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

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

IN 2005

submitted to the Network by **Dr. Lauri MÄLKSOO**

on 15 December 2005

Reference: CFR-CDF/EE/2005

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CHAPTER I. DIGNITY

Article 1. Human dignity

Legislative initiatives, national case law and practices of national authorities

On 11 April 2005, an assistant judge of Tallinn City Court refused to register an Estonian satanistic congregation that calls itself "Black Venus Order". She relied on § 14 para. 2 point 2 of the Churches and Congregations Act according to which the register keeper may not include a congregation in the registry when the activities of the congregation endanger public order, health, morality, and other people's rights and freedoms. In the rationale of the decision, the assistant judge explained that Satanistic ideology does not repect the rights of other people as stipulated in Article 19 of the Estonian Constitution (human dignity, the prohibition of cruel and inhuman treatment).

Reasons for concern

Currently, human dignity as concept seems to be more a part of ethical-moral-religious rather than legally safeguarded discourse in Estonia. However, as the instance avbove indicates, courts and public authorities have started to pick up the concept and introduced it in the legal decicion-making.

Article 2. Right to life

Euthanasia

Positive aspects

Terry Schiavo's case in the U.S. made headlines in Estonia just as in the rest of the world. In Estonia, assisted suicide remains criminal delict.

Domestic violence

Positive aspects

In September 2005, the Body Shop´s campaign "Stop Violence in the Homes" was launched in Estonia. The campaign, initiated by Anita Roddick form the Body Shop, is simultanesously carried out in more than 20 countries.

The campaign coincides with the increased realization in Estonia – also on the state level - that domestic violence remains a huge problem in the society. Since 2004, domestic violence incidences are reflected in police statistics which has rised the level of criminal acts in Estonia. According to information provided by the Union of the Estonian NGOs (Eesti Mittetulundusühingute ja Sihtasutuste Liit), every year more than 40 000 women – every fifth woman - suffer from physical, sexual or psychological domestic violence every year in Estonia.[1]

Reasons for concern

The high level of domestic violence remains a concern.

[1] http://www.ngo.ee/6813, 27.09.2005.

Other relevant developments

Reasons for concern

The statistics revealed in December 2005 demonstrates that Estonia is one of the "bloodiest" nations, when counted per capita, in the EU. In fact, according to the data used, Estonia turned out to be the "leader" in murders per capita. 2003 statistics revealed that in Estonia, 10,4 murders were committed per 100 000 people; the average of the EU was 2,8 murders per 100 000 people. The police leaders admitted that Estonia`s dubious "leadership" position in this "ranking" was accurate; the only consolation they were able to offer was that in 2004 the ratio had dropped from 10,4 to 6,7 murders for 100 000 people in Estonia.

In 2005, several murders that took place on open streets in the capital city Tallinn – including the murder of a 16 year old schoolgirl Veronika Dari on her way to school on 11 October 2005 – have so far remained unsolved.

Article 3. Right to the integrity of the person

Rights of the patients

Reasons for concern

The awareness of the rights of the patients is still relatively low in Estonia. Quite characteristic is the title of the presentation held by the most recognized specialist of medial law in Estonia, Dr. iur. Ants Nõmper, held on 8 December 2005 in the Estonian Academic Lawyers' Society. The presentation had the title – "Doctor's Responsibility: Myth or Reality?" Nevertheless, with Estonia rapidly "Westernizing", both patients and doctors have become more aware of their rrespective rights and responsibilities.

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 and institutions for the detention of persons with a mental disability

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

A delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited Estonia from 23 to 30 September 2003. The respective report was adopted by the CPT at its 53rd meeting, held from 1 to 5 March 2004. Together with the response of the Estonian government[2], the CPT comprehensive report was made available to the public on 27 April 2005.[3]

The report contained in part quite harsh and strongly formulated critic of prisons conditions and practices in Estonia. The report discussed extensively information that had disturbed the CPT delegation most. On the basis of the witnessed deficiencies in Estonian prisons, the CPT adopted the following recommendations –

[2] CPT/Inf(2005)7.
[3] CPT/Inf(2005)6

Police establishments

Regarding ill-treatment, the CPT recommended that senior police officials regularly instruct police officers that ill-treatment will not be tolerated, all relevant information regarding alleged ill-treatment will be investigated; and perpetrators of ill-treatment will be subject to severe sanctions (para. 14); police officers to be reminded that no more force than is reasonably necessary should be used when effecting an apprehension and that once apprehended persons have been brought under control, there can be no justification for their being struck (para. 15); whenever criminal suspects brought before an investigating judge or public prosecutor at the end of the police custody or thereafter allege ill-treatment by the police, the judge or prosecutor should record the allegations in writing, order immediately a forensic medical examination and take the necessary steps to ensure that the allegations are properly investigated. Further, even in the absence of an express allegation of ill-treatment, the judge or prosecutor should order a forensic medical examination whenever there are other grounds to believe that a person brought before him could have been the victim of ill-treatment (para. 18); immediate steps to be taken to ensure that all police cells, including those in arrest houses, are adequately monitored (para. 20); in respect of every occasion on which inmates are removed from prison at the request of a police investigator, a formal record to be kept of the reason for their removal and of all measures taken during their presence on police premises (para. 22).

Regarding conditions of detention, the CPT recommended that all necessary steps to be taken to implement, without further delay, the CPT´s recommendations concerning material conditions of detention in police arrest houses. The strategy for improving conditions of detention should include regular independent inspections of the premises concerned (para. 32).

The CPT further recommended immediate steps to be taken to ensure that juveniles placed in arrest houses are accommodated separately from adult detainees. Juveniles detained for prolonged periods should be provided with a programme of educational activities (including physical education) (para. 32).

The CPT also recommended as a first step concerning the organisation of a regime of activities, reading matter to be provided to persons held in arrest houses. Consideration should also be given to permitting them to keep radios or television sets in their cells (para. 33).

The CPT further recommended that anyone held in an arrest house for a prolonged period should be permitted to maintain contacts with the outside world according to the same principles as those which should apply to a person held in prison (para. 33).

The CPT also recommended that the shortcomings observed in the cells at Põhja Police Department in Tallinn to be remedied (para. 35) and conditions of detention in all police establishments in Estonia to be reviewed (para. 35).

Regarding safeguards against the ill-treatment of persons deprived of their liberty, the CPT recommended the new Code of Criminal Procedure to be amended to include explicit reference to the right of notification of custody (para. 37); appropriate action to be taken to ensure that the right of notification of custard is rendered fully effective in practice, with respect to all categories of persons deprived of their liberty by the police (including administrative detainees). (para. 37); a doctor to be called without delay whenever a person in police custory requests a medical examination; police officers should not seek to vet such requests (para. 40); written information on rights to be given to all persons deprived of their liberty by the police, at the very outset of their deprivation of liberty (para. 41).

Prisons

Regarding ill-treatment, the CPT recommended that any future involvement in prisons of a special intervention squad to be monitored by an independent authority (e.g. senior judicial authorities) (para. 45); the necessary steps to be taken to ensure that, in respect of all investigations into possible ill-treatment by prison officers, the persons responsible for the investigation, as wella s tose actually carrying it out, are independent from those implicated in the events (para. 46); the Estonian authorities to continue to give high priority to the development of prison staff training, both initial and ongoing. In the course of such training, considerable emphasis should be placed on the acquisition of interpersonal communication skills (para. 48); steps to be taken at Tallinn Prison to ensure that the prison officers do not carry batons in full view of inmates (para. 49).

Regarding material conditions, the CPT recommended the Estonian authorities to rapidly devise and vigorously pursue a strategy for reducing the occupancy rates in the remand blocks of Tallinn Prison to no more than four persons per cell, always bearing in mind that the strategy should not have the side effect of transferring a problem from one establishment to another (para. 52); that the necessary repairs to be carried out to the installations and cells in the remand section at Tallinn Prison (para. 52); the authorities to strive to maintain a standard of at least 4 squaremeters of living space per prisoner in multy-occupancy cells, and and official capacities to be calculated accordingly (para. 53).

Regarding activities, the CPT recommended steps to be taken, as a matter of urgency, to radically improve t rgime activities for remand prisoners. The aim should be to ensure that remand prisoners are able to spend a reasonable part of the day outside their cells, engaged in purposesful activities of a varied nature (group association activities; work, preferably with vocational value; sport). The legislative framework governing remand imprisonment must be revised accordingly (para. 56); outdoor exercise facilities to be made sufficiently large to enable prisoners to exert themselves physically (para. 56); th practice of playing radio programme tuned to an unpleasantly high volume all day at Tallinn Prison to be discontinued (para. 57); the necessary steps to be taken to ensure that all prisoners at Tartu Prison have access to an appropriate range of work, educational, sports and recreational activities (para. 58); the regime applied to life-sentenced prisoners at Tartu Prison to be revised (para. 59).

Regarding health care services, the CPT recommended nursing resources at Tallinn Prison to be reinforced (para. 61); full and comprehensive record drawn up after a medical examination of a prisoner, whether newly-arrived or not (para. 64); existing procedures to be reviewed in order to ensure that, whenever injuries are recorded by a doctor which are consistent with a llegations of ill-treatment made by a prisoner, the record is brought to the attention of the relevant public prosecutor (para. 64); medical examinations of prisoners to be conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of prison officers (para. 65).

The CPT also recommended a very high priority to be attached to finding a suitable alternative to the Central Prison Hospital, which should enable it to be closed (para. 70); uniform regulations to be established for all prisons on the question of the frequency and duration of visits to remand prisoners by family members or other persons. The objective should be to offer the equivalent of a visit every week, of at least 30 minutes duration (para 71); steps to be taken that resort to instruments of physical restraint would be strictly restricted following suggestions of the CPT (para 80); all persons placed in a disciplinary cell to be allowed access to reading matter, which should not be limited to prison regulations and the Bible (para 81); the relevant authorities to ensure that all prisoners (both remand and sentenced), throughout the penitentiary system, are provided with precise written information on the avenues of complaint available to them (if necessary, prisoners should also be supplied with writing materials. Further, practical measures should be taken to ensure that complaints

can be transmitted confidentially (e.g. by providing complaint boxes accessible to prisoners, to be opened only by specially designated persons) (para. 82).

Psychiatric establishments

Regarding ill-treatment, the CPT recommended take urgent steps at Kernu Social Welfare Home to review the management of aggressive/violent residents. For this purpose, a specific policy should be elaborated and implemented in practice, aimed at reducing the risk of inter-resident violence (para. 89); all staff members at Kernu Social Welfare Home to be reminded that they have a duty to ensure the safety and physical integrity of residents and to protect them from other residents who might wish to cause them harm (para. 89).

Regarding patients'/residents' living conditions, the CPT recommended immediate steps to be taken at Ahtme Psychiatric Hospital to ensure that all patients whose state of health permits are offered at least one hour of outdoor exercise per day (para. 92).

Regarding staff and treatment, steps to be taken at Ahtme Psychiatric Hospital (as well as in other psychiatric establishments in Estonia) to ensure that all competent patients are placed in the position to give their informed consent to treatment in writing. For this purpose, they should be systematically provided with relevant information about their condition and the treatment prescribed for them (side effects, duration, etc.) Relevant information should also be provided to patients following treatment (results, etc.) (para. 97). The CPT also recommended steps to be taken at Kernu Social Welfare Home to ensure that: the nursing staff presence, especially at night and on weekends, is reviewed; this will almost certainly require increasing the overall complement of such staff; specialised training is provided for nursing assistants in dealing with residents with severe learning disabilities; the establishment is visited by a general practitioner and a psychiatrist at least once per week; every resident is subject to a medical examination promptly upon admission; rehabilitative services (psychology, physiotherapy, etc.) are provided (para. 100); steps to be taken at Kernu Social Welfare Home to ensure that the confidentiality of medical data is fully respected (para. 101).

Regarding restraint of agitated and/or violent patients/residents, the CPT recommended a written policy on the use of means of restraint and seclusion to be established both at Ahtme Psychiatric Hospital and Kernu Social Welfare Home and steps to be taken to ensure that the procedures followed in this connection are brought in line with the requirements set out by the CPT (para. 103 and 106); appropriate measures to be taken at Ahtme Psychiatric Hospital and Kernu Social Welfare Home to avoid involving residents in the restraint of a fellow-resident. Revolving episodes of acutely disturbed behaviour should be the exclusive responsibility of staff; ensuring that this is the case will require increasing the staff presence (para. 106).

Regarding safeguards, the CPT recommends the Estonian authorities to review the procedures for involuntary placement in psychiatric hospitals, in particular, steps should be taken to ensure that involuntary placement procedures in psychiatric hospitals offer guarantees of independence and impartiality, as well as of objective psychiatric expertise, more specifically, a court should seek an opinion from a psychiatrist outside the hospital concerned before deciding whether to prolong an involuntary placement beyond 14 days; patients who are admitted to a psychiatric hospital on an involuntary basis have the right to be heard in person by the court during placement/appeal procedures; the patient concerned is notified in writing of decicions on involuntary placement in a psychiatric hospital, informed about the reasons for the decision and the avenues/deadlines for lodging an appeal, and granted unlimited and unrestricted access to their legal representative/lawyer; indigent patients benefit from free legal representation and are exempted from court fees incurred in the context of judicial appeal/review procedures; patients themselves are able to request at reasonable intervals that the necessity for their placement be considered by a judicial authority (para. 114).

Furthermore, the CPT emphasized that the Estonian authorities take steps to ensure that residents who are placed in a social welfare home on an involuntary basis by court decicion have the right to be heard in person during placement/appeal procedures; the patient concerned is notified in writing of decicions on involuntary placement in a social welfare home, informed about the reasons for the decision and the avenues/deadlines for lodging in appeal; residents and/or their guardian are able to request at reasonable intervals that the necessity for placement be considered by a judicial authority; all cases of involuntary admission to Kernu Social Welfare Home prior to 2002 are notified to the competent civil court; the legal status of voluntary residents who are prevented from leaving Kernu Social Welfare Home is clarified (para. 119).

The CPT also encouraged the Estonian authorities to strive to find alternative solutions which would better guarantee the independence and impartiality of guardians (para. 121) and recommended that an introductory leaflet/brochure be issued at Ahtme Psychiatric Hospital and Kernu Social Welfare Home to each newly-arrived patient/resident (and his/her legal representative), acoompanied, if necessary, by appropriate oral examination (para. 122). The leaflet, the CPT suggested, should inform patients/residents of their rights to lodge complaints as well as of the modalities of doing so (para. 123). Finally the CPT invited Estonia to explore the possibility of introducing regular visits to psychiatric/social welfare establishments by a body which is independent of the health/social welfare authorities (para. 124).

Several judgments by the European Court of Human Rights point at the same direction and indicate that Estonia still has serious problems with the condition of arrest houses and prisons. On 8 November 2005, the European Court of Human Rights issued its judgment in the case of Alver v. Estonia.[4] The applicant, Mr Rein Alver, born in 1969, was arrested by police in 1996 for burglary and held in detention from 1996-2000 in various arrest and detention facilities such as the Jõgeva Arrest House, Tallinn Central Prison and Murru Prison. During his detention, the applicant contacted tuberculosis and his health worsened considerably.

The Court in its judgement drew on the findings of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) that had recently published the report of its visit and concluded, e.g., that "the conditions of detention of remand prisoners at the Central Prison were intolerable". In September 2003 the CPT carried out its latest visit to Estonia, during which the Jõgeva Arrest House was also inspected. On 27 April 2005 the CPT published a report on its visit. The CPT concluded that conditions remained "very poor" in Jõgeva.

The ECHR discussed whether the government`s acts constituted "inhuman and degrading treatment or punishment" in the sense of Article 3 of the Convention. The Court "considered that the conditions of the applicant´s detention as described above, in particular the overcrowding, inadequate lighting and ventilation, impoversished regime, poor hygiene conditions and state of repair of the cell facilities, combined with the applicant´s state of health of the period during which he was detained in such conditions, were sufficient to cause distress and hardship of an intensity exceeding the unavoidable level of suffering inherent in detention. Accordingly, there has been a violation of Article 3 of the Convention."[5]

The Court awarded the applicant EUR 3,000 for non-pecuniary damage, plus any tax that may be chargable on that amount.[6]

[4] Case of Alver v. Estonia (Application No. 64812-01).
[5] Ibid, para. 56-57.
[6] Ibid., para. 61.

Legislative initiatives, national case law and practices of national authorities

In early December, the Legal Chancellor expressed a resolutely condemning opinion of conditions discovered during an unexpected visit to Kernu Social Welfare Home in Harju County (i.e. the county surrounding the capital Tallinn). Kernu Social Welfare Home is a 24-hour care centre for individuals with special psychiatric needs. During an unexpected control visit, the Legal Chancellor together with his advisors discovered that two "lock-up punishment rooms" had been hidden of the inspectors. Mr Jõks criticised the conditions in Kernu Social Welfare Home "lock-up punishment room" as "worse than in a zoo" – "a narrow hole without window and supervision possibility, urine smell, matrace of the floor for sleeping and a bucket for toilet needs". Mr Jõks issued a statement calling for an end to "inhuman and degrading treatement in the Republic of Estonia". The administration of the Kernu Social Welfare Home pledged not to use the respective "lock-up punishment room" further.

On 12 December 2005, media reported that a resident of the Kernu Social Welfare Home had filed a complaint with the European Court of Human Rights.[7]

The Ministry of Justice has responded to the critic that has been made regarding the situation in prisons. On 22 November 2005, the Minister of Justice, Mr Rein Lang, presented to the Riigikogu his policy plans aiming at the reduction of the number of prisoners. The minister suggested that when now approximately 4500 persons are in detention/imprisoned, this number will decrease significantly in the future. The main means for achieving that would be the shortening of sentences, the diminishing of the role of imprisonment and sending prisoners of foreign nationalities to their respective home countries. For drug addicts, compulsory therapy would be applied. Moreover, electronic surveillance and conciliation procedure would be used more often. The minister added that the plan to decrease the number of prisoners in Estonia is a long-term one and it would have no impact on the punishment of sever crimes.[8]

Positive aspects

Parts of the grave problems addressed above will find solution when (according to the schedule) on 30 June 2007 in North Eastern Estonia, in Jõhvi, Viru Prison will be opened. This is the Northern Estonian analogy to Tartu prison in the southern part of the country. According to the plans, the Viru prison will have 1000 places for closed prison, 75 places for open prison and 150 places for arrested persons.

Since Estonia inherited Soviet-style prison houses without modern facilities and humane ("Western") conditions, it has taken time to reorient from earlier standards and reallocate scarce resources in that respect. The opening of modern Viru prison in 2007, beside the already existing Tartu prison, will be a positive development in that respect.

Reasons for concern

See above the extensive critic made in the report of CPT. It seems that the shortcomings in the prison system are massive enough to indicate a trend aand enable to conclude that for the Estonian society and its political representatives, conditions in prisons and detention centres do not constitute a high priority. On the contrary, quite often "vox populi" is populistically quoted as being very critical of attempts to create better conditions for arrested persons and prisoners, "while average pensioners are starving". Since this vox populi, to the extent that it really exists, may partlu collide with fundamental rights of arrested persons and prispners, it is

[7] Eestlane kaebas hooldekodus hoidmise inimõiguste kohtusse, Baltic News Service, 12.12.2005.
[8] Lang: ministeerium hakkab vähendama vangide arvu, Baltic News Service, 22.11.2005.

the duty of international and supranational institutions, including the Network, to point out the shortcomings and the violations in the practice of Estonia in that regard. This years synthesis report of the Network should thus make a clear statement in that regard.

Centres for the detention of foreigners

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

See above.

Article 5. Prohibition of slavery and forced labor

Fight against the prostitution of others

Reasons for concern

In 2005, Estonia remained a destination for sex tourism. In Sweden, paying for sex has been criminalized and neighbouring Finland currently also discusses a similar draft act criminalizing buying sex. It is feared that these legislative moves would in the form of an undesired fallout effect increase the "turnover" of the prostitution "branch" in Estonia.

It seems that in Estonia, fighting against prostitution depends too much on local police initiative and the respective "instructions" (or not). Thus, in Tartu it is well known that public prostitution has been virtually eliminated or at least pushed in the shadow world while in the capital Tallinn, media often reports of several "institutions" that are active in the very centre of the city.[9]

Trafficking in human beings

Reasons for concern

Trafficking in women takes place, both within Estonia and from the country. However, conclusive statistics in this issue is hard to obtain. It is hoped that recently held campaigns against trafficking in women, particularly aiming at raising the awareness of the potentially affected women themselves, have had a positive impact. Worse is that with several indications of "structural violence" both within Europe and within Estonia, it is sometimes hard to establish which decision to move abroad and become "sex worker" was voluntary and which not.

Protection of the child

Reasons for concern

See above. Where there are problems with trafficking in women (especially for sexual exploitation purposes), the children and youngsters are often affected as very vulnerable group.

[9] See Madis Jürgen, Bordell lastepolikliiniku väravas, Eesti Ekspress, 9.11.2005.

Exploitation of undocumented workers

Reasons for concern

Estonia does not yet receive undocumented workers in substantive numbers. Thus, at least right now, the problem affects less Estonia as country but Estonians working in other (richer) EU member states and/or, e.g. in the U.S. However, altogether there seem to be no problems on a massive scale.

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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

See supra the conclusions in the report of the CPT.

Some cases have been decided in the ECHR on the conditions of pre-trial detention in Estonia. On 15 May 2005, the European Court of Human Rights delivered its judgment in the Case of Sulaoja v. Estonia.[10] The applicant, Mr Kristjan Sulaoja, born in 1964, alleged that the reasons for his protracted detention on remand had been inadequate and that his application for release had not been examined speedily. The applicant complained that protracted detention was unfounded and in breach of Article 5 § 3 of the Convention. The total period of the applicant`s detention on remand amounted to 1 year, 6 months and 22 days.

The Court observed that the judicial orders authorising the applicant´s detention on remand were based on a brief standard formula that the detention was justified, namely that the applicant had been previously convicted, did not have a place of residence, a job nor a family and that he could commit new offences, and abscond. The Court emphasised that under Article 5 § 3 the authorities, when deciding on the continuing detention of a person, were obliged to consider alternative measures of ensuring his appearance at trial. The charges against the applicant were not so complex and voluminous as to justify the length of the pre-trial investigation.[11] By the end of March 1998 the factual circumstances concerning the offences committed by him had largely been established by the investigation, but Mr Sulaoja continued to be held detained on remand. The Court found that Article 5 § 3 of the Convention had been violated.

The applicant also claimed the violation of Article 5 § 4 of the Convention. The Court decdided that the question of Mr Sulaoja´s detention had not been decided speedily and there has, therefore, been a violation of Article 5 § 4 of the Convention.[12] The Court awarded to Mr Sulaoja EUR 3,000.

On 21 September 2005, the ECHR issued another judgment, in the case of Pihlak v. Estonia.[13] Mr Vitali Pihlak, stateless person born in 1972, alleged the violation of Article 5 § 3 of the Convention. The applicant was arrested on 12 September 1998 and kept in detention until 4 October 2000, when the City Court granted him request for his release. Thus, his detention on remand lasted for 2 years and 22 days. Again, the Court criticised that the judicial orders authorising the applicant`s detention on remand were based on a brief standard formula that the detention was justified, namely that the applicant had committed new offences while his earlier criminal case was pending in the City Court. The Court recalled that the authorities, when deciding on the continuing detention of a person, were obliged to consider altenative measures of ensuring his appearance at trial.[14] The Court found that Article 5 § 3 of the Convention had been violated by Estonia. Making its assessment on an equitable basis, the Court awarded Mr Pihlak EUR 1,500.[15]

[10] Application no. 55939/00.
[11] Ibid., para. 65.
[12] Ibid., para. 75.
[13] Application no. 73270/01.
[14] Ibid., para. 45.
[15] Ibid., para. 51.

Legislative initiatives, national case law and practices of national authorities

The Chancellor of Justice has continued to criticize conditions in arrest hourses. The Minister of Interior has admitted that problems exist but refers to the lack of finances as reasons for deplorable condition in arrest houses. The Chancellor of Justice has held that such conditions as may be witnessed in some arrest houses in Estonia, bring along degrading and humiliating treatment that is prohibited according to the Estonian constitution (§ 18)[16] and, of course, international and European human rights law.

Positive aspects

On 24 November 2005, the Police announced that it has been accorded half Million Estonian kroons to make necessary renovations and repairments in Narva Police Arres House.[17]

Reasons for concern

See above and as linked with the previous Article (and the CPT report). The Network should make a critical statement, calling Estonia to improve its pre-trial detention conditions.

Detention following a criminal conviction

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

See above (for the criticism of the CPT report).

Legislative initiatives, national case law and practices of national authorities

The Chancellor of Justice receives annually a significant number of complaints regarding detention and treatement in prison houses. True, not all of these complaints lead to substantive investigations of the Chancellor of Justice since quite a few detainees to a certain extent use their right to petition as a form of means of fighting against imprisonment fatigue. The real problems, however, that have emerged on the basis of complaints, were addressed in the annual report of the Chancellor of Justice, presented to the parliament and published in September 2005.

In 2004, the Chancellor of Justice received 331 complaints from detention facilities/prison houses of which 5 were immediately forwarded to other pertinent institutions. The Chancellor of Justice started investigation in 116 cases in order to establish violation of law or violation of a custom of good administration. In 210 cases, the Chancellor of Justice responded to the petition with a clarification of legal aspccts of the situation.[18] Most petitions/complaints were about moving the detainee from one detention facility to another, the conditions in detention facilities and the health protection, the work of detainees, the use of personal accounts, disciplinary punishment, additional security measures with respect to detainees, releasing detainees before due date. The Chancellor of Justice established most violations in the following areas: the measures of legal protection of the detainees, conditions of detention, the search of the living space and items belonging to the detainee, dopting measures in case of violations of order by the detainees, paying "release support" to detainees.[19]

[16] Õiguskantsleri 2004. aasta tegevuse ülevaade, Tallinn, September 2005, p. 142.
[17] Ida prefektuur saab arestimaja korrastamiseks pool miljonit, Baltic News Service, 24.11.2005.
[18] Õiguskantsleri 2004. aasta tegevuse ülevaade, Tallinn, September 2005, p. 152.
[19] Ibid.

The Chancellor of Justices concluded in his annual report that detention centres as institutions of executive power do not always follow the oblication of § 14 of the Estonian Constitution to secure righst and duties of the detained persons. For example, according to the Constitution and the Prison Act, the detention centre has the obligation to help the detainee in ordering his or her extra-detention legal relationships and interests. The detainee usually has no financial means to turn to a court of law, which is why the prison facility should give to him/her the necessary emergent legal and technical aid in the framework of social assistance – e.g., in compiling action (suit) to the extent that court would have no formal reason to reject it.[20]

Furthermore, the Chancellor of Juctice criticized that it was not in accordance with the rights of the detainees that currently, documents issued by the Citizenship and Migration Board, including the personal ID, cannot be delivered directly to the prison. Prisons have found a temporary solution in bringing the detainee to the closest bank office but in the view of the Chancellor of Justice, taking into account the costs and security risks of such activities, this is not the most feasible solution. The Chancellor of Justice suggests that the Ministry of Justice and the Ministry of Interior should together quickly find a less burdensome solution.[21]

On the basis of complaints received, the Chancellor of Justices has criticized that in several occasions, prison workers are incapable of seeing norms forming the foundation of their work in systematic context, in particular with respect to the fundamental rights of the detainees. For example, this became apparent in a case when the detainee was held in a lock-up and asked for writing paper. The prison official, relying on the argument that such item was not explicitly included in the list of allowed items of the "Prison Interior Rules" of the Minister of Justice of 30 November 2000, refused to give writing paper to the detainee. The Chancellor of Justice concluded that in that case, the detainee was prevented from relying on legal defence measures available to him such as the right to turn to the court, to the Chancellor of Justice or another State institution.[22]

Several other complaints that the Chancellor of Justice has received indicate that the preparedness, training and education of prison/detention officials is not always what it should be. In Estonia, many prison workers are native Russian speakers; not all of them have sufficient command of Estonian. In one instance, s senior specialist of a prison was unable to respond to a detainee in Estonian, thus violating rights foreseen in the Constitution (§ 51 para 1 and § 52 para 1) and in the Language Act (§ 5 para. 2).[23] The Chancellor of Justice concluded that in that particular case, the prison official did not correspond to requirements foressen for this position in the Estonian legislation.

According to the Estonian legislation, the general public is supposed to have control over the activities of a prison house/detention centre via so-called prison commissions. The Chancellor of Justice has, however, come to the conlusion, that this provision has not become operative in practice. The Ministry of Justice holds the opinion that there are not enough active people who could make prison commissions work in reality. Moreover, the inefficiency is also due to the (vague and symbolic) competencies foreseen to prison commissions. However, the Chancellor of Justice has refused to accept this argumentation, stating that such a situation has lasted over the years, it only testifies of the passivity of the Ministry of Justice in working out the respective changes in legislation.[24]
The conditions in the prisons constituted objects of several complaints. For instance, in the tuberculosis department of the Central Hospital of the Prisons, neither the temperature nor the humidity corresponded to the requirements – a circumstance that, as the Chancellor of Justice

[20] Ibid.
[21] Ibid., pp. 152-153.
[22] Ibid., p. 153.
[23] Ibid., p. 153.
[24] Ibid., p. 153.

pointed out, did not facilitate the healing of the patients.[25] Another case was the search by prison officials, in particular the fact that they used the same gloves for searching the food of the detainees that they used for searching other objects. The prison director held erroneously that the only purpose of the gloves was the protection of health of the prison house employee. The Chancellor of Justice replied to the prison director that the health of the detainees could not be endangered because search methods were not in correspondents with requirements of hygiene.[26]

Finally, the Chancellor of Justice has encountered cases in which fundamentals of public administration were violated with respect to detainees, e.g., in cases involving disciplinary punishment of the detainees. The Chancellor of Justice empasized that the detainees and the arrested persons too have rights to fair treatment in investigating circumstances of disciplinary violations. It is essential to take into account the explanations of the detainee, especially if information about his/her act is contradictory. In other cases, detainees´s opinion was not considered when his/her preliminary release was discussed and decided upon.[27]

Reasons for concern

As indicated above, both the CPT and the Estonian Chancellor of Justice have been confronted with several outstanding issues. They all seemt o have a common nominator: the relatively low rank of prison and detention conditions in the hierarchy of the Estonian human development agenda. The Network should remind Estonia that to the extent that issues dealt with here affect fundamental rights, they are not merely a matter of political choice. There is a duty of positive international law to adhere to international (including European) standards.

Deprivation of liberty for juvenile offenders

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

See above.

Reasons for concern
See above.

Deprivation of liberty for foreigners

Legislative initiatives, national case law and practices of national authorities

As of writing this report, in December 2005, the issue of Mr Nikolai Mikolenko`s removal had not been solved. He is a former military member of the Soviet army who was ordered to leave Estonia in 2003. Mr Mikolenko had signed a contract with the US government and received 25 000 USD, taking on himself a legal obligation to leave the Republic of Estonia and return to the Russian Federation. For this money, Mr Mikolenko bought apartment in St Petersburg. However, he never left Estonia. Now, he refuses to to leave Estonia and he cannot currently be sent by force either since he lacks valid travel document for travelling from Estonia to Russia. According to Estonian laws, Mr Mikolenko should himself file an application with the Citizenship and Migration Board in order to get a travel document/ID. Since he refuses to do so, he cannot be handed over to the Russian authorities. The situation can be described as deadlock. The Russian Federation has offered its moral support to Mr Mikolenko in his decision not to agree to leave Estonia.

[25] Ibid., p. 153.
[26] Ibid., p. 153.
[27] Ibid., p. 154.

Moreover, a certain stalemate exists between the Riigikogu and the Supreme Court in interpreting the issue of former Soviet/Russian military pensioners. The Administrative Law Division of the Supreme Court upheld in its 3 February 2005 decicion Government vs Mirosnitsenko its earlier decicion according to which those military pensioners who had been listed in the agreement between the Republic of Estonia and the Russian Federation of 26 July 1994, could apply for permanent resident status in Estonia.[28] In a special act, the Riigikogu had earlier exluded giving permanent resident status to former Soviet military pensioners.

Reasons for concern

Estonia´s problem with ex-Soviet officers remains pending, however it is clear that it is not only Estonia` s responsibility to solve it satisfactorily and in accordance with human rights standards but also a metter involving State security and policies of the Russian Federation as the continuator State of the USSR in international legal obligations.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The Chancellor of Justice in his annual report, presented to the Riigikogu and published in September 2005, criticizes that the police often faces difficulties – even retrospectively – with explaining what was the legal basis of their actions in particular cases or circumstances.[29] Individuals against who measures were taken, are often confused about whether this was for clarifying a criminal offence or the police has intervened for safeguarding public order. Another aspect in the work of the police, criticized by the Chancellor of Justice, was the unproportionality of measures. When there exists legal basis for action of the police, the police often choses a measure that is more burdensome for the person.[30] The Chancellor of Justice has connected these deficiencies in the work of the police with the insufficiency of the legal basis of its work – the Police Act was adopted in 1990 (i.e., even before the restoration of Estonia´s independence in 1991) and often remains too general in its wording. Right now, the Ministry of Justice is preparing a new Order Defence Act that would substitute the substantively outdated Police Act. A representative of the Chancellor of Justice takes part in the working group that is currently preparing the new act.

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

Occasionally, media continued to report in 2005 about instances in which the police investigators were accused of too extensive methods. Howwver, no major incidents of high publicity seem to have happened in 2005.

[28] Vabariigi Valitsus vs Mirosnitsenko (3-3-1-89-04), http://www.nc.ee/klr/lahendid/tekst/RK/3-3-1-89-04.html

[29] Õiguskantsleri 2004. aasta tegevuse ülevaade, Tallinn, September 2005, p. 118.
[30] Ibid.

Voluntary termination of pregnancy

Legislative initiatives, national case law and practices of national authorities

Voluntary termination of pregnancy is allowed in Estonia. While the country is struggling with low birth rates, according to available statistics, the number of abortions has not been much lower than the number of births. However, during the last years the awareness in the society about contraceptions has arisen, and less people use pregnancy as a "legitimate means against pregnancy".

Reasons for concern

Since the role of churches and other religious institutions happens to be quite low in Estonia, there are not enough institutions that would be in the position to remind people of the fact that the right to voluntarily terminate pregnancy must be balanced with responsible use of contraceptives (if and when pregnancy is unwished).

Family life

Protection of family life

Legislative initiatives, national case law and practices of national authorities

On 13 October 2005 the Supreme Court of the Republic of Estonia interpreted in the case X vs South Police Prefecture and the Town Council of Tartu § 26 of the Constitution which stipulates that family and private life are inviolable.[31] The Supreme Court noted that the individuals may rightfully expect that the state will not make unproportional and illegitimate hindrances to their family life. For example, the fact that a guardian has been appointed to a spouse does not imply that family life should be impossible.

Another development has been that on 15 December 2004, the Name Act (Nimeseadus) was adopted by the Riigikogu.[32] The Act entered into force on 31 March 2005. Due to concerns that had been raised in practice, the Name Act to a certain extent restricts the rights of the parents to use their imagination and fantasy in giving names to their children. The problem that evolved during the 1990s, with the Estonian society rapidly transforming from a post-Soviet into a pro-Western society and adopting English instead of Russian as *lingua franca*, was that some individuals thought they would give to their children "Western" names that, however, in reality did not make much sense at all. They reflected if not the lack of taste then at least a lack of education and lack of knowing the meaning and context of names and ´foreign´ letters. The new regulation was thus envisaged in order to give to family and birth registration officials the rights ro reject such names. § 7 (Requirements for First Names) stipulates that names that are not in accordance with "good customs" may not be given. Moreover, the Act forbids to give as first name "unusual first name" that because of its "complicated linguistic form or pronounciation is not suitable for using as first name", a name that does not correspond to the sex of the person, the name of a well-known personality. However, the Act also foresees in para. 4 of the same § 7 that exceptions to these requirements may be made if the applicant(s) have connection with other language/culture traditions due to citizenship, family or national affiliation.

The Chancellor of Justice followed attentively the adoption of the Name Act and achieved that some of its provisions that seemed too rigid and possibly violating fundamental rights of the parents were softened. The Chancellor of Justice has drawn attention to dangers that come

[31] See Case no. 3-3-1-45-05.http://www.nc.ee/klr/lahendid/tekst/RK/3-3-1-45-05.html
[32] Nimeaseadus, RK, RTI, 04.01.2005, 1, 1.

along with giving too broad discretion rights to births and family registration officials.[33] Since it will be the family and birth registration official who will have the right to decide upon the appropriateness of a name, the danger for unequal treatment emerges. The Chancellor of Justice has insisted that he will closely follow the emerging practice – in a country that respects the rule of law it may not be that a certain name would be allowed e.g. in Tartu but not e.g. in Tallinn. The Chancellor of Justice has emphasized that the person´s (parents´) wish should be the ultimate criterion for giving names that counts – unless the new Name Act explicitly prohibits giving a certain name or a form of name.[34]

Reasons for concern

It is important to follow attentively how the Name Act will be implemented in practice, and that there would be enough supervision to avoid that officials would misuse the power of discretion given to them by the Act.

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

Reasons for concern

The pending cases involving the expulsion of foreigners (such as Mikolenko) are mostly further complicated by the fact that the foreigners/ex-Soviet officers who are to be expelled, have their families in Estonia. This should be taken into account when the situation is handled by the authorities.

Article 8. Article 8. Protection of personal data

Independent control authority

Legislative initiatives, national case law and practices of national authorities

The work of the Estonian Data Protection Inspectorate[35] seems not to have made through substantive changes or developments in 2005.

Reasons for concern

The Estonian Data Protection Inspectorate seems to be less visible (audiable) in Estonia than it could ideally be. Rather, the initiative in data protection – and in raising questions about data protection – seems to have gone over to the Office of the Chancellor of Justice.

Protection of personal data

Reasons for concern

The right to remedy in data protection issues seems to be somewhat limited in Estonia in the sense that there is very few practice of (civil or administrative) responsibility for violations of data protection.

3333 Õiguskantsleri 2004. aasta tegevuse ülevaade, Tallinn, September 2005, p. 133.
[34] Ibid.
[35] See http://www.dp.gov.ee/?lang=en.

Protection of the private life of workers

Legislative initiatives, national case law and practices of national authorities

In 2005, further reports were made of employers investigating e-mail boxes of their employees, without the latter being aware of this kind of surveillance. The Chancellor of Justice has expressed the view that surveillance would only be permissible if the employer announced beforehand of such intentions/possibility.[36]

Reasons for concern

Data protection remains in Estonia an issue which has not yet achieved such a central place in the public debate and awareness as it is characteristic for countries that did not experience the Soviet Communist rule. For example, in the debate about the Estonian Genome Project that was revived by the end of 2005, data protection issues have remained marginal in comparison with the question how could Estonia make profit with such a project.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

In a small country like Estonia, a high-level international conference on a certain contested topic may have a huge impact on public awareness, and the awareness of the legal professionals in particular. This is especially due in areas where raising public awareness can be considered crucial, especially among groups and individuals who are so preoccupied with economic and social problems that data protection is not on their minds. One such area is certainly data protection.

On 13 May 2005 in Tallinn took place the third annual conference or the Chancellor of Justice, organized with the financial support of the German IRZ (Verein für Internationale Rechtliche Zusammenarbeit). The materials presented during the conference were published in the special issue of the magazine "Juridica", No. VIII 2005 (the only legal magazine in the Estonian language). The issue contains 7 articles on data protection, both by Estonian and German specialists. This contribution was without doubt the single most significant event in the field of data protection in Estonia in 2005.

However, some problems with data protection have remained unsolved. For example, in December 2005, the Chancellor of Justice raised in public the issue that one can freely access personal identification numbers of the individuals who have become owners of the Estonian ID card. The data can be accessed in the Internet, in the so-called CDAP catalogue administered by the Certification Centre (Sertifitseerimiskeskus). The Chancellor of Justice qualified this as violation of personalal data protection rules and called for the urgent change of the access rules.[37]

Reasons for concern

A valid concern that has been raised in media, is the obvious violation of patients´ rights in "medicine reality shows" such as "112" of the Estonian TV. Doctors have criticized that in these shows, patients´ addresses are published and a general trens indicated that since socially more vulnerable individuals are affected, their approval for filiming is questionable or unlikely.[38] These practices must be terminated.

[36] See Reet Aasmäe, Boss kükitab meiliboksis, Saldo, 17.03.2005.
[37] Jõksi sõnul rikub isikukoodide vaba avaldamine põhiõigusi, Baltic News Service, 13.12.2005.
[38] See Tõnu Peets, Kes katsub haige pulssi?, Eesti Päevaleht, 7.12.2005.

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

Marriage and control of marriages suspect of being simulated

Reasons for concern

In Esdtonia, the problem is not that the state would somehow violate or infringe people´s right to marry. The issues are more on a societal-structural level, e.g., in Estonia the number of the divorces is not substantially smaller from the number of marriages.

Legal recognition of same-sex partnerships and recognition of the right to marry for transsexuals

Legislative initiatives, national case law and practices of national authorities

There have been no legislative initiatives in that regard, and same-sex partnerships are legally not recognized. At the same time, it seems quite unlikely that Estonia would adopt a legislative or constitutional amendment explicitly prohibiting the legal recognition of same-sex partnerships (as neighbouring Latvia did in 2005).

Article 10. Freedom of thought, conscience and religion

Incentives and reasonable accommodations provided in order to ensure the freedom of religion, including the right to conscientious objection

Reasons for concern

(Not a reason of concern but a description of the situation.) The debate about whether to introduce mandatory "religion classes" has continued in 2005 and quite split the socially active part of the Estonian society. Opinion leaders encouraging the introduction of such mandatory classes in schools point out the importance of understanding the religious and cultural heritage of the Western civilization in particular. At the same time, the "atheist" or "agnostic" opponents of such mandatory religion teaching argue that such classes would likely become "institutionsn of religious propaganda". The end of the debate is not in sight. Currently, it is unlikely that mandatory religion classes would be introduced in school curriculum.

Article 11. Freedom of expression and of information

Freedom of expression and of information

Legislative initiatives, national case law and practices of national authorities

The national debate regarding freedom of expression evolved in 2005 around the issue of anonymous Internet commentaries (see on problems related to their content also in earlier reports of this rapporteur). In Estonia, the Internet-portal "Delfi" (www.delfi.ee) in particular but also anonymous comments that can be made under mains newspaper www.- portals has created a significant media subculture – but also fruitful soil for anonymous defamation, so far without clear rules regarding responsibility. In September 2005, the minister of justice, Mr Rein Lang, encouraged people to sue the Internet portal "Delfi" for compensation, if they feel that their honour and good name has been attacked by anonymous Internet commentaries in

"Delfi".[39] On 8 December 2005, the government approved the draft of new legislation prepared in the Ministry of Justice. According to the Ministry of Justice, the new draft Act is directed against anonymous defamation in Internet commentaries and its aim is to protect the honour, dignity and good name of the individuals. The draft act obliges the internet portals deliver information on the available technical data of the suspected internet users, if the court so requests. The courts will be accorded to request such data also in civil proceedings.[40]

Reasons for concern

The new draft approved by the government has occasionally been criticized – for example, by the Chancellor of Justice - as restrictive towards free expression (mostly by the same anonymous commentators). Some columnists have argued that self-regulation and perhaps self-purification of the society is needed, and this cannot be achieved by restrictions and orders. In 2005, representatives of media also started the campaign "Ära leima!" ("Do not defamate!") and equipped their portals with tools that easily enable to inform the portal owner of defamating comments.

However, it seems that nowhere in Europe goes anonymous Internet commenting without any limits and responsibility. Most respected portals even ask their users to clearly identify themselves somehow. Therefore, the new Estonian legislative initiative should not be seen as too big a concern or as a violation of the freedom of expression. Nevertheless, there is a need to remain alert and see how the authorities will use their new powers, if and when the draft act approved by the government gets approval of the Riigikogu.

Media pluralism and fair treatment of the information by the media

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

On 14 December 2005, the Open Society Institute´s EU Monitoring and Advocacy Program made public its report "Television across Europe: Regulation, Policy and Independence. Estonia".[41] The report concluded that although Estonia has made huge progress in creating a public broadcasting system and liberalized private broadcasting sector, a clear broadcasting policy is lacking and progress is still needed to fulfil all international broadcasting standards. Regulatory reforms have stalled, financing of the public broadcaster (ETV) remains unpredictable and insufficient, and ETV´s policy towards the Russian-speaking population remains unclear. The sector also lacks a clear policy regarding media concentration, clear procedures for processing citizen complaints against broadcasters or mechanisms to guarantee editorial independence at private broadcasters.

An interesting part of the report is dedicated to the Russian-language program in the Estonian public broadcasting. The Development Plan 2003-2005 states that Estonian TV (ETV) aims to attract more Russian viewers, and prescribes a big increase in Russian language feature programmes (excluding news and repeated programmes) from 55 hours per year in 2002 to 96 hours by 2003, accompanied by an increase in financial resources for Russian programming of 2.7 times. However, the report notes that neither the increase in resources nor the increase in programming have materialized, and the volume of Russian programming stayed the same in 2004 as well.[42] The report notes that currently, Russian-language programmes in Estonia are watched predominantly by ethnic Estonian viewers. Russian-speakers prefer watching

[39] Rein Lang, Solvatud, nõudke Delfilt kohtus valuraha!, Eesti Ekspress, 29.09.2005.
[40] See also Valitsus kiitis anonüümsete netikommentaaride eelnõu heaks, Baltic News Service, 8.12.2005.
[41] See www.eumap.org/reports/2005. The Estonia report was mainly written by Mr Urmas Loit and developed in cooperation with Tartu University´s Department of Journalism and Communication, and the Meediaseire.
[42] Ibid., p. 593.

programmes broadcast from Russia; a notable proportion of the Russian-speaking population does not understand Estonian or their knowledge of Estonian is poor, and programming in Russian is not continuous, making such programming vulnerable to the tendency of viewers to leave one channel running. The report further suggests that the ETV has no ability to compete in terms of quality with Russian-language channels broadcast from Russia, especially with the rich variety of light entertainment programmes available.[43] The Chair of the Board of ETV until 2005 (Mr Ainar Ruusaar became chair in 2005), Ilmar Raag, has argued that the production of programming in Russian is expensive and needless because Russian programmes have an extremely small impact on their target audience. Raag characterized the attempts to attract a Russian-speaking audience that is predominantly interested in entertainment as a complete failure.[44]

Legislative initiatives, national case law and practices of national authorities

According to the current plans, the Estonian National Television and the Estonian National Radio will be merged into an Estonian National Broadcasting. In December 2005, it was revealed that in connection with these merger plans, the new Boradcasting will also get its own ombudsman in order to supervise over media pluralism and that different opinions would be fairly represented in public broadcasting. Some politicians have expressed dissatisfaction about the representativeness of the Estonian media although most admit that the problems are not fundamental.[45]

As far as fair treatment of the information by media is concerned, the Estonian Press Council seems to have established itself as valuable independent mechanism for reviewing persons´ complaints regarding the information presented by the media. However, a few of the cases reviewed in 2005 indicate that some journalists have quite consciously chosen to violate the Ethics Code adopted by the Estonian media, e.g. by presenting sensitive and partial information regarding a child custody debate during court proceedings.[46]

Reasons for concern

Certain cases in the Estonian Press Council indicate that certain representative of the media do not yet feel fully their responsibility in presenting information in a fair and balanced manner. This may indicate that the current "sanctions" mechanisms are partly insufficient which enables – notwithstanding the recent outcome of the Tammer case in the ECHR - a culture of impunity, especially for "star" journalists.

Since 2005 was the year of (municipal) elections in Estonia, and the campaigning experienced new hights (and lows) of mud-throwing, there were also, quite typically for the time of elections, occasional accusations of the impartiality of media. However, they should not be taken as a serious concern but rather as a ritual that the Estonian society makes through when elections are near.

Secrecy of journalistic sources

Positive aspects

There have been no problems with secrecy of journalistic sources.

[43] Ibid., p. 593.
[44] Ibid., p. 594.
[45] K. Kalamees, Ombudsman asub jälgima saadete tasakaalustatust, Eesti Päevaleht, 9.12.2005.
[46] See www.asn.org.ee/english/index.html.

Reasons for concern

In Estonia, the problem seems to be not so much that the secrecy of journalistic sources seems to be in danger, at least not systematically. Rather, the problem is that the media occasionally publishes uncontrolled information, gossip relying on unrevealed and sometimes dubious sources. Public figures do not therefore necessarily have an easy life in Estonia and often seemt o be quite puzzled how to cope with the sensationalism of and intrusions into public sphere by the media.

Article 12. Freedom of assembly and of association

Freedom of peaceful assembly

Reasons for concern

No incidents or significant developments can be reported about 2005.

Freedom of association

Reasons for concern

Trade unions have argued that the government is trying to repress them (see infra under social rights) but it is somewhat difficult to estimate to what extent this is true or to what extent this kind of claims belong to the "professional rhetoric" of trade unions.

Article 13. Freedom of the arts and sciences

Freedom of the arts

Positive aspects

Estonia has a high level of freedom of the arts. 2005 was not important year if not from fundamental rights point of view then at least for those who care about arts and freedom of arts in Estonia. In 2005, the construction of the new National Art Museum "Kumu" (Kunstimuuseum; Art Museum) became finalized. The museum will be opened to public in early 2006.

Good practices

See above.

Freedom of research and academic freedom

Reasons for concern

Research is free in Estonia, no conscious restrictions can be observed. At the same time, in comparison to European average standards, research remains chronically underfinanced in Estonia. Estonia accords a proportionally significantly lesser portion of its budget to academic research than European educational standards envisage. Thus, researchers often do not have an easy life in finding funding for their research projects. In terms of public financing of the research, research is free in Estonia sometimes in the same way as "everybody is free to dine in Ritz". If the trend will not be reversed and more public money will not be accorded to academic research, Estonia may further lose its young talented researchers to other, better

financed European and American academic institutions which would be extremely damaging for the sustainability of the higher education in Estonia.

Article 14. Right to education

Access to education

Positive aspects

Different providers on the Estonian educational landscape offer a variety of educational careers and possibilities. In the sense that there is a lot to choose from (albeit on postgraduate level not often on world-class level), the access to education is guaranteed.

Reasons for concern

There are two hugely worrisome trends in the educational life of Estonia. One is that – and as I have reported earlier - the gap between Tallinn`s and Tartu`s leading gymnasiums (often called 'elite schools' in Estonia, and the gymnasiums in the rest of the country is further widening. In terms of differences in prestige of different institutions and educational opportunities, Estonia has moved towards class society. The class is determined not only by who your parents are but also by where your parents happen to live. A child in a provincial town is likely to be educationally disadvantaged in comparison with a child with similar intelligence. However, it is hard to say to what extent this reflects negligence on the part of the State. To a certain extent, we are witnessing here a wave of globalization/urbanization – Estonia's scarce human resources are pulled in the capital city and to a lesser extent, South Estonian university centre, Tartu and the spa town Pärnu. The state is unable to provide equal educational opportunities, if not enough educated people choose to live in the countruside, and prefer more lucrative jobs in the towns.

The other trend is that while higher education is extremely popular in Estonia and several private universities beside the public ones are blossoming, the clear trend has been towards the governing principle "student pays for the education". Tuitions can be relatively high, and while there is a good system of State-guaranteed bank loans, the economic factor has become more and more relevant in determining the access to higher education. In other words, a person with enough money and less talent is sometimes more likely to access and/or graduate a university than a talented graduate of the gymnasium who is forced to make a more practical career choice because of economic constraints. However, reliable statistics is limited or unavailable in that regard.

Vocational training

Reasons for concern

The Estonian government and educational policy opinion leaders have often emphasized the importance of vocational training ("You can be more successful as successful practitioner than poor or average graduate of a fancy "management", PR or even law study programme.) However, as the economics is developing rapidly, the educational policy makers admit that it is sometimes hard to predict on the state level, *which* vocational training should be encouraged and emphasized.

Other relevant developments

Reasons for concern

See above, the comparative underfinancing of the educational system in Estonia, and the emergence of the educational "class society" can be characterized as unwelcome trends that may in the longer perspective, if not already today, have impact on the fundamental rights situation in Estonia.

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

The right to engage in work and the right for nationals from other member States to seek an employement, to establish themselves or to provide services

Positive aspects

Since Estonia´s economy is growing quite rapidly in the present time, the unemployment is not seen as among the biggest problems, except in certain regions. There are no reports that the right of the other EU nationals to engage in work would have been restricted. On the contrary, altogether (minor exceptions and incidents are always possible) Estonia seems to have adopted a welcoming approach with respect to workers from other EU countries.

The prohibition of any form of discrimination in access to employment

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

See also below where the report of the Framework Convention`s Committee is analyzed.

Access to employment in public administrations

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

International bodies have pointed out that the representation of the native Russian Estonian citizens is lower among State officials – especially higher State officials - than their share in the population.

Reasons for concern

To the above-referred critic, at least to a certain extent, the explanation may be found in the fact that the good knowledge of the Estonian language is considered crucial for making career in the State apparatus. The request to be proficient in the State language is not in itself discriminatory. However, the state officials could encourage native Russian-speakers to take up more positions of responsibility and leadership in Estonia´s public administration.

Article 16. Freedom to conduct a business

Freedom to conduct a business

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

Estonia is generally considered as one of the most liberal and business-friendly economies in the world. Leading European and global periodicals such as "The Economist" often refer in very positive terms to business freedom in Estonia, and the economic growth it has helped to produce.

Imposition of certain standards, for instance standards restricting the awardance of public contracts

Reasons for concern

There is not enough awareness in Estonia that certain ethical etc. standards may sometimes be necessary in the conduct of business and pursuit of profit. Therefore, there is not enough practice of such clauses either.

Article 17. Right to property

The right to property and the restrictions to this right

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

Legislative initiatives, national case law and practices of national authorities
The debate about the reconstruction of Tartu boulevard in Tallinn (the road that links the airport with Tallinn city) has got stuck in the decision to expropriate certain real estates along the road. The proprietors have protested against these intentions and argued that they would contest such expropriations, if necessary then in the ECHR. However, right now at least further conclusions must be delayed until the decicions have been finalized.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

On 20 April 2005, the parliament, the Riigikogu, adopted the new Civil Procedure Code (Tsiviilkohtumenetluse seadustik). The code further specifies rights and duties of participants in civil law trial.[47]

Article 18. Right to asylum

Recognition of the status of refugee

Legislative initiatives, national case law and practices of national authorities

See below.

[47] Tsiviilkohtumenetluse seadustik, RK, RTI, 19.05.2005, 26, 197. Adopted on 20 April 2005, promulgated by the President on 9 May 2005.

Unaccompanied minors seeking asylum

Legislative initiatives, national case law and practices of national authorities

See below.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

On 14 December 2005, the Riigikogu adopted a new Asylum Act that will enter into force on 1 July 2006. The new Act will accord more comprehensive protection for asylum seekers, bringing the Estonian legislation in accordance with the respective EU directives.[48] In particular, the new legislation extends protection to individuals who are threatened by persecution in their home country or who have fled because of armed conflicts. Temporary protection will be offered usually for a year but this term can be extended up until three years. The Act gives to asylum seekers equal social rights with permanent residents of Estonia. The old Asylum Act that has been in force since 1997 gave such rights only to the refugees to whom the state had accorded the status of a refugee (asylum seeker), something that happened very seldom.

Another development has been that on 1 June 2005, the Legal Information Centre for Human Rights, Estonian human rights NGO, started a project "Promotion of the Access to Justice and Legal Aid for Asylum Seekers and Immigrants in Estonia".[49] The project is financed by the European Commission, and supported by the Estonian Ministry of Interior Affairs and European Refugee Fund. Through the project, the Information Centre offers free legal aid for persons who wish to apply for asylum status in Estonia.

Positive aspects

The raise of public awareness about the issue of asylum seekers and refugees in Estonia, and the increasing realization among the opinion leaders that Estonia will need in the future to accept more asylum seekers than it has been the case so far.

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

Subsidiary protection and prohibition of removals of foreigners to countries were they face a real and serious risk of being killed or being subjected to torture or to other cruel, inhuman and degrading treatments

Legislative initiatives, national case law and practices of national authorities

See above the adoption of the new Asylum Act that raises the level of protection for the foreigners, especially these coming from countries where they could be subjected to torture or to other cruel, inhuman and degrading treatements.

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[48] See e.g. Riik hakkab pakkuma asüülitaotlejatele laialdasemat kaitset, Baltic News Service, 14.12.2005.
[49] See http://www.lichr.ee/new/index.php?page=2010200.

CHAPTER III EQUALITY

Article 20. Equality before the law

Equality before the law

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

On 24 February 2005, the Advisory Committee of the Framework Convention for the Protection of National Minorities made public its second opinion on Estonia.[50] The Advisory Committee noted that Estonia has recognised the need to make special efforts to improve development in Ida-Virumaa, were persons belonging to national minorities reside compactly, in order to ensure full and effective equality.

However, the Advisory Committee was concerned that persons belonging to national minorities continue to be significantly more affected by unemployment than the majority population, and their number in certain sectors of employment, including in higher levels of administration, is remarkably low.[51] Although the Advisory Committee recognised that there were many factors affecting this situation, it emphasised that it was "essential that the authorities ensure that there is no direct or indirect discrimination in the labour market, and in this respect the implementation and monitoring of the new legal guarantees against discrimination in the Employment Contracts Act is of particular importance." Moreover, the Advisory Committee recommended that authorities should pursue further their efforts to address the disproportionately high unemployment rate amongst persons belonging to national minorities in Ida-Virumaa and elsewhere by launching regional development initiatives and measures to fight direct and indirect discrimination in the labour market. The Committee was also hopeful that this should also enhance the recruitment of qualified persons belonging to national minorities in public service.[52]

The Advisory Committee went on to say that in addition to unemployment, persons belonging to national minorities are disproportionately affected by a number of other problems linked to social marginalisation, such as homelessness and drug abuse, "which need to be addressed through special programmes".[53] Of particular concern, the Advisory Committee continued, was the alarmingly high rate of HIV/AIDS amongst persons belonging to national minorities. "It is to be welcomed that the authorities have increased their efforts in terms of prevention and treatment of HIV/AIDS, and there seems to be a wide agreement on the urgency of the matter. It is essential that the related services and documentation are consistently available also in the Russian language."

Furthermore, the Advisory Committee noted that there was a need to obtain more data and to analyse further reasons for the high incarceration rate of persons belonging to national minorities and to examine in this connection how Article 4 and other principles of the Framework Convention were reflected in various stages of law-enforcement.[54]

[50] See Advisory Committee on the Framework Convention for the Protection of National Minorities. Second Opinion on Estonia adopted on 24 February 2005. ACFC/OP/II(2005)001.
[51] Ibid., para. 15.
[52] Ibid., para. 159 and 160.
[53] Ibid., para. 16.
[54] Ibid., para. 56.

Reasons for concern

As discussed previously in these reports, the issues addressed by the Framework Convention´s Advisory Committee are complex, sometimes more complex than the critic of the Advisory Committee indicates. Nevertheless, the issues of equality, non-discimination, etc remain, both from European and national perspective, the most challenging human rights issues in Estonia. Therefore, Estonia should take the Committee`s recommendations seriously.

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

On 24 February 2005 (i.e., on the Estonian National Independence Day), the Advisory Committee of the Framework Convention for the Protection of National Minorities made public its second opinion on Estonia.[55] The Advisory Committee positively recognized that the number of persons without citizenship has decreased, due to measures taken and programmes adopted by the Estonian government but also due to Estonia`s accession to EU on 1 May 2004.[56] The Advisory Committee also noted that not all responsibility for reducing statelessness lies on the Estonian authorties and recognized that some groups of individuals may, for various reasons, not be sufficiently motivated to apply for the Estonian citizenship.

Nevertheless, the Advisory Committee concluded that "the number of persons without citizenship, 150 536 as of 31 December 2004, remains disconcertingly high, indicating that further positive measures are needed to facilitate and encourage naturalisation".[57] In particular, the Advisory Committee suggested considering the exemption of the elderly citizenship applicants from the Estonian language proficiency examination. Moreover, the Committee advised to widen the accessibility of free-of-charge state language training to those concerned.

The Advisory Committee acknowledged that during the last years, Estonia has improved guarantees against discrimination. However, it noted with regret that the adoption of the law on Equality and Equal Treatment has been delayed and as a result, the existing legal guarantees against discrimination still contained shortcomings.[58] Moreover, the Committee expressed its concern that the drafts of the above-mentioned equality legislation did not explicitly include citizenship as a prohibited ground of discrimination. The Committee further noted that the same was true as regards the right of recourse to the Legal Chancellor to conduct a conciliation procedure on the cases of alleged discrimination. The Advisory Committee recalled that in the Estonian context, where many residents are without the Estonian citizenship, legal safeguards against discrimination on the basis of citizenship – which would not exclude differential treatment with objective and reasonable justifications – would be of direct relevance to a large segment of society.[59] The Advisory Committee recommended that the authorities and the legislature expedited the passage of new non

[55] See Advisory Committee on the Framework Convention for the Protection of National Minorities. Second Opinion on Estonia adopted on 24 February 2005. ACFC/OP/II(2005)001.
[56] Ibid., para. 46.
[57] See ibid., para. 10.
[58] Ibid., para. 36.
[59] Ibid., para. 37.

discrimination legislation, ensuring also that adequate legal safeguards and procedures were in place in respect of discrimination on the basis of citizenship.[60]

Furthermore, the Advisory Committee observed that Article 10 of the Employment Contract Acts (giving guarantees against discrimination) stipulates in its paragraph 2 that it is not contrary to the said article to "require language skills necessary for the work and pay compensation for proficiency in languages". The Advisory Committee emphasized that it was important that this provision, which in itself pursued a legitimate aim, was not interpreted too broadly and/or in a manner that led to undue obstacles for persons belonging to national minorities in their access to employment.[61] It recommended that the authorities should carefully monitor the implementation of Article 10, paragraph 2 of the Employment Contracts Act so as to ensure that it would not lead to undue obstacles for persons belonging to national minorities in their access to employment.[62]

The Advisory Committee also held that the authorities` commitment to Estonia as a multicultural society was not consistently reflected in the terminology used in official documents and statements. In particular, the Committee reflected to the use of the term "non-Estonian" (mitte-eesti) to describe the country´s minority population, while intended to refer only to ethnicity, can give the impression that the national minorities are not an integral part of Estonian society. The Committee went on to point out that a similar consequence results from the use of the term "foreign languages" to describe also the languages of national minorities.[63] The Advisory Committee recommended that the Estonian authorities should avoid using terminology that can be perceived as implying that national minorities and their languages were not an integral part of Estonian society.[64]

The Advisory Committee has also noted that the government lacks data on the proportion of persons belonging to national minorities in prisons. According to the data of the Ministry of Justice, as at 1 January 2005 there were 3463 persons in Estonian prisons, among them 1702 Russians, 1524 Estonian, 74 Ukrainians, 48 Belorussians, 19 Finns, 17 Romas, 15 Azerbaijanis, 11 Latvians. The number of other nationalities was less than 10.[65]

Legislative initiatives, national case law and practices of national authorities

On 27 October 2005, the government adopted the regulation elaborating on how citizenship applicants can for health reasons be released from language exam and from the exam for the demonstration of knowledge of the Constitution and the Citizenship Act.[66]

Another development regarding non-discrimination has been that on 8 June 2005 Estonia ratified the ILO C111 Convention concerning Discrimination in respect of Employment and Occupation of 1958.[67]

[60] Ibid., para. 39.
[61] Ibid., para. 38.
[62] Ibid., para. 40.
[63] Ibid., para. 62.
[64] Ibid., para. 65.
[65] Information from „Comments of the Government of Estonia on the Second Opinion of the Advisory Committee on the Framework Convention for the Protection of National Minorities concerning the Implementation of the Framework Convention in Estonia".
[66] Isiku terviseseisundist tulenevalt kodakonduse taotleja eesti keele ning „Kodakondsuse seaduse" ja Eesti Vabariigi põhiseaduse tundmise eksami sooritamise ulatuse ja viisi määramise või nimetatus eksamite sooritamisest vabastamise tingimused ja kord, RT I 08.11.2005, 57, 458.
[67] Rahvusvahelise Tööorganisatsiooni (ILO) töö- ja kutsealast diskrimineerimist käsitleva konventsiooni (nr 111) ratifitseerimise seadus, RT II, 30.06.2005, 17, 51.

Positive aspects

The main positive aspect remains that the trend of increasing naturalization continues. For example, in during the first 6 months of 2005, 3622 persons were granted citizenship, which is equal to the number in the whole of 2003. To facilitate the naturalization process, the Integration Fouccation will implement a project in 2005-2007 aimed at supporting the aspirations of stateless persons in acquiring Estonian citizenship. Half of the cost of the project will be covered by the European Union. Wide-ranging information campaigns and free training will be targeted to potential citizenship applicants. Training will be offered for a total of 10 000 persons: 7000 adult citizenship applicants and 3000 pupils from non-Estonian basic and secondary schools.

Reasons for concern

See above. This national reporter encourages his country to take the concerns expressed in the Advisory Commission most seriously, even though the situation is both legally and practically of such nature that hardly everybody can be made happy at the same time.

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

Legislative initiatives, national case law and practices of national authorities

The case practice in national courts has evolved. In early 2005, an Estonian court fined Mr Sergei Smolyakov (36) with 8000 EEK for indictment to ethnically based violence in a public forum. The procedure was facilitated and did not deserve much public attention (the indicted person had agreed to his indictment).

In 2005, an Estonian citizen, Mr Olev Hannula (23) was indicted by the State Attorney`s Office. According to the state attorney, Mr Hannula had repeatedly engaged in incitement to racial, religious and national hatred. In anonymous Internet-commentary news websites (such as www.delfi.ee), Mr Hannula had expressed himself in hateful manner towards the Jews ("Jews into oven!"), blacks, and other groups. On 5 August 2005, the courts of first instance found Mr Hannula guilty of incitement of social hatred and sentenced him with a pecuniary fine (3000 EEK). On 26 September 2005 the District Court upheld the sentence of the court of the first instance. On 30 November 2005, the Supreme Court rejected Mr Hannula`s attorney`s request for revision and the sentence became final. Hannula has announced that he intends to file complaint at the European Court of Human Rights.

The case that received most public attention in 2005 was that involving Mr Lauris Kaplinski (34), a son of the famous Estonian writer and poet Jaan Kaplinski. In 1991, Lauris Kaplinski had written a text entitled "Our Fight" in which he called to destroy Christian churches, if necessary with terrorist methods. (Kaplinski has explained that he is adherent of the ancient Estonian *maausk*, the "Earth religion"). From 1995-2003, the text was publicly available in the Internet, through Tartu University server. The Defence Police indicted Mr Kaplinski for incitement of social hatred and violence. Kaplinski has pleaded not guilty, arguing that his text was meant as "shock therapy" literature, and that he trusted the wisdom of Internet users (that they would not take his call for violence in the text literally). On 18 April 2005, Tartu County court acquitted Mr Kaplinski. However, on 13 June 2005, the Disctrict Court of Tartu found Mr Kaplinski guilty in the incitement of social hatred. He was fined with 32 000 EEK. The Supreme Court`s judgement in this important precedent was due in December 2005 but seems to have been postponed until early 2006 by the Court.

Positive aspects

The development of case law in these issues can be welcomed since in a small society like Estonia, it has potential to serve as "deterrant".

Reasons for concern

Incitment to discrimination – "hate speech" – is not uncommon in Estonia, reflecting the country´s troublesome history, repressions and fears.

Remedies available to the victims of discimination

Legislative initiatives, national case law and practices of national authorities

See under the freedom of expression on the current "Delfi" draft as put forward by Mr Rein Lang, the current minister of justice of Estonia. The adoption of the draft by the Riigikogu would give further rights to the victims of hate speech (not, however, of discrimination generally).

Protection of Gypsies / Roms

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

The Advisory Committee of the Framework Convention for the Protection of National Minorities concluded in its second opinion on Estonia, adopted on 24 February 2005 that some media coverage reinforcing negative stereotypes on national minorities was still reported, including in relation to Roma.[68]

Reasons for concern

See above. Although quite few Romas live in Estonia, media often – and often unconsciously - reflects and nourishes negatives prejudices about the Romas.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

From June 2005 until May 2006, the Legal Information Centre (Estonian human rights NGO), is carrying out a project "Promoting Non-Discrimination and Tolerance in the Estonian Society through Mass Media".[69] The project is supported by the European Commission, Directorate General for Education and Culture, and "addresses such problems of the Estonian society as interethnic relations, discrimination and unequal treatment of women and men." The aim of the project is to initiate public dialogue on EU policy and legislation in the sphere of unequal treatment and non-discrimination through publications in the local media but also improving skills of local journalists in addressing these issues. The project envisages monitoring of the local media, on-line consultations on the issues of local treatment and non-dicrimination to all those who believe that their respective rights have been violated.

[68] Ibid., para. 73.
[69] http://www.lichr.ee/new/index.php?page=2010900.

Article 22. Cultural, religious and linguistic diversity

Protection of religious minorities

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

The Advisory Committee of the Framework Convention noted in its second opinion on Estonia, adopted on 24 February 2005, that Article 7 of the new Churches and Congregations Act stipulated that the name of a religious association shall be written in Latin letters. The Committee observed that while the requirements to use (also) Latin script may be justified for the registration purposes and for other official contacts, extending such an obligation to the use of the name in all other contexts, including internatl activities of religious associations, would be problematic from the point of view of Articles 8 and 10 of the Framework Convention.[70] The Committee recommended that Estonia should ensure that the relevant provisions of the law were interpreted so that religious associations could write their names in an alphabet of their choice except in cases where it was necessary for a legitimate purpose to require also the use of the Latin script.[71]

However, the Estonian Government in its comments on the Advisory Committee´s opinion has pointed out that according to Article 21 (2) of the Language Act, the seals, stamps and letter-heads of associations registered in Estonia, including religious associations, shall be in Estonian. However, the Estonian text may be accompanied by a translation into a foreign language. Article 22 of the same Act provides that the international form of Estonian names, including the names of associations, in the Latin alphabet shall be identical to the form used in Estonia and, if the names are written in a language which uses another alphabet, the transcription rules established in the Literary Standards shall be applied. Thus, according to effective legislation, writing of names of religious associations in an alphabet other than Latin in other cases referred to in the Advisory Committee`s opinion is allowed and legitimate.

Legislative initiatives, national case law and practices of national authorities

On 11 April 2005, an assistant judge of Tallinn City Court refused to register an Estonian satanistic congregation that calls itself “Black Venus Order”. She relied on § 14 para. 2 point 2 of the Churches and Congregations Act according to which the register keeper will not include a congregation in the registry when the activities of the congregation endanger public order, health, morality, and other people’s rights and freedoms. In the rationale of the decision, the assistant judge explained that Satanistic ideology does not repect the rights of other people as stipulated in Article 19 of the Estonian Constitution (human dignity, the prohibition of cruel and inhuman treatment).

Reasons for concern

Altogether, religious freedom and tolerance seems to be granted quite well in Estonia.

Protection of linguistic minorities

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

On 24 February 2005, the Advisory Committee of the Framework Convention for the Protection of National Minorities made public its second opinion on Estonia. The general

[70] Ibid., para. 81.
[71] Ibid., para. 82.

direction of the opinion was quite positive – inter alia, the Advirory Committee admitted that Estonia has taken a number of steps to improve the implementation of the Framework Convention following the adoption of the first Opinion of the Advisory Committee in September 2001 and the Committee of Ministers` Resolution in June 2002. Nevertheless, the Advisory Committee addressed several areas of concern.

The Advisory Committee pointed out that the National Minority Cultural Autonomy Act has not been subject to any changes, despite the fact that the law, while having finally led to the establishment of one national cultural autonomy, "is generally considered to be ineffective and impractical".[72] The Committee went on to encourage the Estonian authorities to draw up a new law on national minorities which would "also confirm and consolidate in law their increasingly practical and inclusive approach towards the personal scope of the protection designed for national minorities".

Thus, the reservation that Estonia made when it acceded to the Framework Convention – to the effect that it recognizes in protective minority status citizens – remains from the point of view of international law in force. However, as Estonia has admitted in its responses to the earlier critic of the Advisory Committee, *de facto* it has abandoned such a restrictive approach and included individuals not (yet) having citizenship yet living compactly in Estonia, as minority. The Advisory Committee recognized that while the declaration at present had only limited impact in practice, it nevertheless continued to carry symbolic significance for persons belonging to minorities.[73] The Committee suggested that the authorities continue to pursue an increasingly inclusive approach in legislation, policies and practices concerning persons belonging to national minorities. The proposed changes to the National Minority Cultural Autonomy Act and/or the proposed new law on national minorities would send a strong message of inclusion to the persons without citizenship and other persons belonging to minorities who are currently formally outside the scope of the declaration issued by Estonia under the Framework Convention.[74]

The Advisory Committee also addressed the envisaged start of the transfer to Estonian as the main language of instruction in upper secondary schools in the school year 2007-2008.[75] The Committee concluded that this constituted "a major challenge affecting the implementation of Articles 12 and 14 of the Framework Convention". However, the Committee did not say that the transfer in itself would be in contradiction with requirements of the Framework Convention – it simply emphasised that "it needs to be pursued in a manner that guarantees the maintenance and development of minority language education in secondary schools". The Advisory Committee was further worried that "the envisaged transfer has not yet ben adequately prepared throughout Estonia, and there is a need to intensify the training and other efforts to ensure that teachers have adequate Estonian language and other skills, and that pupils and others involved are also prepared for the transfer." The Advisory Committee further opined that - "bearing in mind various problems associated with the pending transfer in many schools" – it was "extremely positive that Estonia has introduced added flexibility by providing secondary schools the possibility to apply for the exemption from the requirement to transfer to Estonian language teaching." Moreover, the Advisory Committee further noted that there was "an urgent need to provide more information and clearer procedural guidance on how schools and local authorities are to ask for such exemptions and how the central Government is to take the respective decicions.

As far as basic schools were concerned, the Advisory Committee commented upon the new legislative guarantees that were introduced by Estonia in 2003 – i.e. guarantees for receiving

[72] Ibid., para. 8.
[73] Ibid., para. 26.
[74] Ibid., para. 27.
[75] Ibid., para. 11.

optional classes on minority languages for pupils whose mother tongue is not the language of instruction. The Committee concluded that these guarantees were "potentially important especially for pupils belonging to numerically smaller national minorities as well as for those Russian-speaking pupils who opt for Estonian-medium schools." However, the Committee expressed its concern that "in practice, these new guarantees have not yielded significant results."[76] The Advisory Committee highlighted that there was "a need to identify the obstacles that hinder the establishment of such classes, and to review the existing regulations and procedures with a view to ensuring that the positive goals of the new guarantees are met."

The Advisory Committee regretted that the availability of teachers with adequate language skills and other challenges needed to be tackled so as to ensure that minority pre-schools remained a real option with quality comparable to other alternatives such as immersion models. The Committee recommended that Estonia should continue to pursue vigorously its commitment to ensuring that children belonging to national minorities had equal opportunities for access to pre-school education.[77] Regarding higher education, the Advisory Committee concluded that language difficulties continued to be a serious obstacle for many persons belonging to national minorities, and this has contributed to the relatively high drop-out rate. Furthermore, the Committee noted that the census data suggested that persons belonging to national minorities were significantly less likely to acquire a master or doctorate degree than persons belonging to the majority.[78] The Advisory Committee recommended that Estonia should take further measures to encourage and facilitate access of persons belonging to national minorities to higher educational institutions. It was important to ensure that increase in the volume of state language instruction in the secondary education was pursued in a manner that did not harm the quality of education in schools attended by persons belonging to national minorities and thereby limit their possibilities to access higher education.[79]

The Advisory Committee noted with satisfaction certain progress in the area of language legislation. Estonia has abolished the language proficiency requirements for electoral candidates and has extended the validity of the certificates for Estonian language proficiency for occupational purposes that were issued under previous language regulations. Moreover, the Advisory Committee was satisfied that "the practice of the Language Inspectorate has also improved in some areas, as evidenced by the fact that it has stopped issuing sanctions for the posting of private signs visible to the public also in a minority language." The Advisory Committee concluded that it was "important that such improvements are expanded and that they have a firm legal basis, and that no overly regulatory approach is pursued, for example, in the promotion of Estonian language proficiency in employment."[80]

However, in its first opinion, the Advisory Committee had referred to Article 25 of the Language Act and concluded that the goal of having minority language broadcasting subtitled in the state language should be pursued principally through voluntary methods rather than by imposing a rigid translation requirement. It had further called for an examination of the impact of Article 25 of the Language Act on minority language broadcasting.[81] In its second opinion, adopted on 24 February 2005, the Committee regretted that Article 25 of the Language Act remained unchanged and the Advisory Committee had received no information on any efforts to analyze the impact that it has had on minority language broadcasting. The Language Inspectorate had monitored the implementation of the translation obligation notably in the field of cable broadcasting and found in September 2004 that a Russian language Orsent TV had violated the said provision. Orsent TV received a written order from the Language Inspectorate to bring its broadcasting into line with Article 25 of the Language Act,

[76] Ibid., para. 12.
[77] Ibid., para. 128.
[78] Ibid., para. 131.
[79] Ibid., para. 132.
[80] Ibid., para. 17.
[81] Ibid., para. 87.

and subsequently the transmission of its programmes was temporarily terminated by the holder of the broadcasting licence up until Orsent TV began to translate its programmes.[82] The Advisory Committee conclouded that Estonia should, as a matter of priority, review Article 25 of the Language Act with a view to ensuring its compliance with Article 9 of the Framework Convention and, pending possible amendments to the said article, ensure that measures taken in connection with the monitoring of the implementation of the said provision were proportional to the legitimate aim pursued.[83]

The Advisory Committee further observed that Estonia has regularised the use of minority languages in contacts with administrative authorities through amendments to the Language Act introduced in 2002. However, from the point of view of the Advisory Committee, this has not been sufficient – "while constituting a step in the right direction in terms of implementation of Article 10 of the Framework Convention, the new legislation leaves an overly larfe margin of discretion to the individual officials concerned as to whether persons belonging to national minorities may use their language in contacts with authorities."[84] The Advisory Committee acknowledged that more substantial guarantees were applicable only in those local governments where at least half of the permanent residents belonged to a national minority. However, it found that this constituted a too high threshold and that the actual reach of these guarantees was difficult to determine due to the legal uncertainty surrounding the legal scope of the term national minority in Estonia.[85]

While the Advisory Committee recognised the need to promote and develop the Estonian language, the Advisory Committee considered that there remained a risk that the continuous reliance on a regulatory approach to promote the state language – sometimes at the expense of incentive-based voluntary methods – would lead to problems in the implementation of the right of persons to national minorities to use their language in private and in public, orally and in writing. The Advisory Committee held that the risk was accentuated by the fact that the Development Strategy of the Estonian Language for 2004-2010, approved by the Government in August 2004, while pursuing an important aim of protecting the Estonian language and while containing a number of valuable initiatives, also called for additional legal regulations on, and supervision of, the use of the state language in businesses, advertising and various other sectors. At the same time, the Committee was critical of the fact that the Strategy payed limited attention to some factors, such as the need to develop Estonian language education for adults, which were of central importance for persons belonging to national minorities. The Advisory Committee suggested that in order to ensure a balanced approach, it was important that the position of persons belonging to national minorities and their languages was more fully taken into account in this context.[86] The Committee recommended that the Estonian authorities should make further efforts to ensure that the protection and promotion of the state language was not pursued through an overly regulatory approach and at the expense of the protection of national minorities and their languages.[87]

As far as the use of minority languages in relations with authorities was concerned, the Advisory Committee noted that following amendments to Article 9 of the Language Act, which entered into force in January 2002, it was now legal to use a "foreign language" in oral communications with officials of state agencies and local government "by agreement of the parties". The Advisory Committee acknowledged that this provided an improved legal basis for the practice, common in some areas, of using Russian in such contacts.[88] However, the Advisory Committee also found that while improving legal certainty, the above-mentioned

[82] Ibid., para. 88.
[83] Ibid., para. 89.
[84] Ibid., para. 18.
[85] Ibid., para. 18.
[86] Ibid., para. 92.
[87] Ibid., para. 93.
[88] Ibid., para. 95.

amendment provided only limited guarantees for persons belonging to national minorities as it leaved an overly large margin of discretion to the individual officials concerned as to whether persons belonging to national minorities might use their languages in contacts with authorities without bearing interpretation costs. The Committee observed that this followed from the fact that in cases where the official did not agree to the use of the "foreign language", interpretation would be organised at the cost of the person "not fluent in Estonian".[89] The Advisory Committee went on to observe that more substantial guarantees, covering also the submission of written documentation to the authorities in a minority language, were applicable only in those local government units where at least half of the permanent residents belonged to a national minority, which, as was pointed out in the first Opinion of the Advisory Committee, constituted a high threshold. Furthermore, the Committee criticised that the actual reach of these guarantees was difficult to determine due to the legal uncertainty surrounding the legal scope of the term national minority in Estonia.[90] Finally, the Advisory Committee recommended that in the implementation of its legislation, Estonia should ensure that persons belonging to national minorities, in areas where they reside traditionally or in substantial numbers, had a true and effective possibility to use their minority language in relations with administrative authorities. The Advisory Committee emphasised that Estonia should seek to remove any legislative or practical problems identified, including those that may stem from imposed financial obligations or from the residual impact of the restrictive definition of the term national minority.[91]

As far as topographical indications were concerned, the Advisory Committee observed that in spite of the Government´s efforts, there appeared to be still a certain lack of awareness of the relevant legal possibilities and procedures available, including in those municipalities in the Lake Peipsi area that are traditionally inhabited by the Russian-speaking Old-Believers. Furthermore, the Advisory Committee suggested that the possibility of using the Cyrillic script (alongside the Latin script), currently excluded by Article 10 of the Place Names Act, would increase interest in introducing traditional place names in minority languages and better reflect the spirit of Article 10 of the Framework Convention.[92] The Advisory Committee recommended that the Estonian authorities should continue their efforts to encourage relevant local authorities to introduce minority language place names and should also consider the possibility of allowing the additional use of script other than Latin for such place names.[93]

Regarding private minority language signs, in its first Opinion, the Advisory Committee had concluded that Article 23 of the Language Act was not compatible with Article 11 of the Framework Convention to the extent it prevented a person belonging to a national minority from displaying signs and other information of a private nature visible to the public in a minority language, and it urged Estonia to revise the relevant legislation and practice. Following the comments made by the Advisory Committee in the first cycle, the Language Inspectorate no longer considers that using another language alongside Estonian in such signs, notices or advertisements was a violation of the existing legislation. Nevertheless, in the second opinion adopted on 24 February 2005, the Advisory Committee regretted that the text of Article 23 of the Language Act remained unchanged, despite the proposals, including by the Language Inspectorate, to introduce amendments that would explicitly sanction the use of another language alongside Estonian n private signs, notices and advertisements visible to the public.[94] The Advisory Committee recommended that improvements in the practice of the Language Inspectorate affecting signs, notices and advertisements in minority languages

[89] Ibid., para. 96.
[90] Ibid., para. 97.
[91] Ibid., para. 98.
[92] Ibid., para. 101.
[93] Ibid., para. 102.
[94] Ibid., para. 105.

should be explicitly rooted in legislation through amendments to Article 23 of the Language Act.[95]

The Advisory Committee critisised that the present language proficiency requirements were unrealistic in some sectors and did not fully take into account the practical situation in the sectors concerned, as was suggested by the extraordinarily high number of infringements of the Act detected by the Language Inspectorate. In 2003, the Inspectorate carried out 2400 inspections and found that the Language Act had been infringed in 1899 cases. In 2004, violations were again found in a great majority of cases inspected and the number of misdemeanour procedures increased considerably, including inter alia fines for 257 public servants (mostly police and deterntion personnel) and for 129 teachers of Russian-medium schools.[96] The Advisory Committee was also critical of the fact that the language proficiency requirements did not take adequately into account the regional specificities. For example, the Language Inspectorate checked the Estonian language skills of Kohtla-Järve town officials between 1997-2003 and concluded that 83 percent of them did not have the required language skills.[97] The Advisory Committee recommended that the authorities should ensure that the Estonian language proficiency of employees and public servants was not pursued through an overly prescriptive approach by the Language Inspectorate or other involved and that the protection of national minorities was full taken into account in this context.[98] The Advisory Committee concluded that in each individual sector of employment, the suitability of the existing language proficiency requirements, mostly established in 2001, should be reviewed so as to ensure that the requirements were realistic, clear and proportional to the aim pursued, and that they did not unduly hinder access of persons belonging to national minorities to employment and their participation therein.[99]

(To that point, the government of Estonia has commented upon the opinion of the Advisory Committee in the following manner: The requirement for public officials, including prison or police officials, cannot be made dependent on the region because in exercising their duties they must be able to communicate in the state language also with Estonian inhabitants who are not proficient in Russian, as well as with state agencies (in-service training, certification, etc). In addition, abandoning the Estonian language proficiency requirement would intensify the isolation of regions in northeastern Estonia. To the concern of the Advisory Committee that too strict language requirements might even disturb the work of state agencies in this area, as it may be difficult to find people with required proficiency, the government responded in its comments that such concerns were unfounded since posts were filled by public competition and there have been no problems in practice. Moreover, the employers had the right to employ or appoint to a post a person with a lower level of language proficiency on the condition that the person will pass the proficiency examination within the set deadline. The government also countered the Advisory Opinion´s critique regarding prison guards that the knowledge of Russian is compulsory or recommended for prison guards and for various other public officials.)

As far as access to media in one´s native language was concerned, the Advisory Committee acknowledged that persons belonging to national minorities had been given some support from the state in terms of their access to the media. At the same time, the Committee found that considering the proportion of persons belonging to minorities in the overall population, this support appeared limited. The Committee highlighted that the promotion of domestic print and electronic media for national minorities, including bilingual initiatives therein, should be seen as a central element of integration efforts in Estonia, where many persons belonging to national minorities continue to follow to a large extent the media based in the

[95] Ibid., para. 106.
[96] Ibid., para. 163.
[97] Ibid., para. 164.
[98] Ibid., para. 167.
[99] Ibid., para. 168.

Russian Federation.[100] The Committee recommended that Estonia should continue to support initiatives aimed at promoting inter-cultural dialogue and contacts in the media and other pertinent fields and also initiatives to monitor developments in this sphere.[101] It held that further measures, including increased budgetary support, were needed to expand the scope of public service broadcasting for national minorities, notably as regards domestically produced programmes. The Committee highlighted that this issue merited particular attention in the envisaged new financing scheme for the Estonian Television. The need to strengthen pertinent legislative guarantees also persisted and should be addressed in the on-going drafting of new legislation on public service broadcasting.[102]

The Advisory Committee furthermore acknowledged that Estonia had continued to provide a substantial amount of support for cultural and other projects concerning national minorities. Nevertheless, the Committee emphasised that there was a need to devise a funding scheme for those on-going activities that were difficult to sustain on the basis of the strictly project-based funding, such as the voluntary language schools ("Sunday schools") set up by national minorities. The Committee highlighted that such private initiatives, even when receiving public funding, did not eradicate the need to ensure adequate minority language education in the public educational system.[103]

Furthermore, the Advisory Committee observed that the European Union was becoming an increasingly important source of funding for cultural and other civil society initiatives. Therfore, it was essential that the related procedures were fully accessible to persons belonging to national minorities in Ida-Virumaa and elsewhere in Estonia, and that relevant training projects as well as materials were also made available in minority languages.[104]

The Advisory Committee also made some remarks regarding the structure of the Presidential Round-Table of National Minorities. In 2003, a chamber of representatives of national minorities was introduced. Although the Advisory Committee acknowledged that this move contributed to the representativeness of the round-table, which earlier had been an issue of concern, it still saw a ned to consolidate the way in which the Round-Table and other relevant consultative bodies were involved in a decision-making processes pertaining, directly or indirectly, to national minorities. In the view of the Advisory Committee, this too could be addressed in the context of the drawing up of the proposed law on national minorities.[105]

The Advisory Committee also observed that the recruitment of persons belonging to national minorities in public service was an essential factor in ensuring their full inclusion in decision-making processes. It suggested that there was a need to step up efforts in this sphere.[106]

As far as the collection of ethnicity-based data was concerned, the Advisory Committee acknowledged that the Law on Personal Data Protection, which entered into force in Pctober 2003, as well as the new Code on Criminal Procedure, ensured the legitimate goal of personal data protection. However, the Committee was concerned that the legitimate goal of ensuring personal data protection was at times pursued in a manner that excluded altogether the collection of ethnicity-based data. The Committee pointed out that in many key fields, such as law-enforcement and participation in elected bodies and economic life, more comprehensive data on persons belonging to national minorities, broken down by gender and geography and other relevant factors, was needed to analyse the implementation of various articles of the

[100] Ibid., para. 19.
[101] Ibid., para. 74.
[102] Ibid., para. 86.
[103] Ibid., para. 20.
[104] Ibid., para. 21.
[105] Ibid., para. 22.
[106] Ibid., para. 23.

Framework Convention.[107] The Committee recommended that the authorities should identify further ways to obtain increasingly reliable and up-to-date disaggregated data on national minorities, while continuing to pay careful attention to the principles contained in Article 3 of the Framework Convention.[108]

The Advisory Committee also took a stance on the transfrontier contacts of minorities and recommended that Estonia should continue to introduce initiatives to facilitate cross-border contacts between Estonia and the Russian Federation and involve persons belonging to national minorities in relevant bilateral initiatives.[109]

Legislative initiatives, national case law and practices of national authorities

Language issues have also been at the centre of attention of Estonian constitutional institutions. For example, the Chancellor of Justice in his annual report presented to the Riigikogu and published in September 2005, concuded that the Estonian Language Inspectorate (Keeleinspektsioon) lacks legal basis for controlling the knowledge of Estonian of public officials and servants.[110] There exists no act adopted by the Riigikogu that would sufficiently regulate the competence of the Estonian Language Inspectorate in that regard. The Chancellor of Justice has recently contacted the Ministry of Education and Science, pointing out the insufficient legal basis for the regulation of the work of the Language Inspectorate. A draft act – a supplement to the existing Language Act - for correcting this flaw, has been prepared by the Ministry.[111]

One of the positive developments launched in 2005 that probably best demonstrates that integreation of Russian-speakers in Estonia is successfully taking place, is the launching of the main daily newspaper "Postimees" (somewhat shortened version opf the Estonian original) also in the Russian language in 2005. This decision, motivated by business inetrest rather than by State subsidies, is an ideal solution for this part of the Russian-speaking community that is looking for "Estonian information in content", although is (yet) unable to follow or consume it in its original form.

Moreover, in May 2005, the project financed by the Estonian government and the European Social Fund was launched, in the framework of which 255 police and rescue service officials participate in free language courses and 145 officials in the labour exchange programme.

Language has also been topical during 2005 local municipalities´ elections in Estonia. In Tallinn, the Election Committee refused to register the list of an ethnic Russian politician, Mr Dimitri Klenski – "Spisok Klenskogo" ("Klenski List") insisting that the name of the list should be in Estonian rather than Russian language. Finally, on 13 September 2005, the Supreme Court´s constitutionality chamber annulled the decision of the Election Committee not to register Mr Klenski´s list as "Spisok Klenskogo".[112]

In 2005, language issues have formed subject of other Supreme Court cases as well. The Administrative Division of the Supreme Court its decision of 16 June 2005 Loksa Town Council v Chessclub Olympic dealt with the question whether juridical person does have the right to get answers to their letters in the minority language.[113] The Division found that the

[107] Ibid., para. 30.
[108] Ibid., para. 31.
[109] Ibid., para. 173.
[110] Õiguskantsleri 2004. aasta tegevuse ülevaade, Tallinn, 2005, p. 125.
[111] Ibid.
[112] See Case no. 3-4-1-15-05, 13.09.2005, Dimitri Klenski and Stanislav Cherepanov v. the Election Commission of the Republic of Estonia. Published in State Gazette RT III 2005, 26, 264.
[113] Loksa Linnavalitsus vs MTÜ Maleklubi Olympic, case no. 3-3-1-29-05, http://www.nc.ee/klr/lahendid/tekst/RK/3-3-1-29-05.html

right to get answers in minority language, enshrined in the Constitution, was linked to physical persons and did not create similar rights to legal persons. Legislator could with lex specialis accord such a right to juridical persons but since it has not done so, the Administrative Division of the Supreme Court currently denied such right to juridical persons.

Somewhat more troublesome has been a recent decicion of the Minister of Regional Affairs, Mr Jaan Õunapuu, in the request of Kallaste, a municipality on the shore of the Peipsi lake, to recognize the Russian parallel name for Kallaste, Krasnye Gory. Mr Leonti Kromonov, the Chairman of the Kallaste Town Council, requested to use the Russian parallel name Krasnye Gory for Kallaste municipality. However, the Minister of Regional Affairs rejected this request, relying on a stipulation in the Place Names Act (Kohanimede seadus) according to which parallel names cannot be used for administrative units (and Kallaste happens to be one). However, in its second report on the implementation of the Framework Convention of June 2004, the government of Estonia had indicated that municipalities that could employ parallel name(s) – such as Noarootsi in Western Estonia -, have themselves not shown initiative for taking up parallel names. In this report, the government had promised to encourage and support through the Place Name Council the respective municipalities in their endeavour to get recognition to the parallel names. From the point of view of Kallaste then, the decicion of the Minister of Regional Affairs amounted to hypocricy by the Estonian government, if not discrimination.[114] Kallaste municipality leaders who see the value of the parallel name also in touristic terms, have insisted that they will continue their exchange with the Estonian government in that issue. Mr Kromonov has stated that of Kallaste could use its historical parallel name, "this would confirm the democratic nature of our Estonian state", as "Peipsi Russians have ancient roots in Estonia; we are not migrants."[115] So far, the only officially recognized parallel names are of Swedish origin – Spithami (Spithamn), Dirhami (Derhamn), Rooslepa (Roslep), Tuksi (Bergsby), Elbiku (Ölbäck), Höbringi (Höbring), Riguldi (Rickul), Vanaküla (Gambyn), Hara (Harga), Suur-Nõmmküla (Klottorp), Väike-Nõmmküla (Persåker), Aulepi (Dirslätt), Sutlepa (Sutlep), Kudani (Kutanäs), Saare (Lyckholm), Pürksi (Birkas), Paslepa (Pasklep), Einbi (Einby), Tahu (Skåtanäs), Osmussaare (Odensholm), Sänna (Sännä).

Reasons for concern

See above. While the current rapporteur does not share the Advisory Committee´s criticism in all nuances and aspects, he certainly thinks that Estonia should take the suggestions and recommendations offered by the Advisory Committee most seriously.

Article 23. Equality between man and women

Gender discrimination in work and employment

Legislative initiatives, national case law and practices of national authorities

Previously, in 2004 (and as discussed in the last year`s report), the Riigikogu had adopted the "Gender Equality Act".[116]

On 16 February 2005, the Government adopted the "Basic Regulation of the Gender Equality Council".[117] The Council is attached to the Ministry of Social Affairs and it is an advisory body in matters of gender equality.

[114] See also Alo Lõhmus, Kalurid Punastelt Kaljudelt, Eesti Ekspress, 08.09.2005.
[115] Ibid.
[116] Soolise võrdõiguslikkuse seadus, RT I 2004, 27, 181.
[117] Soolise võrdõiguslikkuse nõukogu põhimäärus, VV, RTI, 23.02.2005, 12, 53.

On 10 March 2005, the Government adopted the "Basic Regulation concerning the Gender Equality Commissioner".[118] The declared aim of the regulation is to further specify the tasks and ramifications for the newly created institution, the Gender Equality Commissioner.

In September 2005, the first Gender Equality Commissioner, Ms Margit Sarv, was elected, and started her work in October 2005. Margit Sarv is a graduate of Tartu University (LL.B. in political science) and Central European University in Budapest (M.A. in human rights), and has previously worked as advisor of the Legal Chancellor of the Republic of Estonia, Mr Allar Jõks. In her first public announcements, Ms Sarv declared that she hopes to work against the misconception that gender equality is only a "matter of women". She has declared her first priorities the equality of salaries for equal work, men´s health problems, and family violence. By 1 December 2005, the Commissioner had received 11 complaints, more or less equally form men and women (6/5). However, only 2 of 11 cases were about concrete instances of alleged discrimination, the other cases were of more general nature. The Commissioner has encouraged in the media people to be more active since "on the basis of concrete cases, we can do more in our society in terms of setting standards and creating precedents".[119]

Another development has been that the Chancellor of Justice turned to the Ministry of Defence in order to find out whether § 21 para 3 and § 23 para 3 of the Defence Forces Disciplinary Act (*Kaitseväe distsiplinaarseadus*) that stipulate that disciplinary detention and disciplinary arrest will not be applied towards women are in accordance with the non-discrimination rule entailed in the Constitution and international, including European, norms. The minister agreed that such a distinction was unjustified and informed the Chancellor of Justice of the government´s intention to change the act.[120]

Reasons for concern

A poll conducted by Faktum in August 2005 indicated that ½ of women believe they do not have rights equal to men in Estonia.[121]

Remedies available to the victim of gender discrimination

Reasons for concern

The problems lie in the passive attitude of many women and men themselves, i.e., not all victims of discimination do not dare or bother to invoke mechanisms that have been created and that are available to everybody. Of course, this behavious reflects more systematically structural violences present in the society.

Participation of women in political life

Positive aspects

Public figures in Estonia have spoken out against "quotas" in Estonia. Most parties seem, however, to include women among their top ranks.

[118] Soolise võrdõiguslikkuse voliniku põhimäärus, VV, RTI, 15.03.2005, 14, 73.
[119] See Võrdõiguslikkuse volinik ootab tööd, Postimees, 2.12.2005.
[120] Õiguskantsleri 2004. aasta tegevuse ülevaade, Tallinn, September 2005, p. 205.
[121] Pool naistest leiab, et neil pole meestega võrdseid õigusi, Baltic News Service, 18.08.2005.

Article 24. The rights of the child

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The Ministry of Social Affairs worked out and the Government adopted on 27 January 2005 the Conception of Children Protection.[122] The basic document formulating State policy foundations for the coming years envisages the adoption of a new and more comprehensive version of the Children Protection Act in 2006. The move must be seen in lights of the recommendation and criticism made a few years ago (and analysed in ths report) by the UN Children Rights Committee.

The Conception evisages the creation of a High-level Children`s Rights Council in Estonia, a body of experts that would meet regularly. Moreover, the Conception recommends annual special session of the parliament on the situation of children and children`s rights; obliging the local municipalities (in particular, their social affairs departments) to report annually on children´s rights in their area and institutions. The Conception also suggests encouraging academic research in the field of children´s rights and raising the awareness and level of preparation on children rights of the kindergarten teachers, educators, child care specialists. The Conception suggests creating a special children protection unit at the Office of the Chancellor of Justice. Moreover, it demands abolishing erotic advertisement in media (such as TV evening programmes) and deals extensively with the the question of how to guarantee childrens rights when being exposed by media.

Furthermore, the Conception of Children Protection raises the question of citizenship rights and the fact that Citizenship Act gives facilitated access to citizenship rights only to less than 15 years old individuals ("children") while otherwise, Estonia´s civil law defines children as individuals in the age under 18. The Conception suggests amending the Citizenship Act to that effect. The Conception also suggests changing Citizenship Act in order to give to stateless minors of 15-17 years right to become citizens, even if they have violated the Estonian penal code – provided they were born in Estonia.

In the area of social rights of children, the Conception suggests creating a special Fund for children raised by single parents – if the (e.g., divorced) partner fails to pay aliments, the respective sums would first be taken from the fund so that the child would not be disadvantaged and subsequently the money redemanded from the negligent parent. The Conception envisages working out more detailed regulation for adopting children. The Conception foresees a number of suggestions and improvements in the field of healthcare of children and highlights the fact that the risk of poverty is higher for children than for grownups. Therefore, the Conception suggests working out a long-term strategy for reducing poverty among children. The Conception emphasises that children must, more than this has been the case so far, be included in decision making process about matters that affect them most, particularly on the level of local municipalities.

Since the UN Committee on Children Rights had criticised the Asylum Act from the point of view of rights of children to unify with their family, the Conception suggests specifying the Asylum Act stating that the child has the right to stay in Estonia if his/her rights are best protected in Estonia. Since Estonia ratified in 2004 the UN Convention on the Rights of the Child Optional Protocol on the Sale of Children, Child Prostitution and Child Pornogrpaphy, the Conception suggests ways how could Estonia best fulfil its obligations under the Optional Protocol. The Conception supports the suggestion of the European Social Rights Committee

[122] Lastekaitse kontseptsioon, available in the Internet at http://213.184.49.17/lastekaitse/

(see the discussion in last year´s report) to change the Labour Contract Act to the effect that children would be protected also in family enterprises and at home. The Conception thus, concurring with the opinion of the European Social Rights Committee, suggests changing the Labour Contract Act to that effect.

The Conception also discusses the fact that Estonia´s legal acts are not completely in accordance with the UN Convention on the Rights of the Child Optional Protocol on the involvement of children in armed conflict (which Estonia has signed). § 3 para. 2 of the Defence Force Service Law (Kaitseväeteenistuse seadus) foresees that in the case of mobilization, men from the age of 16 to 60 may be mobilized. This, however, is not in accordance with the optional protocol. There are comparable provisions in the Defence League Act (Kaitseliidu seadus). The Conception suggests bringing these regulations in accordance with Estonia´s international obligations.

The Chancellor of Justice maintains in his annual report on fundamental rights, published and presented to the parliament in September 2005 that children´s rights continue to be one of his main prioirities.[123] In his report, the Chancellor of Justice criticized that municipalities do not pay enough attention to the situation in orphanages, not fulfilling their legal duty to represent the children without parents in their interests, guarantee possibilities for their development, to support orphans in becoming independent, etc. The Chancellor of Justice concluded that when one could, for instance, be satisfied with the State supervision over schools, then Chancellor of Justice´s controls to child caretaking institutions continued to testify that the supervision (by the State) was insufficient. Thus, district elders (maavanemad) were controllingt how State finances were used but not the protection of children´s fundamental rights and freedoms.

Reasons for concern

The debate about abuses of children by media has only recently been initiated in Estonia.[124] UNICEF and Estonian Children Defence League´s experts have criticized instances when children have suffered through their exposure in various reality shows (e.g., "wife exchange", a show where parents would exchange their partners for a certain period and children continue to serve as "background" for the show), "erotic" dances performed by children in TV, divorce proceedings presented in TV in which kids are made to "choose" between their parents, etc. In December, the Children Defence League called on media to work together out rules for the exposure of children in media.[125] The policy should be that children´s rights have preference over e.g. public interest (to be informed about a divorce e.g.) The efforts to raise the awareness children´s rights, especially in contacts with mass media, must be further encouraged and accelerated.

Article 25. The rights of the elderly

Participation of the elderly to the public, social and cultural life

Reasons for concern

Estonia is a rapidly aging society. However, there is a general perception in Estonia that the elderly are less included in the public life than they should be. In Estonia, the sentence that "old people have power" would not be true. In fact, due to tumultuous transitions in Estonia the social order is to a certain extent reversed in comparison with West European countries. The generation of 30 plus-years old people often has more capital, knowledge and skills

[123] Õiguskantsleri 2004. aasta tegevuse ülevaade, Tallinn, September 2005, pp 66-67.
[124] See Anneli Ammas, Meediale kindlad piirid laste näitamiseks, Eesti Päevaleht, 14.12.2005.
[125] See Alar Tamm, Tõsieluseriaalides ei arvestata laste õigusi, Eesti Päevaleht, 10.11.2005.

necessary to operate in the globalizing environment than the generation of the pernsioners. In terms of policy, this should be balanced with more vigorous and solidarity-oriented legislation than so far.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

On 21 June 2005, the Constitutional Chamber of the Estonian Supreme Court declared unconstitutional a norm in the State Pension Insurance Act that had been valid until 6 January 2005 and that had stipuled a discriminatory treatment in payments for pensioners who had been accorded pension on general terms and those who had been accorded pension before the proper term.[126] The Supreme Court explained that both cathegories should be treated equally, notwithstanding the fact that this would mean further expenditures for the pension system.

Reasons for concern

The Estonian legislation contains a contradiction with respect to firing of the elderly. § 10 of the Labour Contract Act, influenced by the respective European norms, states that workers may not be fired on the basis of their age. However, § 86 point 10 of the same Act stipulates that (pension) age can be a legal reason for the employer to fire the worker. The Chancellor of Justice has incouraged the legislator to amend as soon as possible § 86 of the Labour Contract Act, bringing it in line with anti-discrimination law. In the meantime, the Chancellor of Justice has encouraged to interpret the existing norms in the way that succeeding norms have priority over § 86 point 10 of the Labour Contract Act.[127] On 25 November 2005 the government finally approved the change in the legislation; it remains pending for the authorization of the Riigikogu.

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

EUMAP (EU Monitoring and Advocacy Program), an Open Society Mental Health Initiative, i.e., an undertaking of the Open Society Institute, a leading NGO active in Eastern and Central Eastern Europe, published in 2005 its report "Rights of People with Intellectual Disabilities. Access to Education and Employment. Estonia".[128] The report concluded that for people with intellectual disabilities in Estonia, access to inclusive education and to any kind of employment remains highly limited.[129] While the number of children with intellectual disabilities is increasing, most of these children are not able to receive education in an integrated environment. The report criticizes that to date, the government has not adequately addressed the specific needs of people with disabilities in the labour market. In the field of education, the right to education to everyone (enshrined in the Constitution) is often not realized; many mainstream schools will not enrol children with intellectual disabilities on the

[126] Case no. 3-4-1-9-05. See http://www.nc.ee/klr/lahendid/tekst/RK/3-4-1-9-05.html

[127] See e.g. Merike Lees, Vanuse tõttu töölepingu lõpetamine võib tuua diskrimineerimissüüdistuse, Äripäev, 21.11.2005.

[128] www.eumap.org. The Estonian rapporteur has been Ms Agne Raudmees from the Estonian Mentally Disabled People Support Organization.

[129] Ibid., p. 13.

grounds that they cannot provide the needed support services.[130] The report takes note of the fact that following Estonia´s accession to the EU in 2004, EU Structural Funds are now being directed towards education and vocational training. However, the government has not yet allocated these funds towards projects specifically aimed at people with intellectual disabilities.[131] There are other problems – e.g., although Estonia recognizes certain principles of inclusive education in law and policy, in practice, most children with intellectual disabilities still do not have the opportunity to receive an education in a mainstream setting.[132] A number of important barriers still limit the extent to which the integrated education of children with intellectual disabilities can develop in practice. These barriers include lack of transportation, large class sizes, and opposition to integration from some teachers and parents or children without disabilities. The most important barrier, however, the report notes, is the insufficient number of support specialists. In kindergartens, for example, in most cases the local authorities are not able to provide financial support for support teachers, and parents or gurardians must themselves cover the cost of a support teacher.[133] Mainstream schools do not receive the funding required to meet the needs of children with intellectual disabilities.

The report also criticizes that the Employment Contracts Act does not protect the rights of people with disabilities. As yet, the report goes on to say, Estonia has not adopted specific legislation to comply with the EU Employment Directive.[134]

The report comes forward with a number of recommendations for Estonia. The core of them are presented in the following.

General recommendations

Regarding international standards, the report recommends that Estonia should ratify Protocol No. 12 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; and ILO´ Convention C159 on Vocational Rehabilitation and Employment (Disablad Persons).[135] *Regarding legislation*, the report recommends that Estonia should transpose into national legislation all the provisions of the EU Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origins (Race Equality Directive); and Directive 2000/78/EC of 27 November 2000, establishing a general framework for equal treatment in employment and occupation (Employment Directive).[136] Regarding public awareness, the report recommends that the government should take steps to raise the awareness of employers with regard to the skills and abilities of people with disabilities and their value as employees on the open labour market. In addition, the government should better inform employers about governmental programmes and employement services fort people with disabilities.[137]

Regarding data collection, the report recommends that the government should ensure that comprehensive data on people with disabilities, disaggregated by type of disability, is regularly collected and published, across all relevant sectors.[138] The report further recommends that the government should carry out a "mapping" of past and present projects that target, or have targeted, people with intellectual disabilities – or, more generally, people

[130] Ibid., p. 15.
[131] Ibid., p. 15.
[132] Ibid., p. 16.
[133] Ibid., p. 16.
[134] Ibid., p. 17.
[135] Ibid., p. 19, point 1.
[136] Ibid., p. 19, point 2.
[137] Ibid, p. 19, point 4.
[138] Ibid., p. 19, point 5.

with special needs. A database should be created with all relevant information about the projects, as well as their results, with the aim of spreading knowledge of best practices.[139]

Recommendations on Education

Regarding legislation the report recommends that the Ministry of Education and Research should elaborate regulations, or propose amendments to the Education Act, that clearly specify the conditions required for children with intellectual disabilities to attend mainstream schools, with the intention of promoting the maximum degree of integration, and equaliy of access, for children with intellectual disabilities.[140] Moreover, in line with Article 3 of the Salamanca Statement, which calls for all governments to embrace inclusive education, the Ministry of Education and Research, in cooperation with the Ministry of Social Affairs, should introduce specific legislation that unequivocally enshrines the right for children with intellectual disabilities to receive individually tailored support services at mainstream schools, including support teachers, personal assistants, and transport to and from school. The legislation should also ensure the right of a child with intellectual disabilities to attend a mainstream school near to their place of residence.[141]

Regarding early intervention services, the report recommends that the government should ensure that children with intellectual disabilities (and their families) are able to access quality early intervention services throughout the country. In particular, intellectual disability should be diagnosed as early as possible, so that pre-school children with intellectual disabilities can be provided with the support they need for their later integration into mainstream education.[142]

Regarding inclusive education, the report recommends that the Ministry of Education and Research should closely monitor the progress of inclusive education for children with intellectual disabilities in Estonia. In particular, it should ensure that children with intellectual disabilities enrolled in mainstream schools are not, in practice, educated at home.[143] Furthermore, the Ministry of Education and Research and the Ministry of Social Affairs should ensure that there is adequate funding to pay for the special needs of children and young people with intellectual disabilities who are included into mainstream aducation. In particular, the costs of employing support teachers or personal assistants in mainstream schools should be covered.[144] The Ministry of Education and Research and local authorities should ensure that the principle of fully informed parental choice is respected within school placement procedures. In particular, these these officials should work to develop the capacity of mainstream mainstream schools, to attend to the special needs of children with intellectual disabilities, so that insufficient capacity is no longer a barrier to their integration at mainstream schools.[145] The ministry should ensure that children with intellectual disabilities have the opportunity to attend a school close to home, if their parents so choose.[146]

Regarding the financing of education, the report recommends that the Ministry of Education and Research should ensure that local governments fulfil their obligation to enable people with intellectual disabilities to obtain an education. This should include covering the additional costs related to their disabilities, such as transport to and from school and a personal assistant at school. If local governments are not implementing existing laws, a system of supervision must be introduced.[147] The Ministry of Education and Research should

[139] Ibid., p. 20, point 6.
[140] Ibid., p. 20, point 7.
[141] Ibid., p. 20, point 8.
[142] Ibid., p. 20, point 9.
[143] Ibid., p. 20, point 10.
[144] Ibid., p. 21, point 11.
[145] Ibid., p. 21, point 12.
[146] Ibid., p. 21, point 13.
[147] Ibid., p. 21, point 14.

promote the equalisation of funding amongst schools, ensuring that rural schools in different regions in Estonia are able to provide the same quality education for children with intellectual disabilities as urban schools.[148] Moreover, the report recommends that the ministry should increase the annual funding provided to mainstream schools for each child with intellectual disabilities by a higher expenditure "index" (adjusted to the severity of disability), to bring funding for children with intellectual disabilities at mainstream schools in line with the funding provided at special schools.[149]

On Transition from Education to Employment

The report recommends that the government should develop supported and sheltered living arrangements, to assist young people with intellectual disabilities who have recently completed school and have yet to enter the labour market in developing independent living skills.[150] The report goes on to say that the government should ensure that vocational training for people with intellectual disabilities is carried out in an inclusive environment and not in special institutions, and that the government should encourage employment agencies to provide life-long vocational training and retraining for people with intellectual disabilities.[151]

On Employment

The report recommends that as a priority, legislation should be introduced on supported employment, and the government should then provide adequate funding to supported employment projects. Moreover, the report recommends that the government should initiate legislation to define and support the functioning of social enterprises.[152] The Ministry of Social Affairs should reform the assessment procedures for degree of disability and working incapacity, and discontinue using the term "incapacity for work" in all policy and legislation, and replace it with terminology that is more positive in connotation, such as "needs for work" or "rehabilitation plan".[153] The report further recommends that that the government should ensure that employers of people with intellectual disabilities have access to support services, such as consultancy services, which assist them in understanding and anticipating the different needs of people with disabilities in the workplace.[154] Moreover, the government should ensure that additional State subsidies are made available to fund the adaptation of the workplace for people with disabilities, such that employers are more motivated to hire people with disabilities.[155] The report furthermore recommends that the government should introduce active employment measures that support the return of the unemployed to the labour market and that *specifically* target people with disabilities.[156] Moreover, the government should provide funding for supported employment services, accessible to people with intellectual disabilities throughout the country. This should include continuous counselling, both for employers and people with intellectual disabilities working on the open labour market.[157] Also, the government should provide employment subsidies for employers to hire job coaches for people with intellectual disabilities. It should also increase the employment subsidy for employers who hire adults with severe intellectual disabilities or multiple disabilities.[158] The report goes on to recommend that the government should, while making th establishment of supported employment services its main priority, ensure adequate financing for the purchase

[148] Ibid. p. 21, point 16.
[149] Ibid., p. 21, point 17.
[150] Ibid., p. 22, point 20.
[151] Ibid., p. 22, points 21-23.
[152] Ibid, p. 22, point 24-25.
[153] Ibid., p. 23, point 28-29.
[154] Ibid., p. 23, point 31.
[155] Ibid., p. 23, point 32.
[156] Ibid., p. 23, point 34.
[157] Ibid., p. 24, point 35.
[158] Ibid., p. 24, point 36.

of equipment and the adaptation of the workplace for people with intellectual disabilities in sheltered workplaces.[159]

Reasons for concern

The concerns expressed in the EUMAP report should be taken seriously by Estonia (and the Network).

[159] Ibid., p. 24, point 37.

CHAPTER IV SOLIDARITY

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

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

Reasons for concern

This reported has indicated in earlier reports that the general ethos and atmosphere in Estonia, particularly among the elite, clearly favours liberal models to extensive social rights. Therefore, it may be presumed that many workers are not even raising the issue that they should necessarily have a big say in the conduct of business and in staying informed about the situation of the undertaking.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

On 31 January 2005, the Confederation of Estonian Trade Unions sent a protest letter to the then prime minister Mr Juhan Parts, arguing that the government systematically violates the revised European Social Charter. In December 2004, the government had adopted two regulations in which it regulated the conditions of renumeration of State employees in 2005. The Trade Union Act obliges the government to colsult the representatives of the affected employees, the government did not inform – according to the critic of the Confederation – the trade unions of the content of the new regulations, not to speak of prior consultation. Since the Riigikogu has ratified the European Social Charter on 31 May 2000, the Confederation points out that the government violated Articles 21 and 22 of the Charter.[160] Article 21 of the European Social Charter (revised) stipulates the right to information and consultation. It states:

> With a view to ensuring the effective exercise of the right of workers to be informed and consulted within the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice:
> a to be informed regularly or at the appropriate time and in a comprehensible way about the economic and financial situation of the undertaking employing them, on the understanding that the disclosure of certain information which could be prejudicial to the undertaking may be refused or subject to confidentiality; and
> b to be consulted in good time on proposed decisions which could substantially affect the interests of workers, particularly on those decisions which could have an important impact on the employment situation in the undertaking.

Moreover, Article 22 of the European Social Charter (revised) stipulates the right to take part in the determination and improvement of the working conditions and working environment:

> With a view to ensuring the effective exercise of the right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice, to contribute:

[160] EAKL : valitsus rikub süstemaatiliselt seadusi, sh Euroopa Sotsiaalhartat, http://www.eakl.ee/uudised/0502011.htm, 01.02.2005. The European Social Charter (revised), Strasbourg, 3.05.1996.

a. to the determination and the improvement of the working conditions, work organisation and working environment;

b. to the protection of health and safety within the undertaking;

c. to the organisation of social and socio-cultural services and facilities within the undertaking;

d. to the supervision of the observance of regulations on these matters.

In November 2005, the Confederation of Estonian Trade Unions sharply criticized that new draft of the Workers` Fiduciary Act, prepared in the Ministry of Social Affairs.[161] According to the Conferedeartion of Estonian Trade Unions, the aim of the bew draft act is to "effectively finish the activities of trade unions in Estonia". The Confederation criticizes that according to the draft, the fiduciaries of the trade unions would lose the rights they enjoy today in communicating with the employers. This decrease of status would be achieved by no longer defending the fiduciaries of the trade unions with the prohibition of firing. Mr Harri Taliga, the chairman of the Confederation has ridiculed the new draft act as the "Estonian response to the European critic that social partnership in Estonia is very weak".[162] Tiia E. Tammeleht, a lawyer with the Confederation, has argued that the draft is in contradiction with the European framework directive on information and consultation[163] which envisages that when informing the employees, the established customs of the respective country will be taken into account. In the words of Tammeleht, "using European directive as pretext, the goal is to demolish the existing system while the new draft does not oblige to consult the employer with the employees".[164] The Confederation of Estonian Trade Unions insists that in order to specify the system of information and consultation in the enterprises, supplements in the existing Workers` Fiduciary Act would suffice.

In December 2005, the Confederation of Estonian Trade Unions turned with protest towards the European Trade Union Confederation (ETUC), and started an "international protest campaign".[165]

Reasons for concern

See above protests voiced by the Confederation. However, the issue is so far in thye stage of legislative suggestions (no act has been adopted yet).

Article 28. Right of collective bargaining and action

Social dialogue

Legislative initiatives, national case law and practices of national authorities

Mr Harri Taliga, the Chairman of the Confederation of Estonian Trade Unions, has criticized the government´s lack of readiness for social dialogue in Estonia.[166] He criticized that employment policy (active labour market measures) remained underfinanced, there was not

[161] Eestis tehakse ametiühingut hävitavat seadust, http://www.eakl.ee/uudised/0511071.htm, 07.11.2005.
[162] Ibid.
[163] Framework directive 2002/14/EC.
[164] See the website supra.
[165] Ametiühingud algatavad rahvusvahelise protestikampaania, http://www.eakl.ee/uudised/0512041.htm, 04.12.2005.
[166] H. Taliga, Does Estonia Fit to European Social Model?, Presentation at an international roundtable « Social Europe and the Constitutional Treaty », organized by the Open Society Institute on 8 April 2005. See http://www.oef.org.ee/et/psl/5sostsiaalpoliitika/.

enough support for LifeLong Learning, and that low wages were merely considered as competitive advantage by the Estonia government. Mr Taliga pointed out insufficient social protection, e.g. that unemployment allowance remained unchanged since 1999. There appeared no special protection scheme for industrial accidents and professional diseases in Estonia, and the government has demonstrated will to lower standards in health insurance. Moreover, Mr Taliga criticized the reluctance of the state/government to engage in social dialogue since there appeared to be no real interest in social partners´ involvement, and it had been refused to allocate ESF money for social partners´ capacity building. Finally, Mr Taliga critically pointed out lack of employers´ interest in collective bargaining, a strong will to lower standards and that labour peace was not considered as a value.

Positive aspects

In December 2005, the minimum wages were raised to 3000 EEK.

The right of collective actions (right to strike) and the freedom of the enterprise or the right to property and the issue of the intervention of the judiciary into collective actions

Legislative initiatives, national case law and practices of national authorities

In the spring of 2005, the Confederation of Estonian Trade Unions criticized a draft issued by the Ministry of Social Affairs that aimed to regulate the supportive strikes in Estonia.[167] The Confederation criticized that the strike to have supportive strikes was restricted in the draft (shortening its duration from 3 days to 6 hours) and prolonging the time of giving prior notice from 3 days to one week. The Chancellor of Justice had argued in his February 2005 letter to the Confederation that in his view, 3 days was too short a period for giving prior notice of of a 3 day supportive strike, potentially violating rights of the employer. The chairman of the Confederation of Estonian Trade Unions has, however, argued that since Estonia has so few strikes, there would be no need to change legislation in that issue.

Reasons for concern

See the critic above but the issue is on the draft phase and critic before the adoption of a new act in the parliament would be preliminary.

Article 29. Right of access to placement services

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

On 28 September 2005, the Riigikogu adopted the Labour Market Services and Assistances Act that will enter into force on 1 January 2006.[168] The act regulates in substantive detail the work of placement services and sets out various means for dealing with the situation of the unemployed.

Positive aspects

See above, the adoption of the new act.

[167] EAKL : sotsiaalministeeriumi eelnõu toetusstreikide piiramiseks on tellimustöö, http://www.eakl.ee/uudised/0504011.htm, 01.04.2005.
[168] Tööturuteenuste ja –toetuste seadus, RT I 18.10.2005, 54, 430.

Article 30. Protection in the event of unjustified dismissal

Reasons for dismissals

Reasons for concern

In Estonia, the problem is that employers due to their economically stronger position tend to put forward labour contracts in which they guarantee themselves easy ways to dismiss a person. As the general attention of legislation and policy seems to be on business growth, labour law sometimes tends to be ineffective in such circumstances (protection of workers´rights and interests, e.g., in the cases of dismissal).

Article 31. Fair and just working conditions

Health and safety at work

Reasons for concern

See the previous comments of the European Committee on Social Rights (as discussed oin last year`s report). The more systematic deficiencies have not been – neither can they be – liquidated in one year only.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

On 24 November 2004 the Riigikogu ratified the 1947 ILO Convention concerning Labour Inspection in Industry and Commerce (C 81) and the 1968 ILO Convention concerning Labour Inspection in Agriculture (C 129).[169]

Positive aspects

See above, the adoption of the ILC conventions.

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

Protection of minors at work and monitoring of the protection

Reasons for concern

See the last year´s report. The legislative changes suggested by the Social Rights Committee have so far not been adopted by the Riigikogu.

[169] Rahvusvahelise Tööorganisatsiooni (ILO) konventsiooni töötingimuste järelevalve kohta tööstuses ja kaubanduses (nr 81) ning konventsiooni töötingimuste kohta põllumajanduses (nr 129) ratifitseerimise seadus, RT II, 23.12.2004, 40, 149.

Article 33. Family and professional life

Parental leaves and initiatives to facilitate the conciliation of family and professional life

Positive aspects

According to population experts and politicians, the "parental salary" act that was adopted in Estonia two years ago, has helped to achieve that birth rates have somewhat improved in Estonia (although the general trend in the population unfortunately remains that Estonia continues to have more deaths than births). However, with this act the state has made tangible effort to facilitate the conciliation of family and professional life. In 2005, 300 more babies than in 2004 were expected to be born in Estonia.

Article 34. Social security and social assistance

Social assistance and fight against social exclusion

Legislative initiatives, national case law and practices of national authorities

In his annual report, published in September 2005, the Chancellor of Justice has dedicated a special section to cases that have emerged on the ground of social assistance and social welfare.[170] Most complaints that the Chancellor of Justice receives are related to decicions made by local municipalities regarding the access to or amount of social assistance. The Chancellor of Justice observed that in several municipalities (such as in Narva), there was a tendency to restrict or limit the rights of disabled persons and other protected groups to social assistance.[171] Moreover, the Chancellor of Justice emphasized that the district governors have, according to the Social Assistance Act, a significant role in supervising social services, social assistance, emergency medical aid since individuals who are in a disadvantaged position often have no means to establish their rights in courts of law.[172] Thus, the Chancellor of Justice called the district governors to a greater vigilance in their supervision task.

Reasons for concern

See above the critic of the Chancellor of Justice.

Article 35. Health care

Access to health care

Legislative initiatives, national case law and practices of national authorities

The health care expert of WHO, Mr Joseph Kutzin, recently visited Estonia and expressed an overall good opinion about how the reformed Estonian health care system works. However, he nevertheless criticized the the fact that Estonia`s public expenditure on health care diminished from 13 % to 11 % of the budget since 1998. Mr Kutzin concluded that to him as economist, these numbers indicate the diminishing status of health care in the list of State`s priorities.[173]

[170] Õiguskantsleri 2004. aasta tegevuse ülevaade, Tallinn, September 2005, pp. 93-103.
[171] Ibid., p. 93.
[172] Ibid.
[173] See A. Günter, *Eesti riik kulutab üha vähem tervishoiule*, Postimees, 29.11.2005.

In his recently published annual report on the status of fundamental rights in Estonia, the Chancellor of Justice dedicated special section to cases that have emerged on the basis of the defence of health and medical health.[174] He concluded that on the basis of his and his staff´s control visits, the rights of patients were generally guaranteed and discovered deficiencies were insignificant. However, the Chancellor of Justice also pointed out that since the district governors (maavanem) play a significant role in the implementation of the so-called family doctor medical care system, the role of the district governors, although crucial, remains unclear. It needs to be further specified.[175]

The Chancellor of Justice also discovered deficiencies in the implementation of the Sea Service Act (mereteenistuse seadus), regarding the question of the accessibility of emergency medical help. The Chancellor of Justice criticized the Ministry of Social Affairs for having interpreted the seamen`s access to emergency health care in a too restrictive manner.[176]

Reasons for concern

See above the critic done by WHO expert regarding Estonia´s health care expenditure.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

On 4 May 2005, the parliament adopted the Tobacco Act (Tubakaseadus).[177] The Tobacco Act brings the Estonian legislation in line with the recent developments in the EU legislation, aiming at further restricting the consumption of tobacco. The Tobacco Act contains prohibitions and restrictions to the consumption of tobacco.[178] Moreover, on 4 May 2005 the Riigikogu ratified the WHO Framework Convention on Tobacco Control.[179]

Reasons for concern

The health of Estonia`s population is not good in comparison with European average. Mens´ life expectancy, for example, is considerably lower in Estonia than the EU average.

Article 36. Access to services of general economic interest

Article 37. Environmental protection

Right to a healthy environment

Legislative initiatives, national case law and practices of national authorities

See below.

[174] Õiguskantleri 2004. aasta tegevuse ülevaade, Tallinn, September 2005, pp 78-92.
[175] Ibid., p. 78.
[176] Ibid., p. 79.
[177] Tubakaseadus, RK, RTI, 26.05.2005, 29, 210. Adopted on 4 May 2005 and promulgated by the President on 18 May 2005.
[178] Ibid., chapter 5.
[179] Maailma Terviseorganisatsiooni (WHO) Tubaka Tarbimise Leviku Vähendamise Raamkonventsiooni Ratifitseerimise Seadus, RT II, 31.05.2005, 15, 46.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

On 26 October 2005, the Riigikogu approved the "Environmental Strategy of Estonia until 2010".[180] The strategy takes into account the EU Lisabon Strategy, EU Sustainable Development Strategy, the 6. Environmental Strategy of the EU, and other documents. The strategy analyzes environmental problem areas, risks and policy goals in Estonia. The strategy points out as a problem that the environmental awareness of the public has diminished and often is limited to rejecting an undesired object from one´s immediate neighbourhood.[181] Furthermore, it recognizes that drafts of new legislative acts are often worked out in a hurried manner, without consulting the public. Moreover, the strategy admits that state institutions do not make sufficiently effort to include the public in the decicion-making; at the same time, people´s awareness of ways to participate in the decision-making is insufficient. The strategy also recognizes that environmental NGOs do not have sufficiently means to participate efficiently in the decision-making. Somewhat paradoxically from the point of view of the particular document itself (as a form of self-critique?), the strategy criticizes the fact that when state documents, strategies and policies are worked out, only minimal publication takes place. "Not sufficiently time and reseources are found for the inclusion of the public and the affected parties."

Following these (self-)criticques, the strategy sets out as policy goals to publicize in due time new environmental draft acts, and if necessary, to arrange to them previous assessment, to include people to the formulation of state strategies during the whole process, starting from the vision stage, to include more successfully people who are affected by decisions in the respective decision-making processes, to guarantee the control of the public over the implementation of the environmental decisions, to use further means for raising environmentally conscious behaviour among the population.[182]

Another relevant development has been that on 19 October 2005 the Riigikogu ratified the Joint Convention on Safety of Spent Fuel Management and on the Safety of Radioactive Management, signed by first signatories on 5 September 1997 in Vienna and signed by Estonia on 5 January 2001 in Vienna.[183]

Moreover, on 16 March 2005 the Riigikogu ratified the Aarhus Protocol on Persistant Organic Pollutants of the Convention on Long-range Transboundary Air Pollution.[184]

Positive aspects

The adoption of the"Environmental Strategy" can in itself be seen as positive development since the strategy contains several important principles and aspects. It is, however, important to oversee that such guiding principles and goals would be implemented and bot remain "on paper".

[180] « Eesti keskkonnastrateegia aastani 2010 » heakskiitmine, RT I 10.11.2005, 58, 462.
[181] Ibid., point 5.8.4.
[182] Ibid.
[183] Kasutatud tuumakütuse ja radioaktiivsete jäätmete ohutu käitlemise ühendkonventsiooni ratifitseerimise seadus, RT II 24.11.2005, 28, 92.
[184] Piiriülese õhusaaste kauglevi 1979. aasta konventsiooni püsivate orgaaniliste saasteainete protokolliga ühinemise seadus, RT II 07.04.2005, 11, 29.

Article 38. Consumer protection

Protection of the consumer in contract law and information of the consumer

Good practices

The Estonian Consumers` Union has done quite good work in informing consumers about the pertinent legislation and practices.[185]

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

On 20 October 2005, the Riigikogu amended and complemented the Product Safety Act.[186] The new version will enter into force on 1 January 2006. The main idea of the amendment is to extend the safety production explicitly not only to products but also to services. The amendments are mostly carried by this pursuit.

[185] See www.tarbijakaitse.ee.
[186] Toote ohutuse seaduse muutmise seadus, RTI 17.11.2005, 61, 474.

CHAPTER.V. CITIZENS' RIGHTS

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

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

Participation of foreigners in public life at local level

Reasons for concern

During the October 2005 municipal elections several violations of election laws were reported, especially in the North Eastern part of the country. However, it was not observed that foreigners were unable to participate in political life at the local level.

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

Positive aspects

EU citizens non nationals of Estonia were entitled to vote during 2005 October local municipalities´ elections. No cases of discrimination were observed. The election activity was generally relatively low. In certain municipalities – e.g. in Võhma, Viljandi district, a woman of German nationality – EU citizens non nationals of Estonia were elected members of local municipalities´ councils.

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 residence

Prohibition to enter certain zones or portions of the national territory during particular events

Reasons for concern

During the last years, Estonia has not experienced major international summits or sports events of the scale that the provision under discussion would have become topical or problematic from the point of view of human rights.

Article 46. Diplomatic and consular protection

Protection of EU citizens by diplomatic and consular representations abroad

Reasons for concern

Estonia does not have as many consular representations abroad as most other – bigger – EU member states. Therefore, in terms of consular protection, Estonia may be rather on the "receiving end" of the common European regulation of consular help. As far as other EU nationals have turned to Estonia´s consular representations, no noteworthy cases have emerged.

CHAPTER VI JUSTICE

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

Access to a court and, in particular, the right to legal aid / judicial assistance

Good practices

See the last year´s report, especially the discussion on the newly adopted Legal Aid Act. The act facilitates the Estonians to better exercise their right to legal aid/judicial assistance.

Interim judicial protection

Legislative initiatives, national case law and practices of national authorities

The Estonian parliament, the Riigikogu, adopted on 15 June 2005 the Witness Protection Act (Tunnistajakaitse seadus).[187] The act regulates the status and protection of witnesses in criminal proceedings, in particular stipulating the conclusion of "defence contracts" between the witness and the police.[188]

Good practices

The adoption of the Witness Protection Act.

Independence and impartiality

Reasons for concern

In 2004, Mr Märt Rask, a leading politician of the Reform Party and former attorney, was elected Chairman of the Estonian Supreme Court. At that time, opposition politicians criticized the appointment as "political" and pointed out that the choice might have a negative impact on the impartiality of the conduct of justice. However, such fears have not materialized and there have been no signs of the "politization" of the Supreme Court since the appointment of Mr. Rask.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

On 16 November 2005, the Riigikogu ratified the European Convention on the Compensation of Victims of Violent Crimes, signed by first signatory States on 24 November 1983 in Strasbourg and signed by Estonia on 22 October 2003.[189]

Positive aspects

The adoption of the further mentioned European Convention by Estonia.

[187] Tunnistajakaitse seadus, RK, RTI, 11.07.2005, 39, 307.
[188] See ibid. § 14 et seq.
[189] Vägivallakuritegude ohvritele hüvitise maksmise Euroopa konventsiooni ratifitseerimise seadus, RT II, 13.12.2005, 32, 109.

Article 48. Presumption of innocence and right of defence

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

On 22 November 2005, the European Court of Human Rights issued its judgment in the case of Taal v. Estonia.[190] Mt Hermo Taal, born in 1954, was charged with having threatened, by way of telephone calls, to explode a bomb in the supermarket Pirita Selver if his demands for a sum of money were not met. Witnesses failed to appear at the hearing in the Estonian courts and the courts based their decisions mainly on written (recorded) testimonies. The applicant was convicted and sentenced to 3 years' imprisonment. The applicant complained that he did not have a fair trial and that his rights of defence had been violated since he had had no opportunity to examine or have examined, both during the investigation and at the trial, any of the witnesses against him. He relied on Article 6 §§ 1 and 3(d) of the Convention.

The ECHR found that having regard to the fact that neither the applicant nor his representative were enabled to question any of the witnesses at any stage of the preoceedings and that none of the witnesses were ever examined by the courts, the applicant's defence rights were restricted to an extent incompatible with the guarantees provided by Article 6 §§ 1 and 3 (d) of the Convention.[191] Accordingly, the Court concluded that there had been a violation of Article 6 §§ 1 and 3 (d). The Court also found that the applicant had sustained damage, which could not be compensated by the finding of the violation. Making its assessment on anequitable basis, the Court awarded the applicant the sum of EUR 6,500 by way of compensation for non-pecuniary damage.[192] The Court also found it reasonable to award EUR 2,300 on that amount for costs and expenses in respect of the Convention proceedings in addition to the amont that had already been granted for legal aid.[193]

Reasons for concern

The ECHR judgement in Taal v. Estonia indicates that Estonian court system still sometimes has problems with international and domestic rules governing evidence in criminal matters.

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

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

Right not to be tried or punished twice

Legislative initiatives, national case law and practices of national authorities

The Administrative Law Division of the Supreme Court dealt in its 2 May 2005 decicion with the question whether the fact that a person had been simultaneously dismissed from the list of police school and his release from the police service violated the rule that nobody should be punished twice.[194] The Supreme Court denied that such a violation would exist and argued

[190] Case of Taal v. Estonia, Application No. 13249/02.
[191] Ibid., para. 35.
[192] Ibid., para. 40.
[193] Ibid., para. 43.
[194] Roossaar vs Ida Politseprefektuur (3-3-1-10-05), http://www.nc.ee/klr/lahendid/tekst/RK/3-3-1-10-05.html

that the social good that was defended in this case had overruled other possible considerations.

Reasons for concern

Notwithstanding the Supreme Court decision, no major concerns could be observed in 2005.