

*E.U. NETWORK OF INDEPENDENT EXPERTS ON FUNDAMENTAL RIGHTS  
(CFR-CDF)  
RÉSEAU U.E. D'EXPERTS INDÉPENDANTS EN MATIÈRE DE DROITS FONDAMENTAUX*

**REPORT ON THE SITUATION OF FUNDAMENTAL RIGHTS IN ESTONIA IN  
2003**

January 2004

Reference : CFR-CDF.repEE.2003



The E.U. Network of Independent Experts on Fundamental Rights has been set up by the European Commission upon request of the European Parliament. It monitors the situation of fundamental rights in the Member States and in the Union, on the basis of the Charter of Fundamental Rights. It issues reports on the situation of fundamental rights in the Member States and in the Union, as well as opinions on specific issues related to the protection of fundamental rights in the Union. The content of this opinion does not bind the European Commission. The Commission accepts no liability whatsoever with regard to the information contained in this document.



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\* submitted to the Network by Dr Lauri Mälksoo.



**Le Réseau UE d'Experts indépendants en matière de droits fondamentaux** a été mis sur pied par la Commission européenne (DG Justice et affaires intérieures), à la demande du Parlement européen. Depuis 2002, il assure le suivi de la situation des droits fondamentaux dans les Etats membres et dans l'Union, sur la base de la Charte des droits fondamentaux de l'Union européenne. Chaque Etat membre fait l'objet d'un rapport établi par un expert sous sa propre responsabilité, selon un canevas commun qui facilite la comparaison des données recueillies sur les différents Etats membres. Les activités des institutions de l'Union européenne font l'objet d'un rapport distinct, établi par le coordinateur. Sur la base de l'ensemble de ces (26) rapports, les membres du Réseau identifient les principales conclusions et recommandations qui se dégagent de l'année écoulée. Ces conclusions et recommandation sont réunies dans un Rapport de synthèse, qui est remis aux institutions européennes. Le contenu du rapport n'engage en aucune manière l'institution qui en est le commanditaire.

Le Réseau UE d'Experts indépendants en matière de droits fondamentaux se compose de Elvira Baltutyte (Lituanie), Florence Benoît-Rohmer (France), Martin Buzinger (Rép. Slovaque), Achilleas Demetriades (Chypre), Olivier De Schutter (Belgique), Maja Eriksson (Suède), Teresa Freixes (Espagne), Gabor Halmai (Hongrie), Wolfgang Heyde (Allemagne), Morten Kjaerum (Danemark), Henri Labayle (France), Rick Lawson (Pays-Bas), Lauri Malksoo (Estonie), Arne Mavcic (Slovénie), Vital Moreira (Portugal), Jeremy McBride (Royaume-Uni), Bruno Nascimbene (Italie), Manfred Nowak (Autriche), Marek Antoni Nowicki (Pologne), Donncha O'Connell (Irlande), Ian Refalo (Malte), Martin Scheinin (suppléant Tuomas Ojanen) (Finlande), Linos Alexandre Sicilianos (Grèce), Dean Spielmann (Luxembourg), Pavel Sturma (Rép. Tchèque), Ineta Ziemele (Lettonie). Le Réseau est coordonné par Olivier De Schutter, assisté par Valérie Verbruggen.

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The EU Network of Independent Experts on Fundamental Rights is composed of Elvira Baltutyte (Lithuania), Florence Benoît-Rohmer (France), Martin Buzinger (Slovak Republic), Achilleas Demetriades (Cyprus), Olivier De Schutter (Belgium), Maja Eriksson (Sweden), Teresa Freixes (Spain), Gabor Halmai (Hungary), Wolfgang Heyde (Germany), Morten Kjaerum (Denmark), Henri Labayle (France), Rick Lawson (The Netherlands), Lauri Malksoo (Estonia), Arne Mavcic (Slovenia), Vital Moreira (Portugal), Jeremy McBride (United Kingdom), Bruno Nascimbene (Italy), Manfred Nowak (Austria), Marek Antoni Nowicki (Poland), Donncha O'Connell (Ireland), Ian Refalo (Malta), Martin Scheinin (substitute Tuomas Ojanen) (Finland), Linos Alexandre Sicilianos (Greece), Dean Spielmann (Luxembourg), Pavel Sturma (Czech Republic), Ineta Ziemele (Latvia). The Network is coordinated by Olivier De Schutter, with the assistance of Valérie Verbruggen.

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## PRELIMINARY REMARKS

The following is the first country report concerning fundamental rights situation in Estonia. Estonia belongs to this group of the candidate states that are not yet members of the EU but will become full members on 1 May 2004. The respective referendum in Estonia was held on 14 September 2003, and both the accession to the EU, and the respective amendment of the constitution<sup>1</sup> won considerable popular support.<sup>2</sup>

Fundamental rights situation in each EU country is shaped by history, culture, traditions of the respective country. Common European ideals and values are not in all details interpreted in the same way in all members states of the EU. It is therefore necessary to compare fundamental rights situations in EU member states and ask whether such practices match up to European fundamental rights standards.

Just as in the other European countries, the fundamental rights situation in Estonia is strongly shaped by unique historical, economical and political factors. First, there is the presence of the (undesired yet omnipresent) Soviet legacy. Having been together with Latvia and Lithuania illegally annexed countries for fifty one years (1940-1991), the Soviet legacy still looms behind most fundamental rights problems and concerns in Estonia. This is especially the case with regard to the question regarding political rights of the Russian minority, and very different viewpoints represented in this question by different actors.

Estonia has pursued very liberal economic and social policies after the restoration of country's independence in 1991. According to most scholars, this has guaranteed the relative success of Estonia in political and economic terms. On the other hand, it is increasingly criticized that this has cultivated the social atmosphere of the « survival of the fittest », and the relative neglect of social and economic rights. The result is that many less protected individuals have - literally - not survived. Probably the most worrisome aspects of the development of the Estonian society having a connection with fundamental rights *problématique*, are the following: decreasing population, high suicide and accident rates, the number of people with HIV or AIDS, social inequality. The parliament has recently made attempts to pay more attention to those issues, forming a special parliament committee on the prevention of HIV, AIDS and drug addiction.<sup>3</sup>

In 2003, important legislative (financial) initiatives have been adopted to tackle the decrease of Estonia's population and negative birth rates.

In 2003, the most important legislative initiatives concerning fundamental rights situation, have been the adoption of the Personal Data Protection Act and the new Criminal Procedure Code on February 12, 2003.<sup>4</sup> Important new competences were given to the Office of the Legal Chancellor in the field of discrimination disputes.

In terms of legal situation, Estonia is, at the moment of writing of this report, still in the transition to the full membership of the EU. Thus, several laws and regulations relevant from

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<sup>1</sup> Eesti Vabariigi põhiseaduse täiendamise seadus (The Supplementary Act of the Constitution of the Republic of Estonia), Riigi Teataja I, 10.10.2003, 64, 429.

<sup>2</sup> Rahvahääletuse tulemuste kinnitamine (Affirmation of the Results of the Referendum), Vabariigi Valimiskomisjoni 3. oktoobri 2003.a otsus no. 90 (decision of the Electoral Commission of the Republic of 3 October 2003), Riigi Teataja I, 04.10.2003, 63, 426. Voting ballots were handed to 556 915 citizens, and given back by 555 835 citizens. 369 657 citizens voted in favour of Estonia's EU accession and the respective amendment of the constitution and 183 454 voted against.

<sup>3</sup> Riigikogu probleemkomisjoni moodustamine HIV, AIDSi ja narkomaania ennetustegevuse tõhustamiseks (On the Formation of the Special Committee for the Enhancement of the Prevention of HIV, AIDS and drug addiction), decision of Riigikogu of 23 September 2003, Riigi Teataja I, 04.10.2003, 63, 418.

<sup>4</sup> The Personal Data Protection Act came in force on February 12, 2003 and the new Criminal Procedure Code will come in force on July 1, 2004.

the point of view of fundamental rights will cease to be in force on May 1, 2004<sup>5</sup> when the respective European legal acts will become directly applicable in Estonia.

Due to some constraints that affected the completion of the first country report concerning Estonia, in particular the fact that the work with the report could be started only in the second half year of 2003, the following report cannot be as exhaustive as its compiler would have wished. The report concentrates more thoroughly on some most significant fundamental rights aspects and developments in Estonia. In particular regarding social and economic rights, more research and analysis must be done in the future. The present lacunae should therefore not indicate that there are no concerns or no developments. As the legal scholarship about those issues is only emerging, it must be hoped that – among its other important tasks – the E.U. Network's work will encourage future research and scholarship, and also facilitate future analysis in that regard. However, notwithstanding lacunae in the present report, its compiler believes that the report can serve as a starting point for critique, analysis – and future reports.

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<sup>5</sup> See e.g. Geneetiliselt muundatud lisaainet või lõhna- ja maitseainet sisaldava toidu märgistamise erinõuded (Special Requirements for Labeling Food Containing Genetically Modified Additions or Fragrances), the regulation of the government of April 22, 2003, no. 123, Riigi Teataja I, 28.04.2003, 37, 247. § 2 stipulates that the regulation will be in force until the entry of Estonia in the EU.

## **CHAPTER I : DIGNITY**

### **Article 1. Human dignity**

*National legislation, regulation and case law*

The administrative law division of the Supreme Court in its judgment of 10 November 2003 mentions the principle of human dignity in the context of arguing that the individuals who for the reasons not dependent on themselves cannot find a job, should not be left out of insurance protection.<sup>6</sup>

*Reasons for concern*

Human dignity is both a very simple and a very complex phenomenon at the same time. Thus, conditions created by poverty, marginalization and social exclusion – of which there are plenty in Estonia, notwithstanding the generally quite positive trends – do not let individuals live a dignified life.

### **Article 2. Right to life**

*Reasons for concern*

In the mid-1990s, Estonia abandoned death penalty as a choice in penal policy. However, surveys demonstrate that most Estonians still favour death penalty. This is a reason for concern since it demonstrates a gap between the Estonian parliament and the people and the popular consciousness in Estonia and Western Europe.

### **Article 3. Right to the integrity of the person**

*National legislation, regulation and case law*

Here and with regard to many following Articles regarding restrictions of liberty and integrity of the person, the impact of the newly adopted Criminal Procedure Code will be felt in the future.<sup>7</sup> The Code was adopted on February 12, 2003 and will enter into force on July 1, 2004.

*Reasons for concern*

Estonia is a country with quite high rates of criminality. Especially the capital Tallinn and the North Eastern region of the country provide for negative statistics in that regard. It is a source of constant political debates in Estonia what exactly the government must do and how far go in order to prevent violent crimes and violations of the integrity of person. As the rates of criminality are high, the record – and the situation regarding the respective fundamental rights - can definitely be improved in that regard. However, this may not be achieved at the cost of violating fundamental rights of suspects and other individuals.

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<sup>6</sup> Toom v. Haigekassa (Toom v. Estonian Health Insurance Fund), Judgment of the administrative law division of the Supreme Court, No. 3-3-1-6503, November 10, 2003, <http://www.nc.ee/rkis/laheidid/tekst/3-1-65-03.html>.

<sup>7</sup> Kriminaalmenetluse seadustik (Code of Criminal Procedure), Riigi Teataja I, 13.03.2003, 27, 166.

#### **Article 4. Prohibition of torture and inhuman or degrading treatment or punishment**

##### *International case law and concluding observation of international organs*

In its final conclusions submitted on April 15, 2003, the UN Human Rights Committee welcomed the fact that the problem of prison overcrowding is being resolved in Estonia, through the decreasing resort to alternative forms of punishment and the opening of a new spacious prison in Tartu.<sup>8</sup> At the same time, it expressed the concern that acts of ill-treatment or other forms of violence perpetrated or condoned by law enforcement officials are not prosecuted on the basis of the most appropriate criminal charges but only as minor offences.<sup>9</sup> The Committee emphasized that Estonia should ensure that law enforcement officials are effectively prosecuted for acts that are contrary to article 7 of the CCPR, and that the charges correspond to the seriousness of the acts committed. The Committee also recommended that Estonia guarantee the independence from police authorities of the newly created police control department, which is responsible for carrying out investigations of abuses committed by the police.

Moreover, the Human Rights Committee expressed concern at the possibility of the use of lethal force in circumstances not presenting a risk to the life of others.<sup>10</sup> The Committee invited Estonia to revise its legislation to ensure that the use of firearms is restricted by the principles of necessity and proportionality as reflected in paragraphs 9 and 16 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (articles 7 and 10 of the Covenant).

The UN Committee on Economic, Social and Cultural Rights that made on December 19, 2002 public its considerations of the initial report by Estonia, expressed its concern that convicted prisoners are required to perform forced or compulsory work and that they face “penalties” in the form of loss of privileges, such as early release, if they refuse to do so.<sup>11</sup>

The Commissioner of the Council of the Baltic Sea States, H.E. Helle Degn, in co-operation with the Norwegian Ministry of Justice and Police, has recently issued a survey with recommendations based on the seminar “Pre-Trial Detention in the Baltic Sea Area” which was held in St Petersburg, Russia, on 2-4 February 2003. It repeated the concerns expressed by the European Committee for the Prevention of Torture (CPT) in 1997, and identified the following areas of concern: first, overcrowding of prisons; second, a lack of work for prisoners; difficulties in the field of prison staff, partly due to the fact that many staff members are Russian-speakers with a low command of Estonian.<sup>12</sup>

##### *National legislation, regulation and case law*

The Imprisonment Act entered into force on 1 December 2000; it is based on the “European Prison Rules”. During the 1990s, Estonia has been criticized for overcrowded prisons. Recently, the authorities have responded to the danger of overcrowding of prisons with extended use of probation. The overall state of the detention conditions in Estonia’s prison houses has been recently improved considerably since the new Tartu Prison was opened in October 2002. The detention conditions in this prison house are considered modern and in accordance with the detention standards in the European Union. However, when the Tartu

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<sup>8</sup> CCPR/CO/77/EST, Concluding observations of the Human Rights Committee : Estonia, 15/04/2003, B, p. 7.

<sup>9</sup> *Ibid.*, C, p. 9.

<sup>10</sup> *Ibid.*, C, p. 12.

<sup>11</sup> E/C.12/1/Add.85. Concluding Observations of the Committee on Economic, Social and Cultural Rights : Estonia, 19/12/2002, p. 13.

<sup>12</sup> The Commissioner of the Council of the Baltic Sea States H.E. Helle Degn, “Pre-trial Detention in the Baltic Sea Area. A Survey with Recommendations based on the Seminar held in St Petersburg/Pushkin, 2-4 February 2003, p. 23.

prison house was opened, the then Minister of Justice made a statement indicating that temporarily, until another planned new prison house corresponding to modern European standards will be opened in Jõhvi, the Tartu prison house must accommodate more prisoners than initially foreseen. The media reported that the news were encountered with protests by inhabitants of Tartu who were worrying about possible negative impacts in town, and by prisoners as well.

So far, the plans to build a new hospital in Viljandi to the Central Prison in Estonia have been delayed due to the fact that individuals supported by the Estonian Fund for Nature have been successful in challenging the accordance of the construction plans with environmental stipulations.<sup>13</sup>

In several ways, prison houses have until today struggled with certain remnants of the Soviet legacy. New competent personnel have sometimes been difficult to find; there are not few employees who still lack sufficient knowledge of the Estonian language. The Legal Chancellor has received several complaints from ethnic Estonian prisoners who have claimed that facilities are *de facto* run in the Russian language, and who therefore feel discriminated against. On the other hand, some Russophone prisoners in the newly opened Tartu Prison have complained to the Legal Chancellor that some new employees of the prison house are not capable of communicating in the Russian language.

The prisoners have the right to file complaints at the Legal Chancellor against any activities of prison employees and officials. The prison facility must send such letters and complaints unopened to the Legal Chancellor. This right is used – and sometimes misused – very actively by prisoners. The intervention of the Legal Chancellor has enabled to change certain negative practices.

There have been complains about the practices of search – sometimes personal property has been taken from prisoners without proper legal instruments/acts composed by prison officials. Moreover, there have been some complaints about too excessive and brutal methods of the special police unit that is responsible for order in prison houses (*Vanglate Eriüksus*). Detainees have complained about insufficient access to media and information in prison houses. Prisoners who are working have complained that it is difficult to survive with the system that leaves to them only 30 % of their earnings (20 % of the earnings can be used when the imprisonment is ended; 50 % will be taken away for compensating civil claims, if applicable.)

There have been a few problems with detention conditions in psychiatric institutions and institutions raising problematic juveniles. Juveniles (under 21 years) are detained in separate institutions where they are segregated by age groups. Minors under the age of 18 are required to continue to acquire basic education to the extent prescribed by law, whereas detainees at the age of 18-21 are granted an opportunity to acquire secondary vocational education according to their wish and aptitude. In the juveniles' pre-detention prison in Maardu, there have been concerns about the accessibility of education. Nevertheless, major discrepancies with human rights standards have not been observed.

The Code of Criminal Procedure stipulates that the person deprived of liberty has the unrestricted right to receive visits from his/her defence counsel. Consultations are not to be interrupted; they are to be held within sight but not within hearing distance from prison officers. In practice, problems have occurred with the implementation of this right. As far as pre-detention is concerned, there have been complaints about limits set to the detainees' right to make telephone calls. As this right had been misused in the past by detainees, the exercise

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<sup>13</sup> See Eesti Loodukaitse Selts, Tiina Timpman, Henri Väre, Ülle Kuldkepp and Aavo Pärnsalu v. Pärsti Vallavolikogu (Municipality Council), Supreme Court case no. 3-3-1-54-03, October 14, 2003.

of the right to call to relatives, lawyer, etc has been restricted to detention house corridors, under the supervision of prison personnel. Prisoners in pre-detention have complained that this arrangement does not enable to make telephone calls in privacy.

Pre-trial detention is primarily supervised by the Department of Prisons under the Ministry of Justice. However, jurisdiction is also given to the Legal Chancellor (acting in the capacity of an ombudsman), to prison commissions and to members of the Health Protection Office to visit detention houses. Detainees may appeal the decision on disciplinary sanctions by filing a written complaint with the prison governor, with the Minister of Justice, or with the Administrative Court.

In 2003, there were 1557 convicted prisoners who were citizens of Estonia, 1332 who were without citizenship and 170 prisoners who were citizens of other countries.<sup>14</sup> This data demonstrates that the percentage of non-ethnic Estonians in prison houses is somewhat higher than their percentage in the Estonian society. In their Concluding Observations released in 2002, the UN Committee against Torture expressed additional concern about the overrepresentation of Russian nationals and stateless persons in the prison population.

Detention conditions in Estonia have been improved recently. Although they are not any more a major point of concern from the point of view of Human Rights, the State must make further steps in order to safeguard human treatment and detention conditions to all prisoners.

Another issue concerning torture and/or inhumane or degrading treatment and not related to detention conditions has caught the attention of the Estonian society. In 2003, politicians have extensively addressed the issue of bullying and violence in schools. The issue was first taken up by the Legal Chancellor. This trend follows extensive recommendations issued by the UN Committee on the Rights of the Child on 31 January 2003<sup>15</sup>, with regard to violence and maltreatment of children. That there are serious problems in this regard in Estonia, both in schools and at home, was confirmed in a sociological study “Violence and the Health of Women” that was carried out by the Open Estonia Foundation – a leading Estonian NGOs – in May and June 2003. 22 % of respondent boys and 17 % of respondent girls argued that they have experienced mental violence by teachers. 13 % of respondent boys and girls had suffered mental violence inflicted by the father, 11 % of the respondent girls and 8 % of the respondent boys by the mother.<sup>16</sup>

In the same study undertaken by the Open Estonia Foundation, shocking news was revealed about the amount of domestic violence in the Estonian society. Each year, around 2000 pregnancies will be interrupted and babies unborn due to physical violence inflicted on women, mostly by their partners or husbands. In other and more explicit words, beating kills each year 2000 unborn babies. That many women seem to accept violence, including domestic violence, fatalistically as “normal”, is demonstrated by the fact that around 2/3 of the victims of violence does not look for help immediately after the violence took place and suffer health and mental problems due to the inflicted violence and no timely help.<sup>17</sup>

Domestic violence remains still a very serious problem in Estonia and must yet be addressed adequately by the Estonian State and society.

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<sup>14</sup> See “Vanglasüsteemi aastaraamat” (Estonian Prison System Yearbook), 2003, p. 20.

<sup>15</sup> See CRC/C/15/Add.196, para. 30-31.

<sup>16</sup> Baltic News Service, 30 September 2003.

<sup>17</sup> Baltic News Service, 29 September 2003.



## Article 5. Prohibition of slavery and forced labor

### *International case law and concluding observation of international organs*

The UN Economic, Social and Cultural Rights Committee released on 19 December 2002 its concluding observations on Estonia.<sup>18</sup> The Committee recommended that Estonia made work for convicted prisoners conditional on their consent, in conformity with International Labour Organization Forced Labour Convention (No. 29). Moreover, the Committee encouraged Estonia to review its legislation in order to prohibit under all circumstances the work of children under the age of 15. Moreover, the Committee was concerned about the continually rising incidence of trafficking in women. The Committee recommended that Estonia take effective measures to combat trafficking in women, including through ensuring that traffickers are prosecuted. The Committee called upon Estonia to ratify the international instruments aimed at intensifying cooperation in this field among states.<sup>19</sup>

### *National legislation, regulation and case law*

See *infra*.

### *Practice of national authorities*

See *infra*.

### *Reasons for concern*

Estonia is a country with an unfortunate record in prostitution. Most prostitutes come from socially and economically disadvantaged North Eastern part of the country; the mother language of most prostitutes is the Russian. There have been cases of trafficking in women – a phenomenon in which the territory of the Republic of Estonia has also been used for transit purposes. Prostitution is particularly flourishing in the capital city Tallinn where the respective establishments are often frequented by “vodka tourists” from Finland and the rest of economically more prosperous Scandinavia.

Issues concerning prostitution and trafficking in women are widely debated in the Estonian society, in the media and among the politicians. There have been political initiatives both to criminalize and to legalize prostitution. The former initiative has been downplayed as too idealistic and unrealistic, the latter as immoral. Nevertheless, the pimping is criminalized. However, there are only few such cases since the law officials insist that pimping is often very complicated to prove.

The general mood among the population and the political elite seems to be that extensive prostitution is a necessary evil with which the country must live.<sup>20</sup> The cliché of “the oldest profession in the world” is often apologetically used in debates. Some journalists and even a few politicians have cynically pointed out the importance of prostitution for tourism industry that is one of the pillars of the Estonian economy.

After Sweden criminalized buying sexual services and Finland is considering such prohibition as well, Estonian feminist writers have demanded the same prohibition in Estonia as well. It

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<sup>18</sup> E/C.12/1/Add.85. Concluding Observations of the Committee on Economic, Social and Cultural Rights : Estonia, 19/12/2002.

<sup>19</sup> *Ibid.*, p. 42.

<sup>20</sup> A recent study « Prostitution in Estonia : Social Risks and Economic Pressure », publicized by the Open Estonia Foundation on December 15, 2003 indicates that 60 % of Estonian men and 42 % of women accept the « necessity » of prostitution. See [www.oef.ee](http://www.oef.ee).

seems, however, that such a ban is relatively unlikely in the near future since prostitution seems to be silently or openly accepted in wide parts of the Estonian society.

The particular problem of trafficking in women has been tackled with information campaigns, partly financed by the Council of the Nordic Countries.<sup>21</sup> High-range seminars informing state officials and the wider public have taken place in 2003. Swedish film director's Lucas Moodysson's movie "Lilja 4ever", telling a story of a Russian-speaking Estonian youngster who is cheated to Sweden and kept as a sexual slave there, found much attention and caused painful soul-searching in Estonian media.

## **CHAPTER II : FREEDOMS**

### **Article 6. Right to liberty and security**

#### *International case law and concluding observation of international organs*

The Human Rights Committee issued on April 15, 2003 its concluding observations<sup>22</sup> on the basis of the second periodic report submitted by Estonia. The Committee expressed its concern at some aspects of the administrative procedure related to the detention of a person for mental health reasons, in particular the patient's right to request termination of detention, and, in the light of the significant number of detention measures that had been terminated after 14 days, the legitimate character of some of these detentions.<sup>23</sup> The Committee considered that a period of 14 days of detention for mental health reasons without any review by a court was incompatible with article 9 of the CCPR. The Committee recalled the obligation of Estonia under article 9, paragraph 4 of the CCPR, to enable a person detained for mental health reasons to initiate proceedings in order to review the lawfulness of his/her detention.

The Committee expressed its concern about the information that deserters from the armed forces may have been kept in solitary confinement for up to three months. It emphasized that Estonia is under an obligation to ensure that the detention of alleged deserters is in conformity with articles 9 and 10 of the CCPR.

#### *National legislation, regulation and case law*

The Estonian Supreme Court highlighted in a case concerning Brusilov that the right to liberty is an essential constitutional value.<sup>24</sup> On this basis, the Supreme Court reasoned that the imprisonment sentence that was once given in accordance with the old Criminal Code that by now has been substituted by the new Penal Code, had to be decreased up until the highest limit foreseen in the new Penal Code.

Furthermore, the Supreme Court has reaffirmed and relied on the right to privacy in a number of cases concerning disputes between applicants for the residence permits and the State.<sup>25</sup>

<sup>21</sup> See about the Nordic-Baltic Campaign Against Trafficking in Women in Estonia in 2002-2003 report, [www.nordicbalticcampaign.org/estonian/report-estonia.pdf](http://www.nordicbalticcampaign.org/estonian/report-estonia.pdf).

<sup>22</sup> CCPR/CO/77/EST, Concluding observations of the Human Rights Committee: Estonia, 15/04/2003.

<sup>23</sup> Ibid., C, 10.

<sup>24</sup> *Brusilov*. The judgment of the Supreme Court of 17 March 2003 No. 3-1-3-10-02, Riigi Teataja III (State Gazette III) 2003, 10, 95. <http://www.nc.ee/rkis/lahendid/tekst/1-3-10-02.html>.

<sup>25</sup> See Štilerman vs Siseminister (Minister of Interior), judgment of the administrative division of the Supreme Court of 17 March 2003 no. 3-3-10-03 (Riigi Teataja III 2003, 8, 83) <http://www.nc.ee/rkis/lahendid/tekst/3-1-10-03.html>. Dorfman vs. Minister of Interior, judgment of the administrative division of the Supreme Court of 17 March 2003, *ibid.*, Doroshenko vs. Minister of Interior, judgment of the administrative division of the Supreme

The Estonian government, especially the Ministry of Justice, has in 2003 declared “war on criminality” and advocated the policy of “zero tolerance” even against smaller violations of law. It must yet be seen how this policy will be implemented and what the real effects of this new policy will be.

One of the first visible results of the new policy has been the stronger criminalization of drug offences. On December 17, 2003, the Penal Code was amended to the effect that the amendments foresee much more severe prison sentences for drug dealers than have been force until 2004.<sup>26</sup> For example, the amendments foresee prison sentence of 6-20 years or imprisonment for lifetime for transferring narcotics to minors with the purpose of inciting them to the consumption of narcotics.<sup>27</sup> Leading Estonian lawyers such as the Dean of the Faculty of Law and members of the bar have expressed the concern that the new law is populist and goes too far in extending prison sentences.<sup>28</sup>

#### *Reasons for concern*

The experience of other countries demonstrates that the well-known problem with “zero tolerance” policy has been police violence and occasional violations of fundamental rights of suspects and criminals. It is too early to tell whether Estonia will confront the same problems, as we do not yet know what exactly the overall effects of the new policy will be.

### **Article 7. Respect for private and family life**

#### *International case law and concluding observation of international organs*

In its concluding observations on Estonia issued on 31 January 2003, the UN Committee on the Rights of the Child recommended that Estonia ensure that the provisions of the Aliens Act reflect decisions of the Supreme Court, and that the Refugee Act be amended to ensure the right to family reunification shall be dealt with in a positive, humane and expeditious manner.<sup>29</sup>

#### *National legislation, regulation and case law*

In June 2002, the parliament amended the Aliens Act following the May 2000 Estonian Supreme Court judgment which deemed unconstitutional the refusal of a residence permit application for the purposes of family reunification on the grounds that it exceeded the immigration quota. The amended Act is now in conformity with the standards of the ECHR. Moreover, in September 2003, the constitutional committee of the parliament initiated a further change of the Alien Act the purpose of which is to solve another debated issue regarding aliens who have served military service in the army of a foreign country. The Aliens Act will thus be clarified and brought in accordance with the agreement on social guarantees for the military pensioners of the (Soviet) Russian army<sup>30</sup>, and a recent judgment

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Court of 20 May 2003 no. 3-3-1-44-03 (Riigi Teataja III 2003, 20, 184), <http://www.nc.ee/rkis/lahendid/tekst/3-1-44-03.html>.

<sup>26</sup> Kriminaalmenetluse koodeksi, karistusseadustiku ja väärteomenetluse seadustiku muutmise seadus (Criminal Procedure Code, Penal Code and Misdemeanour Procedure Amendment Act, adopted on December 17, 2003, Riigi Teataja I, 23.12.2003, 83, 557.

<sup>27</sup> See § 185 (3) of the Act.

<sup>28</sup> Kai Kalamees, *Tippjuristid peavad ülikarme narkokaristusi populismiks* (Top Lawyers Consider Highly Severe Drug Punishments Populistic), Eesti Päevaleht, 29.12.2003.

<sup>29</sup> CRC/C/15/Add.196, para. 34-35.

<sup>30</sup> Eesti Vabariigi ja Vene Föderatsiooni vaheline Kokkulepe Vene Föderatsiooni relvajõudude pensionäride sotsiaalsete tagatiste küsimustes Eesti Vabariigi territooriumil”, Riigi Teataja II 1995, 46, 203. (Agreement between the Republic of Estonia and the Russian Federation regarding social guarantees of the military pensioners of the Russian Federation on the Territory of the Republic of Estonia.”

of the administrative law division of the Estonian Supreme Court.<sup>31</sup> By those changes, military pensioners temporary residence permits will be guaranteed by the Aliens Act, provided those persons do not constitute threat to the security of Estonia.

Thus, Estonia has recently made significant steps in striking a fair balance between taking into account both human rights concerns and concerns for security after the termination of the illegal Soviet annexation.

There have been several cases concerning the respect for private life in the Estonian Supreme Court in 2003. In *Estonian Air v. Minister of Finance*, the constitutional review division of the Supreme Court found that the obligation to make salary data of companies' board members public is not in accordance with the respected individuals' right to privacy when the state has a minority share in the company.<sup>32</sup> Similar conclusion regarding unconstitutionality was reached with respect to the obligation to declare economic interests. In another judgment, the civil law division of the Supreme Court found that even though a court's judgment was declared in public, the publication in media of data about the private life of the victim, must be regarded as violation of the victims' private life.<sup>33</sup>

#### *Practice of national authorities*

In 2003, problems have emerged in the field of intelligence activities carried out by the State and the protection of fundamental rights, especially the right to privacy. In particular, the Legal Chancellor has drawn attention to stipulations in the Telecommunication Act providing for access to state security officials to telecommunications system in order to listen to private conversations (*pealtkuulamine*). The debate on the limits of such infringements of the right to privacy has emerged.

#### *Reasons for concern*

Taking into account the historical experience of the Estonians – the USSR violated the very fundamentals of the respect for private and family life – the situation is, at least in comparative terms, quite good now in Estonia. However, new technologies and new security threats will keep the protection of this fundamental right topical in the near future.

### **Article 8. Protection of personal data**

#### *National legislation, regulation and case law*

The awareness about issues of data protection is regrettably yet quite low in the Estonian society that may, at least partly, be due to the fact that in the period of the Soviet annexation, the almighty State had proclaimed and taken to itself right to collect any data on any personal nature. Even today, people reveal data about themselves when asked without reflecting whether this is necessary and whether the demander is really entitled to an access of data of personal nature.

However, in 2003 important initiatives were taken with this regard. The new Personal Data Protection Act<sup>34</sup> became applicable on 1 October 2003. The act is modelled according to the

<sup>31</sup> Judgment nr 3-3-1-43-02, Riigi Teataja III 2002, 28, 310.

<sup>32</sup> AS *Estonian Air vs Rahandusminister*, Riigikohtu põhiseaduslikkuse järelvalve kolleegiumi 24.12.2002.a otsus nr 3-4-1-10-02 (Riigi Teataja III 2003, 2, 16), <http://www.nc.ee/rkis/lahendid/tekst/4-1-10-02.html>.

<sup>33</sup> AS *Inforing vs. J.P.* Judgment of the civil law division of the Supreme Court of 5 December 2002, no. 3-2-1-138-02, Riigi Teataja III 2003, 1, 10. <http://www.nc.ee/rkis/lahendid/tekst/2-1-138-02.html>.

<sup>34</sup> Isikuandmete kaitse seadus (Personal Data Protection Act), adopted on February 12, 2003, in force since October 1, 2003, Riigi Teataja I 11.03.2003, 26, 158.

EU Data Protection directive.<sup>35</sup> According to this new version of the law, individuals can take back the approval that they have formerly given regarding the procession of their personal data. The new Personal Data Protection act has already caused shifts in practice. For instance, universities are now obliged to prevent data or notes and exam results being made public to anybody except the respective student.<sup>36</sup> So far, it has been a common practice at universities that exam results of all students can be *de facto* seen by anybody, or at least by other students of the same class. The new law effectively bans the scientific use of data contained in medical registries – such as the cancer register – without proper authorization by the respective person. Leading Estonian doctors have sharply criticized effects of this law on medial scholarship regarding cancer.<sup>37</sup>

On January 30, 2003, Data Collection Act's Amendment Act was adopted by the parliament.<sup>38</sup>

#### *Practice of national authorities*

See *infra*.

#### *Reasons for concern*

During the parliamentary elections in March 2003, the Data Protection Inspection received many complaints about election advertisement being sent, and even phone calls made, to private addresses. Thus, political parties had used and probably misused available data, collected by the state.

There have been questions regarding the delimitation of the use of personal data in the media reporting and the freedom of expression. The new law seems to have adopted quite a restrictive approach – in favour of individuals' right to the protection of their personal data -, although it is unclear yet to what extent exceptions will be made to the journalists in this regard. The Act provides that individuals' rights are violated when he or she has not agreed to making public of the respective data or when the data is "legally released for use".<sup>39</sup>

Problematic from the point of view of personal data protection has been the release by the police of data regarding individuals' criminal and administrative punishments. The problem has arisen in particular with respect to the publication of names of people who have been caught by the police with driving in a drunken condition.

Some data pools kept by the State may have insufficient bases under Estonia's constitution and laws. This has been argued with respect to the police information database POLIS and the data collection of the Statistic Board).

The Supreme Court has argued that the official publication of the amount of officials' salary – as it was foreseen in the Anticorruption Act and Salary Act and in particular in the Ministry of Finance regulation of 28 January 2002 "The Order and Conditions of Making Public the Salary Data of the State Officials" - violates the principle of the inviolability of private life as stipulated in § 19(1) and § 26 of the Estonian constitution.<sup>40</sup>

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<sup>35</sup> See 95/46/EC

<sup>36</sup> See also A. Lõhmus, *Õpilaste hinded on nüüdsest seadusega kaitstud isikuandmed* (Students grades are now personal data protected by the law), Postimees, 8.10.2003, p. 5.

<sup>37</sup> See also A. Lõhmus, *Seadus peatas meditsiiniregistrite põhjal tehtavad teadustööd* (Act stopped scholarly studies made on the basis of medical registries), Postimees, 15.10.2003, p. 4.

<sup>38</sup> *Andmekogude seaduse muutmise seadus* (Data Collection Act's Amendment Act), January 30, 2003, Riigi Teataja I, 25.02.2003, 18, 107.

<sup>39</sup> See *Isikuandmete kaitse seadus* (Personal Data Protection Act), § 2, section 2, p. 2.

<sup>40</sup> 24 December 2002, the Judgment of the Division of the Constitutional Supervision, no. 3-4-1-10-02.

With regard to the information collected by the Soviet secret service there have not arisen concerns from the point of view of personal data protection since the bulk of the KGB archives was evacuated from Estonia to Russia before the breakdown of the USSR in 1991. The former agents of KGB are mandated by law to reveal their names and former activities to the Security Police; the names of former KGB agents who have not followed those provisions have been made public in the State Gazette.

A case regarding illegitimate data collection was widely discussed in summer 2003. An employee in a hotel of Tallinn found retrospectively out that she had been observed with the help of a secret security camera in an elevator in the same hotel. However, she had been unaware of the elevator since there were no signs indicating its presence. She claimed that data on her has been collected illegally and her right to privacy had been violated. The Legal Chancellor Allar Jõks insisted that the users of the elevator should have been informed about the existence of a camera in the elevator.<sup>41</sup>

### **Article 9. Right to marry and right to found a family**

#### *Reasons for concern*

There appear to be no significant developments regarding this right in 2003.

### **Article 10. Freedom of thought, conscience and religion**

#### *International case law and concluding observation of international organs*

The Human Rights Committee was on its concluding observations on Estonia concerned that the duration of alternative service for conscientious objectors may be up to twice as long as the duration of regular military service.<sup>42</sup> The Committee emphasized that Estonia is under an obligation to ensure that conscientious objectors can opt for alternative service, the duration of which is without punitive effect (articles 18 and 26 of the CCPR).

#### *Practice of national authorities*

The Legal Chancellor has received applications regarding the protection of the conscience and religion. First, there has been the question of the use of terms in the Churches and Congregations Act (CCA) as well as of the title of the act as such. According to the CCA, the name of the religious association, in order to be registered in the registry of religious associations, should include the corresponding word “kirik” (church), “kogudus” (congregation), “koguduste liit” (association of congregations) or “klooster” (monastery).<sup>43</sup> At the same time, the term “kirik” (church) has been traditionally used for Christian organizations and the term “kogudus” (congregation) for congregations of a church. Although the single congregation in terms of the CCA can be an association of natural persons confessing any religion, representatives of non-Christian faiths and denominations in Estonia have found this regulation to be insulting for them as well as in contradiction with their constitutional rights. The question is unsolved yet.

The second question has concerned plans to introduce compulsory non-confessional religious studies in school curricula. The name of the intended subject of study is “religiooniõpetus”

<sup>41</sup> T. Mattson, *Õiguskantsler Allar Jõks: oleme kõik alasti* (Legal Chancellor Allar Jõks: We are all naked), *Postimees*, 20.10.2003, p. 4.

<sup>42</sup> CCPR/CO/77/EST, Concluding observations of the Human Rights Committee : Estonia, 15/04/2003, C, p. 15.

<sup>43</sup> Section 7 of the CCA.

(studies of religion). The instruction should consist in giving an overview of the different religions of the world as well as providing for the grounds of ethics etc. Plans have posed heated debate in Estonian society. Doubts have been raised as regards the neutrality of that kind of instruction and equal treatment of different confessions and denominations. There is a genuine fear of Christian indoctrination under the label of the non-confessional studies of religion.

#### *Reasons for concern*

The freedom of religion should include the right to decide upon the name of a religious association and restraints to that right need to be “necessary in democratic society”. It therefore seems that there is no practical reason for not allowing the non-Christians to have their original name (e.g. convent etc) to be entered into the registry of religious associations.

Adding the subject of the studies of religion would in itself not be in contradiction with the freedom of conscience and religion. Nevertheless, the drafting of the curricula of the new subject should be subordinated to an independent review and the system of later supervision should be established. The completion of a competent, neutral body of instructors (teachers of the new subject) is one of the key issues as well.

### **Article 11. Freedom of expression and of information**

#### *National legislation, regulation and case law*

In its judgment of 5 December 2002, the civil law division of the Supreme Court declared that freedom of communication is a precondition for the functioning of a democratic society.<sup>44</sup> Media that in its activities observes the law may not be restricted or prevented from making information public.

To ask whether the plurality of media is secured in Estonia, raises more serious questions than it may appear at the first glance. Generally, pluralism appears to be ensured in Estonia’s media. However, the biggest party in Estonia – that has usually been the biggest opposition party at the same time – Eesti Keskerakond (Estonian Center Party) has repeatedly criticized the media for not being fair against it. Most analysts have agreed that there has been a certain truth in this critique, although in most cases the Center Party leader has provided ample material for journalist critique.

The more general concern of intellectuals has been that the Estonian media gives quite a narrow and pessimistic view of the world, and is unable to satisfy the quest for knowledge and information in more demanding and educated circles. The state sponsored weekly newspaper *Sirp* and its monthly supplement of foreign policy, *Diplomaatia* – an initiative of 2003, sponsored by the government – have had to fill a wide gap in that regard.

There is no particular mechanism for ensuring pluralism of media in Estonia. Estonian society is very small and the social control exercised by opinion leaders prevents the establishment of control over ideas and media.

#### *Reasons for concern*

Due to the country’s smallness and certain egalitarian traditions in the Estonian society, Estonia has quite good prospects regarding democratic, pluralist media. Probably the most

<sup>44</sup> *AS Inforing vs. J.P.*, judgment of 5 December 2002 no. 3-2-1-138-02 (RT III 2003, 1, 10) <http://www.nc.ee/rkis/lahendid/tekst/2-1-138-02.html>.

problematic aspect is the sustainability of quality media. Estonian national culture faces a serious threat if plurality of media is guaranteed formally but not substantially in the sense that Estonian media remains poor in terms of covering and analysing the world developments. Estonian government and society should avoid the emergence of Estonia with “two speeds” where members of the elite proudly declare that they by having access to the Internet and world media, they do not need the Estonian press any more while the majority’s worldview would be shaped by frequently stupefying local media.

### **Article 12. Freedom of assembly and of association**

#### *Reasons for concern*

There have been no negative developments in that regard in 2003. Freedom of assembly and association appear to be well respected in Estonia.

### **Article 13. Freedom of the arts and sciences**

#### *Practice of national authorities*

Estonia has had a very liberal higher education policy. The requirements for setting up private universities have been quite lax. The result has been that a country with a population of less than 1,4 Million has dozens of small private universities. The bankruptcy of once-prestigious Concordia International University Estonia in 2003, and the often-heard critique that most private universities are too small, mainly profit-oriented, and do not engage sufficiently in scholarship, has resulted in government attempts to set higher financial and academic standards for private universities.<sup>45</sup> Although some representatives of private university scene have expressed the concern that the government may restrict academic freedom by setting higher standards that cannot be fulfilled by them, most Estonians seem to agree that such measures are necessary for reorganizing higher education in Estonia and preventing further academic bubbles in the style of Concordia.

#### *Reasons for concern*

The government should continue the work on the quality control of higher education; however, this may imperil the freedom of the arts and sciences.

### **Article 14. Right to education**

#### *Reasons for concern*

There is an unfortunate tendency regarding right to education that may have further negative implications for the development of Estonia: it is the increasing inequality between education provided by so-called “elite” schools in the cities and usual countryside schools. The gap between the level of education provided in those schools has widened since Estonia regained its independence in 1991. However, this had occurred not only due to underfinancing and/or failure of the state to act but as a reflection of dominant values (such as success) in the society. Many of the most talented kids are consciously sent to the elite schools by their parents so that a sort of inner-state brain-drain takes place. It is very important that the state

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<sup>45</sup> See Ülikooli ja rakenduskõrgkooli ning nende õppekavade akrediteerimise kord ja akrediteerimisel esitatavad nõuded (The Order of Accreditation of the Universities and Their Curricula and the Requirements Presented at the Accreditation), Regulation of the government of 23 October 2003 no. 265, Riigi Teataja I, 31.10.2003, 67, 459.



would do its best to safeguard equal educational opportunities in smaller towns and countryside schools as well.

Another related and politically sensitive issue has been the fate of smallest countryside schools. Due to the decreasing population and budgetary constraints, small countryside schools have run the risk of closure. Although it is not evident that state should guarantee a school for just 10-15 pupils, nevertheless, it is important to guarantee the access to education for everyone.

### **Article 15. Freedom to choose an occupation and right to engage in work**

#### *International case law and concluding observation of international organs*

The UN Committee on Economic, Social and Cultural Rights in its concluding observations on Estonia noted with satisfaction the recent reduction in unemployment.<sup>46</sup> At the time of issuing the observations, the unemployment rate had been reduced from 14.8 per cent, at the beginning of 2001 to 9.4 per cent in the second quarter of 2002. The Committee also commended Estonia on its targeted efforts to combat unemployment among high-risk groups, including those affected by long-term unemployment, young people, people with disabilities and rural women. At the same time, the Committee was concerned that unemployment rates are higher in certain regions than in others and that the unemployment rate for ethnic minorities was higher than the national average. The Committee noted with concern the high rate of unemployment among older women and single mothers.

#### *Reasons for concern*

Estonia has problems with “structural unemployment” and at the same time structural lack of skilled labour force. While on the other hand unemployment is very high in South Western and North Eastern part of the country, several sectors of economy complain that they would profit from even more skilled labour force.

### **Article 16. Freedom to conduct a business**

#### *Reasons for concern*

Since the 1990s, Estonia has been singled out as one of the most liberal places in the world for conducting business.

### **Article 17. Right to property**

#### *National legislation, regulation and case law*

Smaller changes were made in intellectual property law. Thus, it is now stipulated that in the case of the violation of trademarks, the pirate clothes and shoes can be given to the medical institutions run by the state or local administration. This presupposes that the falsified trademarks would be eliminated from the clothes and the owner of the trademark gives a written confirmation of such a use.<sup>47</sup>

<sup>46</sup> E/C.12/1/Add.85. Concluding Observations of the Committee on Economic, Social and Cultural Rights : Estonia, 19/12/2002, p. 6.

<sup>47</sup> Intellektuaalset omandit rikkuva kauba sisse- ja väljaveo tõkestamise seaduse muutmise seadus (The Amendment Act of the Prevention of the Import or Export of Commodities Violating Intellectual property Act), adopted on February 11, 2003, Riigi Teataja I, 07.03.2003, 23, 134.

*Reasons for concern*

The problem of property rights of individuals with ethnic German origin of 1941 (*Nach-Umsiedler*) remains unsolved in Estonia. On 28 October 2002 the Supreme Court decided that § 7(3) of the Property Reform Foundations Act is in violation with § 13(2) and § 14 of the Estonian constitution (in the co-effect of those two stipulations).<sup>48</sup> § 7(3) stipulates that the restitution or compensation of the property that belonged to the individuals who left Estonia pursuant to the international agreement concluded between the USSR and Nazi Germany on 10 January 1941, shall be solved pursuant to international agreements that shall be agreed upon (with Germany). Until today, there is no such agreement in force between Estonia and Germany. The Supreme Court found that according to fundamental rights crystallized in § 13(2) and 14 of the Constitution, respective stipulation of the Property Reform Foundations Act must be accommodated to a new situation. During last ten years, no agreement between Estonia and Germany has come into existence with there currently being no prospects for the conclusion of such an agreement. Thus, the Supreme Court sent a signal to the parliament that as the current situation is legally ambiguous and does not offer effective solutions, the parliament must find a new clear regulation to the problem. While the Supreme Court declared the respective provision of the Property Reform Foundations Act to be violating the constitution, it did not declare the unconstitutional provision invalid.<sup>49</sup>

In Estonia, the question of the restitution of the property to Baltic Germans has been a politicized issue. It surprises that Estonia that otherwise has considered itself to be the continuator State of pre-1940 Republic of Estonia, and thus denied any succession to the rights and/or duties of the State which annexed it, the USSR, in this property issue *de facto* relies on a treaty concluded between the USSR and Germany. Estonia's inability or unwillingness so far to deal with those property issues conclusively may violate the concerned individuals' right to property. However, while ratifying the European Charter of Human Rights, Estonia made a reservation that excludes disputes concerning property reform from the jurisdiction of the Strasbourg court.

**Article 18. Right to asylum***International case law and concluding observation of international organs*

In its concluding observations on the second periodic report of Estonia, the Human Rights Committee was concerned that the application of the principle of "safe country of origin" may deny the individual assessment of a refugee claim when the applicant is considered to come from a "safe" country.<sup>50</sup> The Committee reminded Estonia that in order to afford effective protection under articles 6 and 7 of the Covenant, applications for refugee status should always be assessed on an individual basis and that a decision declaring an application inadmissible should not have restrictive procedural effects such as the denial of suspensive effect of appeal (articles 6, 7 and 13 of the CCPR).

*National legislation, regulation and case law*

On January 15, 2003, the Refugee Act Amendment act was adopted by the parliament. The act modifies and specifies rights and procedures concerning refugees and asylum seekers.<sup>51</sup>

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<sup>48</sup> Judgment no. 3-4-1-5-02, Riigi Teataja (State Gazette) III 2002, 28, 308.

<sup>49</sup> For another case in the Supreme Court addressing the same issue, see the judgement of the Administrative Law Division, Judgment no. 3-3-1-23-03, 6 March 2003.

<sup>50</sup> CCPR/CO/77/EST, Concluding observations of the Human Rights Committee : Estonia, 15/04/2003, C, p. 13.

<sup>51</sup> Pagulaste seaduse muutmise seadus (Refugee Act Amendment Act), adopted on January 15, 2003, Riigi Teataja I, 10.02.2003, 13, 65.

*Reasons for concern*

So far, Estonia has not belonged to the favourite destinations of asylum seekers and refugees. It is not yet obvious that Estonia is well prepared, in material terms and in terms of awareness of its officials about the country's international obligations, for the potentially higher number of refugees and asylum seekers in the future.

**Article 19. Protection in the event of removal, expulsion or extradition***Reasons for concern*

The case law, practice and legal opinion in this regard are only emerging in Estonia. So far, the attention has concentrated at former Russian military pensioners illegally residing in Estonia. *Inter alia* due to Russian criticism, Estonia has avoided too violent steps in that regard.

**CHAPTER III : EQUALITY****Article 20. Equality before the law***Reasons for concern*

There are no legal provisions in force that would establish an open inequality before the law. In several areas of law, it is yet open to debate to what extent material inequalities should be confronted with "affirmative action" or "positive discrimination".

**Article 21. Non-discrimination***International case law and concluding observation of international organs*

In its final conclusions published on April 15, 2003 following the second periodic report submitted by Estonia, the UN Human Rights Committee remained "deeply concerned" at the high number of stateless persons in Estonia and the comparatively low number of naturalizations.<sup>52</sup> It noted that although Estonia has adopted a number of measures designed to facilitate naturalization, a large number of stateless persons do not even initiate this procedure. The Committee recommended that Estonia should reduce the number of stateless persons, with priority for children, *inter alia* by encouraging their parents to apply for Estonian citizenship on their behalf and by promotion campaigns in schools. The Committee invited Estonia to reconsider its position as to the access to Estonian citizenship by persons who have taken the citizenship of another country during the period of transition and by stateless persons. Moreover, the Committee encouraged Estonia to conduct a study on the socio-economic consequences of statelessness in Estonia, including the issue of marginalization and exclusion (articles 24 and 26 of the CCPR).

Moreover, the Committee expressed its concern about legislation prohibiting non-citizens from being members of political parties.<sup>53</sup> The Committee linked this issue to Estonia's obligations under article 22 of the CCPR.

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<sup>52</sup> CCPR/CO/77/EST, Concluding observations of the Human Rights Committee : Estonia, 15/04/2003, C, p. 14.

<sup>53</sup> *Ibid.*, C, p. 17.

The Committee was concerned that the duration of alternative service for conscientious objectors may be up to twice as long as the duration of regular military service.<sup>54</sup> The Committee emphasized that Estonia is under an obligation to ensure that conscientious objectors can opt for alternative service, the duration of which is without punitive effect (articles 18 and 26 of the CCPR).

Another international monitoring body, the Committee on the Rights of the Child adopted on 31 January 2003 its concluding observations on the rights of the child in Estonia.<sup>55</sup> The Committee expressed its concern because of “current discriminatory attitudes against minority language communities (e.g. the Russian-speaking community), non-citizens, especially those without legal status, and other disadvantaged groups, directly or indirectly may restrict the rights guaranteed under the Convention [on the Rights of the Child] to children belonging to those groups. Discussing the right to non-discrimination guaranteed to children, the Committee expressed its concern about there being no legislative provisions defining crimes with a racist element as racist crimes, and that there is at present no legislation prohibiting discrimination in housing, and access to education and public services. Moreover, the Committee on the Rights of the Child recommended that Estonia reduced the number of stateless children, shorten the procedures for applying for residence permits, and take measures to eliminate discrimination against children on the basis of parents’ past opinions and activities.

Moreover, the Human Rights Commissioner of the Council of Europe, Mr. Alvaro Gil-Robles encouraged on its visit to Estonia on October 30, 2003 the Estonian authorities to facilitate the integration of non-citizens by giving a citizenship automatically to any child who is born in Estonia but whose parents do not have the Estonian citizenship.<sup>56</sup> According to the current legal regulations, the acquisition of citizenship is not automatic in such cases but must be accompanied by a written request of the respective parents. It is presumed that in some cases, careless parents would fail presenting such request to the authorities and the child of parents without Estonian citizenship must later unjustly take the consequences of his or her too passive parents.

Last but not least, the UN Committee on Economic, Social and Cultural Rights that made on December 19, 2002 public its considerations of the initial report by Estonia, expressed its concern that the unemployment rate for ethnic minorities was around 16.6 per cent, which was well above the national average of around 9.9 per cent.<sup>57</sup>

#### *National legislation, regulation and case law*

On February 11, 2003 amendments were made to the Legal Chancellor Act providing that everybody is entitled to turn to the Office of the Legal Chancellor for the procedure of conciliation in order to control whether an individual or juridical person of private law has discriminated him or her on the basis of sex, race, ethnicity, colour of skin, language, roots, religious convictions, political convictions, wealth or social status, age, disability, sexual orientation or any other discriminatory ground named in law.<sup>58</sup> The Act regulates the procedure of the conciliation (Articles 21-32). However, it leaves quite free hands to the

<sup>54</sup> *Ibid.*, C, p. 15.

<sup>55</sup> CRC/C/15/Add.196, para. 23-25.

<sup>56</sup> Baltic News Service, EN-i volinik : Eesti peab kodakonduse saamist lihtsustama (The Commissioner of the COE : Estonia Should Make Naturalisation More Easy, 30 October 2003.

<sup>57</sup> E/C.12/1/Add.85. Concluding Observations of the Committee on Economic, Social and Cultural Rights : Estonia, 19/12/2002, p. 12.

<sup>58</sup> Õiguskantsleri seaduse muutmise ja sellega seotud seaduste muutmise seadus (The Legal Chancellor Act Amendment Act and the Act of Amendment of Acts Connected to It), adopted on February 11, 2003, Riigi Teataja I, 07.03.2003, 23, 142.

Legal Chancellor in determining the proper methods and procedures of investigation and conciliation (see Article 20 of the Act).

On 10 December 2003, the Citizenship Act was amended to the effect that the state reimburses to the applicant for citizenship the costs of the courses of the Estonian language upon the successful pass of the language examination.<sup>59</sup>

#### *Practice of national authorities*

In 2003, concerns have been raised with respect to those Russian military pensioners who during the 1990s had received financial aid from the U.S. for the facilitation of their settlement to Russia. In exchange, those former Russian military service members accepted the contractual obligation to leave Estonia. As the *Slivenko vs Latvia* judgment of the European Court of Human Rights demonstrates, the fate of such former Soviet (Russian) military members – and primarily their family members - has become a legally and politically very controversial issue.<sup>60</sup> *Mutatis mutandis*, similar concerns are applicable to the Estonian situation. In 2003, the Estonian Citizenship and Migration Board issued orders for 12 such military pensioners to leave Estonia. In several cases, the Supreme Court has rejected the petitions of such military pensioners.<sup>61</sup> However, none of them has either done or been forced to do it so far. Russia has criticized the willingness of the Estonian authorities to expel such Russian military pensioners from Estonia.<sup>62</sup> The Legal Chancellor has also received a complaint by family members of a military pensioner to be extradited from Estonia.

In the end of 2002 and the beginning of 2003, cases came up in the Citizenship and Migration Board that demonstrated that after the restoration of Estonia's independence in 1991, citizenship had been given through naturalization to a number of individuals without a proper legal ground. Acting in accordance with the law, the Citizenship and Migration Board initially declared the passports and thus citizens' rights of those individuals invalid. However, the question emerged whether the situation had as its cause the state's negligence or the respective individuals' behaviour. To the extent that individuals had not acted *mala fides* (by providing, for instance, false data, themselves), the parliament confirmed their citizenship rights retroactively.<sup>63</sup>

#### *Reasons for concern*

The previously quoted critiques on Estonia's minority situation often ignore or marginalize one legally essential aspect: Estonia was an illegally occupied and annexed country at the time when the USSR basically created the demographic circumstances that cause critique and discomfort today. Due to the fact of illegal Soviet annexation and the violation of international law that prohibits population transfer following illegal seizure, it is simply wrong and one-sided to picture the Estonian government as somehow "responsible" for difficulties in the minority situation.

Before the illegal occupation and annexation of Estonia by the USSR in 1940, Estonia's ethnic minorities made up only a minor portion of the population. The minority protection in

<sup>59</sup> Kodakonduse seaduse muutmise seadus (Citizenship Act amendment Act), 10 December 2003, Riigi Teataja I, 22.12.2003, 82, 550.

<sup>60</sup> *Slivenko vs. Latvia*, judgment of 9.10.2003, case no. 48321/99.

<sup>61</sup> Valeri Dorfman and Tatjana Dorfman v. Minister of Interior, case no. 3-3-1-11-03, March 17, 2003 ; Anton Galitski, Ljubov Galitskaja and Ruslan Galitski v. Minister of Interior, case no. 3-3-1-12-03, March 18, 2003; Nikolai Mikolenko, Ljubov Mikolenko and Oleg Mikolenko v. Minister of Interior, case no. 3-3-1-17-03, April 17, 2003 ; Vladimir Dorošenko and Nina Dorošenko v. Minister of Interior, case no. 3-3-1-44-03, May 20, 2003.

<sup>62</sup> See Postimees, 31.10.2003 – the Estonian Ambassador in Moscow, Karin Jaani, was called for an exchange of views in that regard in the Russian ministry of foreign affairs.

<sup>63</sup> Kodakonduse seaduse muutmise seadus (Citizenship Act Amendment Act), adopted on January 29, 2003, Riigi Teataja I, 25.02.2003, 18, 101.

the country, especially the 1925 Law on Cultural Autonomy, was considered among the most progressive and tolerant ones of this kind during the League of Nations era. After the USSR illegally annexed the country in 1940, it promoted the settlement of Soviet citizens from the USSR to Estonia *en masse*.

After 1991, a legal and political debate emerged about what weight is to be measured to the fact that the annexation by the USSR had been illegal.<sup>64</sup> This debate has had repercussions outside Estonia, in Russia and in the EU. Estonia claimed that the population transfers undertaken by the USSR – the deportation of tens of thousands of Estonians to Siberia and the settlement of immigrants from the USSR to Estonia – was undertaken in violation of rules of international law. Although Estonia did not, for political and pragmatic reasons, invoke the 1949 Geneva conventions with a too loud voice, and make the argument that Russophone settlers should return to their country of origin after the end of occupation, it refused to give citizenship to the settlers of the Soviet era automatically. For Russophone settlers, naturalization was conditioned on a language test, citizenship exam and oath. As the government of USSR had favoured the use of the Russian language in its territory, and in the areas illegally annexed such as the three Baltic republics, the knowledge of the Estonian language and of the knowledge of the history and culture of the country was quite poor among the Russophone settlers before 1991. According to one survey, only 13 % of the Russophones commanded the Estonian language before 1991. As the Estonian and Russian languages are very different from each other, and the Estonian is considered to be not an easy language to learn, the need to demonstrate some knowledge of the Estonian language in order to acquire citizenship still proves a real challenge for a part of the Russophone minority.

The relatively large number of “non-citizens” and of the “undocumented” must be rightly regarded as a source of serious concern for today’s Estonia. At the same time, it is important to emphasize once again that the situation as it exists is not a consequence of Estonia’s questionable policies of “exclusion” or “discrimination” but a legacy of the illegal Soviet annexation. Estonia does have the right under international law to say that the granting of citizenship cannot follow “automatically” and that the applicants for citizenship must acquire the knowledge of the Estonian language. Some international monitoring bodies seem to criticize this language requirement as if it would be something extraordinary. But it is not – in most countries of the world, the language requirement is one of the most obvious citizenship requirements. Why then question or criticize it in a case following illegal annexation by a foreign power?

The previous “critique of the critique” does not, however, suggest that Estonia has a perfect record in meeting international standards and enabling a life without any discrimination for national minorities. In particular, Estonia should guarantee an even better Estonian language preparation for Russian kids and citizenship applicants. It is a failure of the Estonian school system if a Russian child does not get a working knowledge of Estonian – and the citizenship and future opportunities in life are conditioned on this knowledge. While not denying the right of minority children to study in their own language, the government must guarantee a better quality of teaching of Estonian for non-Estonian schools.

In sum, the relatively large number of non-citizens in Estonia is not *per se* a sign of Estonia’s discriminatory policies. In terms of international law, Estonia’s laws are in conformity with international standards and requirements - a fact that was recognized when the OSCE mission left Estonia. During 1993-1998, OSCE made 30 proposals to Estonia about changing certain laws – all those requests were fulfilled until 12 July 1999. On 12 July 1999, the changes in the

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<sup>64</sup> See e.g. L. Mälksoo, *Illegal Annexation and State Continuity: the Case of the Incorporation of the Baltic States by the USSR. A Study of the Tension between Normativity and Power in International Law*, Leiden: Martinus Nijhoff Publishers, 2003.

Citizenship Act became effective that brought the Act in accordance with the Convention on the Rights of the Child.

The Russophone minority is granted widespread rights in the educational system and in their dealings with the administration. It has been a politically contested issue in Estonia whether, to what extent and when should all gymnasiums in the country have subjects taught in the Estonian language. Until today, the Russophone minority has preserved its autonomous schools at the gymnasium level. This autonomy will to a certain extent be preserved although it is important that schools with Russian as a language of instruction would also give a sufficient knowledge of the official language to their pupils.

Permanent residents without citizenship have the right to take part in the elections on the municipal level.

Estonia's attempts to combine promoting its national language and culture and protecting the rights of the Russophone minority are not two goals contradicting each other. In Estonia, everybody is free to use in the private sphere the language of one's preference. Moreover, the national programme "Integration in the Estonian society 2000-2007", adopted by the parliament of Estonia, emphasizes that integration is a two-way street even when the knowledge of the Estonian language remains crucial for creating a "common space" in Estonia for the ethnic Estonians and Russophones. It does not imply, however, that the Russophone minority should learn the majority's language and pay respect to its culture without being entitled to the same respect to its own minority culture. The national integration program has three major goals: linguistic-communicative integration, legal-political integration, socio-economic integration. Linguistic-communicative integration implies the reproduction of the common information space in the Estonian language while at the same time paying respect to cultural diversity and mutual tolerance. Legal-political integration implies the creation of the population loyal to the Republic of Estonia and diminishing the number of individuals living in Estonia permanently and yet without the Estonian citizenship. Social-economic integration implies the goal of achieving higher level of competition and social mobility in the society not depending on ethnic or cultural background. It is clear that a lot of work remains to be done in all of those three areas of integration; however, it is a positive first step that such goals are recognized straightforwardly in a document adopted on the national level. Therefore, the national programme "Integration in the Estonian society 2000-2007" has deserved positive appraisals by most international monitoring bodies.

National minorities can also address the problems facing them in the framework of the Roundtable of the National Minorities, created by the President of the Republic of Estonia in 1993.

In the framework of the system of the cultural autonomy of minorities, the Estonian government adopted the new regulation of the election of the cultural councils in 2003.<sup>65</sup>

## **Article 22. Cultural, religious and linguistic diversity**

### *International case law and concluding observation of international organs*

In its concluding observation on Estonia, publicized on April 15, 2003, the UN Human Rights Committee welcomed the abolition of the requirement of proficiency in Estonian language for standing as a candidate in elections and the assertion by the Estonian delegation that the use

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<sup>65</sup> Vähemusrahvuste kultuurinõukogu valimise eeskiri (Regulation of the Election of the Cultural Councils of Minority Peoples), Vabariigi Valitsuse 6. mai 2003.a määrus no. 137 (regulation of the government), Riigi Teataja I, 13.05.2003, 40, 275.

or size of advertisements and signs in languages other than Estonian is not restricted.<sup>66</sup> However, the Committee was still concerned at the practical implementation of Estonian language proficiency requirements, including in the private sector, and the effect this may have on the availability of employment to the Russian-speaking minority. The Committee remained concerned that in those areas where a substantial minority speaks primarily Russian, public signs are not posted also in Russian. The Committee invited Estonia to ensure that, pursuant to article 27 of the CCPR, minorities are able in practice to enjoy their own culture and to use their own language. It also invited Estonia to ensure that legislation related to the use of languages does not lead to discrimination contrary to article 26 of the CCPR.

Other international monitoring bodies have raised similar points earlier. Thus, the UN Committee on Economic, Social and Cultural Rights released on December 19, 2002 its concluding observations on the initial report of Estonia and expressed concern about “the persisting lack of attention to the issue of minority languages and cultural rights, including the realization of the right to education in minority languages.” The Committee recommended that the Law on Cultural Autonomy of National Minorities be revised to provide for the expedient and full recognition of the rights of minority groups. The Committee called upon Estonia to ensure that ethnic groups continue to have ample opportunities to be educated in their own languages, as well as to use these languages in public life.<sup>67</sup>

The Council of Europe’s Committee of Ministers adopted on 13 June 2002 a resolution suggested by the Advisory Committee on the Framework Convention for the Protection of National Minorities, stipulating that “despite certain recent improvements in the relevant legislation, there remain shortcomings with respect to the use of minority languages, including as regards the private signs visible to the public.”<sup>68</sup> This document was preceded by a much more elaborate opinion by the Advisory Committee on the Framework Convention for the Protection of National Minorities on Estonia.<sup>69</sup>

### *Reasons for concern*

In global and European terms, Estonian culture itself is a minority culture *par excellence*. Estonians are very fortunate to have a nation state at their disposal – a privilege not granted to many groups of the small size of 1 Million. It can therefore be argued that the very existence of the Republic of Estonia is a good guarantor of diversity.

However, there is always the question of minorities within minorities. Estonians, having only relatively recently re-established their statehood, have yet much room to develop true respect, tolerance and attention for smaller minorities within Estonia.

Another problem is that especially abroad the political attention is concentrated at the condition of the Russian minority in Estonia. Members other smaller minorities in Estonia have complained that the too simple portraying of the situation as “ethnic Estonian minority” and “Russophone minority” ignores their rights and their needs for recognition and government help.

<sup>66</sup> CCPR/CO/77/EST, Concluding observations of the Human Rights Committee : Estonia, 15/04/2003, C, p. 16.

<sup>67</sup> E/C.12/1/Add.85. Concluding Observations of the Committee on Economic, Social and Cultural Rights : Estonia, 19/12/2002, p. 57.

<sup>68</sup> Resolution ResCMN(2002)8

<sup>69</sup> Adopted on 14 September 2001, CM(2001)159 (restricted) 29 October 2001.



## Article 23. Equality between man and women

### *International case law and concluding observation of international organs*

The Human Rights Committee praised on April 15, 2003 in its concluding observations on the second periodic report of Estonia measures and legislation adopted to improve the status of women in Estonian society and to prevent gender discrimination. It particularly noted Article 5 of the Wages Act, which prohibits the establishment of different wage conditions on the basis of gender, and articles 120 to 122 and article 141 of the new Penal Code, which make domestic violence and marital rape specific criminal offences.<sup>70</sup>

The UN Committee on Economic, Social and Cultural Rights that made on December 19, 2002 public its considerations of the initial report by Estonia, expressed its concern about the marked difference in the wages of men and women. Although it noted that it is possible to seek legal redress in cases of discrimination in employment and remuneration, it was critically concerned that few women have as yet sought such relief.<sup>71</sup> The Committee was further concerned that many cases of domestic violence go unreported. The Committee recommended that Estonia intensified its efforts to ensure the right of equal remuneration for men and women for work of equal value, including through public awareness-raising campaigns. The Committee recommended in this regard that Estonia ratify the International Labour Organization Discrimination (Employment and Occupation) Convention (No. 111).<sup>72</sup> Moreover, the Committee recommended that Estonia intensify its efforts to combat domestic violence, including through ensuring the availability and accessibility of crisis centres where victims of domestic violence can find safe lodging and counselling.<sup>73</sup>

### *National legislation, regulation and case law*

In national legislation, most contested developments have – or not – taken place in the area of gender equality. The draft setting forth the principles, definitions and legal measures necessary for the implementation of the principle of equal treatment has been elaborated by the Ministry of Social Affairs. The Estonian government has approved the draft. In 2003, heated parliamentary debates on the draft Gender Equality Act continued in Estonia. Although explicitly required by the EU as part of the *acquis communautaire*, the Act has not yet been adopted by the Estonian parliament. However, the adoption is expected soon in 2004. The most contested element of the draft Act concerns the burden of proof in litigation concerning a violation of the principle of equal treatment for women and men as in any other litigation. The draft Gender Equality Act contains a provision on the reversal of the burden of proof in cases of the violation of the principle of equal treatment of women and men as regards access to employment, vocational training and promotion, and working conditions.<sup>74</sup> NGOs and women groups have criticized the slowness of adopting the Act in the Estonian parliament.<sup>75</sup>

There have also been some positive developments in the area of gender equality in Estonia in 2003. Thus, starting from January 1, 2004, the competence of the Legal Chancellor in the

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<sup>70</sup> CCPR/CO/77/EST, Concluding Observations of the Human Rights Committee : Estonia, 15/04/2003, B, p. 6.

<sup>71</sup> E/C.12/1/Add.85. Concluding Observations of the Committee on Economic, Social and Cultural Rights : Estonia, 19/12/2002, p. 14.

<sup>72</sup> *Ibid.*, p. 37.

<sup>73</sup> *Ibid.*, p. 41.

<sup>74</sup> See also Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex.

<sup>75</sup> For thorough discussion on gender equality in Estonia, see Open Society Institute/EU Accession Monitoring Program, *Monitoring the EU Accession Process: Equal Opportunities for Women and Men. Country Reports*, 2002, pp. 179-232.

ombudsman function has been expanded to settling disputes on the workplace concerning claims of discrimination on the basis of sex.

*Reasons for concern*

Estonia is currently fighting about the meaning and limits of Gender Equality Act. Ultimately, this act will be adopted by the parliament. However, the attitudes within the society are sometimes surprisingly backwards in terms of gender equality. It is to be hoped that legislative changes will enable to affect patriarchal public consciousness, shaped by centuries.

**Article 24. The rights of the child**

*International case law and concluding observation of international organs*

The UN Economic, Social and Cultural Rights Committee expressed in its concluding observations on Estonia concern about the extent of the problem of street children.<sup>76</sup> It recommended that Estonia address the situation of street children with a view to eliminating the underlying causes of the problem. The Committee was further concerned that the law allows the work of children between 13 and 15 with the written consent of one parent or a guardian and the labour inspector, and that the list of permissible works includes that of an industrial nature.<sup>77</sup> It noted with concern the high drop out rates among primary and secondary schools.<sup>78</sup> It requested Estonia to take all appropriate measures to address this problem.

*Practice of national authorities*

Two years ago, the Legal Chancellor initiated the discussion on children rights and school violence in Estonia. Today, this has become a very important topic of discussion in the Estonian society and media. The fight against school violence has been declared a political priority by the government. Several thematic conferences on this topic have taken place in 2003.

*Reasons for concern*

Sociological surveys indicate that most children experience physical or mental violence in schools. In 2003, Estonia was disrupted by a few cases of children suicide related to school violence. It is important that the society, state and schools paid even more attention at this unfortunate phenomenon that often calls in question children's basic rights.

**Article 25. The rights of the elderly**

*International case law and concluding observation of international organs*

The UN Committee on Economic, Social and Cultural Rights that made on December 19, 2002 public its considerations of the initial report by Estonia, expressed its concern about the high rate of unemployment among older women.<sup>79</sup>

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<sup>76</sup> E/C.12/1/Add.85. Concluding Observations of the Committee on Economic, Social and Cultural Rights : Estonia, 19/12/2002, p. 20.

<sup>77</sup> *Ibid.* p. 21.

<sup>78</sup> *Ibid.*, p. 31.

<sup>79</sup> E/C.12/1/Add.85. Concluding Observations of the Committee on Economic, Social and Cultural Rights : Estonia, 19/12/2002, p. 12.

*Reasons for concern*

While Estonia is an aging society, the political, cultural and economic life is dominated by younger people. As the pensions are quite low – and very low in European terms, pensioners often feel marginalized and socially excluded in Estonia. These have been the negative effects of the political and economic transition in Estonia. While the situation has been improved recently, it is important to continue paying more attention at the rights and opportunities of the elderly.

**Article 26. Integration of persons with disabilities***National legislation, regulation and case law*

On December 10, 2003, the Supreme Court declared unconstitutional a stipulation (§ 35 para. 2 p. 2) of the Citizenship Act to the extent that this provision did not enable to free from having to comply with citizenship application requirements a person who for the reason of his bad hearing was unable to fulfil those requirements.<sup>80</sup> Although Fedtšenko was practically dead, he was not given a special handicapped status by a medical commission since he did not need permanent outside help. This, however, prevented the Citizenship Board to exempt him from the respective citizenship requirements. However, the Supreme Court found that this person with a serious hearing disability could not be asked to pass language exam for acquiring the citizenship in exactly the same way as those individuals who would be given the special handicapped status due to the reason that they would need outside help. The Supreme Court based its decision on the principle of equality and argued that unequal individuals may not be treated equally with the others if that imperils the exercise of their rights.

*Reasons for concern*

There is positive tendency of drawing more attention at integrating persons with disabilities in Estonia. However, compared to E.U. member states, much must yet be done in public awareness and in the allocation of resources for the improvement of the condition of disabled persons.

**CHAPTER IV : SOLIDARITY****Article 27. Worker's right to information and consultation within the undertaking***Practice of national authorities*

In 2003, trade unions have initiated a suggestion that workers should be included in boards of the enterprises and companies. So far, there is no legal regulation mandating this. The reaction of the government on this suggestion does not seem so far overly enthusiastic.

*Reasons for concern*

Estonia's liberal economic policies imply that the government looks for opportunities for foreign investment and economic growth. The business environment and the legislation therefore is generally shaped by the entrepreneurs' interests. The awareness about social and economic rights and standards is often either in « children's shoes » or outrightly rejected as

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<sup>80</sup> Supreme Court, Case No. 3-3-1-47-03, Fedtšenko v. Sotsiaalkindlustusamet (Social Security Board), December 10, 2003.

an obstacle for economic growth. This mode of thinking has influenced both the above right and the following economic and social rights.

### **Article 28. Right of collective bargaining and action**

#### *International case law and concluding observation of international organs*

The UN Committee on Economic, Social and Cultural Rights released on December 19, 2002 its considerations of the initial report by Estonia. The Committee criticized that Estonia's legislation on the right to strike for civil servants contains restrictions that are not in conformity with international norms.<sup>81</sup> The Committee recommended the amendment of the Civil Service Law with a view to lifting the restrictions imposed on civil servants' right to strike, in conformity with International Labour Organization norms.

#### *Practice of national authorities*

In 2003, the organization of the trade unions of employees (TALO) has demanded the right to strike for the state officials. So far, such right is not guaranteed in Estonia.

On December 4, 2003, a major lockout of teachers and other employees in the school system, organized and co-ordinated by the Estonian Employees' Unions' Confederation<sup>82</sup> took place with the demand to raise salaries in the next year. More than 18.000 people took part in the lockout. The lockout was probably the most successful so far and resulted in the respective raise of salaries, reflected in the state budget of 2004.

#### *Reasons for concern*

Estonia should take the above suggestions into account.

### **Article 29. Right of access to placement services**

There were no major developments in that regard in 2003.

### **Article 30. Protection in the event of unjustified dismissal**

#### *National legislation, regulation and case law*

In cases of dismissal, labour dispute commissions (*töövaidluskomisjon*) and courts make generally decisions in favour of the dismissed workers. For the employers, it is therefore generally quite difficult to dismiss workers. It is even more difficult to dismiss state or municipal officials. The administrative law division of the Supreme Court found in *Galina Pantshenko v. Tallinn City Government* that the former head of the Tallinn Municipal Government's Security and Integration Board had been dismissed illegally.<sup>83</sup> Instead of being fired, Pantshenko was considered to have given up the job on her own initiative, and was awarded the unearned salary and litigation costs by the Court.

<sup>81</sup> E/C.12/1/Add.85. Concluding Observations of the Committee on Economic, Social and Cultural Rights : Estonia, 19/12/2002, p. 16.

<sup>82</sup> See [www.talo.ee](http://www.talo.ee)

<sup>83</sup> Supreme Court, case no. 3-3-1-70-03, *Galina Pantshenko v. Tallinn City Government*, judgment of 25 November 2003.

On January 22, 2003, the act concerning labour dispute commissions was amended by the parliament.<sup>84</sup> The respective procedures were specified, especially with regard to prescription of such labour disputes.

### **Article 31. Fair and just working conditions**

#### *Reasons for concern*

The practice regarding labour contracts has been a source of considerable concern in Estonia. Employers would often legally pay only minimal wages and the rest “in envelopes”. Moreover, some employers push employees to include illegal stipulations and conditions in the labour contract – e.g. obligation to work overtime or during holidays without legally foreseen increased salary, obligation not to use one’s legally foreseen holidays, etc. State has been not as powerful as needed in preventing such illegal labour contracts, damaging workers’ working conditions, being imposed on workers.

### **Article 32. Prohibition of child labor and protection of young people at work**

#### *International case law and concluding observation of international organs*

The UN Economic, Social and Cultural Rights Committee expressed in its concluding observations on Estonia concern about the fact that the law allows the work of children between 13 and 15 with the written consent of one parent or a guardian and the labour inspector, and that the list of permissible works includes that of an industrial nature.<sup>85</sup>

#### *Reasons for concern*

The suggestion that children between 13 and 15 should not be allowed to work is probably alien to many Estonians since people, including children, want to improve their living standards and to work is the most obvious way to achieve this goal. At the same time, it must of course be very carefully observed that children’s rights would be protected in this quest for better living conditions.

### **Article 33. Family and professional life**

#### *National legislation, regulation and case law*

In December 2003, the Parental Compensation Act was adopted by the parliament. The adoption of this act was motivated by the negative births rates in Estonia. The Act seeks to “compensate the gain that is acquired due to raising up the children and support the combination of work and family life”.<sup>86</sup> During the first six months of the life of a newly born child, state will compensate to her salary. In the second half-year of the baby’s life, mother and father can choose whose absence from the work will be compensated. However, the state would not compensate more than in the amount of three average wages in the republic.

The opposition sharply criticized the Act from the point of view of equality, arguing that by differentiating between parents and indirectly between children as well, the state would

<sup>84</sup> Individuaalse töövaidluse lahendamise seaduse muutmise seadus (The Amendment Act of the Act regulating the Settlement of Individual Labour Disputes), adopted on January 22, 2003, Riigi Teataja I, 17.02.2003, 15, 83.

<sup>85</sup> E/C.12/1/Add.85. Concluding Observations of the Committee on Economic, Social and Cultural Rights : Estonia, 19/12/2002, p. 20.

<sup>86</sup> See § 1 of Vanemahüvitise seadus.

already at the outset fix unequal “price tags” to the babies. However, the sponsors of the Act from the governing coalition argued that the “target group” of the Act would be primarily families (and in particular women) who have preferred career to the family life and postponed so far giving births. In this sense, the law was conceptualized as discriminatory at the outset – otherwise, it was argued, the women who the state wants to encourage give birth would still be unable or unwilling to do it. The real effects of the Act must yet be seen; social scientists foretell minor increase of births in Estonia.

#### *Reasons for concern*

The adoption of the Parental Compensation Act has been a major development. It must be seen to what extent this act will improve the situation regarding worries about how to combine family and professional life in an economically very competitive climate.

### **Article 34. Social security and social assistance**

#### *International case law and concluding observation of international organs*

The UN Committee on Economic, Social and Cultural Rights released on December 19, 2002 its considerations of the initial report submitted by Estonia. The Committee criticized that the minimum wage is still insufficient to provide a worker and his/her family with a decent standard of living. It recommended that Estonia undertake necessary measures to ensure the improvement of this situation. The Committee also expressed its concern that unemployment benefits, which are calculated at 50 per cent of the amount earned in a previous job, may in some cases be insufficient to secure a decent standard of living for a worker and his/her family.<sup>87</sup> It recommended Estonia to undertake the necessary measures to ensure that the lowest level of unemployment benefit is sufficient to secure a decent standard of living for a worker and his/her family. Moreover, the Committee was deeply concerned about the lack of social housing.<sup>88</sup> It recommended Estonia to allocate sufficient resources for the provision of social housing, especially to the disadvantaged and marginalized groups. It pointed out that the measures taken by Estonia to address the growing problem of homelessness are insufficient, as they focus solely on providing shelter to the homeless rather than dealing with the underlying causes of homelessness.<sup>89</sup> The Committee recommended that Estonia intensified its efforts to combat the problem of homelessness. The Committee expressed its concern that forced evictions may be carried out in Estonia without provision for alternative lodging or adequate compensation.<sup>90</sup> The Committee recommended that Estonia ensure that alternative lodging or adequate compensation is provided for people who are evicted from their homes and, in this regard, referred to the guidelines set out in its General Comment No. 7 (1997) on forced evictions.<sup>91</sup>

The Committee urged Estonia to monitor closely the level of poverty. It recommended that Estonia integrate human rights, including economic, social and cultural rights, into the formation of a national strategy for poverty reduction.

#### *National legislation, regulation and case law*

Two changes in legislation were adopted in 2003 that have impact on social assistance. On 8 August 2003, the Social Assistance Acts was amended in the parliament. This amendment

<sup>87</sup> E/C.12/1/Add.85. Concluding Observations of the Committee on Economic, Social and Cultural Rights : Estonia, 19/12/2002, p. 15 and 17.

<sup>88</sup> *Ibid.* p. 23.

<sup>89</sup> *Ibid.* p. 24.

<sup>90</sup> *Ibid.* p. 25.

<sup>91</sup> *Ibid.*, p. 47.

affected the students who up until then received social assistance (*toimetulekutoetus*) from the state. Since the amendment, students' families have the duty to sustain their living costs. The system of students' assistance was adopted at the same time<sup>92</sup>, yet this system does not cover all students who received state's assistance according to the old system. This then was a step towards less social assistance with respect to students of Estonia. The amendment was politically justified with the argument that today's students will tomorrow belong to this strata in the society that will have salaries higher than average. It was therefore claimed that it was be unjust to expect that the rest of the society would pay social assistance for preparing the way for a "privileged" future.

Another amendment that came into force on 1 January 2003 restricted the circle covered by the solidaric medical insurance. The wives or husbands of the workers who do not earn themselves will not be automatically covered by medical insurance any more (i.e. they have to buy it separately) – except in the cases of emergency help.

### *Reasons for concern*

That Estonia has kept social security and social assistance quite low, seems partly be due to a conscious policy choice by the government. It has been argued that social assistance has been kept low in order to raise competition and economic growth.<sup>93</sup> It is, however, important that the level of social assistance would meet the respective international and constitutional standards regarding human dignity and solidarity.

## **Article 35. Health care**

### *International case law and concluding observation of international organs*

The UN Committee on Economic, Social and Cultural Rights released on December 19, 2002 its considerations of the initial report submitted by Estonia. The Committee noted with regret that the statistical data received on the health situation in Estonia lacked disaggregation on a comparative basis and thus did not provide a sufficient basis for the Committee to monitor effectively the implementation of the Economic, Social and Cultural Rights Covenant.<sup>94</sup> The Committee expressed its concern that, in spite of the measures undertaken by Estonia to combat HIV/AIDS, the incidence of reported new cases is still very high.<sup>95</sup> The Committee recommended Estonia to intensify efforts to control the spread of HIV/AIDS, including through public information campaigns. The Committee noted with concern the high rate of cases of tuberculosis.<sup>96</sup> It recommended Estonia to intensify efforts to combat the spread of tuberculosis. The Committee was concerned about the high morbidity rate due to alcohol and tobacco abuse, particularly among men.<sup>97</sup> The Committee urged Estonia to ensure the effective implementation of national strategies and measures to address the problem of alcohol and tobacco abuse. Although the Committee recognized that affordable contraception is widely available in Estonia, it expressed its concern that abortion is still commonly used as a method of birth control, which puts the health of women at risk.<sup>98</sup> The Committee recommended that Estonia promote a general awareness of safe contraceptive methods, as

<sup>92</sup> Õppetoeustuste ja õppelaenude seadus (Study Assistance and Study Loans Act), adopted on August 7, 2003, Riigi Teataja I, 26.08.2003, 58, 387.

<sup>93</sup> For an interesting analysis comparing world trends and the situation in Estonia, see A. Kuddo, R. Leetmaa, L. Leppik, M. Luuk, A. Võrk, *Sotsiaaltoetuste efektiivsus ja mõju tööjõupakkumisele* (The Effectiveness of Social Assistance and Its Impact on Labour Availability), Tallinn : PRAXIS, 2002.

<sup>94</sup> E/C.12/1/Add.85. Concluding Observations of the Committee on Economic, Social and Cultural Rights : Estonia, 19/12/2002, p. 26.

<sup>95</sup> *Ibid.*, p. 27.

<sup>96</sup> *Ibid.*, p. 28.

<sup>97</sup> *Ibid.*, p. 29.

<sup>98</sup> *Ibid.*, p. 30.

well as sexual and reproductive health information, and instil awareness about the health risk of using abortion as a method of birth control.

The Committee recommended that Estonia take measures, in line with General Comment No. 14, to ensure that adequate and affordable health care is accessible and available to everyone, especially older women in rural areas.

*National legislation, regulation and case law*

In its judgment of 10 November 2003, the administrative law division of the Supreme Court raised the issue of constitutionality in a case in which the amendment of the Medical Insurance Act was applied with respect to an individual who had so far been automatically insured by his wife's insurance but was not any longer, according to the Estonian Medical Board's application of the amendment.<sup>99</sup> The Supreme Court satisfied applicant's claim for medical insurance.

*Reasons for concern*

The difficulties of transition and restructuring have been fully felt in the system of health care which has often been criticized as insufficient and increasingly privatized. It is important to continue to follow the developments in that regard.

**Article 36. Access to services of general economic interest**

*Reasons for concern*

This access has witnessed both positive and negative developments during earlier years and in 2003. On the one hand, communication has generally been improved and Estonia is among the most developed countries in terms of IT and mobile telephone use. At the same time, economic factors have put transport in economically less vibrant "border lands" in question – in fact, some negative developments and cuts can be witnessed during the last years. This has potential to have a negative impact on the respective fundamental right situation.

**Article 37. Environmental protection**

*International case law and concluding observation of international organs*

The UN Committee on Economic, Social and Cultural Rights released on December 19, 2002 its considerations of the initial report submitted by Estonia. It recommended that Estonia strictly enforce the domestic and international standards for environmental protection, so as to prevent harmful effects on the health of the population in Estonia.<sup>100</sup>

*National legislation, regulation and case law*

In *Vaher et al. v .the Government*, the administrative law division of the Supreme Court recognized very widespread and progressive rights for individuals affected by restrictions aiming at the regulation of the use of certain areas.<sup>101</sup> Persons who would use the area for

<sup>99</sup> Johannes Toom v. Eesti Haigekassa, case no. 3-3-1-65-03, November 10, 2003.

<sup>100</sup> E/C.12/1/Add.85. Concluding Observations of the Committee on Economic, Social and Cultural Rights : Estonia, 19/12/2002, p. 54.

<sup>101</sup> Administrative law division of the Supreme Court, regulation of May 7, 2003 no. 3-3-1-31-03. Jaak Vaheri, Anne Rehkalti, Luule Velleste ja Hillar Taamali kaebus Vabariigi Valitsuse 19. detsembri 2000.a määruse no. 452



recreation, sports or other activities of this kind, would be affected by any act regulating the use of the area, and can challenge such acts in administrative courts. The government had argued that such persons cannot be directly affected by such regulations and cannot thus enjoy standing in courts. In deciding in favour of indirectly affected citizens, the administrative law division of the Supreme Court relied on article 6 paragraph 2 of the Aarhus convention.

There is an ongoing debate in Estonia about the amendment of the Constitution through should a specific environmental protection article. The debate has been initiated by the leading NGO in the field, Estonian Fund for Nature (Eestimaa Looduse Fond).<sup>102</sup> The Fund has suggested an amendment of the Constitution, stipulating in particular that at every human activity in Estonia, the following must be taken into account: the living environment of all species must be guaranteed, development must be sustainable, human health and the quality of the living environment must be protected by the state.

In terms of implementation of the right to environmental protection, a regulation was adopted by the government on May 6, 2003, setting forth the order and measures of calculating damages in cases of environmental damage.<sup>103</sup>

#### *Reasons for concern*

The initiative to create a special « nature protection article » in the constitution was not taken up by the Estonian parliament at the time of the amendment of the constitution for enabling the entry into the EU. To amend the Estonian constitution is a complicated procedure which is why it is unlikely that the constitution will be amended in the near future.

### **Article 38. Consumer protection**

#### *Practice of national authorities*

The Consumer Protection Board has publicly reacted and drawn attention at misuses in political advertising during the last electoral campaign. Moreover, it prohibited an advertisement by a security company that sent, against good custom, a threatening message to the customers (“Parkimistrahvi maskab maksta, muidu pargime su läbi”, “You should pay your parking fine, otherwise we will “pay” you duly”).

#### *Reasons for concern*

In terms of public attention and awareness and state guarantees, Estonia has made a lot of progress regarding the right to consumer protection. However, the level of this protection does not yet always match up to European standards and practices.

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peale (The Complaint of J. Vaher, A. Rehkalt, L. Velleste and H. Taamal against the regulation no. 452 of the government of December 19, 2000.

<sup>102</sup> [www.elfond.ee](http://www.elfond.ee)

<sup>103</sup> Kaitstava loodusobjekti kahjustamisega tekitatud keskkonnakahju arvestamise kord ja määrad (The Order and Measures of Calculating Environmental Damage in Cases of Damage Caused to Protected Natural Objects), regulation of the government of May 6, 2003, no. 142, Riigi Teataja I, 13.05.2003, 40, 281.

**CHAPTER V : CITIZEN'S RIGHTS****Article 39. Right to vote and to stand as a candidate at elections to the European Parliament**

No significant developments to be reported

**Article 40. Right to vote and to stand as a candidate at municipal elections**

*National legislation, regulation and case law*

Due to changes made into the Local Municipality Election Act and in force since January 1, 2004, the election authorities are not allowed to register the local election alliances of citizens. Thus, starting from the next municipality elections, there won't exist the possibility to form local election alliances. The candidates can run as individuals or as members of the party lists. In Estonia, a party can be formed by 1000 individuals.

*Reasons for concern*

The question whether the local election alliances should be allowed or not in Estonia, caused heated political and legal debates in 2002 and 2003. Estonia's big political parties have argued that local election alliances are unstable and are not responsible for their promises and deeds as the big established parties. The critiques of this position, including the Legal Chancellor, have pointed out that Estonia's municipalities are threatened by a "forced partyzation".

**Article 41. Right to good administration**

No significant developments to be reported

**Article 42. Right of access to documents**

No significant developments to be reported

**Article 43. Ombudsman**

No significant developments to be reported

**Article 44. Right to petition**

No significant developments to be reported

**Article 45. Freedom of movement and of residence**

No significant developments to be reported

## Article 46. Diplomatic and consular protection

No significant developments to be reported

## CHAPTER VI : JUSTICE

### Article 47. Right to an effective remedy and to a fair trial

#### *International case law and concluding observation of international organs*

On 21 January 2003, the European Court of Human Rights issued its final judgment in the case of Veeber v. Estonia<sup>104</sup> (Application no. 45771/99). In this case involving tax evasion (the existence of which was not under question), Estonian courts had applied a stipulation of the Criminal Code retroactively, Estonia had violated Article 7 § 1 of the European Human Rights Convention. For the violation of the principle *nullum crimen sine lege* by Estonia, the Court ordered Estonia to pay EUR 2,000 in respect of non-pecuniary damage and EUR 840.90 in respect of costs and expenses related to legal aid to mr Veeber.

On 2 December 2003, the ECHR issued its judgment in the case of Treial v. Estonia, and established a violation of Article 6 § 1 of the Convention.<sup>105</sup> The length of the civil proceedings concerning the divorce and division of property of Treial was not reasonable, even though the Court accepted that the case had been complex. The Court awarded the applicant EUR 3,000 for damages of non-pecuniary nature.

In the judgment Mõtsnik vs. Estonia, issued on 29 April 2003, the ECHR found that although there were rather significant delay in the criminal proceeding concerning Mõtsnik, the length of the proceedings was not such as to amount to a breach of the “reasonable” time regulated in Article 6 § 1 of the Convention.<sup>106</sup>

#### *Reasons for concern*

There are huge problems in Estonia with the accessibility of legal aid. The proper legal aid in matters beyond criminal law is often *de facto* not available to individuals with low income. 90 % of the means provided for the legal aid in the national budget is spent on criminal cases. In matters of civil and administrative law, the legal regulation and the State support for the access to legal aid is unclear and unsatisfactory. Indirectly, the gravity of the situation is demonstrated by the fact that more than half of the letters and/or complaints addressed to the Legal Chancellor are basically requests of legal aid with respect to a particular problem. The Legal Chancellor in its recent report has drawn the attention of the Estonian parliament and society to the urgent need of paying more attention and pouring in more resources to the legal aid.<sup>107</sup> At the same time, it is difficult to establish with certainty that Estonia does not follow its international obligations in that respect.

There have been discussions about developing a State-sponsored system of legal aid, and the respective Legal Aid Act has been prepared by the Ministry of Justice. It is planned that the Estonian parliament would adopt the Act in 2004 that would mean the implementation of the new system starting from 2005. Currently, legal aid by State can be received only exceptionally beyond criminal proceedings. According to the new Act, the State legal aid will

<sup>104</sup> Case of Veeber v. Estonia (No. 2), Judgment (Merits and just satisfaction), 21/01/2003, appl. no. 45771/99.

<sup>105</sup> Case of Treial v. Estonia, judgment of 2 December 2003, application no. 48129/99.

<sup>106</sup> Case of Mõtsnik v. Estonia, 29/04/03, case no. 00050533/99.

<sup>107</sup> Õiguskantsleri tegevuse ülevaade 2002. aastal (The Legal Chancellor's Activities from 1 September 2002 until 31 August 2003, the Report presented by the Legal Chancellor to the Parliament in September 2003), p. 25-26.

be expanded to quasi-judicial and international proceedings, and would include composing legal documents and oral counselling. Moreover, State legal aid can also be requested by juridical persons. The planned Act established more clear guidelines about how to evaluate whether the applicant is in real need of State legal aid. Most importantly: when at present on the average 24 Million Estonian kroons are given for the State legal aid in the annual State budget, the accompanying explanation of the planned Act envisages the rise of this sum up to 70 Million annually. It includes higher fees for the attorneys providing State-sponsored legal aid: an aspect that is supposed to raise the quality of the aid.

Generally, the independence of the judges has not been questioned since the judges are appointed for life-time. Recently, some concerns have been raised with respect to the independence and impartiality of judges. The new draft of the Party Act enables judges, prosecutors, police officials, the Legal Chancellor and other officials to acquire party membership. However, according to the draft law, the individuals exercising professions mentioned above may not belong to party leadership organs. The Chairman of the Supreme Court Mr Uno Lõhmus was quoted saying that he believes that the level of the political culture in Estonia does not yet enable to allow judges and prosecutors to belong to political parties.<sup>108</sup> Similarly, the Estonian judge at the ECHR, Rait Maruste, spoke publicly out against the plan to politicize the judges' profession in Estonia.<sup>109</sup>

#### **Article 48. Presumption of innocence and right of defence**

##### *Reasons for concern*

See comments on Article 47 above.

#### **Article 49. Principles of legality and proportionality of criminal offences and penalties**

##### *International case law and concluding observation of international organs*

In its concluding observations on Estonia's second periodic report, submitted on April 15, 2003 the Human Rights Committee expressed the concern that the relatively broad definition of the crime of terrorism and of membership of a terrorist group under the Criminal Code may have adverse consequences for the protection of rights under article 15 of the CCPR which is a non-derogable provision.<sup>110</sup> It requested that Estonia ensured that counter-terrorism measures, whether taken in connection with Security Council resolution 1373 (2001) or otherwise, are in full conformity with the Covenant.

##### *Reasons for concern*

The recommendations above must be carefully observed and implemented in Estonia.

#### **Article 50. Right not to be tried or punished twice in criminal proceedings for the same criminal offence**

There have been no major concerns regarding this right.

<sup>108</sup> Quoted by the Baltic New Service, 27 September 2003.

<sup>109</sup> See R. Maruste, Tarbetu parteistamine (Unnecessary Partyzation), Eesti Päevaleht, 30 September 2003.

<sup>110</sup> CCPR/CO/77/EST, Concluding observations of the Human Rights Committee : Estonia, 15/04/2003, C, p. 8.