiste	
Prohibition of slavery and forced labour.....	17
Merle Albrant	
Right to a fair trial	27
Kari Käsper	
Right to respect for family and private life.....	35
Ann Väljataga	
Freedom of expression.....	47
Dr. Katrin Nyman-Metcalf	
Freedom of assembly and association.....	57
Alari Rammo	
Prohibition of discrimination	67
Kelly Grossthal	
Right to education	79
Aivi Remmelg	
Right to free elections	93
Egert Rünne	
National minorities and integration policy in Estonia.....	103
Kristjan Kaldur	
The situation of LGBT persons in Estonia	115
Helen Talalaev	
Rights of refugees and asylum seekers.....	125
Anni Säär	
Rights of the Child	135
Helika Saar	
Situation of persons with disabilities	149
Tiiu Hermat	

Dear reader!

Human rights in Estonia face pressure from two sides. On one hand it is set to have a correlation with the founding principles defined by the community, the need to secure a living space for Estonian nationality, language and culture. These values cannot be clearly defined: there is a noticeable tendency, which cropped up in the course of the refugee crisis, an attempt to define what is Estonian through skin colour and other hereditary attributes, and not through language or something else an individual can learn – and is thus attainable for everyone. On the other hand the theme of living space is manifested on the level of existence of the state. “Only a certain disposition can make sure the state of Estonia will last through ages,” says this approach, placing all other considerations under the seal of right of communal existence.

The first communal impulse has a parasitical existence on a level, which is democratic in essence. In Estonia, as has been referred, the egalitarian nature of democracy has been bent to serve the interests of a more narrowly defined (ethnic) group. It is unavoidably and apparently clear that groups and individuals who do not share the same imperative, will find themselves, through the mediation of a seemingly democratic decision-making mechanism, in an unequal situation. In reality they have fewer rights, and additionally, their rights in the future will be qualified by the constitutionally in-coded requirement to make sure the dominant ethnic community never loses the majority status on the territory of their state.

Another pressure factor is similarly parasitical on the international law, filling the right of self-determination narrowly with ethnic content. The problem works both ways: besides instrumentalisation of democracy and nationality, or making them a tool for a narrow interest, practicing these both in a diminished way unavoidably distorts, if not disfigures, their content for the Estonian public. The threshold of values is lowered.

Human rights, in essence, belong to the sphere of the state based on rule of law. Along with democracy and international law the state based on rule of law is one of three foundations for the modern value-based world order. Historically, it is primary, as international law is hard to imagine in a world without democracy, and democracy, in turn, is hard to imagine without the foundation of equal rights of people. In practice, this forms a certain hermetically sealed circle: all three principles require the other two in one way or another. Human rights are the platform for ideal values, which can be deduced from practical functioning of the Western world order – its legal practice, conventions, constitutions, etc. Human rights are the historic fruit of this developing practice. The similarity of human rights to Kantian universal rights (applicable for all conceivable people at all times) is not coincidental – but nor is it causal. Immanuel Kant and his successors have derived their systems from Western practices, and then universalised them.

It is important to understand that this origin of universality is built into the definition of a state based on rule of law also when it in practice does not exceed the boundaries of one society.

Every person on the territory of a state based on rule of law has fundamental rights guaranteed by law even when the political, economic and social rights of the state's subject vary. These same fundamental rights also exist for representatives of state powers acting outside of their territory. In practice, this of course means tension between national interests and things like it, but already for a long time the Western states do not allow their representatives of state powers to kill the natives, etc.

The challenge for Estonia is to acknowledge and detangle for ourselves the conflict contained in our constitution, which increasingly seems to blur the official policy on human rights. If the preamble of the constitution places the duty on the state, with its democracy and legal institutions, to serve a nation or a privileged community, then the founding values of the constitution, as they have been understood by the Supreme Court, clearly dictate the need to respect democracy, state based on rule of law and international law as clear principles. The solution, in any time perspective, can only be to secure

complete autonomy of human rights / state based on rule of law within theory and practice of the state's activity, and keep it independent from communal imperatives, no matter how democratic or serving the norms of international law they are presented as.

Most of the weak points that this annual report points to, but not all, are understandable in the context of this tension and struggle. The rights of national minorities, right to fair trial, sufficient access to legal counselling, depoliticization of top officials, exclusion of any kind of discrimination, preventative empathy of officials in regards to minority problems (whether based on gender, sexuality or culture), political (state based on rule of law and democratic) control over security institutions, codifying the limits of tolerance for criminalization of xenophobia – all this to (today so topical) humane treatment of refugees and asylum seekers and guaranteeing them adequate legal help is a part of this set of problems. A state based on rule of law, if it actually works, can only be a mirage on the untouched horizon of power guaranteed by rights of individuals.

For the state of Estonia – which, on top of it all, has been the member of the United Nations Human Rights Council for three years – human rights at peace time cannot under any excuse be a topic which has to be analysed or can be analysed from the point of view of security policy, preservation of Estonian language or culture, the nation state's future, or anything similar.

Ahto Lobjakas

HUMAN RIGHTS IN ESTONIA
2014-2015

Prohibition of torture, inhuman or degrading
treatment and punishment

Prohibition of torture, inhuman or degrading treatment and punishment



AUTHOR



Epp Lumiste

Epp attained her Bachelor's Degree in Law from Audentes University in 2005, her Master's Degree from Concordia International University / Audentes University in 2007 and an LL.M from George Washington University in the United States in 2010. In her studies she concentrated on international law, more precisely on national security law and human rights law. She has been working at Aivar Pily Law Office since 2012.

CHAPTER 1

Prohibition of torture, inhuman or degrading treatment and punishment

During the years 2014–2015 several events within the jurisdiction of Article 3 of the European Convention on Human rights (the Convention) have taken place in Estonia. The legislator has carried out a reform of the Penal Code. The Chancellor of Justice has repeatedly drawn the public's attention to shortcomings in guaranteeing human dignity in closed institutions. The European Court of Human Rights (ECtHR) has also passed a judgment about Estonia, where a breach of Article 3 was detected.

In order to give an overview of developments within the scope of Article 3, we must first remind ourselves that the law in question states that nobody can be tortured or inhumanely or degradingly treated or punished. The law in question offers protection for a person's human dignity and guarantees it in situations of detention.

Since most disputes arise from situations of detention, all places where people whose freedom has been taken away are kept or can be kept have to be considered places of detention.¹ This does not only include prisons but also centres for children at risk and other closed institutions a child or an adult

¹ Õiguskantsleri 2014. aasta tegevuse ülevaade [2014 yearly report of the Chancellor of Justice]. Chancellor of Justice. Tallinn 2015. Available at: http://oiguskantsler.ee/sites/default/files/ylevaade_2014.pdf.

is forbidden to leave and where his freedom of movement is restricted. The aforementioned institutions have been having problems with guaranteeing human dignity and applying methods of restraint on persons for years. There have been no noteworthy developments in the observed period.

Political and institutional developments

According to the Chancellor of Justice's 2014 and 2015 reports² the Chancellor of Justice made control visits to custodial institutions (including centres providing rehabilitation services to minors and to institutions providing psychiatric help). Special attention was afforded to conditions of restraint, and separation rooms, but also to rest rooms and/or accommodation areas of persons. Already in 2014 the Chancellor of Justice drew attention to shortcomings of psychiatric care providers where there was risk of human dignity not being guaranteed.

Upon analysing the Chancellor of Justice's 2015 report it is clear that there have not been significant changes in this area in 2015.

In 2009 the Chancellor of Justice addressed Riigikogu and drew attention to problems related to restriction of personal freedom in rehabilitation institutions for youths with addiction disorders. The Chancellor of Justice has also drawn attention to the same problem in 2010.³ Despite attention having been repeatedly drawn to this topic the legislator has still not established a legal basis for restricting children's freedom while offering the rehabilitation service.

In other words, in 2015 there is still no legal basis for restricting a child's freedom against his or her will. If a child is sent to a centre providing rehabilitation service (in Tallinn or Jõhvi), where a child is forced to stay against his or

² Õiguskantsleri aastaülevaade 2014/2015. Laste ja noorte õigused [Chancellor of Justice's annual report 2014/2015. Rights of children and youths]. Available at: <http://oiguskantsler.ee/ylevaade2015/laste-ja-noorte-oigused>, and Õiguskantsleri 2014. aasta tegevuse ülevaade [Chancellor of Justices yearly review for 2014]. Available at: http://oiguskantsler.ee/sites/default/files/ylevaade_2014.pdf.

³ Õiguskantsleri aastaülevaate ettekanne Riigikogus, oktoober 2011 [Presentation of the Chancellor of Justice's annual report at Riigikogu, October 2011]. The Office of the Chancellor of Justice. 2010. Available at: <http://oiguskantsler.ee/et/ylevaade%202010>.

her will and has no option to leave the institution, then the aforementioned may essentially be a breach of requirements stated in Article 3. Upon analysing the reports of the Chancellor of Justice over the years, it is apparent that centres for children at risk have the right to send the child to a separation room or apply methods of restraint on him or her, however, in order to apply such measures there ought to be a clearly worded basis for it stated in legislation.

Legislative developments

On 1 January 2015 the changes made due to the Penal Code reform came into force. The legislator intended to limit the possible overlap of necessary elements of misdemeanours and criminal offences and eliminate excessive punishability.⁴ In addition to the aforementioned, several necessary elements of an offence, and bases for punishability for legal persons were altered.

It is remarkable, in the light of the law under analysis, that § 122 of the Penal Code (torture) was repealed. As it proved problematic to give meaning to “consistent physical abuse” in practice, the punishment for physical abuse (§ 121 of the Penal Code) was increased and the article on torture was repealed. However, the legislator added the necessary elements of torture to the Penal Code (§ 2901), if it has been committed by an official for the purpose of extracting testimonies, punishing, intimidating or forcing a person, or for discriminating against a person.

By adding a new provision the legislator has established necessary elements for a criminal offence in Estonian law that is based on the principle of torture in the international convention, while also preserving similar necessary elements. It is also a welcome development that the necessary element of torture that came into force in 2015 also contains causing moral suffering without physical interference with the integrity of the person. This means that torture is not only understood to mean causing physical pain, but also mental pain.

⁴ KarS jt seaduste muutmise eelnõu seletuskiri [explanatory memorandum to draft legislation]. Available at: <http://www.riigikogu.ee/index.php?op=ems&page=eelnou&eid=78433b29-8b2f-4281-a582-0efb9631e2ad&>.

The reform of the Penal Code also increased the upper limit of punishment for torture, which, instead of the earlier 5 years of imprisonment is now 7 years of imprisonment. By increasing the upper limit of the punishment Estonia has taken into consideration the recommendation in point 8 of the report by the European Committee for the Prevention of Torture (CPT)⁵ to adjust the upper limit of the punishment for torture in a way that takes into consideration the serious nature of the criminal offence. It is still questionable whether increasing the upper limit of the punishment by just two years corresponds to the serious nature of the offence.

In addition to amendments to the Penal Code there were also amendments made to § 407 of the Code of Criminal Procedure – minors were guaranteed right to independently file appeals when it had to do with a person's location to special schools.

Court practice

The law in question comes up in court practice in Estonia mostly while processing applications submitted by the detained. Regarding the so-called security measure applied by the prison (playing loud music to prevent inmates from communicating with each other) the Supreme Court found in its 2014 judgment that carrying out the punishment for the crime is no justification for interfering with the person's fundamental freedoms without a legal basis.⁶ The court thereby confirmed that the prison's regulations cannot establish limitations that breach a person's fundamental rights or infringe on their human dignity, if such authority is lacking in the act of law. The court also cited that communication among prisoners is possible to achieve by solutions of civil engineering.

There have been several so-called floor space disputes discussed at the Supreme Court, which originated in the ECtHR judgment *Tunis v. Estonia*, where

⁵ Concluding observations on the fifth periodic report of Estonia, adopted by the Committee at its fiftieth session (6-31 May 2013). Committee against Torture. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/EST/CO/5&Lang=En.

⁶ See Administrative Law Chamber of the Supreme Court judgment no 3-3-1-17-14 p-s 14.

breach of Article 3 of the Convention was identified.⁷ The Constitutional Review Chamber of the Supreme Court evaluated the size of the floor space required by the internal rules of the prison to be compatible with what was expressed in judgment of the ECtHR.⁸ The Supreme Court admitted that staying on just 2.5 m² long term can be a breach of human dignity, however, if supplementary conditions are present, 2.5 m² of floor space for the inmate may not be seen as a breach of human dignity.

The trend of submitting floor space disputes continued in 2015, but the Supreme Court repeated the position it had expressed in 2014. Although the court primarily analysed the timeliness of the complaint submitted in its judgment no 3-3-1-20-15, the Supreme Court emphasized that from the point of view of guaranteeing human dignity, if the person is kept at the place of detention in allegedly inhuman conditions long term, it can be presumed that he perceives the nature of conditions that breach human dignity over a reasonable time. Therefore, the inmate cannot indefinitely hold off submitting his application for damages, but must turn to the court within reasonable time.

In order for the floor space to be in breach of human dignity, the sum of all conditions must be assessed together. This means that if the person has the obligation to stay in the chamber only at night, but at other times is guaranteed opportunities to take walks, the chamber is ventilated and has natural light, then 2.5 m² of floor space per inmate is not in breach of human dignity. In other words, if the detainee is only guaranteed 2.5 m² of floor space, it cannot automatically be concluded that Article 3 of the Convention has been breached.

In addition to national courts, the ECtHR analysed in the time period in question (2014–2015) complaints regarding Article 3 of the Convention lodged against the Republic of Estonia on two occasions. On one occasion the ECtHR found that there had been a breach of a fundamental right stated in Article 3, and on another it found that there had not been a breach. In February of 2014

⁷ European Court of Human Rights. 9 January 2014 judgment no. 429/12.

⁸ See the Constitutional Review Chamber of the Supreme Court judgment no 3-4-1-9-14.

the ECtHR analysed methods applied on a detainee in a detention institution (including being chained to a bed, and use of pepper gas in an enclosed room) and found that the sum of methods used amounted to a breach of Article 3 of the Convention.⁹ Unlike an earlier judgment (*Julin v. Estonia*) it found that also being chained to a bed for 4 hours would cause the detainee physical discomfort.

In October of 2014 the ECtHR did not detect breach of Article 3 insofar as the applicant was unable to prove that unauthorized persons were present when he was being searched.¹⁰ Although no breach was detected it can be concluded from the judgment that if the prison guards had carried out the search of the prisoner in a way that others had been witness to it, it would have taken place in a manner that reduced human dignity of the detainee.

As can be concluded from the aforementioned judgments the question of human dignity and degrading treatment continues to arise from methods of force applied by prisons, security measures and human dignity of inmates in connection with the floor space. Even though the purpose of these methods is to guarantee discipline in prison, the states (including prisons) have the responsibility to adhere to obligations taken under the Convention while applying these methods.

Noteworthy public discussions

From the point of view of guaranteeing the law in question the most noteworthy public discussions might be the published articles based on the Chancellor of Justice's annual reports.

In March of 2015 heightened attention was afforded to guaranteeing human dignity of persons located in special welfare institutions.¹¹ In the appraisal of

⁹ European Court of Human Rights. 13 February 2014 judgment no. 66393/10.

¹⁰ European Court of Human Rights. 31 October 2014 judgment no. 1574/13.

¹¹ „Oiguskantsler: inimväärikus ei pruugi haigete hooldamisel alati tagatud olla“ [Chancellor of Justice: human dignity may not always be guaranteed while caring for the ill]. Postimees. 12.03.2015. Available at: <http://tervis.postimees.ee/3120157/oiguskantsler-inimvaarikus-ei-pruugi-haigete-hooldamisel-alati-tagatud-olla>.

the Chancellor of Justice increased attention should be paid to leisure time of persons and guaranteeing their privacy.

The need to make amendments to acts of law is also indubitably due to the ECtHR judgment no 25820/07,¹² where the Court detected a breach of Article 3 regarding the sum of conditions at a care home. For breach of Article 3 to occur the person's suffering and humiliation must be such as to exceed the necessary purpose of treatment or punishment. In the aforementioned judgment the ECtHR found that the bad quality of the food, the questionable cleanliness of bathing facilities, lack of elementary toiletries or insufficient access to the toilet were in sum degrading to human dignity. This means that also the conditions of care homes in Estonia must be observed in their sum and it must be assessed whether these conditions are in compliance with the rights guaranteed by Article 3 of the Convention.

In September of 2015 the Chancellor of Justice consistently drew attention to the breach committed by the state in restricting the freedom of children in institutions providing rehabilitation services.¹³ Considering his constant drawing of attention to restricting freedom of children in institutions providing rehabilitation services and the persons placed in care homes, the legislator ought to get to work on relevant amendments to acts of law in the near future.

The shortcomings in welfare institutions and institutions offering rehabilitation services for children in Estonia pointed out by the Chancellor of Justice meet the aforementioned conditions, which is why the Chancellor of Justice's accusations to the legislator are justified, as is continually drawing the public's attention to these shortcomings.

In addition to the aforementioned, on 1 October 2015 the public's attention was also drawn to the living conditions of inmates in prisons in Estonia. The newspaper Postimees wrote on its website that ca 300 inmates have submitted

¹² European Court of Human Rights. 17 March 2015 judgment no. 25820/07.

¹³ „Riik rikub lapsi rehabilitatsioonikeskustes hoides seadust“ [The state is breaking the law by keeping children in rehabilitation centres], Pealinn. 16.09.2015. Available at: <http://www.pealinn.ee/newset/riik-rikub-lapsi-rehabilitatsioonikeskustes-hoides-seadust-n152590>.

a claim for inhuman treatment. Various court instances have awarded compensatory sums of 315–2630 euros.¹⁴ It is remarkable that the courts have deemed sums of less than a thousand euros adequate compensation for 256 days of inhuman treatment. Whereas we should remind ourselves that the ECtHR has awarded inmates 10,000 euros as adequate compensation for breach of Article 3 of the Convention.¹⁵ Considering that the differences in the size of compensation are that vast it is still questionable whether compensation awarded to prisoners for breach of Article 3 is proportionate and adequate.

Trends

The 2013 annual report of the Estonian Human Rights Centre recommended the state establish a concept for torture which also involves mental abuse. The recommendation has been put into force with the amendments to the Penal Code, which came into force in January of 2015; the concept of torture in § 2901 of the Penal Code also includes causing consistent mental pain.

Recommendations:

- It is necessary to establish powers on a legislative level for detaining and applying methods of restraint as well as restricting freedom of minors in the course of providing rehabilitation services to minors.
- In order to guarantee human dignity of persons in care homes the conditions of care homes must be assessed in their sum and the persons located there must be guaranteed human dignity; amendments on legislative level must be made, if necessary.
- Compensations for inmates must be proportionate and adequate to the extent of the breached rights.

¹⁴ „Ligi 300 vangi nõuab alandava kohtlemise pärast hüvitist“ [Nearly 300 inmates demand compensation for degrading treatment]. Postimees. 1.10.2015. Available at: <http://www.postimees.ee/3345571/ligi-300-vangi-nouab-alandava-kohtlemise-parast-huvitist>.

¹⁵ Tunis v. Estonia. 19 December 2013 judgment no. 429/12.

HUMAN RIGHTS IN ESTONIA
2014-2015

Prohibition of slavery
and forced labour

Prohibition of slavery and forced labour



AUTHOR



Merle Albrant

Merle has worked at the Estonian Human Rights Centre on the Equal Treatment programme since 2011. At the moment she is working as a lawyer and advises on matters of equal treatment and discrimination. As of 2008 she has been involved with women's shelters in Estonia, and because of this has had contact with victims of human trafficking. Merle is also a member of the board of the Estonian Women's Shelters Union. Merle has a Master's degree in law.

CHAPTER 2

Prohibition of slavery and forced labour

When we speak of slavery and forced labour we must draw attention to the wider definition of slavery and its various forms, as the modern concept of slavery also includes human trafficking, which exists in various forms, and which, as a result limits a person's freedom and destroys his or her dignity. Human trafficking is a crime that cannot be tolerated and the fight against it must be the state's priority. Estonia has confirmed this in „Development Objectives of Criminal Policy until 2018“ – the Minister of Justice and the Minister of Internal Affairs consider the fight against human trafficking a common priority for the police and the prosecutor's office and assure that there is a need to set clear and coherent aims for the police and the prosecutor's office in the fight against crime.¹ Human trafficking is a serious problem as Estonia is the country of origin, transit and departure for women subjugated to prostitution. There is also a problem with people subjugated to conditions of forced labour (men as well as women).²

Political and institutional developments

At the end of 2014 the strategy for prevention of violence for 2015–2020 was prepared, which details human trafficking as one of its parts.³ Estonia will adopt the EU directive on victims and plans to ratify the Council of Europe Convention

¹ Ministry of Justice. Riigi kuritegevusvastased prioriteedid [The state's priorities in crime fighting]. Available at: <http://www.just.ee/26990>.

² EUCPN Newsletter. September 2014. Available at: http://eucpn.org/sites/default/files/content/download/files/eucpnnewsletterseptember2014_0.pdf.

³ Council of Europe. Action against Trafficking in Human Beings. Available at: http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Profiles/ESTONIAProfile_en.asp

on Protection of Children against Sexual Exploitation and Sexual Abuse.⁴ Estonia's „Development Objectives of Criminal Policy until 2018“ detail that as a method for preventing offences against person the Ministry of Social Affairs in cooperation with local governments and the non-profit sector must guarantee sufficient number of shelters for victims of human trafficking all across Estonia. As a result of this the Ministry of Social Affairs has made a contract with the NGO Eluliin, who has created help centres in Harjumaa for women who have fallen victim to human trafficking.⁵ Nevertheless, the necessary help and services might still not reach the victims.

Developing a policy on prostitution is not one of the priorities for Estonia, however, this topic does arise in the course of fight against trafficking in humans, and mostly in prevention of trafficking in humans. Reducing the demand for prostitution is one of the methods of preventing trafficking in humans. Sexual exploitation and the offence of trafficking in humans is often discovered while investigating offences of pimping. Regulations related to pimping are in place here as well as in other states and change is not necessary in this sphere. Estonia has made it illegal to buy sexual services from minors, however buying sexual services from victims of human trafficking has not been solved on the level of regulations.⁶

There is reason to believe that there are a lot more victims of human trafficking in Estonia than there are people receiving the help. The initial contacts are not sufficiently aware to spot the victims, and forward this information on to the Estonian National Social Insurance Board and the police for further processing. The skill for recognising offences of trafficking of humans

⁴ Vägivalla ennetamise strateegia aastateks 2015–2020 [Strategy for prevention of violence for 2015–2020]. Available at: https://valitsus.ee/sites/default/files/content-editors/arengukavad/vagivalla_ennetamise_straategia_2015-2020_kodulehele.pdf.

⁵ Kriminaalpoliitika arvudes: võrdlusi statistikast ja uuringutest [Criminal policy in figures: comparisons of statistics and surveys]. Ministry of Justice. 2013. Available at: <http://www.just.ee/orb.aw/class=file/action=preview/id=59115/Kriminaalpoliitika+kogumik+valmis.pdf>.

⁶ Anni Kivimäe, Anu Leps. Prostitutsioonipoliitika, sh seksuaalteenuste ostu puudutavate regulatsioonide analüüs [Policy on prostitution incl analysis of regulation regarding bying sexual services]. 2014.

in bodies conducting proceedings and other experts has to be increased.⁷ It is also important that various institutions and experts exchange information and experience in identifying cases of human trafficking, processing cases, helping the victims, providing services, etc. Working together and partnership between various organisations increases efficiency in solving the cases and helping the victims as well as better planning of actions in the future. Information about institutions and organisations offering help for victims of human trafficking is available on the website of Ministry of Social Affairs,⁸ but to what extent this information reaches the victims and persons in contact with them is not known.

Legislative developments

It can be claimed, as of 2015, that Estonian legislation is generally in compliance with the international and the EU law in making trafficking in humans illegal. The Penal Code states offences of trafficking in humans, which includes engaging a person in prostitution, forcing a person to work under unusual conditions, forcing a person to beg or commit a criminal offence or perform other disagreeable duties. It is also a punishable act to aide human trafficking, to pimp, and aide prostitution.

Whereas, buying and selling sexual services of adults is unregulated, which is why, from a legal point of view, trade in sexual services between adults are viewed as permitted activities.⁹ Such unregulated area in Estonia's legal system may aide the spread of concealed human trafficking.

The amendments to the Penal Code related to improving the wording of the act of law for increasing legal clarity in paragraphs related to human trafficking came into force 1 May 2015.¹⁰

⁷ Vägivalla ennetamise strateegia aastateks 2015–2020 [Strategy for prevention of violence for 2015–2020]. Available at: https://valitsus.ee/sites/default/files/content-editors/arengukavad/vagivalla_ennetamise_straategia_2015-2020_kodulehele.pdf.

⁸ Ministry of Social Affairs. Inimkaubandus [Trafficking in humans]. Available at: <http://www.sm.ee/et/abiandvad-organisatsioonid-estis>.

⁹ Anni Kivimäe, Anu Leps. Prostitutsioonipoliitika, sh seksuaalteenuste ostu puudutavate regulatsioonide analüüs [Policy on prostitution incl analysis of regulation regarding bying sexual services]. 2014.

¹⁰ State Gazette I, 12.07.2014, 1.

On 10 December 2014 the act ratifying the Council of Europe Convention on Action against Trafficking in Human Beings was passed, which came into force 2 January 2015.¹¹ The aim of the convention is to prevent trafficking in humans, protect the victims and punish the human traffickers and it includes forms of organised crime as well as forms outside of it, and all forms of exploitation. Estonia had signed this convention already on 3 February 2010.¹² This can be considered a positive development and indicates political will to fight against human trafficking.

It has already been pointed out in earlier surveys of criminal policy that legislation in force in Estonia is generally in concordance with penal law articles of Directive 2011/36/EU of the European Parliament and the Council, but in criminal proceedings there is no guarantee of prompt legal counselling of victims of human trafficking from third states (this means not Estonian or EU nationals).¹³ Receiving legal counselling in the course of state legal aid is not prompt and requires going through separate proceedings.

Court practice

Human trafficking criminal offences have predominantly meant sexual exploitation of women, but now labour exploitation cases have been added to it. In 2014 there were 28 registered criminal offences of trafficking in humans, compared to earlier situation there are now also cases of forced labour and forced offences (theft and drug dealing). According to the HEUNI survey human trafficking in Estonia also exists for the purpose of labour exploitation; people have had experience of it, but the instances of forced labour are not yet reflected in criminal statistics.¹⁴

¹¹ State Gazette. II, 23.12.2014, 1 Available at: <https://www.riigiteataja.ee/akt/223122014001>.

¹² Council of Europe. Available at: http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Profiles/ESTONIAProfile_en.asp.

¹³ Ministry of Justice. Kriminaalpoliitika uuringud 17: Kuritegevus Eestis 2012. [Criminal policy survey 17: crime in Estonia 2012] Op. cit.

¹⁴ Vägivalla ennetamise strateegia aastateks 2015–2020 [Strategy for prevention of violence for 2015–2020]. Available at: http://www.kriminaalpoliitika.ee/sites/www.kriminaalpoliitika.ee/files/elfinder/dokumendid/ves_2015-2020_1.pdf.

In 2014 the survey on criminal policy for 2013 was published, which reported that the number of offences linked to trafficking in humans rose.¹⁵ In 2013 there were various instances of human trafficking where criminals forced victims to commit criminal offences, used violence on them, even threatened to take their life. There were 18 cases of human trafficking among cases registered in 2014, two of the registered cases in 2013 regarding support to human trafficking (§ 133¹ of Penal Code) had to do with receiving and organising passage of two Vietnamese persons from Russia via Estonia to Poland. One of the criminal proceedings was ended at the prosecutor's office, the other continued with court proceedings, where a charge was brought of organising carriage of 27 Vietnamese citizens. 13 registered offences of pimping (§ 133² of the Penal Code) in 2013 generally had to do with organising prostitution in apartments in Tallinn (providing the apartment, aiding the provision of service, publishing advertisements, etc.) and pimping via advertisements for intimate services published online. The largest number of criminal cases had to do with advertisements published on voodi.ee.

There were 18 instances of human trafficking in order to take advantage of minors (§ 175 of the Penal Code) registered in 2013; 8 of these were connected. In several episodes a 13 year old male was influenced to have sexual intercourse with various men, which he was paid 10–50 euros for, and in some episodes another young male was influenced to do the same.

In 2015 the survey on criminal policies 20 “Crime in Estonia 2014” was published.¹⁶ According to the survey, the number of offences connected to human trafficking has decreased compared to the previous year by 14; in 2013 there were 42 registered offences, in 2014 there were 28. Charges were brought on the paragraph of trafficking in humans on 5 instances: in two instances minors were among the victims, on one instance a mother exploited her daughter, and two cases had to do with illegally importing foreigners into

¹⁵ Ministry of Justice. Kuritegevus Eestis 2013 [Crime in Estonia]. Available at: http://www.kriminaalpoliitika.ee/sites/www.kriminaalpoliitika.ee/files/elfinder/dokumendid/18_kuritegevus_eestis_2013.pdf.

¹⁶ Ministry of Justice. Kuritegevus Eestis 2014 [Crime in Estonia 2014]. Available at: http://www.kriminaalpoliitika.ee/sites/www.kriminaalpoliitika.ee/files/elfinder/dokumendid/kuritegevuse_at_2015_0.pdf.

Estonia. Charges were brought on the paragraph of pimping (§ 133² of the Penal Code) on 8 occasions; in 2014 it was generally a matter of pimping a person in Tartu via the webpage iha.ee in apartments and hotels. Repeated offences with the same participants were registered on six occasions. In addition there were two offences linked to pimping in massage parlours in Tallinn and Tartu, where in addition to erotic massage also prostitution service was offered. On 15 occasions human trafficking charges were brought for the purpose of exploiting minors. Human trafficking in order to take advantage of minors were committed against minors 10–17 years of age. Offences were committed for example via a chat room, a web camera, via a phone, also by meetings in apartments, including, on many occasions, the residence of the criminal. In two instances minors were forced to commit criminal offences – on one to steal a car, and on another to commit theft.

The case that drew most attention in the society was the Tartu County Court judgment in criminal case no. 1-14-2416,¹⁷ where the court found three men (Renee Kibildas, Silver Sokk, Rainer Kristerson) guilty of § 133 section 2 points 2 and 7 of the Penal Code and gave them 10 years of imprisonment. The judgment came to force on 5 May 2015. It was a gang of men that forced an underage girl to prostitution. The victim was awarded 150,000 euros from the three convicted men in civil action claim. The court considered in a just compensation for the victim for suffering caused by criminal behaviour (for material as well as moral damages), whereas in the moral damage was deemed to be irreparable.

Good practices

In 2014–2015 the NGO Living for Tomorrow, with the help of Norway's financial mechanisms 2009–2014 will carry out a project “Human trafficking prevention and victim support through anti-trafficking hotline +372 6607 320 service”, which aims to prevent trafficking for the purpose of labour exploitation, and to support victims of labour exploitation. The task of the hotline is to

inform people of possibilities, conditions, regulations and dangers abroad and help the victims (including giving consultations to relatives and close ones). The hotline will also educate the general public by including various media publications. Call statistics will be collected and trends of human trafficking will be analysed. Consultations are given in Estonian, Russian, English, Polish, Ukrainian and Finnish. The hotline +372 6607 320 is open on work-days 10.00–18.00; it is also possible to email the hotline at info@lft.ee.¹⁸

Trends

The number of articles on human trafficking in the media has increased as the media's interest for the topic has grown. In 2014 the NGO Living for Tomorrow organised a competition for finding the best article, radio program or television clip in support of stopping trafficking in humans in the course of the project "Facing economic impact of human trafficking in Baltic states". The purpose of the competition was to acknowledge analysing articles and programs in Estonian media on the topic of human trafficking, which helped explain the seriousness of the problem and raising the awareness of the general public.¹⁹

Recommendations

- Pay more attention to increasing the minorities' knowledge of acts of law by giving them information in their native languages.
- Pay more attention to raising the awareness of young people on trafficking in humans.
- Increase the public's awareness of human trafficking for the purpose of forced labour, of labour law and acts of law by using media channels.
- Raise awareness among officials in contact with minors (including local governments' social workers and child protection officials) for noticing and spotting victims of human trafficking.
- Ban advertising of sexual services, or marketing, in media.

¹⁸ NGO Living for Tomorrow. Available at: <http://www.lft.ee/inimkaubitsemine/projektid-2-1/norra-finantsmehhanism-2009-2014>.

¹⁹ NGO Living for Tomorrow. Available at: <http://www.lft.ee/uudised/i47/>

Prohibition of slavery
and forced labour

HUMAN RIGHTS IN ESTONIA
2014-2015

HUMAN RIGHTS IN ESTONIA
2014-2015

Right to
a fair trial

Right to a fair trial



AUTHOR



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CHAPTER 3

Right to a fair trial

Political developments

There haven't been any great changes in justice in the past two years. Essential developments mainly had to do with accessibility of state legal aid.

The government's action programme¹ initiated in spring of 2015 states as a specific step developing independence of the judicial power – by increasing self organisational right of courts. The government also wants to speed up court proceedings by removing unfounded obstacles for speedy processing of court cases. At the same time, there is desire to extend options before going to court, as well as options outside of court. These are welcome steps, and have been worked on before. The government also plans to analyse options for giving guardianship organisations and NGO's the right to protect the rights of their target groups in court. An analysis of this is due to be published at the Ministry of Justice by the end of 2015. At the moment, only environmental organisations have limited rights to protect the rights of their target groups in courts, but also NGO's who protect human rights (including primarily cases of discrimination), where the victims alone are often not prepared or capable of going to court, definitely need a similar right.

Availability of legal aid is another problem area next to making court proceedings more efficient. The system in place does not sufficiently consider obstacles of various societal groups in accessing legal aid. For example, there

¹ Valitsuse tegevusprogramm [government's action programme]. Available at: <https://valitsus.ee/et/valitsuse-tegevusprogramm>.

have been great problems with legal aid to asylum seekers (the funding of refugee legal aid clinic that operated under Estonian Human Rights Centre was cut, whereby the asylum seekers' opportunities for receiving speedy and good quality legal aid decreased) as well as Russian speaking persons' access to justice. Changing the order of providing legal aid and legal advice so that good quality legal aid is available to everyone is an important prerequisite in providing access to fair trial. It is vital to extend the legal pre-trial counselling, for which the resources are very scant at the moment (130,000 euros in 2015), but for which there is a great demand.

Institutional developments

In 2015 the tenures of the Chancellor of Justice Indrek Teder as well as Gender Equality and Equal Treatment Commissioner Mari-Liis Sepper ended. Riigikogu, upon proposal of the President of the Republic, named a renowned jurist, professor of public law at Tartu University and legal adviser to the president Ülle Madise as the new Chancellor of Justice.

Minister of Social Protection organised a public competition for electing the equal treatment commissioner, organisation and results of which were criticised by NGO's of the area (note: the author himself participated in the competition).² Politician Liisa Pakosta (whose meeting the qualification requirements was severely criticised) who belongs in the same political party as the minister who made the choice, became the new equal treatment commissioner. Election of the commissioner showed that the process has to be de-politicized and more clearly regulated in order to guarantee that a competent and independent person is chosen for the position in the future. In case of the equal treatment commissioner the extremely limited resources continue to be a problem, which hinders with achieving necessary goals.

² Read more about the competition in Sulev Vedler's article "Võrdõigusvoliniku valimine. Skandaali tagamaa. 28 väikest neegrit" [Election of equal treatment Commissioner. Background for the scandal. 28 little black boys.], 23.09.2015. Available at: <http://ekspress.delfi.ee/news/paevauudised/vordoigusvoliniku-valimine-skandaali-tagamaa-28-vaikest-needrit?id=72507531>.

Statistics and surveys

According to European Commission's 2015 EU Justice Scoreboard, which provides an overview of efficiency of judicial proceedings,³ Estonia is among the top or middle in regards to the duration of judicial proceedings, except in cases of insolvency where Estonia stands out in negative light. Compared to the EU average, in judicial proceedings Estonia is among the first in using electronic channels; at the same time the courts spend relatively little money per person on average, making up only 0.2% of the GDP. The number of lawyers per inhabitants is also one of the smallest in the EU. The scoreboard also indicates that people in Estonia perceive justice systems as predominantly independent.

European Union Agency for Fundamental Rights carried out a survey on freedom to conduct business, which also looks at access to justice in Estonia.⁴ The report reveals that inflexible state fees, insufficient information (especially in unofficial languages) and long insolvency proceedings are the main problems for operators.

Court practice

There was a total of four cases related to Article 6 of the European Convention on Human Rights at the European Court of Human Rights in 2014 and up to the end of October of 2015 – in two of them the Court found a breach of the Convention.

The case Jüssi Osawe v. Estonia⁵ had to do with establishment of paternity of a child in parallel with declaring an entry in the birth register void. Even though the court in Strasbourg found that Estonian procedural law, which demands these two procedures be consecutive and not parallel, may be formalistic, it nevertheless did not hinder the applicant from protecting her rights in court.

³ 2015. aasta ELi õigusemõistmise tulemustabel [EU Justice Scoreboard]. Brussels, 9.3.2015. Available at: http://ec.europa.eu/justice/effective-justice/files/justice_scoreboard_2015_et.pdf.

⁴ Read a summary in Maksumaksja. Available at: <http://www.maksumaksjad.ee/modules/smartsection/category.php?categoryid=159>.

⁵ Read analysis: https://www.riigiteataja.ee/kohtuteave/kohtulahendi_analysys/9844.

The applicant herself did not appeal against the first procedure. That is why the court found that Estonia had not breached the Convention and the applicant should have made use of the national legal system.

In the case *Rummi v. Estonia*⁶ the state confiscated in the course of criminal proceedings 100 kg of silver, about 1 kg of gold and 5 diamonds that had allegedly been brought into the country as contraband. The person who had been suspected of smuggling had committed a suicide in the detention facility and therefore the criminal proceedings were discontinued. The appeal against court ruling submitted by the wife of the suspect for retrieving the goods was not satisfied. The suspect's wife appealed to the European Court of Human Rights, which found that since the confiscation decision contained great shortcomings, and the Circuit Court's decision was unfounded, Estonia had breached the applicant's right to a fair trial. The Court also found that there had been a breach of Article 1 of Protocol No. 1 of the Convention (right to property), because the applicant's husband had not been found guilty, which is why it wasn't clear that property had been acquired by criminal means. The Court also considered the length of proceedings (2001–2009) in national courts excessive. The Court awarded the applicant as the heir to third of the property 64,456.96 euros plus interest of the worth of confiscated goods, 8500 euros in non-pecuniary damage and 4000 euros for the proceedings before the Court, from the state of Estonia.

Case of *Veits v. Estonia*⁷ also had to do with confiscation of property. An apartment, which the applicant's grandmother had bought with money gained through crime and had gifted the applicant who had been under age at the time, had been confiscated. Even though the applicant had not been involved in criminal proceedings as a third person (as a result of which her property was confiscated) the Court in Strasbourg found that her interests had been represented via her mother and grandmother who had been subject

⁶ Read analysis: https://www.riigiteataja.ee/kohtuteave/kohtulahendi_analysys/10449.

⁷ Read analysis: https://www.riigiteataja.ee/kohtuteave/kohtulahendi_analysys/10448.

to criminal proceedings. Therefore, state of Estonia had not breached Article 6 of the Convention.

In *Tolmachev v. Estonia*⁸ the applicant had filed a complaint against a 80 euro fine in misdemeanour proceedings for breach of public order. He did not appear at the hearing but sent his counsel and his father. The County Court refused to examine the complaint because the defendant failed to appear at the court. The Circuit Court agreed with the County Court. The European Court of Human Rights did not agree with that as it found that the applicant's wish to be represented by a counsel does not mean that he has given up his right to protection and to a fair trial. The court could have adjourned the hearing of its own initiative or at least tried to solve the case without the applicant's presence. Therefore, the Court of Human Rights found that Estonia had been in breach of Article 6 of the Convention.

Recommendations

- Give advocacy NGO's in the sphere of human rights the right to protect the rights of target groups in court.
- Increase availability of free legal counselling, including for minority groups and asylum seekers.
- Create clear rules for appointing the equal treatment commissioner, which would guarantee that the position is an independent one.
- Consider making paying for the state fee in civil proceedings more flexible.

⁸ Read the analysis at: https://www.riigiteataja.ee/kohtuteave/kohtulahendi_analys/11107.

Right to
a fair trial

HUMAN RIGHTS IN ESTONIA
2014-2015

HUMAN RIGHTS IN ESTONIA
2014-2015

Right to respect for
family and private life

Right to respect for family and private life



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CHAPTER 4

Right to respect for family and private life

Data protection and privacy have remained steadily in focus after the pivotal year of 2013, more articles and news pieces have been published on this topic than in the previous two years put together. Instances of contacting the Data Protection Inspectorate have also increased many times over.¹ The results of 2014 Eurobarometer survey² proved that despite Snowden's disclosures and for example publicising of FinSpy client base Estonians are generally optimistic in digital and privacy matters.

Court practice and legislative developments

2014 brought along two judgments on European level, which had far reaching effects, but in Estonia received rather modest attention. First of these was undoubtedly the Court of Justice of the European Union judgment in *Seitlinger and Digital Rights Ireland*,³ where the Court declared Directive 2006/24/EC on retention of data retroactively invalid. The Court's arguments can be summed up as follows:

¹ Postimees. Andmekaitse pöördumine on paari aastaga viiekordistunud [Applications to the Data Protection Inspectorate have increased five times within a few years]. 16. June 2014.

² Eurobarometer. Special Survey on Safer Internet. Available at: http://open-data.europa.eu/et/data/dataset/S490_64_4_EBS250.

³ Court of Justice of the European Union. Joined cases C-293/12 and C-594/12, *Digital Rights Ireland and Seitlinger and Others*. 8. April 2014.

Directive on retention of data is invalid because:

- it does not provide a definition of a serious criminal offence, thereby rendering proportionality assessment of protection of public interest and infringement of fundamental rights impossible;
- it did not establish a certain procedure for handing over data to surveillance institutions;
- it did not differentiate between data subjects – those about whom there is reasonable doubt, from those who do not have any connection to crime;
- it did not grant data subjects sufficient guarantees and legal remedies in case data is misused;
- the required period for retaining data is not justified.

Directive on retention of data was incorporated into Estonian acts of law with paragraph 1111 of Electronic Communications Act, which, unlike the directive, prescribes a duty to retain data in territory of Estonia (or in some cases in the territory of the EU). It does not contain other additional conditions. European states have had various reactions to the judgment – as of 1 September 2015 the highest court instances⁴ have, due to the judgment, declared retaining data a breach of constitution in Austria, Slovenia, Slovakia, Poland, Romania, the United Kingdom, Bulgaria, Belgium and in the Netherlands. In Estonia the petition to evaluate constitutionality of § 1111 of the Electronic Communications Act has reached the Chancellor of Justice and Ministry of Economic Affairs and Communications, the Ministry of Internal Affairs and the Ministry of Justice have started on an analysis of the current regulation. In response to the petition, the Chancellor of Justice conceded in her memorandum⁵ that § 1111 of the Electronic Communications Act is not in conflict with the constitution and the current international agreements, as also the Digital Rights Ireland judgment does not indicate that gathering and retaining data is in essence a disproportionate breach of persons' right to

⁴ FRA's annual report 2014. Chapter 5.2. Luxembourg. 2015.

⁵ Seisukoht vastuolu puudumise kohta [The stance on absence of controversy]. Chancellor of Justice. Available at: http://oiguskantsler.ee/sites/default/files/field_document2/6iguskantsleri_seisukoht_vastuolu_mittetuvastamise_kohta_elektronilise_side_andmete_kogumine_sideettevotete_poolt.pdf.

respect for family and private life, the Chancellor did, however, concede that, similarly to the European Union Court of Justice that conditions for retaining data should be regulated more clearly and that data subjects should have access to legal remedies.⁶

Invalidity of the directive on retention of data has been used as an argument in case no. 3-1-1-51-14,⁷ where, according to the defendant, the information received as a result of retaining metadata of electronic communication does not belong with allowable evidence in criminal proceedings. Criminal Chamber of the Supreme Court also emphasized that retaining of data as such does not constitute a disproportionate breach and invalidity of the directive does not necessarily result in invalidity of national regulation, as the legislators of the Member States do have certain discretion in achieving the objectives of the directive in national regulation. Therefore, the Digital Rights Ireland judgment did not result in invalidity of the gathered evidence. The necessity for retaining data arose again after the Charlie Hebdo shooting, which took place in Paris on 7 January. In Estonia, the discussion that followed mainly concentrated on multiculturalism and immigration.

In many states, including Estonia, retaining data is the only institution, which, in principle, allows to covertly observe undefined masses of people for safety purposes. Monitoring over the activity of safety institutions is exerted by Security Authorities Surveillance Select Committee of the Riigikogu and – in the extent stated in the Electronic Communications Act – the Technical Surveillance Authority. Since 1 January 2015 the Chancellor of Justice's jurisdiction to carry out monitoring over state institutions that organise surveillance of phone calls and conversations, observation of mail correspondence and who gather, process and use personal data in other covert ways, is regulated more clearly than before.

⁶ Also see Chancellor of Justice's annual report 2014-2015. *Sideandmete kogumine vs eraelu kaitse* [Gathering communications data v. protection of private life]. Available at: <http://oiguskantsler.ee/ylevaade2015/andmekorje>.

⁷ Criminal Chamber of the Supreme Court judgment no. 3-1-1-51-14. 23 February 2015. Available at: <http://www.nc.ee/?id=11&tekst=222577237>.

The Chancellor of Justice's annual report 2014–2015 states: „It is the duty of Chancellor of Justice as an independent institution, to find a balance between institutions responsible for the individual's fundamental rights and freedoms and those responsible for the state's security. The Chancellor also has to consider that people themselves are not aware of the potential breach of their rights in this area and cannot protect themselves on their own initiative. This means that the Chancellor's monitoring in this area has to be efficient, systemic and active, placing herself in the situation of those persons whose rights and freedoms have been breached.“⁸ At the same time, the monitoring is limited as amendments to acts of law do not give Chancellor of Justice access to state secrets or to confidential foreign data.

Riigikogu's Commission and the Data Protection Inspectorate do not have access to state secret either, the Data Protection Inspectorate can acquaint themselves with the in-house information, access to which is limited according to § 35 of the Public Information Act, but this information does not have to do with the content of the work of security institutions. It is also questionable whether the expertise and resources of Riigikogu's Commission are sufficient for carrying out monitoring of content. In actuality, at the moment Estonia does lack objective and sufficient monitoring over the fact whether the local security institutions base their work on principles of necessity and proportionality.

The Chancellor of Justice's jurisdiction in monitoring has thus been unequivocally and precisely determined by an act of law since 2015, but in essence the Chancellor has always had the authority to check that institutions carrying out public tasks, including security institutions, as well as officials, do not breach persons' constitutional rights. As a result of application submitted by Chancellor of Justice in 2013,⁹ the Constitutional Review Chamber of the Supreme Court declared in its 20 March 2014 judgment no. 3-4-1-42-13¹⁰

⁸ Chancellor of Justice. Annual report 2014-2015. Põhiõigused- ja vabadused isikuandmete varjatud töötlemisel [Fundamental rights and freedoms in covert processing of personal data]. Available at: <http://oiguskantsler.ee/ylevaade2015/julgeolekuasutused>.

⁹ See Right to respect for family and private life. Human Rights in Estonia 2013.

¹⁰ Judgment no. 3-4-1-42-13. Available at: <http://www.riigikohus.ee/?id=11&tekst=222571298>.

the paragraph 25¹ (2¹¹) the Code of Criminal Procedure Implementation Act to be in breach of constitution and invalid insofar as it does not set an efficient control system over substance of continuing to not notify of surveillance activities that ended before 1 January 2013. It is an important case as the Supreme Court is interpreting the extremely topical question of whether, to what extent, and on which conditions does a person have the right to be informed of surveillance that has been carried out about him.

Legal remedies meant for persons in the context of surveillance activities are often empty words, as persons who have been under surveillance do not know anything about it. The European Court of Human Rights judgments has been of the opinion in its judgments *Klass*¹², *Ekimdzhiev*¹³, *Weber and Saravia*¹⁴ that in order to guarantee everyone access to efficient legal remedy, it is vital that data subjects are informed of the surveillance that has taken place as soon as it no longer compromises the object of surveillance. The court practice so far has allowed for various interpretations, as in the same judgments it has also been said that because of the secret nature of surveillance activities there can be no right to privacy and right to effective legal remedy to the same extent as in other areas of life. The last year's report on surveillance statistics reveals that in 2014 the surveillance institutions notified 3282 persons of surveillance activities. The state prosecutor's office gave 1500 permits to delay notification of surveillance. The state prosecutor's office applied for court's permit to extend the period until notifying of surveillance on 58 occasions, the court granted permissions to 56 application, denied one application, granted one application partially. Notification of 201 persons was deferred by court's permission.¹⁵

¹¹ Kriminaalmenetluse seaduse rakendamise seadus [Code of Criminal Procedure Implementation Act]. RT I. 26.03.2014, 11. Available at: <https://www.riigiteataja.ee/akt/126032014011>.

¹² ECtHR. *Klass and Others v. Germany*. 6 September 1978. Application no. 5029/71.

¹³ ECtHR. *The Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria*. 28 June 2007. Application no. 62540/00.

¹⁴ ECtHR, *Weber and Saravia v. Germany*. 29 June 2006. Application no. 54934/00.

¹⁵ Jälitustegevuse statistika 2014 [surveillance statistics]. Ministry of Justice. Available at: http://www.kriminaalpoliitika.ee/sites/www.kriminaalpoliitika.ee/files/elfinder/dokumentid/jalitusstatistika_aruanne_2014_2.pdf.

On 10 April 2014 the European Court of Human Rights sent Estonia the case Lütsepp v. Estonia¹⁶ for submitting arguments, the subject of which was notification of surveillance. Privacy International and Article 19, as interested third parties, published a joint statement.¹⁷ In their submission they emphasized the fact that the Court ought to take a step further and admit that duty to notify is an inescapable requirement for proportionality of surveillance today, regardless of other prescribed guarantees, whereas, it is emphasized, that this duty cannot be absolute and risks involved with notifying have to be weighed at each individual case. According to various data, more than half a million Estonians actively use Facebook, which means that their data is retained on the territory of the United States according to the so called Safe Harbour Agreement. Safe Harbour requires that US undertakings involved with it guarantee the protection of data on the same level as the EU law does, whereas this agreement was not binding for US offices, including the intelligence agencies.

Therefore, despite the agreement, undertakings such as Facebook forwarded their data to, for example the NSA, according to national law. The data of European citizens was forwarded to Facebook's data centres by its subsidiary located in Ireland, while Ireland's Data Protection Commissioner had no control over this process because it had been approved by the Commission with the Safe Harbour agreement. On 6 October 2015 the European Court of Justice declared the Safe Harbour Agreement invalid in judgment of the case Schrems vs Data Protection Commissioner¹⁸ because it did not provide citizens of the EU protection from breach of privacy such as the NSA mass surveillance programmes. Similarly to the Digital Rights Ireland judgment this judgment also applies retroactively, which opens up opportunities for interesting court practice in Europe as well as in the US.

¹⁶ ECtHR. Communicated case of Lütsepp v. Estonia. Available at: <http://hudoc.echr.coe.int/eng?i=001-142949>.

¹⁷ Privacy International. Article 19. Submission. ECHR: Luutsepp v Estonia. Available at: <https://www.article19.org/resources.php/resource/37720/en/echr:-luutsepp-v-estonia>.

¹⁸ European Court of Justice. Judgment in case C-362/14, Maxmillian Schrems v. Data Protection Commissioner. 6 October 2015.

Noteworthy public discussions

The second important European Court of Justice Judgment in case *Google Spain*¹⁹ brought along a relatively lively discussion in Estonia as well. The Court said that the search engine has the obligation to remove data. In case of searches made via a search engine the right to protection of private data and protection of private life generally outweigh the economic interest of the manager of the search engine as well as the public's interest in receiving information. The right to be forgotten is a compelling and controversial concept from legal, sociological as well as cultural point of view, therefore the discussion surrounding it has been theoretical and hypothetical, and court practice nor amendments to acts of law have not followed in Estonia. However, according to the judgment, Estonian citizens also have the right to demand international internet operators to delete information about them. Right to be forgotten is also contained in the European data protection reform package. In 2012 and 2013 it was relatively critically analysed by heads of the Data Protection Inspectorate²⁰ as well as NGO Estonian Internet Community (MTÜ Eesti Interneti Kogukond).²¹ It has been seen as a measure for re-writing the history; whereas the European Union Agency for Network and Information Security (ENISA) has stated that the right to be forgotten is nearly impossible to realize. Yet, the right to be forgotten gives the regular citizen, who so far has been relatively unarmed with tools for defending himself, some control over his identity in cyber space.

Media paid a lot of attention to the FinFisher case. In August of 2014 an unknown hacker broke into servers of Gamma International who produce FinFisher spyware and leaked the information he found in the internet.²²

¹⁹ European Court of Justice. Judgment in case C-131/12: *Google Spain SL, Google Inc. v. Agencia de Protección de Datos (AEPD) Mario Costeja González*. 13 May 2014.

²⁰ Häbistatud saavad võimaluse netist kaduda [The disgraced have the chance to disappear from the internet]. Eesti Ekspress' article on the Data Protection Inspectorate's web page. 14 March 2013. Available at: <http://www.aki.ee/et/uudised/meediakajastus/habistatud-saavad-voimaluse-netist-kaduda>.

²¹ Loho, E. Tsensuur andmekaitse maski taga [Censorship behind the mask of data protection]. Õhtuleht. 11 June 2012.

²² Wikileaks. SpyFiles4. FinSpy Customers. 15 August 2014. Available at: <https://wikileaks.org/spyfiles4/customers.html>.

Among other things it became apparent that Estonia had bought four FinFisher licences. FinFisher spyware is a trojan, which allows to observe activity of the infected computer in real time.²³

Gamma International has a bad reputation among human rights lawyers – in 2013 Privacy International filed a complaint with the OECD over Gamma International's activities. In February of 2015 the OECD admitted that since Gamma International's internal regulation lacks guarantees against breaches of human rights, the producer of spyware has not acted in good faith and has breached the UN Guiding Principles on Business and Human Rights' and the OECD Guidelines for Responsible Business Conduct. The FinFisher²⁴ leak was commented on laconically by Peep Aru, the Chairman of Security Authorities Surveillance Select Committee of the Riigikogu, who explained that the Committee lacked data about unlawful surveillance activity and that surveillance activity was protected by Estonian state secret. The same month Eesti Päevaleht wrote that according to the former employee the IT and Development Centre of Ministry of the Interior uses FinSpy spyware in order to observe its employers. Subsequent to this, the Minister of Internal Affairs Hanno Pevkur initiated a special audit, which failed to prove misuse of spyware.

Summary

2014 brought about important court judgment on European level as well as in Estonia, we were faced with the question of whether and how much a person can have a say in forming his or her cyber identity, whose metadata (and on which conditions) can be collected, what constitutes proportionate surveillance in information society. At the same time there is a situation where in

²³ Mida suudab FinFisher? [What can FinFisher do?] Eesti Päevaleht. no. 156. 14 August 2014; Inimõiguste kohtu hinnangul on FinFisher kasutamine õigustatud üksnes äärmisel vajadusel [In the ECtHR's view use of FinFisher is only justifiable in case of extreme need]. Eesti Päevaleht. Available at: <http://epl.delfi.ee/news/eesti/inimoiguste-kohtu-hinnangul-on-finfisher-kasutamine-ogustatud-uksnes-aarmisel-vajadusel?id=69536239>,

²⁴ SMIT-i audit ei tuvastanud nuhkvara kasutamist [Audit of IT and Development Centre of Ministry of the Interior did not reveal use of spyware]. ERR News. 29 September 2014. Available at: <http://uudised.err.ee/v/eesti/f67bef94-0e84-4d12-a99e-baff776c4b2f>.

essence none of the institutions – neither the Data Protection Inspectorate, Security Authorities Surveillance Select Committee of the Riigikogu or the Chancellor of Justice – have sufficient jurisdiction to monitor activities of surveillance institutions. In a situation where there is essentially no effective monitoring, it is particularly important that persons are informed of surveillance they had been subjected to once the surveillance has ended. The Supreme Court has also published the opinion that the duty to inform is an important guarantee of right to privacy, regardless of the year that surveillance took place.

Recommendations

- Extend the Chancellor of Justice's and/or the Data Protection Inspectorate's jurisdiction conducting monitoring over security institutions, or found a special independent organ comprised of experts.
- Critically review the order of retaining metadata of electronic communications.
- Have Security Authorities Surveillance Select Committee of the Riigikogu initiate investigation of buying and using spyware licences.

Right to respect for
family and private life

HUMAN RIGHTS IN ESTONIA
2014-2015

HUMAN RIGHTS IN ESTONIA
2014-2015

Freedom of
expression

Freedom of expression



AUTHOR



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CHAPTER 5

Freedom of expression

Political and institutional developments

Freedom of expression is stated in Article 10 of the European Convention on Human Rights (ECHR) and in paragraphs 44–46 of the Constitution of the Republic of Estonia. Freedom of expression is important in itself as well as a prerequisite for exercising other freedoms, and as a basis for a functioning democracy, and entails the freedom to express one's opinion and impart information – whether in writing, verbally, as images, or by other means – and the right to obtain information. Freedom of expression includes acts of law regarding media, access to information, and data protection. Freedom of expression can be restricted in certain circumstances and on certain conditions for the protection of other rights (for example, privacy), for security considerations, for curtailing hate speech, or for other reasons, such as broadcasting licensing.

Also for 2014 and 2015 it can be said that freedom of expression in Estonia is generally in a good state, and has been for a long time, which means that the state of freedom of expression is sufficiently stable. The media sphere in Estonia is rather diverse for such a small state. Internet media is consumed in large quantities. There is little political pressure on the media when compared to other states in the world. This does not mean there are no problems – and they have been covered in the annual human rights reports in previous years. These problems are partly related to issues in other fields, such as discrimination, transparency of activities of political parties or using tax payers' money for political propaganda. In the current period there have been emotional and oftentimes fierce debate on various

topics (the cohabitation act and refugees), which have indicated possible negative consequences to freedom of expression if acts of law, for example, regarding hate speech, are lacking.

In 2014 international attention was drawn to the fact that Estonia arrested an Italian journalist (the ex-member of European Parliament), who carried a ban for entering the country as he is being suspected of pro-Kremlin activities, activities against state. A few Russian journalists were arrested for the same reason. There was concern for general increase in propaganda in Russian media, which was partly directly aimed at the Russian-speaking population in Estonia. It is being discussed on European Union level whether and how the EU could support the correct Russian language media and independent news in Europe and Russia. Creation of the new Russian language television channel with the Estonian Public Broadcasting is an important achievement. The channel started broadcasting on 28 September 2015.

An important event, which was covered in the previous report and was also topical in 2014 and 2015 was the European Court of Human Rights judgment in *Delfi v. Republic of Estonia*.¹ The final solution in the case came on 16 June 2015 when the Grand Chamber confirmed the first judgment of the ECtHR, in which Estonia was acquitted.

Legislative developments

The Act amending the Gambling Act, the Media Services Act and the Advertising Act was announced in February of 2015. The amendment mostly has to do with protection of gamblers and it concerns media only with regards to sponsor messages in the audio-visual media.

The Estonian Technical Surveillance Authority had adopted the tasks of the Ministry of Culture in the field of media with the 2013 amendments to act of law. The amendments to Media Services Act came into force in 2014. The

¹ *Delfi AS v. Estonia*. Application no. 64569/09. 16.06.2015. Available at: <http://hudoc.echr.coe.int/eng?i=001-155105>.

new system is generally in accordance with the norm in Europe, as regulation of communication ought to be the jurisdiction of an independent institution rather than a ministry.

Amendments to paragraphs against inciting hatred (with the aim of bringing regulation more into concordance with the Council of the European Union framework decision against racism and xenophobia), which have also been discussed at round tables organised by Ministry of Justice for the past few years, were not adopted in 2014, nor have they been until now in 2015. The paragraph was amended only insofar as criminal organisations are no longer specifically mentioned. Incitement of hatred was even more sharply under political scrutiny in the summer of 2015 in regards to the refugee debate. Especially the internet media carried messages, which according to principles accepted in several European states clearly crossed the line into hate speech. In the beginning of September, for example, the Chairman of European Union Affairs Committee of the Riigikogu said that there ought to be punishment for hate speech, but the Chief Public Prosecutor deemed it necessary to review the acts of law that are in force.²

It was discussed at the hate speech debate already in summer of 2014 that the definition of public space defined in acts of law should be reassessed in order to clarify whether it could include the internet. The acting Minister of Justice Reinsalu mentioned in September of 2015 that the previously prepared draft act should be looked at again and discussed with various parties. Yet he has also stated that tolerance is hard to construct in criminal justice.³ Therefore, there is hope that necessary amendments to acts of law will be processed, but at the moment it is impossible to say when it could happen.

² „Palling: vihakõne pidamise eest tuleb ette näha karistus“ [Palling: hate speech must be punished]. Postimees. 7.09.2015. Available at: <http://www.postimees.ee/3319285/palling-vihakone-pidamise-eest-tuleb-ette-naha-karistus>.

³ „Reinsalu vihakõnest: sallivust on kriminaalõiguslikult väga raske konstrueerida“ [Reinsalu on hate speech: tolerance is hard to construct in terms of criminal law]. ERR news. 8.09.2015. Available at: <http://uudised.err.ee/v/eeesti/337c459a-39e1-4599-adf4-194131f93558/reinsalu-vihakonest-sallivust-on-kriminaalõiguslikult-vaaga-raske-konstrueerida>.

Court practice

The Supreme Court did not make any decision on constitutional review regarding freedom of expression in 2014. There was a certain link to the topic in the judgment of 20 March 2014 in case 3-4-1-42-13 initiated by the Chancellor of Justice.⁴ The Supreme Court decided to declare § 251 (2) of the Code of Criminal Procedure Implementation Act unconstitutional insofar as it does not guarantee an effective monitoring system in regard to justifiability of certain surveillance activities. The case is connected to freedom of expression in the aspect that has to do with access to information. The court states that: “with surveillance activities the state processes personal data, doing so by mostly keeping it a secret from the data subject, or by concealing the fact of data processing as well as its content from the person.”⁵ Although it is unavoidable in the situation it should not mean there are no rules established for the protection of persons. Limitations to rights in democratic society have to be necessary and not distort the essence of freedoms and rights that are being limited. Every breach of a fundamental right has to adhere to all norms of the constitution, and be formally and materially in accordance with the constitution.

Civil Chamber of the Supreme Court decided on 25 May 2015 in case no. 3-2-1-55-15 Eerik-Niiles Kross’ action against Äripäev.⁶ The application had to do with refutation of untrue data or determining whether publishing value judgments is against the law, and compensation for non-patrimonial damage. The Supreme Court agreed with the County Court, but altered the reasoning to an extent. The Supreme Court’s appraisal that the action can also be secured if there has already been significant damage to the reputation of the applicant by publishing the claims / value judgments and a negative opinion has been created with the public, is of interest.

⁴ Lahendid [Judgments]. Supreme Court. Constitutional Review Chamber. Judgment. Case no. 3-4-1-42-13. Available at: <http://www.riigikohus.ee/?id=11&tekst=222571298>.

⁵ Ibid. Section 39.

⁶ Lahendid [Judgments]. Supreme Court. Civil Chamber of the Supreme Court. Judgment. Case no. 3-2-1-55-15. Available at: <http://www.riigikohus.ee/?id=11&tekst=RK/3-2-1-55-15>.

The court says that if untrue statements or unfitting value judgments have been published about the person, it is possible to ban the respondent from publishing such statements until a court judgment has been reached, in order to prevent increase of damage. At the same time the court emphasizes that such limitation of freedom of expression aimed at the future must only be possible in special cases.⁷

The second judgment on the topic in the Civil Chamber of the Supreme Court was made on 18 February 2015 in case no 3-2-1-159-14,⁸ where Tallin Circuit Court's judgment was quashed and the case was sent to a new hearing. The plaintiff Oleg Kozlov, who is bearing a life sentence claimed that Kanal 2 in its 26 April 2013 television show „Eluaegsed“ demeaned his dignity and breached his right to family life and privacy. According to the plaintiff the television show was one-sided and extremely negative. The Supreme Court mainly had to do with the plaintiff's claim for damages. The court mentions that demeaning the dignity of a person with a value judgment is against the law according to § 1046 (1) of the Law of Obligation Act if the value judgment is unsuitable, which may be due to its unfoundedness or the way of expressing it.

The Delfi case at the ECtHR, which the previous annual report discussed more at length, remained topical. To be exact, the European Court of Human Rights judgment – which supported Estonian courts' decision that Delfi was responsible for the internet posts – was appealed to the Grand Chamber. This is a fairly unusual measure, which is used if the Court's judgment establishes an important precedent. Delfi case is an important one as it is the first international court judgment on internet comments. The judgment⁹ was made in June of 2015 and the Grand Chamber upheld the ECtHR's (and thereby also the Estonian courts') judgment.

⁷ Ibid. Section 11.

⁸ Lahendid [Judgments]. Supreme Court. Civil Chamber of Supreme Court. Judgment. Case no. 3-2-1-159-14. Available at: <http://www.riigikohus.ee/?id=11&tekst=RK/3-2-1-159-14>.

⁹ Delfi AS v. Estonia. Application 64569/09. 16.06.2015. Available at: <http://hudoc.echr.coe.int/eng?i=001-155105>.

Statistics and surveys

In addition to acts of law and the court system Estonia also has a system based on self regulation. Complaints can be filed with Avaliku Sõna Nõukogu or the Estonian Press Council. In addition to the print media, certain broadcasting channels and the internet media (Delfi) also participate in the system. The number of complaints remains the same year on year. In 2014 there were 51 complaints made and 43 decisions (in 2013 those figures were respectively 56 and 52). As of 30 June 2015 there had been 34 complaints. The ratio between acquittals and condemning decisions also remains largely the same: in 2014 there were 21 acquittals and 22 condemning decisions, in 2015 so far there have been 13 acquittals and 17 condemning decisions (in 2013 respectively 25 and 27). The only slightly more noticeable change compared to the previous years has been the number of previously made agreements – 7 in 2014, and 3 so far in 2015. There had been fewer of them before, or none at all.¹⁰ Looking at the statistics of various years, it could be said the system is generally well known and is working. Avaliku Sõna Nõukogu deals with questions of media ethics and processes complaints in the area. In February of 2015 the statistics for 2014 was not yet available on their website. In 2013 Avaliku Sõna Nõukogu had 30 complaints – 10 dismissals and 8 condemning decisions.¹¹ Avaliku Sõna Nõukogu enables making public addresses on media topics on their website. People are generally aware of existence of self regulation and the organs process the cases submitted in the foreseen manner.

The discussion on privacy also continued in 2014 and 2015. The Estonian Institute of Human Rights carried out an extensive survey in 2014 on the views of the residents of Estonia on privacy, especially regarding social media. The survey was discussed at the human rights conference in December of

¹⁰ Statistika 2007–2015 [Statistics 2007–2015]. Estonian Press Council. Available at: <http://www.eall.ee/pressinoukogu/statistika.html>. (Visited 11 September 2015).

¹¹ Statistika [Statistics] (2003–2013). Avaliku Sõna Nõukogu. Available at: <http://www.asn.org.ee/statistika.html>. (Visited 11 September 2015). No newer data available.

2014. The survey showed that people place a lot of emphasis on the person's responsibility in using the new media and social networks.¹²

Good practices

Acts of law in Estonia and the self regulation is in accordance with the rules in Europe. A good practice characteristic to Estonia is the continued access to information via e-governance (e-riik). International interest has been shown for the fact that in Estonia people have easy access to checking whether various institutions have looked at their data.

Noteworthy public discussions and trends

A lot of discussion in Estonian society arose from the Civil Partnership Act (Cohabitation Act), which Riigikogu adopted in October. The debate was heated at times. This act has been named the act of law processed with the most passion in Estonia since regaining independence.¹³ The media allowed to express various opinions and in general mediated various points of view in a professional manner. In 2015 the debate is even more intense regarding refugees, in media, as well as in political institutions. There have been several speeches made in this debate, which have been close to hate speech or crossed the lines, which have been set in most European democracies. The main problem are the internet comments. The tone used in internet environments is often very rough and insulting. It is clear to see with controversial topics. Even though media publications have created various systems for taking down unsuitable comments and attempt to improve communication culture, there have nevertheless been clearly inappropriate comments.

It has to be remembered that freedom of expression also means freedom to express negative and even to an extent information dividing society, if it does

¹² Privaatsus inimõigusena ja igapäevatehnoloogiad [Privacy as human right and everyday technologies]. Estonian Institute of Human Rights. Available at: <http://www.eihr.ee/privaatsus-inimoigusena-ja-igapaevatehnoloogiad/>.

¹³ Arvamus. „Allar Jõks ja Mart Luik: kõige vastuolulisema seaduse aasta” [Opinion. Allar Jõks and Mart Luik: the year of the most controversial act of law]. Postimees. 17.02.2015. Available at: <http://pluss.postimees.ee/3095005/allar-joks-ja-mart-luik-koige-vastuolulisema-seaduse-aasta>.

not cross the line and become inciting hatred and violence. Therefore, fierce debate on controversial topics may seem negative, but could still be a sign that the freedom of expression is working. At the same time, this positive approach to free media is only possible if certain lines are applied. Creating a better communication culture is a long term process, but unfortunately no remarkable process can be seen in that in Estonia. As a short term solution, a realistic option of punishing inciting violence should be created.

A worrying trend in the current period is the increased propaganda in Russian media. In connection to the Crimean occupation by Russia and Russia's military activities in Eastern Ukraine the media in Russia has become more and more propagandistic; the independent media is limited, public criticism of the government is more difficult. It is known that a large portion of the Russian-speaking residents consume largely Russian media, which means that they live in a different media landscape than most of the Estonian residents and take part in the propagandistic and partly hatred and violence inciting tone of the Russian media. As propaganda is partly directed at Estonia and other Baltic state, this media situation is a worry, although, so far, not much of an effect on the residents has been detected.

The case of the detained (in December, for a short time, until leaving the country) Italian journalist was also directly linked to Kremlin propaganda as the journalist was known as Kremlin-minded and suspected of coming to Estonia to participate in Russian operations of influence. The journalist (who is also an ex member of the European Parliament) initiated court proceedings against the state of Estonia regarding the ban to enter the state, in January of 2015.

Recommendation

- The public discussions on controversial topics in the past few years, such as the Civil Partnership Act and refugees, have shown a need for clearer rules on hate speech. We recommend reviewing the relevant acts of law in the near future and make necessary amendments to acts of law.

Freedom of assembly and association



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CHAPTER 6

Freedom of assembly and association

Freedom of assembly and freedom of association are close concepts, which are protected by the Constitution of the Republic of Estonia so that everyone can come together peacefully, hold meetings and form associations. In a wider sense these fundamental rights also mean the opportunity to stand up for individuals' interest and speak up in politics, thereby guaranteeing pluralism that is necessary for democracy.¹

Political and institutional developments

The main events in the period under discussion took place in livening up of political competition, which was given an extra impulse by Rahvakogu in 2013. The amendment² to act of law, which came into force in January of 2014 regarding reduction in minimum number of members brought two new political parties to the scene – the Free Party, which was largely created on the basis of members that left the Union of Pro Patria and Res Publica, and the Party of People's Unity (RÜE), which was headed by Kristiina Ojuland who had been expelled from the Reform Party.³ The Free Party made it into the parliament at the 2015 general elections with nearly 9% of votes.⁴ The People's Party of Unity and Estonian Greens, which had made it into Riigikogu earlier were left out with 0.4% and 0.9% of votes respectively. Then again, the Conservative

¹ Kask, O. and others. PS § 47, 48. Eesti Vabariigi põhiseadus. Kommenteeritud väljaanne [Commented issue of the Constitution of the Republic of Estonia]. Tallinn: Juura 2012.

² Erakonnaseadus [Political Parties Act]. State Gazette I, 05.02.2014, 1.

³ <https://ariregister.rik.ee/erakonnad.py> (30.09.2015).

⁴ <http://rk2015.vvk.ee/voting-results.html> (30.09.2015).

People's Party of Estonia, which had been created from Rahvaliid returned successfully, gaining 7 seats with 8.1% of the votes. Therefore, instead of the four parties of the previous composition of the Riigikogu, there are again six parties, and the phenomenon of cartel parties is disintegrating.

With the new composition of the Riigikogu the provisions of the Political Parties Act on allocations from the state budget also came into force in 2015. If earlier the parties that did not exceed election threshold received tax payers' support upon gathering 1 or 4% of the votes respectively 9578 and 15,978 euros, then now the amount for gathering 2–3% of votes is 30,000 euros, with 3–4% of the votes 60,000, and 4–5% of the votes 100,000 euros a year.

The life of political parties has not become easier, however, since the increasingly active Committee for monitoring political parties' financing (ERJK) has been bolder at taking to task those who operate on the borders of the law. For example, several precepts were made about using the tax payers' money on election campaign advertising in Tallinn and Valga. Matters have mostly been taken to court, the debate is ongoing.⁵ Among other things the ERJK analysed whether the activity of Foundation for Protecting Family and Tradition (SAPTK) before the elections qualifies as forbidden donation, as the association produced and distributed materials recommending certain candidates.⁶ Such practice has not been conducted by a NGO in Estonia before.

Legislative developments

In March of 2014 another proposal of Rahvakogu became law, according to which the parliament is obliged to hear collective applications with at least 1000 signatures that meet necessary requirements.⁷ This opportunity was taken advantage of on a few occasions over the year and a half, absence of a convenient digital signature seemed to remain one of the obstacles.

⁵ <http://www.erjk.ee/et/dokumendiregister/otsused-ja-ettekirjutused> (30.09.2015).

⁶ Jaakson, T. „Komisjon: SAPTK-i voldikute näol oli tegu valimisreklaami ja keelatud annetusega“ [Commission: SAPTK's brochures were voting advertising and forbidden donations]. AK 18.03.2015.

⁷ Märgukirjale ja selgitustaotlusele vastamise seadus [Response to Memoranda and Requests for Explanations Act]. State Gazette I, 01.04.2014, 1.

On 1 July 2014 the new Law Enforcement Act finally came into force, which also contains provisions on organizing a public meeting.⁸ More has been written on this act of law, which has been in preparation and in waiting to be brought into force, in 2011 and 2013 annual human rights reports.

In 2015, after years of debate the rather much changed § 11 of the Income Tax Act came into force, which makes application for income tax incentive for NGOs somewhat clearer and certainly faster and less bureaucratic.⁹ The act also clarified several other grey areas regarding statuses of NGOs, among them the issue of giving another legal person assets in the course of conducting objective specified in the articles of association, which is now more clearly exempt from tax. The new government also (in order to fulfil its promises) further reduced the upper limit of private persons' taxable income (from 1920 euros to 1200).¹⁰ The incentive for natural persons to make donations has thus been brought to a minimum with tax policy.

Court practice

In 2014 the Civil Chamber of the Supreme Court made a somewhat unexpected, but a logical judgment, as for several decades nobody had challenged the requirement in the Non-profit Associations Act that the name of the non-profit association shall contain an appendage referring to the fact that this is an association of persons.¹¹ The applicant used the abbreviation MTÜ (the English equivalent for NGO), which the registration department of the County Court nor the Circuit Court found suitable. The Supreme Court, however, found that although unlike the Commercial Code the Non-profit Associations Act does not establish using abbreviations as part of the name, such interpretation cannot be excluded. In the appraisal of the Civil Chamber the abbreviation MTÜ is in the orthological dictionary as well as general use, therefore it refers to an association of people and is permissible.

⁸ Korrakaitseadus [Law Enforcement Act]. State Gazette I, 13.03.2014, 4.

⁹ Tulumaksuseadus [Income Tax Act]. State Gazette I, 11.07.2014, 5.

¹⁰ Tulumaksuseadus [Income Tax Act]. State Gazette I, 30.06.2015, 1.

¹¹ Civil Chamber of the Supreme Court 3-2-1-47-14.

In May of 2015 the Administrative Law Chamber of the Supreme Court made the first substantive judgment on interpreting § 11 of the Income Tax Law, or the meaning of “public interest” and “charitable”.¹² The judgment annulled deletion of Arstide Täienduskoolituse Fond (fund for doctors’ in-service training) from the list of non-profit associations, foundations and religious associations, which may open the possibility for other associations that have come across as business associations so far, in health care as well as other areas that have constitutional protection.

The Supreme Court, upon the application of Chancellor of Justice,¹³ found in March of 2015 that three day giving notice of support strike is not lawful.¹⁴ The topic has been up for discussion for years (see annual report for human rights 2013) and although the Constitutional Review Chamber gave the parliament four months to bring the § 18 (3) of the Collective Labour Dispute Resolution Act into concordance with the constitution, it was, nevertheless, not done. As a result, since July of 2015, after the provision was repealed, there is no term for advance notice at all.

Statistics and surveys

Several survey reports were published within the period under focus: Tallinn University published the survey conducted every five years on institutionalization of citizen initiative,¹⁵ Linnalabor in cooperation with Kodukant analysed the current situation of communities,¹⁶ Praxis researched participation in voluntary activity.¹⁷

¹² Administrative Law Chamber of the Supreme Court 3-3-1-10-15.

¹³ Toetusstreigist ette teatamise tähtaeg [term for advance notice for support strike]. Chancellor of Justice application no. 15, 05.11.2015.

¹⁴ Constitutional Committee of the Riigikogu 3-4-1-49-14.

¹⁵ Rikman, E. and others. „Kodanikualgatuse institutsionaliseerumine Eestis 2014” [Institutionalisation of citizen initiative in Estonia 2014]. Tallinna University. 2014.

¹⁶ Vihma, P., Lippus, M. „Uuringuraport “Eesti kogukondade hetkeseis” [Research report. The situation of communities in Estonia at the moment.]. Linnalabor. Kodukant. 2014.

¹⁷ Uus, M., Hinsberg, H., Mänd, T., Batueva, V. Vabatahtlikus tegevuses osalemine Eestis 2013 [Participation in voluntary activities in Estonia 2013]. Poliit.

All these reports, along with the analysis of the financial year, which had not been done before, were gathered together by EMSL for an overview of the current situation of the civil society.¹⁸ The overview revealed a standstill as well as clear regression in several important figures: within a decade the average number of members of NGOs has been halved, and the number of active members is three times smaller. The income of half the NGOs is less than 5500 euros a year, the income of quarter of the NGOs is more than 11,000 euros a year. Half the NGOs have up to two employees, 4% have more than three employees, around a thousand NGOs pay their management board. In other words, of nearly 10,000 NGOs operating in public interest that have been registered, only probably one or two thousand are active.

It cannot be said that civil activity is on decline, though in institutional form it is true. It can be presumed that citizens are more active in one-off and informal networks.

A standstill was also detected in the 2014 Freedom House report, which also stated that Estonia is a state that has strong democracy, is in second place among post-communist states, after Slovenia.¹⁹ Estonia has been stuck on the same level for ten years and the problem areas are the level of democracy of governance and corruption. Democracy rating has fallen for many states in the world, which, however, is no excuse if no effort is put in for democracy, said the authors.²⁰

Good practices

In September of 2015 the Let's Do It Foundation in cooperation with the Estonian Debating Society and several other partners, and with the support of EEA NGO Fund initiated a new platform for community e-decision-making Citizen OS, which allows anyone to initiate discussions, participate in them

¹⁸ Kübar, U., Rammo A. „23 küsimust Eesti vabakonna kohta“ [23 questions about civil society in Estonia]. Hea Kodanik 5 (63). EMSL. 2014.

¹⁹ „Nations in Transit.” Freedom House. 2015.

²⁰ Vinni, R. „Eesti demokraatia areng tammub paigal” [Estonian democracy is standing still]. Vikerraadio päevakommentaar [radio commentary]. 21.08.15.

and digitally sign decisions.²¹ The environment opens up new opportunities for using the aforementioned petition rights as well as hopefully making signing the minutes of general meetings of NGOs and the list of participants more convenient. The latter is still obligatory at making an application for register entry.

In June of 2014 the government authorized the international Open Governance Partnership initiative Action Plan for Estonia.²² Activities for inclusion, transparency and developing public services are intended for increasing the quality of governance, however, the interim report published in September of 2015 has not yet shown remarkable progress.²³ To be fair, the funding of the action plan is insufficient and significant change shouldn't be expected.

Noteworthy public discussions

One of the greatest public challenges for civil society and the government was the Work Capacity Reform, where the protests of organizations of disabled persons were not listened to, but the government itself ended up delaying the reform plan. Several speakers for disabled persons run as a candidate for the parliament on the same steam.

As a separate topic before the general elections there was discussion on the openness and inclusion of the parliament itself, where the public outrage stopped some of the ideas that were born from the idea of being closed off (destruction of committee's session recordings), but the new composition has not brought this topic up yet.²⁴

²¹ <https://citizenos.com> (30.09.2015).

²² Avatud Valitsemise Partnerlus [Open governance partnership]. Government Office. <https://riigikantslei.ee/et/avatud-valitsemise-partnerlus> (30.09.2015).

²³ „Eesti tegevuskava avatud valitsemise partnerluses osalemisel. Tegevuskava täitmise vahearuanne“ [Open Governance Partnership initiative Action Plan for Estonia. Interim report on fulfilling the action plan]. Government Office. 2015.

²⁴ Avatud valitsemise partnerluse ümarlaua pöördumine Riigikogule [Open Governance Partnership round-table's address to Riigikogu]. 23.01.15.

In 2014 as well as in 2015 the society was included in extremely polarizing debates on fundamental rights as well as democracy in the wider sense: first the Civil Partnership Act and then the issue of receiving refugees. In both cases political parties and NGOs formed into irreconcilable sides, and it can be expected that distrust of members of the society for their fellow citizens, NGOs as well as the public authority increased.

Although it would be founded in both cases, it is too easy to place blame on scarce and belated government communication. It is a much more interesting question – which will hopefully be further researched in the future – why guaranteeing the rights of a very small number of people created such a passionate reaction and hate speech in the society.

Trends

Two cases concerning donations can be considered some kind of weather vane if not a trend. In the course of the aforementioned discussions another interesting question arose on the topic of accountability of NGOs: how transparent and public should a private initiative civil organisation be? The extremely successful SAPTK led by Varro Vooglaid became a specific example in 2014, which refused to publicize the names of persons who had made donations to it.²⁵

On the same topic of donations an unusual move was made by Swedbank, which publicly apologized at the end of 2014 and asked back the 5000 euros it had donated to Aadu Luukas Foundation when it became apparent that the same SAPTK, which does not share the values of the Swedish bank, which among other things include equal opportunities and non-discrimination, received Luukas' mission award.

²⁵ Kübar, U. „Hooplevate ja salatsevate annetajate vahel“ [Between the bragging and the secretive donors]. Vikerraadio päevakommentaar [radio commentary]. 1.08.2014. Available at: <http://uudised.err.ee/v/arvamus/acf67653-0374-44f1-8b30-2d8c8e268dd1>.

Although there hadn't been notable scandals in regards to donating for years, in 2014 EMSL put together the good practice for gathering donations,²⁶ joining of which is already presumed also by Swedbank from candidates in their donation environment.

Recommendations

- Even if the stagnant project of codification of associations law²⁷ doesn't come to pass in the planned extent, improvement of the legal environment cannot be limited to competitive business environment, for which a steering group was called together in 2015.²⁸ Acts of law regarding NGOs and foundations have changed more slowly than the Commercial Code and are therefore partially obsolete. There are also excessive regulations and needless bureaucracy – in organising internal matters of associations as well as in communicating with the departments of the register.
- The public sector has to be persuaded to apply the guidance material of financing NGOs more actively in order to achieve more transparency and decrease bureaucracy and danger of corruption.²⁹

²⁶ "Annetuste kogumise hea tava" [good practice for gathering donations]. Available at: <http://ngo.ee/annetamine> (30.09.2015).

²⁷ Ühinguõiguse revisjoni ettevalmistamine [preparation for revision of association law]. Ministry of Justice. Available at: <http://www.just.ee/et/eesmargid-tegevused/oiguspoliitika/parem-oigusloome/uhinguoiguse-revisjoni-ettevalmistamine> (30.09.2015).

²⁸ Available at: <http://adr.rik.ee/jm/dokument/4425340> (30.09.2015).

²⁹ Rahastamine [Financing]. Ministry of the Interior. <https://www.siseministeerium.ee/et/tegevusvaldkonnad/kodanikuühiskond/rahastamine> (30.09.2015).

HUMAN RIGHTS IN ESTONIA
2014-2015

Prohibition of
discrimination

Prohibition of discrimination



AUTHOR



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CHAPTER 7

Prohibition of discrimination

This chapter gives an overview of general developments in equal treatment in Estonia and takes the principles set in the Constitution of Republic of Estonia and the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms, according to which no one should be discriminated against because of attributes given or for belonging to a group, as its basis. As the situation of national minorities, LGBTI persons, refugees and asylum seekers as well as protection of rights of children and persons with disabilities in Estonia are discussed more closely in other chapters, this chapter focuses in more detail on gender equality (among other topics).

Political and institutional developments

The period under focus included elections as well as forming of coalitions. In March of 2014 the Social Democratic Party and the Reform Party formed the government. Five women belonged in the composition of the government, with Jürgen Ligi resigning Maris Lauri became the new Minister of Finance – which resulted in a record number of women in the government – six; while there were seven male ministers in the government. The government's coalition agreement contained several promises in gender equality, for example, the aim of moving towards gender equality in governance of social life, taking steps for reducing the gender wage gap and signing the Istanbul Convention. On 2 December 2014 the then Minister of Justice Andres Anvelt signed the so-called Istanbul Convention or the Council of Europe Convention on preventing and combating violence against women and domestic violence for Estonia. Even

though the convention has to be ratified at the Riigikogu, it is an important step towards a more equal society, as it is the most extensive international agreement in this matter.

The parliamentary election took place on 1 March 2015 and 236 women ran as candidates, forming 27% of all candidates. The experts at Estonian Human Rights Centre analysed the parties' election programmes in the light of human rights' protection. The topic of promoting tolerance or avoiding discrimination was brought up in one wording or another in election programmes of several parties, but the plans of the Estonian Centre Party, the Reform Party and the Social Democratic Party stood out with the widest discussion on the topic. At the same time the analysis revealed that none of the political parties in Estonia has a comprehensive vision of human rights and promoting a more tolerant society.¹

24 women were in the Riigikogu after the elections, forming a quarter of members of the parliament. The previous composition of the Riigikogu had 20 women. In April of 2015 the Reform Party, the Social Democratic Party and the Union of Pro Patria and Res Publica formed government, with only two women belonging to their government. The fact that the coalition agreement contains goals in equal treatment can be considered a positive development. Among the promises there are measures for combining work and family life, there is desire to expand the education and work opportunities for young people with disabilities, there are also plans for creating a "diverse place of work" state recognition badge. In order to reduce the gender pay gap, which is a serious problem in Estonia, the Labour Inspectorate is to be given authority to monitor equal remuneration and wage discrimination.

In late spring of 2015 the public's attention was drawn to the competition for the office of the Gender Equality and Equal Treatment Commissioner. The equal treatment commissioner is an important institution in human rights'

¹ Valimisprogrammid inimõiguste valguses [Election programmes in the light of human rights]. Estonian Human Rights Centre. 5.02.2015. Available at: <http://humanrights.ee/2015/02/valimisprogrammid-inimõiguste-valguses/>.

protection who is and independent and impartial observer of fulfilment of the Equal Treatment Act and the Gender Equality Act. According to the Equal Treatment Act the Commissioner is appointed to office for five years by the minister responsible for the area. In March of 2015 the Ministry of Social Affairs announced a competition for finding the new commissioner. The term of the commissioner was coming to an end at the end of October and Mari-Liis Sepper who had held the office for the past five years decided not to apply for a second term. On 3 July 2015 Margus Tsahkna, the Minister of Social Protection (of the Union of Pro Patria and Res Publica) named Liisa-Ly Pakosta from the same political party the commissioner; after which she withdrew from the party. A few days later 13 citizens' associations sent an address² to the Minister of Social Protection, expressing their concern that the competition for the office of the commissioner was not sufficiently transparent and correct.

Electing the commissioner received quite a bit of attention from media. The date of submitting the application to be considered a candidate was focused on, and the absence of clear rules was criticised. On 3 October 2015 Liisa-Ly Pakosta started work as an equal treatment commissioner. As several of the commissioner's activities in the past few years and the payment cost for the employees hired to carry them out are covered by the Norwegian support, which is about to run out, the new commissioner will have to start addressing the issue of underfunding of the institution. Annual human rights reports of previous years have also drawn attention to the problem of underfunding and recommended the funding of the commissioner is brought into concordance with her tasks. The state has so far not allocated additional funds from the state budget for fulfilling the tasks which were added with the Equal Treatment Act in 2009, and the situation has remained the same.³

² 13 organisatsiooni ühispöördumine sotsiaalkaitseministri poole [Appeal of 13 organizations to the Minister of Social Protection]. 7.07.2015. Available at: <http://humanrights.ee/2015/07/13-organisatsiooni-uhispoordumine-sotsiaalkaitseministri-poole/>.

³ Võrdõigusvoliniku 2014. aasta tegevusaruanne [The 2014 annual report of equality commissioner]. Available at: <http://www.vordõigusvolinik.ee/wp-content/uploads/2015/06/SVV-Aastaaruanne-2014.pdf>.

Legislative developments

In July of 2015 the Ministry of Social Affairs sent for the approval of amendment of the Equal Treatment Act's legislative intent, which contains three topics:

The Ministry plans to unify protection for all bases and areas of life mentioned in the Equal Treatment Act. At the moment the prohibition of discrimination is wider on the basis of gender, nationality, race or skin colour than on age, disability, sexual orientation and creed or beliefs.

According to the UN Convention on the Rights of Persons with Disabilities Estonia has the obligation to create a framework which contains an independent mechanism for application of the convention. The legislative intent requires creating such a monitoring mechanism with the office of the equality commissioner.

There are plans to extend the authority of the commissioner so that she can go to court in her own name or in the name of the victim; at the moment the commissioner can only deliver legally not binding opinions. There's also the plan to give the commissioner the authority to mediate conciliation between parties of discrimination disputes.

The previous annual human rights report recommended the state guarantee application of the equal treatment principle for all bases of discrimination in the same manner, therefore we have to give credit for the state's plan to amend the Equal Treatment Act. All three planned amendments are vital in equal treatment and improve the opportunities of various groups to stand up for their rights. Yet the Ministry of Justice did not give legislative intent their approval. The ministry points out that the institution of equality commissioner might not fully correspond with the Paris principles (for example, inclusion of the target group, independent funding, etc.). There is also caution about the proposal allowing the commissioner to participate in court proceedings in her own name by presenting the appeal of the discriminated

person.⁴ Therefore, due to the comments of Ministry of Justice the draft act amending the Equal Treatment Act will have several differences compared to the legislative intent.

Additionally, the Ministry of Social Affairs sent the act amending the Equal Treatment Act, which intends to add EU citizenship as a basis for discrimination, for approval. This amendment primarily wishes to bring the Equal Treatment Act into concordance with the Directive 2014/54/EU of the European Parliament of the Council in regards to measures, which facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers.

Ministry of Social Affairs had not presented any of the aforementioned amendments to acts of law to the government as of 19 October 2015.

An important development that has to be pointed out is the initiation of drafting of the „Social Security, Inclusion and Equal Opportunities Development Plan for 2016–2023“. The two previous annual human rights reports (in 2012 and 2013) have claimed that Estonia needs to adopt development plans in various sectors for promotion of gender equality and guaranteeing equal opportunities on other bases. These two topics are discussed in the aforementioned development plan. The sub-goal no. 4 focuses on promotion of gender equality and achieving gender equality. Topics such as inequality on labour market, including the pay gap, unequal representation of women and men on decision-making levels, low level of awareness of institutions and of the public are also mentioned. The sub-goal no. 5 focuses on the topic of promotion of the equal treatment principle and valuing diversity; there is desire to change attitudes and customs towards groups of residents that are based on negative prejudices and stereotypes. Yet, at the moment there is no information about the allocated financial means for achieving the sub-goals, but precisely the real existence of resources is the prerequisite for achieving the sub-goals in reality.

⁴ Väljatöötamiskavatsuse mittekooskõlastamine [Non-approval of legislative intent]. Ministry of Justice. 3.08.2015 Available at: <http://eelnoud.valitsus.ee/main#qgERr2Pa>.

In December of 2014 the government approved the white paper of human resources policy of state as the employer,⁵ which, for the first time, implements nation-wide personnel management. Equal treatment and promotion of gender equality and diversifying of the employees have an important place in the goals of the paper. One part of image creation for state as an employer is the desire to create interest to work in the public sector for residents whose first language is Russian or another language other than Estonian. In order to achieve that, there are plans to better inform the target groups that are less represented, so that representation of various national groups among employees in the public sector is greater. This is an important advancement in the public sector, especially in the situation where ethnic minorities have been under represented, and the state structures do not mirror the composition of the residents.⁶

Discrimination disputes

A positive fact that is worth mentioning is that the people in Estonia are increasingly more ready to stand up for themselves. The number of labour disputes in jurisdiction of the Labour Inspectorate related to unequal treatment has increased in comparison to the previous years.⁷ The applications submitted in 2014 had to do with various bases for discrimination, however, the largest number of applications asked to identify discrimination based on becoming or being a parent.

There were also more applications on discrimination of pregnant women among applications to the equality commissioner. Altogether there were 192 applications to the commissioner in 2014, which was 76 application more than the year before (65% more). The office of the commissioner has also achieved an important breakthrough in ordering payment of discrimination

⁵ Riigi kui tööandja personalipoliitika valge raamat [White Paper on human resource's policy of state as employer]. Adopted 02.12.2014. Available at: <http://eelnoud.valitsus.ee/main#Z3LppPQm>.

⁶ Read more on under-representation of ethnical minorities for example in Sergei Ivanov and Raivo Vetik's research „Etniliste vähemuste esindatus ametnikkonnas: Eesti juhtum“ [representation of ethnical minorities in public sector]. *Acta Politica Estica* 5/2014.

⁷ Letter of Labour Inspectorate and an overview of labour disputes solved regarding inequal treatment at labour dispute committees in 2014 for cooperation partners. 13.03.2015 no. 1.4-1/277-2.

compensation in labour dispute committees and agreements between employers and employees. If in 2013 the compensation payments remained between 1000 and 2000 euros, then in 2014 the lowest compensation payment was 1000 euros and the highest 23,000 euros.⁸

There were few court decisions in the period under observation and there were no important changes to interpreting acts of law. Ordering a larger discrimination compensation payment than the usual practice took place in administrative case no. 3-14-164/38, where Tartu Administrative Court ordered Estonian National Social Insurance Board pay the specialist made redundant from the social insurance board for his age a discrimination compensation in the sum of 8200 euros based on the Equal Treatment Act. The applicant worked at the National Social Insurance Board as a specialist. In November of 2013 the immediate manager of the applicant carried out an evaluation with him and valued the employer's competence in cooperation to be below expectation. Seven days later a Minister of Social Affairs directive was drawn up eliminating the applicant's position from the unit of structure. In mid-December 2013 the applicant received a notice of dismissal from his employer and by directive dated in the middle of the same month the applicant was released from employment as of December 31st for redundancy. The court found, among other things, that the National Social Insurance Board discriminated against the applicant by ignoring the provisions of the Equal Treatment Act. In notifying the then 65 year old applicant of the upcoming dismissal, his immediate superior sent him an e-mail, which, among other things, says: "criteria to do with age are certainly not the only basis for the decision, however, they are the main basis for it." The court detected illegal removal from post. The court also ordered the National Social Insurance Board make a payment in favour of the applicant for three months' average wages in the sum of 1830 euros and 8200 euros for compensation for non-patrimonial damage. The National Social Insurance

⁸ Võrdõigusvoliniku 2014. aasta tegevusaruanne [2014 Annual report of equality commissioner]. Available at: <http://www.vordõigusvolinik.ee/wp-content/uploads/2015/06/SVV-Aastaruanne-2014.pdf>.

Board is to also pay for the 486 euros for the applicant's procedure expense.⁹ This is a remarkable sum for compensation for non-patrimonial damage in a discrimination dispute.

Statistics and surveys

Several surveys were published in the period under observation to do with equal treatment in one way or another. It can generally be concluded that the situation in Estonia in equal treatment has not changed noticeably. There are continuing problems with the pay gap, gender stereotypes and tolerance. The main conclusions of the following surveys have only been brought up to mark more important tendencies in the area.

According to the Social Progress Index Estonia was in the 19th place in the world, and in the 23rd place in 2015. The sequence consisting of 133 states is an alternative to various others to measure development of states and progress mainly based on economic figures. Estonia was in the second place in the category of political freedom in terms of opportunities, however, intolerance of the society is holding back from getting a better result. For example, on a scale measuring tolerance for immigrants, Estonia placed 123rd among 133 states.¹⁰

Bertlesmann Foundation's Sustainable Governance Indicators brings out the largest gender pay gap among the OECD countries as Estonia's weakness. The average income for women is only 62% of the men's average income, although the level of education is higher for women.¹¹ In September of 2014 the Ministry of Social Affairs published the gender equality monitoring. One of the biggest positive changes in comparison to the previous, 2009 monitoring is the support to women's participation in politics by the women. Even though women are welcome in politics, and the support for female leaders has risen, in raising girls it is still expected that they mainly develop skills in

⁹ Court decision no. 3-14-164/38. Available at: <https://www.riigiteataja.ee/kohtulahendid/detailid.html?id=146828142>.

¹⁰ Thorough tables of Social Progress Index available at: <http://www.socialprogressimperative.org/>.

¹¹ The survey is available at: <http://www.sgi-network.org/2014/>.

cleaning, cooking and looking after themselves. According to the monitoring, 35 percent of men believe that women and men are equal in society; only 15 percent of women think so.¹²

Good practices and noteworthy public discussions

At a time when surveys show a standstill in gender equality in Estonia, a positive trend of women's activity in raising the topic in social debate can be noted as a positive trend. One visible point of weakness has long been the male-centricity of discussion programmes. Producers of programmes have claimed that in certain areas there are few female opinion leaders. Several acknowledged experts in their field have therefore, as civil initiative, decided to put together a list of expert women, which could be of help to producers if they can't think of who to invite or places to find suitable female experts.¹³

After a long break Estonia's 6th Congress of Women gathered on 7 March 2015, which adopted a manifest with five political demands. The manifest demands that as of 2015 the political parties have the obligation to submit so-called striped lists for elections, where male and female candidates are presented intermittently. It was also demanded that both men and women are represented at collegial bodies (neither less than 40%). The congress expects the government of the republic to draw up a gender equality strategic development plan. It was also stated that wage systems should be made transparent to guarantee equal pay for equal work. The manifest of the congress also proposes to legitimize the fathers' individual right to take parental leave covered by parental benefit.

In the beginning of 2015 the feminist portal www.feministeerium.ee, which values equality, started up. Several opinion pieces and analyses that have

¹² Soolise võrdsuslikkuse monitooring 2013 [Gender Equality Monitoring 2013]. Ministry of Social Affairs. Tallinn 2013. Available at: http://www.sm.ee/sites/default/files/content-editors/Ministeerium_kontaktid/Uuringu_ja_analuusid/Sotsiaalvaldkond/soolise_vordisuslikkuse_monitooring_2013_uuringuraport_ja_ankeet.pdf.

¹³ Ühispoordumine Rahvusringhäälingu poole [Common address to Estonian Public Broadcasting]. 8.03.2015. Available at: <http://naised.net/2015/03/08/naistepaeva-uhispoordumine-err-noukogu-ja-juhatuse-poele/>.

appeared there have also been published in several other media publications, thus taking the feminist message to the entire society. The election of the chauvinist of the year initiated by Feministeerium, where the explanations to the nominations for candidates are analysed by the editors and the winner is decided by the public vote at the end of the year, received a lot of attention.

Several undertakings essential to the development of equality were initiated with the equality commissioner. On 28 September 2015 the advisory committee for gender equality assembled for the first time, which aims to advise the commissioner and give council at drawing up of strategic documents of the office of the commissioner.¹⁴ A competence centre was also created with the commissioner in 2015 in order to guarantee promotion of equality of genders and equal treatment with the use of instruments of the European Union Structural Funds. The competence centre provides counselling to ministries, provides information on the topic and offers training in cooperation with the Ministry of Finance for taking gender equality and principles of equal treatment into consideration.¹⁵

Recommendations to the government

- We continue to recommend bringing the funding of the commissioner into concordance with the tasks of the commissioner.
- Adopt “Social Security, Inclusion and Equal Opportunities Development Plan for 2016–2023” and guarantee that sub-goals no. 4 and 5 are actually implemented by allocating sufficient funds for that end.
- Adopt amendments to the Equal Treatment Act covered in the annual report, and most importantly unify protection against discrimination on all bases.

¹⁴ Täna kogunes esimest korda võrdõigusvoliniku nõukoda [The equality commissioner's advisory committee gathered today for the first time]. 28.09.2015. Available at: <http://www.vordoigusvolinik.ee/2015/09/tana-kogunes-esimest-korda-vordoigusvoliniku-noukoda/>.

¹⁵ Kompetentsikeskuse koduleht [the competence centre's website]. Available at: <http://www.vordoigusvolinik.ee/kompetentsikeskus/>.

HUMAN RIGHTS IN ESTONIA
2014-2015

Right to
education

Right to education



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CHAPTER 8

Right to education

Political and institutional developments

The Constitution of the Republic of Estonia states every person's right to education and the school children's obligation to study in the extent provided by law, whereas studying at state and local government general education schools is free of charge.¹ Donations asked from parents, entrance exams to so-called elite schools and the funding issues of private schools made the Chancellor of Justice address the Riigikogu on the topic of constitutionality of organisation of basic education.

By accepting monetary contributions from parents in "elite schools", whether it is called a donation or anything else, a hybrid of municipal and private school is created, which further increases the advantages of children from better socio-economic backgrounds in comparison to other children and thereby increasingly contributes to process of stratification of education.² From the point of view of the parent and the child there is no difference in which level of the public authority is responsible for availability of good-quality and free basic education, therefore the Chancellor of Justice says it cannot be ruled out that "in the future Estonia will look at guaranteeing basic education as a task of the state."³ In the appraisal of Ülle Madise every child has the right to receive a free decent quality basic education,

¹ The Constitution of the Republic of Estonia § 37.

² Ibid.

³ Põhihariduse korralduse põhiseaduspärasusest [On constitutionality of the basic education] .Õiguskantsleri kirjalik ettekanne Riigikogule [A written report of the Chancellor of Justice to the Riigikogu]. 26.08.2015.

which affords the best basis for advancing in life. “It is the task of the state to choose a model, which does actually provide that. At the moment we do not have that. Educational stratification is increasing.”⁴ The intended amendment to an act of law, which would remove the local governments’ duty to participate in covering costs for private general education school, is in concordance with the constitution according to Ülle Madise’s appraisal. The current decision to support private schools belongs to choices in educational politics, but does not stem from the constitution.⁵

In 2014 the Chancellor Justice initiated proceedings to investigate whether students of Tallinn English College have the constitutional right to study at a municipal school free of tuition.⁶ At the moment the parents are financing curricular education via donations. Intensive study of English language is not extracurricular, therefore it is forbidden to demand money from the parents to carry out these lessons. The Chancellor of Justice made a proposal to the city of Tallinn to cover the cost of teaching foreign languages to the extent provided by the curriculum in the future.⁷ The serious nature of the problem is that the Tallinn English College case is not an exception, and needs interference on state level.

Despite the wonderful results of the PISA 2012 survey⁸ there is reason to worry about the future of education. According to Reemo Voltri, the president of Estonian Education Personnel Union, the greatest problem are the low wages of teachers. “If we compare our wages to those in OECD

⁴ Maiste, V.S. Eliitkoolid soosivad vanemate uhkust, mitte andekaid [Elite schools favour the pride of parents, not the gifted]. Sirp, 4 September 2015. Available at: <http://www.sirp.ee/s1-artiklid/c9-sotsiaalia/eliit-koolid-soosivad-vanemate-uhkust-mitte-andekaid>. (4.09.2015).

⁵ Madise – erakoolide rahastamise muutus on põhiseadusega kooskolas [Madise – amendment to funding of private schools in accordance with the constitution]. Postimees, 3 November 2015. Available at: <http://www.postimees.ee/3385579/madise-erakoolide-rahastamise-muutus-on-pohiseadusega-kooskolas> (5.09.2015).

⁶ The Constitution of the Republic of Estonia § 37 lg 1.

⁷ Õiguskantsler: Tallinna Inglise Kolledži õpilastele ei ole tagatud põhiseadusest tulenevat õigust õppida munitsipaalkoolis ilma õppemaksuta [The Chancellor of Justice: the students of Tallinn English College are not guaranteed the constitutional right to study at a municipal school without a fee]. Office of Chancellor of Justice, 1.07.2015. Available at: <http://oiguskantsler.ee/et/oiguskantsler-tallinna-inglise-kolledzi-opilastele-ei-ole-tagatud-pohiseadusest-tulenevat-oigust>. (4.09.2015).

⁸ Pisa 2012 results. Available at: <http://www.hm.ee/index.php?0513776>. (12.09.2015).

countries, it is the smallest. Another problem is that our teachers are getting older.”⁹ The education personnel would like to have a discussion about what is going to happen in the following years, in other words, a sense of security and fulfilment of agreements in the future in order to guarantee a new generation of teachers.

Reform of higher education, which went ahead in 2013 can be considered the greatest change that took place in Estonian education.¹⁰ It is too early to draw significant conclusions on the results of the reform after such a short period, however, new proposals for reforming higher education are already being discussed. The so-called G. Okk report¹¹ composed to the order of Research and Development Council on courses of action¹² of Estonian universities and other scientific research establishments gives ideas for further discussions. Making cardinal changes over such a short time gives reason to ask whether education policy decisions are based on sufficient research and whether specialists from various fields have been included in the process.

Legislative developments

Making the education cost support allocated for running municipal schools in counties and towns more flexible brought about amending the Basic Schools and Upper Secondary Schools Act, which would allow, among other things, to

⁹ Kattago, D. 2015. Haridustöötajate Liit: õpetajate palk peab olema „väga hea“, mitte „normaalne“ [Estonian Education Personnel Union: the teachers' wage should be “very good”, and not “okay”]. Pealinn. 17 April 2015.

¹⁰ Rahastamisreform ehk üleminek tegevustoetuse süsteemile [The funding reform or switching to the system of activity support]. Available at: <http://www.hm.ee/index.php?popup=download&id=12053>. (13.09.2015).

¹¹ Okk, G. 2015. Eesti ülikoolide, teadusasutuste ja rakenduskõrgkoolide võrgu ja tegevussuundade raport [report on frameworks and courses of action of Estonian universities, scientific research establishments and institutions of professional higher education]. Available at: https://riigikantselei.ee/sites/default/files/riigikantselei/strateegiaburoo/eutarkvt_loppraport.pdf. (06.09.2015).

¹² The Estonian Research and Development and Innovation Strategy 2014–2020 “Knowledge-based Estonia” which was the Riigikogu approved on 22 January 2014 sets as its tasks to “support development of responsibility domains of institutions of higher education and scientific research establishments and development institution, structural changes, focusing on strategic main activities and organizing framework of institutions; increasing scientific institutions’ responsibility for performance of their activities”. 2014. Available at: https://www.hm.ee/sites/default/files/59705_teadmistepohine_eesti_est.pdf. (2.09.2015).

cover the personnel cost for support specialists, as well as the state and local governments to divide the responsibility among themselves.¹³

The needs-based study allowance was created in order to support young people from low-income families in acquiring a higher education, but a remarkable part of the target group was left without support. The system for applying for needs-based study allowance was changed and those who had not qualified for the main support were given the opportunity to apply for needs-based special allowance.¹⁴

The new Child Protection Act¹⁵ claims that violence has no part in raising children. It was pointed out in the course of drawing up the draft act the cooperation between various levels of education and cooperation across different fields is insufficient.¹⁶ “Better cooperation across different fields would allow to apply preventative interference more effectively.”¹⁷

One of the purposes for amending the Preschool Child Care Institutions Act¹⁸ was to clarify the obligations of towns and rural municipalities in guaranteeing kindergarten placements. Numerous court disputes on this topic brought on the need for clarification.

Court practice

The Chancellor of Justice’s 2013 annual report that was published in 2014 pointed out that, as in several previous years, a large portion of problems had to do with providing the service of preschool child care. The Chancellor advised applicants to turn to court in case of lack of kindergarten placements,

¹³ Põhikooli- ja gümnaasiumiseaduse muutmise eelnõu [Act amending the Basic Schools and Upper Secondary Schools Act] 799 SE.

¹⁴ Õppetoetuste ja õppelaenu seaduse muutmise ja sellega seonduvalt teiste seaduste muutmise seadus [Act amending the Study Allowances and Study Loans Act and other related acts] State Gazette I. 04.12.2014, 4.

¹⁵ Child Protection Act. State Gazette I. 06.12.2014, 1.

¹⁶ Public Governance Reviews. Estonia. Towards a Single Government Approach. Assessment and Recommendations. 2011. OECD. Available at: http://www.valitsus.ee/UserFiles/valitsus/et/riigikantselei/uldinfo/dokumendiregister/Uuringud/OECD_Public%20Governance%20Review_Estonia_full%20report.pdf

¹⁷ Draft Act to Child Protection Act 677 SE II.

¹⁸ Kooolieelse lasteasutuse seaduse muutmise seadus [Act amending the Preschool Child Care Institutions Act]. State Gazette I. 20.11.2014, 2.

since if the placement is not guaranteed the local government is breaking the law and the court has coercive measures in place to guarantee execution of a court judgments.¹⁹ By this time the judgments in earlier court disputes in this field have had a positive effect and the act of law²⁰ also regulates the opportunities for organising child care for local governments.

However, the problem of funding operating costs of private schools is still not solved.²¹ City of Tallinn was obliged to participate in covering operating costs for a private general education school in proportion to the students whose residence according to population register was in town. The school submitted an application with the administrative court for imposing a fine for failure to execute a court judgment, which the city contested in court; the solution came from the Supreme Court who left the ruling of lower courts unchanged.²² The stance of the Supreme Court in an analogous complaint²³ provides an answer to the city's objections that despite the obligation stemming from law they lack the budgetary means for that purpose. The Supreme Court explained further that covering operating costs of private schools is a duty of the state that has been placed on local governments. In 2014 the Supreme Court declared unconstitutional the fact that the state does not provide local governments the necessary money to cover the operating costs of private schools. Despite this local government units cannot challenge their duty to private schools. The Supreme Court noted that if no money has been allocated for funding the duty of the state or insufficient amount has been allocated, the local government has the right to demand the state for money lacking to cover the duty of the state in court.

¹⁹ Õiguskantsleri 2013. aasta tegevuse ülevaade [Chancellor of Justice's 2013 annual report]. 2014. Available at: http://oiguskantsler.ee/sites/default/files/oiguskantsleri_tegevuse_ulevaade_2013.pdf. (16.08.2015).

²⁰ Koolieelse lasteasutuse seaduse muutmise seadus [Act amending the Preschool Child Care Institutions Act]. State Gazette I. 20.11.2014, 2.

²¹ Vt õiguskantsleri ettekanne Riigikogule: Põhihariduse korralduse põhiseaduspärasusest [On constitutionality of the basic education]. Õiguskantsleri kirjalik ettekanne Riigikogule [A written report of the Chancellor of Justice to the Riigikogu]. 26.08.2015.

²² Court ruling of Administrative Law Chamber of the Supreme Court no. 3-3-1-11-14 of 29.05.2014.

²³ Constitutional Review Chamber of the Supreme Court judgment no. 3-4-1-26-14 of 28.10.2014.

The unconstitutional situation does not prevent private schools from filing an appeal with an administrative court. The legal foundation for the claim comes from the ruling of the Constitutional Review Chamber of the Supreme Court²⁴ for as long as the state's monetary obligation for local governments is stated by an act of law. The 2015 court action²⁵ already refers to the Constitutional Review Chamber of the Supreme Court ruling in case no. 3-4-1-26-14.

Statistics and surveys

Based on Article 19 of the Convention on the Rights of the Child and § 44 of the Basic Schools and Upper Secondary Schools Act the school has the obligation to guarantee the protection of the student's mental and physical safety and protection of health for the duration of staying at school. Risk Behaviour Awareness Study²⁶ confirms that a large part of students in Estonia experience bullying at school, which decreases in higher age brackets. One in four students has experienced physical violence. Teachers also mention significant contact with mental violence. The form-masters believe there are obstacles when solving problems to do with reluctance of students and their parents to cooperate. Teachers themselves evaluate their knowledge and skills at handling cases of violence to rather be good and the school's opportunities for solving situations are considered the greater shortcoming.

The children's deviant behaviour study²⁷ states that bullying in school has somewhat decreased in comparison to 2006, however, there are a lot of children for whom school is not a safe environment and it is necessary to implement state sanctioned support mechanisms for teachers as well as for students.

²⁴ Constitutional Review Chamber of the Supreme Court judgment no. 3-4-1-26-14 of 28.10.2014.

²⁵ Administrative Law Chamber of the Supreme Court judgment no. 3-3-1-84-14 of 21.05.2015.

²⁶ Riskikäitumise teadlikkuse uuring kolmes sihtühmas [Risk Behaviour Awareness Study]. 2014. Available at: <https://www.politsei.ee/dotAsset/331164.pdf>. (22.08.2015).

²⁷ Lühülevaade laste hälbiva käitumise uuringust (ISRD-3) [A short overview of children's deviant behavior study]. 2014.

^{Av}ailable at: https://www.just.ee/sites/www.just.ee/files/laste_halbiva_kaitumise_uuringu_kokkuvote.pdf. (22.08.2015).

Right to education does not only mean up to school leaving age. Article 13(1) of the International Covenant on Economic, Social and Cultural Rights²⁸ acknowledges every person's right to education. As the population of Estonia is decreasing we are in a situation where around a third of the population of working age has a low level of education, where unemployment is the largest.²⁹ The Praxis analysis indicates that precisely the people with the lowest level of education have problems using opportunities of lifelong learning. The reasons for this are economic hardship, low level of motivation to study and low awareness of opportunities to study, also the fact that in Estonia vocational training is mainly offered as daytime study, which makes access to education services more difficult.

Improving the minimum wage for teachers at basic schools and upper secondary schools is part of valuing the teaching profession. The minimum wage for teachers³⁰ was raised to 900 euros, increasing 12.5% in comparison to 2013. According to the education statistics the average gross wages for teachers at municipal schools exceeded 1002 euros as of November of last year.³¹

The situation of secondary and higher education is indicated in survey on education called Education and Skills,³² where among other things attention is paid to skills of teachers. The biggest problem area is the low level of skills of graduates of teacher training. Therefore, all policies influencing attractive nature of the teaching profession, improving the level of teacher

²⁸ International Covenant on Economic, Social and Cultural Rights. State Gazette II 1993, 10, 13.

²⁹ Haaristo, H.S. 2014. Mida lubatakse madala haridustasemega inimestele? [What is promised to persons with lower educational levels?] Available at: <http://mottehommik.praxis.ee/mida-lubatakse-madala-haridustasemega-inimesele/>. (23.08.2015).

³⁰ Põhikooli ja gümnaasiumi õpetaja töötasu alammäär [Minimum wage for teachers at basic and high school]. Regulation of Government of Republic. State Gazette I, 23.12.2014, 12.

³¹ Haridusstatistika [Statistics of education]. Available at: www.HaridusSilm.ee. (3.09.2015).

³² Haridus ja oskused [Education and skills]. PIAAC uuringu temaatiline aruanne nr 6 [Thematic report no. 6 of the PIAAC survey]. 2015.

^{Av}ailable at: http://dSPACE.utlib.ee/dspace/bitstream/handle/10062/46963/PIAAC6aruanne_haridus_oskused.pdf?sequence=1.

(12.09.2015).

training and supporting further development of those who have already graduated, are vital.³³

According to the Minister of Education the rights of teachers should be extended as it would improve them coping with problem situations: “at the moment, a great obstacle in choosing the teaching profession is the fact that it is not known what can be done to prevent problems in this profession.”³⁴

Good practices

The child’s right to a safe and free from violence school environment stems from Article 19³⁵ in cooperation with Articles 28 and 29 of the UN Convention on the Rights of the Child. The child has a right to childhood that is free from violence. The child must be protected from violence at home, at school and elsewhere.

Article 28 states the child’s right to education and Article 29 specifies achieving which purpose the education must be aimed, e.g. the right to education is guaranteed if the child is safe at school.³⁶ The opportunities for creating a safe school environment must be created by the school operator (for example the local government) and organised by the head of school. Internal rules of a school must explain how situations threatening safety of students and workers at school are prevented and how they will be reacted to, also how such cases are notified and solved.³⁷

³³ Haridus ja oskused [Education and skills]. PIAAC uuringu temaatiline aruanne nr 6 [Thematic report no. 6 of the PIAAC survey]. 2015.

³⁴ Available at: http://dspace.utlib.ee/dspace/bitstream/handle/10062/46963/PIAAC6aruanne_haridus_oskused.pdf?sequence=1.

(12.09.2015).

³⁵ Mäe, I. Noorte õpetajate vähesus on jätkuvalt probleem [Dearth of young teachers continues to be a problem]. Postimees. 12 August 2015. Available at: <http://www.postimees.ee/3291641/noorte-opetajate-vahesus-on-jatkuvalt-probleem>.

³⁶ Convention on the Rights of the Child. State Gazette II 1996, 16, 56.

³⁷ Kool kiusamisest vabaks [Getting rid of school bullying]. Available at: <http://lasteombudsman.ee/koolikiusamine/koolikeskkond.html>. (29.09.2015).

³⁷ Ibid.

One of the positive initiatives for guaranteeing safety at school is the free from bullying program KiVa, which more than 30 schools have joined in 2015/2016 academic year. It is a research based program, which was created with the support of University of Turku, Finland, with funding from the Ministry of Education and Culture. The survey carried out in schools that participated in the pilot project showed that the number of victims dropped by 17.2% as a result of KiVa.³⁸

As children's attitudes and social relations start already in kindergarten the anti-bullying preventative work must start early. The project of Estonian Union for Child Welfare "Bullying-free Preschool and School" has achieved good results. Effectivity of methodology from Denmark preventing bullying is proved by surveys accompanying the implementation. This methodology is already in use in two thirds of preschools and 81 schools in Estonia.³⁹

The teachers must have in addition to knowledge of the subjects also communication skills, knowledge for recognizing bullying and dealing with situations of bullying. It is also important to have school psychologists, social pedagogues and other support specialists in schools.

Noteworthy public discussions

The tragic incident that took place in 2014 has raised the issue of safety in school. The school shooting, which took place on October 27th at Paalalinna upper secondary school in Viljandi, where a 9th form student shot a teacher from a firearm during class who died of injuries shocked the whole of Estonia. The background for such behaviour has been discussed on various levels. There is agreement that in addition to guaranteeing security we must also look for reasons, which may influence such behaviour, and deal with them. The Chancellor of Justice Indrek Teder emphasizes that there is no more profound duty than guaranteeing the rights of children and protection of their

³⁸ SA Kiusamisvaba Kool [Foundation bullying-free school]. Available at: www.kivaprogram.net/estonia/sa_kiusamisvaba_kool/missioon_ja_tegevused. (14.08.2015).

³⁹ Kiusamisest vabaks [Getting rid of bullying]. Available at: www.lastekaitseliit.ee. (14.08.2015).

wellbeing.⁴⁰ States that have joined the UN Convention for the Rights of the Child⁴¹ have taken on the obligation to guarantee it. Preventing violence against children also significantly reduces violent behaviour of children themselves and other risk behaviour.⁴²

The highly topical issue of receiving refugees also has an effect on our schools – whether we are ready to teach children who cannot speak Estonian when they come to school. These children whose knowledge of Estonian is not sufficient for managing in school are called new immigrant students⁴³ in Estonian education system. They could be of another nationality as well as citizens of Estonian origin who have spent a considerable time in a foreign country and their language skills are insufficient for managing in school. The Chancellor of Justice drew attention to the problem where a school has not succeeded in carrying out studies due to the child's special⁴⁴ educational needs.⁴⁵ The act of law does not directly say how to organize studies if a child has special

⁴⁰ Teder, I. 2014. Laste ja noorte heaolu parandamine ning sotsiaalse tõrjutuse ennetamine [Improving the wellbeing of children and youths and preventing social exclusion]. Tallinn. Available at: <http://oiguskantsler.ee/et/indrek-tederi-kone-konverentsil-laste-ja-noorte-heaolu-parandamine-ning-sotsiaalse-torjutuse>. (15.08.2015).

⁴¹ Convention on the Rights of the Child. State Gazette II 1996, 16, 56.

⁴² Teder, I. 2014. Laste ja noorte heaolu parandamine ning sotsiaalse tõrjutuse ennetamine [Improving the wellbeing of children and youths and preventing social exclusion]. Tallinn. Available at: <http://oiguskantsler.ee/et/indrek-tederi-kone-konverentsil-laste-ja-noorte-heaolu-parandamine-ning-sotsiaalse-torjutuse>. (15.08.2015).

⁴³ „Uusimmigrantide lapsed Eesti hariduses. Hariduspoliitilised põhimõtted ja hariduskorraldus” [Children of new immigrants in Estonian education. Principles of education policy and education organization]. Available at: http://www.meis.ee/bw_client_files/integratsiooni_sihtasutus/public/img/File/Uusimmigrantide_lapsed_Hariduspoliitilised_pohimotted.pdf. (12.09.2015). Children of new immigrants are considered to be children of migrants from the European Union, but also from third countries, children of asylum seekers and refugees, who wish to start studying in Estonian schools and who have lived in / stayed in Estonia for less than three years. In addition to persons of other nationalities also families of Estonian origin who have lived in a foreign country long term, whose children have been born there and who have spent a great part of their lives in a foreign country and who also have problems with Estonian language skills because of it may also belong to the group of new immigrants.

⁴⁴ A student with insufficient language skill is also considered a child with a special educational need.

⁴⁵ Õiguskantsler: Soovitus õiguspärasuse ja hea halduse tava järgimiseks. Ebapiisava eesti keele oskusega lapse õpetamine [Chancellor of Justice: Recommendation for following legislative and good administrative custom. Teaching a child with insufficient Estonian language skills]. 17.02.2014. Available at: http://oiguskantsler.ee/sites/default/files/field_document2/6iguskantsleri_sooitus_pohioiguste_ja_-_vabaduste_paremaks_tagamiseks_ebapiisava_eesti_keeles_õskusega_lapse_opetamine.pdf. (13.09.2015).

educational needs. The school has to choose support methods considering the needs of the specific child and consider the child's best interests.⁴⁶

Recommendations

- Stop the unconstitutional situation and provide local governments the necessary money from the state for covering operating costs.
- Provide all basic school students the opportunity to study free of charge.
- Guarantee state funding for implementing research based anti-bullying methods from preschool to high school.
- Value the teaching profession in order to provide there is a new generation of teachers.

⁴⁶ Kivioja, A. „Kui kooli tuleb uusimmigrandi laps.“ [If a child of a new immigrant comes to school] Õpetajate Leht. 14 March 2014.

Right to
education

HUMAN RIGHTS IN ESTONIA
2014-2015

HUMAN RIGHTS IN ESTONIA
2014-2015

Right to
free elections

Right to free elections



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CHAPTER 9

Right to free elections

Political and institutional developments

During the period under focus both the 2014 European Parliamentary election and the 2015 parliamentary election took place in Estonia.

For the first time the European Parliamentary election took place based on open lists, which is stated in the European Parliament Election Act (amended 10 February 2010).¹ In 2004 and 2009 voters at European Parliamentary elections had to make a decision based on closed lists — votes could be cast for the political parties as a whole, or for independent candidates; this time votes could be given to specific candidates.

According to democratic institutions and the report of expert group of bureau of human rights the 2015 parliamentary election in Estonia had been organised in an effective manner.²

The existence of persons who do not have the right to vote and cannot participate in elections continues to be a problem. Persons of undetermined citizenship have a right to vote at local elections, but not at parliamentary elections, neither can they be set up as candidates at parliamentary elections (in 2015 there were 89,700 persons of undetermined citizenship in Estonia).³ Even

¹ Euroopa Parlamendi valimise seaduse muutmise seadus [The Act amending the European Parliament Election Act]. Available at: <https://www.riigiteataja.ee/akt/13282688>.

² Parliamentary elections. 1. March 2015. ODIHR-i valimiste eksperdirühma aruanne [ODIHR election expert team report]. Warsaw 26 May 2015. Available at: <http://www.osce.org/et/odihr/elections/estonia/165836?download=true>.

³ Lõimumine: eesmärgid [Integration: goals]. Available at: <https://valitsus.ee/et/eesmargid-tegevused/loimumine/loimumine-eesmargid>.

though persons of undetermined citizenship can participate in party activities and make donations to parties and candidates, they do not have the right to become a member of a political party.⁴

Despite OSCE's proposals, the appraisal of the Chancellor of Justice and several recommendations made in human rights reports, Estonia is one of the few states in Europe where all prisoners automatically, by law, lose their right to vote. There were 2291 prisoners in Estonia in 2014.⁵

In the beginning of 2014 the then Minister of Foreign Affairs Urmas Paet sent the Chairman of the Constitutional Committee Rait Maruste a letter stating the need to urgently change the prisoners' right to vote in acts of law, as an absolute ban on voting contradicts the European Convention for the Protection of Human Rights and Fundamental Freedoms.⁶ The topic was discussed at the session of the Constitutional Committee in 2014; in the personal appraisal of the then Chairman of the Constitutional Committee Rait Maruste changes should be made in acts of law regulating elections in order to fulfill an international obligation that Estonia took by joining the Convention in 1996. Although in the appraisal of the Ministry of External Affairs as well as Ministry of Justice the absolute ban to vote for prisoners ought to be made less severe, the Constitutional Committee lacks the political will to do it.⁷

In 2015 the adviser at the legal and analysis department of Chancellery of the Riigikogu Katre Turbo also pointed out in her article that solving this problem

⁴ Parliamentary elections. 1. March 2015. ODIHR-i valimiste eksperdirühma aruanne [ODIHR election expert team report]. Warsaw 26 May 2015. Available at: <http://www.osce.org/et/odihr/elections/estonia/165836?download=true>.

⁵ Estonian Prison Service Yearbook. Available at: http://issuu.com/vanglateenistus/docs/vanglaameti_aastaraamat_veeb.

⁶ "Urmas Paet: vangide valimisõiguse osas tuleb viivitamatult seadust muuta." [Urmas Paet: acts of law regarding prisoners' right to vote must be amended immediately] Delfi. 15.01.2015. Available at: <http://www.delfi.ee/news/paevauudised/est/urmas-paet-vangide-valimisõiguse-osas-tuleb-viivitamatult-seadust-muuta?id=67609316>.

⁷ "Võimusaadikud panid vangide valimiskeelu leevendamisele pidurit." [The powers put a stop to alleviating the prisoners' ban on voting] Postimees. 15.01.2015. Available at: <http://www.postimees.ee/2661958/võimusaadikud-panid-vangide-valimiskeelu-leevendamisele-pidurit>.

has been put off for a long time, even though it ought to be clear that it can't be put off forever.⁸

Legislative developments

On 1 July 2014 a draft Act to amend the Constitution initiated by 41 members of Riigikogu, which requested the voting age at local government council elections be reduced to 16, was submitted to legislative proceeding of Riigikogu.⁹ This amendment required that the constitution also be amended, therefore it had to be confirmed by two consecutive compositions of The Riigikogu. The Act on Amendments to the Constitution of the Republic of Estonia for Reducing the Voting Age for Local Government Council Elections was passed on 1 June 2015 as follows:

§ 1. § 156 subsection 2 of Constitution of the Republic of Estonia is amended and worded as follows:

“At local authority council elections, the right to vote is held, under conditions established by law, by persons who reside permanently in the territory of the local authority and have attained at least sixteen years of age.”¹⁰

According to law, persons who are at least 16 years of age can vote at the 2017 local government elections.

Court practice

Most of the appeals to the electoral committee and from there as an appeal to the Supreme Court predominantly concern the principle, which automatically bans all prisoners from voting. Disproportionality of this law has been

⁸ Tubro, Katre. Vangide valimisõigusest [On prisoners' right to vote]. Riigikogu Toimetised. Available at: <http://www.riigikogu.ee/rito/index.php?id=14443>.

⁹ Eesti Vabariigi põhiseaduse muutmise seadus kohaliku omavalitsuse volikogu valimistel valimisea langetamiseks 703 SE [The Act on Amendments to the Constitution of the Republic of Estonia for Reducing the Voting Age for Local Government Council Elections]. Available at: <http://www.riigikogu.ee/tegevus/eelnoud/eelnou/b0f58e59-bf36-40e3-bbd7-3aff08428bdf/>.

¹⁰ Eesti Vabariigi põhiseaduse muutmise seadus kohaliku omavalitsuse volikogu valimistel valimisea langetamiseks [The Act on Amendments to the Constitution of the Republic of Estonia for Reducing the Voting Age for Local Government Council Elections]. Available at: <https://www.riigiteataja.ee/akt/115052015001>.

referred to by various ministries, international organizations as well as local experts.

Most public discussion concerned the Tallinn Circuit Court administrative case no. 3-15-403, where in the opinion of the appellant the ban stated in Riigikogu Election Act for a person who has been convicted of a criminal offence by a court and is imprisoned shall not participate in voting is disproportionate. The court found that according to the judgment, Riigikogu, for a long time, has not brought the election act into concordance with the practice of the European Court of Human Rights, which does not allow the state to uniformly and without exception limit the right of all prisoners to participate in parliamentary elections. Because Riigikogu has not made the decision based on which criteria the prisoners' right to vote is limited and in which procedure, the Riigikogu Election Act is unconstitutional.¹¹ Therefore, because of the judgment, two prisoners, as an exception, were given the right to vote, but at the same time the court failed to apply the unconstitutional limitation in the case, which initiated the constitutional review proceedings in the Supreme Court, whose sole jurisdiction it is to declare the limitation void. The Supreme Court found in its judgment that they would not declare the limitation void based on this particular case.

The Chancellor of Justice found in his appraisal that he sent the Supreme Court that curtailing the active right to vote of persons convicted of a crime and serving a prison sentence (§ 4 (3) and § 22 (3) of the Riigikogu Election Act) is in clear contradiction with the requirements of Article 3 of the first protocol to European Convention on Human Rights as well as § 123 (2) of the Constitution. Since in Estonian law the general right to vote applies at Riigikogu elections and restricting this right is only possible according to the

¹¹ Tallinna Ringkonnakohtu otsus haldusasjas nr 3-15-403 [Tallinn Circuit Court judgment in administrative case no. 3-15-403]. Available at: https://www.riigiteataja.ee/kohtuteave/maa_ringkonna_kohtulahendid/menetlus.html?kohtuasjaNumber=3-15-403/11.

principle of proportionality, the disputed paragraphs also contradict paragraphs 11, 57 and 58.¹²

The Minister of Justice found in his appraisal that proportionality of the disputed limitation on active right to vote is questionable.¹³ At the same time the minister of External Affairs considered the § 4 (3) and § 22 (3) of the Riigikogu Election Act unconstitutional because of their disproportionality.¹⁴

Statistics and surveys

Ministry of Justice ordered that Tallinn University Institute of Political Science and Governance carry out a survey “Analysis of reducing the active voting age: a preliminary assessment”, which concluded that similarly to the experience of other states the 16 year olds in Estonia are mature enough to vote at local elections. The analysis detected that by reducing the voting age from 18 to 16 the electorate would increase by 24,000 votes, which makes up 2–2,3% of the entire electorate. The main problem could be the weakness of the desired effect of policy change, or the lack of effect altogether. The likelihood of this occurring is greater if young people do not take an active position in articulating their interests and needs and conform in their voting or do not take part at all.¹⁵

The survey commissioned by the Gender Equality and Equal Treatment Commissioner discovered that the portion of women candidates on lists of candidates for political parties has not changed noticeably during the last 10–15 years, however, the number of women in top tens and top twenties of national lists of political parties has increased somewhat. The survey

¹² Arvamus põhiseaduslikkuse järelevalve kohtumenetluses Riigikogu valimise seaduse § 4 lõige 3 ja § 22 lõige 3 [Opinion in constitutional review proceedings on Riigikogu Election Act § 4 (3) and § 22 (3)]. Available at: http://oiguskantsler.ee/sites/default/files/field_document2/6iguskantsleri_arvamus_riigikogu_valimise_seaduse_ss_4_loige_3_ja_ss_22_loige_3_3-4-1-2-15.pdf.

¹³ Riigikohtu üldkogu kohtuotsus asjas nr 3-4-1-2-15 [Supreme Court en banc judgment in case no. 3-4-1-2-15]. Available at: <http://www.riigikohus.ee/?id=11&tekst=222578548>.

¹⁴ Riigikohtu üldkogu kohtuotsus asjas nr 3-4-1-2-15 [Supreme Court en banc judgment in case no. 3-4-1-2-15]. Available at: <http://www.riigikohus.ee/?id=11&tekst=222578548>.

¹⁵ Aktiivse valimise langetamise mõjude analüüs: eelhindamine [Analysis of the effects of active voting age]. Available at: https://www.tlu.ee/UserFiles/VOTE%2016_loplik.pdf.

pointed out that most women candidates were in the Social Democratic Party (36.8%) and the least in the Union of Pro Patria and Res Publica (24.0%). The largest number of women on district list of candidates is in the Estonian Centre Party (41.7%) and the smallest in the Social Democratic Party (8.3%). In the first three district candidates the percentage of women is largest in the Social Democratic Party (36.1%) and the smallest in the Estonian Reform Party (22.2%). Among top tens of national lists there are most women in the Social Democratic Party (60%), which is followed by the Estonian Centre Party (50%). In the Estonian Reform Party and the Union of Pro Patria and Res Publica national top ten women make up 20%. There is not a single woman in the national top ten of the Conservative People's Party of Estonia.¹⁶

Good practices

One of Estonia's success stories, internet voting, has been made more secure and transparent, mainly thanks to creation of the Electronic Voting Committee with the National Electoral Committee, the function of which is to carry out internet voting and confirm the results of e-voting. A verification process has also been created in order to confirm that the voter's e-vote was delivered expediently and recorded on the server that contains votes. At the same time, accountability of voting via internet continues to be a problem. For example, the OSCE is of the opinion that in order to increase accountability of internet voting system the agencies should continue with their efforts to add end-to-end verification to the system, so that voters would have confirmation that their votes are counted in the same way as they had been recorded.

Noteworthy public discussions

Giving 16 year olds the right to vote brought about extensive discussion, which mostly supported making amendments to the Constitution; the Centre Party was most critical of the draft act, being of the opinion that the amendment

¹⁶ Available at: http://www.vordoigusvolinik.ee/wp-content/uploads/2015/02/Riigikogu_valimisnimekirjad_2015.pdf.

was a partial solution and in addition to having the right to vote, 16 year olds should also have the right to be elected.¹⁷

During the 2014 European Parliamentary election and the 2015 parliamentary election discussion in media was initiated mainly by the Centre Party on safety of e-elections.

Recommendations

- Amend the relevant acts of law so that only prisoners bearing an additional punishment of not being allowed to vote are banned from voting.
- Consider whether banning political outdoor advertising during the campaigning period is reasonable and purposeful.

¹⁷ "Kesknõored valimisea langetamisest: see on noorte petmine" [Centre Party youths on decreasing voting age: youths are being cheated]. Delfi. 6.05.2015. Available at: <http://www.delfi.ee/news/paevauudised/eeesti/kesknõored-valimisea-langetamisest-see-on-noorte-petmine?id=71403581>.

Right to
free elections

HUMAN RIGHTS IN ESTONIA
2014-2015

HUMAN RIGHTS IN ESTONIA
2014-2015

National minorities and
integration policy in Estonia

National minorities and integration policy in Estonia



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CHAPTER 10

National minorities and integration policy in Estonia

Political and institutional developments

The years 2014 and 2015 were remarkable in several respects in regards to national minorities and integration. One of the most important milestones was the publication of the integration plan for 2014 – 2020 or the “Integrating Estonia 2020”.¹ Drawing up of the plan was initiated already in 2013, however, its final adoption kept being put off for much longer for various reasons.² Even though the new integration plan has been accused of lack of ambition and concentrating on activities that will be carried out anyway,³ it is still an important and stable continuation to integration activities that have been carried out so far.

The new integration plan also focuses more heavily on adaptation of new immigrants.⁴ An adaptation programme was created in 2014 on the initiative of the Ministry of Internal Affairs, which aims to support new

¹ Lõimumise meede [Method of integration]. Ministry of Culture. Available at: <http://www.kul.ee/et/loimumise-meede>.

² Nurk, Mari. Lõimumiskava eelnõu sai kooskõlastusringi tulemusel veelgi sisukamaks [The draft for integration plan became even stronger in content at the coordination round]. 18.11.2014. Lõimumisvaldkonna arengukava “Lõimuv Eesti 2020” [Integration plan „Integrating Estonia 2020“]. Available at: <http://integratsioon.ee/uudised/loimumiskava-eelnou-sai-kooskolastusringi-tulemusel-veelgi-sisukamaks-3>.

³ See for example the non-coordination of the integration plan by Estonian Ministry of Education and Research in spring of 2014. „Jevgeni Ossinovski: lõimumiskava on sel kujul täiesti ebarahuldav“ [Jevgeni Ossinovski: the integration plan in this form is entirely unsatisfactory]. 26.05.2014. Available at: <http://epl.delfi.ee/news/eesti/jevgeni-ossinovski-loimumiskava-on-sel-kujul-taiesti-ebarahuldav?id=68746305>.

⁴ New immigrants are defined as foreigners who have arrived in Estonia in the past five years.

immigrants in their migration process, the adaptation and also their subsequent integration.⁵ The first adaptation training started in autumn of 2015 and in the course of various modules the new migrants are given knowledge of functioning of the state and society, organising daily life, on topics related to work and family; they are also supported at acquiring basic Estonian language skills.⁶ Parallel to the integration plan and the adaptation programme the Ministry of Economic Affairs and Communications also initiated work on action plan on including foreign specialists and adaptation, or drawing up of the talent policy.⁷

Legislative developments

On legislative level a significant change took place with the 2014 amendment to the act of law (draft act 737 SE), which made giving citizenship to the elderly and to the underaged easier.⁸ The amendment prescribes that children born into the family of parents of undetermined citizenship is automatically granted Estonian citizenship by naturalisation, without his or her parents having to specifically apply for it.⁹ Essentially this ended the decades long uncertainty which continually reproduced undetermined citizenship.

⁵ Kuigi välismaalaste kohanemist on koostöös Integratsiooni Sihtasutuse ja Tallinna Ülikooli poolt toetatud alates 2009. aastast, näitavad läbiviidud uuringud, et nii välismaalaste endi kui ka neid värbavate organisatsioonide teadlikkus programmist on olnud väga madal (vt pikemalt käesoleva ptk uuringute alaosast). Even though adaptation of foreigners has been supported since 2009 in cooperation with the Integration and Migration Foundation Our People and Tallinn University, the surveys indicate that the awareness of foreigners themselves as well as organisations recruiting them of the programme has been very low (see this chapter's subheading Statistics and surveys for further discussion!).

⁶ Read more at: <https://www.siseministeerium.ee/et/kohanemisprogramm>. The website aimed at the target group in English is available at: www.settleinestonia.ee.

⁷ „Work in Estonia – välisspetsialistide Eestisse kaasamise tegevuskava 2015–2016“ [action plan for including foreign specialists in Estonia for 2015–2016]. Available at: https://www.mkm.ee/sites/default/files/work_in_estonia_tegevuskava.pdf. Work In Estonia is a web environment initiated by Enterprise Estonia in the course of talent policy, which gathers all the information regarding working in Estonia, recruiting foreigners, including adaptation. Available at: <http://www.workinestonia.com>.

⁸ Kodakondsuse seaduse ja riigilõivuseaduse muutmise seadus 737 SE [Act to amend the Citizenship Act and the State Fees Act]. Available at: <http://www.riigikogu.ee/tegevus/elnoud/elnou/e0669e30-f9d1-4a51-86d3-77232eba1eb9/Kodakondsuse%20seaduse%20ja%20riigil%C3%B5ivuseaduse%20muutmise%20seadus/>.

⁹ It was also often not done by the parents for lack of knowledge.

The same draft legislation brought on another change which allows minors to possess citizenship of another country besides Estonia, despite whether Estonian citizenship has been acquired at birth or by naturalisation. According to the Citizenship Act multiple citizenship was previously allowed only for children who had acquired Estonian and another citizenship by birth. The topic of multiple citizenship has been actively on the agenda since 2012 and also during the period under observation for the purposes of this report this has been the topic for several discussions.¹⁰ It is still important to note that Estonia is becoming more international despite the Citizenship Act and more and more children that are being born have multiple citizenship by birth.

Another important amendment to an act of law regarding national minorities has to do with children under 15 years of age, who, through inactivity of their legal representative, have been left without residence permit for staying in the country (draft act 586 SE).¹¹ Children in this situation have no opportunity to apply for Estonian citizenship despite the fact that factually they have fulfilled the requirement of residence necessary for applying for citizenship.¹² The amendment added an exception to the Citizenship Act in applying for citizenship for children who have resided in Estonia for at least eight years before turning 15, despite whether they had a residence permit, a right of residence, at the time or not.

¹⁰ „Liina Kersna: Mathéol on õigus jääda eestlaseks“ [Liina Kersna: Mathéol has the right to remain an Estonian]. Eesti Päevaleht. 1.10.2014. Available at: <http://epl.delfi.ee/news/arvamus/liina-kersna-matheol-on-ogus-jaada-eestlaseks?id=69852397>. See also opinions of experts and politicians on this topic in the previous annual report.

¹¹ Kodakondsuse seaduse muutmise seadus 586 SE [Act to amend the Citizenship Act]. Available at: <http://www.riigikogu.ee/tegevus/elnoud/elnoud/ad2a7136-962c-41c7-b6ed-606c3f1ee5a4/Kodakondsuse%20seaduse%20muutmise%20seadus/>.

¹² Ettepanek Riigikogule: kodakondsuse taotlemise tingimuste kohaldamine isiku suhtes, kelle õiguslik staatus jäi alla 15-aastasena määratlemata [Proposal to the Riigikogu: application of conditions for applying for citizenship for persons whose legal status remained undetermined while they were less than 15 years of age]. Chancellor of Justice. 20.11.2012. Available at: <http://oiguskantsler.ee/et/seisukohad/seisukoht/ettepanek-riigikogule-kodakondsuse-taotlemise-tingimuste-kohaldamine-isiku>. Also see an example from life: „Ametnikud ei halasta: lapselt võetakse Eesti kodakondsus.“ [The officials show no mercy: Estonian citizenship is taken from a child] Eesti Ekspress. 23.01.2014. Available: <http://ekspress.delfi.ee/news/paevauudised/ametnikud-ei-halasta-lapselt-voetakse-eesti-kodakondsus?id=67662145>.

Statistics and surveys

A large scale monitoring of the Estonian society is carried out every 3 or 4 years and it thoroughly observes various angles of the integration process in Estonian society. The results of the new monitoring which was published in spring of 2015 show that in comparison to previous years the Estonian language skill and the positive symbolic meaning of Estonian language have increased noticeably among persons of other nationalities.¹³ Also, the trust for Estonian state institutions among young persons of other nationalities is approaching that of Estonian-speaking youths, however, it is remarkably higher than among the older Russian-speaking generation. Still, the trust for Estonian state institutions among Russians in Estonia as a group continues to be much lower than among Estonians; it is especially low in Ida-Virumaa, in comparison to other counties. Perception of socio-economic and political inequality has also increased among Russians in Estonia.

In addition to monitoring of integration adaptation of new immigrants in Estonia was also researched in 2014.¹⁴ The results of the survey showed that providing services to new immigrants in Estonia is fractured, the cooperation between recruiters and the public sector is marginal and a lot of the services are doubled. In addition, the information about general services provided by the state and local governments, as well as services aimed specifically at foreigners in support of adaptation is not well accessible; the survey also points out the Police and Border Guard Board's low level of client-centeredness at applying and processing residence permits.

The survey on diversity in Estonian companies analysed the situation of diversity in boards of Estonian companies, assessing connections between

¹³ Eesti ühiskonna integratsiooni monitooring 2015 [Monitoring of integration in Estonian society]. Institute of Baltic Studies, Tallinn University, PRAXIS Center for Policy Studies. 2015.

¹⁴ Uussisserändajate kohanemine Eestis: valikud ja poliitikaettepanekud tervikliku ja jätkusuutliku süsteemi kujundamiseks [Adaptation of new immigrants in Estonia: choices and policy proposals for creating a comprehensive and sustainable system]. Institute of Baltic Studies. 2014.

diversity and the companies' economic results.¹⁵ The results of the survey show that in comparison to general population indicators there are more members of Estonian nationality on boards of Estonian companies. In terms of nationalities 91% of Estonian companies have either only Estonians or only persons of another nationality on board, in other words, only 9% of companies have Estonians on board along with representatives from another nationality.

An overview of the results of the annual opinion polls on national defence and integration of Russian-speaking residents focused to a significant extent on the 2014 results in connection to the events in Ukraine.¹⁶ The analysis indicates that in regards to security guarantees the opinions of Estonian-speaking residents and residents speaking other languages clearly differ: for Estonians the main guarantee of safety is the NATO membership, for Russian-speaking respondents it is creating and developing good relations with Russia. However, similarly to the Estonians the Russian respondents are of the opinion that in case of an attack the state must be protected and the younger Russian-speaking persons are ready to take part in state defence on equal terms with the Estonians.

Several fascinating surveys and analyses were published on the topic of migration related to integration, the most important of which were the overview of choices of state of Estonia's migration policies by the National Audit Office,¹⁷ the analysis compiled by the Estonian Academy of Security Sciences on possible risks of resettlement programmes for persons who have been granted international protection on internal security

¹⁵ Uuring mitmekesisusest Eesti ettevõtetes [Survey on diversity in Estonian companies]. PRAXIS Center for Policy Studies. 2015.

¹⁶ Ülevaade venekeelse elanikkonna lõimumisest ning

riigikaitse alaste arvamusuuringute tulemustest [An overview of integration of Russian-speaking population and on the results of opinion polls on national defence]. International Centre for Defence and Security. 2014.

¹⁷ Ülevaade riigi rändepoliitika valikutest [Overview of choices of state migration policy]. National Audit Office. 2015.

(the survey also touches upon integration of refugees);¹⁸ and opinion poll ordered by the Open Estonia Fund of Estonians and not Estonians on topical events and following media coverage and importance of information channels, which is vital in defining opinions on the Ukraine conflict in various national groups.¹⁹

Good practices

A new Russian language television channel ETV+ started broadcasting in September of 2015.²⁰ A Russian language television channel and the Russian population in Estonia living in another information sphere has been talked about for decades. This was especially topical after the bronze night and the events in Georgia (culminating in creation of ETV2 and production of a few programmes in Russian), but the real steps towards creating a Russian language channel were predominantly driven by the 2014 events in Ukraine. Even though it is still early to evaluate the effect and results of the channel it can be considered a good additional activity in supporting the Russian population in Estonia in integration.

Lack of timely information and it (not) reaching the population in Estonia who do not speak Estonian has been one of the main conclusions of integration surveys of the recent years. The regular and free provision of legal aid is an extremely important topic in integrating the Russian speaking population, as in the appraisal of experts the Russian-speaking population also lives in another information sphere in regards to legal aid.²¹ Upon initiative of the Ministry of Justice, a website was opened in spring of 2014 www.juristaitab.ee/ru in order to improve the situation, where, for the first time, legal aid

¹⁸ Rahvusvahelise kaitse saajate ümberasustamise ja -paigutamise programmides osalemise võimalikud riskid Eesti sisejulgeolekule [Possible risks of resettlement programmes for persons who have been granted international protection on internal security]. Estonian Academy of Security Sciences. 2015.

¹⁹ Päevakajalised sündmused ja erinevad infokanalid [Topical events and various information channels]. SaarPoll. 2014.

²⁰ Available at: <http://etvpluss.err.ee/>.

²¹ „Juristide liidu juht: venekeelne elanikkond on ka õigusabi osas teises informuumis“ [The head of Estonian Lawyers Association: Russian-speaking population also lives in another information sphere in regards to legal aid]. ERR News. 28.07.2014. Available at: <http://uudised.err.ee/v/estti/cf5eb1bc-bc55-451d-b22b-5a65d052eab1>.

can be accessed in Russian. The website also provides Russian translations for more important acts of law.

Noteworthy public discussions

The main public discussions on integration and national minorities were divided between three events: the first in connection with Russia's aggression in Ukraine, the second in connection with the Charlie Hebdo terror attack in Paris, and the third in Connection with the Mediterranean crisis or refugees of war from Syria and other conflict sources.

The Ukraine events once more raised the question of loyalty of Russians in Estonia to the state of Estonia. The diametrically opposite coverage of the conflict in Russian and Estonian information space raised the question on how many Russians in Estonia actively follow Russian media, how many support Russia's military activity in Ukraine and why, and first of all, to what extent are Russians in Estonia loyal in case of a conflict in Estonia in guise of "protection of Russians". Even though the last question – "Is Narva going to be next?" – was largely reduced to speculations, it was the topic, which was discussed in Estonia, but more actively in foreign media.²²

Another public discussion regarding national minorities had to do with the Charlie Hebdo attack in Paris. The Estonian media covered the events mainly

²² Raik, Katri. „Lääne vaade meie Narvale“ [The West's view on our Narva]. The Journal of the Estonian Parliament. Available at: <http://www.riigikogu.ee/rito/index.php?id=16804>. Hurt, Martin. „Kas kõik Baltimaade venekeelsed elanikud on Venemaa sõbrad?“ [Are all Russian-speaking residents in Baltic states friends of Russia?]. International Centre for Defence and Security. Available at: <http://www.icds.ee/et/rkk-meedias/artikkel/kas-koik-baltimaade-venekeelsed-elanikud-on-venemaa-sõbrad/>. „Kas Narva on järgmine?“ [Will Narva be next?]. Karmo Tüüri's blog. 26.06.2015. Available at: <http://karmotuur.blogspot.com.ar/2015/06/kas-narva-on-jargmine.html>. Liik, Kadri. „Mis on Ukrainas kaalul?“ [What is at stake in Ukraine?]. Diplomaatia. March 2014. Available at: <http://www.diplomaatia.ee/artikkel/mis-on-ukrainas-kaalul/>. „Lauristin: riik on jätnud seni venekeelse elanikkonna infovajaduste rahuldamise Venemaa telekanalite meelevalda“ [Lauristin: the state has left satisfying the Russian-speaking population's need for information to the television channels of Russia]. Delfi. 19.04.2014. Available at: <http://www.delfi.ee/news/paevauudised/eesti/lauristin-riik-on-jatnud-seni-venekeelse-elanikkonna-infovajaduste-rahuldamise-venemaa-telekanalite-meelevalda?id=68471267>,

from the point of view of security, but also from conflict of cultures due to (excessive) immigration and the “impossibility” of integration of Muslims.²³

It is important to note that the media publications framed the attack as not only the matter of radical Muslim movement, but also often created contextual links with Islam, Muslims and immigration in general,²⁴ thereby reaffirming the image of Islam and Muslims as potential terrorists.

The third public discussion on national minorities and integration had to do with the Mediterranean crisis. Numerous speeches on ability/inability of asylum seekers and refugees to integrate into Estonian society were published. Even though weighty arguments were presented in support of both views, an new trend in Estonian public must be pointed out – significant increase in speeches based on subjective emotions, fear and manipulated facts.²⁵

Trends

When in previous years there had been very few incidence related to racism, hate speech or aggressive xenophobia in Estonia,²⁶ then the period under observation in this report denotes a noticeable change. Due to probably

²³ Terrorist attacks in Paris. Andmekogumine Euroopa Liidu Põhiõiguste Ametile [Gathering data for FRA]. Institute of Baltic Studies. 2015.

²⁴ Ibid.

²⁵ See for example statements, which have received a lot of response, and the reactions: “300 000 siin parasiteeriva tibra”: „Reitelmanni mõjust” [300,000 residing tibra’s [derogatory term for Russians]. On Reitelmänn’s influence]. Eesti Päevaleht. 29.09.2015. Available at: <http://epl.delfi.ee/news/arvamus/reitelmanni-mojust?id=72562897>. „Nikolaj Karajev: miks „tiblade” paljastajat Reitelmanni ei vallandata?” [Nikolaj Karajev: why isn’t Reitlemann, the revealer of „tibla’s” not fired?] Postimees. 17.09.2015. Available at: <http://www.postimees.ee/3352247/ekre-kasutab-kremli-propagandatrikke-vanad-kaadrid-serveritakse-uute-pahe>.

²⁶ FRA aastaaruanne põhiõigustest [FRA’s annual report on fundamental freedoms]. Institute of Baltic Studies. 2014. Author’s correspondence with experts (2015) and the Ministry of Justice (2015).

largely the three previously mentioned events, it can be noted that there are first manifestations of more active expression of such attitudes in 2015. There have been notably many more instances of notifying about incidents related to intolerance and xenophobia: the hate speech letters sent to Estonian Muslim community after the Paris events,²⁷ setting fire to Vao centre for asylum seekers,²⁸ hate speech sent to the web constable in relation to the refugee topic,²⁹ and threats and racist remarks aimed at dark-skinned persons on the streets.³⁰ In addition to that, disguised or circumstantial inciting of xenophobia via manipulating or misinterpreting facts, and wilfully playing on people's emotions and fears has become more rife (see the previous footnote).

There is a thin line between inciting fear and inciting hate, although a remarkable one in regards to legal and penal power. Such trends are dangerous as the creators of it are knowingly balancing on the border between the two, while responsibility for possible real actions is in the end placed on the person who goes along with the provocation. Talking about possible dangers and real fears of people in regards to immigration, national minorities and their integration is in itself a necessary part of any reasonable discussion – they shouldn't be denied or depreciated, but making generalisations about the entire target group based on a single case, manipulation, and playing on people's emotions cannot be considered to be a part of reasonable discussion.

²⁷ Terrorist attacks in Paris. Andmekogumine Euroopa Liidu Põhiõiguste Ametile [Gathering data for FRA]. Institute of Baltic Studies. 2015.

²⁸ „Ammas: Vao keskuse süütamine on ilmselt vihakuritegu“ [Ammas: setting fire to Vao centre is probably a hate crime]. Delfi. 3.09.2015. Available at: <http://www.delfi.ee/news/paevauudised/eesi/ammaz-vao-keskuse-suutamine-on-ilmselt-vihakuritegu?id=72355007>.

²⁹ „Pagulasvastane saatis veebikonstaablile võika vihakirja“ [An anti-refugee person sent the web constable lurid hate mail]. Postimees. 7.08.2015. Available at: <http://www.postimees.ee/3286229/pagulasvastane-saatis-veebikonstaablile-voika-vihakirja>.

³⁰ „Tiina Jõgeda: eestlaste meeli valdab võõrahirm“ [Tiina Jõgeda: the minds of Estonians are consumed by fear of foreigners / xenophobia]. Postimees. 13.10.2015. Available at: <http://www.postimees.ee/3361371/tiina-jogeda-estlaste-meeli-valdab-voorahirm>. „Taavet Hinrikus: e-riik peab olema salliv“ [Taavet Hinrikus: an e-state must be tolerant]. Postimees. 7.10.2015. Available at: <http://arvamus.postimees.ee/3353617/taavet-hinrikus-e-riik-peab-olema-salliv>.

Recommendations

- More attention should be paid to framing the topics in media. Far too often, when covering a piece of news – whether knowingly or not – connections are made with conflict, violence and terrorism and specific national groups or religions.
- Also, even though there have been several activities on raising the awareness of the population and the journalists in the past few years, the results and effect of these activities must be evaluated and seen what could be done better than before so that media would not focus on provocations and the people would not subject to manipulation.
- Although multiple citizenship is now legalized for minors it is necessary to initiate discussion in order to enable multiple citizenship also after becoming an adult. Multiple citizenship is allowed for EU citizens for example in Germany as well as Latvia (as of 2013); Denmark legalized multiple citizenship on 1 September 2015.
- Estonia's security is guaranteed only if the entire population is united and integrated. Even though the activities of the integration plan and the newly initiated ETV+ are actively working towards that objective, strengthening the Russian language information space in Estonia continues to be important, especially with the aim of producing local Russian-speaking opinion-formers, who are listened to and trusted by people belonging to Estonian as well as Russian language information space.
- The state needs to adopt a far greater and more active role in delivering communication in conflict situations. For example, an open and frank discussion needs to be entered into with the population on the topic of immigration, otherwise the people will be convinced that the state has no control over or strategy for dealing with immigration. Trust for the state can only come about if the residents understand the rules regulating immigration and are sure that the state is capable of enforcing these rules.

HUMAN RIGHTS IN ESTONIA
2014-2015

The situation of LGBT
persons in Estonia

The situation of LGBT persons in Estonia



AUTHOR



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CHAPTER 11

The situation of LGBT persons in Estonia

Rights of LGBT persons

2014 will go down in history with the passing of the Cohabitation Act (Civil Partnership Act) on October 9th. The time preceding it was spent focusing primarily on regulating the relationships of same sex couples – on the level of politicians, ministries, opinion leaders as well as civil society. Passing the implementation act was left in 2015, which had not been submitted with the Riigikogu at the time of writing this report. Parallel to this an important development was taking place in the Ministry of Social Affairs since the summer of 2014 – initiation of creating the development plan, which among other topics sets up strategic goals, methods and activities for creating a more equal society. However, by autumn of 2015 it has become clear that topics related to equal treatment will be significantly reduced in the development plan.

Political and institutional developments

In July of 2014 the Ministry of Social Affairs submitted a proposal to the government to compile a “Social Security, Inclusion and Equal Opportunities Development Plan 2016–2023” (by now it has been renamed the wellbeing development plan). The government approved the proposal and the ministry set about preparing the development plan. A steering committee was formed for this purpose, consisting of, among others, the representatives of the civil society, including Estonian Human Rights Centre and the Estonian LGBT Association. According to the working version of 22 September 2015 it

gathers together the work, social protection, gender equality and equal treatment policies' strategic goals for years 2016–2023. The development plan will give a comprehensive view of the main challenges, goals and courses of action in the aforementioned political areas.¹

The meeting of the steering committee on 1 October 2015 revealed the worrying development that the Ministry of Social Affairs intends to lose the sub-goal 5 “A society valuing diversity and being considerate differences, where following the principle of equal treatment of people is guaranteed” as a separate sub-goal and divide it between the other sub-goals. Since the sub-goals 1–4 have to do with employment, social protection, welfare services and gender equality, the question inevitably arises how it is possible to achieve the sub-goal 5 through them in the full extent. Their expectation that the sub-goal 5 will be preserved has been expressed in writing by the Estonian Human Rights Centre as well as Estonian LGBT Association, however, at the time of writing the report it is not yet clear which development plan the Ministry of Social Affairs will go ahead with.

At the 2015 Parliamentary elections the Estonia's Conservative People's Party made it into the parliament, having partially based their campaign on the message “down with the Cohabitation Act”. The party's rhetoric is clearly aimed against same sex couples and the rights of LGBT persons in general. In their conservative programme the Conservative People's Party have defined family as: “We support Christian values and protect traditional, wholesome family model consisting of a mother, a father and children. When adopting children we consider that every child has an inalienable right to a normal family life.”² The Conservative People's Party has 7 seats at the parliament; they have not increased their support after making it into the Riigikogu. In 2015 they have channelled their main attention into activities against refugees and immigration. With their appearance in Riigikogu such derogatory expressions towards gays and lesbians have made it into political rhetoric as

¹ 22 September 2015 working version of wellbeing development plan. Sent electronically to members of the steering committee.

² Konservatiivne programm [Conservative programme]. Available at: <http://ekre.ee/konservatiivne-programm/>.

for example “homo steamroller drivers”³ or “let’s topple this social liberalist coalition of queers”.⁴ Time will tell what the future brings for the Conservative People’s Party and whether they will have similar success as analogous parties in Finland, Sweden and in several other countries in Europe.

Legislative developments

On 17 April 2014 forty members of the parliament presented Riigikogu the draft act of the Cohabitation Act. The first reading was successfully passed in June, the second and third in October. The act of law was passed on 9 October 2014. The Cohabitation Act enables two adults to legally register their cohabitation, the draft act extends to couples of the same sex as well as different genders. This is also the only way for same sex couples to register their cohabitation, offering them important protection and acknowledgement, which they did not have so far. The Cohabitation Act enables adoption within the family, thereby giving same sex parent families with a child with only one parent with parental rights the opportunity to have the other registered partner adopt the child. This significantly improves the safety of children growing in such families.

In 2015, in order for the Cohabitation Act to come into force in the full extent the implementation act along with all the amendments that have to be made in other acts of law has to be passed. The Minister of Justice Urmas Reinsalu announced upon entering into office in April of 2015 that he has no intention of working on the implementation act.⁵ Yet precisely the government, and in case of the Cohabitation Act – the Ministry of Justice, ought to be responsible

³ „Mart Helme: homoteerulli juhid ei sõida kooseluseaduse rakendusakte läbi surudes üle mitte EKRE seitsmest vaprast, vaid rahva enamusest“ [Mart Helme: homo steamroller drivers don’t only run over the seven brave ones of the Conservative Party while pushing the implementation act of the Cohabitation Act, but the majority of the people]. Delfi. 25.04.2015. Available at: <http://www.delfi.ee/news/paevauudised/eeesti/mart-helme-homoteerulli-juhid-ei-soida-kooseluseaduse-rakendusakte-labi-surudes-ule-mitte-ekre-seitsmest-vaprast-vaid-rahva-enamusest?id=71328005>.

⁴ „Madison: kukutame selle sotsiaalliberalistliku lillade koalitsiooni! [Madison: let’s topple this socialist liberalist coalition of queers!] Postimees. 25.04.2015. Available at: <http://poliitika.postimees.ee/3169845/madison-kukutame-selle-sotsiaalliberalistliku-lillade-koalitsiooni>.

⁵ „Voimuerakonnad on kooseluseaduse rakendussätete osas eri meelt“ [The parties in power disagree on implementation provisions of the Cohabitation Act]. Postimees. 22.04.2015. Available at: <http://www.postimees.ee/3165323/voimuerakonnad-on-kooseluseaduse-rakendussatete-osas-eri-meelt>.

for implementation of the act – the legislator did express its will by passing the Cohabitation Act. At the time of writing this report the draft had not been presented to the Riigikogu, but it is still likely to be presented in October of 2015, and again by members of the Riigikogu, as had been the case with the draft act to the Cohabitation Act.⁶ If the implementation act is not passed in 2015, court cases are probably to be expected in 2016 when partners wishing to register their cohabitation will sue the state for failure to act.

The Ministry of Social Affairs has put together an intent to develop to amend the Equal Treatment Act to guarantee protection from discrimination on the basis of sexual orientation, beliefs, age and disability also outside of work, for example, in education, in social spheres, health care and accessibility to goods and services. With that the long awaited amendment of the Equal Treatment Act to harmonise basis of discrimination has begun, however, this amendment is not likely to apply before 2017.

The lacking regulation on incitement of hatred and hate crimes in the Penal Code, which several previous annual human rights reports have drawn attention to became topical again in relation to the setting fire to of the Accommodation Centre for Asylum Seekers in Vao village in the beginning of September in 2015. Minister of Justice Urmas Reinsalu pointed out the need to review the concept of hate crimes: “The purpose of an act of violence as a hate crime must have an element of aggravation of punishment in penal power. I will assemble representatives of various organisations related to human rights, the media and public opinion in order to discuss proposals.”⁷ We must carefully observe which activities the Minister of Justice will come to in this question.

In the 2013 annual human rights report Marianne Meiorg and Ann Väljataga pointed out a contradiction between the Constitution of the Republic and the

⁶ „Kriitilised 51 häält“ [The critical 51 votes]. Postimees. 7.10.2015. Available at: <http://poliitika.postimees.ee/3354101/kriitilised-51-haalt>.

⁷ „Ülevaade: kuidas reageerisid poliitikud Vao pagulaskeskuse põlengule?“ [Overview: how did politicians react to the fire at Vao accommodation centre for asylum seekers] Postimees. 3.09.2015. Available at: <http://arvamus.postimees.ee/3315573/ulevaade-kuidas-reageerisid-poliitikud-vao-pagulaskeskuse-polengule>.

Aliens Act: „the Chancellor of Justice received three similar applications [in 2012] asking to check whether the Aliens Act is in accordance with the constitution in that it does not allow same sex partners of Estonian citizens to take residence in Estonia.“⁸ The explanations of the Minister of Interior Affairs to the request for information of Chancellor of Justice did not convince the latter, and on 4 November 2013 the Chancellor of Justice, in his memorandum, recommended initiating amending the Aliens Act in order to bring it into accordance with the constitution. The act has not been amended as of October 2015, however Chancellor of Justice Ülle Madise who took office in 2015 has stated in her letter of 24 August 2015 that she “has taken this issue into focus and is planning to take steps of her own in order to initiate bringing the Aliens Act into accordance with the constitution.”⁹ Therefore, hopefully in the next annual human rights report there is reason to write of greater progress.

Court practice

The cases mentioned in previous annual human rights reports (refusal to issue a certificate of capability to marry, division of property of same sex partners after the end of cohabitation) have ended without success after the Supreme Court refused to accept the claims. The complaint of representative of NGO Sexual Minorities Protection Union (SEKY) Reimo Mets regarding recognition of same sex marriage concluded in a foreign country was added to that list in August of 2015.

At the moment there is a case in court on the initiative of the office of Gender Equality and Equal Treatment Commissioner regarding protection of rights of a transgender person in the process of changing their name.¹⁰

⁸ Meiorig, M., Väljataga, A. „Seksuaalvähemuste olukord“ väljaandes “Inimõigused Eestis 2013“ [Situation of sexual minorities in the 2013 annual human rights report]. Available at: <http://humanrights.ee/inimoiguste-aruanne-2/inimoigused-eestis-2013/seksuaalvahemuste-olukord/>.

⁹ Chancellor of Justice's e-mail „Vastus Eesti LGBT Ühingu pöördumisele“ [response to inquiry of Estonian LGBT Association]. 24.08.2015.

¹⁰ „Soolise võrdõiguslikkuse ja võrdse kohtlemise voliniku 2014. aasta tegevuse aruanne“ [2014 annual report of the Gender Equality and Equal Treatment Commissioner]. Available at: <http://www.vordoigus-volinik.ee/wp-content/uploads/2015/06/SVV-Aastaruanne-2014.pdf>.

Statistics and surveys

In 2014 one complaint, request for explanation or memorandum was submitted with the office of the commissioner regarding sexual orientation. A surprising trend can be noted throughout the years – since 2013 the number of applications has reduced. In 2010 there were 11 applications, in 2011 there were 19, in 2012 there were 23, in 2013 there were 4 applications regarding sexual orientation, and 1 regarding gender identity.¹¹

The attitude towards LGBT persons was investigated via the public opinion poll¹² carried out by Turu-Uuringute AS in 2014 in the course of the Tallinn Law School at Tallinn University of Technology project “Diversity Enriches”. The poll reveals that attitudes have not changed significantly in comparison to the comparative poll¹³ from two years ago. It was a positive surprise that 64% of Estonia’s residents believed that gays and lesbians should be protected from discrimination by law also outside employment, only 26% were against it. The support for registering same sex cohabitation has decreased a little – from 46% in 2012 to 40% in 2014, especially among Russian speaking respondents.

Good practices

Several civil initiatives supporting passing the Cohabitation Act in 2014 will be remembered. Immediately before the first reading of the Cohabitation Act at the Riigikogu the Facebook page „Aitäh, aga minu traditsiooniline perekond ei vaja kaitset“¹⁴ was created, which gathered thousands of supporters within a few days, soon reaching 18,000 supporters. This page helped show that the Cohabitation Act had great support within society, which had not had a voice in the previous debates.

¹¹ Voliniku tegevuse aasta ülevaated [yearly overview of the commissioner’s activities]. Available at: <http://www.vordoigusvolinik.ee/voliniku-too/aasta-tegevuse-ulevaated/>.

¹² „Avaliku arvamuse uuring hoiaikutest seksuaalvähemuste suhtes“ [public opinion poll on attitudes towards sexual minorities]. 2014. Available at: <http://www.erinevusrikastab.ee/tegevused/uuringud/avaliku-arvamuse-uuring-hoiaikutest-seksuaalvahemuste-suhtes-2014/>.

¹³ „Avaliku arvamuse uuring hoiaikutest seksuaalvähemuste suhtes“ [The public opinion poll on attitude towards sexual minorities]. 2014. Available at: <http://www.erinevusrikastab.ee/tegevused/uuringud/avaliku-arvamuse-uuring-hoiaikutest-seksuaalvahemuste-suhtes/>.

¹⁴ [Thank you, but my traditional family needs no protection] <https://www.facebook.com/traditsioon>

Immediately before the third reading of the Cohabitation Act people were invited as civil initiative to donate money in order to gift flowers to members of the parliament on the day of the third reading. The action „Ütle läbi lillede“ (say it with flowers) was born.¹⁵ Thousands of euros were collected as a result, and so many flowers could be bought that the square in front of Riigikogu was decorated with hundreds of colourful blooms.¹⁶ This thoroughly positive message and support to Riigikogu encouraged supporters of the Cohabitation Act give their vote for the act. The people against the Cohabitation Act had also gathered at Toompea at the same time, but their opposing messages found no support.

Initiating the draft act of the Cohabitation Act by the members of the Riigikogu can also be pointed out as a good practice. Most of the draft acts originate in the government, but since the government showed no initiative in this topic the cooperation between political parties at Riigikogu functioned well, and as a result the draft act of the Cohabitation Act along with 40 signatures of parliamentarians was presented to the Riigikogu for processing.

Noteworthy public discussions

One of the main topics of discussions in 2014 was the Cohabitation Act, which was supported by and spoken out in favour of by politicians, officials, opinion leaders, leaders of civil society, authors, musicians and several others. Civil initiatives that brought understanding and positivity to the debate have been mentioned as good practices above, but the discussions also have another side, which culminated at a demonstration at Toompea on 5 October 2014 for protection of family and democracy,¹⁷ where one of the more memorable slogans was “aberration must be treated”. At the same time tens of people spoke out in support of a caring and tolerant society, several did so via

¹⁵ The action's Facebook page: <https://www.facebook.com/events/1698825217009748/>.

¹⁶ „Galerii: lilled ja plakatid Toompeal ehk kooseluseaduse poolt ja vastu“ [Gallery: flowers and slogans in Toompea, or for and against the Cohabitation Act]. Postimees. 9.10.2014. Available at: <http://www.postimees.ee/2948133/3416073>.

¹⁷ „Aasta kõige teravam meelevaldus: Toompeal protestiti kooseluseaduse vastu!“ [The fiercest demonstration of the year: protesting against the Cohabitation Act in Toompea] Delfi. 5.10.2014. Available at: <http://www.delfi.ee/news/paevauudised/estii/aasta-koige-teravam-meelevaldus-toompeal-protestiti-kooseluseaduse-vastu?id=69880533>.

video clips: <https://www.youtube.com/user/KOOS2014/videos>. These statements illustrate sides, which came about in the cohabitation debate and which will continue in 2015 in debates on refugees and immigration. We are yet to find the common ground as society.

Recommendations

- Adopt the implementation act of the Cohabitation Act, which guarantees the coming into force of the Cohabitation Act in the full extent from 1 January 2016.
- Retain the sub-goal of equal treatment and promotion of tolerance in development plan of wellbeing in order to guarantee increasing awareness in equal treatment topics, and the increase of tolerance in society as a whole.
- Regulate clearly the foundations for residence and basis for stay rights of foreign citizen same sex partners or spouses of Estonian citizens or residents in Estonia.
- Adopt rules offering LGBT persons protection from hate speech and discrimination, including protection from discrimination outside employment (in education, health care, consuming social services and accessibility to goods and services).
- Conduct research to better chart and understand the situation of LGBT persons in various fields (including bullying in school system, unequal treatment in health care system, treatment of LGBT persons in places of detention).
- Guarantee in-service training for specialist (teachers, youth workers, health care workers, policemen, judges, etc.) on LGBT topics, and add questions related to LGBT persons in training programmes of for example, teachers, youth workers, policemen, judges, health care workers.

HUMAN RIGHTS IN ESTONIA
2014-2015

Rights of refugees
and asylum seekers

Rights of refugees and asylum seekers



AUTHOR



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CHAPTER 12

Rights of refugees and asylum seekers

There are several reasons why people change their place of residence – for example, to go live with their spouse, or because they have accepted an offer for a better job. However, for a lot of people leaving their country of origin is not a choice, but they are forced to leave in order to guarantee the life or health of themselves, and often also their family. Refugees need special protection precisely because they have not chosen this fate for themselves. Estonia has been providing international protection since 1997 when we acceded to the UN Convention relating to the Status of Refugees (1951)¹ and the Protocol Relating to the Status of Refugees (1967). In years 1997–2013 Estonia received 446 applications for asylum; 93 persons were granted international protection and permission for family reunification.

Political and institutional developments

In 2014 and 2015 guaranteeing the rights of unaccompanied minors in asylum proceedings has been organised better – for example, since 2014 the partner to the Estonian National Social Insurance Board is the Estonian SOS Children's Villages Association, with whom there is a contract under public law for offering the service of replacement home for unaccompanied minors.

In 2014 and 2015 the Chancellor of Justice made the Police and Border Guard Board two proposals relating to enabling communication for detainees at the

¹ Convention relating to the Status of Refugees (1951) – State Gazette RT II 1997, 6, 26.

detention centre. On 19 April 2014 the Chancellor of Justice made the proposal to remove the infringement regarding opportunities for living together and spending time together for unmarried partners at the detention centre. The Chancellor of Justice pointed out that a man and a woman in a sustainable relationship must be considered family members and when possible unmarried partners should be accommodated together at the detention centre.² Neither did the Police and Border Guard Board follow the Chancellor of Justice's earlier recommendations about enabling single women detained on the women's floor to communicate with other persons at the centre, mainly with their unmarried partners.³ The Chancellor of Justice is of the view that the activity of the Police and Border Guard Board in so far as it did not enable detained unmarried partners to communicate and spend time together at the detention centre, was not lawful.

The 2015 proposal came about from the fact that a person was not enabled to meet their unmarried partner at the detention centre. The Chancellor of Justice emphasized that enabling meetings may be necessary in order to guarantee the person's fundamental right to inviolability of family and private life.⁴ The Chancellor of Justice was of the opinion that the activity of the Police and Border Guard Board in forbidding the meetings was unlawful and unconstitutional.

On May 12th and 14th of 2014 the advisers to the Chancellor of Justice carried out a verification visit at the Vao Accommodation Centre for Asylum Seekers.⁵ The Chancellor of Justice recommended the accommodation centre, after the arrival of the asylum seeker, carry out an initial medical examination, conclude a contract with the family physician for providing health services for

² Ettepanek rikkumise kõrvaldamiseks [Proposal to remove infringement]. Kinnipidamiskeskuses elukaaslaste koos elamise ning ajaveetmise võimaldamine [Enabling living and spending time together for unmarried partners at the detention centre]. P 4. 29.04.2014. Available at: http://oiguskantsler.ee/sites/default/files/field_document2/6iguskantsleri_ettepanek_rikkumiste_korvaldamiseks_kinnipidamiskeskuses_elukaaslaste_koos_elamise_ning_ajaveetmise_voimaldamine.pdf.

³ Ibid. P 1.

⁴ Ettepanek rikkumise kõrvaldamiseks [Proposal to remove infringement]. Kinnipidamiskeskuses kokkusaamise võimaldamine [Enabling meeting at the detention centre]. 30.03.2015. Available at: http://oiguskantsler.ee/sites/default/files/field_document2/6iguskantsleri_ettepanek_rikkumise_korvaldamiseks_kinnipidamiskeskuses_kokkusaamise_voimaldamine.pdf.

⁵ 12.05.2014 ja 14.05.2014 kontrollkäik Varjupaigataotlejate Majutuskeskusesse [verification visit at the Accommodation Centre for Asylum Seekers]. Available at: http://oiguskantsler.ee/sites/default/files/field_document2/kontrollkaigu_kokkuvote_varjupaigataotlejate_majutuskeskus.pdf.

the inhabitants of the centre, organise interpretation into an understandable language upon providing the health services, and if possible, include a professional interpreter, cover the children's dental treatment expenses, organise the service of psychological counselling at the accommodation centre on site, and organise language learning in a more effective way.

The move of the accommodation centre from Illuka rural municipality in Jaama Village to Väike-Maarja rural municipality in Vao village in 2014 should also be pointed out as progress, since the access to services necessary for the asylum seekers is much better there. Also, in 2015, upon statements of a person about refugees and displaced persons in social media, misdemeanour procedure was initiated on the section of the Penal Code to do with incitement to hatred.

Legislative developments

On 4 July 2014 an amendment was made to the Act on Granting International Protection to Aliens, which came into force 1 January 2015, changing the amount of aid given to family members who are minors. When earlier the second family member and all the following members received 80% of the aid given to the first family member, then as of 1 January 2015 each under age member of the family receives aid equal to that of the first family member.

One of the most remarkable developments of 2015 was the provision of the Act on Granting International Protection to Aliens that came onto force on April 2nd, according to which the applicant of international protection is allowed to work in Estonia, if within six months of submitting the application no decision about the application has come into force for reasons not to do with him or her. The applicant of international protection may work in Estonia until the end of proceedings for his or her application, including during contestation of the decision of refusal to give international protection. The amendment to the act, which the refugee organisations lobbied for is remarkably more favourable towards asylum seekers. The only problem area in realising this right is the inability of asylum seekers, who have no documents, to open a bank account, which limits their access to labour market. Additionally, on 1 August 2015 the provision of the Act on Granting International Protection to Aliens came into force, according to which the Police

and Border Guard Board will send foreigners who have been granted international protection to participate in an adaptation programme.

Court practice

Most of the court practice has to do with detention of asylum seekers, there is a lot less court practice related to contestation of refusal to grant international protection. Asylum seekers are often detained referring to the danger that they may abscond. The risk of absconding has not been defined in Estonian legislation, therefore it is hard to dispute in court. The presence of risk of absconding is reasoned with that the person has crossed the border illegally when coming to Estonia or has passed through several safe countries in order to reach Estonia. Smugglers are used more and more in order to reach safe countries, which is often accompanied by irregular border crossing.

Tartu Circuit Court has said that if an asylum seeker has no identity document or other documents, which is why it cannot be claimed that the person is who he says he is, then bases are present according to which the asylum seeker can be detained for the unavoidable necessity to identify the person, to verify or find out his citizenship.⁶ Tartu Circuit Court has also stated that if it has been reasoned that the person wishes to abuse the procedure by applying for asylum and delay his expulsion, then there is reason to believe the person has submitted the application for asylum in order to delay his obligation to leave or avoid being deported.⁷

In the beginning of 2015 the Supreme Court made public the court rulings of the Administrative Law Chamber regarding placing two Belorussian and one Syrian asylum seeker at the detention centre.⁸ The Chamber found that placing the asylum seekers at the detention centre is justified if risk of absconding has been detected. Also, appropriate reasons for detention are, for example, destruction of evidence or risk of influencing witnesses. The Chamber pointed

⁶ Tartu Circuit Court ruling of 29.11.2013 no. 3-13-2162, Tartu Circuit Court ruling of 03.12.2013 no. 3-13-2163.

⁷ Tartu Circuit court 18.03.2014 administrative case no. 3-13-2470.

⁸ 29.01.2015 Administrative Law Chamber of the Supreme Court rulings in cases no. 3-3-1-52-14 and 3-3-1-48-14; 03.02.2015 Administrative Law Chamber of the Supreme Court ruling in case no 3-3-1-56-14.

out that the asylum seeker ought to be released immediately as soon as the basis of detention cease to exist. Otherwise the applicant has the right to apply for revocation of authorisation of the court or challenge the administrative authority's failure to act in finding out the circumstances. He also has the right to claim compensation for damages caused by detention for the time that detention was no longer necessary, or for the administrative authority's unlawful failure to act in finding out circumstances while the person was at the detention centre.

Tallinn Circuit Court made an important decision on 10 April 2015 regarding annulment of the decision to rejection an asylum application and refusal of a residence permit, denying the appeal of the Police and Border Guard Board and concurring with the Administrative Court judgment reasons.⁹ The Circuit Court explained that existence of contradiction does not always mean inauthentic testimony as the person may not understand how important it is to exhaustively show all the reasons for applying for an asylum already in the asylum application. The court added that as a rule there is a significant time delay between asylum application and the events that caused the application, which is why the person's memories may be unclear and distorted. The Circuit Court emphasized that it is important to consider that the interviews took place via an interpreter, in this instance via two interpreters, and even in the best operation of all parties, the differences between the initial statement and what was written down were possible, also adding that these differences could possibly not be removed even by re-reading the record. The Circuit Court remarked that only significant contraventions can be decisive.

Statistics and surveys

117 men and 40 women applied for international protection in Estonia in 2014; in 2015 (as of 30.09.2015) 124 men and 66 women did the same. The largest number of asylum seekers (from 01.01.2014 until 30.09.2015) have come from Ukraine (136), Russia (31), Sudan (31) and Syria (21). In 2014 refugee status was given to 20 persons (2 from Bangladesh, 4 from Syria, 7 from Sudan, 4 from Kosovo, 2

⁹ Tallinn Circuit Court judgment of 10.04.2015 in administrative case no. 3-13-1596.

from Palestine, 1 from Russia), nobody was granted subsidiary protection. In 2015 (as of 30.09.2015) refugee status was given to 16 persons (10 from Sudan, 6 from Ukraine) and 40 persons were granted subsidiary protection (38 from Ukraine, 1 from Yemen, 1 from Russia). In 2014 residence permit for family reunification was given to 3 persons, and 18 persons in 2015 (as of 30.09.2015).

Good practices

As a result of verification visit to the accommodation centre carried out by advisers to the Chancellor of Justice on May 12th and 14th of 2014 the good practices were noted to be the open and helpful attitude of workers at the accommodation centre towards the residents of the centre, organisation of English language lessons for asylum seekers and the contribution of the centre and the NGOs in creating opportunities for asylum seekers in spending their free time.¹⁰ Donations were collected in the course of the “Ukraina heaks!” (for Ukraine) campaign initiated in 2014 by three Estonian NGOs, helping people who had suffered and fled from their homes because of the Ukraine conflict.¹¹ The campaign is still ongoing, as is providing the help.

In 2015 the movement Sõbralik Eesti (friendly Estonia) was created, promoting tolerance through their activities. Sõbralik Eesti is a movement that started in civil initiative, uniting people and undertakings that wish to keep the state helpful and open. On 6 September 2015 the “Sõbralik Eesti” support concert took place, with national dishes’ areas and several well-known people making speeches inviting people to be more open and tolerant.

Another good example of a good practice is the yearbook of the NGO Estonian Refugee Council, which was published on 24 March 2015 for the first time, analysing Estonian refugee policy and the system for accepting refugees in detail.¹²

¹⁰ 12.05.2014 ja 14.05.2014 kontrollkäik Varjupaigataotlejate Majutuskeskusesse [12.05.2014 and 14.05.2014 verification visits at the Accommodation Centre for Asylum Seekers]. Pages 9-10.

¹¹ NGO Estonian Refugee Council. More than 13,500 euros have been gathered for the aid of Ukrainian people in the course of the campaign „Ukraina heaks!“. 04.11.2014. Available at: <http://www.pagulasabi.ee/ukraina-humanitaarabi-programm>.

¹² NGO Estonian Refugee Council. Varjupaiga aastaraamat 2014 [Refugee yearbook 2014]. 23.03.2014. Available at: <http://www.pagulasabi.ee/varjupaiga-aastaraamat-2014>.

Noteworthy public discussions

The biggest public discussion of 2015 arose in the summer in relation to the proposed European Commission action plan on migration. Several groups (including Facebook groups) arose in relation to the topic, which were against refugees or mass immigration, and the content context and calls were (and still are) at times racist. Fear and lies have also been created by speeches of politicians – for example, Margus Tsahkna, the Minister of Social Protection and chairman of Pro Patria and Res Publica Union, wrote an opinion piece in August of 2015 on preservation of Estonian culture in the face of current immigration problems, remarking that: “The fact that the police in Sweden is not allowed to enter certain areas for their safety gives reason to worry. The talk that it doesn’t endanger us cannot be taken seriously.”¹³ The press officer for Swedish police later refuted this statement. Sõbralik Eesti, Delfi and Eesti Päevaleht in cooperation carried out discussion marathons on the topic of refugees at the end of 2015, where sceptics’ questions were responded by specialists; and opinion pieces were also published.

Trends

In 2014 and 2015 several asylum seekers who had crossed the Russian-Estonian border irregularly were punished pursuant to criminal procedure, or by having to make a payment to public revenues. This practice has not been altered, although the UNHCR has condemned it. Access to kindergarten placements is complicated for the asylum seekers at the accommodation centre because of their financial situation. As the asylum seekers staying at the accommodation centre are not registered there as residents, then they should pay a larger kindergarten fee than the locals whose place of residence is registered in Väike-Maarja rural municipality. However, this fee is more than the asylum seekers can afford. Even though each year the Estonian Human Rights Centre has emphasized the importance of publicity campaigns on refugees

¹³ Mellik, J. „Rootsi politsei: Tsahkna jutt on väärtõlgendus.“ [The Swedish police: Tsahkna’s words are a misinterpretation] Postimees. 17.08.2015. Available at: <http://maailm.postimees.ee/3297041/rootsi-politsei-tsahkna-jutt-on-vaartolgendus>.

there was been no systematic activity on this topic. The level of awareness on this topic is low, if not fearmongering and creating stereotypes.

On 1 July 2015 the refugee legal aid clinic with the Estonian Human Rights Centre folded as the Ministry of Internal Affairs decided not to announce the previously planned competition for guaranteeing the service of early legal counselling for asylum seekers from July on. Since 1 October 2015 the state legal aid in regards to international protection proceedings and/or detention is provided to asylum seekers by six lawyers of law offices from LMP and LEXTAL, who provide legal aid in administrative proceedings as well as administrative court proceedings.

Recommendations

- Consider and implement the recommendations of verification visit to the accommodation centre carried out by the Chancellor of Justice on May 12th and 14th of 2014, as well as the proposal of 29 April 2014 and of 30 March 2015.
- Carry out publicity campaigns about refugees, thereby raising the public's awareness.
- Enable the asylum seekers a kindergarten placement and fee on the same grounds as registered residents.
- Do not place asylum seekers at the accommodation centre on the assumption that the person will abscond, since he has entered the country irregularly.
- Create a regular information exchange and cooperation between the Ministry of Interior Affairs, the Ministry of Social Affairs and NGOs working with refugees in order to create mutual trust and facilitate solutions based on coproduction.¹⁴

¹⁴ Delfi. Eesti pagulasorganisatsioonid pöördusid rahastamisküsimuses peaministri poole [Estonian refugee organisations turned to the Prime Minister with the question of funding]. 02.06.2015 Available at: <http://www.delfi.ee/news/paevauudised/estli/estli-pagulasorganisatsioonid-poordusid-rahastamiskusimuses-peaministri-poole?id=71612805>.

HUMAN RIGHTS IN ESTONIA
2014-2015

Rights of
the Child

Rights of the Child



AUTHOR



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CHAPTER 13

Rights of the Child

Children are people here and now, and just adopting acts of law is not enough to guarantee their rights, supportive actions and changing the situation on the whole are also necessary (*law in books* → *law in action*). In 2014 when the 25th anniversary of the UN Convention¹ on the Rights of the Child² was celebrated, the children were in focus in Estonia as well as the world in general. The Nobel peace prize was given to Kailash Satyarthi who had been devoted to protection on children's rights and Malala Yousafzai.³ Such recognition shows the importance of the role of civil society in promoting, facilitating and protecting the rights stated in the convention.⁴ The purpose of the convention is to protect the child from all kinds of risks to his or her development and wellbeing in all kinds of environments. It is equally important to observe the treatment of the child in the family, the kindergarten, the school, health care institutions and the society in general.

The number of children in need of help is increasing every year. The problem is the state's insufficient support at caring for a child with disability, in practice the

¹ The UN Convention on the Rights of the Child is the most widely ratified human rights agreement of all time. Along with three optional protocols it is a comprehensive collection of legally binding international standards promoting and protecting the rights of the child (The Optional Protocol to the Convention on the Rights of the Child on a

Communications Procedure came into force in April of 2015. See: <http://www.ratifyop3crc.org/material/>).

² ÜRO Lapse õiguste konventsioon [UN Convention on the Rights of the Child]. Available at: <https://www.riigiteataja.ee/akt/24016>.

³ Kailash Satyarthi has been working for reducing the use of child labour in India for years, and implemented several initiatives for reducing poverty. Malala Yousafzai is the youngest Nobel prize Laureate. She stands up for the girls' and women's right to education in Pakistan.

⁴ European Parliament resolution on the 25th anniversary of the UN Convention on the Rights of the Child of 27 November 2014 (2014/2919(RSP)) Available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B8-2014-0285&format=XML&language=ET>.

local governments are unable to guarantee all children with disability a place at a regular kindergarten, there is also insufficient support for teachers for teaching children with special needs (for example, in 2013 the position of a support specialist had been created at just 53% of kindergartens).⁵ Not all teachers are sufficiently prepared for implementing the inclusive education policy, and there is a lack of resources for creating the necessary environment for learning.⁶ The percent of children that have fallen victim is worrying: 22% of children fell victim to school bullying, 16% to cyber bullying, 22% to theft, and 7% were attacked in 2013. The risk factors for children's offences and for falling victim are violence in family and use of violence on the child as well as conflicts in the family, lacking parental overview, alcohol and drug problems of parents.⁷

Legislative developments

Adoption of the new Child Protection Act⁸ expressly forbidding physical punishment of children can be considered the most important step. For the first time in Estonian legislation it is stated that in matters regarding children it is important to place the child's interests first, and allow the child to express his or her view.⁹ The 2015 amendment to the constitution¹⁰ reducing the voting age at local government council elections from 18 to 16 is also worth mentioning. As a result of the review of the Penal Code¹¹ the definition of domestic violence was set for the first time in legislation, and due to the amendment the punishment

⁵ Laste heaolu. Child Well-being.. Ed. Kutsar, D. Statistics Estonia 2013. Available at: <https://www.stat.ee/65395>.

⁶ Explanatory memorandum to the draft act for ratifying the UN Convention on the Rights of Persons with Disabilities and joining the Optional Protocol. Available at: http://www.ead.ee/orb.aw/class=file/action=preview/id=375878/Eeln6u_seletuskiri.pdf.

⁷ Markina, A., Žarkovski, B. 2014. Laste hälbiv käitumine Eestis [Children's deviant behaviour in Estonia]. Kriminaalpoliitika uuringud 19 [Criminal policy surveys]. Available at: http://www.kriminaalpoliitika.ee/sites/www.kriminaalpoliitika.ee/files/elfinder/dokumendid/laste_kaitumise_uuring_2014.pdf.

⁸ Lastekaitseseadus [The Child Protection Act]. State Gazette I. 06.12.2014. Available at: <https://www.riigiteataja.ee/akt/106122014001>. The act will come into force on 1 January 2016.

⁹ Poopuu, T. 2014. Uus lastekaitseadus ootab rakendamist [The new Child Protection Act is waiting to be implemented]. Sotsiaaltöö no. 6, 2014.

¹⁰ Eesti Vabariigi põhiseaduse muutmise seadus kohaliku omavalitsuse volikogu valimistel valimisea langedamiseks [Act that amends the Constitution for reducing the voting age at local government council elections]. State Gazette I, 15.05.2015, 1.

¹¹ Karistusseadustik [The Penal Code]. State Gazette I, 23.12.2014, 16. Available at: <https://www.riigiteataja.ee/akt/123122014016>.

committed in a close relationship or a dependent relationship is harsher. It is extremely unacceptable that there were 12,138 children in Estonia at the beginning of 2014 whose maintenance obligation was voluntarily not fulfilled by one parent (execution proceedings were initiated in the total sum of 10,766,732.10 euros). It is a growing trend in violating the rights of the child, and the methods for recovering alimony have not been sufficiently effective for the total debt of alimony to be reduced. However, it is positive that the amendment of the Code of Enforcement Procedure in 2015 established a number of options, implementation of which would make the alimony debtors' lives uncomfortable to some extent (including suspending the debtor's right to drive). The necessity to amend the Citizenship Act for better protection of rights of the child¹² has repeatedly been drawn attention to by the Chancellor of Justice Indrek Teder as well as Council of Europe Commissioner for Human Rights Nils Muižnieks.¹³ The amendment to the Citizenship Act¹⁴ allows minors to acquire the citizenship of another country in addition to Estonian citizenship, and for under the age of 15 children of parents with undetermined citizenship to acquire Estonian citizenship by naturalization from birth.

Court proceedings and practice

One of the main goals of the EU Agenda for the Rights of the Child¹⁵ is to make the European justice system more child-friendly.¹⁶ It is an area that the European Union has jurisdiction according to the EU treaties to actually

¹² Saar, H. 2014, Rights of the Child. Human Rights in Estonia 2013. Estonian Human Rights Centre. Available at: <http://humanrights.ee/inimoiguste-aruanne-2/inimoigused-eestis-2013/lapse-oigused/>.

¹³ REPORT by Nils Muižnieks Commissioner for Human Rights of the Council of Europe Following his visit to Estonia from 25 to 27 March 2013. Available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2308567&SecMode=1&DocId=2023896&Usage=2>.

¹⁴ The Act that amends the Citizenship Act and the State Fee Act was passed 21.01.2015. Available at: <https://www.riigiteataja.ee/akt/103022015001>.

¹⁵ Euroopa Komisjoni teatis Euroopa Parlamendile, nõukogule, Euroopa Majandus- ja Sotsiaalkomiteele ning Regioonide Komiteele „Lapse õigusi käsitlev ELi tegevuskava” [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. „An EU Agenda for the Rights of the Child”] COM (2011)60. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0060:FIN:et:PDF>.

¹⁶ According to the concept of child-friendly justice the protection of rights of children upon contact with justice as a more vulnerable group has to be guaranteed.

implement the rights of the child based on EU law. Contact with the justice system is often an unpleasant experience for the child (environment that makes them uneasy, lack of information and explanation suitable for their age, little attention to families and lengthy proceedings),¹⁷ which is why it is important to support children participating in proceedings in every way. However, it must be conceded that the rights of the child are still not sufficiently guaranteed in this area in Estonia. For example, there is no system of support persons in place for the benefit of children in court proceedings, and access to supporting services varies in different districts. Children who have witnessed (domestic) violence are not offered special treatment, even though various surveys¹⁸ confirm that children who have witnessed violence in their childhood have a greater risk of falling victim of domestic violence as adults. The safety of child victims is also not always sufficiently guaranteed, for example at designation of curatorship existence of domestic violence does not always have weight in the decision-making.¹⁹ It is important from the point of view of interests and rights of children how the child is treated also in criminal proceedings, including hearing of a child. It became apparent from analysis of video recorded hearings of underage victims²⁰ that the children are not always asked permission to video record the hearing, neither is the child also always told the truth, and if the specialist included in the hearing has not been prepared on criminal proceedings and the tactics of hearing, he or she will find it hard to stand up for the best interests of the child. It became

¹⁷ Euroopa Nõukogu ministrite komitee suunised lapsesõbraliku õigusemõistmise kohta [The Council of Europe guidelines on child-friendly justice]. Available at: http://www.coe.int/t/dghl/standardsetting/childjustice/Source/GuidelinesChildFriendlyJustice_ET.pdf.

¹⁸ Vt nt Edleson, J. L., Ellerton, A. L., Seagren, A. E., Kirchberg, S. O., & Ambrose, A. T. 2007. Assessing child exposure to adult domestic violence. *Children and Youth Services Review*, 29(7), 961-971; Sousa, C., Herrenkohl, T. I., Moylan, C. A., Tajima, E. A., Klika, J. B., Herrenkohl, R. C., & Russo, M. J. 2011. Longitudinal study on the effects of child abuse and children's exposure to domestic violence, parent-child attachments, and antisocial behavior in adolescence. *Journal of Interpersonal Violence*, 26 (1), 111-136.

¹⁹ Vägivalda ennetamise strateegia 2015–2020 koostamise ettepanek [proposal to devise the National Development Strategy for Preventing Violence 2015–2020]. Available at: https://www.osale.ee/konsultatsioonid/files/consult/263_VVA%202015-2020%20ettepanek.pdf.

²⁰ Kask, K. 2015. Alaealiste kannatanute videosalvestatud ülekuulamiste analüüs [Analysis of videorecorded hearing of underage victims]. *Kriminaalpoliitika analüüs* [Criminal policy analysis] No. 1/2015 Available at: http://www.kriminaalpoliitika.ee/sites/www.kriminaalpoliitika.ee/files/elfinder/dokumendid/alaealiste_kannatanute_videosalvestatud_ulekuulamised_kristjan_kask_2015.pdf.

apparent from the analysis of determining curatorship²¹ that in court decisions, considering the interests of the child is only limited to admitting that it has been taken into consideration, however, few decisions explain how the court did it.²²

The Supreme Court deliberated repeatedly over kindergarten places in the course of constitutional review proceedings in 2014;²³ found that leaving a seven year old child home alone may not be a breach of guarantor obligations;²⁴ specified allowed use of force in execution a court decision on communicating with a child.²⁵ It also emphasized the court's role in directing parents towards compromise in disputes over communication.²⁶ Regulation regarding communication between the child and the parent living separately is problematic in Estonia. In 2014 Tallinn Administrative court awarded damages against the state in the sum of 7500 euros in favour of a father, because the father had used up all the opportunities stemming from the law in three years to meet his child, and the forced absence from his child had created non-patrimonial damage. The state needs to actively work on this topic.²⁷

²¹ Espenberg, K., Soo, K., Beilmann, M., Linno, M., Vahaste, S., Göttig, T., Uusen-Nacke, T. 2013. Vanema hooldusõiguse määramise praktika analüüs [Analysis of practice for determining curatorship of a parent]. Tartu Ülikooli sotsiaalteaduslike rakendusuringute keskus RAKE. Available at: https://www.riigikantselei.ee/valitsus/valitsus/Vanema%20hooldus%C3%B5iguse%20m%C3%A4%C3%A4ramise%20uur-ing_%C3%B5ppraport.pdf.

²² Also see: in Sahin v. Germany ((30943/96) [2003] ECHR 340 (8.07.2003)) the court detected as an important breach that the court failed to hear the child in court and noted that a national court must take significant steps in order to achieve a direct contact with the child, and only that is the way to ascertain best interests of the child. Summary available at: http://www.hrcr.org/safrica/childrens_rights/Sahin.html.

²³ Constitutional Review Chamber of the Supreme Court judgment in civil case no. 3-4-1-63-13, 19.03.2014. Available at: <http://www.riigikohus.ee/?id=11&tekst=RK/3-4-1-63-13>. Constitutional Review Chamber of the Supreme Court judgment in civil case no. 3-4-1-63-13, 19.03.2014. Available at: <http://www.riigikohus.ee/?id=11&tekst=RK/3-4-1-66-13>.

²⁴ Criminal Chamber of the Supreme Court judgment in criminal case no. 3-1-1-45-14, 10.10.2014. Available at: <http://www.riigikohus.ee/?id=11&tekst=RK/3-1-1-45-14>.

²⁵ Civil Chamber of the Supreme Court ruling in civil case no. 3-2-1-95-14, 29.10.2014. Available at: <http://www.riigikohus.ee/?id=11&tekst=RK/3-2-1-95-14>.

²⁶ Civil Chamber of the Supreme Court ruling in civil case no. 3-2-1-91-14, 05.11.2014. Available at: <http://www.riigikohus.ee/?id=11&tekst=RK/3-2-1-91-14>. Civil Chamber of the Supreme Court ruling in civil case no. 3-2-1-113-14, 05.11.2014. Available at: <http://www.riigikohus.ee/?id=11&tekst=RK/3-2-1-113-14>.

²⁷ Authors' note: the European Court of Human Rights has repeatedly emphasized that issues of a child and parent must be solved in courts as quickly as possible, and not in processes going on for years. Analogous judgment. 04.11.2014.

The European Court of Human Rights emphasized among other things that it is not reasoned that a child is taken from a parent who cannot manage raising the child materially (*Zhou v. Italy*);²⁸ general education schools must guarantee the student the opportunity not to participate in religious education class (*Mansur Yalcin and others v. Turkey*).²⁹ In 2014 the Grand Chamber of European Court of Human Rights made a decision, according to which it holds the government of Ireland responsible for sexual harassment of children in general education schools in 1970s (*O’Keeffe v. Ireland*).³⁰ According to the decision the state is not absolved from responsibility by passing the responsibility of operating the school to a private institution or individuals.

Statistics and surveys

The state fulfilled its duty under the Convention on the Rights of The Child – by submitting the Committee on the Rights of the Child the third and fourth periodic report on application of the convention,³¹ based on activities and statistics of 2003 – 2011 in 2014 (six years after it was due). In 2015 the organisations in the field, lead by the NGO Estonian Union for Child Welfare, gathered their supplementations and proposals to be submitted to the Committee on the Rights of the Child as a supplementary report.

In order to draw attention to rights of the child and most of all Article 12 of the convention, and making the opinion of children heard, the NGO Estonian Union for Child Welfare carried out a survey on participation and inclusion of children and young people at school, the purpose of which was to find out to what extent children are included in decisions about school life, in which way and on which topics; also whether the children and young people believe

²⁸ *Affaire Zhou c. Italie*. Requête no. 33773/11. Available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-140026>.

²⁹ *En l’affaire Mansur Yalcin et autres c. Turquie*. Requête no 21163/11. Available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-146381>.

³⁰ *Case of O’Keeffe v. Ireland*. Appeal 35810/09. European Court of Human Rights, Grand Chamber. Available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-140235>.

³¹ Eesti Vabariigi kolmas ja neljas perioodiline aruanne ÜRO Lapse õiguste konventsiooni täitmise kohta [Third and fourth periodic report of the Republic of Estonia on implementation of the UN Convention on the Rights of the Child]. Available at: http://vm.ee/sites/default/files/elfinder/article_files/aruanne_est.pdf.

the level of inclusion is sufficient, on what topics they would like to have a say and in which way they would most like to do it. 1787 children across Estonia responded to the questionnaire (including 404 Russian-speaking children).³² Despite the fact that Estonia ratified the convention already in 1991 and the national curriculum of the basic school prescribes making it known among students, 59% of respondents stated they had never heard of the convention.

The survey of deviant behaviour among 7–9th grade students in Estonia³³ proved that in comparison to 8 years ago the students have committed significantly fewer offences.³⁴ The number of hate crimes has increased (6% of children admitted that they had been threatened with violence or had experienced violence because of his or her religious beliefs, language, skin colour, social standing or other reasons). Children find it hard to retain their identity and familial relations if the child and parents are living in separate countries. A recent study³⁵ confirms that the absence of parents may increase missing school and thereby influence the child's progress at school, it can also cause or deepen health, behavioural and dependency problems. At the same time the social workers lack information about such families (41% considered information about families where children live alone, because their parents live outside Estonia to be insufficient).³⁶

In comparison to earlier in 2014–2015 more studies concerning children were conducted, however, more attention should be paid to gathering and

³² NGO Estonian Union for Child Welfare 2014. Kokkuvõte uuringust: „Laste ja noorte osalus ja kaamine koolis“ [Summary of survey: participation and inclusion of children and young people at school]. Compiler H.Saar. Available at: <http://www.lastekaitseliit.ee/wp-content/uploads/2014/11/Laste-ja-noorte-osalus-ja-kaamine-koolis.pdf>.

³³ Markina, A., Žarkovski, B. 2014. Laste hälbiv käitumine Eestis [Deviant behaviour of children in Estonia]. See footnote 6!

³⁴ Author's note: Estonia's first school shooting took place in 2014.

³⁵ Espenberg, K., Lees, K., Arrak, L., Aksen, M., Vahaste-Pruul, S. Välismaal töötavate vanemate ja Eestis elavate lastega pered: parimad praktikad ja võimalikud ohud [Families where parents work abroad and the children live in Estonia: best practices and possible risks]. Tartu Ülikooli sotsiaalteaduslike rakendusuuringute keskus RAKE. Available at: http://www.ec.ut.ee/sites/default/files/ec/loppraport_27.11.14.pdf.

³⁶ Pettai, I., Proos, I. 2014. Lähisuhtevägivald Eestis sotsiaaltöötaja pilgu läbi. Ekspertküsitluse tulemused 2004 ja 2014 [Domestic violence in Estonia through the eyes of a social worker. Results of expert questionnaire 2004 and 2014]. Estonian Institute for Open Society. Ekspertuuriring raport [Report of expert survey], 57.

analysing national data, and supporting relevant scientific initiatives. The UN Committee on the Rights of the Child also emphasizes the need to gather information regarding children and inspires to develop indicators for monitoring realisation of rights of children.³⁷

Good practices

General Comment no. 14 of the Committee on the Rights of the Child on the right of the child³⁸ to have his or her best interests taken as a primary consideration (art. 3, para.1 of the Convention on the Rights of the Child) was translated into Estonian on the initiative of the NGO Estonian Union for Child Welfare. The general comments will continue to be translated into Estonian in the coming years to better understand the content of the articles of the convention. The project of the Estonian Institute of Human Rights “Human rights in education system – networking, teacher training and empowering young people”,³⁹ in the course of which “Compass”, the Council of Europe manual for human rights was translated into Estonian was also aimed at raising awareness.

In 2014 the University of Tartu faculty of social sciences in cooperation with the faculty of law initiated a study module on the rights of the child as a part of Master’s curriculum of social work and social politics aimed at the future child protection and social workers, lawyers and other specialists working with children. The module was introduced as a part of the NGO Estonian Union for Child Welfare project “Lapse hääl!”⁴⁰ (the voice of the child), containing subjects of human rights and children’s rights,

³⁷ Iivonen, E. 2013. Indikaattoritiedon hyödyntäminen lasten oikeuksien toteutumisen seurannanassa. In compilation: Lapsioikeus murroksessa. Editors: Hakalehto-Wainio, S., Nieminen. Pages 303-347.

³⁸ Üldkommentaar nr. 14 [General comment no. 14] 2013 lapse õigus tema parimatel huvide esikohale seadmisele (Art 3 para. 1)* [right of the child to have his or her best interests taken as a primary consideration] unofficial translation. Available at: <http://www.lastekaitseliit.ee/wp-content/uploads/2011/04/%C3%9Cld-kommentaari-14.pdf>.

³⁹ See more on Estonian Institute of Human Rights website: <http://www.eihr.ee/mis-on-inimoigustesobralik-kool/>.

⁴⁰ The project was funded by the Gambling Tax Council via the Ministry of Social Affairs and the NGO Fund via Open Estonia Foundation.

child protection and practical work with children and families.⁴¹ No institute of higher education in Estonia had offered a systemic study of children's rights before, thereby the creation of module filled an important gap which had been referred to also by the UN Committee on the Rights of the Child.

Noteworthy public discussions

The right of the minor to influence decisions regarding him or her in health care institutions have to do with the child's right to participate, but also with right to protection and care. In the summer of 2014 the Social Affairs Committee of the Riigikogu discussed proposal no. 27 "Limitations to termination of pregnancy regarding being underage"⁴² of the Chancellor of Justice with the representatives of the Ministry of Social Affairs, the Ministry of Justice, the Estonian Council on Bioethics, the Estonian Union for Child Welfare and the Estonian Gynaecologists Society, according to which § 5 (2) of the Termination of Pregnancy and Sterilisation Act is in contradiction with the constitution as it disproportionately limits the right to self-determination of women under 18 years of age, making her excessively dependent on her parents or her guardian. Wider discussions continued in the beginning of 2015 when Riigikogu abrogated the limitation.

The Estonian National Youth Council lead the discussion in reducing the voting age to 16. The survey on effectiveness⁴³ confirmed that there are no risks to reducing the voting age, Estonia is prepared for reducing of the voting age and the preferred policy choice is to reduce the active voting age to 16 precisely at local elections.

⁴¹ In spring of 2015 the NGO Estonian Union for Child Welfare concluded an agreement with Tallinn University for creating a similar field of study by 2016.

⁴² See more at: http://oiguskantsler.ee/sites/default/files/field_document2/6iguskantsleri_ettepanek_nr_27_alaealisusega_seotud_piiangud_raseduse_katkestamisel.pdf.

⁴³ Toots, A., Idnurm, T., Saarts, T. 2014. Aktiivse valimisea langetamise mõjude analüüs: eelhindamine [Analysis of effects of reducing the active voting age: a prior appraisal]. Tallinn University school of governance. Available at: <https://www.just.ee/sites/www.just.ee/files/vote16.pdf>.

In 2014 as well as in 2015 the Festival of Opinion Culture (Arvamusfestival) had a separate stage for children and families discussing prevention of bullying, inclusion of children and young people as well as the rights of the child as a whole.

The public debate over the Cohabitation Act⁴⁴ and the new Child Protection Act was heated. Occasionally, however, the expression remained that for some of the debaters the so-called standing up for the interests of children was rather due to political ambition or goals of certain interest groups rather than serious concern for wellbeing of children in general.

Trends

The number of instances of abuse of children in Estonia is very high. The children speaking Russian as their mother tongue are punished more, there is also more violence in these families.⁴⁵ The media actively covered instances of domestic violence in 2014, where violence against the child had resulted in death of the child.⁴⁶

“Estonian Guidelines for Development of Criminal Policy until 2018”⁴⁷ approved by Riigikogu establish that heightened attention must be paid to prevention of domestic violence, and a system for early detection of problems in growing environment of children, and developing parental skills of parents must be established. The National Development Strategy for Preventing Violence 2015–2020 focuses mainly on violence related to children. The Ministry of Social Affairs initiated the parenting program Incredible Years aimed at parents of children with behavioural problems, and parents who wish to prevent their children developing possible behaviour problems. Prevention

⁴⁴ Among them the opinion seminar „Kooseluseaduse tahud ja teravikud“ [Aspect and angles of the Cohabitation Act] 27.08.2014 at Riigikogu conference room.

⁴⁵ Markina, A., Žarkovski, B. 2014. Laste hälbiv käitumine Eestis [Deviant behaviour of children in Estonia]. See footnote 6!

⁴⁶ For example a series of articles by K.Ibrus in Eesti Päevaleht, which investigated the background of unnatural death of children.

⁴⁷ Kriminaalpoliitika arengusuunad aastani 2018 [Estonian Guidelines for Development of Criminal Policy until 2018]. Available at: http://www.just.ee/sites/www.just.ee/files/elfinder/article_files/kriminaalpoliitika_arengusuunad_aastani_2018.pdf.

of bullying behaviour is paid increasingly more attention to in the education system. *Liikumine Kiusamisvaba Haridustee Eest* (the movement for bullying-free education) was created at the University of Tartu Centre for Ethics value education conference in December of 2014. The movement was created by the NGO Estonian Union for Child Welfare, the Foundation Kiusamise Vastu, NGO Noorteühing TORE and University of Tartu Centre for Ethics. The common goal was to create a viable platform for cooperation through which to get a research based program preventing and solving bullying to all children's institutions and general education schools in Estonia.

Recommendations

- Guarantee a more effective implementation of the UN Convention on the Rights of the Child (including guaranteeing social fundamental rights). Gather systematic statistical data (including submitting regular reports), analyses of which to base policies guaranteeing the rights of the child on.
- Increase the children's opportunities to have a say in questions regarding society, community and school life. Include children in decision making processes more.
- Increase the knowledge and skills of investigators, judges and other specialists working with children by offering them training on the rights of the child (including hearing of children) and development psychology.
- Develop the school system as a whole in order to more effectively implement inclusive education policies (including providing training for teachers, adjust the necessary learning environment, adjust study materials, also increase the volume of human rights education on various levels of education).
- Inform the society even more on the rights of the child, including using various channels to introduce the UN Convention on the Rights of the Child to adults as well as children and young people (including in Russian, considering special needs, etc.).

HUMAN RIGHTS IN ESTONIA
2014-2015

Situation of persons
with disabilities

Situation of persons with disabilities



AUTHOR



Tiiu Hermat

Tiiu Hermat graduated from the Tallinn Polytechnic Institute in 1979 in engineering industry economy and management (with an equivalent to a Master's degree), in 1997 she graduated from the Institute of Theology as a theologian. Tiiu has worked as a sales engineer, a merchandiser, and a kindergarten teacher for deaf children. Since 1995 Tiiu is a congregation teacher (using sign language) at Church of the Holy Ghost congregation in Tallinn. As of 2003 she is also the chairperson of the board of Tallinn City's Board of Disabled People. Tiiu has worked through the Master's course of diaconal and social work at the Institute of Theology, she has yet to defend her master's thesis.

CHAPTER 14

Situation of persons with disabilities

For years Estonia has had the increasing problem of rising numbers of persons receiving pension for incapacity for work and persons with disabilities, as well as sustainability of the social system. Various institutions (the National Audit Office, the Praxis Centre for Policy Studies, the OECD, the European Commission, etc.) have made recommendations to reform the current systems¹ already several years ago, or people's coping ability will increasingly worsen. The criticism of the system that had been in place until the middle of 2014 was that it increased non-activity and passivity, as it did not support people's activity, nor did it motivate them to return to labour market.

One of the macro-level indicators of health and quality of life is the proportion of people with official incapacity for work and disability in the population. This proportion does not necessarily show quality of life but it does talk of need. As of beginning of 2014 people with disability formed 10.9% of the population, consisting of 144,136 persons. According to calculations of the Estonian National Social Insurance Board this figure has begun to decrease, and as of the end of second quarter of 2015 the number of recipients

¹ „Eesti sotsiaalkindlustuse süsteemi jätkusuutliku rahastamise võimalused“. Uuringuaruanne [Opportunities for sustainable funding of the Estonian social security system. Survey report]. Praxis 2011. And „Riigi tegevus puuetega inimeste ja töövõimetuspensionäride toetamisel“ [The state's activity in support of persons with disability and persons receiving pension for incapacity for work]. Kontrollaruanne 2010 [Verification report 2010].

of various disability aid was 141,802.² However, in order to understand the socio-economic situation, and to clarify the target group, we must also consider the number of persons receiving pension for incapacity for work. The target groups of persons receiving pension for incapacity for work and working age persons with disabilities are partly the same; upon assessment about half of persons receiving pension for incapacity for work have also been given a degree of disability. If as of beginning of 2014 there were 94,325 persons of working age (ages 16–62) who had been determined to have incapacity for work in the extent of 40–100%, then as of the end of second quarter of 2015 this figure had risen to 96,631.³

However, most of the persons with disabilities are older. This is due to general aging of the population and the rise of average life expectancy – the larger the proportion of older people in population, the more there are people among them with long-term illnesses. A lot of the disabilities are due to changes due to aging and they occur at a later age. Unfortunately, the older persons with disabilities have remained out of focus, and also in the period under observation no significant steps have been taken to improve their situation. The carer to the kin have also been left out of the target group – they themselves do not have a disability, but they have a great role in guaranteeing the life quality of persons with disabilities, and unfortunately they themselves are the potential persons to have disability in the future and become persons receiving pension for incapacity for work.

The local governments also have an important role, in addition to the state, in guaranteeing coping of persons receiving pension for incapacity for work and persons with disability. And yet the capacity of the local government to support those who need help differs greatly, and accessibility of help varies greatly, depending on the local government,⁴ which is why people are treated unequally.

² Eelarve ja statistika [Budget and statistics]. Estonian National Social Insurance Board. Available at: <http://www.sotsiaalkindlustusamet.ee/statistika/>.

³ Ibid.

⁴ „Sotsiaalteenuste kvaliteedianalüüs ja ettepanekud tervikliku kvaliteedisüsteemi tagamise juurutamiseks“ Analüüsi lõpparuanne. Ministry of Social Affairs. 2013.

Political and institutional developments

The buzzword for 2014 was definitely the Work Capacity Reform. The principles of the Work Capacity Reform⁵ had been set the year before, setting the goal of helping working age people with damage to health and persons with disability in finding and keeping suitable work. It was also thought necessary to motivate people to be active within the boundaries of the capacity for work they had retained and offer employers help in improving the work environment and hiring people with diminished capacity for work as well as keeping them employed.

All the parties – persons with damage to health, persons with disability, employers, specialists, national officers – understand that initiating a major social reform is unavoidable as the old system is about to collapse in the near future.

Work that is suitable for the ability of persons with disability or damage to health enables a significantly better income and quality of life than aid and pensions. It is not possible to guarantee a quality of life comparable to healthy working persons solely on these. A suitable and pleasant work also offers social and professional self-realisation. One of the basic needs and rights of a person is the chance to decide about his or her life. One of the goals of the Work Capacity Reform is to have at least 50% of persons with partial capacity for work to be employed.

The employers are in the situation where they are lacking employees – the population is aging, the number of people incapable for work is increasing, there are no new employees coming up as the birth rate has steadily decreased, emigration is considerable.⁶ Therefore, the employers have realised that persons with damage to health and persons with disability are an untapped resource; persons with disability are often considered more motivated and loyal.⁷ At the

⁵ Work Capacity Reform. Ministry of Social Affairs. Available at: <https://www.sm.ee/et/toovoiuimereform>.

⁶ 2015 Statistical Yearbook of Estonia.

⁷ „Töövõimeetuse seaduse mõjuanalüüs – eelhindamine“ [The effect analysis of Work Ability Allowance Act – a prior appraisal]. Saar Poll 2014.

same time, they shouldn't create illusions for themselves as by nature people are similar despite their health condition or disability.

The state's goal in initiating the Work Capacity Reform is primarily to decrease the growth of social expenses and have more tax payers by including the target group in employment. This naturally requires investment in education and rehabilitation, however, if before the growth of cost in state budget on pension for incapacity for work and disability allowance was prognosed to go from 253.1 million euros in 2014 to 619.9 million euros in 2022, then the new system would slow down the growth and the estimated cost would be 405.5 million euros in 2022; thereby saving 214.4 million euros.

The point of departure is a good one – all parties understand the inevitability of reform. And yet all still have very different expectations and understanding, which have to be worked on to make more similar. The society's outdated view of people who need help is also very slow to change. However, the change within the past year has been noticeable (and the huge work of organisations of people with disabilities in making themselves visible and bringing awareness to the problems is also behind this). First of all, the employers' fears based on lack of knowledge have to be reduced, as does the thinking of people with disabilities have to be changed. From the point of view of human rights people with disabilities are not "the poor sad people", who have to be helped, but equal members of society who have the same rights and some special needs to be considered. Protection of rights of people with disabilities is not a choice dependent on discretion of the state, but a duty stemming from human rights. This means that the society must guarantee people with disabilities the chance to participate in the life of the society as independently as possible and create the opportunity to stand up for their rights when necessary.

Successful initiation of the Work Capacity Reform requires a complex approach to the entire set of problems. A lot more has to be contributed to the education system, every person with a disability must have the best possible education, which also takes his or her interests and abilities into consideration. Estonian Ministry of Education and Research has started work on the

relevant program,⁸ mainly contributing to vocational training.⁹ However, so far there is no program for transferring from school to employment. Many young people remain unemployed after graduating, since there is no suitable work where they live, or access to work is complicated for small number of social services supporting it. This shows that also the accessibility of social services and their quality have to be better guaranteed by state as well as local governments, whatever the region. It is not possible to implement the Work Capacity Reform if social services do not support the goal of employment, and the contradiction between the state and local governments remains. Some of the necessary services are provided by the Estonian Unemployment Insurance Fund,¹⁰ various packages of rehabilitation services are being drawn up and prepared.¹¹

Another big set of problems has to do with employers. Even though they see persons with reduced capacity for work as resources they are also modest in hiring them. One of the reasons for this is fear – they are unfamiliar with the problems and afraid they cannot handle them. The Unemployment Insurance Fund has compiled several different materials¹² to alleviate this fear, also organising training and offering counselling. Yet the employers oppose the need to increase their costs, as additional resources are first of all meant for developing the enterprise, and not for social projects. Here it is possible to apply for partial compensation for costs from the Unemployment

⁸ „Hariduslike erivajadustega õpilaste õppekorralduse kontseptsioon! [Organisation of studies conception of a student with special educational needs]. Estonian Ministry of Education and Research. Available at: https://www.hm.ee/sites/default/files/hev_kotseptsioon.pdf.

⁹ Hariduslike erivajadustega õpilane [Student with special educational needs]. Estonian Ministry of Education and Research. Available at: <https://www.hm.ee/et/tegevused/kutseharidus/hariduslike-erivajadustega-opilane>.

¹⁰ „Tööturuteenuste osutamine töövõimereformi sihtrühmale“ [Providing the target group of Work Capacity Reform the labour market service]. Ministry of Social Affairs. Available at: https://www.sm.ee/sites/default/files/content-editors/ESF/57_lisa.pdf.

¹¹ Töövõimereformi eesmärk [The objective of the Work Capacity Reform]. Estonian National Social Insurance Board. Available at: <http://www.sotsiaalkindlustusamet.ee/toovõimereform/>.

¹² „Erivajadustega inimene – hinnatud töötaja! Miks ja kuidas värvata tööle puudega inimest?“ [A person with special needs – a valued employee! Why and how to hire a person with disabilities?]. Estonian Unemployment Insurance Fund. 2008. Available at: https://www.tootukassa.ee/sites/tootukassa.ee/files/Erivajadustega_inimene_hinnatud_tootaja.pdf.

Insurance Fund,¹³ there are state imposed tax incentives,¹⁴ as well as other premiums. If the employers realise that including persons with damage to health and persons with disabilities in employment is beneficial for them in long term perspective, it is a necessary prerequisite for the Work Capacity Reform to be a success.

Legislative developments

On 19 November 2014 Riigikogu passed the Work Ability Allowance Act,¹⁵ which was supposed to come into force on 1 July 2015 according to the initial plan. This act was based on the principles of the Work Capacity Reform and should cardinally change the status of persons with disabilities and persons with damage to health – bring them back onto labour market, turn them into active members of society from people needing help. However, this was not accompanied by a comprehensive package of acts of law influencing this field, even though also the Social Welfare Act¹⁶ was amended in order to partially bring it into accordance with the Work Ability Allowance Act (whereas some of the points were supposed to come into force at different times). The newest wording of the Social Welfare Act was recently adopted, on 18 February 2015, and came into force on 1 July 2015. A new wording is currently in the works, which will presumably come into force on 1 January 2016.

The Work Ability Allowance Act discussion was actively entered into by organisations of people with disabilities who draw attention to significant shortcomings – the act stated several demands, which are not possible to fulfil without supporting social services, there was also concern for worsening of coping for active people – from a certain wage level the work ability allowance

¹³ Abi erivajadusega inimese tööle võtmisel [Assistance at employing a person with special needs]. 10.08.2015. Estonian Unemployment Insurance Fund. Available at: <https://www.tootukassa.ee/content/tooandjale-ja-partnerile/abi-erivajadusega-inimese-toole-votmisel>.

¹⁴ Maksusoodustused [Tax incentives]. 10.08.2015. Estonian Unemployment Insurance Fund. Available at: <https://www.tootukassa.ee/content/t%C3%B6%C3%B6andjale-ja-partnerile/maksusoodustused>.

¹⁵ Töövõime toetuse seadus [Work Ability Allowance Act]. State Gazette. Available at: <https://www.riigiteataja.ee/akt/113122014001>.

¹⁶ Sotsiaalhoolekande seadus [Social Welfare Act]. State Gazette. Available at: <https://www.riigiteataja.ee/akt/123032015134>.

will start to reduce, however, the costs of going to work do not reduce, but, conversely, increase. Several demonstrations were organised, a number of amendments were submitted, the President of the Republic was addressed. Some of the proposals were even considered in the final version of the act of law, but in general, the target group was not pleased with the act of law in this wording. The new composition of Riigikogu that was elected in 2015 reviewed the act of law again and postponed its implementation until 1 January of 2016; development of supporting services was also planned. At the moment there's talk of the chance that the act of law comes partially into force on 1 January 2016 and in full on 1 July 2016.

In October of 2015 the draft act for amending the Basic Schools and Upper Secondary Schools Act and the Specialized Schools Act,¹⁷ which also worries people with disabilities, as some of the schools for students with special needs are in private property and there is fear that amendment to the act will increase the fee for a place, was submitted to the government.

Court practice

On 5 May 2014 the Supreme Court made a judgment¹⁸ regarding payment of subsistence benefit for the guardian of a person with disability where the ward is a member of the family, the caregiver's allowance and guardianship support are below the established subsistence level, however, with the social support of the ward, the common income is above the subsistence level. Here the court drew attention to contradiction of some of the points in the Family Law Act and the Social Welfare Act and that in this question the local government has no jurisdiction. The final conclusion is that the guardian of a person with disability can demand subsistence from the ward by judicial process, but its size will be determined by court. In essence, such judgment does not influence coping of persons with disabilities and their family members, as the sum does not depend on the order of adding up, but it gives the opportunity to review

¹⁷ State Gazette: <http://eelroud.valitsus.ee/main#5SJ Rc0hF>

¹⁸ Constitutional Review Chamber judgment in case no. 3-4-1-67-13. Supreme Court. Available at: <http://www.riigikohus.ee/?id=11&tekst=RK/3-4-1-67-13>.

these provisions of law and bringing them into accordance, it also allows the guardian to apply for subsistence benefit if the court doesn't order support for his or her benefit for some reason.

Statistics and surveys

There were no new statistical surveys or research directly regarding people with disabilities conducted in the period under observation, all prognoses and calculations related to Work Capacity Reform are based on earlier studies. However, Praxis, on the order of Ministry of Education and Research, has analysed the network of basic and upper secondary schools in Estonia.¹⁹ Even though it doesn't specifically mention schools for students with special needs, the decisions based on the study, along with other concepts, may influence the access of students with special needs to education fitting their ability (place and type of school).

Noteworthy public discussions

The wider public discussion on topics regarding persons receiving pension for incapacity for work and persons with disabilities has continued in the past year. In relation to processing and adopting the Work Capacity Reform Act the representatives of the target group have started to become more involved and louder in the debate. The discussions have more substance, the approach to the topic is more based on human rights. Since the Work Capacity Reform deeply affects a large group of people (100,000 persons upon estimation) there were a lot of emotions, fierceness and debate in discussions. Nevertheless, it is positive that we are finding increasingly more common ground – we all are people, some just have greater special needs.

Trends

Similarly to the previous year, the main point of departure for development was the Work Capacity Reform. As it continued to be one of the top priorities

¹⁹ „Eesti põhikooli- ja gümnaasiumivõrgu analüüs aastaks 2020“ [Analysis of network of Estonia's basic and upper secondary schools for 2020]. Uuringuaranne [Survey report]. Praxis. 2014.

for the government there was also a certain sense of pressure and rushing. After the act was passed and the Riigikogu elections had taken place, the parties did start to listen to one another more and approaching matters in a more complex way. Amendments to the rehabilitation system have been started, the order of distributing technical aids is being reviewed and small steps are taken towards complete implementation of the act. However, the comprehensive approach has not been reached yet, the educational and social policy will not catch up with the employment policy that fast.

Recommendations

- There has to be a comprehensive approach to initiating and completely implementing the Work Capacity Reform – guarantee equal opportunities to all persons with disabilities or damage to health, regardless of their place of residence. This requires equal accessibility of social services in all local governments.
- Establish a minimum checklist and quality requirements to social services provided by local governments and guarantee sufficient capability of all local governments to fulfil them.
- Improve access to education and quality of education for students with special needs on all levels of education, establish a support system for smoothly transferring from school to employment.

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