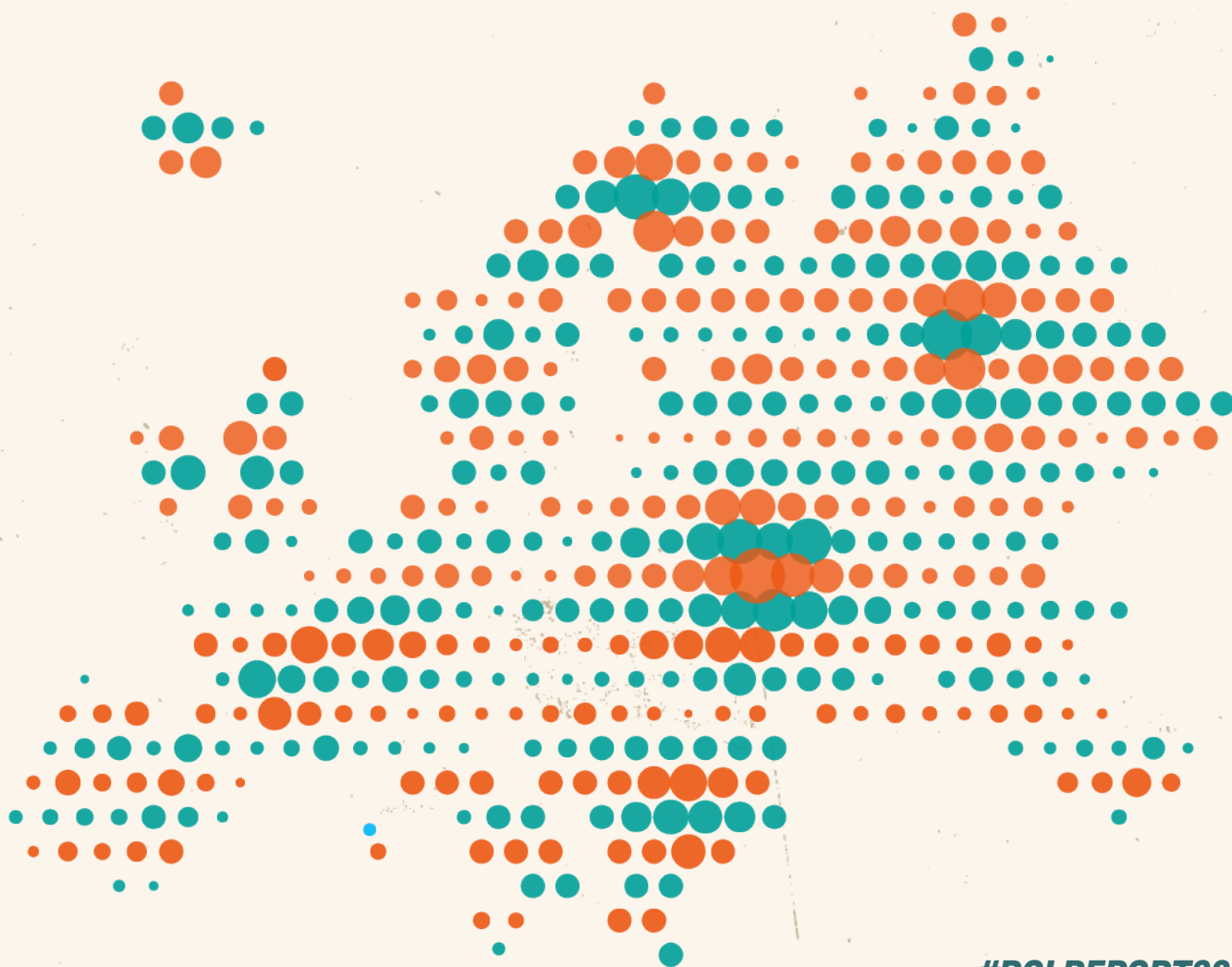


# LIBERTIES

# RULE OF LAW REPORT

# 2023

# ESTONIA



#ROLREPORT2023

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## **FOREWORD**

This country report is part of the Liberties Rule of Law Report 2023, which is the fourth annual report on the state of rule of law in the European Union (EU) published by the Civil Liberties Union for Europe (Liberties). Liberties is a non-governmental organisation (NGO) promoting the civil liberties of everyone in the EU, and it is built on a network of national civil liberties NGOs from across the EU. Currently, we have member and partner organisations in Belgium, Bulgaria, the Czech Republic, Croatia, Estonia, France, Germany, Hungary, Ireland, Italy, Lithuania, the Netherlands, Poland, Romania, Slovakia, Slovenia, Spain and Sweden.

Liberties, together with its members and partner organisations, carries out advocacy, campaigning and public education activities to explain what the rule of law is, what the EU and national governments are doing to protect or harm it, and gathers public support to press leaders at EU and national level to fully respect, promote and protect our basic rights and values.

The 2023 Report was drafted by Liberties and its member and partner organisations, it and covers the situation during 2022. It is a ‘shadow report’ to the European Commission’s annual rule of law audit. As such, its purpose is to provide the European Commission with reliable information and analysis from the ground to feed its own rule of law reports, and to provide an independent analysis of the state of the rule of law in the EU in its own right.

Liberties’ report represents the most in-depth reporting exercise carried out to date by an NGO network to map developments in a wide range of areas connected to the rule of law in the EU. The 2023 Report includes 18 country reports that follow a common structure, mirroring and expanding on the priority areas and indicators identified by the European Commission for its annual rule of law monitoring cycle. Forty-five member and partner organisations across the EU contributed to the compilation of these country reports.

**[Download the full Liberties Rule of Law Report 2023 here](#)**

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# ESTONIA

## About the authors



### Estonian Human Rights Centre (EHRC)

is an independent public interest foundation dedicated to the advancement of the protection of human rights in Estonia. EHRC is engaged in research, monitoring, advocacy and awareness-raising activities to advance the protection of human rights. EHRC's mission is to work together for Estonia to respect the human rights of every person in the country. EHRC develops its activities according to the needs of society. It is currently focusing on advancing the equal treatment of minority groups, promoting diversity and inclusion, protecting the human rights of asylum seekers and refugees, fighting hate speech and hate crime, and monitoring data protection and privacy. EHRC coordinates the Estonian Diversity Charter. It also monitors the overall human rights situation in Estonia and publishes independent human rights reports about the situation in the country. EHRC carries out a broad, effective and sustainable advocacy in the field of human rights.

## Key concerns

The justice system in Estonia is becoming better and more independent. More judges are being appointed to alleviate the judicial workload. Several legal amendments are on the way, which have the potential to improve the quality of judicial proceedings by having more specialist judges, digitalised court proceedings and more accessible court judgments.

The anti-corruption framework, on the other hand, has not seen much progress. Members of Parliament have shown little interest in disclosing their meetings with lobbyists, despite this being one of the main recommendations of the EU Commission in last year's rule of law report, and the EU Whistleblower Directive has not yet been transposed.

Regarding media freedom, no significant changes have occurred in 2022. The EU Commission's 2022 recommendation to bring the right of access to information and access to official documents up to European standards has not been implemented.






There have been no significant changes regarding checks and balances compared to last year. The EU Commission's 2022 report recommended that countries "continue advancing with the digital platform to make the legislative process even more visible and inclusive for public consultation". The Ministry of Justice website states that the "Co-creation

Workspace Project” is being worked on and will be launched in 2024.<sup>1</sup>




There were no major developments in terms of the civic space in 2022, and the EU Commission’s 2022 report did not make any recommendations in this area.

No progress has been made on the systemic issues affecting the rule of law environment and recommendations that EHRC has made repeatedly have still not been implemented.

### State of play

-  Justice system
- N/A Anti-corruption framework
-  Media environment and freedom of expression and of information
-  Checks and balances
-  Enabling framework for civil society
-  Systemic human rights issues

### Legend (versus 2022)

-  Regression
-  No progress
-  Progress

## Justice system

### Key recommendations

- The Ministry of Justice, in cooperation with the Estonian Bar Association and other relevant stakeholders, needs to take urgent action to find a solution to the state legal aid crisis.
- The government should implement the recommendations of the Estonian Council for Administration of Courts to create more circuit court judge positions and increase court officials’ salaries.

### Judicial independence

The justice system in Estonia has enjoyed a high level of independence in 2022. In general, the general public perceives the judiciary as being independent, as do judges themselves. A survey conducted in 2022 by the European Network of Councils for the Judiciary shows that Estonian judges consider the judiciary in Estonia to have a higher than average level of independence compared to other European countries.<sup>2</sup> A 2021 survey on the trustworthiness of institutions showed that 71% of respondents trust Estonian courts, while the results of four previous surveys put this figure at between 60% and 63%.<sup>3</sup>

1 Ministry of Justice (*Justiitsministeerium*), *Riigi koosloome keskkond*.

2 European Network of Councils for the Judiciary, *ENCJ Survey on the Independence of Judges*, 2022.

3 Eesti Kohtud, *Uuring: kohtuid usaldab 71 protsenti eestimaalastest*, 30 November 2021.

Between 1 September 2021 and 31 August 2022, the Chancellor of Justice (the National Human Rights Institute or Ombudsman) had to check whether the court had fulfilled all its official duties or whether a complaint about the inappropriate behaviour of a judge was true in fifteen cases. The Chancellor of Justice found no reason to initiate disciplinary proceedings in any of these cases.<sup>4</sup> However, the Disciplinary Chamber of the Supreme Court published two cases in 2022 in which judges were found guilty of improper performance of their official duties for delaying court procedures and missing deadlines. These resulted in a reprimand in one case and a reduction in salary for six months in the second case.<sup>5</sup>

## Quality of justice

### Accessibility of courts

In its decision of 7 November 2022, the Supreme Court found that with the current compensation rates for state legal aid lawyers, the provision of state legal aid may not be sustainable and the protection of the fundamental rights of people who need legal aid may be endangered. The number of lawyers providing state legal aid has shrunk to a critical level due

to underfunding and issues in the payment system. The Supreme Court stressed that it is up to parliament to decide whether the shortage of lawyers should be alleviated by increasing their fees, abolishing the upper limit of the fees and giving the prosecutor the right to set a fair fee in each individual case, or in some other way.<sup>6</sup>

In her 17 November 2022 opinion the Chancellor of Justice also found that the provisions of Regulation No. 16 of the Minister of Justice on “Procedure for payment of state legal aid fees and reimbursement of costs to lawyers” are inconsistent with the Constitution, as the current fee system no longer guarantees the right to a fair trial or the right to a defence in criminal proceedings.<sup>7</sup>

The Deputy Chancellor of the Ministry of Justice confirmed that the ministry is trying to find resources to alleviate the situation.<sup>8</sup>

### The judiciary's resources

Recent surveys point to Estonian judges having concerns regarding their workload. According to a survey published in 2022 by the Estonian Association of Judges, 70.5% of

4 Chancellor of Justice (*Õiguskantsler*), *Õiguskantsleri aastaülevaade 2021/2022*.

5 Supreme Court (*Riigikohus*), Disciplinary Chamber (*Distsiplinaarkolleegium*), *Case No 9-13/22-1*, 6 July 2022; Supreme Court (*Riigikohus*), Disciplinary Chamber (*Distsiplinaarkolleegium*), *Case No 9-13/22-2*, 23 September 2022.

6 Supreme Court (*Riigikohus*), Constitutional Review Chamber, *Case No 5-22-2*, 7 November 2022.

7 Chancellor of Justice (*Õiguskantsler*), *Ettepanek riigi õigusabi osutamise eest makstava tasu määrade kohta*, 17 November 2022.

8 Estonian Public Broadcasting (ERR), *Madise tegi ettepaneku tõsta riigi õigusabi eest makstavaid tasusid*, 18 November 2022.

the respondents (judges of first and second instance courts) assessed their daily workload as constantly or mostly excessive.<sup>9</sup>

In efforts to alleviate the situation, in April 2022, six additional judicial positions were created between Harju County Court and Tartu County Court.<sup>10</sup>

In September 2022, the Estonian Council for the Administration of Courts made an appeal to the government and parliament, in which it requested that two court budget priorities be taken into account. First, the Council considered it important, in order to cope with the workload of the courts and to ensure reasonable procedural time, that four new circuit judge positions be created and that additional funds be allocated for the recruitment of the necessary support staff. Secondly, the Council drew attention to the low salaries of court officials, which is a key reason why qualified personnel are leaving the courts and why it is difficult to recruit new people.<sup>11</sup>

### **Digitalisation**

On 25 January 2023, parliament adopted a law amending the Code of Administrative Court Procedure and the Code of Civil Procedure, which changes the regulation concerning court files, giving a clear legal definition of digital court files in order to ease the transition to paperless court proceedings.<sup>12</sup>

Parliament is currently reviewing a draft law amending the Courts Act, which will lead to judges specialising more and will result in a more modern management structure for county courts. According to the draft law, civil and criminal departments must be formed in county courts. The explanatory memorandum clarifies that at a time when legal disputes are becoming more and more complex and both lawyers and prosecutors are specialising, the specialisation of judges must also be supported to increase the quality of court proceedings.<sup>13</sup>

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- 9 Estonian Association of Judges (*Eesti Kohtunike Ühing*), EKoÜ töökoormuse küsimustik I-II astme kohtunikele, 20 January 2022
- 10 Minister of Justice (*Justiitsministeerium*), Justiitsministri 27. oktoobri 2005. a määruse nr 47 „Maa-, haldus- ja ringkonnakohtu kohtunike arv ja jagunemine kohtumajade vahel” muutmine, 28 March 2022.
- 11 Eesti Kohtud, KHN: eelarve prioriteet on ringkonnakohtunike lisakohad ja kohtuametnike palgatõus, 9 September 2022.
- 12 Parliament (*Riigikogu*), Tsiviilkohtumenetluse seadustiku ja halduskohtumenetluse seadustiku muutmise seadus (paberivabale kohtumenetlusele üleminek) 723 SE, 17 October 2022.
- 13 Parliament (*Riigikogu*), Kohtute seaduse muutmise ja sellega seonduvalt teiste seaduste muutmise seadus 633 SE, 6 June 2022.

## **Fairness and efficiency of the justice system**

### **Length of proceedings**

Between 1 September 2021 and 31 August 2022, the main complaint to the Chancellor of Justice regarding Estonian courts was that court proceedings were taking too long. This was especially true of cases pending in the Harju County Court. Complaints were also made about delays in administrative court proceedings. The Chancellor of Justice identified no cases in which courts could be accused of delaying procedures.<sup>14</sup> According to the EU Justice Scoreboard 2022, Estonian court proceedings are faster than in most other EU Member States. For example, Estonian first-instance courts ranked second in terms of the estimated time needed to resolve civil, commercial, administrative and other cases.<sup>15</sup>

### **Quality and accessibility of court decisions**

Parliament is reviewing a draft law amending the Code of Administrative Court Procedure and other acts, which increases the publicity of court proceedings and the accessibility of court decisions. Currently, public access is guaranteed only to court decisions that have entered into force, while annulled court decisions and

those that have not been enforced cannot be accessed. From now on, judgments made publicly available in the Riigi Teataja database will be published immediately with the note “not in force”. If the decision takes effect or is annulled, the corresponding note will change automatically. In addition, court hearings may be livestreamed at the initiative of the court.<sup>16</sup>

On 14 December 2022, parliament adopted amendments to the Victim Support Act. The amendments aim to improve the availability of support to victims of violence, crime or crisis incidents, and to clarify the system for applying for benefits for the victims of crime.<sup>17</sup>

## **Anti-corruption framework** N/A

### **Key recommendations**

- Adopt the necessary legal amendments for MPs to start making their lobbying meetings public.
- Adopt the Whistleblower Protection Act that is currently under parliamentary review, thereby transposing the EU Directive on Whistleblowing.

14 Chancellor of Justice (*Õiguskantsler*), *Õiguskantsleri aastaülevaade 2021/2022*.

15 European Commission, *EU Justice Scoreboard 2022*, Figure 6, Estimated time needed to resolve civil, commercial, administrative and other cases in 2012, 2018–2020.

16 Parliament (*Riigikogu*), *Halduskohtumenetluse seadustiku ja teiste seaduste muutmise seaduse eelnõu (kohtumenetluse avalikkus) 574 SE*, 4 April 2022.

17 Parliament (*Riigikogu*), *Ohvriabi seadus 702 SE*, 29 September 2022.



- End the use of earmark funding, which allows MPs to distribute state funds to non-governmental organisations once a year at their discretion.

## **Levels of corruption**

According to the Global Corruption Index released by international risk analysis company Global Risk Profile (GRP), Estonia jumped a place in the last year and is now the fifth least corrupt country in Europe after the Nordic countries.<sup>18</sup> In the corruption perception index published by Transparency International in January 2022, Estonia's score decreased by one point compared to the previous year and Estonia now shares 13th spot with Austria, Canada, Ireland and Iceland.<sup>19</sup>

In 2022, one major suspicion of corruption emerged, which led to a broader discussion of corruption in local governments.<sup>20</sup> On 4 October in Ida-Virumaa, police arrested a well-known entrepreneur and several Kohtla-Järve council members and municipal

officials who are suspected of having given and received bribes and traded in influence. The information collected so far in the proceedings indicate that the suspect had influence over the decisions made in the city, directed them according to his needs and used both public and personal resources for this purpose.<sup>21</sup>

## **Framework to prevent corruption**

The biggest positive development in the field of anti-corruption took place in March 2021 when the government approved the good practice in communicating with lobbyists for officials,<sup>22</sup> allowing anyone to monitor who influences policy-making and on what issues.<sup>23</sup> Since then it has been strongly recommended for ministers and their advisers, secretary generals and their deputies, and heads of government agencies to disclose their meetings with lobbyists and stakeholders. However, the stakeholders believe that such disclosure should progress further and that MPs, to whom the current practice does not apply, should also start to disclose meetings with lobbyists.<sup>24</sup> Media coverage shows that

18 Global Risk Profile, [Global Corruption Index 2022](#).

19 Transparency International, [Corruption Perception Index 2021](#).

20 Transparency International Estonia (*Korruptsioonivaba Eesti*), [Steven-Hristo Evestus räägib korruptsioonist kohalikes omavalitsustes](#), 6 October 2022.

21 Estonian Public Broadcasting (*ERR*), [Politsei kahtlustab Ossipenkot ja Kohtla-Järve ametnikke korruptsioonis](#), 4 October 2022.

22 Ministry of Justice (*Justiitsministeerium*), [Good Practice in Communicating with Lobbyists for Officials \(\*Lobistidega subtilemise hea tava ametiisikutele\*\)](#), 18 March 2021.

23 Ministry of Justice (*Justiitsministeerium*), [Justiitsministeerium tutvustas lobistidega suhtlemise head tava](#), 1 April 2022.

24 Transparency International Estonia (*Korruptsioonivaba Eesti*), [Ettepanekud 2023. a Riigikogu valimistel kandideerijatele](#), 29 August 2022.

until now, MPs have not been very receptive towards implementing a lobbyist register.<sup>25</sup>

The biggest step forward in 2022 was in the field of data disclosure. From 1 October 2022, everyone has been able to access business register data for free. The NGO Transparency International Estonia explained that the positive effect of this development lies in the fact that free access to open data increases the possibilities for civil society and investigative journalism to identify conflicts of interest and suspicions of money laundering.<sup>26</sup> The e-Business Register is an official Estonian state portal containing the data of all legal entities registered in Estonia. It also provides access to business prohibitions, commercial practices, a list of members of political parties and artistic associations, the actual beneficiaries of legal persons, tax information and annual reports.<sup>27</sup> However, it is unclear whether publishing the data in this form is still proportionate or goes against data protection principles.

### **General transparency of public decision-making**

The Network of Estonian Non-profit Organizations has repeatedly criticised earmark funding (katuseraha) distributed by Members of Parliament. This is an opaque system which allows politicians to distribute state funds to NGOs once a year at their own discretion. In December 2018, the Network of Estonian Non-profit Organizations submitted a collective appeal to parliament requesting an end to earmark funding, although there has been no political will to end the system.<sup>28</sup>

### **Measures in place to ensure whistleblower protection and encourage reports of corruption**

In January 2022, parliament completed the first reading of the Whistleblower Protection Bill,<sup>29</sup> which aims to transpose the EU Whistleblower Directive and offer protection to people who report wrongdoing in the workplace, requiring certain organisations to set up hotlines to provide confidentiality to whistleblowers. The draft law led to lively social and political debate and caused anxiety about the potential creation of a major complaint

25 Estonian Public Broadcasting (ERR), Riigikogulaste huvi lobistide registri käibele võtmiseks on leige, 21 August 2022.

26 Transparency International Estonia (*Korruptsioonivaba Eesti*), Korruptsioonivastase teo tunnustuse pälvise äriregistri andmete kõigile tasuta kättesaadavaks tegemine, 9 December 2022.

27 Centre of Registers and Information Systems (*Registrite ja Infosüsteemide Keskus*), e-Äriregister.

28 A. Rammo, Human Rights Report 2020: Freedom of assembly and association (*Inimõiguste aruanne 2020: Kogunemis- ja ühinemisvabadus*), Estonian Human Rights Centre, December 2019.

29 Parliament (*Riigikogu*), Rikkumisest teavitaja kaitse seadus 504 SE, 10 January 2022.

system.<sup>30</sup> There has been no progress with the draft law in parliament since January 2022, and the European Commission has launched an infringement procedure against Estonia for missing the deadline for adopting the directive.<sup>31</sup>

## Media environment and freedom of expression and of information –

### Key recommendations

- Amend the Penal Code to criminalise hate speech in accordance with EU law.

### Media and telecommunications authorities and bodies

Estonia moved into fourth place on the World Press Freedom Index, which assesses the state of journalism in 180 countries and is published by Reporters Without Borders (RSF). In 2021 Estonia ranked 15th.<sup>32</sup>

### Pluralism and concentration

On 25 February 2022, the Consumer Protection and Technical Regulatory Authority (TTJA) prohibited communications companies from rebroadcasting five Russian TV channels on Estonian territory. The TTJA established that on 24 February 2022, the mentioned television channels broadcast a speech by the president of the Russian Federation, justifying the military attack against Ukraine and an incitement to break the law, as well as disregard for the general principles of international law.<sup>33</sup>

### Public trust in media

In 2022, a study was published on the topic of media credibility in relation to the coverage of the Ukrainian war. The study showed that nearly 90% of Estonians have a high degree of trust in the way the Estonian media is covering the war in Ukraine. However, Estonian residents of other nationalities have less trust in all media outlets. For example, nearly 40% of residents of other nationalities either did not trust the coverage of the war in Ukraine by Estonian media outlets, or took no position on the issue.<sup>34</sup>

30 Estonian Public Broadcast (ERR), [Vilepuhumise seadus puhub ka poliitkired lõkkele](#), 31 January 2022.

31 Estonian Public Broadcast (ERR), [EU launches infringement proceedings against Estonia over whistleblower law](#), 29 January 2022.

32 Reporters Without Borders, [Press Freedom Index 2022](#).

33 The Consumer Protection and Technical Regulatory Authority (TTJA), [TTJA otsustas keelata viie telekanali taasedastamise Eesti Vabariigi territooriumil](#), 25 April 2022.

34 Eesti Ekspress, [Uuring: Venemaa telekanalid kaotavad siinsete vaatajate silmis usaldusväarsust](#), 21 December 2022.

## ***Safety and protection of journalists and other media activists***

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### ***Lawsuits and prosecutions against journalists (including SLAPPs) and safeguards against abuse***

In Spring 2022 Harju County Court fined two journalists and a newspaper publisher<sup>35</sup> over a news story published on 25 March 2022 on the Eesti Ekspress website detailing that the entire former management of Swedbank was under suspicion of being connected with money laundering that had allegedly taken place years before. The prosecutor's office claimed that the journalists should have asked them for permission prior to publishing the story. The Prosecutor General justified the imposition of a fine by stating that writing about Swedbank's money laundering does not promote public debate.<sup>36</sup> The decision was criticised as a serious threat to the freedom of the press by the Estonian Association of Journalists.<sup>37</sup> The Circuit Court later annulled the fine imposed on the Eesti Ekspress

journalists but supported the right of the prosecutor's office to restrict the media from disclosing information on pre-trial proceedings without permission.<sup>38</sup> The case has since gone to the Supreme Court.<sup>39</sup>

### ***Access to information and public documents***

According to Reporters Without Borders, the laws protecting private data have become a pretext for the Estonian authorities to limit the media's access to public information.<sup>40</sup> The EU Commission's 2022 country report on Estonia pointed out that public administration tends to deny and/or delay access to public information in certain cases. It does not appear that any measures have been taken to improve this situation in 2022. A study published in October 2022 found that the wording of the Public Information Act encourages the frivolous imposition of restrictions on access, since the wording of the law emphasises only the balancing of the rights and freedoms of the data subject and not of those requesting access.<sup>41</sup>

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35 Estonian Public Broadcast (ERR), *Kohus trahvis kaht Eesti Ekspressi ajakirjanikku rahapesu artikli eest*, 4 May 2022.

36 Eesti Ekspress, *Kohus trahvis Eesti Ekspressi, sest kirjutasime Swedbanki rahapesu uurimisest tõde*, 25 March 2022.

37 Postimees, *Ajakirjanike liidu juhatus taunis Eesti Ekspressi ajakirjanike trahvimist*, 5 May 2022.

38 Eesti Kohtud, *Ringkonnakohus tühistas ajakirjanikele määratud trahvi*, 14 June 2022.

39 Postimees, <https://www.postimees.ee/7603513/riigikohus-hakkab-menetlema-eesti-ekspressi-ajakirjanike-trahvimise-vaidlust>, 12 September 2022.

40 Reporters Without Borders, *Press Freedom Index 2022*, Estonia.

41 Pild, M., Turk, K., Kose, K., Lehemets, M. (2022), *Avaliku teabe kasutamise võimalused*, *Arenguseire Keskus*, October 2022.

## ***Freedom of expression and of information***

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The regulation of hate speech remains problematic in Estonia. The Penal Code includes a provision which bans activities which publicly incite hatred, violence or discrimination on the basis of protected grounds, although only if this results in danger to the life, health or property of a person.<sup>42</sup> In October 2020, the European Commission announced the initiation of infringement proceedings against Estonia in connection with its failure to fully transpose the Framework Decision on combating racism and xenophobia by means of criminal law. In its letter, the Commission pointed out that Estonia had not correctly criminalised hate speech, by omitting the criminalisation of public incitement to violence or hatred when directed at groups, and had not legislated for the provision of adequate penalties.<sup>43</sup>

In response, the Ministry of Justice has considered possible changes but has not come up with any proposals. In 2022, there have been no developments in relation to the

criminalisation of hate speech, apart from one roundtable held in January. At the roundtable, different parties discussed the possibilities of the criminal regulation of hate speech and hate crimes in order to find the most suitable solution for Estonian society.<sup>44</sup>

Russia's attack on Ukraine prompted the Estonian parliament to adopt amendments to the Penal Code banning hate symbols in April 2022.<sup>45</sup> According to the new provision, publicly displaying symbols relating to an act of aggression, genocide, crime against humanity or commission of a war crime in a manner that supports or justifies such acts is punishable by a fine.<sup>46</sup>

The topic of defamation has also been prominent in recent years, as shown by the increase in the number of defamation cases taken to court. As Reporters Without Borders mentions in its country report, journalists in Estonia face the risk of self-censorship due to anti-defamation legislation and cyber-bullying.<sup>47</sup> It is common for celebrities and public figures to sue people who have insulted them in the media, social

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42 Riigi Teataja, Penal Code (Karistusseadustik), § 151, 6 June 2001.

43 European Commission (2020), Combating racism and xenophobia: The Commission calls on Estonia and Romania to fully transpose EU law criminalising hate speech and hate crimes, Infringement decisions, INF-20-1687, 30 October 2020.

44 Ministry of Justice (Justiitsministeerium), Justiitsministeeriumis kogunes vaenukõne teemaline ümarlaud, 19 January 2022.

45 Parliament (Riigikogu), Karistusseadustiku ja väärteomenetluse seadustiku muutmise seadus (agressiooni toetamine) 585 SE, 21 April 2022.

46 Riigi Teataja, Karistusseadustiku ja väärteomenetluse seadustiku muutmise seadus (agressiooni toetamine), 29 April 2022.

47 Reporters Without Borders, Press Freedom Index 2022, Estonia.

media or internet comments. Some prominent cases include: *K. Timmer vs Delfi Meedia*,<sup>48</sup> *R. Sarv vs K. Kutsar*,<sup>49</sup> *K. Lust vs Veet Mano*.<sup>50</sup>

## Checks and balances –

### Key recommendations

- Ensure that third-country nationals are allowed judicial review of all decisions of the Police and Border Guard Board in accordance with the law.
- Keep strengthening the mandate and increasing the resources of the Gender Equality and Equal Treatment Commissioner so that the institution is able to fulfil its tasks in accordance with the proposed Council Directive on standards for equality bodies.

### Process for preparing and enacting laws

In 2022, the Supreme Court performed a constitutional review on legislation regarding

COVID-19 restrictions.<sup>51</sup> A total of 56 complainants filed complaints with the administrative court, stating that two orders issued by the government based on the Communicable Diseases Prevention and Control Act unconstitutionally restricted their rights, mainly because they could not participate in various activities without having a COVID-19 vaccination certificate. The administrative court upheld the complaints and requested that the Supreme Court declare the relevant provisions of the act unconstitutional. According to the administrative court, the provisions were not sufficiently clear and did not define the limits of the executive power.<sup>52</sup> The provisions in question authorised the Health Board, or in some cases the government, to take various measures to prevent the spread of an infectious disease.<sup>53</sup>

In its opinion regarding the case, the Chancellor of Justice found that the provisions of the Communicable Diseases and Prevention Act are unconstitutional as they give the executive branch of government overly broad, unspecified and unchecked authority to restrict fundamental rights. The Chancellor of Justice stated that the government has overstepped

48 Kroonika, Kohus: Kirsti Timmeri „soolapuhujaks“ nimetamine ei ole eksitav, tema teenuseid pole võimalik teaduslikult tõestada, 21 December 2022.

49 Supreme Court (*Riigikohus*), Civil Law Chamber, Case No 2-20-12495, 18 May 2022.

50 Kroonika, Riigikohus: Kuuurija“ saatejuht Katrin Lust peab Veet Manole esitatud süüdistused ümber lükkama ja talle 10 000 eurot maksma, 8 November 2022.

51 Supreme Court (*Riigikohus*), Case 5-22-4, 31 October 2022.

52 Tallinn Administrative Court (*Tallinna Halduskohus*), Case 3-21-2163, 31 May 2022.

53 Riigi Teataja, Communicable Diseases Prevention and Control Act (*Nakkushaiguste ennetamise ja tõrje seadus*), § 27 (3), § 28 (2), (5), (6), (8), 12 February 2003.

its constitutional mandate, as only parliament has the capacity to take decisions that restrict fundamental rights in this way.<sup>54</sup>

However, the Supreme Court found that the provisions in question are not unconstitutional, as the restriction of fundamental rights was proportionate to the goal of protecting life and health. The Court explained that although the state's duty to protect its people in an exceptional situation does not go against the obligation to regulate the most important issues that limit fundamental rights by law, the legislature must create a balance in its actions between the state's duty to protect and the principle of reservation of law, which in some cases may mean that more generally worded authorisation norms are permissible and some important issues can be decided by the government. The Supreme Court stressed that this balance can change over time; norms that may be acceptable in the early stages of an epidemic may no longer be precise enough as the crisis continues, so the provisions may need some adjusting.<sup>55</sup>

### ***Independent authorities***

In addition to the Chancellor of Justice (NHRI), the Gender Equality and Equal Treatment Commissioner also plays a role regarding checks and balances as an equality body. In

November 2022, a new Gender Equality and Equal Treatment Commissioner was elected based on the proposal of an expert committee. For the first time, the expert committee included a wide range of stakeholders, such as representatives of civil society organisations in the field of equal treatment and gender equality, the Office of the Chancellor of Justice, the Top Civil Service Excellence Centre, and the Gender Equality Council.<sup>56</sup> The expert committee is an important step towards ensuring the independence of the Gender Equality and Equal Treatment Commissioner. This is because the role of the Ministry of Social Affairs in the nomination of the Commissioner has been criticised as being a stain on its independence. The institution also has limited resources.<sup>57</sup>

### ***Accessibility and judicial review of administrative decisions***

There are examples of the Police and Border Guard Board (PBGB) failing to issue administrative decisions in written form, complicating access to judicial review of the decisions.

In spring 2022, the PBGB received reports of applications for temporary protection being denied and the refusal to issue the decisions. The Chancellor of Justice pointed out that this administrative practice was unlawful. The

54 Chancellor of Justice (*Õiguskantsler*), *Arvamus põhiseaduslikkuse järelevalve asjas nr 5-22-4*, 30 August 2022.

55 Supreme Court (*Riigikohus*), *Case 5-22-4*, 31 October 2022.

56 Ministry of Social Affairs (*Sotsiaalministeerium*), *Võrdse kohtlemise volinikuks saab Christian Veske*, 30 November 2022.

57 European Commission Against Racism and Intolerance, *ECRI Report on Estonia, Sixth Monitoring Cycle*, 29

PBGB has since changed its administrative practice.<sup>58</sup>

It appears from a ruling of the Tallinn Circuit Court that on 7 May 2022, a person with both Ukrainian and Russian citizenship arrived at an Estonian border crossing point to receive temporary protection in Estonia, but was instead banned from entering. The applicant reached Estonia again on 12 May 2022 through Germany and went to a PBGB service point and applied for temporary protection. On 19 May 2022, an officer of the Estonian Internal Security Service conducted an interview with the applicant. On the same day, PBGB officials also interviewed the applicant and took his belongings, including his Russian and Ukrainian passports. After the procedural steps, the applicant was taken by bus to the border city of Narva, given a bag and Russian passports, and forcibly sent out from Estonia to Russia without an expulsion decision. The applicant filed a complaint to the Tallinn Administrative Court, once back in Crimea, through a representative in Estonia. The ruling of the Circuit Court concerned the applicant's request to be admitted back into Estonia under temporary relief and to be permitted to stay in Estonia during the court proceedings until the final decision was made. The Circuit Court refused the interim relief application.<sup>59</sup>

## **Enabling framework for civil society** –

### **Regulatory framework**

There were no major developments in the Estonian civic space in 2022. Some positive news is that according to the 2021 Civil Society Organization Sustainability Index (CSOSI), Estonia's performance in the field of advocacy has improved in recent years.<sup>60</sup>

### **Financing framework, including tax regulations**

An important legislative change entered into force on 15 March 2022 with the adoption of new wording of the Money Laundering and Terrorist Financing Prevention Act regarding non-governmental organisations and foundations as obliged entities.<sup>61</sup> According to the previous wording, NGOs and foundations were obliged entities if they made cash transactions exceeding EUR 5,000. A clause has now been added that classifies NGOs and foundations as obliged entities when the customer, a person involved in the transaction or the transaction itself is connected with a country that is subject to sanctions, embargos or similar measures issued by, for example, the European Union or the United Nations (independent of

58 Chancellor of Justice (*Õiguskantsler*), *Ajutise kaitse taotluste vastuvõtmine*, 6 June 2022.

59 Tallinn Circuit Court (*Tallinna Ringkonnakohus*), *Case 3-22-1245*, 10 August 2022.

60 USAID, *Civil Society Organization Sustainability Index 2021*.

61 Riigi Teataja, *Rahapesu ja terrorismi rahastamise tõkestamise seaduse ja teiste seaduste muutmise seadus*, 15 March 2022.



the amount involved). Penalties for violating this law go up to EUR 32,000.<sup>62</sup>

In April 2022, an amendment to the Income Tax Act entered into force, allowing legal persons to make tax-free donations for the purpose of preserving the territorial integrity and sovereignty of Ukraine and providing targeted humanitarian aid. Tax-free donations can be made only to the seven associations specified in the act.<sup>63</sup> The exemption will be in force from 24 February to 31 December 2023.<sup>64</sup>

### ***(Un)safe environment***

#### ***Freedom of assembly, including rules on organisation of and participation to assemblies, equal treatment and policing practices***

In addition to the constitutional review of the legislation on COVID-19 restrictions, Estonian courts have also discussed restrictions on public meetings. On 19 May 2021, the Foundation for the Protection of the Family and Tradition (SAPTK) filed a complaint with the Tallinn Administrative Court, disputing the part of government order No. 282 of 19 August 2020 “Measures and restrictions necessary for preventing the spread

of COVID-19” concerning the restrictions imposed in the spring of the same year on outdoor public meetings. According to the original complaint by SAPTK, the restrictions that took effect on 17 May 2021, according to which public meetings were allowed only if it could be ensured there were no more than 25 persons per group, and that the total number of participants did not exceed 250 persons, were disproportionate and unreasonable. The administrative court rejected the complaint, finding that the imposition of restrictions was legal and that the restrictions on holding public meetings were appropriate, necessary and moderate.<sup>65</sup> In autumn 2022, the Supreme Court dismissed SAPTK’s appeal in cassation on the topic of COVID-19 restrictions.<sup>66</sup>

#### ***Access to and participation in decision-making processes, including rules and practices on civil dialogue, and rules on access to and participation in consultations and decision-making***

In autumn 2022, the Ministry of Social Affairs strengthened cooperation with NGOs by including, for the first time, different interest groups in the election of the Gender Equality and Equal Treatment Commissioner. The

62 Riigi Teataja, *Rahapesu ja terrorismi rahastamise tõkestamise seadus*, 26 October 2017.

63 Riigi Teataja, *Maksukorralduse seaduse muutmise (ehitustööde andmete esitamine) ja tulumaksuseaduse muutmise seadus*, 23 March 2022.

64 Riigi Teataja, *Income Tax Act (Tulumaksuseadus)*, § 61 (66), 15 December 1999.

65 Tallinn Administrative Court (*Tallinna Halduskohus*), *Case 3-21-1079*, 1 October 2021.

66 Objektiiv, *Riigikohus keeldus koroonapiirangute teemalise SAPTK kassatsioonikaebuse menetluse võtmisest*, 16 November 2022.

election committee included representatives of several NGOs.<sup>67</sup>

### **Online civic space**

On 30 November 2022, the Tallinn Circuit Court ruled in a defamation case against civic activist Katrina Raiend, who had posted an online petition asking for the removal of radio show host Alari Kivisaar for chauvinism and inciting racism. The first instance court, Harju County Court, sided with Kivisaar and ordered Raiend to retract and remove statements regarding racism and chauvinism from the petition and pay EUR 3,000 in moral damages. However, in appeal proceedings, the Tallinn Circuit Court determined that Kivisaar had spread racist and chauvinistic stereotypes on his radio show. The Circuit Court also upheld the validity and legality of using a public petition as means of exercising one's freedom of expression. The Circuit Court, however, declared one statement in the petition to be defamatory because it had not been proven that Kivisaar had actually said it on the radio show. The Court declared that this sentence be retracted and removed from the petition and that Kivisaar be compensated in the amount of EUR 2,000.<sup>68</sup>

## **Disregard of human rights obligations and other systemic issues affecting the rule of law framework** 🟡

### **Key recommendations**

- Make the necessary changes in the Electronic Communications Act to stop indiscriminate retention of communications data, thereby bringing Estonian national law into line with EU law.
- Lift the blanket ban on prisoners voting.

### **Systemic human rights violations**

Respect for privacy and data protection remains a topical issue, as the concerns raised by the Court of Justice of the European Union (CJEU) and by the Estonian Supreme Court on the indiscriminate storage of communications data have still not been properly addressed. In 2021, the Supreme Court found that indiscriminate retention of electronic communications data based on § 111<sup>1</sup> (2) of

67 Ministry of Social Affairs (*Sotsiaalministeerium*), *Võrdse kohtlemise volinikuks saab Christian Veske*, 30 November 2022.

68 Estonian Human Rights Centre (*Eesti Inimõiguste Keskus*), *Kivisaar versus Raiend: a petition is a part of freedom of speech, racist expression can be publicly condemned* (*Kivisaar versus Raiend: petitsioon on osa sõnavabadusest, rassistliku väljenduse võib avalikult hukka mõista*), 1 December 2022.

the Electronic Communications Act is in conflict with EU law.<sup>69</sup> The Supreme Court's decision was based on a preliminary ruling of the CJEU requested by the Supreme Court in the same case.<sup>70</sup> The Electronic Communications Act § 111<sup>1</sup> requires general and indiscriminate retention of metadata by providers of electronic communications services for one year from the date of the communication.<sup>71</sup> Although the Supreme Court decision has not resulted in changes to the Electronic Communications Act, it did trigger amendments to the Code of Criminal Procedure, which as of 1 January 2022 sets forth that communications data can only be requested from service providers based on judicial authorisation, while previously such requests could also be authorised by the Prosecutor's Office.<sup>72</sup>

Parliamentary elections will be held in Estonia on 5 March 2023, but nothing has been done to lift the blanket ban on prisoners voting. There have been discussions in the media on how the general and automatic ban on prisoners voting goes against European Court of Human Rights case law.<sup>73</sup> The Estonian

National Electoral Committee sent a proposal to lift the ban to the Ministry of Justice, but the Minister found that prisoners do not have a "moral right" to elect parliamentary representatives.<sup>74</sup>

The political parties in power have discussed options for restricting voting rights of third-country nationals in local government elections. In September 2022, the Parliament completed the first reading of a draft law by which third-country nationals living in Estonia would lose their right to vote in local government elections. According to the initiators of the draft, the right of Russian citizens to vote in Estonian local elections has become a security issue. Currently, foreigners who live in Estonia on the basis of a long-term residence permit or a permanent right to residence can participate in local elections. According to the draft law, in the future only citizens of Estonia and the European Union would be able to participate in local elections.<sup>75</sup> However, in her opinion the Chancellor of Justice stated that if the draft law is passed as proposed, constitutional review must be initiated at the Supreme

69 Supreme Court (*Riigikohus*), Case No 1-16-6179, 18 June 2021.

70 Court of Justice of the European Union, Case C-746/18, 2 March 2021.

71 Riigi Teataja, Electronic Communications Act (*Elektroonilise side seadus*), § 111<sup>1</sup>, 8 December 2004.

72 Riigi Teataja, Act amending the Code of Criminal Procedure (*Kriminaalmenetluse seadustiku muutmise seadus*), 1 January 2022.

73 Estonian Public Broadcasting (*ERR*), Olesk ja Tarros: Eesti rikub vaikides kinnipeetavate valimisõigust, 15 December 2022.

74 Estonian Public Broadcasting (*ERR*), Vabariigi valimiskomisjon tahab osa vange valimistele lubada, 16 September 2022.

75 Parliament (*Riigikogu*), Kohaliku omavalitsuse volikogu valimise seaduse muutmise seadus 594 SE, initiated 21 April 2022.

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Court because it is possible that the draft law is unconstitutional.<sup>76</sup>

## ***Fostering a rule of law culture***

### ***Contribution of civil society and other non-governmental actors***

One of the main ways that the Estonian Human Rights Centre (EHRC) contributes to fostering a rule of law culture is through strategic litigation. The EHRC offers legal aid to people whose cases are of strategic significance, with the aim of influencing the quality of law and its implementation. The EHRC chooses cases which are related to the thematic objectives of the EHRC's activity and either address a legal loophole, amend existing regulation or case-law, relate to systematic failure to implement the law, or raise awareness about the law.<sup>77</sup> For example, the EHRC is currently involved in a case regarding the right to report sexual harassment, supporting a young athlete who confidentially informed her school principal about the sexual harassment she had experienced as a minor, as a result of which she was sued for defamation by her coach. The first instance court sided with the EHRC in the matter.<sup>78</sup>

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76 Chancellor of Justice (*Õiguskantsler*), [Arvamus kohaliku omavalitsuse volikogu valimise seaduse muutmise seaduse eelnõu \(594 SE\) kohta](#), 12 September 2022.

77 Estonian Human Rights Centre (*Eesti Inimõiguste Keskus*), [Strategic litigation](#).

78 Estonian Human Rights Centre (*Eesti Inimõiguste Keskus*), [Victory in court: students can inform schools of sexual harassment](#), 9 September 2022.

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## Contacts

### ***Eesti Inimõiguste Keskus*** *Estonian Human Rights Centre*

The Estonian Human Rights Centre is an independent non-governmental human rights advocacy organisation. EHRC develops its activities according to the needs of the society. Our focus is currently on the advancement of equal treatment of minority groups and diversity & inclusion and the human rights of asylum seekers and refugees.

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### ***The Civil Liberties Union for Europe***

The Civil Liberties Union for Europe (Liberties) is a non-governmental organisation promoting the civil liberties of everyone in the European Union. We are headquartered in Berlin and have a presence in Brussels. Liberties is built on a network of 19 national civil liberties NGOs from across the EU.

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