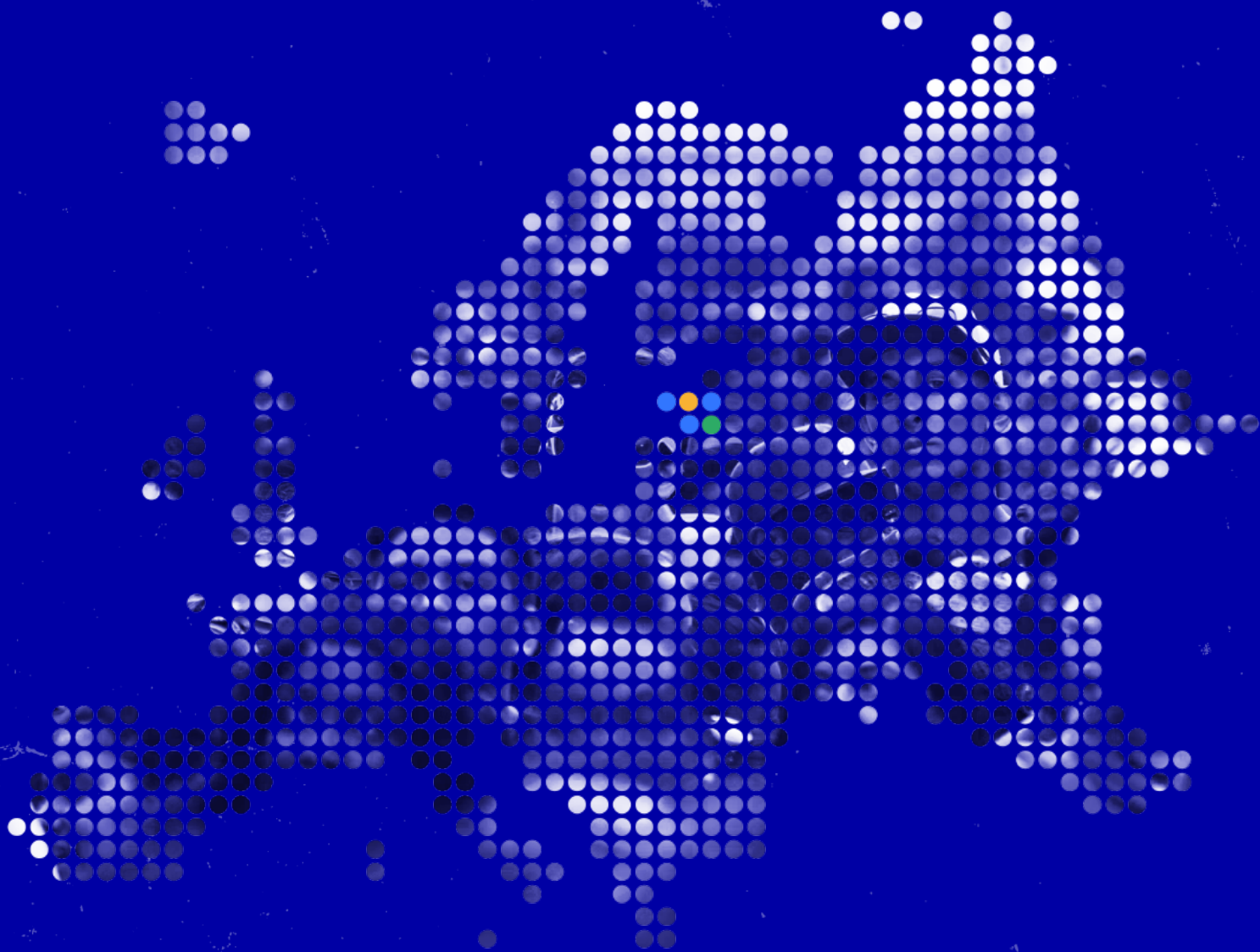


LIBERTIES RULE OF LAW REPORT 2022

ESTONIA



Foreword

This country report is part of the Liberties Rule of Law Report 2022, which is the third 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 to gather public support to press leaders at EU and national level to fully respect, promote and protect our basic rights and values.

The 2022 Report was drafted by Liberties and its member and partner organisations and covers the situation in 2021. 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 2022 Report includes 17 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. Thirty-two member and partner organisations across the EU contributed to the compilation of these country reports.

Building on the country findings, the 2022 Report offers an overview of general trends on the rule of law in the EU and compiles a series of recommendations to national and EU policy makers, which suggest concrete actions the EU institutions and national governments need to take to address identified shortcomings.

[Download the full Liberties Rule of Law Report 2022 here](#)

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Estonia

About the authors



The **Estonian Human Rights Centre (EHRC)** is an independent non-governmental human rights advocacy organisation. EHRC was founded in December 2010. The mission of EHRC is to work together for Estonia to become a country that respects the human rights of every person in the country. EHRC develops its activities according to the needs of society. EHRC focuses on the advancement of equal treatment of minority groups, diversity and inclusion, the fight against hatred, the human rights of asylum seekers and refugees, and data protection and privacy issues. EHRC coordinates the Estonian Diversity Charter. EHRC also monitors the overall human rights situation in Estonia and publishes bi-annual independent human rights reports about the situation in the country. EHRC carries out comprehensive, effective and sustainable advocacy in the field of human rights. This report is based on the EHCR 2021 Human Rights Report.¹

Key concerns

In the area of justice, the persisting stability of the judiciary system, despite the challenges brought by the COVID-19 pandemic, is a positive sign. The state's focus has continued to be on improving the efficiency of the judiciary system and on measures to reduce the length of proceedings and harmonise the workload of courts. Resources which have been allocated to the courts from the state budget are under pressure, but significant cuts have so far been avoided. Efforts have also been made to better ensure public access to court files and court decisions. However, the government has not yet intervened to address concerns raised by the Court of Justice of the European Union and by the Estonian Supreme Court on the use of communications data by the prosecution service in court proceedings. The insufficient protection of rights and interests of vulnerable persons in court proceedings remains a major concern.

The checks and balances framework has been challenged by the conditions created by the COVID-19 pandemic. While restrictions have not significantly infringed upon fundamental rights and freedoms, the reasons behind the restrictions have often been difficult to understand and it is almost impossible for parliament, the Chancellor of Justice, or

1 <https://humanrights.ee/en/materials/inimoigused-cestis-2022/>





the courts to verify their appropriateness. Some concerns also persist surrounding the electoral process. Nothing has yet been done to lift the restriction on prisoners voting, while discussions have been regurgitated regarding the security and accessibility of e-elections.

The situation has slightly improved for civil society organisations in terms of enabling environment, but they continue to face challenges surrounding access to funding and resources, while the government expressed its intention to increase the accountability and transparency of “politically-orientated” foundations and NGOs. The courts ordered a review on the proportionality of restrictions affecting the exercise of the right to freedom of peaceful assembly.




In terms of other systemic issues surrounding the rule of law framework, COVID-19 restrictions affecting fundamental rights, including freedom of movement, assembly, and association, the right to respect for private and family life, the right to education, and the right to engage in business, call for a thorough and regular analysis of their proportionality, effectiveness and impact, in particular in relation to the rights of vulnerable groups. The spread of misinformation causes problems in the fight against the pandemic, with the issue of vaccination especially polarising society. This needs to be addressed. Respect for privacy and data protection remains a topical concern, in particular as the ruling of the Supreme Court that declared the indiscriminate storage of communications data on Estonian residents to be illegal has still not been implemented. Various data protection issues have also arisen

in connection with the pandemic, but the government has shown preparedness to tackle these adequately (including in the case of the HOIA mobile application, for example).

State of play

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

Legend (versus 2020)

- Regression: 
- No progress: 
- Progress: 

Justice system

Key recommendations

- Enhance as a matter of urgency the protection of people’s privacy in the field of storing communications and location data, and in the organisation of access to that data, thereby bringing Estonian national law into line with EU law.
- Enhance the protection of the rights and interests of vulnerable persons in court proceedings

through both legislative and practical measures.

- Ensure that the pursuit of greater efficiency in the judiciary system does not lead to any deterioration in the quality of justice.

Judicial independence

Potential reforms of the prosecution and judiciary system, which would have undermined the independence of that very system, and which were debated by legislators in 2019, have not been relevant since the start of 2020.

At the beginning of 2020, the process of appointing the new prosecutor general, which began in 2019 and initially caused controversy in the government, was finally completed. Andres Parmas, a former judge and a lecturer in criminal law at the University of Tartu, was appointed to this position.²

In 2020 and 2021, the Minister of Justice appointed new county court chairpersons to deal with civil and criminal proceedings of the first instance, with each of them being appointed for a period of seven years. The appointees included: Astrid Asi at Harju County Court, Toomas Talviste at Pärnu

County Court and Liina-Naaber Kivisoo at Viru County Court.

Public perception of the judiciary

The World Justice Project's Rule of Law Index 2020 survey awarded Estonia a score of 0.81 and tenth place in the country rankings (the same as in 2019).³

The European Commission's Rule of Law Report for 2021 highlighted the good functioning of the judicial system in Estonia under the conditions being imposed by a pandemic, as well as the high level of digitisation.⁴

The 2021 EU Justice Scoreboard showed that the Estonian judicial system continues to be amongst the most efficient and quickest in Europe.⁵

Quality of justice

Impact of COVID-19

The functioning of the judiciary system was significantly affected by the COVID-19 pandemic, which became evident in the spring of 2020. In March 2020, The Estonian foreign minister, Urmas Reinsalu, unexpectedly notified the Council of Europe of the activation of Article 15 of the Convention for the

2 Justiitsministeerium. 2020. [Valitsus nimetas riigi peaprokuröriks Andres Parmase](#), 09.01.2020

3 World Justice Project. 2020. [Rule of Law Index](#).

4 European Commission. 2021. [2021 Rule of Law Report – Country Chapter on the rule of law situation in Estonia](#).

5 European Commission. 2021. [The 2021 EU Justice Scoreboard](#).

Protection of Human Rights and Fundamental Freedoms, but the Supreme Court responded quickly with a statement which emphasised the fact that were that Article to be used, Estonia's constitution would still apply and thus so would the right to a fair trial.⁶

On a positive note, the COVID-19 pandemic did not interrupt the Estonian judicial system. Since the beginning of the pandemic, the country has generally followed the principle that the judiciary system must not be disrupted,⁷ and necessary measures to adapt to the pandemic were swiftly undertaken by the courts, the most important of which was the widespread use of video sessions in all areas of court proceedings, including the holding of essential court hearings in this way, and where possible, the use of written procedures.⁸ As a result, the impact on trials remained relatively modest in relation to the state of emergency which was declared in the country between 12 February 2020 and 17 May the same year, as well as in relation to the subsequent health emergency.⁹

The effective continuation of the work of the Estonian judicial system under pandemic conditions is certainly something worth acknowledging. Good preconditions for this result

had already been created due to the relatively high levels of digitalisation in the courts. This was also ensured by rapid adaptation, both in terms of amending legislation and through the implementation of practical solutions. People's access to justice, the right to a trial within a reasonable time, and the right to effective judicial protection all remained guaranteed even when the country found itself in an emergency situation.

Justice and vulnerable groups

On 22 June 2021, the European Court of Human Rights ruled in the case of R B v Estonia, in which the ECHR found a violation of Articles 3 and 8 of the *Convention for the Protection of Human Rights and Fundamental Freedoms* due to the failure of the Estonian state to ensure effective measures in criminal proceedings to protect the interests of a child victim who had been the victim of sexual abuse.¹⁰ This adjudication is important in terms of taking due account of the vulnerable position of child victims, as well as to better protect the needs and interests of such victims in the future.

Between 2020 and 2021, three important analyses of the Supreme Court's case law were

6 Riigikohus. 2020. [Õiglane kohtupidamine on tagatud ka artikli 15 kohaldamisel](#), 30.03.2020.

7 Eesti Kohtud. 2020. [Kohtud jätkavad tööd](#), 15.03.2020

8 Kohtute haldamise nõukoda. 2020. [Kohtute haldamise nõukoja soovitusel õigusemõistmise korraldamiseks eriolukorra ajal](#), 16.03.2020.

9 Justiitsministeerium. 2020. [Kohtud kohanesid eriolukorraga kiiresti ja hästi](#), 15.05.2020

10 Euroopa Inimõiguste Kohtu 22.09.2021. a otsus R.B. vs. Eesti, kohtuasjas nr 22597/16

published: namely, *Placement in a closed child care institution*,¹¹ *The placement of a person with a mental disorder in a closed institution*,¹² and *Cases involving aliens in the practices of the Supreme Court's Administrative Chamber in 2020: the more effective protection of rights*.¹³ All of these drew attention to shortcomings in the practical implementation of measures which were being applied to children, persons with mental disorders, and aliens, respectively.

Fairness and efficiency in the justice system

The 2020-2021 period was characterised by several amendments to the Judicial Procedure Code, with those amendments aimed at providing the necessary flexibility for litigation under pandemic conditions, along with various court measures aimed at reducing the burden on the busiest courts (especially Harju County Court), by directing cases to other courts. It is too early to assess the practical impact of these changes, but they are expected to increase access to justice to some extent and shorten procedural times in the most congested courts.

A legislative initiative which has had a greater impact on the general public concerns the public nature of judicial proceedings. Following public debates, a draft law is currently being

approved under the auspices of the Ministry of Justice.¹⁴ It more precisely regulates the access of persons who are not parties to the proceedings to case files, and increases the number of court decisions which are published on the internet (including non-enforced court decisions which will now be available on the internet). In order to protect personal information, it is envisaged that personal information will be removed from any decisions which have not entered into force. The bill is expected to reach the Riigikogu in 2021.

On 2 March 2021, the Court of Justice of the EU provided a preliminary ruling in Case C-746/18, in which it took two fundamental positions in regard to Estonian national law and practice: (i) law enforcement access to traffic and location data, without being limited to procedures which are aimed at combating serious crime or preventing a major threat to public security is contrary to EU law; and (ii) national law which confers on a public prosecutor, whose task it is to conduct pre-trial criminal proceedings and, where appropriate, to represent the public prosecution in subsequent proceedings, any authority to provide an official institution with access to traffic and location data for the purpose of a criminal investigation is contrary to EU law.¹⁵

11 Riigikohus. 2020. Kohtupraktika analüüs "[Kinnisesse lasteasutusse paigutamine](#)".

12 Riigikohus. 2021. Riigikohtu praktika ülevaade "[Psüühikahäirega isiku kinnisesse asutusse paigutamine](#)".

13 Riigikohus. 2021. [Välismaalaste asjad Riigikohtu halduskolleegiumi praktikas 2020: õiguste tõhusam kaitse](#).

14 Justiitsministeerium. 2021. Halduskohtumenetluse seadustiku ja teiste seaduste muutmise seaduse eelnõu (kohtumenetluse avalikkus), 29.09.2021.

15 [Euroopa Liidu Kohtu 02.03.2021. a otsus kohtuasjas nr C 746/18](#).

On 18 June 2021, the Supreme Court reached a decision in a case related to the aforementioned reference to a preliminary ruling, in which it held that traffic and location data required for communications undertakings based on authorisation from the Prosecutor's Office is generally inadmissible as evidence. Based on the procedure that has remained in force, law enforcement authorities may not make any new inquiries in order to obtain such data.¹⁶

The cited court decisions are significant for Estonia when it comes to the protection of the right to privacy. Unfortunately the state has not yet been able to develop and implement amendments to those acts for which amendments are necessary in order to end violations of the right to privacy.

Following the rulings by the Court of Justice and the Supreme Court, a public debate was initiated concerning amendments needed for the collection of communications data, which covers the conditions for the use of such information in court proceedings. However, no political agreement has been reached to date, and we do not know when such changes will become law or what their scope might be. Under current legislation, the general retention of everyone's communications data (known generally as traffic data) by communications companies (data retention) is a practice which continues in Estonia. This is despite rulings from the European Court of Justice and the Supreme Court's finding that the obligation

to retain such data is contrary to EU law, and despite the fact that there is a level of confusion about which cases should involve the retention of data and how law enforcement authorities should be able to obtain and use such data. From the point of view of ensuring the protection of privacy, the current legislative situation is unsatisfactory.

Checks and balances

Key recommendations

- Continue the debate regarding a more effective solution to the constitution-related review of restrictions on fundamental rights and freedoms.
- Amend relevant legislation so that the ban on elections applies only to prisoners for whom this ban has been applied as an additional form of punishment.
- Contribute to the accessibility of polling stations and e-elections.

Review of and public debate on measures taken to address the COVID-19 pandemic

In May 2020, a clustered draft act for several legal amendments related to the COVID-19

16 [Riigikohtu kriminaalkolleegiumi 18.06.2021. a otsus kohtuasjas nr 1-16-6179.](#)

pandemic all came into force together, amending more than thirty pieces of legislation in the process.¹⁷ The Chancellor of Justice criticised the fact that the package of urgently-needed amendments included changes which were not urgent, the impact of which extended beyond the emergency situation itself. Of particular concern was the amendment to reduce the period of judicial review regarding involuntary treatment and involuntary placement in a psychiatric hospital, as it made it possible to exclude people from being heard in such court proceedings.¹⁸

The Estonian Refugee Council and the Estonian Centre for Human Rights condemned one of the amendments contained in the cluster draft act, according to which the detention of applicants for international protection would be allowed without extraordinary justification, provided there were an exceptionally large number of applications.¹⁹

In addition, the *Act Amending the Communicable Diseases Prevention and Control Act* was passed

in May 2021. The draft specifies the competence of the government and the Health Board, and adds a legal basis to the law, making it possible to ensure that people are under an obligation to follow the precautionary infection safety measures in the event of the spread of an infectious disease. The act also adds the possibility of involving the police and other law enforcement agencies in the performance of the tasks of the Health Board.²⁰ Before the law was passed, people protested on Toompea against the draft act. Protesters expressed their fear that the draft act would allow the law to be used to evict people, especially children, by force. Legal experts have confirmed that this is not in fact the case, with the law changing procedure only to a minimal extent.²¹

Throughout the period in question, a more fundamental legal problem became clear. Namely, that there is no parliamentary scrutiny of the government's general arrangements when it comes to imposing restrictions,²² nor could those restrictions be challenged by the Chancellor of Justice, who was left to instruct

17 Riigi Teataja. 2020. [Abipolitseiniku seaduse ja teiste seaduste muutmise seadus \(COVID-19 haigust põhjustava viiruse SARS-Cov-2 levikuga seotud meetmed\)](#), 06.05.2020.

18 Õiguskantsler. 2020. [Tähelepanekud abipolitseiniku seaduse ja teiste seaduste muutmise seaduse \(COVID-19 haigust põhjustava viiruse SARS-Cov-2 levikuga seotud meetmed\) eelnõu kohta, nr 18-1/200565/2001935](#), 07.04.2020

19 Eesti Inimõiguste Keskus, Eesti Pagulasabi. 2020. [Arvamus abipolitseiniku seaduse ja teiste seaduste muutmise seaduse \(COVID-19 haigust põhjustava viiruse SARS-Cov-2 levikuga seotud meetmed\) eelnõu 170 SE kohta](#), 13.04.2020.

20 Riigi Teataja. 2020. [Nakkushaiguste ennetamise ja tõrje seaduse muutmise seadus](#), 22.05.2021.

21 Ellermaa, E. 2020. [Meeleavaldajate ja õigusekspertide tõlgendus seaduseelnõust läheb lahku](#), ERR, 08.04.2021.

22 Madise, Ü. ja Koppel, O. 2021. [Ülle Madise ja Olari Koppel: õigusriik pandeemia ajal](#), ERR, 13.06.2021.

people to go to court to air their grievances.²³ Parliamentary parties remained sceptical about extending the Chancellor of Justice's mandate.²⁴ In response to this civil society actors called on the courts to review the government's measures (see below in relation to freedom of assembly).

Judgments regarding COVID-19 restrictions can be found in various areas. These include complaints about the rights of prisoners, as well as restrictions on freedom of movement and communications. Based on the available court rulings, the prevailing view is that restrictions regarding prisons, such as bans on long-term visits, are indeed proportionate, as the public interest in preventing the spread of the virus outweighs the impact of the restrictions on the rights of detainees.^{25,26}

Many issues that could be related to COVID-19 restrictions have not reached the Estonian courts. Complaints have instead been directed to the Chancellor of Justice, who questioned the fact that restrictions have been established by a general order, over which the Chancellor of Justice cannot initiate a constitutional review. Instead, in the event of there being any cases involving a violation of rights, the

individual concerned must go to court to address the matter.²⁷ In this regard, the Tallinn Administrative Court has stated that the form of the general order is correct in terms of restrictions, while urging better opportunities for people to be able to protect their rights and interests. In the same decision, the court dismissed the complaint by the *Foundation for the Protection of the Family and Tradition* regarding the legality of COVID-19 restrictions, finding that the disputed restrictions regarding the number of participants at public meetings were indeed appropriate, necessary, and moderate in order to make it possible to prevent the spread of COVID-19.²⁸

Issues and gaps emerged during the crisis, especially regarding colliding fundamental rights. These have been the object of a lively public debate and demonstrations, which should be welcomed from legal and practical points of view, especially where it involves institutions and even the courts addressing the rights and freedoms covered in this chapter. This is something that may allow some restrictions to be set earlier, before any intrusion has a chance of becoming serious. At present, however, it is still difficult to assess the extent to which the recent protests, mainly against

23 Krjukov, A. 2021. Reformierakond, EKRE ja Isamaa on õiguskantsleri õiguste laiendamise suhtes skeptilised, ERR, 09.09.2021.

24 Tallinna Halduskohtu 01.10.2021. a otsus kohtuasjas nr 3-21-1079 (jõustumata).

25 Tartu Ringkonnakohtu 21.12.2020. a määrus haldusasjas nr 3-20-2343.

26 Tallinna Ringkonnakohtu 18.01.2021. a määrus haldusasjas nr 3-20-2267.

27 Õiguskantsler. 2021. Õiguskantsleri aastaülevaade.

28 Nael, M. 2021. Halduskohus ei rahuldanud SAPTK kaebust koroonapiirangute kohta, ERR, 01.10.2021

masks, vaccinations, and restrictions,²⁹ are exacerbated by general confusion, information noise, mistrust, and boredom, or whether case law may reveal fundamental problems with the restriction of rights. Observers have explained the split society by using, amongst other things, the term ‘envy populism’.³⁰

Electoral process

Local government elections took place in Estonia during the reporting period. For the first time, the voter list was electronic, so voters were no longer affiliated with a particular polling station and they had more flexibility to vote.³¹ Polling stations were not pre-determined and everyone could go to the polling station of their choice within their district. Also, e-voters were given the opportunity to change their vote on election day itself.³²

Several previous human rights reports have indicated that the right of all prisoners to vote should not automatically be restricted. There was no discussion at the national level regarding this, but discussions did take place at the international level. For example, in a shadow report submitted by the Estonian Equal

Treatment Network to the UN Human Rights Council, human rights NGOs in Estonia suggested that the ban on prisoners voting should be lifted.³³ During the UN Human Rights Council’s regular review of Estonia, both Canada and Sweden proposed that the total ban on voting be lifted.³⁴ Estonia’s response to the proposal was not promising, stating that the Ministry of Justice would analyse whether the current restrictions should be changed and how that might be achieved.³⁵ In light of this the situation is not expected to improve in the near future.

In the autumn of 2021, Eduard Odinets, a member of the Riigikogu, addressed the Chancellor of Justice, raising the issue of the political neutrality of educational institutions during local elections. More specifically, the director of the Narva Language Lyceum had sent out a call to parents to support his candidacy in the election, using the schoolchildren to take a letter home and giving the children chocolate for doing so. The Chancellor of Justice found that candidates were not prohibited from presenting their political goals and election promises in educational institutions. At the same time, he also referred to the fact

29 Vallimäe, T. 2021. *Liberaaldemokraatia ja rahvuslik solidaarsus*, Sirp, 27.08.2021.

30 Vabariigi Valitsus. 2021. *Kaja Kallase valitsuse tegevusprogramm*.

31 Vabariigi Valimiskomisjon. 2021. *Valijate nimekiri*.

32 Ploompuu, A. 2021. *Kohalikud valimised tulevad mitmete muudatustega*, Postimees, 14.06.2021

33 Eesti võrdse kohtlemise võrgustik. 2020. *Ühisaruanne Eesti kolmanda üldise korralise ülevaatuse (UPR) jaoks*.

34 UN General Assembly. 2021. Report of the Working Group on the Universal Periodic Review – Estonia (A/HRC/48/7).

35 UN General Assembly. 2021. *Report of the Working Group on the Universal Periodic Review – Estonia, Addendum* (A/HRC/48/7/Add.1)

that advertising in school buildings is generally prohibited and that the Consumer Protection and Technical Surveillance Authority can assess the act.³⁶

At the end of 2021, after several failures, the Ministry of Economic Affairs and Communications found a bidder to analyse the implementation of proposals for ensuring security and raising public awareness of the system, as proposed by the Electronic Voting System and Electronic Voting Task Group, which was convened in 2019 by the Minister of Foreign Trade and Information Technology.³⁷

The local government elections of 2021 were the first after 2005 to lift the ban on outdoor advertising, which unreasonably restricts freedom of expression.³⁸ Candidates were allowed to campaign anywhere on election day except at polling stations. Since the introduction of the ban, the Estonian Centre for Human Rights has emphasised in various reports that the ban was disproportionate.³⁹ It was also

criticised by the Chancellor of Justice, who in 2017 asked the Riigikogu to lift the ban.⁴⁰

The Electoral Commission and the courts were, for the most part, approached due to problems related to e-voting. For example, the Constitutional Review Chamber of the Supreme Court rejected a complaint by EKRE and Silver Kuusik that e-votes should be cancelled in certain election district constituencies because the translation application changed the names of candidates on the election website. The courts considered that a translation problem could not significantly affect the electronic voting result.

The Supreme Court also dismissed a grievance in which the complainant requested that electronic voting not be initiated on 11 October.⁴¹ The complainant alleged that electronic voting was not sufficiently secure or reliable because the voting software and voter applications had not been audited. The Electoral Committee did not agree with this complaint, and the Supreme Court also considered that

36 [iguskantsler. 2021. Valimisreklaam koolis, 15.10.2021.](#)

37 [Liive, R. 2021. Riik tellis auditi, mis selgitab välja, kuidas on Kert Kingo e-valimiste töörühma ettepanekuid rakendatud, Digigeenius, 28.10.2021.](#)

38 [Riigi Teataja. Euroopa Parlamendi valimise seaduse, kohaliku omavalitsuse volikogu valimise seaduse, Riigikogu valimise seaduse, rahvahääletuse seaduse ja karistusseadustiku muutmise seadus \(valimispäeval valimisagitatsiooni piirangu ja välireklaami keelu kaotamine\), 13.01.2020.](#)

39 [E. Rünne. 2015. Inimõigused Eestis 2014 – 2015, õigus vabadele valimistele. Õiguskantsler. 2019. Euroopa Parlamendi valimise seaduse, kohaliku omavalitsuse volikogu valimise seaduse, Riigikogu valimise seaduse ja karistusseadustiku muutmise eelnõu, 17.06.2019.](#)

40 [Riigikohtu põhiseaduslikkuse järelevalve kolleegiumi 28.10.2021. a otsus kohtuasjas nr 5-21-16.](#)

41 [Riigikohtu põhiseaduslikkuse järelevalve kolleegiumi 21.10.2021. a otsus kohtuasjas nr 5-21-15.](#)

no circumstances had arisen to provide any reason to stop electronic voting going ahead.⁴² However, the Supreme Court did recommend that election organisers be more transparent. It also asked for it to be possible to disclose audits and system analyses where these were carried out before the start of electronic voting, as long as doing so would not compromise security.⁴³

In 2020, the state commissioned research into the possibility of voting on smart phones. The analysis found that e-voting by smartphone is technically possible, but various risks needed to be mitigated before it could be implemented. For example, devices running iOS and Android could use m-voting, although they would have to have the latest version of the software installed. Additionally, general cyber hygiene was pointed out as a threat (hackers, and the possibility of m-voting making it easier to vote on behalf of someone else).⁴⁴

The analysis of facial recognition technology, which was commissioned by the State Information System Board (RIA), and was carried out by AS Cybernetica, found that facial recognition is a technically complex issue and would require sweeping technical changes. It would increase the risk of e-voting

failures, while also significantly increasing the system's performance requirements, whereas it would be impossible to reduce the error rate to zero. The study found that the e-voting service would become more inconvenient for the user, as it would require the presence of equipment, including a working camera. It also flagged additional privacy breaches. Instead of facial recognition, less intrusive measures could be used to combat attacks against e-voting. These include informing the person by email or text message that a vote has been cast on their behalf, as well as creating good practice for nursing homes when it comes to storing ID cards.⁴⁵

Since e-elections first started, technical issues interfering with the e-voting processes have attracted a degree of public attention, and this election was not error free. As soon as the elections began, people who voted using the latest macOS operating system found they were having problems, receiving an error message and not being able to vote. The problem was fixed on the same day.⁴⁶ The voting app also displayed incorrect information to the first e-voters, making it seem as if their vote had not been taken into account, with the application displaying a message that it was a test vote.⁴⁷ This was caused by incorrect server

42 Ibid.

43 Ibid.

44 Cybernetica. 2020. [Mobile voting feasibility study and risk analysis](#).

45 ERR. 2021. [Uuring näotuvastust e-hääletamisel veel ei soovita](#), 15.07.2021

46 Alas, B.. 2021. [E-valimisi häirisid esimesed tehnilised rikked](#), Postimees, 11.10.2021

47 au, A. 2021. [E-hääletamine algas tehnilise praagiga: 900 kasutajale anti teada, et nende hääl ei lähe arvesse](#), Delfi, 11.10.2021.

programming concerning the time at which the message was displayed. However, all votes cast were counted.⁴⁸

There were also problems and bottlenecks in terms of the accessibility of e-voting. One problem concerned the 2019 Riigikogu elections and European Parliament elections, where the attention of the Electoral Committee was drawn to the fact that the screen reader was unable to read the text in the voting app on the macOS operating system. A representative from the Electoral Committee admitted that the matter had been investigated, but the application was not improved over the next two years.⁴⁹

Another issue which limited the user-friendliness and availability of the voting app arose in the local elections of 2021. The voting app is only available in Estonian. However, everyone who permanently resides in Estonia is allowed to participate in local government elections, although many of them do not speak

Estonian.⁵⁰ According to the State Electoral Service, there are currently no plans in place to add the option for the voting app to be made available in English or Russian.⁵¹

On 13 October, the newspaper *Postimees* published a piece stating that the translation application changed the names of candidates displayed on the election website.⁵² In fact the names only changed if someone used the Google Chrome web browser and had the automatic translation feature turned on. For example, Hõbe Kuusik was displayed instead of Silver Kuusik.⁵³ On the same day a software patch was made available via valimised.ee, which eliminated this.⁵⁴

On 14 October, the Estonian Conservative People's Party (EKRE) and Silver Kuusik, a candidate on their list, filed a complaint with the National Electoral Committee, asking them to cancel the results of electronic voting in those election districts which had been affected by the translation problem.⁵⁵

48 Vabariigi Valimiskomisjon. 2021. [Kõigi kell 9 e-hääletanute hääled läksid arvesse](#), 11.10.2021.

49 Koitmäe, A. ja Arm, M. 2021. [Kas tulevikus saab valimistel hääletada ka mobiiltelefonis?](#) Vikerraadio.

50 Riives, A. 2021. [Kes on Hõbe Meikar või Sipelga Hilving? Tõlkerakendus muudab valimiste veebilehel kandidaatide nimesid](#), Postimees, 13.10.2021

51 Riigi valimisteenistus, e-kiri, 01.10.2021.

52 Riives, A. 2021. [Kes on Hõbe Meikar või Sipelga Hilving? Tõlkerakendus muudab valimiste veebilehel kandidaatide nimesid](#), Postimees, 13.10.2021

53 Pau, A. 2021. [Taas probleem: kandidaadid Silver Meikar ja Silver Kuusik moonduvad valimiste veebilehel Hõbe Meikariks ja Hõbe Kuusikuks](#), Delfi, 13.10.2021.

54 Vabariigi Valimiskomisjon. 2021. [Automaattõlge ei mõjutanud kandidaatide nimede kuvamist valijarakenduses](#), 15.10.2021

55 Delfi. 2021. [EKRE nõuab e-hääletuse tühistamist: kandidaadid, kelle nime väänas tõlkeprogramm, on ebavõrdes seisus](#), 15.10.2021.

The Electoral Committee did not satisfy the complaint, responding that there were only any problems with automatic translation on the valimised.ee website.⁵⁶ The same group appealed against the decision via the Supreme Court. The Supreme Court's Constitutional Review Chamber dismissed the appeal by EKRE and Silver Kuusik because the translation problem was unable to significantly affect the results of electronic voting.⁵⁷ According to the court, it can be argued in principle that the party responsible for displaying the names in translated form is the voter who set up automatic translation in their browser, while on the other hand it can also be argued that the National Election Service is responsible for not excluding the possibility of their website being automatically translated.

According to the Supreme Court, the Electoral Service violated the right of applicants to stand as candidates by failing to ensure that way it displayed the list of candidates on its website was not in some way distorted. The fact that the correct list was displayed in the voter application does not invalidate this conclusion. At the same time, the Supreme Court did not annul the results of electronic voting because the probability that someone did not vote for the desired candidate due to the Election Service's

failure to act is so small that the results could not have been significantly affected.⁵⁸

In order to involve various groups of people and to share information, the National Electoral Committee, in co-operation with the Alarm Centre, opened a 24-hour election hotline on the +372 631 6633 number. The hotline provided answers to general questions related to the elections. In the period between 7-18 October, a total of 3,395 calls were answered via the election hotline. The majority of the calls were questions about how to take part in e-voting, along with the contents of the election information sheet, the location of voting booths at polling stations, and the right to vote.⁵⁹ The helpline was available for callers between 7 October and 18 October 2021, and questions were answered in Estonian, Russian and English.⁶⁰

Enabling framework for civil society —

Key recommendations

- Exercise extreme caution surrounding state regulation of the disclosure of NGO donors, as this

56 Vabariigi Valimiskomisjon. 2021. [Vabariigi Valimiskomisjon jättis rahuldamata kaks e-hääletamisega seotud kaebust](#), 15.10.2021.

57 Riigikohtu põhiseaduslikkuse järelevalve kolleegiumi 28.10.2021. a otsus kohtuasjas nr 5-21-16.

58 Riigikohus. 2021. [Riigikohus jättis rahuldamata kaks e-hääletamist puudutanud kaebust](#), 28.10.2021

59 iigi valimisteenistus, e-kiri, 01.10.2021.

60 Lomp, L. 2021. [Sügisel nõustab valijaid infotelefon](#), Postimees, 27.05.2021.

is something autocratic regimes often do.

Regulatory framework

General developments

On the one hand, the development during the reporting period was the result of a normalisation of the political situation, with the government changing at the beginning of 2021, with those who had rather selectively supported fundamental rights and freedoms not continuing in the coalition. On the other hand, the period was marked by a constant stream of restrictions and support measures following the spread of coronavirus. By 20 March 2020 the government had informed the Council of Europe that it might not respect the ECHR, including the freedoms included therein. The move itself received criticism,⁶¹ although disproportionate interference could not be identified in practice. Although the police were sometimes accused of overreacting to threat assessments,⁶² violations were also found at various demonstrations.⁶³

In the Kaja Kallas government, the Minister of Population, whose portfolio included the

field of civil society for almost two years, did not continue, and the topic remained with the Minister of the Interior. Due to the change in power at the top, the already-approved development plan for the field was opened, family policy and other topics were taken out of it and, under the new title of *Coherent Estonian Development Plan 2021-30*, the Ministry of Interior Affairs and the Ministry of Culture sent a joint document to parliament for discussion in the summer.⁶⁴ No significant new topics on the subject of civil society were included in the development plan, but the topics of integration and adjustment and global 'Estonianness' found a place next to civil society.

The legal acts adopted to address the COVID-19 pandemic included amendments which have continued to have a favourable impact on the work of civil society organisations. As of 24 May 2020, amendments to the Non-profit Associations Act⁶⁵ and the Foundations Act⁶⁶ have made it possible for non-profit associations and foundations to make decisions in writing without having to hold a meeting, which typically requires physical presence. The amendments also lifted the requirement that the list of attendees at a general meeting of a non-profit association, as well as the minutes of a general meeting of a non-profit association,

61 Rünne, E. 2020. *Kergekäeline loobumine inimõiguste konventsioonist on libe tee*, ERR, 29.03.2020.

62 Sarv, H. 2021. *Ekspertid peavad politsei jõukasutust meelevaldustel liigseks*, ERR, 12.04.2021.

63 Tooming, M. 2021. *Politsei tuvastas piiranguvastaste meelevaldusel mitmeid rikkumisi*, ERR, 20.03.2021.

64 *Siseministeerium*. 2021. *Sidusa Eesti arengukava 2021-2030*.

65 *Mittetulundusühingute seadus*.

66 *Sihtasutuste seadus*.

must be signed by hand.⁶⁷ In addition, the rapid amendment of the legislation made it possible to postpone deadlines for submitting annual reports in 2020, from July to October, and at the same time the period of office for members of the governing bodies, which had expired in the meantime, was considered to have been extended due to difficulties in holding election meetings.

In 2021, the strategic partnership development programme was completed after having been delayed due to the pandemic. This was implemented by the Network of Estonian Non-Profit Organisations and the Centre for Applied Anthropology on behalf of the state chancellery. The aim was to improve permanent partnerships with NGOs in at least three ministries which, to some extent has succeeded despite the crisis. The Ministry of Education and Research, which was criticised in the previous report, has come a long way in developing a completely new concept, which will go through a reality test at the end of 2021.⁶⁸ During the programme, a handbook for officials was prepared, which helps to make sense of the whole process from setting goals to reporting.⁶⁹

At the end of 2020, the first civic initiative was launched, focusing on the promotion of liberal values in Estonia, namely the Liberal Citizen Foundation (SALK). This, among other things, monitors the transparency of party funding, both in terms of donations⁷⁰ and social media advertising.⁷¹

Financing framework

In other respects, the government reacted relatively neutrally to the crisis from the point of view of civil society. No special assistance was offered to NGOs, but most of the sectoral support measures also included non-profit organisations and foundations. An exception involved several subsidies in the field of entrepreneurship, where NGOs were discriminated against solely on the basis of their legal form of activity. For example, in the tourism sector only business associations were classed as being qualified to receive compensation for damages.⁷² The Ministry of Economic Affairs and Communications only partially eased the conditions in the spring of 2021.⁷³ The Supreme Court supported the position of the administrative court and declared unconstitutional one of the unreasonable technical

67 [Tsiiviilseadustiku üldosa seaduse ja teiste seaduste muutmise seadus \(elektrooniliste võimaluste laiendamine koosolekute korraldamisel ja otsuste vastuvõtmisel\)](#) 180 SE.

68 Haridus- ja Teadusministeerium. 2021. [Strateegiliste partnerite rahastamine](#).

69 A. Rammo. 2021. [Strateegiline partnerlus vabaühedustega](#).

70 SA Liberaalne Kodanik. 2021. [Rahapada – Erakondade rahastamine](#). SA Liberaalne Kodanik. 2021. [Poliitreklaam Facebookis](#).

71 Tupay, P. 2021. [Kas oleme politseiiriigi loomise lävel](#), ERR, 09.04.2021.

72 Hea Kodanik. 2020. [MKM, miks sa sotsiaalseid ettevõtteid diskrimineerid](#), 07.05.2020.

73 Vabariigi Valitsus. 2021. [Valitsus toetas turismisektori toetuse tingimuste leevendamist](#), 09.03.2021.

conditions set out by the Ministry of Culture when it came to qualifying for support.⁷⁴

While nothing changed in the distribution of regional support funds, the EKRE Minister of Finance forbade the *State Shared Service Centre* from making contractual payments to several strategic partners of the Ministry of Social Affairs in the field of equal treatment. This was an unexpected political intervention that included the argument, supported by the National Audit Office, that the Gambling Tax Act does not allow these issues to be financed.⁷⁵ The NGOs considered this bullying,⁷⁶ while the Ministry of Social Affairs found a short-term solution to the problem.⁷⁷ A more long-term solution needs to be found in 2022, when tax revenues will be fully decoupled from costs⁷⁸.

No changes were made in the tax policy in favour of donations, although with the abolition of the tax exemption on housing loan interest from 2022 income, 300 euros per year can now in theory be added to the deduction of donations.⁷⁹ The topic was also discussed

at a traditional joint sitting of the three committees of the Riigikogu.⁸⁰ In terms of foreign funding, the reserve of the Active Citizens' Fund, which is supported by the European Economic Area, was increased by two million euros.⁸¹

At the end of 2019, the Supreme Court provided a newer interpretation of the Public Procurement Act (RHS), which until now has been strictly understood according to the instructions of the Ministry of Finance, meaning that almost every public interest NGO must comply with the RHS if more than half of its funding comes from taxpayers. Now the administrative chamber has seemed to state more clearly that the performance of a public task must be imposed on the association by law, not simply assumed, although there is no information regarding the use of the interpretation in practice.⁸²

Once again, a name dispute reached the court, this being one of the few options for the state when it comes to hindering the freedom of association upon the registration

74 Riigikohtu põhiseaduslikkuse järelevalve kolleegiumi 22.12.2020. a otsus kohtuasjas nr 5-20-60.

75 Riigikontroll. 2020. Vastus märgukirjale, 04.02.2020.

76 Hea Kodanik. 2020. Ühenduste rahastuse peatamine on poliitiline kius, 14.07.2020.

77 Pölluste, G. 2020. Tanel Kiik väljus lahingust Martin Helmega võidukalt: riigi toetus võrdsuse eest võitlevate ühenduste taskusse jätkub, Delfi, 17.07.2020.

78 Riigi Tugiteenuste Keskus. 2021. Eesti kodanikuühendused saavad RTK abiga kaks miljonit eurot lisaraha.

79 Riigikogu. 2021. Tulumaksuseaduse muutmise seadus 402 SE. Riigikogu. 2021. Heategevuse rollist kodanikuühiskonnas, 28.09.2021.

80 Riigi Tugiteenuste Keskus. 2021. Eesti kodanikuühendused saavad RTK abiga kaks miljonit eurot lisaraha.

81 Riigikohtu halduskolleegiumi 20.11.2019. a otsus kohtuasjas nr 3-17-2718.

82 Tallinna Ringkonnakohtu 11.06.2020. a määrus kohtuasjas nr 2-19-16784.

of associations (albeit this particular dispute came through the courts). It was found that, in the application filed on 13 September 2019, the intended name goes against good morals. The registry official saw the discrepancy in the desired name of MTÜ Süvariik ('Deep State'); the position was supported by the county judge, who forwarded the appeal against the ruling to the Tallinn Circuit Court for resolution. The latter asked for advice from the Estonian Language Institute and found on 11 June 2020 that the county court had incorrectly interpreted the meaning of 'deep state' and had not substantiated its reasoning for the name being inappropriate.⁸³ The association was entered into the register on the day after the ruling by the circuit court.

While most of the recommendations on reviewing company law focused on reducing regulation and reporting obligations for NGOs, the government's action programme includes the sentence: 'We consider it important to increase the accountability and transparency of politically-orientated foundations and NGOs',⁸⁴ referring to plans to analyse and make proposals, which will probably again begin to address the disclosure of donors (especially foreign ones) to advocacy organisations.⁸⁵

Freedom of assembly

Over the years, freedom of assembly has been the subject of debate. Estonia has even been called a police state,⁸⁶ because in order to prevent the spread of the virus, almost all public gatherings were temporarily banned, including the opportunity to demonstrate peacefully, even against those very restrictions. At the beginning of the pandemic, the Chancellor of Justice found that the intrusions were justified as long as the general restrictions on movement, which had been established to prevent the spread of the virus, remained in force, and that there were other ways in which individual freedom of expression could be realised.⁸⁷

Religious associations reacted furiously to the ban on collective worship, but again the Chancellor of Justice found that freedom of religion itself was not restricted, while the ban on gatherings of more than two people was justified.⁸⁸ The Foundation for the Protection of the Family and Traditions (SA Perekonna ja Traditsiooni Kaitseks) compiled a comprehensive guide to the rights of demonstrators,⁸⁹ even going to court.

The court decision arrived on 1 October 2021. The Tallinn Administrative Court dismissed

83 USAID. 2020. [2019 Civil Society Organization Sustainability Index](#).

84 Krjukov, A. 2018. [Reinsalu loob Eestile välisagentide seadust](#), ERR, 28.03.2018.

85 Pärli, M. 2021. [Õigusteadlane kritiseerib riigikogu passiivsust koroonaalukorras](#), ERR, 28.08.2021.

86 Õiguskantsler. 2020. [Kogunemisvabaduse piirangud](#), 29.04.2020.

87 Õiguskantsler. 2020. [Usvabaduse piirangud eriolukorras](#), 22.04.2020.

88 Vooglaid, V. ja Nurmsalu, H. 2021. [Analüüs: meelevaldajad, tundke oma õigusi](#), Objektiiv, 28.05.2021.

89 Pärli, M. ja Tooming, M. 2021. [Politsei pidi meelevaldusse sekkuma](#), ERR, 11.04.2021.

the identification appeal against the government's order of 19 August 2020, considering both the form of a general order – meaning an individual act itself – and the restrictions being imposed on demonstrations to be lawful.

The general courts took a contrary view regarding the protection of rights in the matter of an individual act versus a government regulation: 'The form of the order provides individuals with even better opportunities to protect their interests and rights, as anyone whose rights it violates can directly challenge the order by means of a court action. There would be no availability of such an immediate option if the same restrictions were imposed by means of a regulation. In the latter case, a judicial review of similar restrictive clauses would only be possible within the context of a constitutional review procedure'.⁹⁰ However, the courts stated that the epidemiological situation and the pace of change in terms of restrictions could make judicial review of restrictions virtually impossible, even if court proceedings were expedited. They also considered prohibition appeals unworkable, as future events are difficult to predict.

The courts agreed with the applicant that the lack of knowledge cannot 'justify all sorts of preventive measures forever'. The Foundation for the Protection of the Family and Traditions (SAPTK) promised to appeal against the

judgement.⁹¹ The government questioned the (popular) right of appeal by the foundation as a memberless organisation. The courts did not accept this because any legal entity can organise a meeting and every advocate is included in the protection of the right to freedom of assembly. Nor did the courts agree with the respondent in terms of an identification appeal not being processed against an administrative act, which has been annulled in the meantime, finding that such an appeal had the preventive purpose of protecting rights in the future. EKRE submitted a similar complaint to the courts regarding the restriction of fundamental rights and freedoms, taking umbrage against the government's order of 23 August 2021.⁹²

At the time SAPTK was building up its strategic litigation capacity and it was more successful in another dispute. In this one the county court annulled a fine of 160 euros which had been imposed by the PBGB for violating the requirements for public meetings. The core of the dispute, however, was not freedom of assembly but sloppy misconduct proceedings by an over-eager official.⁹³ Case law covering restrictions is still in its infancy in Estonia, while in several other European countries such cases were resolved as long ago as the summer of 2020.

90 Nael, M. 2021. [Halduskohus ei rahuldanud SAPTK kaebust koroonapiirangute kohta](#), ERR, 01.10.2021.

91 Krjukov, A. 2021. [EKRE taotleb kohtult koroonakorralduste tühistamist](#), ERR, 30.09.2021.

92 [Harju Maakohtu 21.06.2021. a otsus kohtuasjas nr 4-21-2257](#).

93 Laffranque, J. [Koroonajuhtumitest Euroopa riikide kohtutes](#), Õhtuleht, 3.06.2020.

Public perceptions of civic space and civil society

No major studies have been completed regarding civil society. The *NGO Viability Index*, which was published in autumn 2020, continued to recognise overall capacity and freedom of action, with concerns about attacks against NGOs and about growing inequalities between more and less able NGOs. In the index, Estonia again held first place in most indicators, compared to twenty-four other Eastern European and Eurasian countries.⁹⁴ In the subsequent year's report, Estonia remained at the same high level, surpassing all eighty-two countries included in the index.

In its report on social entrepreneurship, the OECD recommended that entrepreneurship education should be improved, that the capacity of associations should be increased, and that equal access to finance should be ensured.⁹⁵

Disregard of human rights obligations and other systemic issues affecting the rule of law framework –

Key recommendations

- The response to the COVID-19 pandemic must be thoroughly analysed and publicly justified in terms of human rights and levels of proportion. The impact of restrictions must be considered both before and, periodically, afterwards, with a possible analysis also being conducted on a regular basis regarding possible side effects.
- The specific nature of the measures, the messages included in them and information which has been shared in regard to those measures, are all important aspects including for the purposes of mitigating the risk of misinformation.
- In a crisis situation, special attention should be paid to protecting the rights of vulnerable groups, including the rights of people with special needs, by cooperating with

94 USAID. 2021. [CSO Sustainability Index Explorer](#).

95 OECD. 2020. [Sotsiaalse ettevõtluse ja sotsiaalsete ettevõtete arengu stimuleerimine Eestis. Strateegia süvaanalüüs](#).

relevant organisations and, among other things, following the recommendations of the Estonian Chamber of Disabled People.

- The procedure for retaining communications data should, as a matter of urgency, be aligned with national and EU law and case law.
- A comprehensive audit of the current arrangements for the collection and storage of biometric data should be carried out, covering technical, legal, and wider societal perspectives.

Impact of measures taken to address the COVID-19 pandemic on rule of law and fundamental rights

On 12 March 2020, the Estonian government declared a state of emergency in response to the COVID-19 pandemic. This state of emergency ended on 18 May 2020. As of 12 August 2021, a fresh healthcare emergency has been in force in the country.⁹⁶

In March 2020, Estonia informed the Council of Europe that it was exercising its right to derogate from its obligations under Article 15 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms*. Estonia announced the suspension of a number of rights, including the right to liberty and the security of the person, the right to a fair trial, the right to respect for private and family life, freedom of assembly and association, the right to education, and the right to freedom of movement.⁹⁷ The use of the derogation ended at the conclusion of the state of emergency on 18 May 2020.⁹⁸

Most of the COVID-19 measures introduced by the state were widely implemented, focussing generally on restricting freedom of movement, assembly, and association, alongside measures to restrict business operations. Restrictions on freedom of movement were imposed on people who had been diagnosed with COVID-19 and people who were living with them, along with people who were crossing the Estonian state border, while movement in public spaces was also restricted (known as the 2 + 2 rule).⁹⁹

Restrictions on movement particularly affected vulnerable groups. In April 2020, people who were living in general care homes and special

96 Vabariigi Valitsus. 2021. [Koroonaviirus ja selle vältimine](#).

97 Eesti Vabariigi alaline esindus Euroopa Nõukogu juures. 2020. [Note verbale nr 1-16/6, 20.03.2020](#)

98 Oja, B. 2020. [Eesti teavitas Euroopa Nõukogu eriolukorra lõppemisest](#), ERR, 16.05.2020

99 Riigi Teataja. 2021. [Meetmed koroonaviiruse SARS-CoV-2 leviku tõkestamiseks](#).

care homes were prohibited from leaving the care home grounds until the emergency situation had been concluded.¹⁰⁰ Restrictions on care homes also concerned the right to respect for private and family life, as residents were unable to meet their relatives for a long time due to the visitation ban.

The restrictions also significantly affected the rights of detainees. The Chancellor of Justice criticised the ban on walking in fresh air and reductions in the opportunity to call on relatives to just once a week, which was put in place during the state of emergency.¹⁰¹

During that state of emergency, all public gatherings were banned, raising questions about the constitutional validity of the ban on political demonstrations and worship. The Chancellor of Justice expressed the opinion that, during the state of emergency, freedom of opinion and expression as provided for in the constitution was not in fact being restricted, as it remained possible to express opinions other than through physical gatherings. The Chancellor of Justice also explained that the ban on public gatherings prevented religious services from being held, although they were still permitted in private, with churches and

other places of worship remaining open and prayers not being banned.¹⁰²

The COVID-19 restrictions also affected the right to education. During lockdown, distance learning was introduced in schools, while in some places distance learning was applied even after the end of the state of emergency. The lack of contact learning placed those students with special educational needs in a particularly vulnerable position. The Estonian Chamber of Disabled People found that the closure of contact schools, dormitories, and social services in schools and special schools resulted in a sharp increase in the care burden being borne by the parents of children with disabilities, with parents stating that school support for distance learning was for the most part insufficient.¹⁰³

In June 2021, the Praxis think tank published a study entitled: The socio-economic impact of the COVID-19 pandemic on gender equality, which found that gender inequality had increased during the pandemic. With the closure of schools and childcare facilities, most of the burden of caring for children and carrying out domestic work was borne by women, with their opportunities to do paid work being reduced. The analysis revealed that measures to

100 Riigi Teataja. 2020. [Eriolukorra juhi korraldus hoolekandeesutustes liikumisvabaduse piirangu kehtestamise kohta](#), 17.05.2020.

101 Õiguskantsler. 2020. [COVID-19 haigust põhjustava viiruse leviku tõkestamise meetmed](#), nr 7-7/200489/2001899, 06.04.2020.

102 Õiguskantsler. 2020. [Õiguskantsleri aastaülevaade – Õigusriik eriolukorras](#).

103 EPIKoda. 2020. [Puudega inimeste toimetulek kriisiajal](#), 14.09.2020.

support gender equality during the pandemic in Estonia were insufficient.¹⁰⁴

In the summer of 2020, the Estonian Chamber of Disabled People conducted a mini-study entitled *Disabled people coping during the crisis*. The recommendations of the study emphasised the need to provide basic social services for people with disabilities even during a crisis, as well as the need to provide contact learning opportunities for children who have special educational needs. In addition, emphasis was placed on the importance of providing accessible communications, and preventive organisation in terms of social work.¹⁰⁵

Disputes over vaccination and mask wearing are widespread on social media and beyond. Some people see COVID-19 restrictions as a deprivation of liberty and a violation of human rights. The spread of misinformation has contributed to this. Misinformation related to the vaccination programme has been widely disseminated in Estonia.

The vaccination programme raises a number of issues which have been widely discussed in the media, in particular the COVID-19 certificate,

or vaccine passport. Since the autumn of 2020, in Estonia it has been compulsory to present a COVID-19 certificate to participate in certain activities, including public meetings or events, and visits to entertainment and catering establishments. Opinion articles in the media have been analysed in some detail, in particular regarding compatibility with the right to equal treatment when it comes to using vaccine passports for non-medical purposes, as well as issues related to the protection of personal data.¹⁰⁶

Professor Mart Susi of Tallinn University has argued that the use of a vaccine passports does not violate human rights if presenting one is not an absolute condition for access to certain services or events. He also argued that anyone can obtain a vaccine passport if they want one.¹⁰⁷ In May 2021 the Chancellor of Justice explained that requesting an immunity certificate from consumers attempting to access certain services is a justifiable act inasmuch as it reduces the risk of infection, although it should still remain a temporary solution.¹⁰⁸

104 Haugas S., Sepper, M-L (Mõttekoda Praxis). 2021. [COVID-19 pandeemia sotsiaal-majanduslik mõju soolisele võrdõiguslikkusele](#).

105 EPIKoda. 2020. [Puudega inimeste toimetulek kriisiajal](#), 14.09.2020

106 Luik-Tamme, I., Šipilov, V. 2021. [Ingeri Luik-Tamme ja Vitali Šipilov: vaksineerimispassi mõju põhiõigustele](#), ERR, 05.03.2021.

107 Susi, M. 2021. [Mart Susi: vaktsiinipass versus inimõigused](#), Postimees, 14.05.2021.

108 Õiguskantsler. 2021. [Lihtsustatud juurdepääs teenustele immuunsustõendi alusel, nr 14-1/210929/2103416](#), 18.05.2021.

Privacy and data protection

The question of whether, and to what extent, the right to privacy and data protection can be restricted has become extremely topical during the pandemic.

At the end of March 2020, Estonia joined the list of countries to have informed the Council of Europe that they had activated Article 15 of the European Convention on Human Rights, which allows for the partial restriction of the rights in the convention. The right to respect for private and family life was one of these rights. During the emergency situation, Statistics Estonia analysed the movements of Estonian residents in areas covered by certain mobile phone masts, on the basis of anonymous data received from telecommunication companies. In addition, the Health Board's voluntary mobile application, HOIA, was active as of August 2020.¹⁰⁹ The app exchanged non-personalised codes using Bluetooth signals and, if the user had registered an illness, informed their close contacts. By October 2021, the application had 272,378 users, with only a small percentage reporting their illnesses.¹¹⁰ On a positive note, although it is difficult to assess the impact of the application, it is a positive that special attention has been paid

to the protection of personal data during the app's development. It is not possible to identify users or their location through the app, and the state does not receive any information about the identity of infected people or their close contacts.¹¹¹ The Data Protection Inspectorate and the Office of the Chancellor of Justice have also praised the HOIA application in this regard.¹¹²

The procedure for storing communications data has been a problem for seven years. This is a long time for such a problem not to have been resolved, and it is understandable that over the last two years it has become an even more newsworthy topic. In reality, it is an almost endless re-running of the same old argument. Fortunately, there are real changes being put in place this time around, especially with regard to case law. The universal obligations on the storage of metadata from network and telephone communications and the obligation to transmit this data to various public authorities to allow them to carry out investigations arises from the repealed EU Data Retention Directive. Until now, storage of communications data has continued based on national law (an implementing provision of the invalid Directive paragraph 111 of the Electronic Communications Act). The report from

109 TEHIK. 2020. [Telefonirakendus "HOIA" privaatsustingimused](#), 21.08.2020.

110 Allik, H. 2021. [Ebaõnnestumiste rägastik: kuidas HOIA rakendus on läbi kukkunud](#), Postimees, 22.02.2021.

111 Sotsiaalministeerium. 2020. [Täna saab laadida nutitelefoniga koroonaviiruse levikut piirava mobiilirakenduse HOIA](#), 20.08.2020

112 R. Liive. 2020. [AKI peab eestlaste koroonäppi sobilikuks, õiguskantsleri büroo jagab tunnustust](#). Digigeenius, 19.08.2020.

2018–2019 examined the ‘Intention to develop a draft amendment to the electronic communications act and related acts’ (in Estonian, ‘*Elektroonilise side seaduse ja sellega seonduvalt teiste seaduste muutmise eelnõu väljatöötamiskavatsus*’), which was initiated by the Ministry of Justice and which promised, among other things, to ‘establish more precise and clear criteria for situations in which communications data may be retained and later used in various procedures, thereby ensuring better protection of privacy and personal data’. The intention to develop the draft did not bring about any rapid changes, partially due to the desire to await decisions on the references for a preliminary ruling which was pending with the European Union Court of Justice at that time. The solutions are now available and are very explicit (see the next subsection), making it all the stranger that the Electronic Communications Act and the bill on ‘Amendments to Other Acts’, which was in its third reading in the Riigikogu on 15 September 2021, did not include amendments to paragraph 111.¹¹³

On 29 June, President Kersti Kaljulaid announced the *Act Amending the Identity Documents Act and Related Acts*, establishing Automatic Biometric Identification System (ABIS) database.¹¹⁴ ABIS is an interoperable database that aggregates biometric data collected by public authorities for various

purposes. However, it does not allow such data to be linked to biographical data. The biggest problem with ABIS is its centralisation and the possibility of it being cross-used, so that in the future a fingerprint which has been issued for applying for a residence permit could in theory be used in criminal investigations, for example. The centralised collection and cross-use of sensitive personal data is problematic. This requires precise rules regarding access, retention periods, deletion, and rights of data subjects. Therefore ABIS may not be the best and most secure way to systematise biometric data held by the state. However, the current fragmented system (of which data owners are often unaware and for which the procedural rules are very vague) understandably also posed major security and confidentiality risks. Unfortunately, in addition to this the process of setting up ABIS does not include any precise definitions of which specific areas of data can be stored in it, how this should be done or even for how long the data should be kept. If there is no systematisation and clarity in regard to the biometric data being collected, or the rules for storage and access, the proposed database will create make it easier for breaches of the fundamental right to privacy and data protection rules to happen.

In October 2020, the European Court of Justice provided clarification in a case brought by the

113 Majandus- ja kommunikatsiooniministeerium. 2021. [Elektroonilise side seaduse, ehitusseadustiku ja riigilõivuseaduse muutmise seadus](#).

114 Riigikogu. 2021. [Isikut tõendavate dokumentide seaduse muutmise ja sellega seonduvalt teiste seaduste muutmise seadus 366 SE](#).

French advocacy organisation, Quadrature du Net,¹¹⁵ regarding the admissibility of the lawful retention of communications data following the repeal of the Data Retention Directive in the 2014 Digital Rights Ireland decision. The decision clarifies the issues in terms of the cases involving Tele2 Sverige,¹¹⁶ and also the Ministry of Finance,¹¹⁷ while moving slightly away from the strictness of the Digital Rights Ireland and Tele 2 Sverige cases. In the Quadrature du Net case, the court explained that the state may oblige providers of electronic communications services to retain traffic and location data for all users of electronic communications equipment for a limited time if it faces an immediate and genuine security threat.¹¹⁸ This means that the obligation to retain communications data is not fundamentally contrary to EU law, provided that it pursues a sufficiently serious legitimate aim and is supported by an accessible and clear system of restrictions and remedies. As a reminder, the Tele 2 Sverige adjudication stated that no data can be stored under any additional conditions. The Quadrature du Net adjudication provides that in the interests of the investigation of a serious crime, it is possible to request the retention of data from a specific service user and the release of data collected by the service provider for another purpose, such as ensuring

the quality or continuity of the service.¹¹⁹ The Quadrature du Net adjudication introduced a degree of flexibility into the previous categorical ban and may have caused confusion both for those who consider the retention of all communications data to be useful for some reason and for those who have actively fought against it.

On 2 March, in response to a reference for a preliminary ruling from the Supreme Court, the European Court of Justice announced its views on the procedure for storing and using communications data in criminal proceedings, pursuant to paragraph 111 of the Electronic Communications Act,¹ and paragraph 901 of the Criminal Procedure Act.¹²⁰ The preliminary ruling clearly returns to the principles expressed in the Digital Rights Ireland and Tele 2 Sverige cases, while also reiterating the fact that, despite the invalidity of the Data Retention Directive, and that domestic security remains regulated by domestic law, the practice of retaining and using communications data remains subject to EU law because it directly concerns the activity of the service providers and the fundamental rights of EU citizens.

115 [Euroopa Liidu Kohtu 06.10.2020. a otsus liidetud kohtuasjades nr C 511/18, C 512/18 ja C 520/18.](#)

116 [Euroopa Liidu Kohtu 21.12.2016. a otsus Tele2 Sverige AB vs. Watson jt. ühendatud kohtuasjades nr C 203/15 ja C 698/15.](#)

117 [Euroopa Liidu Kohtu 02.10.2018. a otsus kohtuasjas nr C-207/16](#)

118 [Euroopa Liidu Kohtu 06.10.2020. a otsus liidetud kohtuasjades nr C 511/18, C 512/18 ja C 520/18, § 137.](#)

119 [Euroopa Liidu Kohtu 06.10.2020. a otsus liidetud kohtuasjades nr C 511/18, C 512/18 ja C 520/18, § 141.](#)

120 [Euroopa Liidu Kohtu 02.03.2021. a otsus kohtuasjas nr C 746/18.](#)

According to the court, Estonian national law is not in line with EU law and case law for the following reasons:

- It provides for the general and undistinguishing storage of communications data.
- In circumstances in which the prosecutor's office conducts pre-trial proceedings and, where appropriate, represents the public prosecution, it cannot be considered an independent body which has been empowered to authorise the retrieval of communications data from service providers.

The Court of Justice has provided clarification by stating that a disproportionate obligation to retain the communications data of all service users cannot provide a basis for gathering legitimate evidence. Evidence gathered in this way cannot be relied upon in criminal proceedings even if the prosecution has requested information only on data which has been recorded for a limited period of time and regardless of the amount and type of data available. However, if the communications service provider is required to retrieve the data of a highly-identifiable suspect, where such data has been collected for any other purpose, this can only be done for the purposes of investigating serious crime or mitigating serious security threats.

On 18 June, the Supreme Court also reached a significant decision in the Estonian criminal case of H K (see also the report for 2018-2019), in which it agreed with all the views expressed by the Court of Justice and concluded that telephone communications data which had been retained by telecommunications companies under the requirements of an unlawful provision may not be requested in criminal investigations.¹²¹ There should therefore no longer be any doubt regarding the unlawfulness of paragraph 111 of the Electronic Communications Act,¹ nor could the judgment concerning Estonia be in any way surprising in light of the Court of Justice's previous case law.

In November 2020, the Ministry of Justice published the results of the survey, *People's privacy rights and the protection of personal data 2020*.¹²² According to the survey, Estonians trust the data processing practices of public institutions the most, especially healthcare institutions, but trust private sector service providers to a much lesser degree. In the same year, the Data Protection Inspectorate pointed out that most complaints have been related to unauthorised access to health data. At the same time, the survey shows that about two thirds of the Estonian population does not have a clear understanding of which institutions and companies collect data about them.

A 2021 survey of fundamental rights by the European Union Agency for Fundamental Rights shows that 75% of Estonians think that

121 [Riigikohtu kriminaalkollegiumi 18.06.2021. a otsus kohtuasjas nr 1-16-6179.](#)

122 [Justiitsministeerium. 2020. Inimeste privaatsusõigused ja isikuandmete kaitsmine 2020, 05.11.20.](#)

they can change the provisions of web applications, pages, and services so that they do not collect personal data. This is the highest figure in Europe. Regarding concerns about service providers, law enforcement, or surveillance agencies, or national or foreign intelligence agencies or cybercriminals being able to access and misuse their data, Estonians are precisely at the European average, without showing any obvious trust or suspicion. Estonians consider their awareness of legislation to be slightly lower than the average European. Such legislation can be used to find out what data their service providers have collected and how they have used it. In relations with the public sector, Estonians' legal awareness is slightly higher than the European average. Strangely, according to the respondents themselves, awareness about the general data protection regulation is one of the lowest in Europe. In general, younger people, and those with higher incomes, were more confident and, in their view, more aware of the technical and legal options when it comes to being able to stand up for their privacy. There were no sharp differences between male and female respondents.¹²³

Estonians self-reported relatively good awareness about the privacy settings of websites and the options they have for adjusting those settings to suit their personal preferences can be considered a good, promising practice.¹²⁴ It

is certainly good practice – albeit one which is still rather new – to expand the scope and opportunities of NGOs and advocacy. For example, from 2021 this is one of the main activities of the Estonian Centre for Human Rights in the field of data protection and digital services, which is providing an advisory service and is also hoping to be able to deal with advocacy and strategic litigation in the future.^{125,126}

The issue of the retention of communications data, as well as the collection and use of biometric data, has come up often in public debates. For the former, the indispensability of such data in the fight against crime is often something which is emphasised, while it is difficult to find publicly-available statistical evidence about it, such as the relationship between the amount of communications data issued at the request of the prosecution and how much of it is successfully used to resolved criminal cases. It also needs to be repeated that the retention obligation is already a relic of a rather old and invalid EU directive. It is pointless to assume that the storage of communications data in Estonia can continue in its current form. The retention of biometric data has not received such widespread attention in the past, so critical questions have rightly been asked about the proportionality and necessity of ABIS. The possible uses of biometric data for security and safety have been clarified, but

123 FRA. 2021. [Fundamental Rights Survey, Data Protection and Privacy](#).

124 Ibid.

125 Eesti Inimõiguste Keskus. 2021. [Keskuse tegevus laieneb](#), 25.05.2021.

126 Eesti Inimõiguste Keskus. 2021. [Keskus alustab nõustamis andmekaitse ja privaatsuse vallas](#), 04.10.2021.

the chaotic nature of the current system has been criticised.

A trend which can be seen here is the increase in legal awareness, but also the increased readiness to restrict fundamental rights, which is probably something which can be justified by the circumstances of the pandemic. In contrast to greater awareness and positive case law, there is also a real tendency to take a bold and public approach to privacy restrictions – as an example, see ABIS and the draft amendment to the Electronic Communications Act – as well as the increased digital dependence and vulnerability which accompanies the pandemic.

Contacts

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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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