European Rule of Law Mechanism: input from Member States – ESTONIA

January 2022

This input provides only new information, and should be read in conjunction with the Input from Estonia and additional information submitted in 2020 and 2021 in the framework of the 2020 and 2021 Rule of Law Cycles.

I. Justice System

A. Independence

1. Appointment and selection of judges , prosecutors and court presidents

2. Irremovability of judges; including transfers, dismissal and retirement regime of judges, court presidents and prosecutors

3. Promotion of judges and prosecutors

4. Allocation of cases in courts

5. Independence (including composition and nomination of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)

6. Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal liability of judges.

7. Remuneration/bonuses for judges and prosecutors, including changes (significant increase or decrease over the past year), transparency on the system and access to the information.

8. Independence/autonomy of the prosecution service

9. Independence of the Bar (chamber/association of lawyers) and of lawyers

10. Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

B. Quality of justice

11. Accessibility of courts (e.g. court fees, legal aid, language)

As of 1 January 2022, the state fees for acts concerning the courts, commercial register, non-profit associations and foundations register and commercial pledge register have increased. The increase in the state fees relating to the courts and registration departments are in accordance with the past years' changing economic indicators. According to *Eesti Pank's* (the Bank of Estonia) June 2021 economic forecast, Estonia's economic growth was projected at 5-8% in 2021 and 4-5% in 2022. Between 2014 and 2020, Estonia's GDP grew by 35%. State fees have increased by 40% on average. The rate of the state fee on civil proceedings for actions by petition was not changed.

Most of the state fee rates have been in force since 1 January 2011. Since that time, the costs of conducting trials have increased by 37%. The workload of the courts and their administrative departments has increased considerably in recent years. In 2020, the county courts alone received 33 658 new civil cases of differing complexity, which was a record for the last seven years.

State Fees Act in force until 31.12.2021:

https://www.riigiteataja.ee/en/eli/ee/506122021002/consolide

State Fees Act in force as of 1.01.2022:

https://www.riigiteataja.ee/en/eli/ee/506122021002/consolide/current

12. Resources of the judiciary (human/financial/material)

The number of judges was increased by 6 county court judges, and another 6 additional positions of judge will be distributed between the courts in March 2022. The salaries of court staff (secretaries, interpreters, court Office clerks) were increased by 15 percent on average.

13. Training of justice professionals (including judges, prosecutors, lawyers, court staff)

14. Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, including resilience of justice systems in COVID-19 pandemic)

Last year, a new user interface for the digital file information system was introduced, which significantly improves user-friendliness and provides support to judges and other court staff in working with digital files. The digital information system is a supplement to the court information system, which facilitates the reading and processing of documents. It has been a great help in the pandemic working conditions.

At the end of 2021, the courts introduced voice recognition software for recording court hearings. The purpose of speech recognition software is to facilitate the recording of court hearings, in particular in criminal matters.

15. Use of assessment tools and standards (e.g. ICT systems for case management, court statistics and their transparency, monitoring, evaluation, surveys among court users or legal professionals)

The new methodology to assess and distribute workload for judges in the first instance courts was confirmed by the Council of Administration of the Courts in September 2021. The courts had already been testing this for several years, and now the workload relating to administrative court cases, civil court cases and criminal court cases are all comparable. The methodology is welcome tool for distributing judges' positions between the first instance courts.

The regular court users survey that is conducted once every four years was carried out at the end of 2021.

16. Geographical distribution and number of courts/jurisdictions ("judicial map") and their specialisation, in particular specific courts or chambers within courts to deal with fraud and corruption cases.

C. Efficiency of the justice system

17. Length of proceedings

According to the procedural statistics of 2021, civil cases were resolved in county courts on average in 101 days, criminal cases were resolved on average in 192 days in general criminal proceedings, 32 days in simplified proceedings and 44 days in misdemeanour cases. In the first instance, administrative cases were resolved in an average in 127 days. The average processing time for appeals was 162 days in civil cases, 66 days in criminal cases and 40 days in administrative cases.

Other – please specify

II. Anti-corruption framework

A. The institutional framework capacity to fight against corruption (prevention and investigation / prosecution)

18. List any changes as regards relevant authorities (e.g. national agencies, bodies) in charge of prevention detection, investigation and prosecution of corruption and the resources allocated to each of these authorities (the human, financial, legal, and technical resources as relevant), including the cooperation among domestic authorities. Indicate any relevant measure taken to effectively and timely cooperate with OLAF and EPPO (where applicable).

The aspiration of the Prosecutor's Office and Police and Border Guard is to strengthen investigation capabilities in corruption and related white-collar crimes (incl. business corruption and economic crime, environmental, cyber and money laundering offences). An application for additional resources was submitted to the state budget.

The database of beneficial owners (TEKSA) is being developed and is expected to be ready for use in spring 2022. In 2022, several further developments are planned, including establishing a connection to the BORIS pan-European beneficial owner information system. The use of TEKSA will take place through the information system of the commercial register and it will communicate with other registers over the data exchange layer.

19. Safeguards for the functional independence of the authorities tasked with the prevention and detection of corruption.

20. Information on the implementation of measures foreseen in the strategic anti-corruption framework (if applicable). If available, please provide relevant objectives and indicators.

The implementation report of the anti-corruption action plan on activities undertaken in 2021 is available at: https://www.korruptsioon.ee/et/tegevuskava-aruanne-2021.

B. Prevention

21. Measures to enhance integrity in the public sector and their application (including as regards incompatibility rules, revolving doors, codes of conduct, ethics training). Please provide figures on their application.

22. General transparency of public decision-making (e.g. public access to information, including possible obstacles related to the classification of information, transparency authorities where they exist, and framework rules on lobbying including the transparency of lobbying, asset disclosure rules, gifts and transparency of political party financing).

The guidelines "Good Practice in Communicating with Lobbyists" were approved by the Government in 2021 and are being actively implemented. Government agencies, including all ministries, publish information quarterly on meetings held between high officials and lobbyists. The contact persons and deputy secretaries general of the ministries and many others have received thorough training on the implementation of the Good Practice, including a manual for implementation (https://www.korruptsioon.ee/et/huvide-konflikt/lobistidega-suhtlemise-hea-tava). In addition, the Ministry of Justice together with Transparency Estonia and the relevant network is carrying out an analysis about implementation of the Good Practice, including of the quality and completeness of the information the implementing agencies are disclosing. Based on the results, a "best performers" ranking will be published by autumn 2022, nudging and supporting further implementation of the Good Practice.

The checklist for the impact assessment of legislative drafts was amended in 2021, and questions that will help to assess the impact of a proposed draft in terms of corruption were added. The Impact Assessment Checklist is available here: https://www.just.ee/oigusloome-arendamine/hea-oigusloome-ja-normitehnika/oigustloovate-aktide-mojude-hindamine.

In October 2021, the Ministry of Justice published a legislative intent to introduce amendments in the Political Parties Act that would increase the capacity and competence of the Political Parties Funding Supervision Committee. A legislative intent is the first step in the legislative process, and outlines the

subject matter, objective, regulatory options, impact and proposed outline of legislation to be drafted. The legislative intent was open for comments and feedback from all government ministries, relevant stakeholders and the general public for one month, and is available at https://eelnoud.valitsus.ee/main/mount/docList/cd95ae81-65c5-4f2b-9924-aba7dd5e479c#NRFRTgOr. The Ministry of Justice is currently drafting a bill based on the input received during the consultation.

23. Rules and measures to prevent conflict of interests in the public sector. Please specify the scope of their application (e.g. categories of officials concerned)

24. Measures in place to ensure whistleblower protection and encourage reporting of corruption.

The draft Act on the Protection of Whistleblowers passed its first reading in the Parliament's Legal Affairs Committee on 17 January 2022. Amendments to the draft can be submitted up to 08 February 2022. The draft establishes the conditions and scope of protection for whistleblowers who have become aware of an infringement in the course of their employment. The draft stipulates the conditions and scope for obtaining protection, and the means and channels for notification. The text of the draft, explanatory memorandum and record of legislative proceedings are available at: https://www.riigikogu.ee/tegevus/eelnoud/eelnou/be649d11-1eb9-40c2-820b-14391f119fac/Rikkumisest%20teavitaja%20kaitse%20seadus.

25. List the sectors with high-risks of corruption in your Member State and list the relevant measures taken/envisaged for preventing corruption and conflict of interest in these sectors. (e.g. public procurement, healthcare, citizen investor schemes, risk or cases of corruption linked to the disbursement of EU funds, other).

26. Measures taken to address corruption risks in the context of the COVID-19 pandemic.

27. Any other relevant measures to prevent corruption in public and private sector

Amendments to the Anti-Corruption Act entered into force in April 2021 by which the list of persons who are obliged to submit an annual declaration of interest was expanded to include political advisers to Government ministers and the deputy secretaries-general of ministries. This will contribute to increased accountability of higher officials.

C. Repressive measures

28. Criminalisation including the level of sanctions available by law, of corruption and related offences including foreign bribery.

29. Data on investigation and application of sanctions for corruption offences (including for legal persons and high level and complex corruption cases) and their transparency, including as regards to the implementation of EU funds.

30. Potential obstacles to investigation and prosecution as well as to the effectiveness of high-level and complex corruption cases (e.g. political immunity regulation, procedural rules, statute of limitations, pardoning).

31. Information on effectiveness of administrative measures and sanctions, in particular recovery measures and administrative sanctions on both public and private offenders.

Other – please specify

III. Media pluralism

A. Media authorities and bodies

32. Measures taken to ensure the independence, enforcement powers and adequacy of resources of media regulatory authorities and bodies

The bill to amend the Media Services Act in order to transpose Directive (EU) 2018/1808 into Estonian law has passed its first reading in Parliament and is awaiting its second reading. It is anticipated that the bill will be adopted swiftly, and the amendments are expected to enter into force in the first quarter of 2022.

We would like to draw the Commission's attention to a possibly misleading sentence on page 9 of the 2021 Report regarding the independence of media regulator, which we regretfully did not note upon giving feedback on the draft country chapter. The sentence reads as follows:

"*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*".

Please note that the last part of the sentence is not accurate. While the Directive (EU) 2018/1808 poses additional obligations on national regulatory authorities, under the current Media Services Act, the Estonian national media regulatory, as the state supervisory authority for compliance with the requirements set by law on the content of media services, is fully competent and obliged to supervise the content of media services.

33. Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media regulatory authorities and bodies

34. Existence and functions of media councils or other self-regulatory bodies Independence, enforcement powers and adequacy of resources of media regulatory authorities and bodies

Self-regulative instruments play a significant role in providing safeguards for editorial independence. A 2019 study has confirmed that the Estonian media self-regulates successfully through the use of Media Accountability Instruments: the Code of Ethics and the Estonian Press Council (*Pressinõukogu*), and the media ombudsman at the Estonian Public Broadcasting Company. The Estonian Press Council (*Pressinõukogu*) is a voluntary self-regulating body. It is tasked with handling 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 members from non-media sectors, in addition to a rotating chairman. The body has been established by the Estonian Newspaper Association. All complaints related to media content are processed either by the Press Council at the Estonian Media Alliance (formerly known also as the Estonian Newspaper Association; it was renamed in 2019 due to the growing importance of the online media) or by the media ombudsman at the Estonian Public Broadcasting Company.

B. Transparency of media ownership and government interference

35. Measures taken to ensure the fair and transparent allocation of state advertising (including any rules regulating the matter)

36. Safeguards against state / political interference, in particular:

- safeguards to ensure editorial independence of media (private and public)

- specific safeguards for the independence of governing bodies of public service media governance (e.g. related to appointment, dismissal) and safeguards for their operational independence (e.g. related to reporting obligations),

- procedures for the concession/renewal/termination of operating licenses

- information on specific legal provisions for companies in the media sector (other than licensing), including as regards company operation, capital entry requirements and corporate governance

The detailed procedures for the concession/renewal/termination of operating licenses is provided for in the Media Services Act. The new draft Media Services Act proposes to amend the existing regulation regarding additional/secondary conditions for TV licensing. Under the amendments, in order to ensure the independence of the supervisory authority, secondary conditions can be established by the Head of the independent national regulator (NRA) and not by the Minister as foreseen in the current law.

With regard to measures to address concentration of media ownership, section 32 of the Media Services Act prescribes: *Television or radio services can only be provided on the basis of an activity licence for the provision of television or radio services (hereinafter activity licence) that is issued to a natural or legal person on the following conditions:*

…

3) it is not connected through the dominant influence over the management to an undertaking that has been issued an activity licence for provision of television and radio services, and the issue of the activity licence may substantially harm competition in the media services market, particularly through the creation or reinforcement of a dominant position in the market.

37. Transparency of media ownership and public availability of media ownership information, including on media concentration (including any rules regulating the matter) The transparent allocation of state advertising (including any rules regulating the matter); other safeguards against state / political interference

C. Framework for journalists' protection

38. Rules and practices guaranteeing journalist's independence and safety

39. Law enforcement capacity, including during protests and demonstrations, to ensure journalists' safety and to investigate attacks on journalists

40. Access to information and public documents (incl. procedures, costs/fees, timeframes, administrative/judicial review of decisions, execution of decisions by public authorities)

41. Lawsuits (incl. SLAPPs - strategic litigation against public participation) and convictions against journalists (incl. defamation cases) and measures taken to safeguard against abusive lawsuits.

Estonian procedural law provides for comprehensive measures to deal with malicious actions and parties to proceedings, e.g. the court may reject or dismiss a statement of claim if, based on the factual circumstances presented as the cause of the court claim, violation of the claimant's rights is impossible, or the court claim has not been filed for protecting the claimant's right or interest protected by law, or with an aim subject to legal protection by the state, or if the objective sought by the claimant cannot be achieved by the court claim (Code of Civil Procedure (CCP) Subsection 371 (2), Subsection 423 (2)); if the action is dismissed, the applicant shall bear the costs of the proceedings (CCP Sections 162, 168); the court may make interim protection of the claim or the continuation of such protection dependant on the payment of a deposit fee in order to compensate for possible harm caused to the opposing party or a third party (CCP Section 383); the plaintiff shall compensate for the harm caused to the defendant and a third party by interim protection of the claim (CCP Section 391); the court shall not allow a party to the proceedings or his or her representative to abuse their rights, delay proceedings or mislead the court (CCP Section 200); a court may order a party to proceedings to pay the costs caused by delaying the proceedings (CCP Section 169); the court can fine or arrest a party to the proceedings or a representative who acts in bad faith (CCP Section 45); the submission of incorrect information to a court or the concealment of important facts may give rise to criminal liability, if it is desired to obtain proprietary benefit through a court decision made to the detriment of the counterparty through fraud (Section 209 of the Penal Code).

No further specific legal measures to protect journalists are currently being considered.

Estonia responded to the Commission's public consultation on SLAPP and provided a policy paper on our views on the issue.

Other – please specify

IV. Other institutional issues related to checks and balances

A. The process for preparing and enacting laws

42. Framework, policy and use of impact assessments, stakeholders'/public consultations (particularly consultation of judiciary on judicial reforms), and transparency and quality of the legislative process

The long-term strategy *Basic Principles for Legislative Policy until 2030* (in a previous answer referred to as *Guidelines for the Development of Legislative Policy 2030*) was approved by Parliament in November 2020. This strategic document sets out a vision for legislative policy, stipulates principles of good legislative practice and sets directions for future legislative developments. Inter alia, the strategy foresees an obligation for the Government of the Republic to present an annual report to Parliament on the implementation of the principles of good legislative practice and of the progress achieved on envisaged directions of development (p. 15).

Since 2020, Estonia has been developing a co-creation workspace which is a new electronic policy-making information system that makes policy-making more transparent, open and innovative. The workspace enables civil servants to co-work on the same text across ministries with experts and stakeholders outside the government through all stages of the decision-making process. This is a long-term project divided into different phases. The first phase of the Project – a workspace providing a template-based text editor with co-creation possibilities – has been piloted since autumn 2021. This means that the first tests involving the drafting of actual legislation are currently being carried out. In parallel, the next phases of the Project have been launched from the beginning of 2022, which include the function of public consultations and the provision of public access to the co-creation workspace.

43. Rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions)

44. Regime for constitutional review of laws

45. COVID-19: provide update on significant developments with regard to emergency regimes in the context of the COVID-19 pandemic

- judicial review (including constitutional review) of emergency regimes and measures in the context of COVID-19 pandemic

- oversight (incl. ex-post reporting/investigation) by Parliament of emergency regimes and measures in the context of COVID-19 pandemic

On 12 May 2021, Parliament passed additional amendments to the Communicable Diseases Prevention and Control Act, which help support the Health Board in resolving health care emergencies, including in the exercise of supervision.

The Act that was in force earlier also provided for the possibility to request disinfection, pest control or cleaning to be organised and medical examination to be arranged for, and diagnosis of infectious disease or arrangement therefor to prevent the epidemic spread of infectious diseases. The Health Board and the Government could also oblige hospitals and institutions providing social services to impose visiting restrictions.

Under the Act adopted in 2021, in the event of an especially dangerous infectious disease and an unavoidable necessity, the Health Board and the Government can also close institutions or restrict their activities temporarily. Besides setting the conditions for prohibiting meetings and events, the Act also allows requirements to be established for holding them.

The Act establishes a new concept of dangerous novel communicable disease: 1) that has the features of an extremely dangerous communicable disease provided for in section 3 clause 1 paragraph 2 (a

disease with a high level of infectiousness which spreads rapidly and extensively or which is serious or life-threatening); 2) that has no effective treatment or for which no effective treatment is available or the spread of which may exceed the hospital treatment capacity.

The Act allows for the involvement of the police and other law enforcement agencies in the performance of the functions of the Health Board in emergencies and emergency situations related to infectious disease epidemics. Up until now, there has been no regulation of involvement and therefore the Health Board has been able to cooperate with law enforcement agencies only through applications for professional assistance or exchange of officials. The establishment of the regulation will simplify and speed up the involvement. The Government will decide on the involvement of a law enforcement agency at the proposal of the Health Board. The more specific conditions and procedure for the involvement will be established by a Regulation of the Government.

Under the Act that was in force before, breach of quarantine rules was punishable under misdemeanour procedure. However, according to the new Act, an opportunity is also created to hold people liable when they breach the requirements established by the Government or the Health Board, for example the obligation to wear a face mask or the restrictions on movement or the organisation of events. Violation of the requirements for the prevention of the epidemic spread of an infectious disease is punishable by a fine of up to 100 fine units, that is, 400 EUR. Legal persons can be punished by a fine of up to 13 000 EUR.

The main legal basis lies in Sections 27 and 28 of this Act, which provide:

"§ 27. Establishment and termination of quarantine

(1) For the purposes of preventing any extremely dangerous communicable disease from spreading outside the focus of the disease, quarantine means the imposed:

1) prohibition on stay for the purposes of the Law Enforcement Act;

2) restriction on the movement of persons, goods and vehicles on a certain territory or departure therefrom, or

3) restriction on the provision of services.

(2) For the purposes of this Act, the focus of a disease is a delimited territory containing persons suffering from a communicable disease and persons suspected of being infected and where intensified surveillance over the residents is exercised by the health protection authorities.

(3) Quarantine shall be established by the Health Board with an administrative act. If the establishment of quarantine is accompanied with a significant effect on the society or economy, the quarantine shall be established by an order of the Government of the Republic. The term of quarantine shall be determined in an administrative act. The term of quarantine determined in an administrative act may be extended until the objective established in subsection (5) of this section has been achieved.

(3[1]) Upon the establishment of quarantine specified in subsection (3) of this section, persons concerned shall be involved immediately according to the provisions of § 40 of the Administrative Procedure Act.

(4) Quarantine requirements and the procedure for compliance therewith shall be established by a regulation of the minister responsible for the area.

(5) Quarantine shall be terminated by the administrative authority who established the quarantine after the spread of the communicable disease has been prevented, the requirements for the control of the communicable disease have been fulfilled and the focus of the disease has been rendered harmless. If quarantine has been established in the same focus of disease by the Health Board and the Government of the Republic, the rights and obligations arising from the administrative act of the Health Board shall be deemed to be terminated as of entry into force of the administrative act of the Government of the Republic concerning the part in which these rights and obligations are different or contradictory.

(6) Information on the establishment and termination of quarantine may be published in media, provided that the number of addressees of the administrative act is more than 50.

(7) An administrative act on the establishment and termination of quarantine shall enter into force upon the communication thereof to the direct addressee or publishing thereof in media, unless the administrative act itself provides for another term.

§ 28. Prevention of epidemic spread of communicable diseases

(1) The risk arising from the epidemic spread of a communicable disease shall be determined by the Health Board on the basis of epidemiological, laboratory and clinical information submitted thereto.

(2) In order to prevent the epidemic spread of a communicable disease, the Health Board may, with an administrative act:

1) order schools, child care institutions and social service agencies to be closed temporarily or restrict the operation thereof;

2) demand that disinfection, eradication of insect vermin, pest extermination or cleaning be organised;

3) demand the organisation of medical examination of people and diagnosing communicable diseases or the organisation thereof, taking account of the provisions of subsection (3) or this Act;

4) require hospitals and social service agencies to establish visiting restrictions;

5) require persons to follow the precautions of safety from infection.

(3) Persons located in a focus of disease or in an area where there is a risk of occurrence of a focus of disease and the persons with a suspicion of disease associated therewith may be obliged to undergo a medical examination or diagnosing of a communicable disease specified in clause (2) 3) of this section. The prohibition on stay or restrictions on the freedom of movement may be applied to persons upon refusal from medical examination and diagnosing of communicable diseases.

(4) The head of a child care institution or social service agency may temporarily close the institution run by him or her with the approval of the Health Board.

(5) In addition to the measures and restrictions specified in subsection (2) of this section, in order to prevent the spread of an extremely dangerous communicable disease, the Health Board may by an administrative act, if it is absolutely necessary, temporarily:

1) close institutions and establishments or restrict the operation thereof;

2) prohibit public meetings and organisation of public events or establish requirements for the holding and organisation thereof;

3) establish other restrictions on the freedom of movement.

(6) If the application of measures and restrictions provided for in subsections (2) and (5) of this section is accompanied with a significant social or economic effect, these shall be established with an order of the Government of the Republic.

(7) The requirements, measures and restrictions established on the basis of this section shall be terminated by the administrative authority who established them after the need therefor ceases to exist. If both the Health Board and the Government of the Republic have established requirements, measures and restrictions with regard to the same addressee, the rights and obligations arising from the administrative act of the Health Board shall be deemed to be terminated as of entry into force of the administrative act of the Government of the Republic concerning the part in which these rights and obligations are different or contradictory.

(8) The requirements, measures and restrictions prescribed for preventing the spread of an extremely dangerous communicable disease in an act or on the basis of an act may be applied for the prevention of a dangerous novel communicable disease.

(9) Information on the establishment and termination of requirements, measures and restrictions provided for in this section may be published in media, provided that the number of addressees of the administrative act is more than 50.

(10) An administrative act on the establishment or termination of requirements, measures and restrictions provided for in this section shall enter into force upon the communication thereof to the direct addressee or publishing thereof in media, unless the administrative act itself provides for another term.

(11) Persons whom the restrictions specified in this section concern shall be involved immediately according to the provisions of § 40 of the Administrative Procedure Act.

(12) The Emergency Act shall be applied, if necessary, to prevent the epidemic spread of communicable diseases."

On the basis of this Act, the Government of the Republic has established temporary restrictions corresponding to the epidemic problem. Each restriction corresponds to the scope and purpose of the problem at that time and has been established in compliance with the principle of proportionality under § 11 of the Constitution – only measures that minimally restrict rights and freedoms in accordance with a legitimate aim are permissible.

All orders of the Government of the Republic are published and available on the website of the electronic database of legislation (*Riigi Teataja*) and on the national crisis website.

All orders of the Government of the Republic contain the legal basis for the establishment of the restriction, the reasons for the necessity of the restriction and epidemiological data based on time and context (see subsection 28(1) of the Act). All orders of the Government contain a reference to the possibilities for contesting the restriction. The order can be challenged in appeal proceedings before the government or in an administrative court.

Judicial review (including constitutional review) of emergency regimes and measures in the context of COVID-19 pandemic

Since the spring of 2020, about 65 complaints have been received by the Tallinn Administrative Court due to restrictions imposed to address the COVID-19 epidemic.

Oversight (incl. ex-post reporting/investigation) by Parliament of emergency regimes and measures in the context of COVID-19 pandemic

In addition to adoption of laws, the task of the Riigikogu is to control the activities of the executive, including the government. Members of the Riigikogu have various options for this: interrogatories, written questions, a question time, the establishment of a committee of inquiry or a vote of no confidence against a member of the government or the entire government.

The Riigikogu Rules of Procedure and Internal Rules Act prescribes, inter alia, the following possibilities for the Parliament to supervise the activities of the executive power:

1. An interpellation by a member of Riigikogu;

2. Question Time to Riigikogu, when the Prime Minister and ministers answer oral questions from members of Riigikogu;

3. A written question from a member of Riigikogu;

4. Resolving collective proposal.

5. Deliberation of matters of significant national importance

1. An interpellation by a member of Riigikogu

According to Subsection 139(1) of the Riigikogu Rules of Procedure and Internal Rules Act: „*An interpellation by a member of the Riigikogu is a question that is addressed to the Government of the Republic or a member thereof, to the Chair of the Supervisory Board of the Bank of Estonia, to the Governor of the Bank of Estonia, to the Auditor General, or to the Chancellor of Justice and that is in the appropriate format and pertains to compliance with the legislation governing the powers of the corresponding body or public official*."

For example: interpellations by members of the Riigikogu to the Minister of Health and Labour on 07.12.2021: "On preparedness for the further spread of Covid-19 infection", "on 21.04.2020 to the Prime Minister "Vaccination priorities and compliance".

All interpellations by a member of Riigikogu can be seen on the website: https://www.riigikogu.ee/tegevus/parlamentaarne-kontroll/aruparimised/.

2. Question Time to Riigikogu, when the Prime Minister and ministers answer oral questions from members of Riigikogu

According to The Riigikogu Rules of Procedure and Internal Rules Act, § 142, the Question Time, during which the Prime Minister and ministers reply to oral questions from members of Riigikogu, runs from 12:00 to 14:00 on a Wednesday of every working week of the plenary assembly of Riigikogu.

The Question Time can be viewed directly on the websites of Riigikogu and Estonian Public Broadcasting.

For example, 08.12.2021 and 12.01.2022 Riigikogu Question Time: About vaccination. The respondents were the Prime Minister and the Minister of Health and Labour.

3. A written question from a member of the Riigikogu

According to Section 147 of the Riigikogu Rules of Procedure and Internal Rules Act: „*A member of the Riigikogu may present a written question to the Government of the Republic or a member thereof, to the Chair of the Supervisory Board of the Bank of Estonia, to the Governor of the Bank of Estonia, to the Auditor General or to the Chancellor of Justice in order to obtain information on an individual matter within the powers of the corresponding body or public official*."

For example, the 07.01.2022 question to the Minister of Health and Labour "Vaccination of children", 21.12.2021 question to the Minister of Health and Labour "Covid 19 booster shots", 08.12.2021 question to the Prime Minister "The implementation of the digital Covid-19 certificate in Estonia".

The questions and answers of the members of Riigikogu are available on the website of the Riigikogu: https://www.riigikogu.ee/tegevus/dokumendiregister/dokument/b688cf66-6125-41f6-914b-6ce7b7a436f0.

4. Resolving collective proposal

Under Section 71 of the Response to Memoranda and Requests for Explanations and Submission of Collective Proposals Act a collective appeal to the Riigikogu can be made with at least 1000 support signatures. Such proposals propose how to amend existing law or how to improve community life. Up to three pages of reasons are appended to the proposal stating why the current situation is unsatisfactory and how the proposal would improve the situation.

In connection with COVID-19, two collective proposals have been submitted to the Riigikogu: 15.12.2020 collective proposal "Corona measures are not justified. It is time to return to ordinary life!" and 19.05.2020 collective proposal "We demand that the government repeal Act 165 SE".

Collective proposals and the related answers are available on the Riigikogu website at https://www.riigikogu.ee/tutvustus-ja-ajalugu/raakige-kaasa/esitage-kollektiivne-poordumine/riigikogule-esitatud-kollektiivsed-poordumised/.

5. Deliberation of matters of significant national importance

According to Section 153 of the Riigikogu Rules of Procedure and Internal Rules Act: : "(1) *A committee or faction of the Riigikogu may initiate the deliberation of a matter of significant national importance by transmitting the corresponding request to the Board of the Riigikogu. The request sets out the matter to be deliberated and the desired time of conducting the deliberation*."

The debate on an important national issue allows for a more general examination of the Government's policies than just a specific draft. Such a debate may be initiated by a committee or a faction of the Riigikogu.

In connection with COVID-19, the following matters of significant national importance have been debated: 09.03.2021 "Organization of COVID-19 vaccination" (2-5/14-20), 11.03.2021 "Activities in controlling coronavirus" (2-5/14-21), 30.09.2021 "How to reach Estonia without restrictions?" (2-5/14-29), 28.10.2021 „Situation in the control of coronavirus".

B. Independent authorities

46. Independence, resources, capacity and powers of national human rights institutions ('NHRIs'), of ombudsman institutions if different from NHRIs, of equality bodies if different from NHRIs and of supreme audit institutions

47. Statistics/reports concerning the follow-up of recommendations by National Human Rights Institutions, ombudsman institutions, equality bodies and supreme audit institutions in the past two years. Independence, capacity and powers of national human rights institutions ('NHRIs'), of ombudsman institutions if different from NHRIs, of equality bodies if different from NHRIs and of supreme audit institutions

There are no general reports concerning the follow-up of recommendations by independent authorities.

According to the Office of the Chancellor of Justice, in 2020-2021, the Chancellor of Justice made 22 recommendations to bring legislation in conformity with the Constitution. In 20 of these cases, the recommendation was followed. In addition, the Chancellor made a total of 41 notices *(märgukiri* in Estonian) to the executive and to local governments on the need to initiate legislation, of which 75% have been resolved. The Chancellor also made 72 recommendations to adhere to the principles of legality and good administrative practice. In general, these recommendations are taken into consideration and followed, with recommendations requiring significant resources requiring more time for implementation. Many issues are also resolved in the course of the Chancellor's proceedings, where the Chancellor will then terminate the proceedings without making any formal recommendation.

According to the National Audit Office of Estonia, it may be difficult to ascertain the degree to which a recommendation has been followed, including for example where an alternate solution may be selected to remedy an identified shortcoming. The National Audit Office no longer keeps detailed statistics on compliance with its recommendations. Over the past two years, a new system has been introduced in the Office whereby in the end stages of an audit, 2-3 key issues are identified for follow-up after a determined time period, which normally ranges from 1-2 years or more. As this system is new, it is not yet possible to draw any conclusions or provide statistics.

C. Accessibility and judicial review of administrative decisions

48. Transparency of administrative decisions and sanctions (incl. their publication and rules on collection of related data)

49. Judicial review of administrative decisions:

- short description of the general regime (in particular competent court, scope, suspensive effect, interim measures, and any applicable specific rules or derogations from the general regime of judicial review).

50. Follow-up by the public administration and State institutions to final (national/supranational) court decisions, as well as available remedies in case of non-implementation Transparency of administrative decisions and sanctions (incl. their publication and rules on collection of related data) and judicial review (incl. scope, suspensive effect)

If the public administration fails to execute a court decision, a complaint can be launched in an administrative court, in accordance with the Code of Administrative Court Procedure as follows:

§ 248. Failure to execute a court decision which has become enforceable

[RT I, 28.11.2017, 1 – entry into force 01.01.2018]

(1) In the case of failure to execute a court decision or a compromise approved by the court, the court imposes a fine of up to 32,000 euros on the participant in proceedings whose fault this is. The imposition of the fine does not relieve the participant who failed to execute the orders contained in the judgment, or the compromise approved by the court, from the obligation to execute the order or compromise within reasonable time, or deprive a participant in proceedings in whose interest the orders were made or the compromise was approved, of the right to apply to the court for the imposition of a new fine on account of failure to execute the order contained in the court judgment or failure to execute the compromise.

(2) In imposing the fine, the court takes into consideration the time that has elapsed since the judgment became final as well as any other circumstances which possess significance in relation to the imposition of the fine and the setting of the amount of the fine. If a period of time reasonable for execution of the court decision has elapsed since the imposition of the previous fine, yet the decision has not been executed, the court may impose the fine again.

(3) The fine for failure to execute the judgment of a circuit court or of the Supreme Court is imposed by the administrative court.

(4) A participant in proceedings may file an interlocutory appeal against the order by which a fine is or is not imposed on account of failure to execute a decision of the court or a compromise approved by the court. The order entered by the circuit court in respect of the interlocutory appeal is subject to further interlocutory appeal to the Supreme Court.

[RT I, 28.11.2017, 1 – entry into force 01.01.2018]

D. The enabling framework for civil society

51. Measures regarding the framework for civil society organisations (e.g. access to funding, legal framework incl. registration rules, measures related to dialogue between authorities and civil society, participation of civil society in policy development, measures capable of affecting the public perception of civil society organisations, etc.)

Civil society organisations (CSOs) are not regulated by any specific legislation in Estonia other than the Non-profit Associations Acts and Foundations Act. Based on the Estonian Civil Society Development Concept, the Government promotes civil society through the Civil Society Development Plan 2015–2020 and the Cohesive Estonia Development Plan 2021-2030 adopted on 18 November 2021. The new development plan is executed by three ministries – the Ministry of the Interior, the Ministry of Culture and the Ministry of Foreign Affairs.

Detailed information on the participants, stakeholders, process, meetings, outcomes and schedule of drafting the development is available to the public on the ministry's website.

The work of CSOs is also supported through the National Foundation of Civil Society (NFCS), which is a state financed civil society fund, development and support centre that focuses on helping CSOs build their capacity to function purposefully and effectively. While the NFCS is funded by the government, it functions independently under the guidance of its board, of which the majority of its seven members are representatives of CSOs. The NFCS supports over 100 projects and initiatives annually, ranging from regional to international cooperation. The NFCS also has a nation-wide outreach involving all stake-holders. In cooperation with county governments and development centres, the NFCS offers expertise and consultations on a variety of topics, including on how to start an NGO, how to apply for funding and how to become a sustainable organization. In recent years, there have been two important initiatives in Estonia to increase participatory democracy: the Estonian People's Assembly and the subsequent Citizens Initiative Portal.

The Estonian People's Assembly took place from 2013 to 2014 and was based in a social movement seeking greater transparency of government. In response, the then President Toomas Hendrik Ilves initiated a process which brought together representatives of political parties, social interest groups and non-profit sector representatives, political scientists and other opinion leaders. This led to two initiatives – an online collection of proposals from citizens and a public day of discussions organised by the Estonian Cooperation Assembly, the Praxis Centre for Policy Studies, the Network of Estonian Non-profit Organisations NENO, the Open Estonia Foundation and the e-Governance Academy, together with representatives of the four parliamentary parties, the Office of the President of the Republic of Estonia as well as several IT and communication professionals.

One of the outcomes of this process was the launch of the Citizen Initiative Portal rahvaalgatus.ee, which allows anyone 16 years of age or older to initiate a discussion or compile and send a collective proposal with at least 1000 digital signatures to the parliament of Estonia, and also to follow how the proposal is dealt with online. As of January 2022, there have been a total of 370 discussions and 237 initiatives launched through the portal of which 106 have been processed by the Riigikogu, Estonia's parliament. In addition, 19 initiatives have been delivered to the parliament on paper.

Information on the functioning of civil society in Estonia is also available in the form of a 2018 short summary on the status of NGOs, and also in the Report of the Conference of INGOs of the Council of Europe on Civil participation in the decision-making process.

52. Rules and practices guaranteeing the effective operation of civil society organisations and rights defenders

Before the new development plan was adopted, the Ministry of the Interior, responsible for civil society policy in Estonia, chose its new strategic partners in the field of civil society through a public call. As of April 2021, four strategic partners help the achieve the civil society development goals agreed in the Cohesive Estonia Development Plan 2021-2030: Network of Estonian Nonprofit Organisations in cooperation with County Development Centres, Social Enterprise Estonia and Social Innovation Lab.

The consulting portal *MTÜ abi* (NGO's Help), a roadmap for civil society organisations (CSOs), helps to find quick answers to questions regarding the establishment of an CSO and guides readers through the complex world of funding opportunities. The portal is meant for all CSOs, the people who run them, and all those interested in the civil society. Furthermore, in every county there is a CSO consultant who offers free of charge advice on matters ranging from an idea to termination of a CSO. These consultants also organise trainings for NGOs and their representatives.

A committee has been established by the Government since the adoption of the Estonian Civil Society Development Concept (*Eesti kodanikuühiskonna arengu kontseptsioon*) in 2002 to discuss issues regarding cooperation between civil society and the government . Half on the members represent civil society, and the other half are state representatives. The platform enables users to raise issues regarding the effective operation of civil society organisations and rights defenders. The activities of the committee are public, which means that the minutes of all meetings are published on the ministry's website.

E. Initiatives to foster a rule of law culture

46. Measures to foster a rule of law culture (e.g. debates in national parliaments on the rule of law, public information campaigns on rule of law issues, etc.)