

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

REPORT ON THE SITUATION OF FUNDAMENTAL RIGHTS IN ESTONIA IN 2004

Submitted to the Network by **Dr Lauri MÄLKSOO**

on 3 January 2005

Reference: CFR-CDF/EE/2004



The E.U. Network of Independent Experts on Fundamental Rights has been set up by the European Commission upon the 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.

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Le Réseau UE d'Experts indépendants en matière de droits fondamentaux a été mis sur pied par la Commission européenne (DG Justice, liberté et sécurité), 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), M. Rick Lawson (Pays-Bas), Lauri Malksoo (Estonie), Arne Mavcic (Slovénie), Vital Moreira (Portugal), Jeremy McBride (Royaume-Uni), François Moysse (Luxembourg), 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), Pavel Sturma (Rép. tchèque), Ineta Ziemele (Lettonie). Le Réseau est coordonné par O. De Schutter, assisté par V. Verbruggen.

Les documents du Réseau peuvent être consultés via :

http://www.europa.eu.int/comm/justice_home/cfr_cdf/index_fr.htm

The EU Network of Independent Experts on Fundamental Rights has been set up by the European Commission (DG Justice, Freedom and Security), upon request of the European Parliament. Since 2002, it monitors the situation of fundamental rights in the Member States and in the Union, on the basis of the Charter of Fundamental Rights. A Report is prepared on each Member State, by a Member of the Network, under his/her own responsibility. The activities of the institutions of the European Union are evaluated in a separated report, prepared for the Network by the coordinator. On the basis of these (26) Reports, the members of the Network prepare a Synthesis Report, which identifies the main areas of concern and makes certain recommendations. The conclusions and recommendations are submitted to the institutions of the Union. The content of the Report is not binding on the institutions.

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), M. Rick Lawson (the Netherlands), Lauri Malksoo (Estonia), Arne Mavcic (Slovenia), Vital Moreira (Portugal), Jeremy McBride (United Kingdom), François Moysse (Luxembourg), 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), Pavel Sturma (Czech Republic), Ineta Ziemele (Latvia). The Network is coordinated by O. De Schutter, with the assistance of V. Verbruggen.

The documents of the Network may be consulted on :

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CHAPTER I: DIGNITY

Article 1. Human Dignity

No significant development to be reported.

Article 2. Right to life

Rules regarding the engagement of security forces (use of firearms)

Positive aspects

One of the issues taken up by the Office of the Legal Chancellor of the Republic of Estonia has been the under regulation of the police law. The Legal Chancellor organized an international conference about the police law in Tallinn in spring 2004, dealing *inter alia* with the use of firearms by the police. The representatives of police leaders were present at the conference in which security and human rights scholars from Germany and Estonia took part.

The fight against the trafficking in human beings (including the use of technical means to prohibit the illegal crossing of borders)

Reasons for concern

Estonia is and will probably remain one of the EU countries that are of special interest for traffickers in human beings. Although among the poorest of the EU countries, it borders Russia which has been a vast terrain of migration and trafficking in human beings since the collapse of the USSR. While Estonia has itself stopped being a significant pool for trafficking in human beings, it continues to serve as transit territory for human traffickers.

Domestic violence (especially as exercised against women)

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Mr Alvaro Gil-Robles, the Council of Europe Commissioner for Human Rights noted in his report on Estonia, published on 12 February 2004 that domestic violence against women is widely spread in Estonia. As in many countries, only a small fragment of domestic violence cases are reported. According to a pilot survey conducted by the Ministry of Social Affairs in 2000, two thirds of the women interviewed had been subject to violence since the age of 16, and only one third of them reported the incident to the police. The Minister of Interior had suggested establishing long term shelters for the victims – the idea, to which the Commissioner for Human Rights opposed in his report, arguing that instead a system of punishing the violent partner should be established. The Commissioner concluded that Estonia should strengthen the legislative framework for combating domestic violence. He argued that the definition of domestic violence, both physical and psychological should be included in the legislation, as well as provisions on the protection of victims and the prevention on future violations. He referred to the respective and recent Council of Europe recommendations. The Commissioner furthermore encouraged strengthening information and awareness raising programmes, in order to reinforce the understanding that domestic violence is a crime deserving punishment, especially among the police and the judiciary so as to enable them to respond appropriately in such cases.¹

¹ Report CommDH(2004)5, p. 18.

Moreover, Amnesty International in its annual report that was published in May 2004 also mentioned domestic violence against women as concern in Estonia. In doing so, the non-governmental human rights organization echoed previous findings of the UN Human Rights Committee that were discussed in this network's last year's report on Estonia.

Legislative initiatives, national case law and practices of national authorities

According to a recent study completed by the Open Estonia Foundation, 285 women become every day in Estonia victims of physical or sexual violence. Two thirds of those cases of violence take place at home. At the same time, 227 men suffer under violence every day whereas only 9 % of those instances take place at home.²

Positive aspects

Some of the most-publicized public scandals in Estonia in 2004 involved the issue of domestic violence. In two prominent divorce proceedings, one involving the leader of Estonian football business and another a former minister of defence in Estonia, the wives raised in media during their divorce processes accusations about long-lasting domestic violence. Through those cases exposed to the public, the Estonian people were confronted with the problem of domestic violence more than ever before. There emerged a widespread consensus in media that, paradoxically, the decision of the wives concerned to publicize the problem of domestic violence in their respective marriages may have served a good general cause since the problem of domestic violence against women is more widespread in Estonia than often recognized in domestic politics. Another potentially positive aspect of the exposure of the above mentioned cases was a strong signal they sent to the people, suggesting that the victims should speak up and there are remedies against the perpetrators.

Another relevant aspect is that women in Estonia have started to report more actively of incidences of domestic practice which is reflected in the fact that in the police statistics, the incidences of domestic violence have increased. For instance, Viljandi (a county in Southern Estonia) police reported 201 incidences of domestic violence during first nine months of 2004 which was 78 cases more than during the previous year.³

Reasons for concern

See above. The alarming level of domestic violence in Estonia remains a problem for the country.

Article 3. Right to the integrity of the person

Rights of the patients

Reasons for concern

The public awareness and case law regarding rights of the patients is insufficiently developed in Estonia. Cases when the malpractice is reported in public do get settled more on an *ad hoc* basis than in accordance with any well-established principles regarding patients' rights. The medical sector in itself is considered to be in crisis which is reflected in under financing and the use of best doctors of their freedom of occupation elsewhere in the EU. Due to problems related to the medical sector, patients' rights have not received the attention they deserve.

² Data from the website of the Ministry for Social Affairs, www.se.ee.

³ H. Väre, *Naised tunnevad vägivalda iga päev* (Women Experience Violence Every Day), Sakala, 30.11.2004

Protection of persons in medical research.

Legislative initiatives, national case law and practices of national authorities

The ambitious project of mapping the genes of the Estonian people for purposes of medical research that stirred a lot of international media attention during the last years seems to have come to a practical halt due to financial reasons. The project was based on the presumption that individuals would voluntarily allow their genes to be 'recorded' and studied. However, the project was criticized from the point of view of protection of persons in medical research.

Reasons for concern

Voluntarism in medical research often follows the logic of money. Thus, Estonian media has reported that Estonians often volunteer to calls made by West European pharmaceutical companies to participate in the research and development of new drugs. It is uncertain, to what extent their rights are/have been protected. In Estonia, no such cases of concern have been publicized.

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

Conditions of detention and external supervision of the places of detention

Penal institutions

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Mr Alvaro Gil-Robles, the Council of Europe Commissioner for Human Rights, made several comments on conditions in prisons and detention facilities in his report on Estonia, published on 12 February 2004. During his visit to Estonia on 27th-30th October 2003, he visited the Rakvere police detention centre and the Maardu juvenile remand prison and observed that the material conditions were far from satisfactory in the police detention centre in Rakvere, which at the time of the visit hosted 19 detainees. There was no space for activities indoors or outdoors, so the detainees had to stay in their cells 24 hours a day, Mr Gil-Robles reported. The only occasion to leave their cells was to take a shower once a week. One cell of approximately 20 m² accommodated eight men, who had to sleep next to each other on thin mattresses on a wooden platform on the floor. Most of the detainees stood in this centre for a period of one or two weeks, but some stood significantly longer, up to a few months waiting for their trial. Mr Gil-Robles emphasized in his report that he found it imperative to afford resources for a total refurbishing of this establishment and for the provision of proper medical care. It was also important, he went on, to offer a regime of activities, including at least one hour of out-door activities daily. What was even more criticisable from the point of view of the Commissioner, the situation in the centre in Kohtla-Järve was arguably even worse.⁴

Moreover, the Commissioner observed that the spread of infectious diseases in Estonian prisons and detention facilities continued to be an issue of significant concern. The Director of the Maardu prison informed that 29 of the 131 detainees were known to be infected with HIV. Previously those with HIV/AIDS had been separated from other inmates, but this was no longer the case. As stated in the European Prison Rules, no segregation should be made on the basis of HIV/AIDS, unless the health of the individual so requires. Mr Gil-Robles suggested that given the exceptionally high number of HIV positive inmates in the prisons, all possible measures must be taken in order to prevent the transmission of the virus among the

⁴ Office of the Commissioner for Human Rights, 12 February 2004, CommDH(2004)5, p. 11.

inmates.⁵ In July 2002, the Ministry of Justice adopted an ‘HIV/AIDS prevention action plan for years 2002-2006 in the area of government of the Ministry of Justice’, with the objective to prevent the spread of HIV infection in prisons and among probationers and to secure high quality anti-virus treatment for persons with HIV-infection. This plan was welcomed by Mr Gil-Robles.⁶

Amnesty International has in its annual report that was published in May 2004 also criticized poor conditions in Estonian prisons. In doing so, it relied on the findings of the UN Human Rights Committee that was discussed in this network’s last year’s report regarding Estonia.

Positive aspects

The Ministry of Justice has developed a comprehensive plan for restructuring and refurbishing the Estonian prison houses system. After a new modern prison house was opened in Tartu in 2003, the next modern prison house is planned to be opened in North-Eastern part of Estonia in 2006.

Reasons for concern

That the situation in the above mentioned detention centres is unsatisfactory, is recognized by the Ministry of Interior and Ministry of Justice. A reform of the prison system is ongoing, with the aim of having 1500-2000 new prison places by the year 2006. A new prison will be built in the northeast of the country (in Virumaa) and some of the old prisons will be closed down.⁷

According to the Estonian Prison System Yearbook, there are 340 prisoners per 100.000 inhabitants, which is six times higher than in the Northern countries. This reporter must also agree with the remark of Mr Gil-Robles that the high level of prisoners per capita in Estonia indicates the need to use alternative penalties more frequently. However, the present government has advocated zero tolerance policy towards criminality which makes it unlikely that the number of prisoners would diminish significantly in the near future.

Centres for the detention of juvenile offenders

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Mr Gil-Robles, the Council of Europe Commissioner for Human Rights, has argued in his report of 12 February 2004 on Estonia that alternative penalties, such as community work, combined with programmes promoting reintegration in the society are better suited to juvenile delinquents. Mr Gil-Robles further remarked that the length of preliminary investigations is also of particular concern for juvenile detainees, who frequently do not have any educational opportunities while in custody.⁸ Approximately one third of the juveniles held in preliminary investigations stay in custody for six months or more.

Legislative initiatives, national case law and practices of national authorities

The Minister of Justice has also emphasized that the further attention must be paid to diminishing the number of juvenile prisoners. At the same time, the Minister and his party

⁵ Ibid., p. 12.

⁶ Ibid., p. 13.

⁷ See Estonian Prison System Yearbook 2002-2003, Ministry of Justice.

⁸ Ibid., p. 13.

“Res Publica” have propagated the “zero tolerance” policy towards criminality⁹ which can be seen as ideologically in contradiction with the previously mentioned goal.

Reasons for concern

It remains a concern that the number of juvenile prisoners is comparatively high in Estonia when compared with other EU countries.

Protection of the child against ill-treatments

Legislative initiatives, national case law and practices of national authorities

The Office of the Legal Chancellor continued to put emphasis on the protection of children’s rights in Estonian families and schools in 2004. (See the annual report of the Legal Chancellor.)

Reasons for concern

It appears from the reports of the media and from the results of the work of the Legal Chancellor that children in Estonia are by far not in the best way protected against physical and mental ill-treatments. They are exposed to violence in a level that is probably higher than in older EU countries, especially Estonia’s immediate geographical neighbours in Scandinavia.

Behaviour of security forces (including during demonstrations)

Legislative initiatives, national case law and practices of national authorities

In 2004, the government decided, following international diplomatic pressure, to remove a monument that was erected in Lihula hamlet to the Estonian soldiers fighting in the German army in World War II. However, during the removal clashes occurred between the local population and the security police forces. Nevertheless, the security police was not criticized for excessive use of force in that case. Instead, the incident was mainly criticized as failure of government by, first, not having been able to prevent the erection of the monument in that form, and second, the secretive style of removing the monument in the way that reminded many people of Soviet practices.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

On 17 December 2003, The Person Repressed by the Occupation Regimes Act was enacted by the parliament.¹⁰ The Act gives an extensive definition as to what persons qualify – in terms of the Estonian law – as persons repressed by the occupation regimes. Several items of the definition include elements of torture and inhuman or degrading treatment or punishment, committed during the period of Estonia’s subjugation. The occupying powers according to this Act are States that occupied Estonia from 16 June 1940 until 20 August 1991 (.i.e. the USSR from 1940-1941, Nazi Germany 1941-1944, USSR 1944-1991). (§ 3). The Act foresees a number of symbolic advantages and financial compensations for the individuals repressed by the occupation regimes – their medical costs will be compensated (§ 6), they can

⁹ See e.g. the debate between Ken-Marti Vaher, the Minister of Justice, and Jüri Saar, assistant professor of criminology at Tartu University Institute of Law, *Kui vali olgu kord?* (How Strict Should the Order be?), Eesti Päevaleht, 10.04.2004.

¹⁰ Okuptionirezhiiimide poolt represseritud isiku seadus (The Person Repressed by the Occupation Regimes Act), Riigi Teataja I, 29.12.2003, 88, 589.

visit the museums owned by the State and the Estonian song festivals for free, they can fish without paying for the respective permissions (§ 7). More significantly, special pensions are foreseen for the individuals repressed by the occupying powers. (§ 11-16).

Positive aspects

The recognition of the victims of Soviet and Nazi crimes is in itself, even when the adopted measures are partly symbolic and insignificant, a positive development. It will help the Estonian society to heal.

Article 5. Prohibition of slavery and forced labour

Fight against the prostitution of others (general)

Police and media have reported about the closure of several brothels in Tallinn in 2004 which indicates that the police and prosecutor's office have taken up the fight against the prostitution of other more seriously.

Reasons for concern

Prostitution in Estonia remains a big business – and concern of cross-border international impacts.¹¹ Unfortunately, no consensus exists in the Estonian society about how seriously the prostitution of others should be taken by the State authorities. The opinion which says that “prostitution is the oldest profession in the world and cannot be liquidated” is shared by many decision makers and opinion leaders, and influences, as a consequence, policies towards the prostitution of others. Moreover, prostitution of others in Estonia is linked with the current HIV problem that the country is facing, and the regional economic and social disparities in the country.

Trafficking in human beings (in particular for sexual exploitation purposes)

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Mr Alvaro Gil-Robles, the Council of Europe Commissioner for Human Rights observed in his report on Estonia, published on 12 February 2004 that internal trafficking continues to be an issue of considerable concern in Estonia. Especially women from north-eastern part of the country are trafficked to work in brothels in Tallinn and in other cities. The Minister of Interior noted to Mr Gil-Robles that much stronger stance from local authorities was needed in order to tackle prostitution. Local authorities, according to the information provided by the Minister of Interior, were often unwilling to terminate licences of businesses operating hidden brothels under the cover of a bar, despite requests from the Ministry to do so.¹²

Mr Gil-Robles concluded that the provision of protection and assistance for the victims of trafficking was insufficient. While certain non-governmental organisations provide important services to victims of trafficking, the involvement of and support by state institutions to such efforts should be significantly strengthened. In the view of Mr Gil-Robles, further efforts must be placed on tackling the root causes of trafficking. Discrimination of women in the field of employment and the precarious socio-economic situation of many people in the

¹¹ See Prostitution – a social problem? : the views on prostitution's nature, causes and effects in the Baltic states and north-western Russia [study = uurimus] / Estonian Women's Studies and Resource Centre, Equality Department of Estonian Ministry of Social Affairs, Nordic Council of Ministers ; compiled by Marion Pajumets. – Tallinn, 2004. – 87 p.

¹² Report CommDH(2004)5, p. 16.

North-East of the country are among the factors increasing the vulnerability of women and girls for trafficking.¹³

The Commissioner for Human Rights encouraged adopting a comprehensive plan of action, addressing the different stages of trafficking, including prevention, protection, assistance, and reintegration of the victims.¹⁴

Reasons for concern

More attention should be paid by politics with respect of trafficking in human beings in Estonia.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

On 17 December 2003, The Person Repressed by the Occupation Regimes Act was enacted by the parliament.¹⁵ The Act gives an extensive definition as to what persons qualify – in terms of the Estonian law – as persons repressed by the occupation regimes. Most typical examples of repressions were slave labour and forced labour in Soviet GULAG camps. The Act foresees a number of advantages and financial compensations for the individuals repressed by the occupation regimes – their medical costs will be compensated (§ 6), they can visit the museums owned by the State and the Estonian song festivals for free, they can fish without paying for the permissions (§ 7). Most significantly, special pensions are foreseen for the individuals repressed by the occupying powers. (§ 11-16).

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¹³ Report CommDH (2004)5, p. 17.

¹⁴ Ibid.

¹⁵ *Okupatsioonirezhimide poolt represseritud isiku seadus* (The Person Repressed by the Occupation Regimes Act), Riigi Teataja I, 29.12.2003, 88, 589.

CHAPTER II : FREEDOMS

Article 6. Right to liberty and security

Pre-trial detention

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

When Mr Gil-Robles, the Commissioner for Human Rights of the Council of Europe, visited Estonia in October 2003, several detainees told him that their lawyers had advised them not to appear before the court, since it would not be useful. The Code of Criminal Procedure then in force allowed a person to waive his or her right to be heard by a judge. Under the new Code of Criminal Procedure which was adopted by Riigikogu on 12 February 2003 and entered into force on 1 July 2004¹⁶, the appearance of the defendant at the hearing where the detention is decided is mandatory. Mr Gil-Robles welcomed this development (which at the time of issuance of his report, in February 2004, had not yet entered into force) since ‘in addition to an important procedural guarantee, the mandatory appearance before the Court provides the opportunity to protect against any ill-treatment.’¹⁷

Reasons for concern

Estonia has space to improve (see above).

Detention following a criminal conviction (including the alternatives to the deprivation of liberty and the conditions for the access to release on parole)

Positive aspects

With the completion of the construction of a new modern prison house in Tartu in 2003, the standards of detention have improved considerably. The Ministry of Justice plans the construction of another modern prison facility in Northern Estonia in the near future.

Deprivation of liberty for persons with a mental disability

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The involuntary placement of a person in a psychiatric or therapeutic establishment involves a limitation to the right to liberty as guaranteed in Article 5 of the European Convention. According to the 1997 Mental Health Act¹⁸, a person is admitted to the psychiatric department of a hospital for emergency psychiatric care without the consent of the person or his or her legal representative if 1) the person has a severe mental disorder which restricts his or her ability to understand or control his/her behaviour; 2) without inpatient treatment, the person endangers the life, health or safety of himself or herself or others due to a mental disorder; and 3) other psychiatric care is not sufficient. The decision of the involuntary admission of a person is taken by a physician of the psychiatric department. Within forty-eight hours after commencement of the inpatient treatment, two psychiatrists must carry out a medical examination of a person admitted for involuntary treatment. If both psychiatrists declare the admission to be justified, the person shall be kept in involuntary treatment for up

¹⁶ *Kriminaalmenetluse seadustik* (Code of Criminal Procedure), Riigi Teataja I 2003, 27, 166.

¹⁷ See op. cit., p. 13.

¹⁸ Riigi Teataja I 1997, 16, 260.

to fourteen days. The involuntary treatment may continue for more than fourteen days only with the authorisation of a court. The Commissioner for Human Rights, Mr Gil-Robles maintained in his 12 February 2004 report on Estonia that the period of 14 days foreseen in the Mental Health Act without any court involvement is clearly too long, and places persons who are admitted in a psychiatric establishment at a disadvantage compared with people detained on criminal charges, whose detention exceeding 48 hours is to be authorised by a Court. He insisted that the legislation be modified accordingly. Moreover, Mr Gil-Robles argued that there appeared some confusion in the Act regarding the decisions authorising involuntary placement and involuntary treatment. Mr Gil-Robles argued that whilst the two decisions may be taken simultaneously, they must be taken separately.¹⁹

Legislative initiatives, national case law and practices of national authorities

The Legal Chancellor and the Ministry of Justice acted following the international critique (previously expressed by Human Rights Committee) and the Ministry has prepared a changed of the Mental Health Act that liquidates the conflict with international human rights norms.²⁰

Positive aspects

The contradiction with human rights obligations has been liquidated.

Deprivation of liberty for foreigners (in order to prevent their unauthorised entry on the territory with a view to their removal, including their extradition)

Legislative initiatives, national case law and practices of national authorities

On 14 April 2004 “The Act of Amending the Alien Act and Due to It Other Acts” was passed by the parliament.²¹ The Act regulates the entry and leaving of aliens and thus indirectly, conditions for their potential deprivation of liberty in Estonia.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

On 17 December 2003, The Person Repressed by the Occupation Regimes Act was enacted by the parliament.²² The Act gives an extensive definition as to what persons qualify – in terms of the Estonian law – as persons repressed by the occupation regimes. Typically, those persons were deprived of their liberty and security during Soviet (1940-1941, 1944-1991 and Nazi 1941-1944) occupations. The Act foresees a number of advantages and financial compensations for the individuals repressed by the occupation regimes – their medical costs will be compensated (§ 6), they can visit the museums owned by the State and the Estonian song festivals for free, they can fish without paying for the permissions (§ 7). Most significantly, special pensions are foreseen for the individuals repressed by the occupying powers. (§ 11-16).

¹⁹ CommDH (2004)5, p. 16.

²⁰ See Comments by the Government of Estonia on the concluding observations of the Human Rights Committee: Estonia 20/04/2004 CCPR.CO/77/EST/Add.1 (Concluding Observations/Comments).

²¹ Välismaalaste seaduse muutmise ning sellest tulenevalt teiste seaduste muutmise seadus, RTI, 21.04.2004, 28, 189.

²² Okuptatsioonirezhiimide poolt represseritud isiku seadus, Riigi Teataja I, 29.12.2003, 88, 589.

Positive aspects

The fact that the present government has taken up the issue of the benefits and rights of the persons repressed by the Soviet and Nazi occupation regimes can be welcomed.

Article 7. Respect for private and family life**Private life**Criminal investigations and the use of special or particular methods of inquiry or research*Legislative initiatives, national case law and practices of national authorities*

In some cases taking place in 2004, the Estonian Bar members have protested the behaviour of security police officials in criminal investigations. They have reported that phones of arrested persons have been taped in order to listen to their conversations with their attorneys. Moreover, at least in one instance, the premises of the attorneys have been searched putting in question the fair exercise of the right to defence.

Reasons for concern

See above. Luckily, the violations seem to have remained relatively incidental.

Personal identity (including the right to gain access to the knowledge of one's origins)*Legislative initiatives, national case law and practices of national authorities*

On 15 December 2004, the Riigikogu adopted the Personal Name Act.²³ The choice of the first name became somewhat restricted by the new law since the law provides that a first name may not be a name that is not in accordance with good morals or Estonian name tradition. The law, however, foresees an exception to this rule if the child or the child's parents, due to their citizenship, family relations, ethnic origin or other circumstances have a personal relation to the name tradition of another language. The rationale by the amendment and the *de facto* restriction to choose first names has been the custom of choosing grammatically and culturally unusual names (to the point of absurdity) by some, especially younger and less educated parents in Estonia. The linguist Annika Hussar, one of the members of the working group who drafted the new law, has argued that one fifth of first names given during the last decade in Estonia, are 'inappropriate'.²⁴ According to her, those names fail because of their misspoken orthography or because in the language/culture from which the exotic name is taken, the name is used for the other sex instead. It is envisaged that the Personal Name Act should thus prevent in the future occurrences when boys' name is given to girls (Keith, Steve, Geir, and Jani). The law also enables the officials to refuse the giving of Estonian names written in a mistakenly 'foreign' way (Caddi vs Kadi, Bireta vs Piret, Gersti v Kersti, Liisy v Liisi, Kadry v Kadri, Küllly v Külli, Tuuliky v Tuuliki, Hellery v Helliin, Pillery v Pilleriin, Kattre v Katre). Other examples were misspoken or misunderstood 'English' names that may have inappropriate connotations: Candy, Dandy, Angry, Asian, Bitterly, Bridge, Lovely, Killy, Sigrity, Nois, Bajana, Demona, Floriin, and Siss. Other names that were given by the drafters of the law as examples were simply considered as inappropriate or nonsensical: Gabiella, Gerin, Gerid, Martika, Solemari, Lilily, Laliaala, Evulla, Lalaaim, Marjonella, and Melmariin.

²³ Isikunime seadus; not yet published in State Gazette as of completing this report.

²⁴ See (also for the following examples) A. Lõhmus, *Vanemal tuleb veidrate nimede panek lõpetada* (Parents Must Stop Giving Strange Names), Postimees, 04.06.2003.

At the same time, there is a certain intervention by the State in people's privacy here and a certain patronizing touch to the law. Some observers have criticized the paternalism of the state as *pater familias* telling through its officials to people what first names are appropriate and what not. It is questionable whether in a pluralistic society prohibitions and restrictions like that are the best way of fighting against what is defined as 'stupid' or disturbing by the enlightened elite. There is a certain fear that officials in the State and Family Board will get too big discretionary powers. However, the new act provides that the government has to work out within the next three months tables with 'inappropriate' names.

According to the Act, in the official spelling of a name, the Estonian Latin alphabet and symbols will be used and, if necessary, the transcription rules for other languages will be applied. The spelling of a name in a foreign language should conform to the orthographic rules of that language.

Another, related question is to what extent the Estonian law enables individuals belonging to the national minorities' to take into account their cultural and linguistic traditions when giving first names, and whether such freedom can be somehow restricted by the new law. In Estonian, names do not have gender indications (since there are no gender indications at all in the Estonian language). The Personal Names Act takes into account the linguistic and name traditions of other nationalities living in Estonia, and therefore common surnames are considered to be not only which have the spelling matching letter-by-letter but also names which have differences in spelling due to the indication of the gender, family status or other characteristic in the name in accordance with the person's national traditions. This enables persons belonging to an ethnic minority to observe their name traditions in adopting a common name after the marriage as well as choosing the surname for their child.

The Estonian legislation does not enable the persons of East-Slavic origin to use the patronymic in the official form of their name in addition to the first name and the surname. The Estonian Government represents in its Second Report on the Implementation of the Council of Europe Framework Convention for the Protection of National Minorities²⁵ the view that although the use of patronymic has an important role in the name tradition of Eastern Slavonic people, the fact that Estonian law provides that the person's name consists of a first name and the surname does not constitute a violation of Article 11(1) of the Framework Convention.

Reasons for concern

See above. It is yet unclear to what extent the newly adopted Act has a potential of intervening in individuals' right to privacy. According to some standards, it may.

Family life

The right to family reunification

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The European Committee of Social Rights in its 2004 conclusions on Estonia maintained that the fact that a five year residence requirement is imposed on migrant workers before their family can join them, is not in conformity with Article 19 § 6 of the Revised Charter.

²⁵ June 2004, p. 50.

Indeed, the Alien's Act provides that a temporary residence permit may be issued to the following aliens to settle with a close relative who is an alien who has resided in Estonia for at least 5 years on the basis of a permanent resident permit:

- to a minor child in order to settle with a parent who permanently resides in Estonia,
- to an adult child in order to settle with a parent who permanently resides in Estonia if the child is unable to cope independently due to health reasons or a disability,
- to a parent or grandparent in order to settle with a child or grandchild who permanently resides in Estonia, if the parent or grandparent need care which cannot be provided in his/her country of origin and if his permanent income or that of his/her child or grandchild is adequate to maintain him/her,
- To a person under guardianship where the guardian permanently resides in Estonia and has an adequate legal income.

The Committee had previously held that a certain length of residence may be required of migrant workers before their family can join them. Nevertheless, it considered 5 years too excessive and not in conformity with the Charter.

Reasons for concern

This reporter joins with the observation of the European Committee of Social Rights. Estonia should adopt its legislation to the international human rights standard.

Private and family life in the context of the expulsion of foreigners

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Due to the high percentage and number of foreigners in Estonia, this issue has been a concern for international monitors for some time but no critiques were voiced in 2004.

Legislative initiatives, national case law and practices of national authorities

On 21 June 2004, the Supreme Court decided that Aliens Act § 12 section 4 p 1 and § 12 section 5 are unconstitutional.²⁶ Those provisions established that residence permits are not prolonged to the aliens who give false data when applying to their residence permits. The Court established that the right to the protection of family and private life extends to the aliens. It was unproportional and unconstitutional that the respective provisions of the Aliens Act did not leave a space for taking into account the circumstances of the particular case. The provisions were declared unconstitutional to the extent that they did not provide leeway to make a decision possibly in favour of the applicant. Thus, the decision of the Supreme Court makes the expulsion of foreigners on the ground that they have provided false data to the state authorities, less likely.

Positive aspects

See the above mentioned Supreme Court ruling which follows the tradition of the Court of relaxing the situation of foreigners and stateless persons.

²⁶ Case no. 3-4-1-9-04.

Article 8. Protection of personal data

Independent control authority (evolution of its powers, competences)

Legislative initiatives, national case law and practices of national authorities

The adoption of the Personal Data Protection Act²⁷ and the new situation it caused in 2003 was analyzed in the last year's report. The powers of the independent control authority (*Andmekaitse Inspektsioon*) were increased due to the entry into force of the Act and the extension of the sphere for the protection of personal data.

Protection of personal data (in general, right of access to data, to have them rectified and right to a remedy)

Legislative initiatives, national case law and practices of national authorities

The Legal Chancellor of the Republic of Estonia has addressed the issue of the protection of personal data in his report of activities in 2003/2004.²⁸ The Legal Chancellor took note of several cases in which the activities of the State in the field of personal data processing restricted private life of individuals. There had been two types of unjustified interventions of private life: State had passed on or made public legally collected data illegally or by collecting data, State had in an unproportionate manner intervened in the right to privacy.²⁹ The protection of personal data in Estonia to some extent bears marks of the Soviet heritage: the Legal Chancellor observes in his report that while people often file complaints about the State officials hiding certain information (e.g. contained in databanks), they felt less worried about interventions by the State in their own private life. Individuals learned during the Soviet decades to fulfil all kinds of formularies, questionnaires and papers without asking questions back about the necessity, purpose and limits of use of their answers.

One example the Legal Chancellor mentions in his report is the internet-based collection of court cases, statistics and judgments that is accessible to everyone under <http://kola.just.ee>. It has happened that one has been able to access in this database unedited court judgments with very sensitive data, e.g. detailed descriptions of injuries inflicted, rape circumstances, etc. The Legal Chancellor admitted that making court judgements public serves a legitimate purpose in the society; however, not all personal data can be made public on the website.³⁰ Moreover, Public Information Act §35 section 2 points 10 and 11 and § 39 together with Personal Data Protection Act § 14 establish that sensitive (i.e. private and delicate) personal data may not be published, except in exceptions foreseen by law.

Thus, the Legal Chancellor concluded, the possessors of public information will have to continue to make well calculated judgments regarding data publications and protection, based on the law.³¹

Another problem that emerged in the practice of the Legal Chancellor was that in police and State Attorney's Office, individuals felt that their access to data collected by the respective offices and concerning those very individuals, was restricted. However, according to the laws, this kind of data should have been available to the respective individuals immediately. However, the Legal Chancellor observed that the attitude of the Ministry of Interior following the Legal Chancellor's critique had been cooperative and the police was instructed to

²⁷ Isikuandmete kaitse seadus (Personal Data Protection Act), Riigi Teataja I 2003, 26, 158.

²⁸ Õiguskantsleri 2003.-2004.a aasta tegevuse ülevaade, Tallinn, 20 September 2004.

²⁹ Ibid., p. 41.

³⁰ Ibid., p. 42.

³¹ Ibid., p. 42.

elaborate more precise regulations about the access to data and to arrange the additional education of the respective officials.³²

Furthermore, State had in some instances asked of individuals more data than necessary and legitimate, thus violating the constitutional right of the protection of privacy. All individuals wishing to marry were asked to convey more data than needed for the conclusion of the act of marriage: e.g. field of occupation, how many years had the couple been lived together (sic!), whether this is the first or further marriage, etc. The respective office declared that these kinds of data were collected for 'statistical' purposes solely. After the intervention of the Legal Chancellor, the respective formulas were changed and differentiations made between voluntary (needed for statistics) and mandatory fields in the formula.³³

The Legal Chancellor concluded in his report such unjustified restrictions of personal life and collections of data by officials are mostly caused by insufficient awareness. This diagnosis also applies to the holders of the right to privacy – the Legal Chancellor concluded that the pressure of the public for the defence of privacy was not working sufficiently well. Therefore, the Legal Chancellor maintained that also in the near future, he will need to become active on his own initiative because in the case of many violations, individuals may not even present complaints.³⁴

Positive aspects

Data protection and its importance from the viewpoint of fundamental rights have moved more in the public consciousness of the Estonians during the year under review. This is in itself a positive development since the heritage of the Soviet mentality in the Baltic used historically to create an atmosphere where individual data protection was not so important in the society.

Reasons for concern

The issues raised by the Legal Chancellor.

Protection of the private life in the processing of medical data

Legislative initiatives, national case law and practices of national authorities

One of the restrictions introduced by the 2003 Personal Data Protection Act has been to the use of the medical data. Previously, doctors were allowed to use medical data of individuals in a quite extensive way for research purposes. Due to the adoption of the new Act, this use has been considerably conditioned and restricted. Developments in 2004 consolidated this in the consciousness of patients and doctors. However, several doctors have voiced the concern that a disservice has been delivered to the medical research.

Video surveillance in public fora

Legislative initiatives, national case law and practices of national authorities

Video surveillance in public fora has become quite wide-spread in Estonia. Public authorities justify this development by the high crime rates and with the needs to fight against the criminality. However, there is little discussion and awareness about the potentials of misuse.

³² Ibid., p. 43.

³³ Ibid., p. 43.

³⁴ Ibid., p. 43.

Reasons for concern

See above.

Article 9. Right to marry and right to found a familyLegal recognition of same-sex partnerships*Legislative initiatives, national case law and practices of national authorities*

There is no recognition of same-sex partnerships in Estonia. The leading coalition party Res Publica has publicly spoken against the legal recognition of same-sex partnerships in 2004.

Recognition of the right to marry for transsexuals*Reasons for concern*

The question has not emerged in practice in Estonia.

Article 10. Freedom of thought, conscience and religionReasonable accommodation provided in order to ensure the freedom of religion.*Legislative initiatives, national case law and practices of national authorities*

The ancient Estonian religion *maausk* – ‘earth religion’ – that dominated in the country before its forced Christianization in the Middle Ages, has experienced a revival during the last decade. Individuals adhering to *maausk* had complained that the “Churches and Congregations Act” was Christianity-orientated since it demanded that the official registered name of a religious group would contain the nomination of “congregation” or “alliance of congregations”. Due to respective claims the parliament passed on 28 June 2004 “The Churches and Congregations Act Amendment Act” which stipulates that a religious community can be registered also on the basis of its own specific name (not ‘congregation’) when this corresponds to the historic usage of the respective religious community. (§ 1 section 1).³⁵

Positive aspects

See above; the accommodation of a religious minority.

Protection against harassment especially of religious minorities*Good practices*

Religious freedom is currently well guaranteed in Estonia.

³⁵ Kirikute ja koguduste seaduse muutmise seadus, Riigi Teataja I, 09.07.2004, 54, 391.

Article 11. Freedom of expression and of information

Freedom of expression and information (in general)

Positive aspects

Freedom and expression and information were generally well guaranteed in Estonia in 2004. (But see also below.)

Media pluralism and fair treatment of the information by the media

Legislative initiatives, national case law and practices of national authorities

After the 2004 elections to the European Parliament, the Chairman of the Estonian Social Democratic Labour Party (the successor party of the Estonian Communist Party), Mr Tiit Toomsalu filed a complaint at the Estonian Press Council.³⁶ The Estonian Press Council is a non-profit organisation that was set up in 1991 with the purpose of protecting press freedom, examining complaints about mass media from the aspect of good conduct. At present, there are 9 members in Estonian Press Council: one journalist, four professors, one individual from Consumer Union, two managers from media associations, and 1 clergyman. Usually, Estonian Press Council meets once a month.

Mr Toomsalu claimed that ‘Postimees’, the biggest Estonian daily newspaper among the non-tabloids, had violated the principle of fair representation of different viewpoints when it had decided not to give newspaper space to the political parties not represented in the Parliament. Mr Toomsalu himself is known as one of the most outspoken opponents of the European Union in Estonia. According to Mr Toomsalu’s claim, the newspaper, informed the public selectively about the election campaign. Moreover, Postimees did not react to the common protest of the four parties that did not receive coverage in the newspaper.

The Estonian Press Council took the position that the decision of ‘Postimees’ was in contradiction with the principle of the freedom of expression. The opinion of the Press Council laid out the following points. According to the Press Council, the editors of Postimees were using the freedom of journalism (i.e. the right of a media organization to decide about the contents of its publication) against the freedom of expression. Certain groups are eliminated from the public political debate, justifying this with uncertain and unserious arguments (“punk bands have nothing to do at a competition of choirs”). Like this, parties not represented in the parliament will also in the future will be excluded the entrance in the Riigikogu since they have been taken away the possibility to communicate with the electorate on the equal basis with other parties. The opportunities of a party to present its views should not depend on some formal indicators but rather on the weight and significance of the communicated arguments in the society. Media may not be the only institution that makes decisions of this kind. The Press Council concluded that the domination over the freedom of journalism restricts the free communication of ideas in the society.

Reasons for concern

While the freedom of expression in media is generally well guaranteed in Estonia, there are a few signals of the links between politics and media. It cannot be said that politics controls the media; it is a mutual symbiosis of specific interests. There have, for instance, been signals that the biggest daily newspaper in Estonia, Postimees, leans towards favouring views represented by the Reform Party. However, luckily there is in Estonia counter-force (or –bias) to every

³⁶ Avaliku Sõna Nõukogu, lahend nr 323, 16.8.2004, Tiit Toomsalu (ESDTP) ajalehe Postimees suhtes (T. Tammerk “Valimiskell läheb käima”, 02.05.04).

bias presented in the media. It cannot therefore generally be said that freedom of expression or information are in peril.

Article 12. Freedom of assembly and of association

Freedom of peaceful assembly

Legislative initiatives, national case law and practices of national authorities

When Estonia joined the EU on 1 May 2004, a few incidents were reported where anti-EU demonstrators with 'provocative' slogans were banned by the police to demonstrate at the central area of Tallinn. Their carrying slogans were qualified as demonstration according to the Estonian laws – and demonstrations had to be pre-registered at the municipal authorities.

Article 13. Freedom of the arts and sciences

Freedom of the arts

Legislative initiatives, national case law and practices of national authorities

On 18 November 2004, the parliament adopted The Creative Individuals and Creative Associations Act which entered into force on 1 January 2005.³⁷ The Act regulates the activities of professional organizations of individuals active in different arts. It also regulates the modalities of State financial and other support for such professional organizations.

Positive aspects

There have been no reports, signals or cases about restriction of the freedom of the arts in Estonia. The adoption of the above mentioned act can be greeted as positive development as well.

Freedom of research

Positive aspects

There have been no reports, signals or cases about restriction of the freedom of research in Estonia.

Academic freedom

Legislative initiatives, national case law and practices of national authorities

There was in 2004 a tendency towards the consolidation of higher education in Estonia. State and private universities are facing mergers and increasingly fierce battles with regard to their financing and public recognition. There is no information that those sometimes economically and otherwise difficult circumstances would have hampered academic freedom in Estonia.

³⁷ Loovisikute ja loomeliitude seadus, Riigi Teataja I, 16.12.2004, 84, 568.

Article 14. Right to education

Access to education Legislative initiatives, national case law and practices of national authorities

The analysis of the 2000 popular census in Estonia demonstrates that ethnic Estonians and non-ethnic Estonians are not proportionally represented in master and doctor programs of the country's universities.³⁸ The ethnic Russians were underrepresented when compared to their share in the population.

Positive aspects

However, those tendencies have improved in 2004. According to the information provided by the Ministry for Education and Science, the numbers of Estonian and Russian schools' graduates have become more equal. 40 % of the graduates of the Estonian gymnasiums entered on university places financed by the state. At the same time, 35 % of the graduates of Estonia's Russian-speaking gymnasiums entered the university by state-financed schemes.

Reasons for concern

See above.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The Legal Chancellor of the Republic of Estonia highlighted in his annual report of 2003-2004 problems and deficiencies related to children's right to education, based on the practice of his Office.³⁹ He concluded that local municipalities often establish additional restricting criteria for the access to kindergarten and school places that are not compatible with the constitution and other legal norms since discriminatory.⁴⁰ Complaints received by the Legal Chancellor revealed unsatisfactory state of affairs in some State schools, including Tallinn Ballet School. The Legal Chancellor also criticized the situation in Estonia's special schools for youngsters who do not fit in normal schools because of their aggressive behaviour or non-ability to study with the normal class. Different problems such as unawareness of pupils about their rights, disrespect for the right to privacy of the pupil, the existence of a special room for 'isolation' (in fact, punishment) in Kaagvere Special School, etc were singled out by the Legal Chancellor as most significant yet symptomatic problems.⁴¹

Reasons for concern

See above the critique of the Legal Chancellor with which this rapporteur agrees with.

³⁸ Census IV, Tables 79 and 55, quoted in V. Poleshchuk, Non-Citizens in Estonia, 2004, p. 44.

³⁹ Õiguskantsleri 2003.-2004.aasta tegevuse ülevaade, Tallinn, 20 September 2004.

⁴⁰ Ibid., p. 51.

⁴¹ Ibid., pp. 60-67.

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

Professional prohibitions and the conditions of access to certain professions

Legislative initiatives, national case law and practices of national authorities

The Legal Chancellor analyzed in his annual report for 2003/2004 complaints filed with regard to restrictions to choose occupation in Estonia.⁴² A student in the Police Academy filed a complaint with regard to the prohibition of Academy's students to work during their studies. (The prohibition had been linked to the students receiving a modest scholarship.) The Legal Chancellor concluded that the prohibition had been unconstitutional and the Rector of Academy abolished the prohibition already before the Legal Chancellor took action.⁴³ In another case, the Legal Chancellor intervened with regard to the prohibition of more than 65 years old individuals to work as family doctors. The Minister of Social Affairs abolished the respective provision.⁴⁴

The prohibition of any form of discrimination in the access to employment

Reasons for concern

In Estonia, unemployment is higher among non-ethnic Estonians than among ethnic Estonians. According to the 2000 national census, unemployment among ethnic Estonians was 11 %, among ethnic Russians 19 % and among other ethnic groups 16 %. The overrepresentation of minorities among the unemployed can be seen in different educational groups, including among persons with advanced levels of education.

Table. Unemployment rate among persons with the highest and lowest levels of education, by ethnic origin, persons aged 15 and older, 2000 national census, %.⁴⁵

	Higher education	No vocational or professional education
Ethnic Estonians	3	16
Ethnic Russians	10	25
Others	9	20

Mostly, these results are explained by the fact that the knowledge of Estonian has become crucial for finding a job while a higher education of a Soviet era is not necessarily a guarantor of this knowledge for non-ethnic Estonians.

According to the 2000 national census, unemployment among different status groups was the following:⁴⁶

Estonian citizens -	12 %
Russian citizens	20 %
Citizens of other countries	14 %
Stateless persons	22 %

⁴² Õiguskantsleri 2003.-2004.a tegevuse ülevaade, Tallinn, 20 September 2004, p. 83 et seq.

⁴³ Ibid., pp. 84-86.

⁴⁴ Ibid., pp. 86-87.

⁴⁵ 2000 Population and Housing Census: Employment and Socio-Economic Status, VIII, Tallinn: Statistical Office of Estonia, 2003, Tables 75-77.

⁴⁶ Information provided in the public database of the Statistical Office of Estonia at www.stat.ee. See also V. Poleshchuk, *Non-Citizens in Estonia*, 2004, Legal Information Centre for Human Rights, p. 40.

The difference among average salaries of ethnic Estonians and non-ethnic Estonians becomes apparent in the data of the Estonian Labour Force Survey:

Table. Average Salary per month in Tallinn by occupation and ethnic origin, 1999, Estonian cronos⁴⁷

Occupation	Total	Estonians	Non-Estonians	% of salary
Legislators, Senior officials, Managers	5923	6783	4485	66.1
Professionals	4037	4384	3193	72.8
Technicians and Associate professionals	3670	3872	2933	75.7
Clerks	3128	3485	2449	70.3
Service workers	2394	3116	1839	59.0
Craft and related trade Workers	3045	3346	2848	85.1
Plant and machine operators And assemblers	3073	3234	2986	92.3
Elementary occupations	1961	2165	1897	87.6

Access to employment for asylum seekers

Reasons for concern

So far, there have been relatively few asylum seekers in Estonia.

Access to employment in public administration (including for non nationals)

Reasons for concern

Ethnic Russians are generally underrepresented in public administration, partly because they tend to have a comparative disadvantage because of the comparatively worse proficiency of the state language.

⁴⁷ Estonian Labour Force Survey 1999, Statistical Office of Estonia. Quoted in M. Lauristin and M. Hedimets (eds.) *The Challenge of Russian Minority*, Tartu University Press, 2002, p. 99.

Article 16. Freedom to conduct a business

Freedom to conduct a business

Good practices

No problems have been reported. Economic analysts maintain that Estonia has one of the most liberal and businessfriendly economic climates in the EU.

Article 17. Right to property

The right to property and the restrictions to this right

Legislative initiatives, national case law and practices of national authorities

The issue of the former property of those ethnic Germans who were settled from Estonia to German-annexed Poland in 1939 and 1941 following the Soviet-German secret pact of 23 August 1939 has remained unsettled. While upon the restoration of Estonia's independence the general principle adopted was property restitution, the Property Reform Foundations Act § 7 section 3 envisages that the question of the property of the German settlers (Unshielded of 1939 and Nachumsiedler of 1941) will have to become a subject matter of separate treaty between Estonia and Germany. However, the Supreme Court proclaimed on 28 October 2002 that § 7 section 3 was in contradiction with the Estonian constitution since it put the Umsiedler for too long period in an uncomfortable situation of uncertainty and waiting. The Property Reform Foundations Act had been adopted in the early 1990s, however, no treaty settling the issue of the property of the German settlers was in sight. The Supreme Court obliged the parliament to deal with the matter and to adopt a regulation taking the situation to a real legislative/treaty solution.

In the last annual report of the Legal Chancellor, submitted in fall 2004 to the parliament, the Legal Chancellor criticized the fact that almost two further years had passed and the parliament had been unable to offer a legislative solution that would have solved the issue of the property of the German settlers. The Legal Chancellor emphasised that the parliament is obliged to take action expeditiously, otherwise the Legal Chancellor would take the issue back to the Supreme Court and ask the court to declare § 7 section 3 invalid.⁴⁸

Reasons for concern

The issue of the property of the German settlers of World War II era has remained unsettled.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The Author's Rights Act was amended through several additional stipulations during 2004.⁴⁹ Author's rights are now *expressis verbis* extended to unpublished works (§ 8), new issues raised by satellite TV and cable TV transmission rights were regulated (§ 10² and 10³), stipulations regarding the use of new technologies such as computer programmes and databases were included. The amendments largely reflect experiences that were made during the last years with the application of Author's Rights Act in the practice. The new modified Act should thus give a more detailed and better protection to author's rights.

⁴⁸ *Õiguskantsleri 2003.-2004.a tegevuse ülevaade* (Overview of the Activities of the Legal Chancellor in 2003/2004), Tallinn, 2004, p. 13.

⁴⁹ Autoriõigusseaduse muudatused, RTI, 11.11.2004, 77, 527 and RTI, 29.10.2004, 71, 500.

Article 18. Right to asylum

Asylum proceedings

Good practices

There have been no reports that Estonia would have not respected its obligations under the 1951 Geneva Convention. However, relatively few applications for asylum have been presented in Estonia. (Most of the applications have been rejected.) The situation may well change when Estonia, now being EU member, will receive more applications in the future.

Recognition of the status of refugee

Legislative initiatives, national case law and practices of national authorities

Estonia has legislation on asylum seekers in force since 1997. Only 4 persons (out of 83) were granted the status by October 2003.⁵⁰

Article 19. Protection in the event of removal, expulsion or extradition

Collective expulsions

Legislative initiatives, national case law and practices of national authorities

The Ministry of Justice of the Republic of Estonia is preparing a compensation claim to the government of the Russian Federation as Continuator State of the USSR in favour of the Estonian citizens who were deported in 1941 and 1949 to Siberia. However, so far, Russia has denied responsibility for those crimes of the Soviet government.

Legal remedies and procedural guarantees regarding the removal of foreigners

Legislative initiatives, national case law and practices of national authorities

The Supreme Court has continued its practice of loosening up the interpretation of the Alien Act, interpreting it in contested cases in favour of individuals and thus making the expulsion of aliens less likely.⁵¹

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

On 17 December 2003, The Person Repressed by the Occupation Regimes Act was enacted by the parliament.⁵² The Act gives an extensive definition as to what persons qualify – in terms of the Estonian law – as persons repressed by the occupation regimes. Several items of the definition include elements of torture encapsulated in the definition are the victims of the Soviet mass deportations of civilians to Siberia of 14 June 1941 (10.000 deportees from Estonia, many thousands more from other Baltic republics) and of 25 March 1949 (20 000 deportees from Estonia, many thousands more from other Baltic republics). The Act foresees a number of advantages and financial compensations for the individuals repressed by the occupation regimes – their medical costs will be compensated (§ 6), they can visit the museums owned by the State and the Estonian song festivals for free, they can fish without

⁵⁰ Citizenship and Migration Board Yearbook 2003, Tallinn, p. 18.

⁵¹ See Case no. 3-3-1-31-04, 16.06.2004 (Svetlana Štilerman)

⁵² Okuptatsioonirezhiimide poolt represseritud isiku seadus, Riigi Teataja I, 29.12.2003, 88, 589.

paying for the permissions (§ 7). Most significantly, special pensions are foreseen for the individuals repressed by the occupying powers. (§ 11-16).

Positive aspects

As Estonia suffered under two mass deportations during the Soviet occupation, both deportations affecting thousands of individuals, it is positive that Estonia at least to recognize the suffering inflicted to its citizens under the foreign occupation.

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CHAPTER III : EQUALITY

Article 20. Equality before the law

Equality before the law

Legislative initiatives, national case law and practices of national authorities

On 25 February 2004 the Supreme Court declared invalid that part of the Weapon Act § 30 section 2 according to which an alien living in Estonia with a temporary residence permit had, in order to acquire a hunting gun, first have a work permit.⁵³ The Supreme Court found that § 30 section 2 discriminatorily restricted individual's right to free expression of their freedom. The Supreme Court argued in particular that an alien does not need to have a work permit in Estonia in order to have a legal steady income. The restriction was thus considered unproportional and declared invalid.

Article 21. Non-discrimination

Protection against discrimination

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

According to Estonian social security law, family benefits are granted to residents, whether permanent or temporary, on condition that the family members are residing in Estonia. Benefits are not paid in respect of family members who already receive family benefit from other countries. The European Committee of Social Rights in its 2004 conclusions on Estonia took the fact that child allowances were not paid in respect of children not residing with the claimant parent in Estonia (except where studying abroad was involved) as a case of indirect discrimination prohibited by Article 12 § 4 of the Revised European Social Charter. Note also, however, that Committee member Mr Matti Mikkola wrote a dissenting opinion on that point, arguing that in most European countries child allowance is *not* a benefit for the worker and the Charter does *not* establish any common labour market as in the EU.

Mr Alvaro Gil-Robles, the Commissioner for Human Rights of the Council of Europe, dealt in his report on Estonia published on 12 February 2004 at length with access to citizenship in Estonia. Mr Gil-Robles writes on the historic genesis of the citizenship problematique: "The strong emphasis placed on the preservation of the Estonian language and identity led to the adoption of strict legislation relating to languages and the acquisition of citizenship, as well as to increasing tensions between the different parts of the population. A sense of injustice grew among the Russian-speaking minority, who felt unjustly penalised for historical events beyond their control."⁵⁴ Mr Gil-Robles furthermore observed that although various measures have been taken in recent years to improve the access to Estonian citizenship, the population census in the year 2000 indicated that more than 170.000 persons still had the status of non-citizens, while 117.000 had been granted citizenship since 1992. Of the total population of approximately 1.370.000 persons, 80 percent have Estonian citizenship, 7 percent have a citizenship of another country (mainly Russian), and 12 percent are "persons whose citizenship is undetermined" (they do not have citizenship of any state).⁵⁵

⁵³ Case No. 3-3-1-60-03.

⁵⁴ Office of the Commissioner for Human Rights, CommDH (2004)5, p. 5.

⁵⁵ *Ibid.*, p. 5.

Mr Gil-Robles' critique of this situation was, in the first place, of general nature. In his report, he pointed out that the lack of citizenship deprives these persons of a number of rights, and carries an increased risk of social exclusion. Although non-citizens have the right to vote in local elections, they do not have the right to vote in national elections, establish political parties, or become members in political parties. Although *de facto* the approach taken by the authorities is not discriminatory in this sense, the enjoyment of the rights guaranteed under the framework Convention for the Protection of National Minorities was limited by Estonia to those who have Estonian citizenship when it ratified the Convention.⁵⁶

Mr Gil-Robles took in his report note of the two, partly contradictory, explanations regarding the slow pace of naturalisation: first, difficulties that some persons continue to experience in passing the examinations required for the acquisition of Estonian citizenship and second, by the relatively limited motivation of some of the non-citizens to seek naturalisation.⁵⁷

The contradictory explanations were well reflected when Mr Gil-Robles discussed in his report measures that are needed to ensure that all newborn children of non-citizen parents acquire a nationality after birth. This possibility is guaranteed by the law on the basis of an application by the parents. Mr Gil-Robles was, however, informed that many parents do not apply for Estonian citizenship for their children or, apparently, for any other citizenship, and leave it up to the child to decide whether to apply for citizenship through naturalisation when he or she turns 15. Mr Gil-Robles recalled in his report that the right to acquire a nationality entails a positive obligation for the State to ensure an effective exercise of this right. He emphasized that a state should not accept a situation where newborn children are rendered stateless on the basis of a mere option available for the parents to apply for another citizenship.⁵⁸

In order to ensure the effective enjoyment of the right of the child to acquire a nationality from birth, Mr Gil-Robles proposed during his visit that the interpretation of the Law on Citizenship be modified so that the registration of a new-born child of non-citizens would be automatically considered as an application for Estonian citizenship, unless the parents of the child declare in writing that they have applied for citizenship of another state, under which laws the child is entitled to acquire citizenship of that country. Mr Gil-Robles argued in his report that such a solution would ensure that every child would acquire citizenship at birth, instead of subjecting the child to statelessness at least until she or he turns 15 and becomes eligible for a naturalisation on his or her own right. According to Mr Gil-Robles, this interpretation would ensure that a child would acquire one citizenship or another from birth, without the effect of imposing Estonian citizenship on those who apply for another citizenship.⁵⁹

Mr Gil-Robles noted in his report of 12 February 2004 that many of his interlocutors in Estonia noted that the level of language proficiency required for acquiring Estonian citizenship continued to be too high for some persons, particularly for the elderly, and for many those who live in regions predominantly inhabited by Russian-speakers. It was estimated that 20 percent of candidates do not pass the language exam. The Commissioner for Human Rights suggested that successful participation in a language course would be regarded as sufficient proof of the knowledge of the language without having to pass the exam. Mr Gil-Robles also expressed his concern that – although the legislation grants significant exemptions for persons with certain disabilities from compliance with the requirements set

⁵⁶ Ibid., p. 6.

⁵⁷ Ibid., p. 6.

⁵⁸ Ibid., p. 6.

⁵⁹ Ibid., p. 6-7.

forth for the naturalisation – the pace of naturalisation was low among persons with disabilities.⁶⁰

Furthermore, Mr Gil-Robles quoted the absence of specific anti-discrimination legislation as an impediment to achieving full equality. He encouraged the enactment of legislation prohibiting discrimination in areas such as access to housing, education and services.⁶¹

Legislative initiatives, national case law and practices of national authorities

One of the positive aspects has been that on 10 December 2003 the Citizenship Act was amended⁶² to the effect that as of 1 January 2004, the total costs of the language exams will be reimbursed within three months to all those who passed the exam. This is a significant step since the costs of the language exams had created impediments to some individuals. However, Mr Alvaro Gil-Robles, the Council of Europe Commissioner for Human Rights suggested in his report on Estonia, published on 12 February 2004, that the exams be made free of charge irrespective of whether the person succeeds in the exam or not: “A fear of failure in the exam, and the corresponding costs, may provide an unwelcome disincentive for taking the exam. Financial constraints should not create an obstacle for the effective realisation of such a fundamental right as the right to nationality.”⁶³

Positive aspects

State has paid visibly more attention at the naturalization and non-citizens in 2004.

Good practices

The increased number of naturalizations.

Reasons for concern

Upon the restoration of Estonia’s independence in 1991, the mostly Russian-speaking immigrants of the Soviet period were not granted automatic citizenship rights. Rather, naturalization requirements including State language exam were created. As at 17 May 2004, there were 160 270 persons with undetermined citizenship (i.e. de facto stateless) having a valid residence permit in Estonia, and 88 575 Russian citizens with a valid residence permit. The increase of Russian citizenship holders among stateless persons would be undesirable, rather, Estonia has a clear interest in naturalizing those individuals, and more efficiently than this has occurred so far. There exist different interpretations to this situation. According to the Integration Monitoring 2002, the Russian citizens and stateless people mentioned the following reasons for not having Estonian citizenship:

Table. For what reason have you personally not obtained citizenship yet?

By citizenship, %⁶⁴

	Stateless persons	Russian c-ns
I am already a citizen of another country	-	85

⁶⁰ Ibid., p. 7.

⁶¹ Ibid., p. 18.

⁶² Kodakondsuse seaduse muutmise seadus (Citizenship Act Amendment Act) , Riigi Teataja I, 22.12.2003, 82, 550.

⁶³ Ibid., p. 8.

⁶⁴ K. Hallik (ed.) *Integration of Estonian Society: Monitoring 2002*, Tallinn: Institute of International and Social Studies and Integration Foundation, 2002, p. 62.

Cannot learn the Estonian language	61	73
Requirements of citizenship exam are humiliating	61	69
Lack of citizenship does not hinder living in Estonia	55	78
Easier to travel to Russia and other CIS states	38	72
Estonia is too small for its citizenship to have any value in the world	21	34
It would be of little use to me and my family	18	44
Do not feel as belonging to Estonia	9	12
Wish to avoid military service in Estonian army	8	3

Furthermore, according to the Estonian scholar Anna Markina, the probability to receive a parole verdict was twice as high for Estonians than for non-Estonians.⁶⁵ According to the data of the Ministry of Justice, in 2003 there were 3,059 convicted criminals in Estonia and minority members made up 60 % of them. Non-citizens were also overrepresented in the prison population in 2003 since Estonian citizens made up 50.9 %, stateless persons 43.5 %, and citizens of other countries 5.6 %.⁶⁶ Most of the foreign citizens in Estonia's prisons were citizens of the Russian Federation.

Vadim Poleshchuk, a legal analyst with the Legal Information Centre for Human Rights points out that in case of family reunification, the treatment of non-citizens is less favourable when compared with Estonian citizens. Only non-citizens are subject to "proving" of the fact that their family reunification in Estonia is justified (Article 12¹ (7) of the Aliens Act).⁶⁷ It seems to the present rapporteur, however, that distinguishing between the citizens and the non-citizens in that regard is compatible with human rights standards and is practiced by most countries.

Although minority representatives have a very good position in North Eastern Estonia's local municipalities, the data for senior government officials does not reflect equal representation.

Table. Ethnic Estonians and ethnic Russians among legislators and senior government officials, 2000 national census, %⁶⁸

	Estonians	Russians
Percentage in the group of legislators	96.6	3.3
% in the group of senior government officials	95.0	3.5
% in the citizenry	84.2	13.0
% in the citizenry (only persons with Estonian language proficiency)	83.6	7.7

Vadim Poleshchuk concludes his analysis with the following policy suggestion: "We recommend paying more attention to political and social-economic integration of non-citizens and other minorities in Estonia. Naturalization of non-citizens (residents from the Soviet period) shall be as simple as possible and may not include a language exam."⁶⁹

While it is easy to realize why this would be the most convenient solution for the non-citizens, this suggestion would nevertheless be quite strongly opposed by the Estonian electorate. While the attitudes in Estonia towards the Russian minority have relaxed

⁶⁵ Quoted in V. Poleshchuk, *Social Dimension of Integration in Estonia and Minority Education in Latvia*, ECMI Report No. 18, December 2001. Flensburg: ECMI, p. 9.

⁶⁶ See *Estonian Prison System Yearbook*, Tallinn: Ministry of Justice, 2003, pp 19-20.

⁶⁷ See V. Poleshchuk, *Non-Citizens in Estonia*, Report, 2004, Legal Information Centre for Human Rights, Tallinn, p. 24.

⁶⁸ Quoted in V. Poleshchuk, *Non-Citizens in Estonia*, Report, 2004, Legal Information Centre for Human Rights, Tallinn, p. 29.

⁶⁹ See V. Poleshchuk, *ibid.*, p. 49.

considerably in the course of the last decade, and the Russian immigrants of the Soviet era are generally not viewed as ‘colonizers’ any more, the suggestion that citizenship should be somehow automatically extended without effort to learn the Estonian language and pass the citizenship exam is seen as unjustified and dangerous by the Estonian citizenry. However, a step-by-step relaxation of citizenship requirements has taken place in the course of the last years, partly due to the pressure by European institutions.⁷⁰

Fight against incitement to racial, ethnic, national or religious discrimination

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

UN Human Rights Commission ended its 60th plenary on 23 April 2004 with a resolution entitled “Resolution on Racism, Racial Discrimination, Xenophobia and All Forms of Discrimination”. The resolution was suggested by Russia and Byelorussia and did not mention Estonia (or Latvia) in the final version but according to some information, did so in an earlier draft. The resolution condemned neonazism, neofashism and national prejudices and expressed its worry about the glorification of Waffen SS members, especially erecting monuments in honour of and allowing public gatherings of former SS members.

The voting lines in the Commission reveal the politics of the matter. 36 states voted in favour, 13 abstained, a few countries did not vote. Against the resolution voted Australia, Austria, Croatia, France, Germany, Hungary, Ireland, Italy, Japan, Holland, Sweden, the UK and the US. The Estonian media criticized the fact that among the countries who voted in favour of the resolution, several countries were criticized by international human rights NGOs for their serious human rights violations.⁷¹

The passing of the resolution was politically connected with what became the most significant political event in Estonia after the country joined the EU on 1 May 2004: the so-called Lihula incident. In the spring of 2004, local municipality politicians and volunteers erected in Lihula a monument that depicted a soldier in German World War II uniform with a gun and had an accompanying dedication to those Estonian soldiers who fought in World War II against the ‘Bolshevik threat’. The monument was immediately criticized by the Jewish and other Nazi victim organizations and several Western governments as insensitive towards the victims of the Nazi crimes and unacceptable in the light of the fact that SS was declared a criminal organization in Nuremberg. In Estonia, the critique triggered a passionate debate about the role of Estonian soldiers fighting against the USSR in German uniform, identity politics and the wider context of World War II events. Those Estonian (and Latvian) men who fought in the German army have argued that they were ‘freedom fighters’ and no Nazis: joining the German army, they have claimed, was the only possibility to fight the USSR, the country that had ended the independence of the Baltic States in 1940 and committed mass crimes there, such as mass deportation on 14 June 1941. Those veterans portray themselves as fighting on the side of victims (the Soviet-conquered Estonian nation) rather than perpetrators (being drafted in the German Waffen SS).

As the diplomatic pressure on Estonia to deal with the issue of the monument grew, the government decided to take the monument – that was erected not by the State but as a private initiative with a support of the local municipality in Lihula – down. This happened in an action protected by the police but caused a mini-riot against the police action by spectators in

⁷⁰ See for a most recent scholarly treatment Stephan Heidenhain, *Ausgewählte Minderheitenfragen in Litauen, Lettland und Estland seit 1991 und der Einfluss internationaler Organisationen und Einzelstaaten auf die Rechtsentwicklung*, 50 Osteuropa Recht August 2004, pp 317-342.

⁷¹ See P. Hõbemägi, *Kuidas inimõiguste rikkujad Eestit õpetasid* (How Human Rights Violators Gave a Lecture to Estonia), 8.10.2004, Eesti Päevaleht.

Lihula. The government was criticized by many for having been unable to solve the matter more diplomatically.

The events of World War II and their different perception by many individuals in the Baltic republics will have the potential to even further cause political disagreements and accusations of the revival of unacceptable tendencies in Estonia. As I am writing this in December 2004, there is a lot of debate in the Estonian media about whether the Estonian president should accept Mr Putin's invitation to celebrate in Moscow the 60th year anniversary of the end of World War II. The debate in Estonia is caused by the fact that Russia has not apologized for the fact that the USSR occupied the Baltic States as a consequence of World War II and committed heinous crimes there. However, the debate is for obvious reasons politically laden and will enable one to criticize the Estonian government's possible reservations to celebrate 9th May 1945/2005 in Moscow as 'our common victory' in World War II.

Legislative initiatives, national case law and practices of national authorities

Since 1.07.2004, the Penal Code contains two Articles - § 151 "The incitement of social hatred" and § 152 "The Violation of Right to Equality". (State Gazette I, 2004, 46, 329). The level of sanctions is monetary fine or arrest for the first incident and potential imprisonment for any further. First indictments on the basis of those charges have been reported in 2004.

Remedies available to the victims of discrimination

Legislative initiatives, national case law and practices of national authorities

Since 2004, claims of discrimination can be mediated and settled (beside usual, court proceedings) by the Office of the Legal Chancellor.

Positive aspects

See legislative initiatives.

Reasonable accommodation of the specific needs of certain groups, especially religious or ethnic minorities

Positive aspects

Estonia's entry into the EU has made acquiring the Estonian citizenship more attractive for the part of the Russian-speaking minority that had/has not acquired the citizenship yet. The increase of non-citizens applying for citizenship was very noticeable in 2004. The speed of naturalisation has increased – 3090 persons received citizenship in spring 2004. During the first six months of 2003 2229 persons applied for citizenship while during the first six months of 2004 the number of applications was already 3648. Altogether, 6500 stateless individuals were naturalized in Estonia in 2004.

As of 28 December 2004, there were 153 500 stateless persons in Estonia. (Estonia calls them officially somewhat euphemistically 'persons with undetermined citizenship' recognizing implicitly through the use of softening language some obligations towards those people or their future) This makes up 11 % of the population, a percentage that has diminished considerably since the 1990s. As of 17 May 2004, there were 88 575 Russian citizens with a valid residence permit. The number of stateless persons as compared to the 2000 population census data has decreased by 18 000 persons. As of 1 May 2004, 4080 under 15-year-old children of stateless persons who were born in Estonia had received citizenship by way of simplified naturalisation.

In spring 2004, steps were taken to make the acquisition of citizenship easier for school pupils. The goal has been to reduce the number of stateless pupils for which purpose the Examination and Qualification Centre has attempted to create better conditions for pupils to pass the citizenship exam. Figuratively speaking, the officials have made a move closer to the people. Previously, the citizenship applicants had to go to a particular examination site to take the exam of the knowledge of the constitution and the citizenship. Now, the officials of the National Examination and Qualification Centre go to a school if there are at least 10 pupils who would like to apply for the citizenship. First such examination took place on 27 March 2004 in schools of Tallinn, Narva, Kohtla-Järve, Sillamäe, Tartu and Võru. 91 per cent of the total of 314 pupils passed the exam successfully.⁷²

For future implementation of the integration programme the Government approved on 6 May 2004 the action plans of sub-programmes of the integration programme for 2004-2007. The action plans foresee the gradual increase of allocations to cultural societies of national minorities with the aim to create possibilities for stable base funding of umbrella organisations of national minorities from the state budget. Another stated aim is to create conditions for supporting cultural self-governments of national minorities from the state budget as of 2005.⁷³

Moreover, the government is currently debating amendment to Citizenship Act suggested by the Ministry of Education and Science which would enable the graduates of the Russian-speaking schools to apply for the citizenship upon completing the civic education class at principal school level (even when this subject would be taught in Russian). The content of the draft is currently discussed in the government.⁷⁴

Good practices

The Minister of Population Affairs, Mr Paul-Eerik Rummo, emphasized at his press conference on 27 December 2004 that the Republic of Estonia increased spending on integration of minorities twice when compared to 2003. This included linguistic programmes and information programmes about the awareness to get citizenship. He claimed that with the current tempo of naturalization (which, he insisted, was unprecedented in the world), the problem of stateless persons in Estonia would be solved in next 10 years. The goal set in the State Integration Program is to naturalize at least 5000 non-citizens annually.

The increased number of naturalizations can also be seen as (a result of a) good practice.

Reasons for concern

The problem of stateless persons in Estonia remains. According to current estimations, it will take approximately ten more years to be solved.

Positive actions aiming at the professional integration of certain groups

Good practices

The spending on respective 'integration programmes' has significantly increased in 2004.

⁷² See also *Estonia's Second Report on the Implementation of the Council of Europe Framework Convention for the Protection of National Minorities*, June 2004, p. 16. (www.vm.ee).

⁷³ Ibid., pp 19-20.

⁷⁴ Priit Simson, *Vene noored võivad põhikooli lõpetamisel kodakondsuse saada* (Russian Youth May Acquire Citizenship Upon the Completion of the Principal School), Eesti Päevaleht, 26.12.2004.

Protection of Gypsies / Roms*Legislative initiatives, national case law and practices of national authorities*

The present rapporteur has got the impression that part of the Estonian media continues to use language with racist undertones with respect to the Romas. One such example is a popular internet news portal called "Delfi" (www.delfi.ee) - they have a tendency to play on nationalism and primitive black and white contradictions. As an example, I quote news from Delfi: "Estonia showed the door to the Gypsies" which report a case of five Romas being rejected to enter Estonia at Estonian-Latvian border: "The doors of Estonia remained closed to the nomad people. (...) The Estonian border guard certified that to the five Romanian citizens the experience of expulsion from other cities had not been unknown either."⁷⁵

Reasons for concern

Racist undertones in part of the media towards the gypsies.

Other relevant developments*Legislative initiatives, national case law and practices of national authorities*

One of the problems that has remained politically contested and has some fundamental rights implications is the question of the aliens who served as professional members of the armed forces of the USSR. In Estonia they are not entitled to residence permit, although exceptions on the individual basis are possible (and the professional service members of the Soviet army who were Estonian citizens by birth or their successors did of course receive citizenship automatically.) At the moment it is estimated that in Estonia reside ca 10,000 former Soviet/Russian military servicemen with their family members. It has been a source of political and legal debate whether their residential rights were secured by the so-called July Agreements between Estonia and Russia. The Supreme Court in its decision of 24 October 2002 recognized that such former military servicemen's rights to residence permits is based on an international treaty and that they are in principle entitled to apply for permanent residence permits. Nevertheless, in December 2003 the Law on Aliens was amended to the effect of explicitly prohibiting the issuance of permanent residence permits to such non-citizens (Art 12 (2¹) of the Aliens Act).

Some 115 resident families have been recently denied a residence permit with the reference to clause 4 of Article 12 (9) of the Aliens Act that prohibits the issuance of residence permit who has committed himself/herself to leaving the Republic of Estonia, received a residential space abroad within the framework of an international aid program or has received support for leaving Estonia. Those 115 families participated in a US-sponsored program on the basis of the bilateral US-Russian agreement in the early 1990s and later received temporary residence permits to stay in Estonia. Some of these individuals have recently filed complaints in the ECHR.⁷⁶

⁷⁵ Delfi, *Eesti näitas mustlastele ust* (Estonia showed the door to the gypsies), 11.10.2004.

⁷⁶ See Vadim Poleschuk, *Non-Citizens in Estonia*, Report, Tallinn, Legal Information Centre for Human Rights, 2004, p. 11-12.

Article 22. Cultural, religious and linguistic diversity

Protection of religious minorities

Legislative initiatives, national case law and practices of national authorities

On 28 June 2004, the parliament adopted amendments to the Churches and Congregations Act, according to which religious associations will have the right to use other terms in their name in accordance with their historical traditions. With the amendments the deadline for the re-registration of religious organisations was also extended from 1 July 2004 to 1 January 2005. The re-registration deadline was extended at the request of the Estonian Council of Churches, as the re-registration process has proved more complicated than was expected.

According to the 2000 national census, minority members appear to be somewhat more religious than the ethnic Estonians. Among the ethnic Estonians only 24 % are the followers of a particular faith, most of them (89 %) are Lutherans. By contrast, 39 % of the ethnic Russians are followers of a particular faith and most of them (92 %) are Orthodox Christians. In general, 14.8 % of the Estonian population belongs to Lutheran Church and 13.9 % to Orthodox Church.⁷⁷

Important steps have now been taken towards solving the property debate among the two Orthodox Churches. The historical background of this debate is the following.⁷⁸ After Estonia's independence was recognized by Soviet Russia in 1920, the local Estonian Orthodox Church received an autonomous status. In 1923 the Estonian Orthodox Church changed its canonical subordination from Moscow to Constantinople Patriarchate. After Estonia was occupied by the USSR in 1940, the Moscow Patriarchate took over the Estonian Orthodox Church's property in Estonia. Following the principle of State continuity, the rights of the Moscow Patriarchate over this property were not recognized. Instead, the Orthodox Church's property was restored to the Estonian Orthodox Church that was subordinated to the Constantinople Patriarchate and continued to function in exile during the Soviet occupation. However, although they de iure received the property returned after 1991, de facto the property often remained in possession of pro-Moscow Patriarchate parishes.

Church leaders estimate that the Constantinople Church is supported by ca 20 000 Orthodox believers while the one subordinate to Moscow by 200 000 believers in Estonia.⁷⁹ Both churches are divided more or less among ethnic lines: Orthodox adherents subordinated to the Constantinople patriarchate are mostly ethnic Estonians.

For several years there was a political problem that Estonia refused to register the Moscow Patriarchate Church in Estonia, referring to unsolved property disputes. Although the Moscow Patriarchate Church was finally registered in 2002, property issues are to be solved yet between the two Orthodox Churches. Vadim Poleschuk, the analyst of the Legal Information Centre for Human Rights concludes critically that 'these circumstances cannot be regarded as favourable for profession of religion by the majority of non-citizens.'⁸⁰ At the same time, he admits that certain positive changes have occurred recently.

⁷⁷ Data for people aged 15 and older. 2000 Population and Housing Census: Education and Religion, IV, Tallinn: Statistical Office of Estonia, 2002, Table 92.

⁷⁸ See also Vadim Poleschuk, *Non-Citizens in Estonia*, Report, Tallinn, Legal Information Centre for Human Rights, 2004, p. 30.

⁷⁹ *Ibid.*, p. 30.

⁸⁰ *Ibid.*, p. 30.

Protection of linguistic minorities

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Mr Alvaro Gil-Robles, the Commissioner for Human Rights of the Council of Europe joined in his report following his visit to Estonia in October 2003 and published on 12 February 2004 the critical comment of the Advisory Committee on the Framework Convention to the effect that the status of the state language is regulated and protected in great detail, whereas corresponding standards on the status and protection of minority languages are limited in their number and scope.⁸¹

The Constitution guarantees the right to receive a reply in a minority language in municipalities where at least 50 per cent have a language other than Estonian their mother tongue. Mr Alvaro Gil-Robles was told by members of the Russian-speaking minority that the requirement of 50 per cent creates significant difficulties for the Russian-speakers in places like Tallinn, with large Russian-speaking minorities who do not, however, fulfil the 50 per cent requirement. While Mr Gil-Robles took note of the fact that in practice, authorities do show flexibility in the interpretation of the law, he recalled that the Advisory Committee noted that this requirement was high from the point of view of Article 10 of the Framework Convention.⁸²

Mr Gil-Robles also emphasized in his report that increased attention should be placed on the preservation of the distinct identities and cultures of the numerically smaller minorities, including those who might use Russian as their mother tongue, but do not belong to the Russian minority. Also, Mr Gil-Robles wrote in the report that a member of the Roma community noted that there was not sufficient recognition of the Romani culture or language in Estonia. (In the 2000 population census 542 persons, including 263 Estonian citizens, declared themselves as the Roma. According to some estimation, there are approximately 1000 Roma in Estonia.) The Roma individual with whom Mr Gil-Robles communicated emphasized the importance of improving access to education by Roma children, since school non-attendance and school drop-outs remain a serious concern. He also stressed, as Mr Gil-Robles points out in his report, that further measures are needed to improve access to employment, since the unemployment rate is extremely high among the Roma population, and many are disproportionately affected by poverty.⁸³

Legislative initiatives, national case law and practices of national authorities

On 12 February 2003, the Riigikogu passed the new Code of Criminal Procedure that entered into force on 1 July 2004.⁸⁴ The provisions regulating the use of languages in criminal procedure will remain more or less the same as before. According to the Code of Criminal Procedure, the language of criminal proceedings is Estonian. With the consent of the body conducting the proceedings, the participants in the proceedings and a party in the judicial and criminal proceedings can also take place in another language if the participants are proficient in that language. A participant in a criminal proceeding and a party in judicial proceedings who is not proficient in Estonian are guaranteed the assistance of an interpreter or translator. At the request of a party to the judicial proceedings, a text which is not in Estonian can also be entered in the minutes of the proceedings. In that case, a translation of the text into Estonian will be added to the minutes. If the defendant does not speak Estonian, he or she is forwarded the text of the statement of charges as a translation into her or his mother tongue or to a

⁸¹ Office of the Commissioner for Human Rights, CommDH (2004)5, p. 10.

⁸² *Ibid.*, p. 10.

⁸³ *Ibid.*, p. 10.

⁸⁴ Kriminaalmenetluse seadustik, Riigi Teataja I 2003, 27, 166.

language that he or she understands. Hearing of a matter without an interpreter in a language that the defendant does not speak is considered a material violation of the law of criminal procedure. In misdemeanour proceedings the interpreter participates in accordance with the bases and rules provided for in criminal procedure. In 2003, there were 52 interpreters/translators working in Estonian county, city, administrative and circuit courts whose working languages were Estonian and Russian.⁸⁵

As far as the place names are concerned, the new Place Names Act was adopted by the Riigikogu on 5 November 2003 and entered into force on 1 July 2004.⁸⁶ The new act replaced the old 1997 act. The need for drawing up a new law was due to the changed environment, inefficiency of some of the earlier provisions and also additions needed for launching the state place names register. Yet the main framework of the law did not change. According to the new law there will no longer be a need to seek the approval of the Minister of Internal Affairs with regard to a foreign language name to be given if the object with the foreign language place name is located in a territory of a settlement the majority of whose inhabitants were non-Estonian speaking as at 27 September 1939. According to that provision, a municipality with an indigenous population of a national minority may itself decide the use of old names in the languages of minorities. By now, the historical names in a minority language have been approved in the areas of settlement of coastal Swedes: parallel names in Noarootsi rural municipality and only in Swedish in Vormsi rural municipality. In the latter, in two villages the Estonian names were retained. The municipalities have, however, not widely used the possibility of introducing names in minority languages. In some cases, historic Russian manipulates near the lake Peipsi even rejected the suggestion of re-establishing the pre-1940 bilingual place names council operating at the Ministry of Internal Affairs.⁸⁷

On 10 December 2003, the Riigikogu passed the amendment to the § 28 of the Language Act⁸⁸, according to which certificates of category of work-related proficiency in Estonian that were issued until 1999 were declared to be valid for an unlimited period and to conform to the particular level of language proficiency. Pursuant to the earlier version of the law, the certificates would have become invalid as of 1 January 2004. The amendment was passed following the justified critique that declaring the certificates of category of language proficiency invalid would have violated the legitimate expectation of persons who had the legitimate expectation that the certificates issued to them on the basis of an effective law would remain valid.

Positive aspects

In 2004 the first national minority group – the Ingrian Finns – established a cultural autonomy of a national minority. This is based on the framework of the National Minorities Cultural Autonomy Act which in its trend is inspired by a similar Estonian law of 1925. On the basis of the “Rules for the election of the cultural council of a national minority”, adopted by the Government in May 2003, the elections of the Ingrian-Finnish cultural council were held on 14-16 May 2004. 58.55 % of the persons eligible to vote (i.e. persons at least 18 years old and entered in the list of voters on the basis of the list of people belonging to the national minority) participated in the elections. The results of the election were confirmed on 1 June 2004.

⁸⁵ See also *Estonia's Second Report on the Implementation of the Council of Europe Framework Convention for the Protection of National Minorities*, June 2004, p. 47. (www.vm.ee).

⁸⁶ Kohanimeseadus (Place Names Act), Riigi Teataja I 2003, 73, 485.

⁸⁷ See in detail *Estonia's Second Report on the Implementation of the Council of Europe Framework Convention for the Protection of National Minorities*, June 2004, p. 52. (www.vm.ee).

⁸⁸ Keeleseaduse muutmise seadus (Language Act Amendment Act), Riigi Teataja I, 22.12.2003, 82, 551.

Social scientists send mixed signals about to what extent is the Russian minority interested in learning Estonian. A recent survey conducted by the research centre 'Faktum' indicated that 28 % of the Russian pupils and students considered learning the Estonian language unnecessary.⁸⁹ Another recent study indicates that in the biggest 'Russian' city in Estonia, Narva, there is a bigger demand for study places in the Estonian school than the ministry of education has been able to satisfy.⁹⁰

As one of the concerns in Estonia has been the insufficient knowledge of Estonian by part of the minority population, efforts to expand linguistic programmes and outreach the Russian-speaking community with the teaching of Estonian can be welcomed as positive development. Currently, the EU PHARE programme "Learning of the Estonian language and Estonian language tuition for non-Estonian population" is underway. The programme is aimed at supporting the Estonian language learning of non-Estonian population. The EU has allocated 51.6 Mio. Estonian kroons for these purposes. The duration of the programme is 2003-2005 and it is implemented by the Ministry of Education and Research and the PHARE 2003 administrative unit under the Integration Foundation.

Since August 2004, another project with the budget of 8 Mio. Estonian kroons will be implemented (of which EU support of approximately 4 Mio. Kroons in the framework of the Transition Facility Programme) which is aimed at supporting the integration of non-Estonians (informing of non-Estonians about the possibilities of naturalisation, their preparation for the citizenship examination and raising the awareness of the usefulness of citizenship). In the framework of this project, a training system for applicants for citizenship will be established.

State's support to the learning of Estonian increased from 1 January 2004. According to the amendments to the Citizenship Act that entered into force on 1 January 2004⁹¹, the state will compensate the second half of the sum spent on language studies to persons who successfully pass both the language examination as well as the examination of the knowledge of the Constitution and the Citizenship Act. When the PHARE programme ends on 31 December 2005, Estonia will compensate 100 % of the language learning costs to persons who successfully pass the examinations.

Good practices

See above.

Reasons for concern

In Estonia, the lack of teachers with sufficient command of Estonian remains a serious problem. According to the Basic Schools and Upper Secondary Schools' Act, the language of instruction in the upper secondary schools (classes 10-12) shall be Estonian, which in practice means that at least 60 percent of the instruction shall be in Estonian.⁹² In order to allow schools to prepare for this requirement, the law stipulates that the transition to instruction in Estonian shall be started not later than the academic year 2007/2008. One has to agree with the conclusion of the Commissioner for Human Rights to the effect that "significant further investment into the language training programmes is imperative in order to prevent the

⁸⁹ A. Kuus, *Vene noored kahtlevad eesti keele vajalikkuses* (Russian Youths Doubt About the Necessity of the Estonian Language), 04.10.2004, Postimees.

⁹⁰ S. Laev, *Narvas tung eesti keele õppesse* (In Narva the Study of the Estonian Language is Popular), Eesti Päevaleht, 29.11.2004 (discussing the demand for admittance in the all-Estonian *Vanalinna riigikool*); S. Laev, *Vene lapsed tahavad rohkem eesti keelt* (Russian Children Want More Estonian Language), Eesti Päevaleht 1.12.2004.

⁹¹ Kodakondsuse seaduse muutmise seadus (Citizenship Act Amendment Act), Riigi Teataja I 22.12.2003, 82, 550.

⁹² Article 9 of the Basic Schools and Upper Secondary Schools' Act.

potential risks that the language reform in upper secondary schools might carry particularly to those students whose command of Estonian is not at the academic level”.⁹³

Article 23. Equality between man and women

Gender discrimination in work and employment

Legislative initiatives, national case law and practices of national authorities

See below.

Positive aspects

See below.

Good practices

See below.

Reasons for concern

See below.

Positive actions seeking to promote the professional integration of women

Legislative initiatives, national case law and practices of national authorities

See below.

Positive aspects

See below.

Gender discrimination in the access to goods and services

Legislative initiatives, national case law and practices of national authorities

See below.

Positive aspects

See below.

Good practices

See below.

Reasons for concern

See below.

⁹³ Office of the Commissioner for Human Rights, CommDH (2004)5, 12 February 2004, p. 9.

Remedies available to the victim of gender discrimination (burden of the proof, level of penalties, standing of organisations to file suits)

Legislative initiatives, national case law and practices of national authorities

On 1 January 2004 modifications in the Legal Chancellor Act came into force which gives to the Legal Chancellor the right to mediate conflicts between private persons with respect to charges of discrimination. New tasks are foreseen for the advancement of the principle of equal treatment of the two sexes (non-discrimination).

Positive aspects

See above.

Good practices

See above.

Participation of women in political life

Reasons for concern

Of the 6 Estonian deputies that were elected to the European Parliament in 2004, 2 are women. While this gives a majority to the men, things have at least become much better with respect to the participation of women in political life.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

On 7 April 2004, the Estonian parliament finally followed the respective EU directives and adopted the Gender Equality Act.⁹⁴ The adoption was preceded by a lengthy battle in the parliament in which the openly sexist vocabulary used by several male deputies emphatically proved the need for such the implementation of such an act in Estonia.

The Act establishes the prohibition of discrimination on the basis of gender in public and private sector, the obligation for the state offices, local municipalities, educational and scientific institutions and finally, employers, to promote equality between men and women. Most significantly, the act foresees the right to recover damages born out of discrimination carried out on the basis of gender. However, the Act also stipulates that its requirements will not be applied or enforced in family or private life (§ 2).

A stipulation that caused counter-arguments by the opponents of the Act is the burden of proof (§ 4). The Act stipulates that if a person finds that s/he has been discriminated against on the basis of gender and presents a complaint/claim related to the incident of discrimination to the competent organ, then the person against whom the accusation of discrimination has been filed must upon the requirement of the competent organ explain the motives and reasons of his/her behaviour or the decision taken. If (s)he does not do that or refuses to give an explanation, this will be taken as acceptance of the discriminating behaviour. However, § 4 also stipulates that this kind of shared burden of proof will not be applied in administrative law and criminal proceedings.

⁹⁴ Võrdõiguslikkuse seadus (Gender Equality Act) Riigi Teataja I, 21.04.2004, 27, 181.

Discrimination in work life has been defined in § 6. As it has been a very common practice in Estonia, it is important that § 6 section 2 includes in the definition of discrimination in the workplace restrictions based upon women due to pregnancy and motherhood.

The employer is obliged to give written explanations about the person who was preferred to him/her for the advertised job. This explanation has to include information regarding the selected person's work experience, education, other skills relevant for carrying out the work, other skills or reasons that might have made the chosen candidate a better one. (§ 7). The employer has the obligation to respond in writing to such complaints within 10 work days.

The Act places several obligations regarding the promotion of non-discrimination to State and local municipalities' offices and, in particular, to employers. (§ 9-11).

Disputes about the incidents and claims of discrimination will be solved in courts or in settlement procedure by the Office of the Legal Chancellor. (§ 12). The Act also recognizes the claim for monetary compensation, including compensation for non-material damages ('a reasonable amount of money'). (§ 13 section 2).

The Act establishes the Commissioner for Gender Equality (soolise võrdõiguslikkuse volinik). In reality, the Ministry for Social Affairs has not yet found the appropriate person to be suggested for the position of the Commissioner. The Commissioner checks on the implementation of this Act and in this capacity, acts as independent and impartial specialist. (§ 15). She/he observes in the official capacity the fulfilment of the requirements set out in this Act and completes analysis about the status of women and the implementation of equal rights. Moreover, the Commissioner delivers opinions in individual complaint procedures. The reasoned opinion in an individual case must be delivered within two months (§ 17). The Act does not specify what legal consequences such an opinion delivered by the Commissioner would have; it seems that no real binding consequences emerge out of an opinion.

Positive aspects

See above.

Good practices

See above.

Reasons for concern

Estonia has enough room to improve in achieving gender equality. However, important steps in the positive direction were made in 2004.

Article 24. The rights of the child

Other relevant developments

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Amnesty International echoed in its annual report published in May 2004 previously articulated concerns of the UN Committee on the Rights of Children (see this network's last year's report on Estonia). Mistreatment of children in families and schools, and insufficient awareness of its impacts was mentioned in the UN report.

Legislative initiatives, national case law and practices of national authorities

The Legal Chancellor of the Republic of Estonia highlighted in his annual report of 2003-2004 problems and deficiencies related to children's right to education.⁹⁵ He concluded that local municipalities often establish additional restricting criteria for the access to kindergarten and school places that are not compatible with the constitution and other legal norms since discriminatory.⁹⁶ Complaints received by the Legal Chancellor revealed unsatisfactory state of affairs in some State schools, including Tallinn Ballet School. The Legal Chancellor also criticized the situation in Estonia's special schools for youngsters who do not fit in normal schools because of their aggressive behaviour or non-ability to study with the normal class. Different problems such as unawareness of pupils about their rights, disrespect for the right to privacy of the pupil, the existence of a special room for 'isolation' (in fact, punishment) in Kaagvere Special School, etc were singled out by the Legal Chancellor as most significant yet symptomatic problems.⁹⁷

Furthermore, the Legal Chancellor continued to address in public the issues of school violence and juvenile suicides which have received a lot of coverage as problem areas by the media.⁹⁸

Positive aspects

Through the campaign initiated by the Legal Chancellor and followed by many other national institutions and NGOs, the awareness about the children's rights has increased considerably in Estonia.

The Ministry for Social Affairs carried in October and November out a public information campaign "Child is Not Toy".

Article 25. The rights of the elderlyParticipation of the elderly to the public, social and cultural life*Reasons for concern*

Estonia is a rapidly aging society. Although the government has recently adopted financial measures for encouraging the birth-rate, the number of deaths still outnumbers the number of births. Social scientists claim that if a society has elderly people more than 7 % (65+), it is considered aging. In Estonia, elderly individuals make up ca 15,9 % of the population. According to an authoritative population prognosis conducted by the UN, the portion of the elderly may make up 25 % in 2030.⁹⁹

It seems that while the economic development of Estonia has generally been very rapid, the country has not been equally successful in guaranteeing the benefits of this development to its elderly.

The pensioners in Estonia have argued that the low level of pensions is caused not only by the scarcity of resources but also because of priorities set by the politics. The proportion of

⁹⁵ Õiguskantsleri 2003.-2004.aasta tegevuse ülevaade, Tallinn, 20 September 2004.

⁹⁶ Ibid., p. 51.

⁹⁷ Ibid., pp. 60-67.

⁹⁸ Ibid., pp. 67-68.

⁹⁹ Data from the website of the Ministry for Social Affairs, www.sm.ee.

pensions in the Estonian budget is arguably considerably lower than in the country's more prosperous Western European counterparts.

Article 26. Integration of persons with disabilities

Protection against discrimination on the grounds of health or disability

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Mr Alvaro Gil-Robles encouraged Estonia in his report on the human rights situation in the country, published on 12 February 2004, to strengthen the efforts aimed at providing services and rehabilitation programmes for persons with disabilities with a view to promoting their independent living; and provide increased opportunities for children with disabilities to attend regular schools.¹⁰⁰

Reasonable accommodations

Legislative initiatives, national case law and practices of national authorities

It was difficult to get relevant comprehensive data in that regard. One indicator, however, can be mentioned: The Estonian Chamber of the Disabled People has a questionnaire "Is the social protection of the disabled people in Estonia sufficient?" on its website www.epikoda.ee. Of 587 respondents, 1 person had answered "very good", 76 persons (12 %) sufficient, 311 persons (52 %) insufficient and 199 persons (33 %) very bad. As it may be inferred that most of the respondents were disabled individuals, the data reflects well their dissatisfaction with the current level of protection in Estonia.

Reasons for concern

See above. The overall level of protection is insufficient.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The Legal Chancellor of the Republic of Estonia highlighted in his annual report of 2003-2004 problems and deficiencies related to persons with disabilities.¹⁰¹ The Legal Chancellor concluded on the basis of complaints that he received that one of the main problems that individuals with disabilities face is the superficial attitude of the executive power towards them. There were also complaints about conditions and attitudes in caretaking facilities that disabled persons are cut off from information and their opinion is not heard to. The Legal Chancellor also suggested that Estonia should create (and finance) a system that would help the disabled persons to reintegrate in the society.¹⁰²

Positive aspects

The raise of awareness about the issue initiated by the Legal Chancellor.

¹⁰⁰ Report, CommDH(2004)5, p. 21.

¹⁰¹ Õiguskantsleri 2003.-2004.aasta tegevuse ülevaade, Tallinn, 20 September 2004.

¹⁰² Ibid., p. 69.

Reasons for concern

See the analysis of the Legal Chancellor.

CHAPTER IV : SOLIDARITY

Article 27. Workers' right to information and consultation within the undertaking

Workers' information on the economic and financial situation of the undertaking

Reasons for concern

No major negative cases have been reported in 2004. It may well be, however, that in many cases, *inter alia* due to the relatively high unemployment, workers in Estonia are even not aware of their fundamental rights, including the right to information and consultation.

Article 28. Right of collective bargaining and action

Intervention of the judiciary into collective actions

Legislative initiatives, national case law and practices of national authorities

It is the courts' responsibility to declare strikes illegal (Section 23 of the Collective Labour Disputes Resolution Act). However, so far there have been no relevant cases.

The right of collective action (right to strike) and the freedom of enterprise or the right to property

Legislative initiatives, national case law and practices of national authorities

From 23-29 September 2004 the biggest strike since the restoration of Estonia's independence in 1991 took place. The railway conductors achieved through this strike an increase of their salaries from 9-15 %. The strike was conducted peacefully and without major incidences with the exception of the Estonian Railways (Eesti Raudtee) employees preventing the strike leader to enter the wagon depot in Tapa. The support of the Estonian population to the strikers was very high.¹⁰³

The right of collective action (right to strike) and the continuity of public services

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Section 21 of the Collective Labour Disputes Act (*Kollektiivse töötüli lahendamise seadus*) prohibits strikes in government agencies and other state bodies and local authorities, the defence forces, other national defence organisations, the courts, and fire fighting and rescue services. In such cases, collective disputes must be settled by negotiation, mediation or the courts. Strikes that interfere with the activities of the courts are unlawful. (Section 22).

The European Committee on Social Rights in its 2004 conclusions on Estonia admitted that in the light of Article G of the revised Charter the right to strike of civil servants may be restricted because they perform duties affecting public interest or national security.. However, the Committee found that a denial of the right to strike to civil servants as a whole cannot be deemed in conformity with Article 6 §4 of the Revised Charter.

¹⁰³ See eakl.ee/uudised

Legislative initiatives, national case law and practices of national authorities

The Confederation of Estonian Trade Unions sent in November 2004 letters to the European Trade Unions Confederation (ETUC) and the International Confederation of Free Trade Unions (ICFTU) asking their support in achieving the liquidation of total ban for the right to strike by the employees in the public services sector.¹⁰⁴

Reasons for concern

The rapporteur agrees with the analysis of the European Committee and the Trade Unions.

Article 29. Right of access to placement servicesAccess to placement services*International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up*

The European Committee of Social Rights in its 2004 conclusions on Estonia took note of the activities of the Estonian Labour Market Board. However, it found that as more than half of the labour market policy spending has been devoted to unemployment benefits for the reference period, an active employment policy was not adequately developed in Estonia. It was requesting Estonia to provide further information on measures taken to strengthen the active labour market policy and pending receipt of the information requested, deferred its conclusion.

Reasons for concern

The rapporteur joins with the analysis (and critic) of the Committee.

Article 30. Protection in the event of unjustified dismissalReasons for dismissals*Legislative initiatives, national case law and practices of national authorities*

Unfortunately, no such statistics were available at the time of writing this report.

Reasons for concern

Employers are traditionally stronger than employees in countries with the history of transition. Therefore, they also have more influence on labour contracts, and their interpretation. In Estonia, it is reported that many employers write in labour contracts illegal clauses, and clauses that essentially force the employee to give up some of his or her essential rights. The mechanisms for fighting this kind of behaviour are sometimes insufficient since the employers as the economically stronger side tend to have stronger arguments in economically harder and more competitive times.

¹⁰⁴ www.eakl.ee, news 11.11.2004.

Compensation due in the event of an unjustified dismissal

Legislative initiatives, national case law and practices of national authorities

Estonian legislation foresees compensation for employees in the event of an unjustified dismissal.

Reasons for concern

Although legislation in itself offers quite satisfactory protection, its implementation is sometimes not effective, especially when strong economic disparities come in play.

Article 31. Fair and just working conditions

Health and safety at work

Legislative initiatives, national case law and practices of national authorities

On 18-22 October 2004 the European week for health and safety at work was carried out in Estonia (just as in other member states). The week raised public awareness about the health and safety hazards at work. This is a particularly welcome development since the number of accidents at work is comparatively higher in Estonia than in older EU member states. Moreover, it can be inferred that the comparatively lower life expectancy in Estonia is inter alia due to often unsatisfactory work safety conditions in Estonia.

Article 32. Prohibition of child labour and protection of young people at work

Protection of minors at work

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

In Estonia, the Employment Contracts Act (1992) provides that a person of 15-18 years may enter employment with the written consent of a parent or guardian provided that the work does not endanger the minor's health, morals or education. Minors between the ages of 13 and 15 years may be employed with the written consent of a parent or guardian and the Labour Inspectorate in light work as set out in a list contained in Government Regulation No. 214 of 22 July 1992, if the work does not endanger the health, morality or education of the minor. Minors of 13 to 15 years may be employed in work not contained on the above-mentioned list only with the additional consent of the health care services.

As the Employment Contracts Act does not apply to work done in family enterprises, domestic work or on family farms, the European Committee on Social Rights in its 2004 conclusions on Estonia noted that the minimum age for unemployment and the rules applying to the employment of persons under 15 years of age did not apply. The Committee held that this situation was not in conformity with the Revised Charter which requires that the guarantees laid down in Article 7 § 1 be extended to all forms of economic activity irrespective of the status of the worker. A representative of the Ministry of Social Affairs, Ms Malvet, has argued that the Ministry was surprised by this critic since another Estonian law, the Children Protection Act prohibits all kinds of exploitation.¹⁰⁵

¹⁰⁵ See *Euroopa sotsiaalhartaat rikkuv Eesti sattus must nimekirja* (Estonia, in Violation of the European Social Charta, was Entered into a Black List), Eesti Päevaleht, 8.10.2004.

The working time of minors is set out in the Working and Rest Time Act (2001). The Committee criticized that children working in family enterprises, on family farms or as domestic workers were excluded from the protection of the Working and Rest Time Act 2001.

Reasons for concern

See the critique above.

Article 33. Family and professional life

Other relevant developments

Positive aspects

The Minister for Population Affairs, Mr Paul-Eerik Rummo, has at a recent press conference on 27 December 2004 declared that the Parental Compensation Act has during its first year in operation proved to be “extremely successful”. The State expected 400 additional births in 2004 but in reality, there were more than 800 additional births in 2004 that can be linked with the adoption of the Act’s financial guarantees.¹⁰⁶ However, the death rate in Estonia continues to be higher than the birth rate.

Good practices

See above.

Reasons for concern

It remains a concern that women, especially those with little children, end up working more and having less leisure time in Estonia. A recent international time budgeting monitoring demonstrated that average work day of a woman together with homework is 10,5 hours while for man it is 9 hours.¹⁰⁷ When compared to men, women have less free time during their whole life, not depending on their family type or age.

Article 34. Social security and social assistance

Social assistance and fight against social exclusion (in general)

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The European Committee on Social Rights in its 2004 conclusions on Estonia concluded that Estonia did not comply with Article 12 § 1 of the Revised Charter as the level of the state unemployment allowance was “manifestly inadequate”. Pursuant to Section 6 para. 2 of the Unemployed Persons Social Protection Act the rate of the state unemployment allowance shall be established by the Government. This figure has been 400 EEK (about 26 EUR) per month which the Committee considered extremely low and, in view of the poverty indicators, “manifestly inadequate”.

Moreover, The Committee considered in the same report social assistance benefits inadequately low. The Committee criticized that a single person with no other disposable income is entitled to a monthly subsistence benefit of 32 EUR and observed that according to

¹⁰⁶ www.rahvastikuminister.ee

¹⁰⁷ See website of the Ministry for Social Affairs, www.sm.ee

Eurostat, the poverty threshold defined as 50 % of median equivalised income (single person household) was about 79 EUR per month in 2000. The Committee referred to the fact that the subsistence minimum calculated by the Estonian Statistical Office was 1 306 EEK (83 EUR) per month in 2001 and a national poverty line developed by researchers at Tartu University was 1 488 EEK (95 EUR) in 2001. The Committee emphasized that social assistance must enable recipients to meet basic needs in an adequate manner and concluded that insofar as the subsistence benefit falls far below the poverty threshold and is even lower than the monthly cost of a minimum food basket as calculated by the Estonian Statistical Office, this benefit did not satisfy the requirements of the Revised Charter (Article 13 § 1) and was “manifestly inadequate”.

Reasons for concern

See the above critique with which the rapporteur joins.

The most worrisome aspect of Estonia’s development continues to be the prevailing poverty among a significant portion of the population. A publication of the Ministry for Social Affairs “Social Sector in Numbers 2003”¹⁰⁸ points out that in 2002, 34 % of the children or 99 000 children lived below poverty line. Outside the poverty risk were only 52 % of the children. 23 % families or 132 000 families lived below poverty line. Outside the poverty risk lived 58 % of the families. The methodology of the calculation took into account minimal costs for food, housing, necessary costs of clothing and transport.

Unless Estonia can improve those indicators in the near future, the implementation of most fundamental rights in the country will be in peril.

Measures promoting the right to housing

Legislative initiatives, national case law and practices of national authorities

On 21 January 2004 the constitutional review division of the Supreme Court declared unconstitutional a provision in the Social Assistance Act that had been in force from 1 January 2002 until 5 September 2003. The provision had stipulated that individuals in need who were eligible for State support under the Social Assistance Act could not be compensated housing expenses when their rate of social assistance was determined. The Court concluded that such eligible individuals are also entitled to receive assistance in the amount of the established minimum housing expenses.

On 15 June 2004, the final restrictions of rent control were liquidated by the Parliament. The President of the Republic refused to proclaim the law, arguing that the new law violates the right to housing and further deepens social inequality. Without rent control for apartments that were subject to restitution, the President argued that the right of housing as foreseen in the UN Declaration of Human Rights could not be guaranteed in Estonia. However, the Supreme Court finally decided on 2 December 2004 that the liquidation of the rent control by the parliament had not violated fundamental rights.¹⁰⁹ The Court argued that the individuals living in the apartments that were given back to their pre-1940 owners via restitution did never have a legal guarantee for expectation of rent control. The law was finally proclaimed

¹⁰⁸ *Sotsiaalministeerium arvudes 2003*, Tallinn.

¹⁰⁹ Case no. 3-4-1-20-04, *Vabariigi Presidendi taotlus kontrollida Elamuseaduse ja Eesti Vabariigi omandireformi aluste seaduse vastavust põhiseadusele* (The Request of the President of the Republic to Control the Correspondence of the Housing Act and the Republic of the Estonia Property Reform Act to the Constitution).

by the President. It will become operative 10 days after its publication in the State Gazette which has not happened yet at the time of this writing.

Reasons for concern

The problem of the so-called 'forced renters' (sundüürnikud) affects many people and is a consequence of the Soviet occupation. However, as the principled decision for property restitution was taken in early 1990s, it would not have helped to uphold the rents artificially for even longer. Although the protests about the liquidation of rent control are very understandable, it is difficult to maintain that fundamental rights are unequivocally violated by this political development.

Altogether, however, deficiencies remain in guaranteeing the right to adequate housing in Estonia.¹¹⁰

Article 35. Health care

Access to health care

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Mr Alvaro Gil-Robles, the Council of Europe Commissioner for Human Rights, recounts in his report on Estonia, published on 12 February 2004 the information and complaints brought by NGOs. 6 % of the population are not covered by medical insurance, and therefore have access only to emergency medical care. Those who are covered by the insurance, face problems due to the fact that a person cannot get treatment outside the place of his or her official residence, which is particularly problematic for those who temporarily work outside his or her place of residence.¹¹¹

As far as patients' rights are concerned, a law on patients' rights has not yet been adopted. There is no complaint procedure available for patients. Mr Gil Robles encouraged in his report an early adoption of such a law, with the establishment of a commission to examine possible compensation claims by patients.¹¹²

Legislative initiatives, national case law and practices of national authorities

The Legal Chancellor analyzed in his annual report for 2003/2004 complaints filed with regard to the providing of health care in Estonia.¹¹³ On the basis of complaints received, the Legal Chancellor concluded that the insufficiency of information for citizens and the insufficient implementation of existing legal acts remain problems. He also addressed specific problems regarding health care in schools criticizing the fact that there is no specific legal act (law) that would regulate health care in schools.¹¹⁴ He concluded that the regulation provided in the Contagious Diseases Prevention and Liquidation Act¹¹⁵ was unconstitutional in the part

¹¹⁰ See Access to Housing for Vulnerable Groups in Estonia [study = uurimus] / Anneli Kährrik, Ene-Margit Tiit, Jüri Kõre, Sampo Ruoppila ; PRAXIS Centre for Policy Studies ; ordered by Ministry of Social Affairs of Estonia ; financed by European Commission. – Tallinn : PRAXIS, 2003 (August). – 91 p.

¹¹¹ Report, CommDH(2004)5, p. 19. See also K. Ehin, *Nakkusohhtlikud EV haigekassakaardid* (Contagious Medical Insurance Certificates of the Republic of Estonia), Postimees 10.04.03.

¹¹² Report, *ibid.*, p. 19.

¹¹³ Õiguskantsleri 2003.-2004.a tegevuse ülevaade, Tallinn, 20 September 2004, p. 74 et seq.

¹¹⁴ *Ibid.*, p. 75.

¹¹⁵ Nakkushaiguste ennetamise ja tõrje seadus, RT I 2003, 26, 160.

where it subjected a person ill with a contagious disease to compulsory cure.¹¹⁶ Moreover, the regulation of health care compensation for dental services had been unconstitutional that it extended the requirements for being eligible for health care compensation to the existence of bank account in Estonia.¹¹⁷

Reasons for concern

See above.

Drugs (regulation, decriminalisation, substitutive treatments)

Reasons for concern

Extensive consumption of drugs is one of the most pervasive social problems in Estonia. However, recently the police have started to deal in a more determined way with drug-related crimes.

Other relevant developments

Reasons for concern

The level and indicators of health among the Estonian population remain visibly below the average EU indicators.¹¹⁸ This is due to health habits and awareness of the population, difficulties of transition, poverty and to some extent (and connected to the factors mentioned before) the quality and availability of health care.

I would like to point out in this context a negative development of health situation in Estonia. According to the annual report of the European Monitoring Centre for Drugs and Drug Addiction, published on 25 November 2004, Estonia alongside with Latvia, Russia and the Ukraine is among the countries with the fastest growing HIV epidemics in the world. Estonia is the country with the highest reported number of HIV infections per capita in Europe. HIV incidence peaked in 2001, at rate of 991 cases per million population. The trend has fallen thereafter but continues to be very high. A worrying recent development has been reports of the trafficking of fentanyl, a synthetic opiate that is up to 100 times more potent than heroine. Estonia is among the countries bordering Russia where recent seizures have been reported.¹¹⁹ This information I consider important to mention at the outset under 'human dignity' since it explains quite a lot about the background of the main fundamental rights problems in Estonia – the over imprisonment, the health system crisis, the minority rights aspect, etc. Note that the Russian minority, especially in North Eastern part of Estonia and Tallinn is particularly affected by the spread of drugs and HIV.¹²⁰ In response, the Estonian Government adopted in January 2002 an ambitious National HIV/AIDS prevention programme for 2002-2006 which aims at stopping the spread of the virus and insuring the high-quality treatment for those infected with HIV.

¹¹⁶ Õiguskantsleri 2003.-2004.a tegevuse ülevaade, Tallinn, 20 September 2004, p. 79.

¹¹⁷ Ibid., p.80-82.

¹¹⁸ Estonian report for EUROSTAT pilot project 2001 : public health : [overview] / Ministry of Social Affairs of Estonia, Statistical Office of Estonia, National Institute for Health Development. – [Tallinn, 2004]. – 201 p.

¹¹⁹ <http://annualreport.emcdd.eu.int/download/ar2004-en.pdf>

¹²⁰ See A. Maimets, *Euroopa mureseb narkomaania pärast Eestis* (Europe Worries About Drug Addiction in Estonia), Postimees, 29.11.2004. (Interview with Mr Alain Wallon, leader of the working group in EMCDDA).

Article 36. Access to services of general economic interest

Access to services of general economic interest in the economy of networks: transports, posts and telecommunications, water-gas-electricity

Legislative initiatives, national case law and practices of national authorities

Estonia is not a densely populated country. Its population and economic resources have increasingly accumulated in the capital city, Tallinn where 1/3 of the country's population lives. Water, energy and telecommunications are well available all over the country. The rapid spread of the internet and other new technologies (such as mobile telephones) in the country has promoted social and territorial cohesion in the country. It has even become more popular to live in the countryside and work in Tallinn. However, energy is not equally available all over Estonia in the sense that the costs of establishing e.g. electricity in some of the more remote countryside regions are very high and must be borne by the consumer. Post is well available accessible all over the country. However, increasing gasoline and labour costs have made the transport, including the public transport more expensive. Throughout the 1990s and early 21st century, one indicator of the recession in the public transport sector has been the cutting off of railway passenger services in Estonia. Combined with unemployment, social disparities, this has further deepened the sense of seclusion and marginalization in some countryside areas.

Reasons for concern

The recession of railway transport in Estonia has added to the sense of seclusion and marginalization in certain countryside areas of Estonia.

Article 37. Environmental protection

Right to a healthy environment

Legislative initiatives, national case law and practices of national authorities

On 29 September 2004, a government commission led by the Prime Minister Mr Juhan Parts worked out an ambitious strategy for Estonia's nature and its uses until 2030: "Säästev Eesti 21" ("Sustainable Estonia 21").

On 20 July 2004 a regulation was issued by the Minister for the Environment which obligates all car producers to take from the last individual owner back their old cars for procession.¹²¹ The regulation aims to prevent leaving old cars stay in the nature. A similar law has been drafted by the Ministry for the Environment for the old electrical machines and equipment.

Article 38. Consumer protection

Protection of the consumer in the law of civil procedure

Legislative initiatives, national case law and practices of national authorities

The matters are dealt with by the Estonian Consumer Protection Board that was founded in 1994. In January 2004, the Board had 64 employees. Its budget for 2003 was 9,4 Mio. EEK

¹²¹ *Romusõidukite käitlusnõuded*, Riigi Teataja Lisa, 26.07.2004, 97, 1527.

(600 000 EUR). The Board continued successfully in 2004 to take up ‘presidential’ lawsuits on behalf of consumers.¹²²

Information of the consumer

Legislative initiatives, national case law and practices of national authorities

The Estonian Consumer Protection Board is the state agency that is responsible for the general information of the consumer. The work of the Board has been quite visible and its employees have spread information on consumer rights in 2004. The Board has initiated a product safety campaign and in cooperation with the leading non-tabloid daily newspaper ‘Postimees’ has created a special information booklet on consumer rights (“Kasu”). The Board initiated the litigation of cases in the interests of the consumers, up until the Supreme Court.¹²³

¹²² www.consumer.ee

¹²³ See the Supreme Court case no. 3-1-1-32-04, 28.09.2004.

CHAPTER V : CITIZEN'S RIGHTS

Article 39. Right to vote and to stand as a candidate at elections to the European Parliament

Right to vote and to stand as a candidate at elections to the European Parliament

Legislative initiatives, national case law and practices of national authorities

Right to vote and to stand as a candidate at elections to the European Parliament in June 2004 was properly guaranteed. In comparison to non-citizens/stateless persons, there are not yet too many non-national residents in Estonia who at the same time are nationals of another EU state. However, there were no complaints in 2004 that their electoral rights were not guaranteed.

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

Participation of foreigners in public life at local level

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Estonia has not yet become a party to the Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level.

Legislative initiatives, national case law and practices of national authorities

No municipal elections took place in 2004.

Right to vote and to stand as a candidate for EU citizens non nationals of the member State

Legislative initiatives, national case law and practices of national authorities

There have not occurred significant obstacles (yet). No municipal elections took place in 2004.

Right to vote and to stand as a candidate at municipal elections for third country nationals

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Although Estonia has been criticized internationally for the too high number of stateless persons, it has been simultaneously given credit for the decision to grant to permanent residents among stateless persons and non-citizens for third country nationals the right to vote at municipal elections.

Legislative initiatives, national case law and practices of national authorities

See above. Since mid-1990s, third country nationals and stateless persons who are permanent residents in Estonia have the right to vote at municipal elections. However, this right does not extend to the right to stand as a candidate.

Positive aspects

See above.

Article 41. Right to good administration

This provision of the Charter will only be analysed in the Report dealing with the law and practices of the institutions of the Union.

Article 42. Right of access to documents

This provision of the Charter will only be analysed in the Report dealing with the law and practices of the institutions of the Union.

Article 43. Ombudsman

This provision of the Charter will only be analysed in the Report dealing with the law and practices of the institutions of the Union.

Article 44. Right to petition

This provision of the Charter will only be analysed in the Report dealing with the law and practices of the institutions of the Union.

Article 45. Freedom of movement and of residenceProhibition to enter certain zones or portions of the national territory during particular events*Legislative initiatives, national case law and practices of national authorities*

No such events took place, except some State visits which may have caused disturbances in the traffic.

Estonia has inner-EU border only with Latvia. The practice is only forming and is too early to be commented upon.

Other relevant developments*Legislative initiatives, national case law and practices of national authorities*

On 14 April 2004 “The Act of Amending the Alien Act and Due to It Other Acts” was passed by the parliament.¹²⁴ The Act gives a new updated shape to regulations of entry in Estonia, both other EU (yet not Estonian) citizens and non-EU foreigners. The Act specifies reasons and conditions of issuing visas and residence permit, diminishing the subjective role of the officials making the respective decisions.

¹²⁴ Välismaalaste seaduse muutmise ning sellest tulenevalt teiste seaduste muutmise seadus, RTI, 21.04.2004, 28, 189.

Article 46. Diplomatic and consular protectionProtection of EU citizens by diplomatic and consular representations abroad

Legislative initiatives, national case law and practices of national authorities

During the natural catastrophe in South Eastern Asia around Christmas 2004, the Estonian government was criticized in media by tourists affected by the catastrophe for not having been able to deliver support to/contact actively the Estonian victims. Estonia has yet to make effort to improve the protection of its own citizens abroad, not to speak of other EU countries' citizens.

Decision 96/409/CFSP of 25 June 1996 on the establishment of an emergency travel document

Legislative initiatives, national case law and practices of national authorities

Estonia seems to comply with the Decision 96/409/CFSP of 25 June 1996 although the success of the implementation must yet crystallize in practice.

CHAPTER VI: JUSTICE

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

Access to a court

Legislative initiatives, national case law and practices of national authorities

Through the adoption of State Legal Aid Act in 2004 (see below), the access to a court was de facto facilitated for many people whose own means would not have enabled to initiate court proceedings in civil and administrative matters.

In the line of a parallel development, on 17 December 2003 the Estonian parliament Riigikogu adopted the Victim Aid Act.¹²⁵ The Act entered into force on 14 April 2004. The law enlarges the system of victim support services and increases the amount of compensation paid by the State to the victims.

Positive aspects

See above (the adoption of the State Legal Aid Act).

Liability of public authorities and immunities of jurisdiction or execution

Legislative initiatives, national case law and practices of national authorities

On 1 January 2004 modifications of the Legal Chancellor Act came into force which expands the authority of the Office of the Legal Chancellor by giving to the individuals the right to file complaints about activities of all organizations and individuals who fulfil public functions. Previously, the competence of the Legal Chancellor was restricted to the behaviour of State officials stricto sensu. This modification liquidates the feeling that had emerged that some organizations and individuals fulfilling State functions are somehow outside the usual controls applicable to the State offices. Therefore, the liability of 'private' persons fulfilling public authorities for their misconduct was made more real and visible.

Positive aspects

See the extension of the Legal Chancellor Act.

Legal aid / judicial assistance

Legislative initiatives, national case law and practices of national authorities

The funds allocated for free legal assistance have been increased. While in 2003 the sum foreseen for free legal assistance was 26,88 million kroons, it is 59 million in 2004. However, the Bar Association insists that the compensation paid for advocates who are giving free legal assistance is too low and, although significantly increased in 2004, the hourly rates continue to be inadequate for attorneys.

On 28 June 2004, the long-awaited "State Legal Aid Act" was passed by the parliament Riigikogu.¹²⁶ The Act extended the instances of State legal aid considerably. Any individual whose economic situation would not allow him/her to obtain legal services, is under

¹²⁵ Ohvriabi seadus, 17.12.2003, Riigi Teataja I 2004, 2, 3.

¹²⁶ Riigi õiguabi seadus, Riigi Teataja I, 15.07.2004, 56, 403.

conditions regulated by the Act entitled to State legal aid. (§ 6 section 1). However, a number of exceptions have been created when a person may not receive legal aid. (§ 7 section 1). The request to receive State legal aid will be presented to the court in civil, administrative or criminal matters. (§ 10 section 1). The court makes the respective decision whether and to what extent to free state funds for the legal aid. (§ 15 section 1). § 21-§ 24 of the Act regulate how and on what basis the State legal aid will be paid to the attorneys. An individual can also request State legal aid for civil proceedings in a Court of another EU member State and even for filing a complaint against Estonia in the ECHR. (§ 33 and 37).

The State Legal Aid Act will enter into force on 1 March 2005. (§ 49).

Positive aspects

The adoption of the State Legal Aid Act.

Good practices

See above.

Independence and impartiality

Reasons for concern

In 2004, Mr Märk Rask, a leading politician of the Reform Party and formerly a prominent attorney, was appointed by the parliament Riigikogu the President of the Estonian Supreme Court. Objections were raised to this nomination by political opponents. Among arguments raised was the politization of the Supreme Court and the fact that Mr Rask had previously no experience with working as judge. Doubts were raised whether Mr Rask could participate in court proceedings in matters that would involve controversies that Mr Rask previously opined upon as minister, parliament member and Reform Party leading figure.

While the appointment of Mr Rask can indeed be criticized as involving some potential threats to the independence of the judiciary, his appointment is more a result of the shortness of 'bench' of appropriate candidates than the decline of Estonian democracy as such. While Mr Rask's previous political positions were prominent, he received a wide parliamentary support for the appointment as President of the Supreme Court, also from opposition parties, which can be taken as recognition of Mr Rask's leadership skills and his relatively independent stance while he was active in politics.

Publicity of the hearings and of the pronouncement of the decision

Legislative initiatives, national case law and practices of national authorities

In Estonia, there have been no problems with the publicity of the hearings and of the pronouncement of the decisions. On the contrary, see above the analysis under the right to data protection section which exposes that sometimes the publication of details in sensitive court cases/judgments by the Ministry of Justice in the Internet has violated the affected individuals' right to privacy.

Reasonable delay in judicial proceedings

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

In a judgment of 2 December 2003, Treial v. Estonia (Appl no. 48129/99), the European Court of Human Rights found Estonia in the violation of Article 6 § 1 in a case involving the length of divorce proceedings. This case was reported in this rapporteur's last year's report.

Reasons for concern

While there is probably no country where the situation cannot be improved with respect to the length of the court proceedings, the Estonian courts have generally done relatively well in that regard. The case of Treial does not seem, at least not right now, to be symptomatic of a greater ill that should be addressed by the Network.

Right to the enforcement of judicial decisions

Legislative initiatives, national case law and practices of national authorities

No major problems have been reported.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The Supreme Court was confronted in 2004 with the judgment of the ECHR in Veeber v Estonia (2). The Supreme Court found on 6 January 2004¹²⁷ that the legislator had left in the Code of Administrative Procedure the domestic impact of the judgments of the ECHR. Unregulated. Notwithstanding the lacuna in the Code of Administrative Procedure, the Supreme Court based its argument on the constitution and decided to reopen the domestic procedure in the matter decided upon by the ECHR. The Supreme Court thus sent a signal to the legislator that it should rapidly consider regulating the questions related to the law of procedure and the reopening of procedure in the cases decided against the State by the ECHR. The Legal Chancellor of Estonia paid in his annual report of 2003/2004 also sufficiently attention at the issue and urged the parliament to adopt the respective procedural regulations.¹²⁸

Other development having impact on the right to an effective remedy and to a fair trial is the adoption on 28 June 2004 of amendments to the "State Attorney Act".¹²⁹ The Act consolidates and organizes the status of state attorneys in the criminal prosecution system and creates a clearer yet more hierarchical structure of the State Attorney offices. It is too early to tell how those changes will influence the work performance of the State attorneys – and the conduct of criminal proceedings.

Positive aspects

The Supreme Court managed successfully to guarantee the implementation of Estonia's international obligations in dealing with the judicial consequences of Veeber v Estonia (2).

¹²⁷ Cases no 3-3-2-1-04 and 3-1-3-13-03, Riigi Teataja III 2004, 4, 36.

¹²⁸ Õiguskantsleri 2003./2004.a tegevuse ülevaade, p. 30-32.

¹²⁹ Prokuratuuriseaduse muudatused, RTI, 06.09.2004, 66, 457.

Article 48. Presumption of innocence and rights of defence

Presumption of innocence

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

In the judgment delivered on 10 February 2004, the European Court of Human Rights found in the case Puhk v. Estonia (Appl. No. 55103/00) that Estonia had been in breach of Article 7 § 1 of the European Convention on Human Rights (retroactive application of criminal law, *nullum crimen nulla poena sine lege*). The defendant had been charged of tax offences and inadequate accounting. However, he had been convicted under Article 148-1§ 7 of Criminal Code of acts committed prior to its entry into force on 13 January 1995. The Estonian court had applied criminal law retroactively. The case bears close resemblance to another similar case from Tartu, decided a year ago (Veeber v. Estonia (No.2)).

Legislative initiatives, national case law and practices of national authorities

As a consequence of the judgment of the ECHR, the Supreme Court of the Republic of Estonia decided to reopen the case of Puhk.¹³⁰

Reasons for concern

As deplorable as the violation of *nullum crimen* principle by Estonia in Puhk was, there is no evidence that this kind of violation would have been symptomatic of a greater ill or tendency.

The rules governing the evidence in criminal matters

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Mr Gil-Robles, the Council of Europe Commissioner for Human Rights expressed in his report on Estonia, published on 12 February 2004, concern that these provisions, which do not provide adequate guarantees in situations where the advocate is acting as a defence lawyer, may significantly weaken the position of the defence and the confidentiality attached to the lawyer-client relationship. In the view of Mr Gil-Robles, they also jeopardize the principles of equality of arms and rules relating to the professional secrecy of advocates. This may, Mr Gil-Robles further concluded, have serious implications for the ability of the accused to adequately prepare his defence, and thereby for the effective exercise of the rights guaranteed in Article 6.3 and Article 8 of the European Convention on Human Rights. The Commissioner encouraged that these provisions be reviewed in order to ensure that the rights of the defendants are respected.¹³¹

Legislative initiatives, national case law and practices of national authorities

The Bar Association has expressed concerns in 2004 over the provisions of the Code of Criminal Procedure relating to the search of advocates' offices and seizure of confidential data in the possession of advocates. According to the new Code of Criminal Procedure, in force since July 2004, a search may be conducted in the advocate's office, inter alia, for the purposes of confiscating a document necessary for the adjudicating of a criminal matter, with the permission of a judge or a court. The attorneys have criticized that the law does not define

¹³⁰ 22.11.2004, Case no. 3-1-3-5-04 (Puhk).

¹³¹ Report by Mr Gil-Robles, CommDH(2004)5, p. 14.

any terms upon which the court may refuse a search permit of advocates offices and seizure of confidential data, and that there is no right to appeal such decision.

Moreover, the Bar Association has expressed concerns regarding some illegal taping practices by the Defence Police. In a recent case, officials of the Defence Police had not only taped a phone conversation by a tax official charged in criminal offence and his attorney but also included the transcript of this phone conversation in the materials prepared for the court proceedings.¹³²

Reasons for concern

See above the critique expressed by the Bar Association.

The right to freely choose one's defence counsel

Legislative initiatives, national case law and practices of national authorities

No significant violations or problems have been reported in that regard.

The right to an interpreter

Legislative initiatives, national case law and practices of national authorities

As Estonian language is in global terms spoken by a very small number of people, Estonians are used to foreign languages and other people not being able to understand or speak their language. Therefore, Estonia has had not problems with safeguarding the right to an interpreter to the individuals not understanding the Estonian language in the court proceedings. However, Estonia has not yet been confronted with a massive immigration from non-European countries.

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

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The Legal Chancellor has recently paid a lot of attention to the police law in Estonia. During the spring of 2004, an international scientific conference was convened by the Legal Chancellor in Tallinn. The Legal Chancellor took a systemic approach to the laws regulating police activities and came in his 2003/2004 report to the following conclusion: "Estonian police law is not in accordance with the requirements of democracy and rule of law. There are many contradictory and ambiguous stipulations in the laws and lacunae that prevent the appliers of law to find legally correct solutions. This causes a situation where people's fundamental rights and freedoms are not sufficiently protected and the legal order guaranteed while it is difficult to accuse of that the appliers of law."¹³³ The Legal Chancellor thus called upon the parliament to offer more up-to-date, coherent and systematic legislative solutions in the field of police law.

Reasons for concern

See above.

¹³² R. Berendson, Advokaat süüdistab Kapot pealtkuulamises (Attorney Accuses the Defence Police of Secret Taping), Eesti Päevaleht 26.10.2004.

¹³³ *Õiguskantsleri 2003.-2004.a tegevuse ülevaade*, Tallinn, 2004, p. 19.

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

No negative developments have occurred. Neither have there been worrisome signals from the practice in 2004.

APPENDIX: CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION (O.J. C-364 OF 18.12.2000)

CHAPTER I: DIGNITY

Article 1: Human dignity

Human dignity is inviolable. It must be respected and protected.

Article 2: Right to life

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

Article 3: Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
 - a) the free and informed consent of the person concerned, according to the procedures laid down by law,
 - b) the prohibition of eugenic practices, in particular those aiming at the selection of persons,
 - c) the prohibition on making the human body and its parts as such a source of financial gain,
 - d) the prohibition of the reproductive cloning of human beings.

Article 4: Prohibition of torture and inhuman or degrading treatment or punishment

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

Article 5: Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

CHAPTER II: FREEDOMS

Article 6: Right to liberty and security

Everyone has the right to liberty and security of person.

Article 7: Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Article 8: Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

Article 9: Right to marry and right to found a family

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Article 10: Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

Article 11: Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

Article 12: Freedom of assembly and of association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

Article 13: Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

Article 14: Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

Article 15: Freedom to choose an occupation and right to engage in work

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Article 16: Freedom to conduct a business

The freedom to conduct a business in accordance with Community law and national laws and practices is recognised.

Article 17: Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.
2. Intellectual property shall be protected.

Article 18: Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.

Article 19: Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

CHAPTER III: EQUALITY**Article 20: Equality before the law**

Everyone is equal before the law.

Article 21: Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

Article 22: Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Article 23: Equality between men and women

Equality between men and women must be ensured in all areas, including employment, work and pay. The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Article 24: The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views

freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Article 25: The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

Article 26: Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

CHAPTER IV : SOLIDARITY

Article 27: Workers' right to information and consultation within the undertaking

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Community law and national laws and practices.

Article 28: Right of collective bargaining and action

Workers and employers, or their respective organisations, have, in accordance with Community law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

Article 29: Right of access to placement services

Everyone has the right of access to a free placement service.

Article 30: Protection in the event of unjustified dismissal

Every worker has the right to protection against unjustified dismissal, in accordance with Community law and national laws and practices.

Article 31: Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.

2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Article 32: Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations. Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Article 33: Family and professional life

1. The family shall enjoy legal, economic and social protection.

2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Article 34: Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Community law and national laws and practices.

2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices.

3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient

resources, in accordance with the rules laid down by Community law and national laws and practices.

Article 35: Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

Article 36: Access to services of general economic interest

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaty establishing the European Community, in order to promote the social and territorial cohesion of the Union.

Article 37: Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Article 38: Consumer protection

Union policies shall ensure a high level of consumer protection.

CHAPTER V: CITIZENS' RIGHTS

Article 39: Right to vote and to stand as a candidate at elections to the European Parliament

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.

2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

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

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

Article 41: Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.

2. This right includes:

a) the right of every person to be heard, before any individual measure which would affect him or her

adversely is taken;

b) the right of every person to have access to his or her file, while respecting the legitimate interests of

confidentiality and of professional and business secrecy;

c) the obligation of the administration to give reasons for its decisions.

3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Article 42: Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents.

Article 43: Ombudsman

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

Article 44: Right to petition

Any citizen of the Union and any natural or legal person residing or having its registered

office in a Member State has the right to petition the European Parliament.

Article 45

Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.

2. Freedom of movement and residence may be granted, in accordance with the Treaty establishing the European Community, to nationals of third countries legally resident in the territory of a Member State.

Article 46: Diplomatic and consular protection

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

CHAPTER VI : JUSTICE

Article 47 : Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

Article 48: Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.

2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

Article 49: Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held guilty of any criminal offence on account of any act or omission

which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission

which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.

3. The severity of penalties must not be disproportionate to the criminal offence.

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

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

CHAPTER VII: GENERAL PROVISIONS

Article 51: Scope

1. The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers.

2. This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties.

Article 52: Scope of guaranteed rights

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

2. Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under

the conditions and within the limits defined by those Treaties.

3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

Article 53: Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in

their respective fields of application, by Union law and international law and by international agreements to which the Union, the Community or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Article 54: Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.