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COMMISSION STAFF WORKING DOCUMENT

**2021 Rule of Law Report
Country Chapter on the rule of law situation in Estonia**

Accompanying the

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

**2021 Rule of Law Report
The rule of law situation in the European Union**

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ABSTRACT

The advanced digitalisation of the justice system proved to be a determining factor in ensuring the Estonian justice system's resilience when faced with the challenges brought on by the COVID-19 pandemic. The e-File, a system for electronic communication in the justice system, is being further developed with new functionalities accompanied with training and has contributed to the courts resolving incoming cases efficiently. The powers of court presidents have been extended: where necessary for the good administration of justice, to transfer judges without consent, in extraordinary situations and for a limited time, to transfer cases and to request secondment of judges with their consent. These powers can be used to address any potential backlogs in the courts and emergency situations in the case of an increase in the number of incoming migration and asylum cases. The promotion of judges was made more transparent by amending the criteria for evaluation of first instance judges to include a procedure for collecting information on candidates.

The anti-corruption strategic framework has been further developed since last year's report with a new National Action Plan for 2021-2025, which was adopted by the Government in 2021. The Action Plan strengthens the involvement of ministries in the coordination and implementation of anti-corruption measures and develops civil society's engagement in addressing anti-corruption issues. As regards the prosecution of corruption, the criminal justice system has proven its effectiveness in identifying high-level corruption cases. Measures to strengthen the preventive side include new non-binding guidelines for lobbying and conflict of interests, although these lack clear implementing provisions. The legislative procedure to adopt comprehensive rules on whistleblowers protection is currently ongoing and it is expected to be finalised by the end of this year. The asset declaration system was updated to oblige ministers' political advisers to submit a declaration of financial interests. In addition, the Government has announced its intention to strengthen the political party financing framework.

Regarding media freedom and pluralism, the Government has proposed draft legislation to strengthen the independence of the media regulator and enhance the transparency of media ownership. The right of access to information generally finds legal and formal protection in the Constitution yet actual disclosure practices may vary between public bodies. Since the 2020 Rule of Law Report, the comprehensive framework for the protection of journalists has remained stable. The ongoing COVID-19 pandemic has caused declining advertising revenues, which has affected media plurality and journalists in economic terms by lowering the sector's job security, particularly when it comes to freelancers. The Government has adopted several supporting measures to address these concerns.

Estonia continues to improve its well-developed system of checks and balances through new projects aimed at a more inclusive legislative process. The Chancellor of Justice has expanded its competences and received A-status accreditation as a National Human Rights Institution, for full compliance with the UN Paris Principles. The new civil society programme was co-created by the Government and civil society, and emphasises building strategic partnership between Civil Society Organisations and public institutions. The Estonian government declared an emergency situation between March and May 2020. Since then amendments to the legislation gave the Health Board and Government the powers to address the COVID-19 pandemic. All COVID-19 pandemic-related Orders of the Government contain information on how they can be legally challenged.

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. 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*)¹. 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 prosecutors². The Estonian Bar Association is an independent, self-governing professional association³. Disciplinary proceedings against lawyers can be initiated before the Court of Honour⁴ by any interested person or by the board of the Bar Association⁵. Estonia participates in the European Public Prosecutor's Office.

Independence

The level of perceived judicial independence has improved considerably and is now high among the general public and average among companies. Amongst the general public, 66% perceive judicial independence to be fairly or very good, which is a considerable increase compared to 2020 (57%), and continues a positive trend. Amongst companies, 57% perceive judicial independence to be fairly or very good, which reversed the previous downward trend (39% in 2020)⁶. The level of perceived judicial independence has increased for both the general public and companies since 2016.

The powers of court presidents have been extended to cover the transfer of judges without consent in extraordinary situations and for a limited time, and to request secondment of judges with their consent. Aiming to address any potential backlogs in the courts and an emergency situation in the case of an increase in the number of incoming migration and asylum cases, amendments of the Courts Act that entered into force in June 2020 allow for transferring judges without their consent. Where necessary for the good administration of justice, a judge may be temporarily transferred, without his or her consent,

¹ The Supreme Court *en banc* is the highest body of the Supreme Court. It is comprised of all 19 justices of the Supreme Court. The Supreme Court *en banc* is convened and chaired by the Chief Justice of the Supreme Court.

² The Prosecutor General exercises supervisory control in the prosecutor's office, and chief prosecutors exercise supervisory control in district prosecutor's offices. Figures 55 and 56, 2021 EU Justice Scoreboard.

³ § 2(1) of the Bar Association Act.

⁴ § 15(1) and § 15(3) of the Bar Association Act - The Court of Honour consists of four sworn lawyers elected by the general assembly of the Bar Association, two judges elected by the Court *en banc* and one jurist designated by the council of the Law Faculty of the University of Tartu.

⁵ § 16(1) of the Bar Association Act.

⁶ Figures 48 and 50, 2021 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 or very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%).

by a decision of the president of the court, to an administrative court for review of applications for detention of third-country nationals⁷. This transfer is possible only in an emergency situation⁸ and is subject to a judicial review before the Supreme Court. The fact that the transfer is temporary, for a specifically determined situation, and subject to judicial review, combined with the fact that the transfer is not decided by the executive power constitute important safeguards. The Council of Europe recommends that the transfer of judges without their consent should be subject to such safeguards⁹. The same amendments extended the possibility to transfer a case to another court without changing jurisdiction¹⁰. Upon a request of the president of a county court or administrative court, the presidents of circuit courts may, by their joint decision, transfer a case, which can be determined based on general elements¹¹ to another court of the same instance for judgment¹². This measure is to be used as an extraordinary one and not to be used as a permanent solution¹³. The same amendments extended the possibility to second judges with their consent. The president of a court may send a judge, subject to his or her consent and at the request of the president of another court, to hear a matter in another court of the same or lower instance when there is actual risk that one court could not solve incoming cases within reasonable time¹⁴. In that situation, the secondment is also limited in time¹⁵.

The promotion of judges was made more transparent. In December 2020, the Supreme Court *en banc* amended the criteria for evaluation of first instance judges, when they are applying for the position of second instance judges. The criteria, which were first made public in 2015¹⁶, have been revised to include a procedure for collecting information on candidates¹⁷, which should contribute to the transparency of the promotion process of judges.

⁷ § 45² (1) of the Courts Act.

⁸ Explanatory memorandum to the Courts Act for §45². Such transfer is possible in an emergency situation caused by mass immigration, in which administrative courts have to meet short deadlines and for as long as necessary until the administrative courts are able again to provide the necessary protection of the rights of the parties with their own resources. Although the law does not explicitly mention the specific time limits, it reiterates that this secondment is temporary, and its lengths is determined by the Council for Administration of Courts.

⁹ A judge should not receive a new appointment or be moved to another judicial office without consenting to it, except in cases of disciplinary sanctions or reform of the organisation of the judicial system. See CM/Rec(2010)12, para. 52. See also case *Bilgen v. Turkey* (Application no. 1571/07) of 9 March 2021, paras 63 and 96.

¹⁰ § 45¹ (1) of the Courts Act - Referral of a matter from a county court is allowed only to another county court and from an administrative court only to another administrative court.

¹¹ § 45¹(3) of the Courts Act - The Council for Administration of Courts may establish specified principles for referral of matters to another court for judgment.

¹² § 45 (1¹) of the Courts Act - This is possible if it is evident that it is not possible to ensure administration of justice pursuant to the requirements in the court the president made the request

¹³ Explanatory memorandum of the Courts Act for §45 (1¹) - if it is evident that it is not possible to ensure administration of justice pursuant to the requirements in the court.

¹⁴ § 58³(1) of the Courts Act.

¹⁵ Explanatory memorandum to the Courts Act for §58³ – the secondment lasts until resolving the one specific matter for which the transfer was made.

¹⁶ The criteria are contained in an appendix to the internal rules of the Supreme Court and have been made public as a response to a GRECO recommendation in the Fourth Evaluation round – Evaluation report, para. 99.

¹⁷ Criteria for Selecting Among the Judges Applying for the Position of Circuit Court Judge and the Procedure for Collecting Information on Candidates. Approved by the Supreme Court *en banc* on 15 December 2020. The procedure for collecting information on candidates existed prior to its inclusion in the appendix to the internal rules of the Supreme Court, but it was not public.

Career advancement for judges is based on public competitions where judges¹⁸ seeking promotion are put on an equal basis with candidates from other legal professions¹⁹. This amended regime is particularly relevant considering that in the coming years a number of judges will retire and need to be replaced by newly appointed or promoted judges. The appointment process of new judges to first and the second instance courts is managed by the Judge's Examination Committee, based on an oral and a written exam²⁰ and an evaluation of the candidates' suitability. Afterwards, the successful candidates are presented to the Supreme Court *en banc*²¹ who makes a proposal²² for their appointment to the President of the Republic²³. Judges at first instance courts are promoted to higher instance courts by a resolution of the Supreme Court *en banc*²⁴, based on an interview and on the opinion of all the members of the court for which the person applied²⁵. Decisions on promotions or on appointment may be appealed before the Constitutional Review Chamber of the Supreme Court²⁶. Concerns have been raised by stakeholders regarding structural impartiality of the justices participating in the appeal procedure, although in practice, to date no one has filed such an appeal. Furthermore, it must be noted that the members of the Constitutional Review Chamber²⁷, who have been involved in the decision on promotion or decision on proposal for appointment, have the possibility to withdraw from the process of appeal to address potential doubts about the structural impartiality of the appeal chamber. After a first time judge is appointed to office, the Judges' examination committee evaluates judges during the first three years, according to criteria set in law²⁸.

Quality

The advanced level of digitalisation of justice has allowed the continued functioning of the courts without notable disruptions during the COVID-19 pandemic. As noted in the 2020 Rule of Law Report, Estonia is among the best performing Member States when it comes to digitalisation of justice. This has allowed a smooth transition from in-person to

¹⁸ § 53 of Courts Act.

¹⁹ Information received in the context of the country visit to Estonia. - Candidates must be experienced and recognised lawyers.

²⁰ A candidate for a judge of a circuit court (court of appeal) has to have passed a judge's exam before applying or has to be exempted therefrom (e.g. if the candidate is already a judge at a first instance court or is otherwise exempt under Subsection 66(6) of the Courts Act). There is no separate exam for a circuit court judge.

²¹ § 69 subsection 3¹ of Courts Act - a person affected by a decision of the judge's examination committee may file an appeal against the decision with the Supreme Court *en banc* within 14 days after the date when he or she received the decision. § 30 subsection 2(3) of Courts Act - the Supreme Court *en banc* shall resolve appeals filed against the decisions of the judge's examination committee.

²² The decision on the proposal is made by a majority vote of the justices of the Supreme Court *en banc* who are present. – Information received in the context of the country visit to Estonia. (e.g. Supreme court and the Council for the Administration of Courts)

²³ § 55(1) of Courts Act.

²⁴ § 55 (3¹) of Courts Act.

²⁵ § 55 of Courts Act.

²⁶ Taking the decision in a five justices panel (out of the 19 justices from the *en banc* formation).

²⁷ For the cases of appeal, they sit in a panel of five justices out of nine.

²⁸ Pursuant the requirement of § 100 (2) of the Courts Act - Standard formats for submission of opinion of president of court and of report of judge-supervisor include consideration of: 1) the procedural statistics of resolved matters, 2) the professional knowledge and skills (according to the list), 3) the participation in training (especially the professional skills training program for judges of a court of the first instance and of a court of appeal who assumes office approved by the Training Council), 4) the abilities and personal characteristics.

distance justice during the COVID-19 pandemic. Even before the pandemic, Estonia had already introduced digital court file application, equipped all courthouses with videoconference tools and enabled courts, prosecutor's offices and legal professionals to work remotely. A virtual courtroom was developed in 2020 to allow for judges, lawyers and prosecutors to participate in remote hearings²⁹. This new digital tool does not use commercial cloud products. It allows users to log in without installing any software and allows for streaming and recording the hearings. Every virtual courtroom hearing has a unique name and password, which cannot be reused after the hearing is over. This novelty was accompanied by manuals to help professionals use the new tool. The Supreme Court is developing additional specific training materials and courses to further develop the training in this area. Furthermore, a new version of the e-File, a system for electronic communication in the justice system, is to be presented in 2021, which will allow large files and videos to be uploaded on the online platform³⁰.

Efficiency

The justice system continues to work efficiently despite the challenges brought on by the COVID-19 pandemic. The length of proceedings and pending cases are among the lowest in the EU³¹. In 2020, civil cases were resolved with the same efficiency as in 2019 in county courts (in 95 days on average), criminal cases were resolved slower than 2019 (on average, in 255 days in general criminal proceedings, 34 days in simplified proceedings, and 47 days in misdemeanour cases)³². In the first instance courts, administrative cases were resolved slightly slower than 2019³³ (in an average of 126 days)³⁴. The average processing time for appeals was 192 days in civil cases, 51 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 in the EU (measured in disposition time) and pending cases are often amongst the lowest in the EU³⁵. Compared to 2019, the clearance rate fell slightly below 100%, but courts were generally able to cope with incoming cases.

II. ANTI-CORRUPTION FRAMEWORK

The anti-corruption institutional set-up has not changed compared to the 2020 Rule of Law Report. The Ministry of Justice is in charge of the preparation, oversight and coordination of the anti-corruption Action Plan 2021-2025. The Anti-Corruption Select Committee exercises parliamentary scrutiny over the implementation of anti-corruption measures. 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

²⁹ Figure 40, 41 and 44, 2021 EU Justice Scoreboard – Among other features, the justice system offers: court hearings can be conducted entirely online; digital format evidence is admissible; initiating proceedings online; filing an application for legal aid online; online access to ongoing and closed cases; official court documents can be served electronically; court fees can be paid online.

³⁰ Information received in the context of the country visit to Estonia. (e.g. Ministry of Justice).

³¹ Figures 6-21, 2021 EU Justice Scoreboard.

³² See 2020 Rule of Law Report, Country chapter on the rule of law situation in Estonia, p. 5 - In 2019, criminal cases were resolved on average in 226 days in general criminal proceedings, 28 days in simplified proceedings and 46 days in misdemeanor cases. In the first instance courts, administrative cases were resolved in an average of 123 days.

³³ See previous reference - In the first instance courts, administrative cases were resolved in an average of 123 days.

³⁴ Input from Estonia for the 2021 Rule of Law Report, p.4.

³⁵ Figures 6 – 16, 2021 EU Justice Scoreboard.

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 represents the public prosecution in courts.

The perception among experts and business executives is that the level of corruption in the public sector in Estonia remains relatively low. In the 2020 Corruption Perceptions Index by Transparency International, Estonia scores 75/100 and ranks 6th in the European Union and 17th globally³⁶. This perception has improved³⁷ over the past five years³⁸.

The strategic anti-corruption framework has been revised. The new comprehensive anti-corruption Action Plan 2021-2025³⁹, adopted by the Government in February 2021, has eight main priorities⁴⁰. The plan can be considered as an important step forward compared to the previous strategy, aiming to complete the anti-corruption legal framework with lobbying regulation and legal provisions on whistleblowers' protection. The implementation of the new Action Plan will be coordinated by the Ministry of Justice through the anti-corruption network⁴¹.

The existing anti-corruption network has received new responsibilities under the 2021-2025 Action Plan. The anti-corruption network's main objectives are to develop and share best practices, support cooperation and mutual learning and exchange experience, in addition to monitoring the activities foreseen by the Action Plan⁴². The network, which was originally composed of anti-corruption coordinators from each ministry, has now been expanded to include representatives of the police, the civil society, the Parliament, the National Audit Office and occasional external stakeholders⁴³. The network is envisaged to meet four to five times a year and, according to the authorities and civil society, it will be a key player in the implementation of the Action Plan. The network is expected to be expanded and strategic partnerships are expected to be further developed. The cooperation between authorities and organisations included in the network is considered good both by the authorities and the civil society⁴⁴.

³⁶ Transparency International, Corruption Perceptions Index 2020, p. 2-3. The level of perceived corruption is categorised as follows: low (the perception among experts and business executives of public sector corruption scores above 79); relatively low (scores between 79-60), relatively high (scores between 59-50), high (scores below 50).

³⁷ In 2015 the score was 70, while in 2020, the score was 75. The Score significantly increases/decreases when it changes more five points; improves/deteriorates (changes between 4-5 points); is relatively stable (changes from 1-3 points) in the last five years.

³⁸ The Eurobarometer data on corruption perception and experience of citizens and businesses as reported last year is updated every second year. The latest data set is the Special Eurobarometer 502 (2020) and the Flash Eurobarometer 482 (2019).

³⁹ The Anti-corruption National Action Plan 2021-2025.

⁴⁰ The eight main priorities of the new Anti-Corruption Action Plan are: (I) Transparency of State Activities; (II) Transparency of local government activities; (III) A fair business environment; (IV) Awareness; (V) Protection of whistleblowers; (VI) Sectorial Transparency; (VII) Investigation of corruption offences; (VIII) Impact assessment of anti-corruption policies.

⁴¹ Partners listed in the action plan are the Police and Border Guard Board, the National Audit Office, Transparency International Estonia, and the Estonian Chamber of Commerce and Industry.

⁴² The Anti-corruption National Action Plan 2021-2025, point 4.

⁴³ Written contribution received by the Ministry of Justice in the context of the country visit to Estonia.

⁴⁴ Information received in the context of the country visit to Estonia.

The criminal justice system for investigating and prosecuting corruption has adequate resources and is functioning well although specialised support to prosecutors is lacking.

In 2020, 78 notifications of corruption offences were registered⁴⁵ and 56 criminal proceedings were opened⁴⁶. The criminal justice system has proved to be effective in identifying corruption cases: a total of four high-level corruption cases⁴⁷ are currently ongoing, including the recent case involving the Porto Franco development project in Tallinn that led to the resignation of the previous Government in January 2021. In the Prosecutor General Office, there are two State Prosecutors and one Assistant Prosecutor working on corruption related offences. In the District Prosecutor's Office, there are six Specialised Prosecutors and four Assistant Prosecutors responsible for corruption⁴⁸. The human resources dedicated to corruption investigations appear to be adequate, considering the number of ongoing cases. However, specialised support to prosecutors, such as experts in public procurement and auditors, would be needed⁴⁹. The anti-corruption Action Plan envisages that the Prosecutor's Office will build procedural and analytical capacity in the area of business corruption and financial crimes through contracting auditors and supporting staff, without, however, providing a timeline⁵⁰. There are no new developments in terms of specific anti-corruption trainings for prosecutors and judges.

Non-binding guidelines on lobbying and on conflict of interests have been put in place.

On 18 March 2021, the Government adopted two new sets of guidelines. First, the guidelines on "Good practice in communicating with lobbyists for officials" aim to increase the transparency of policy-making and apply to ministers, their advisers, senior officials in ministries, and government agencies, including the Secretary of State. They are of a voluntary, non-binding nature. The guidelines were adopted on recommendation of GRECO who advised to create a general voluntary lobby register, as well as a voluntary lobbying regime for members of Parliament⁵¹. However, the document does not specify how the implementation will be promoted: the officials subject to the good practice must read the guidelines, and the head of the concerned authority is tasked with the monitoring of their implementation in practice⁵². The second set, the "Guidelines for ministers and their advisers to avoid conflicts of interest" are applicable for ministers and their counsellors only, and list a set of principles⁵³, including as regards revolving doors⁵⁴. The principles advise to abstain from moving to the management or supervisory body of private companies and foundations active in the same field of activity within a year after leaving office. The restriction does not apply to other positions in such a company or foundation⁵⁵. The provisions on

⁴⁵ An increase of nine compared to 2019.

⁴⁶ Statistics on corruption offences for the year 2020.

⁴⁷ Three of them are in the investigative phase; and in one case, the indictment was sent to court.

⁴⁸ Input from Estonia for the preparation of the 2020 and 2021 Rule of Law Report, p.14 and p.1.

⁴⁹ Information received in the context of the country visit to Estonia.

⁵⁰ Anti-corruption National Action Plan, point 7.2.

⁵¹ Memo. "Starting points of the Select Committee on lobby regulation" 11 December 2020.

⁵² Good Practice In Communicating With Lobbyists For Officials, paras. 8 and 9. In practice, the actual implementation has been supported by the Ministry of Justice through several network trainings and meetings, a special manual for disclosing meetings with lobbyists and preparation of a uniform webpage section for disclosing meetings with lobbyists. Moreover, interested officials may also attend a new training video available online.

⁵³ Guidelines for ministers and their advisers to avoid conflicts of interest.

⁵⁴ This part of the guidelines is analogous to the prohibition imposed on officials by the Public Service Act not to take up a position in the management board and control body of a legal person over which it has exercised direct or permanent supervision during the past year.

⁵⁵ Guidelines for Ministers and their advisers to avoid conflicts of interest, para. 7.

implementation require the minister or adviser to familiarise themselves with the guidelines and encourage the completion of a dedicated online course⁵⁶. The adoption of these guidelines, along with a new e-training module on communication with lobbyists, are among the deliverables of the anti-corruption Action Plan 2021-2025⁵⁷. As stated by the Group of States against Corruption of the Council of Europe (GRECO)⁵⁸, the rules on revolving doors included in the guidelines represent a concrete and positive step forward⁵⁹.

The Anti-Corruption Act has been amended to extend the obligation to declare interests also to ministers' political advisers⁶⁰. According to GRECO, the amendments as presented to the Parliament are a positive development⁶¹. On whistleblowers protection, the legislative procedure for a new comprehensive regulation is ongoing and is expected to be concluded by the end of 2021⁶².

Discussions are ongoing on the supervision of party financing. A proposal to abolish the Political Parties' Finance Surveillance Committee and transfer its powers to the National Audit Office was proposed in 2020⁶³. Following the change of government, the proposal was dropped and the new Government – who declared strengthening of the supervision of the financing of political parties to be a key priority⁶⁴ – is working on a new legislative reform to increase the competences of the Committee⁶⁵. Currently, the Political Parties' Funding Surveillance Committee is the main body in charge of the scrutiny of political parties' accounts. It has powers to investigate and report possible misbehaviours and to examine the legality of donations. As for its sanctioning powers, it can impose financial fines and require illegal donations to be returned. According to the Government, several areas may yet be further improved, especially on the powers to request documents and to enforce sanctions when illegal donations are not returned or transferred to the State budget. For instance, currently, the Committee can only request documents from the entities listed in the law, but not from others (third parties).

The COVID-19 pandemic had a limited impact on corruption risks. In the context of the pandemic, there was no major impact on the number of investigations opened by the prosecution service⁶⁶. To prevent corruption risks and to increase transparency in the context of the pandemic, the Government adopted specific guidelines regarding public procurement procedure in special or urgent situation⁶⁷. In addition, guidelines have been adopted to

⁵⁶ Guidelines for Ministers and their advisers to avoid conflicts of interest, paras. 12-13.

⁵⁷ Anti-corruption National Action Plan, point 1.1.3.

⁵⁸ Fifth Evaluation Round Compliance Report, p. 6 and 7.

⁵⁹ Information received in the context of the country visit to Estonia.

⁶⁰ *Riigikogu* (The Parliament), Bills, Act amending the Anti-Corruption Act (implementation of GRECO recommendations and public restriction of declarations of interests of heads of security agencies) 323 SE.

⁶¹ Fifth Evaluation Round Compliance Report p. 8-9. The new amendment entered into force on the 23 April 2021.

⁶² Information received in the context of the country visit to Estonia.

⁶³ Act amending the National Audit Office Act, the Party Act and other acts (control body for the financing of political parties) 193 SE.

⁶⁴ Governance agreement for 2021–2023.

⁶⁵ Information received in the context of the country visit to Estonia.

⁶⁶ Information received in the context of the country visit to Estonia.

⁶⁷ Written contribution received by the Ministry of Justice in the context of the country visit to Estonia. The guidelines establish that procedures without prior publication of a notice can be used for contract of maximum EUR 30 000 for supplies and services and for EUR 60 000 for works.

prevent corruption risks and to increase transparency in the vaccination campaign against COVID-19⁶⁸.

III. MEDIA PLURALISM AND MEDIA FREEDOM

In Estonia⁶⁹, the freedom of expression finds legal and formal protection in the Constitution of the Republic of Estonia⁷⁰. Secondary legislation expressly ensures the right of journalists to protect their sources and fosters media freedom in the radio and television sector⁷¹. The right to information is explicitly recognised in the Constitution, in the Public Information Act⁷² and in the Personal Data Protection Act⁷³. Legislation is pending to transpose the revised Audiovisual and Media Services Directive in Estonia.

The Ministry of Culture has prepared draft legislation to strengthen the independence of the media regulator – the Consumer Protection and Technical Regulatory Authority. The draft law,⁷⁴ transposing the revised Audiovisual Media Services Directive (AVMSD),⁷⁵ which was under preparation in 2020⁷⁶, has now been approved by the Government, and has been submitted to the Parliament⁷⁷. The draft envisages changes concerning the functions and competences of the national media regulator, which has been operating as an administrative body of the Ministry of Economic Affairs and Communications and currently has no competencies to supervise media content. A specific provision is envisaged to ensure the independence and impartiality of the media regulator in carrying out its tasks, which aims to fulfil the requirements on independence enshrined in the revised AVMSD⁷⁸. The media regulator reports having managed to maintain adequate resources to carry out its tasks, even securing some additional human resources⁷⁹.

Amendments to legislation are expected to enhance transparency of media ownership. The transposition of the relevant provisions of the revised AVMSD⁸⁰ would for the first time introduce a specific obligation for media companies to disclose their ownership structure⁸¹. There are currently no specific legal provisions requiring the disclosure of ownership information, although general information related to entrepreneurship is electronically, publicly, and freely available through the Business Register and the owners of all major

⁶⁸ Written contribution received by the Ministry of Justice in the context of the country visit to Estonia.

⁶⁹ In 2021, Estonia ranked 15th in the Reporters Without Borders World Press Freedom Index, which is one rank lower compared to 2020 but the ranking among the EU Members remained the same (9th).

⁷⁰ Constitution of the Republic of Estonia, Section 44-46.

⁷¹ Media Services Act, §15 and §13.

⁷² Public Information Act.

⁷³ Personal Data Protection Act (*Isikuandmete kaitse seadus*).

⁷⁴ Law amending the Media Services Act.

⁷⁵ Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU.

⁷⁶ 2020 Rule of Law Report, Country chapter on the rule of law situation in Estonia, p. 8.

⁷⁷ Input from Estonia for the 2021 Rule of Law report, p. 6.

⁷⁸ Art. 30 of the revised AVMSD.

⁷⁹ Information received from the Consumer Protection and Technical Regulatory Authority in the context of the country visit to Estonia.

⁸⁰ Art. 5 of the revised AVMSD.

⁸¹ In the 2020 Rule of Law Report, it was noted that in Estonia there were no specific legal provisions requiring disclosure of ownership information and that it had raised some concerns (p. 8).

channels are known to the public⁸². For the time being, the Media Pluralism Monitor 2021 (MPM 2021) continues to consider the situation concerning transparency of media ownership as one with medium risk pending the adoption of the new law and due to ultimate ownership of media companies not being available to the public in all cases. A high level of news media concentration is observed in Estonia⁸³.

The problems for journalists linked to the COVID-19 pandemic are mainly seen as economic. According to stakeholders, the pandemic has affected media pluralism and protection of journalists primarily in economic terms by lowering the sector's job security, particularly when it comes to freelancers. To alleviate the impact of the publishers' declining advertising revenues caused by the COVID-19 pandemic, the Ministry of Culture opened two crisis aid application rounds in 2020 to support the financial sustainability of publishers of daily and/or weekly newspapers, including local newspapers. Furthermore, the VAT rate for electronic publications was reduced from 20 to 9 %, which is the same level as for paper publications. The increased digital subscriptions have helped the publishers to alleviate the impacts of the declined advertising revenues⁸⁴.

The right of access to information finds legal and formal protection in the Constitution, yet its practical implementation may vary. As was the case last year, stakeholders indicated that the public administration in certain cases tends to deny and/or delay access to public information. Some ministries, reportedly, interpret the defined exceptions regarding the disclosure requirements, such as data protection, broadly⁸⁵. This leads to a divergence in practice regarding access to information. This finding is corroborated by the MPM 2021, which maintains a medium risk with regard to the protection of right to information⁸⁶.

No major systematic threats to journalists have been reported. Since the 2020 Rule of Law Report, the comprehensive framework for the protection of journalists has been stable. The fact that defamation is not decriminalised and carries a fine or prison term of maximum two years is still considered a risk by MPM 2021⁸⁷. Since the 2020 Rule of Law Report, two new alerts were created on the Council of Europe's Platform to promote the protection of journalism and safety of journalists. The alerts concern acts having chilling effects on media freedom⁸⁸. The first alert has since been resolved and regarding the latter, the Government

⁸² 2021 Media Pluralism Monitor, country report for Estonia, p. 11; 2020 Rule of Law Report, Country chapter on the rule of law situation in Estonia, p. 8; Business Register is available here: <https://www.rik.ee/en/e-business-register>.

⁸³ 2021 Media Pluralism Monitor, country report for Estonia, p. 11. The cumulative market share of Top4 owners for radio is 74% and for newspapers 68%. The cumulative market share of the Top4 online news media outlets is approximately 60%. The Top4 index for cross-media concentration is 92%.

⁸⁴ International Press Institute, Strong newspaper traditions and trust advance digital subscriptions in Estonia-22 December 2020.

⁸⁵ Information received in the context of the country visit to Estonia. See also the 2020 Rule of Law Report, Country chapter on the rule of law situation in Estonia, p. 8-9.

⁸⁶ 2021 Media Pluralism Monitor, country report for Estonia, p. 9.

⁸⁷ 2021 Media Pluralism Monitor, country report for Estonia, p. 9.

⁸⁸ Reply by the Government of Estonia to the Platform to Promote the Protection of Journalism and Safety of Journalists concerning the Results of Investigation Remain Offline Amid Ongoing Lawsuit Against Estonian Public Broadcaster and Journalists Mihkel Kärmas and Anna Pihl. The first case concerned alleged unauthorised surveillance by journalists investigating the Minister of Education and Science and an allegation that the Minister of Justice had asked the prosecutor's office to look into the case. The alert is resolved. The authorities clarified that the aim of the Minister of Justice was to seek information on how the relevant law should be interpreted in practice and not to request opening an investigation. The prosecution has taken no action on this case. The second alert concerned a court-ordered

replied that it concerns a civil dispute in an independent court of law where the Government is prohibited from intervening.

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, based on a constitutional complaint⁸⁹. 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.

The Ministry of Justice continues to develop a project to further improve the process of enactment of laws. The Ministry of Justice is working on new ways to improve the legislative process, notably as regards stakeholders' consultation. The "Co-creation workspace project" aims to improve the law-making process and in particular stakeholders' involvement. It aims to ensure that legislative policy is inclusive, foreseeable and knowledge-based and to provide citizens with a good overview of what the Government is planning at a very early stage. It should also increase transparency and simplify coordination by using modern digital tools. The timeline for the implementation of the project is part of the new 2030 Guidelines for the Development of Legislative Policy that were adopted by Parliament in November 2020. In general, these guidelines aim at ensuring a coherent basis for legislation and providing stakeholders and society with clear expectations on which to base their participation in the legislative process. Ultimately, the objective is to increase the quality and reduce the volume of new legislation⁹⁰.

Amendments to the legislation gave the Health Board and Government the powers to address the COVID-19 pandemic without establishing an emergency regime. As noted in the 2020 Rule of Law Report, Estonia declared an emergency situation from 12 March 2020 to 18 May 2020, and appointed the Prime Minister as the manager of the emergency situation. The legislative orders of the Prime Minister in this role were open to judicial review before the Administrative Court but not subject to parliamentary nor presidential scrutiny. On 17 May 2020, the Parliament passed amendments to the Communicable Diseases Prevention and Control Act that gave the Health Board and the Government the power to adopt measures for the prevention and control of the COVID-19 pandemic⁹¹. Based on this legislation, the Government may establish temporary restrictions, where each restriction should correspond to the scope and purpose of the problem at the time, and should be in line with the principle of proportionality⁹². According to its rules of procedure and internal rules, the Parliament

removal of an investigative programme and articles by two journalists working for the Estonian national broadcaster in the context of an ongoing lawsuit. The Government replied that the pending lawsuit is a civil dispute in an independent court of law where the Government is prohibited from intervening.

⁸⁹ § 4 of the Constitutional Review Court Procedure Act - A complaint can be referred to the Supreme Court's Constitutional Review Chamber by the President of the Republic, the Chancellor of Justice, a local government council and the *Riigikogu* (Parliament).

§ 9 of the Constitutional Review Court Procedure Act - Constitutional review on the basis of court judgment or court ruling is also possible.

⁹⁰ 2030 Guidelines for the Development of Legislative Policy.

⁹¹ § 28 of the Communicable Diseases Prevention and Control Act.

⁹² All orders of the Government are published and available online - <https://www.riigiteataja.ee/index.html> and <https://www.kriis.ee/et>.

supervises the activities of the executive power through the ordinary procedure⁹³. During the pandemic, the Parliament has remained operational and a number of measures have been adopted to minimise physical contacts and thus reduce the risk of infections⁹⁴.

All COVID-19 pandemic-related Orders of the Government contain information on how they can be legally challenged⁹⁵. In addition, the Supreme Court has held that a person may challenge a general order within 30 days as of the date on which the order has an effect on that person⁹⁶. Between spring 2020 and 1 March 2021, approximately 40 complaints were received by the Tallinn Administrative Court, of which half have been resolved⁹⁷. One request to initiate a constitutional review was submitted to the Supreme Court. In this case, the Constitutional Review Chamber declared a clause of a regulation of the Minister of Culture that established conditions for Government support for performing arts institutions to be incompatible with the constitutional requirement of equal treatment⁹⁸, and was therefore invalid⁹⁹.

The Office of the Chancellor of Justice received A-status accreditation as a National Human Rights Institution. In 2019, the procedure for accreditation before the Global Alliance of National Human Rights Institutions (GANHRI) started and was delayed due to the COVID-19 pandemic. In December 2020, the process was completed and the Chancellor of Justice received the accreditation. As described in the 2020 Rule of Law Report, it received new tasks as a National Human Rights Institution, including action related to the UN treaties and mechanisms for the protection of human rights¹⁰⁰. Because of its enlarged mandate, the Chancellor of Justice received additional human and financial resources, which appear to be sufficient to fulfil its tasks adequately. Moreover, in case of insufficient resources, the institution may request funds from the Parliament, which are usually granted¹⁰¹. In addition to its new functions, and aside of the normal Ombudsperson tasks, the Chancellor of Justice has several other powers. The Chancellor has the right to file a request for a constitutional review, and the right to initiate disciplinary proceedings against judges

⁹³ This includes an interpellation by a Member of the Parliament; Question Time to Parliament, when the Prime Minister and ministers answer oral questions from Members of Parliament; a written question from a Member of the Parliament; resolving collective proposal. See §139, §142 and Section 147 of the *Riigikogu* Rules of Procedure and Internal Rules Act. See also Response to Memoranda and Requests for Explanations and Submission of Collective Proposals Act - collective appeal to the *Riigikogu* with at least 1000 support signatures on amendments to existing legislation or how to improve community life. In connection with COVID-19, two collective proposals have been submitted to the *Riigikogu*: 15. December 2020 collective proposal “Corona measures are not justified. It is time to return to ordinary life!” and 19 May 2020 collective proposal “We demand that the Government repeal Act 165 SE”.

⁹⁴ Input from Estonia for the 2021 Rule of Law Report, p.10.

⁹⁵ “This Order can be appealed by filing a challenge pursuant to the procedure provided by the Administrative Procedure Act within 30 days as of the day the relevant person became or should have become aware of the Order. This Order can also be appealed by filing an action with an administrative court pursuant to the procedure provided for in the Code of Administrative Court Procedure within 30 days as of the date of publication of this Order.”

⁹⁶ Order of the Administrative Chamber of the Supreme Court No. 3-19-557 of 05.09.2019.

⁹⁷ E.g. Complaints have disputed the obligation to wear a mask, the cancellation of school holidays and the obligation of distance learning.

⁹⁸ § 12 of the Constitution.

⁹⁹ Judgment of the Constitutional Review Chamber of the Supreme Court No. 5-20-6 of 22 December 2020.

¹⁰⁰ See 2020 Rule of Law Report Country chapter on the rule of law situation in Estonia, , p.11 - 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.

¹⁰¹ Information received in the context of the country visit to Estonia. (e.g. Office of the Chancellor of Justice).

and plays the role of an intermediary between the citizens and the Supreme Court. The institution itself is the filtering mechanism for citizen's request for constitutional review, which are eventually sent to the Constitutional Review Chamber of the Supreme Court. Upon its own initiative or a request by a citizen, the Chancellor may initiate disciplinary proceeding against judges, which are limited to the behaviour and the fulfilment of judges' duties and cannot concern the merits of their decisions¹⁰². This power is exercised in cooperation with the Supreme Court in order to avoid overlapping requests and proceedings.

The Civil Society Programme for 2021-2024 was created in cooperation between the Ministry of Interior and civil society. Based on the Estonian Civil Society Development Concept¹⁰³, the Government promotes civil society through the new Civil Society Programme for 2021-2024, which replaced the previous Civil Society Development Plan 2021-2030. In the new programme, more emphasis is placed on building strategic partnership between Civil Society Organisations (CSOs) and public institutions¹⁰⁴. This practice of cooperation has been implemented since the inception of the programme, whereby CSOs were involved in the process, and stakeholders described the work between the Ministry of Interior, responsible for the project, and the CSOs on this project, as a co-creation¹⁰⁵.

¹⁰² See also <https://www.oiguskantsler.ee/en/other-duties>.

¹⁰³ The mission and goals of the civil society are written down in a strategy document called the Estonian Civil Society Development Concept, known as the EKAK. This strategy document defines the mutually complementing roles of public authorities and civil society. The EKAK contains principles, mechanisms and priorities for cooperation in shaping and implementing public policies and building up civil society. The EKAK deals with cross-sectoral issues such as participation in policy making, funding, outsourcing public services, awareness and civic education, volunteering, philanthropy.

¹⁰⁴ Input from Estonia for the 2021 Rule of Law Report, p.11.

¹⁰⁵ Information received in the context of the country visit to Estonia.

Annex I: List of sources in alphabetical order*

* The list of contributions received in the context of the consultation for the 2021 Rule of Law report can be found at <https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2021-rule-law-report-targeted-stakeholder-consultation>.

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Annex II: Country visit to Estonia

The Commission services held virtual meetings in March 2021 with:

- Anti-corruption Select Committee
- Consumer protection and Technical Regulatory Authority
- Estonian Association of Judges
- Estonian Bar Association
- Estonian Internal Security Service
- Estonian Press Council and Estonian Association of Journalists
- Ministry of Culture
- Ministry of Finance
- Ministry of Foreign Affairs
- Ministry of Interior
- Ministry of Justice
- Network of Estonian Non-profit Organizations.
- Office of the Chancellor of Justice
- Political Party Funding Surveillance Committee
- State Audit Office
- the Police and Border Guard Board
- The Prosecutor's Office
- The Supreme Court and Council for the Administration of Courts
- Transparency International Estonia

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

- Amnesty International
- Center for Reproductive Rights
- CIVICUS
- 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
- European Federation of Journalists
- European Partnership for Democracy
- European Youth Forum
- Front Line Defenders
- Human Rights House Foundation
- Human Rights Watch
- ILGA-Europe
- International Commission of Jurists
- International Federation for Human Rights
- International Planned Parenthood Federation European Network (IPPF EN)
- International Press Institute
- Netherlands Helsinki Committee
- Open Society European Policy Institute
- Philanthropy Advocacy
- Protection International

- Reporters without Borders
- Transparency International EU