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COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

2020 Rule of Law Report The rule of law situation in the European Union

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ABSTRACT

The Estonian justice system is characterised by some of the most advanced information and communication technologies used in courts. They provide a high degree of accessibility and flexibility to court uses, and have also contributed greatly to the continued functioning of the courts with relatively little disruption during the COVID-19 pandemic. The Supreme Court and judicial self-governance bodies are well involved in the main aspects of the management of the justice system, particularly on allocation of human and financial resources and in appointment and other aspects of judges' careers.

Estonia has the legal and institutional set-up to fight corruption broadly in place. It has established an effective network to manage the implementation of the anti-corruption policy. A new anti-corruption strategy is in preparation. All Ministries are equipped to coordinate corruption prevention and ensure the implementation of the national anti-corruption strategy's activities in the relevant sector. The capacity to investigate and prosecute corruption crimes is effective and according to the the Prosecutor's Office, the budgetary resources are considered satisfactory. Provisions have been introduced to regulate 'revolving doors'. Lobbying activities are not regulated by law but a draft regulation is in the pipeline and a comprehensive whistleblower protection framework is still not in place. Estonia has largely invested in e-learning to support prevention of conflict of interest for all public sector employees.

The Estonian legal framework concerning media pluralism is based both on constitutional safeguards and sectorial legislation. The media regulator - the Consumer Protection and Technical Regulatory Authority (ECPTRA) - operates as an administrative part of the Ministry of Economic Affairs. The law transposing the revised Audiovisual Media Services Directive (AVMSD) will reinforce its independence. Transparency of media ownership is not fully ensured pending the adoption of new specific legal provisions. Yet, general information related to entrepreneurship is electronically available, and access to data in the Business Register is free. The framework for the protection of journalists is comprehensive and safeguards for the protection of journalists are included in several acts.

The system of checks and balances in Estonia is well-developed, with an inclusive process for the adoption of laws, which is being further developed. The Constitutional Review Chamber of the Supreme Court performs both *ex-ante* and *ex-post* control of constitutionality, including through a direct constitutional complaint. The Chancellor for Justice, plays a strong role in the system of checks and balances, and its accreditation with the A-status according to UN principles is ongoing (delayed due to COVID-19 pandemic).

I. JUSTICE SYSTEM

The Estonian court system consists of three levels: four County Courts (hearing all civil, criminal and misdemeanour matters) and two Administrative Courts at first instance, two Circuit Courts at second instance (reviewing decisions of County and Administrative Courts), and the Supreme Court at the highest instance, which reviews court judgments by way of cassation proceedings and is also the court of constitutional review. The Supreme Court administers its own budget and operations, while the courts of first and second instance are administered in cooperation between the Council for Administration of Courts and the Ministry of Justice. The Council for Administration of Courts is a non-permanent body, which, among others, has powers related to the judicial map, the resources of the judiciary and participates in the discussion on administration of the courts.¹ Judges of first and second instance courts are appointed by the President of the Republic on the proposal of the full Supreme Court (*en banc*). The Prosecutor's Office is a government agency under the Ministry of Justice, which is independent in the performance of its duties. It is managed by the Prosecutor General, particularly as regards the appointment and career of prosecutors.² Lawyers (attorneys) in the Estonian justice system are members of the Estonian Bar Association, which is an independent, self-governing professional association.

Independence

The Supreme Court and other judicial self-governance bodies play an important role in judicial appointments and other decisions on the justice system. The Supreme Court organises the competition and, in plenary sitting, selects candidate judges for the first and second instance courts, proposing them for appointment by the President of the Republic.³ The judges of the Supreme Court are appointed by the Parliament (*Riigikogu*) on the proposal of the President of the Supreme Court, who first considers the opinions of the full Supreme Court (*en banc*) and of the Council for Administration of Courts. The Supreme Court assists in organising the work of the five self-governance bodies of judges (the Court comprising all judges (*Court en banc*), the Council for Administration of Courts, the Judicial Training Council, the Judges' Examination Committee⁴, the Disciplinary Chamber⁵ and the Judicial Ethics Council). Moreover, its Constitutional Review Chamber would resolve potential requests for judicial review filed against the decision of the President of the Republic not to

¹ The Council for the Administration of Courts consists of Chief Justice of the Supreme Court, five judges elected by the Court *en banc* for three years, two members of the Parliament (*ex officio* the chairpersons of the Legal Committee and the Constitutional Committee), a sworn advocate appointed by the Board of the Bar Association, the Chief Public Prosecutor or a public prosecutor appointed by him or her, the Chancellor of Justice (ombudsperson) or a representative appointed by him or her. In addition, the Minister of Justice or a representative appointed by him or her shall participate in the Council with the right to speak but without the right to vote. The Council is not a permanently operating body but a council that has regular sessions four times a year and extraordinary sessions whenever there is a need.

² Figures 55 – 57, 2019 EU Justice Scoreboard. The Ministry of Justice exercises supervisory control over the prosecution service, however, this does not extend to the activities of the Prosecutor's Office in the planning of surveillance, pretrial criminal proceedings and representing the public prosecution in court. See Art. 9 of the Prosecutors' Office Act. The Prosecutor General is appointed by the Government on the proposal of the minister of justice after considering the opinion of the Legal Affairs Committee of the Parliament.

³ Art. 30 of the Courts Act.

⁴ The Judges' Examination Committee is composed of ten members and is formed for five years. Six are judges from all three levels, one jurist designated by the Law Faculty in Tartu, one person designated by the Minister of Justice, a lawyer designated by the Bar Association and a public prosecutor designated by the Prosecutor General. See Art. 69 of the Courts Act.

⁵ For the composition of the chamber, see Art. 93(1) – five justices of the Supreme Court, five circuit court judges and five judges of courts of the first instance.

appoint a candidate judge.⁶ It should be noted that the President has so far never refused to appoint a candidate judge. Therefore, there has never been a case of judicial review before the Constitutional Review Chamber regarding a non-appointment of a candidate judge.

The level of perceived judicial independence is average among the general public and low among companies. Among the general public, 57% perceive judicial independence to be fairly and very good, which is an increase compared to 2019, after a previous downward trend. Among companies perceived independence is low (only 39% consider it to be fairly and very good), and remains stable, after a previous downward trend.⁷ Another survey among businesses (World Economic Forum) where the level of perceived independence is above average among Member States, has in recent years shown a decrease in perception.⁸

The Council for Administration of Courts plays an important role in determining the resources for the judiciary, and contributed to the response to the COVID-19 pandemic. The Council for Administration of Courts, a non-permanent body consisting of a majority of judges, plays an important role in managing the justice system. Among others, it approves the judicial map, the number of judges for each court, and the appointment and dismissal of court presidents. In addition, it gives opinions on court budgets and candidates for Supreme Court judges. The Council does not function on a permanent basis and has four regular sessions, as well as extraordinary sessions whenever needed. For example, the Council discussed the response of the justice system to the COVID-19 pandemic, including the further development of electronic communication in courts to keep the courts functioning.⁹ Organisational support for the Council is provided by the Ministry of Justice, which cannot intervene in the work and decision-making of the Council. The Council has to approve most of the important decisions made by the Ministry of Justice in relation to the courts.¹⁰ It also gives an opinion on financial, budgetary and some human resources matters.¹¹ In particular, it is involved in determining the allocation of resources to courts, as it gives an opinion on the proposal drafted by the Ministry of Justice in consultation with court presidents. In the process of the Council presenting its opinion on the budget, a compromise proposal is formed, which fully involves the judiciary.

⁶ GRECO noted that the Supreme Court decides in plenary (19 justices) when making proposals for the appointment of the first and second instance court judges, while the Constitutional Review Chamber of the Supreme Court, composed of nine justices, serves as the appeal instance. According to GRECO, this creates a problem of “structural impartiality” addressed in several decisions of the European Court of Human Rights. See GRECO Fourth Evaluation round – Evaluation report, para. 99. See also GRECO Fourth Evaluation round - Second Compliance Report, paras. 39 – 44.

⁷ Figures 44 and 46, 2020 EU Justice Scoreboard.

⁸ Figure 48, 2020 EU Justice Scoreboard. The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%).

⁹ Recommendations of the Council for Administration of Courts for organising the administration of justice during emergency situation.

¹⁰ See Articles 39 and 41 of the Courts Act: determination of the territorial jurisdiction of courts, structures of the courts, the location of courts and courthouses; determination of the number of judges in the courts and courthouses; appointment to office and premature release of chairmen of courts; a decision to allow a judge to continue to serve after attaining the age of retirement; determination of the number of lay judges; the establishing of the composition of the register data of the courts information system and the procedure for the submission thereof.

¹¹ See Art. 39 and 41 of the Courts Act: the principles of the formation of annual budgets of courts; the conformity of the funds allocated to courts in the budget of the Ministry of Justice with the principles of the formation of annual budgets of courts; candidates for a vacant position of justice of the Supreme Court; release of a judge from office due to extraordinary reasons.

Quality

Information and communication technologies in courts are advanced, and are being further developed to make the courts function smoothly despite the COVID-19 related challenges. Estonia is among the Member States which perform the best when it comes to the use of Information and Communication Technology (ICT) to improve the accessibility and overall quality of their justice system.¹² The work of courts is facilitated by the use of four ICT tools: the Court Information System (CIS), Public e-file, e-File and the recently launched Digital Court Files system. The CIS is the internal court information system used by all judges and court officials, and it contains all documents submitted to a court or generated by a court. It further serves as an environment for creating court documents with customisable templates, making inquiries from other databases and sending court information to other information systems via e-File. The CIS is also used for distributing cases automatically among judges.¹³ The public e-File is the external information system which allows parties and their representatives to electronically participate in proceedings.¹⁴ Public e-File enables citizens to initiate civil and administrative proceedings, and to monitor these and misdemeanour proceedings as well as to submit documents to be processed. It is based on the e-File system that combines the information systems of the Police, the Prosecutor's Office, the courts and other bodies conducting proceedings, ensuring central sharing of information on proceedings between parties and a quick and paperless data exchange. The purpose of the public e-File system is to provide information contained in the e-File system to procedural parties via the Internet.¹⁵ The e-File is an internal central information system that provides a detailed overview of different stages of proceedings. It allows for the simultaneous exchange of information between various parties to the proceedings.¹⁶ Users of the client systems can only see the data that are related to their professional duties.¹⁷ The Digital Court Files system is used for a better and more functional overview and accessibility of court files for judges, their assistants¹⁸ and parties to court proceedings.¹⁹ This ICT tool offers users several options for better organisation and optimisation of the procedural steps and processes in the courts.²⁰ In a response to the COVID-19 pandemic, the further development and implementation of the Digital Court Files system was advanced, which allowed the courts and prosecution service to continue working without major disruption.

¹² Figures 27 – 29, 2020 EU Justice Scoreboard.

¹³ Input from Estonia for the 2020 Rule of Law Report.

¹⁴ Public e-File gives access to civil, administrative, criminal and misdemeanour cases. It has approximately 5000 users who log into the system at least once a week and 50 000 requests from client systems daily.

¹⁵ For more information see <https://www.rik.ee/en/international/public-e-file>.

¹⁶ For more information see <https://www.rik.ee/en/international/e-file>.

¹⁷ For example, prison officers cannot access information regarding court proceedings.

¹⁸ Via the CIS.

¹⁹ Via the Public e-File.

²⁰ It should be noted that upon request from a Member State, the Commission can provide tailor-made expertise via the Structural Reform Support Programme to help design and implement growth-enhancing reforms. Since 2018, such support has been provided to Estonia for reforms in the justice system. As Estonia is one of the most digitalised countries in the world, including at the level of e-services by the public sector, compared to less digitalised countries, cybercrime has thus potentially a large impact on Estonian's stability, economy and growth. The support aims to develop effective national cybercrime units within the police, the Border Guard Board, the Prosecutor's Office and the courts in order to counter, investigate and prosecute cyber threats.

Efficiency

The Estonian justice system is working efficiently. In 2019, civil cases were resolved in county courts on average in 95 days, criminal cases were resolved on average in 226 days in general criminal proceedings, 28 days in simplified proceedings and 46 days in misdemeanour cases. In the first instance courts, administrative cases were resolved in an average of 123 days.²¹ The average processing time for appeals was 162 days in civil cases, 44 days in criminal cases and 197 days in administrative cases. The length of court proceedings in civil, commercial and administrative cases is shorter than average level (measured in disposition time) and pending cases are often among the lowest in the EU.²² In those type of cases, the clearance rate is above 100%, meaning that courts are able to cope with incoming cases.

II. ANTI-CORRUPTION FRAMEWORK

The Ministry of Justice is in charge of the preparation of the national anti-corruption strategy and oversees and coordinates the reporting on the Action Plan for the Anti-corruption Strategy. The Anti-Corruption Select Committee exercises parliamentary scrutiny over the implementation of anti-corruption measures and the Political Party Funding Supervision Committee oversees political parties' funding. The Corruption Crime Bureau of the National Criminal Police is a specialised unit responsible for carrying out investigations on corruption cases and the Internal Security Service is responsible for investigating corruption offences committed by higher state officials and higher local government officials in six larger municipalities. The Prosecutor's Office supervises and directs pre-trial criminal investigation proceedings on corruption offences and it represents the public prosecution in courts.

Estonia scores 74/100 in the Transparency International Corruption Perceptions Index and ranks 8th in the European Union and 18th globally.²³ 60% of respondents to the 2020 Special Eurobarometer perceive corruption widespread (EU average 71%)²⁴ and 14% of people feel personally affected by corruption in their daily lives (EU average 26%). As regards business, 44% of companies consider corruption to be widespread (EU average 63%), while 9% of companies consider that corruption is a problem when doing business (EU average 37%). 37% respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average 36%), while 46% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average 31%).²⁵

A new anti-corruption strategy is in preparation. The Ministry of Justice (Criminal Policy Department) is responsible for coordinating anti-corruption activities.²⁶ The Ministry of Justice oversees and coordinates the reporting on the Action Plan for the Anti-corruption

²¹ Input from Estonia for the 2020 Rule of Law Report.

²² Figures 4 – 15, 2020 EU Justice Scoreboard.

²³ Transparency International 2020 index.

²⁴ Special Eurobarometer 502 (2020).

²⁵ Flash Eurobarometer 482.

²⁶ Each other ministry has a corruption prevention co-ordinator who is appointed to manage the implementation of the anti-corruption policy its area of competence. The network convenes around four to five times per year and it includes also representatives from the police, civil society, Parliament, the state audit office and other stakeholders. The budget of anti-corruption coordination is 7000-15 000 € for anti-corruption projects, besides running costs for personnel.

Strategy.²⁷ The current Strategy is coming to an end as it covers the period from 2013 to 2020.²⁸ A new strategy is in preparation. The list of high-risk sectors has been translated into priorities within the Anti-corruption Strategy 2013-2020 and currently includes health-care and education. Public procurement is considered as a horizontal corruption-prone area throughout various sectors.

Competences in the prevention and fight against corruption are shared between different institutions. The Prosecutor's Office supervises and directs pre-trial criminal investigation proceedings on corruption offences, and it represents the public prosecution in courts.²⁹ The number of corruption crimes registered has decreased in 2019 by 81% compared to 2018.³⁰ Approximately 40% of corruption cases occur at local level.³¹ According to the Prosecutor's Office, the budgetary resources are considered satisfactory.³² The Corruption Crime Bureau (CCB) of the National Criminal Police is the specialised unit responsible for carrying out investigations on corruption cases. The functions of the CCB include both the prevention and pre-trial investigation of criminal offences under the supervision and direction of the Prosecutor's Office and the processing of misdemeanours in corruption cases.³³ In addition, the Internal Security Service has competences as regards the pre-trial investigation of criminal offenses and processing of misdemeanours in corruption cases. Each Ministry has one official coordinating corruption prevention and ensuring the implementation of the national anti-corruption strategy's activities in the relevant sector. Corruption prevention coordinators also report to the respective Minister in case of suspicions of corruptions or corruption risks. When there is evidence of corruption, they report this to the police.³⁴ The parliamentary Anti-Corruption Select Committee exercises parliamentary scrutiny over the implementation of anti-corruption measures and discusses and assesses the potential incidents of corruption involving officials specified in the Anti-Corruption Act.³⁵ The Political Party Funding Supervision Committee oversees political parties' funding and supervises the legality of obtaining and spending the finances of political parties, election coalitions and independent candidates who participate in elections.³⁶

²⁷ Estonian Government Anti-corruption strategy 2013.

²⁸ Korruptsioonivastase strateegia aastateks 2013-2020" rakendusplaan aastateks 2017-2020.

²⁹ The Prosecutor's Office budget for 2020 is EUR 15 159 770 euros, which represents an increase of EUR 763 801 compared to 2019.

³⁰ Ministry of Justice, Criminality in Estonia – 2019, Corruption. <https://www.kriminaalpoliitika.ee/kuritegevusestatistika/korruptsioon.html>.

³¹ Ministry of Justice, Recorded crimes 2003 – 2018, Tallinn, 2019.

³² The Prosecutor's Office budget for 2020 is EUR 15 159 770, which represents an increase of EUR 763 801 compared to 2019. Explanatory notes to the 2020 State Budget. <https://www.riigikogu.ee/download/52fab2ca-9670-4add-8347-4c880a647a63>.

³³ In 2019, there were 33 persons working in the Bureau. The budget of the CCB in 2019 was EUR 1,156,132. See also <https://www.politsei.ee/files/Korruptsioon/Trykised/korruptsioonsisu2017engnett.pdf?18996834f6>.

³⁴ Corruption prevention contacts in ministries, Korruptsioon.ee, <https://www.korruptsioon.ee/en/anti-corruption-activity/corruption-prevention-contacts-ministries>.

³⁵ The Committee consists of 5 members of Parliament and 2 permanent officials. The Committee monitors compliance with restrictions on the activities of members of the Riigikogu (Parliament) and reviews their assets declarations, submits to the Parliament a yearly overview of its activities, carries out parliamentary oversight of anti-corruption measures, including meetings with government agencies, law enforcement agencies such as the Internal Security Police, National Criminal Police and the Prosecutor's Office to gather information. The Special Committee has the right to summon persons and request information and documents for inspection. It also has the right to make proposals to amend legislation. See further on Anti-corruption Select Committee supervision activities: <https://www.riigikogu.ee/en/parliament-of-estonia/committees/anti-corruption-select-committee/>.

³⁶ The committee consists of members appointed by the political parties represented in the Riigikogu and representatives of the Chancellor of Justice, the Auditor General and the National Electoral Committee.

There are no comprehensive whistleblower protection rules in place. The 2013 amendments to the Anti-Corruption Act prohibit officials from concealing corruption, and require Agencies to protect the confidentiality of good-faith whistleblowers. However, they only regulate the public, but not the private sector.

Lobbying is not regulated. There are no legal rules that would set down the framework and regulate lobbying. GRECO recommended adopting rules on contacts between lobbyists and the persons with top executive functions (PTEFs), and making such contacts public.³⁷ The Government is in the process of preparing a draft regulation on lobbying for public officials working in the executive branch.

There has been some debate on the need for managers of state-owned companies to make their economic interest public. As regards the assets declaration, the Anti-Corruption Act adopted in 2013 has reinforced the capacity of the Anti-Corruption Select Committee of the Parliament.³⁸ Improvements include an extension of the amount of data to be declared and of the competence and the rights of the Committee. On the basis of the revised Act, an electronic register of declarations of interests was established in 2014. These are, unlike economic interests of state-owned companies, already publicly available and therefore also subject to public scrutiny including by the media. The system for declaring assets and interests, effective as from 2014, enables every declaring official to use a pre-filled form and to file the declaration electronically. The declaration submitted is accessible to the public for three years from the date of submission.³⁹

Provisions have been introduced to regulate ‘revolving doors’. The Civil Service Act contains provisions according to which an official who is released from office may not become, within one year from the day of release, a connected person⁴⁰ with a legal person in private law over which the official has exercised direct or constant supervision during the last year.

Members of the Committee are independent and do not represent the interests and positions of the organisations that appointed them in their work.

³⁷ GRECO Fifth Evaluation Round – Evaluation Report, recommendation v.: “that rules be laid down to govern (i) contacts between persons with top executive functions and lobbyists/third parties that seek to influence the public decision-making process and (ii) the disclosure of such contacts and the subject-matters discussed”.

³⁸ Anti-corruption Act. <https://www.riigiteataja.ee/en/eli/521082014007/consolide>. (as of 22.09.2014)

³⁹ GRECO Fourth Evaluation Round- Compliance Report.

⁴⁰ The connected person in this context means legal person in which at least 1/10 of the holding or the right to acquire a holding belongs to an official or a person connected to him or her; and legal person in which the official or family member is a member of the management or controlling bodies.

III. MEDIA PLURALISM

In Estonia, the freedom of expression and the right of access to information find legal and formal protection in the Constitution of the Republic of Estonia.⁴¹ Secondary legislation expressly ensures the right of journalists to protect their sources and fosters media freedom in the radio and television sector.⁴² The right to information is explicitly recognised in the Constitution, in the Public Information Act⁴³ and in the Personal Data Protection Act^{44, 45}

A planned reform aims to strengthen the independence of the media regulator - the Consumer Protection and Technical Regulatory Authority (ECPTRA). ECPTRA is a governmental organisation established in 2019 by merging the Consumer Protection Board and the Technical Regulatory Authority. The authority is operating as an administrative part of the Ministry of Economic Affairs and Communications. The amendments to transpose the revised Audiovisual Media Services Directive (AVMSD)⁴⁶ aim to modify the tasks, powers, and competences of ECPTRA. As announced by the Estonian authorities, they will also define the latter's status as an independent authority in accordance with the requirements on independence, enshrined in the AVMSD.⁴⁷

The Estonian Press Council (*Pressinõukogu*) is a voluntary self-regulating body. It is tasked to handle complaints from the public concerning material in the press, online portals with journalistic content and on public service broadcasting stations. The Press Council has ten members, including six from the media sector and four lay members from non-media sectors, in addition to a rotating chairman. The body has been established by the Estonian Newspaper Association.⁴⁸

There are currently no specific legal provisions requiring the disclosure of ownership information. Nonetheless, general information related to entrepreneurship is electronically available and access to data in the Business Register is free.⁴⁹ The lack of information on media ownership has raised some concerns.⁵⁰ However, the current draft act transposing the AVMSD includes a new provision regulating publicly available data on structure and transparency of media ownership, based on the relevant provision in the AVMSD⁵¹ Currently, ultimate ownership of media companies is not available to the public in all cases. Due to this fact, the Media Pluralism Monitor 2020 (MPM 2020) considered the situation with regards to transparency of media ownership in Estonia as one presenting medium risk. At the same time, the indicator of market plurality represents a high risk, due to the growing

⁴¹ Section 44-46, <https://www.riigiteataja.ee/en/eli/521052015001/consolide>.

⁴² Art. 15 and 13 of the Media Services Act, see: www.riigiteataja.ee/en/eli/506112013019/consolide.

⁴³ <https://www.riigiteataja.ee/en/eli/514112013001/consolide>.

⁴⁴ Personal Data Protection Act (Isikuandmete kaitse seadus) <https://www.riigiteataja.ee/en/eli/523012019001/consolide>.

⁴⁵ In 2020, Estonia ranked 14th in the Reporters Without Borders World Press Freedom Index.

⁴⁶ The draft law amending the Audiovisual Media Services Directive (Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU) has passed the interinstitutional consultation and will be submitted to the Government for approval in August. It will be discussed in the Parliament in September.

⁴⁷ Art. 30 AVMSD.

⁴⁸ Estonian Newspaper Association (Eesti Ajalehede Liit) website on the Press Council of Estonia (Pressinõukogu), <http://vana.meedialiit.ee/pressinoukogu/index-eng.html>.

⁴⁹ Business Register is available here: <https://www.rik.ee/en/e-business-register>.

⁵⁰ Information received in the context of the country visit and of the consultation process for the preparation of the report

⁵¹ Art. 5 AVMSD.

horizontal and vertical concentration of media ownership. This applies in particular to regional media, which have a strong tradition in the country. A 2018 European Centre for Press and Media Freedom's fact-finding mission pointed to media concentration as a matter of concern⁵². As regards local media, the MPM 2020 highlighted medium risk related to the political independence of media, as a result of the lack of rules regulating the conflict of interests between owners of media and ruling parties and politicians.⁵³

The right to information is established in the Constitution, and the Public Information Act regulates the public's right to access information held by public authorities. However, as pointed out to the Commission by stakeholders⁵⁴ and as raised by the Media Pluralism Monitor, there is a perception that the public administration tends to deny access to public information in some cases.

The framework for the protection of journalists is comprehensive. It rests on the freedom of expression, which is explicitly recognised in the Estonian Constitution and the Media Services Act. The latter includes a provision on the protection of source of information. Safeguards for the protection of journalists are also included in the Code of Criminal Procedure.⁵⁵ However, imprisonment is among the envisaged sanctions for some specific cases of defamation.⁵⁶ The analysis of the indicator on journalistic profession, standards and protection presents a low risk in the MPM 2020. Nevertheless, recently some concerns have been raised over interference in the work of investigative journalists.⁵⁷ In 2019 and 2020, the Council of Europe's Platform to promote the protection of journalism and safety of journalists published no relevant alerts concerning Estonia.⁵⁸ In 2020, one alert was published regarding alleged chilling effects on media freedom; however, the case related instead to the application of financial sanctions issued at EU level, as confirmed by the European Commission in its opinion of 19 June 2020.⁵⁹

⁵² Joint EFJ-ECPMF Mission to the Baltic countries 2018 https://adobeindd.com/view/publications/c17c50d1-7733-41c3-b0fd-de8de57e8d9a/alnr/publication-web-resources/pdf/FFM_Baltics_cc.pdf.

⁵³ These findings were confirmed with information received in the context of the country visit.

⁵⁴ Information received in the context of the country visit.

⁵⁵ Section 72 of the Code of Criminal Procedure - <https://www.riigiteataja.ee/en/eli/530102013093/consolide>.

⁵⁶ Decriminalisation of Defamation, https://cmpf.eui.eu/wp-content/uploads/2019/01/decriminalisation-of-defamation_Infographic.pdf.

There are only very specific instances of defamation of a specific category of persons that could result in imprisonment (persons enjoying international immunity § 247; representative of state authority § 275; judge/court § 305 of the Penal Code).

⁵⁷ "Reporters Without Borders is extremely concerned for the future of independent journalism in Estonia, where almost all of the investigative reporters and the opinion desk editors have left Postimees, the country's leading daily newspaper, in the past few weeks, saying they no longer trust its management". RSF already voiced concern about Linnamäe's control of Postimees in April 2019, when its journalists said they had been under various forms of pressure to cover events linked to his other long list of business interests", January 2020, <https://rsf.org/en/news/does-crisis-leading-daily-mean-end-investigative-journalism-estonia>.

⁵⁸ Council of Europe, Platform to promote the protection of journalism and safety of journalists.

⁵⁹ Council of Europe, Platform to Promote the Protection of Journalism and Safety of Journalists, Reply by the Government of Estonia to the platform concerning the Russian State News agency Sputnik. On 19 June, the European Commission adopted an opinion on the application of financial sanctions imposed by means of Council Regulation (EU) No 269/2014, according to which Estonia has implemented the financial sanctions towards Rossiya Segodnya (Sputnik-Estonia) legitimately. See Opinion on the application of financial sanctions imposed by means of Council Regulation (EU) No 269/2014, https://ec.europa.eu/info/sites/info/files/200619-opinion-financial-sanctions_en.pdf.

IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES

Estonia is a parliamentary republic with a single-chamber Parliament, where the Supreme Court's Constitutional Review Chamber can carry out *ex-post* constitutional review, including, under certain conditions, on the basis of a constitutional complaint. In addition to the justice system, the Office of the Chancellor for Justice (ombudsperson) plays a role in the system of checks and balances. Involvement of the public and stakeholders is supported by advanced Information and Communication Technology tools.

A new law-making environment and legislative policy guidelines are being developed to further enhance the user-friendliness and inclusiveness for the public and stakeholders. Legislative drafting is guided by the Rules for Good Legislative Practice and Legislative Drafting.⁶⁰ The process generally begins with the drafting of a „legislative intent“, which details the issue that is being addressed, the potential target group, an analysis of the current situation and policy options, as well as the potential impact of any possible action.⁶¹ Ministries are required to identify the stakeholders to be engaged as early as possible, at the latest during the stage of drafting a legislative intent or of a proposal to draft a development plan. Stakeholder consultations must be conducted in at least two stages: when deciding whether to draft legislation (intent) and when legislation has been drafted, before submission to Parliament. All draft legislation, legislative intents, proposals to draft a development plan or other potentially significant matters are published in the policy information system EIS (*Eelnõude infosüsteem*) for consultation. Stakeholders are also regularly engaged directly with requests for input. The Ministry of Justice is working on a project to create a new law-making environment that would be more user-friendly, with innovative ways for better and more inclusive legislative drafting. Draft 2030 Guidelines for the Development of Legislative Policy are being debated in the Parliament, with the objective of renewing the standard for good legislative policy and to serve as a guide for policy-making, including with regard to engagement with stakeholders.

Constitutional review is carried out by the Supreme Court's Constitutional Review Chamber. The Supreme Court is both the highest third instance court and the court of constitutional review. The Constitutional Review Chamber reviews the constitutionality of laws and other legislation of general application pursuant to the Constitutional Review Court Procedure Act.⁶² Various types of constitutional review proceedings can be initiated by a court, the President of the Republic, the Chancellor of Justice, a local government council or the Parliament. The President may file a petition to declare an Act that has been adopted without any amendments by Parliament on a second hearing, following the President's initial refusal to promulgate the said Act to be contrary to the Constitution (*ex-ante* constitutional review). The Chancellor of Justice (Ombudsperson) also plays a key role in the system of constitutional review of laws, in particular with the right to initiate *ex-post* abstract constitutional review.⁶³ In line with Supreme Court's case law, the Court, in certain exceptional situations, allows the applicant to submit individual complaints directly to the

⁶⁰ <https://www.riigiteataja.ee/en/eli/508012015003/consolide>.

⁶¹ Access to all of these documents is freely available to the public through the draft legislation and policy information system (Eelnõude infosüsteem or EIS, available at <http://eelvoud.valitsus.ee/main#ANx6shIc>).

⁶² For the full act see <https://www.riigiteataja.ee/en/eli/512122019006/consolide>.

⁶³ Art. 6 of the Constitutional Review Court Procedure Act.

Supreme Court before the exhaustion of the legal remedies before the lower courts, namely in situations where there is no effective remedy for protecting applicant's fundamental rights.⁶⁴

Amendments broadened the mandate of the Office of the Chancellor for Justice (Ombudsperson). The Chancellor is a non-accredited associate member of the European Network of National Human Rights Institutions. In January 2019, new legislation⁶⁵ on the institution came into force, which broadened its mandate to allow it to act as the national human rights institution in Estonia. The Chancellor of Justice has a broad and strong mandate, including acting as the National Preventive Mechanism under the UN Convention Against Torture and the National Monitoring Mechanism under the UN Convention on the Rights of Persons with Disabilities. It also performs the functions as the Ombudsperson for Children. The Chancellor recently applied for accreditation with the Global Alliance of National Human Rights Institutions and is undergoing the accreditation process.⁶⁶

In relation to the COVID-19 pandemic, Estonia declared an emergency situation. On 12 March 2020, the Estonian government declared an emergency situation and appointed the Prime Minister as the manager of the emergency situation. On 20 March 2020, it informed the Council of Europe pursuant to the derogation clause contained in Article 15 of the European Convention on Human Rights (the Convention) that some of the measures adopted to protect "public health" may involve a derogation from certain obligations of Estonia under the Convention. The legislative orders of the Prime Minister (as the manager of the emergency situation) were open to judicial review before the Administrative Court (but not subject to parliamentary nor presidential scrutiny). The emergency situation was terminated on 18 May 2020 (the derogation under Article 15 of the Convention was lifted on the same day).

A new Civil Society Development Plan 2021-2030 is being developed. Based on the Estonian Civil Society Development Concept, the Government promotes civil society through the Civil Society Development Plan 2015–2020.⁶⁷ Since 2018, the Ministry of the Interior has been leading the process of drafting a new Civil Society Development Plan 2021-2030, in cooperation with and with the active engagement of stakeholders, including the umbrella organisations that represent CSOs in Estonia. This process has included working group meetings and stakeholder consultations throughout the different counties of Estonia.⁶⁸ The civic space in Estonia is considered to be open.⁶⁹

⁶⁴ Judgment of the Supreme Court *en banc*, 3-1-3-10-02, 17 March 2003.

⁶⁵ See January 2019 amendments to the Chancellor of Justice Act.

⁶⁶ The accreditation for A-status under the UN Paris Principles that was scheduled for March 2020 was postponed due to Covid-19 pandemic. See also ENNHRI, The rule of law in the European Union, Reports from national human rights institutions, p.73.

⁶⁷ https://www.siseministerium.ee/sites/default/files/elfinder/article_files/estonian_cs_dev_plan_2015-2020_extract.pdf.

⁶⁸ Input from Estonia for the 2020 Rule of Law Report.

⁶⁹ See the rating given by CIVICUS; ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

Annex: List of sources in alphabetical order.*

* *The list of contributions received in the context of the consultation for the 2020 Rule of Law report can be found at (COM website).*

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Virtual country visit to Estonia in the context of the 2020 Rule of Law Report.

Annex II: Country visit to Estonia

The Commission services held virtual meetings in June and July 2020 with:

- Consumer Protection and Technical Regulatory Authority
- Council for the Administration of Courts
- Estonian Association of Journalists
- Financial Intelligence Unit
- Ministry of Justice
- National Criminal Police
- Parliamentary Anti-Corruption Select Committee
- Press Council
- Prosecutor's Office
- Supreme Court
- Transparency International Estonia

* The Commission also met the following organisations in a number of horizontal meetings:

- Amnesty International
- Civil Liberties Union for Europe
- Civil Society Europe
- Conference of European Churches
- EuroCommerce
- European Center for Not-for-Profit Law
- European Centre for Press and Media Freedom
- European Civic Forum
- Free Press Unlimited
- Front Line Defenders
- ILGA-Europe
- International Commission of Jurists
- International Federation for Human Rights
- International Press Institute
- Lifelong learning Platform
- Open Society Justice Initiative/Open Society European Policy Institute
- Reporters without Borders
- Transparency International EU