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2022 Rule of Law Report Country Chapter on the rule of law situation in Estonia

Accompanying the document

**Communication from the Commission to the European Parliament, the Council, the
European Economic and Social Committee and the Committee of the Regions**

2022 Rule of Law Report The rule of law situation in the European Union

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ABSTRACT

The digitalisation of the justice system in Estonia, which is already well advanced, continued to improve, including in the field of criminal proceedings. This high level of digitalisation has allowed the justice system to continue working efficiently, with some further improvements in criminal cases. Challenges have been identified as regards the workload of judges, as illustrated by a survey conducted among judges. To address these challenges and to even-out the workload between courts, a new regime was created for transfer of cases. Concerns have been raised about the effect of the application of this new regime because it may require judges to travel to hold hearings in cases they were assigned. Court fees have been significantly increased but citizens can rely on a number of safeguards, including exemption from court fees for cases with the highest social significance, such as child support disputes, labour and pension related disputes.

The anti-corruption network effectively supports the implementation of the 2021-2025 Anti-Corruption Action Plan. The criminal justice system for investigating and prosecuting corruption continues to function well. The Guidelines on Lobbying are being implemented and the first evaluation of their effectiveness is still ongoing. There are shortcomings in the implementation of the Guidelines on Conflicts of interest, including the lack of evaluation of their implementation, which does not allow to verify and monitor whether they have met their objectives. The first feedback on the implementation of the Anti-Corruption Act extending the obligation to declare interests to ministers' political advisers and the deputy secretaries-general of ministries is positive. The draft law that would strengthen the powers of the Political Parties' Financing Surveillance Committee is under preparation. The Government has proposed a comprehensive law to protect whistleblowers, which is currently being discussed in Parliament.

Estonia has amended the media law to strengthen the independence of the media regulator and enhance the transparency of media ownership, including beneficial owners. The right of access to information is protected by the Constitution, yet actual disclosure practices vary between public bodies. There is legislation in place that foresees detailed procedures for operating TV and radio licenses without media-specific quantitative rules for market entry or operation. Legislative safeguards for the independence of public service media are in place. Since the 2021 Rule of Law Report, the comprehensive framework for the protection of journalists has remained stable.

A project creating a new digital platform to further improve the process of enactment of laws entered its first implementation phases. As a consequence of the COVID-19 pandemic, new legislation provides a broader basis for measures to address health emergencies and exercise supervision. The Cohesive Estonia Development Plan 2021-2030 replaces or integrates all previous strategies and plans related to Civil Society Organisations, and extends the duration of the previous programme.

RECOMMENDATIONS

It is recommended to Estonia to:

- Ensure that the guidelines on the conflict of interests are subject to an effective verification, monitoring and enforcement mechanism.
- Continue the efforts in effective implementation of the guidelines on lobbying.
- Ensure consistent and effective practical implementation of the right of access to information taking into account European standards on access to official documents.
- Continue advancing with the digital platform to make the legislative process even more visible and inclusive for public consultation.

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 body¹, which has powers, among others, 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 Supreme Court (*en banc*)². 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 prosecutors³. The Estonian Bar Association is an independent, self-governing professional association⁴. Disciplinary proceedings against lawyers can be initiated before the Court of Honour⁵ by any interested person or by the board of the Bar Association⁶. Estonia participates in the European Public Prosecutor's Office (EPPO).

Independence

The level of perceived judicial independence in Estonia has decreased, yet continues to be high among the general public and average among companies. Overall, 60% of the general population and 47% of companies perceive the level of independence of courts and judges to be 'fairly or very good' in 2022⁷. According to data in the 2022 EU Justice Scoreboard, the level has decreased for both the general public and for companies, both in comparison to 2021 (66% for the general public and 57% for companies), and in comparison to 2016 (62% for the general public and 72%).

The effects of the application of the new regime for the transfer of cases, intended to address the excessive workload, raise concerns in relation to the transfer of judges. On 7 July 2021, the Presidents of the Tallinn and Tartu Circuit Courts of Appeal made use of the

¹ The Council does not function on a permanent basis and has four regular sessions, as well as extraordinary sessions whenever needed. See 2020 Rule of Law Report, Country Chapter on the rule of law situation in Estonia, p.3.

² 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.

³ The Prosecutor General exercises supervisory control in the prosecutor's office, and chief prosecutors exercise supervisory control in district prosecutor's offices.

⁴ § 2(1) of the Bar Association Act.

⁵ § 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.

⁶ § 16(1) of the Bar Association Act.

⁷ Figures 50 and 52, 2022 EU Justice Scoreboard. The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%).

amendments reported last year⁸, which extended the possibility to transfer a case to another county or administrative court⁹. This amendment was introduced to address the excessive workload in certain courts and is meant to be used as an extraordinary measure and not as standard practice¹⁰. Upon a request of the President of Harju County Court, the presidents of the two circuit courts decided to transfer 543 cases to the County Courts of Viru and Pärnu¹¹. If not all cases can be handled in written proceedings, this could result in a significant number of cases for which judges may need to travel to hold hearings in the court where the cases were originally filed, possibly for a longer period. Concerns have been raised that such transfers of cases could result in temporarily transferring judges, for the duration of the hearings, without their consent, to another city¹².

Quality

The improvements in the digitalisation of justice continue with the introduction of a speech recognition software. As noted in the 2020 and 2021 Rule of Law Reports, Estonia is among the best performing Member States when it comes to digitalisation of justice¹³. This high level of digitalisation has contributed to the efficiency and quality of the justice system. Furthermore, a new electronic tool has been introduced. On 19 November 2021, the speech recognition software ‘SALME’ was introduced to the Council for the Administration of Courts¹⁴. The main goal of this software is to save time on writing protocols, especially in hearings in criminal matters. In its current form, the software can process only in Estonian, but the goal is to expand it to other languages. Currently, the software is available for criminal proceedings, but the Ministry of Justice plans to expand the use to civil and administrative proceedings. Different types of trainings, general and in-house, support the improvements in the digitalisation of justice¹⁵.

Challenges have been identified as regards workload of judges. In 2021, a survey conducted among judges disclosed the perceived potential detrimental effects of the excessive workload on the quality of justice¹⁶. The survey shows the effects of the increasing workload¹⁷ in the Estonian justice system¹⁸. The increase of workload per judge was also

⁸ See 2021 Rule of Law Report, Country Chapter on the rule of law situation in Estonia, p.3.

⁹ § 45(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.

¹⁰ Explanatory memorandum of the Courts Act for §45(1) - if it is evident that it is not possible to ensure administration of justice pursuant to the requirements in the court.

¹¹ Order No 11-1/21/30 of 7 July 2021 - On a request by the President of Harju County Court for referral of cases pursuant to Section 451 of the Courts Act.

¹² Information received from the Estonian Association of Judges in the context of the country visit to Estonia.

¹³ Figures 42 to 49 from the 2022 EU Justice Scoreboard.

¹⁴ Contribution from the Supreme Court and Council for the Administration of Courts for the 2022 Rule of Law Report, p. 12.

¹⁵ Information received from the Ministry of Justice, Supreme Court and Estonian Judges Association in the context of the country visit to Estonia.

¹⁶ Estonian Judges Association (2022), Workload survey for I-II level judges. The survey was prepared and conducted by the Estonian Association of Judges. The survey was conducted at the end of 2021 and the summary of the responses was issued on 20 January 2022. It was answered by 112 out of 241 (the total number of all cases in Estonia for this number of judges is 51 244, as per the Council for the Administration of Courts) judges and covered questions related to the workload.

¹⁷ About half of the respondents have considered, occasionally or often, leaving their job due to the excessive workload. About 90% of the respondents consider that workload is a stress factor, which to some degree affected their abilities to perform their duties. See also on 10 February 2022, the statistics for the workload

illustrated by the Yearbook of Estonian Courts, where a summary of the data shows that at first instance courts the workload of judges varies between 227 and 447 cases that a judge has per year¹⁹. The main factors affecting the workload of judges, according to the same survey as well as other stakeholders²⁰, are legislative changes that increased the workload but not the available positions of judges, the increased complexity of cases, the excessive number of cases and the low quality of procedural documents submitted by the parties to the proceedings. Moreover, due to an upcoming retirement wave²¹, the justice system could face challenges filling in the vacant positions²². In June 2022, one of the main topics at the General Assembly of all judges in Estonia will be the increase in workload and how the situation can be improved.

Court fees have been significantly increased with a number of safeguards. As of 1 January 2022, the court fees in Estonia were increased by 40% on average. This is the first increase of the court fees since 2011. The 2022 EU Justice Scoreboard shows that the court fees in consumer and commercial cases are already among the higher ones in the EU²³. According to the Government, the economic growth of Estonia since the last revision of court fees, as reflected in the increase of GDP, has justified this measure²⁴. The increase was not accompanied by other reforms, such as a reform of the available legal aid scheme. According to stakeholders, the increase could also be seen as a way to decrease the workload of the courts by disincentivising cases from being brought before the courts, while making alternative dispute resolution more attractive²⁵. In certain cases, related to family matters, such as divorce or disputes over the custody of a child, a mandatory alternative dispute resolution was introduced. The State Fees Act also lists a number of exceptions from payment of the fees for each of the areas affected by the increase; some of the areas with the highest social significance, such as child support disputes, labour and pension related disputes, are exempted from court fees altogether²⁶. The Estonian justice system also allows a

of courts for 2021 was released, Council for the Administration of Courts (2022), Statistics for the workload of courts for 2021.

¹⁸ The Minister of Justice confirmed that there is an increase of workload in civil cases, administrative cases and stated that the workload of circuit courts is the highest of the last years.

¹⁹ This data concerns only civil and criminal cases. The lowest average workload of a judge per year relates to Pärnu county court in criminal cases, while the highest average workload of a judge per year relates to Harju county court in civil cases. – Summary of the Procedural Statistics of the County, Administrative and Circuit Courts in 2020: about Resolved Matters (incl. Paperless Procedure) and the Average Workload of a Judge.

²⁰ Information received from the Supreme Court and Estonian Judges Association in the context of the country visit to Estonia.

²¹ About 1/3 of all judges in Estonia are expected to retire in the next 2 years. Moreover, in 2022, there are 20 judges eligible for retirement. - Information received from the Supreme Court and Estonian Judges Association in the context of the country visit to Estonia.

²² This is already the case for positions in the field of criminal law. – Information received from the Estonian Judges Association in the context of the country visit to Estonia.

²³ Figures 26 and 27, 2022 EU Justice Scoreboard. The two figures present court fees in specific consumer and commercial case scenario, respectively. The data in the 2022 edition of the Scoreboard present the situation before the reform.

²⁴ Input from Estonia for the 2022 Rule of Law Report, p.1.

²⁵ Information received from the Estonian Judges Association and Estonian Bar Association in the context of the country visit to Estonia.

²⁶ § 22 of the State Fees Act.

party to challenge court fee rates before the Constitutional Review Chamber of the Supreme Court on a case-by-case basis²⁷.

Efficiency

The justice system continues to work efficiently, with some further improvements in criminal cases. The length of proceedings and pending cases are among the shortest in the EU²⁸. In 2021, civil cases were resolved with a similar efficiency as in 2020 in county courts (in 101 days on average), criminal cases were resolved fairly faster than in 2020 (on average, in 192 days in general criminal proceedings, 24 days in simplified proceedings, and 44 days in misdemeanour cases)²⁹. In the first instance courts, administrative cases were resolved with a similar efficiency as in 2020 (on average 127 days)³⁰. The average processing time for appeals was 162 days in civil cases, 66 days in criminal cases and 40 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 the number of pending cases are amongst the lowest in the EU. Compared to 2020, the clearance rate increased slightly above 100%, which means that courts were generally able to cope with incoming cases³¹.

II. ANTI-CORRUPTION FRAMEWORK

The anti-corruption institutional set-up has not changed compared to the 2021 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 Parties' Financing Surveillance Committee oversees political parties' funding. The Corruption Crimes' Office of the National Criminal Police is a specialised unit responsible for carrying out investigations on corruption cases, and the Internal Security Service is responsible for investigating corruption offences committed by higher state officials and higher local government officials in six larger municipalities. The Prosecutor's Office supervises and directs pre-trial criminal investigation proceedings on corruption offences and 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 2021 Corruption Perceptions Index by Transparency International, Estonia scores 74/100 and ranks 6th in the European

²⁷ See Art. 15, para 1, second sentence of the Constitution, everyone is entitled to petition the court that hears his or her case to declare unconstitutional any law (or a provision thereof) relevant (applicable) in the case. See also Art. 152 of the Constitution, the courts refuse to give effect to the applicable law (or a provision thereof) that conflicts with the Constitution (para 1), and the Supreme Court declares invalid any law or other legislation or administrative decision that conflicts with the letter and spirit of the Constitution (para 2).

²⁸ Figures 6-10 and 17-24, 2022 EU Justice Scoreboard.

²⁹ See 2021 Rule of Law Report, Country Chapter on the rule of law situation in Estonia, p. 5 - In 2020, criminal cases were resolved on average in 226 days in general criminal proceedings, 28 days in simplified proceedings and 46 days in misdemeanour cases. In the first instance courts, administrative cases were resolved in an average of 123 days. In the first instance courts, administrative cases were resolved in an average of 123 days.

³⁰ Input from Estonia for the 2021 Rule of Law Report, p.4.

³¹ Figures 11-16, 2022 EU Justice Scoreboard.

Union and 13th globally³². This perception has improved³³ over the past five years³⁴. The 2022 Special Eurobarometer on Corruption shows that 43% of respondents consider corruption widespread in their country (EU average 68%) and 12% of respondents feel personally affected by corruption in their daily lives (EU average 24%)³⁵. As regards businesses, 33% of companies consider that corruption is widespread (EU average 63%) and 9% consider that that corruption is a problem when doing business (EU average 34%)³⁶. Furthermore, 38% of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average 34%)³⁷, while 50% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average 29%)³⁸.

The extended anti-corruption network effectively supports the implementation of the 2021-2025 Anti-Corruption Action Plan. The network, which was originally composed of anti-corruption coordinators from each ministry, was in the last years expanded to additional stakeholders and it is now composed of 29 members³⁹. In 2021, the network met six times. The tasks of the network, mainly related to developing and sharing best practices, supporting cooperation and mutual learning and exchanging experience, include now also monitoring the activities foreseen by the Action Plan⁴⁰. According to the authorities and civil society, the network is a key player in the implementation of the Action Plan⁴¹. The cooperation between authorities and organisations participating in the network is considered good by both⁴².

The criminal justice system for investigating and prosecuting corruption continues to function well. In 2021, the criminal justice system proved again to be effective in identifying

³² Transparency International (2022), Corruption Perceptions Index 2021, 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).

³³ 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.

³⁴ 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 523 (2022) and the Flash Eurobarometer 507 (2022).

³⁵ Special Eurobarometer 523 (2022). The Eurobarometer data on citizens' corruption perception and experience is updated every second year. The previous data set is the Special Eurobarometer 502 (2020).

³⁶ Flash Eurobarometer 507 (2022). The Eurobarometer data on business attitudes towards corruption as is updated every second year. The previous data set is the Flash Eurobarometer 482 (2019).

³⁷ Special Eurobarometer 523 (2022).

³⁸ Flash Eurobarometer 507 (2022).

³⁹ The network is composed of all ministries, the Estonian Chamber of Trade and Commerce, Transparency International Estonia, Prosecutors Office, Police and Border Guard, Internal Security Service, Forum of Responsible Business, Network of Estonian Nonprofit Organizations, Estonian Health Insurance Fund, State Audit Office and the Anti-Corruption Select Committee of the Parliament. Occasionally, depending on the topic, also other bodies are invited to participate, e.g. the Estonian Centre for Integrity in Sports. Information received from the Ministry of Justice in the context of the country visit to Estonia.

⁴⁰ The Anti-corruption Action Plan 2021-2025, point 4.

⁴¹ According to the Anti-corruption Action Plan 2021-2025, point 4, 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 Plan.

⁴² Information received from the Ministry of Justice and Transparency International in the context of the country visit to Estonia.

corruption cases⁴³. During 2021, a final verdict was reached in relation to three corruption cases on political party financing and bribery⁴⁴, and four more were brought to court⁴⁵. As regards the case involving the Porto Franco development project in Tallinn that led to the resignation of the previous Government in January 2021, the proceedings are still ongoing. To further support investigation and prosecution of corruption cases, further specialised expertise, notably regarding procurement and audit has been created⁴⁶. Furthermore, specific anti-corruption trainings for prosecutors and judges take place once per quarter on average, focusing on a variety of topics⁴⁷. In addition, members of the Internal Security Service participate in the European Union Agency for Law Enforcement Training (CEPOL) financial investigation and money laundering trainings.

Discussions on legislative transparency and integrity with regard to lobbying are ongoing. Between March and May 2022, the Anti-Corruption Select Committee of the Parliament organised a series of three roundtables with the participation of external stakeholders⁴⁸ to discuss legislative transparency and integrity with regard to lobbying. As a second step, concrete recommendations are to be drafted based on the discussions that were carried out⁴⁹.

The Guidelines on Lobbying are being implemented and the first evaluation of their effectiveness has been carried out. The Ministry of Justice, together with Transparency International Estonia and the relevant network, have carried out an analysis of the implementation of these Guidelines on lobbying⁵⁰. The assessment concluded that certain measures are needed, such as ensuring accuracy and timeliness of information⁵¹. The ranking of “best performers” will be published by the autumn of 2022; this is expected to encourage and support the further implementation of the Guidelines on lobbying. According to the authorities and stakeholders⁵², the preliminary conclusion is that the ministries generally follow the Guidelines adequately, while there are some gaps in the way they are implemented by the government agencies and top officials⁵³. At the same time there is no enforcement mechanism in case the Guidelines on lobbying are not followed.

There are shortcomings in the implementation of the Guidelines on Conflicts of Interest. The Guidelines for ministers and their advisers to avoid conflicts of interest have been in

⁴³ Opening of three cases related to high-level officials from the local and national administration were reported. See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Estonia, p. 7.

⁴⁴ Information received from the Prosecutor’s Office in the context of the country visit to Estonia.

⁴⁵ Only one could be considered high-level corruption.

⁴⁶ The Northern District Prosecutor's Office and the Office of the Prosecutor General have created a position for a specialised consultant with financial knowledge, which is used also in corruption proceedings. Information received from the Ministry of Justice following the country visit to Estonia.

⁴⁷ Such as financial investigations in connection with fraud and corruption cases, anti-money laundering, virtual assets, detection of corruption, procurement procedures, corruption indications and red flags. Information received from the Ministry of Justice in writing following the country visit to Estonia.

⁴⁸ The participants include, among others, Group of States against Corruption of the Council of Europe (GRECO) and Transparency International Estonia.

⁴⁹ Information received from the Anti-Corruption Select Committee in writing following the country visit to Estonia.

⁵⁰ Estonian Government (2021), Good Practice in Communicating with Lobbyists for Officials. Summary of lobby meetings.

⁵¹ E.g. a uniform format in which data are to be made public, possible technical platform to share information

⁵² Information received in the context of the country visit in Estonia from the Ministry of Justice and Transparency International Estonia.

⁵³ Information received from the Ministry of Justice in the context of the country visit in Estonia.

force since March 2021. They require the minister or adviser to familiarise themselves with the Guidelines and encourage the completion of a dedicated online course⁵⁴. However, no evaluation of their efficacy is planned and no measures are foreseen in case the Guidelines are not followed⁵⁵. In view of ensuring proper implementation, in February 2022 the Minister of Justice reminded all ministers and their advisers that they must participate and pass the test in the e-training course⁵⁶. GRECO assessed that the rules on ‘revolving doors’, included in the guidelines, represent a concrete and positive step forward⁵⁷. However, overall, the Guidelines lack an effective verification and monitoring mechanism. The lack of evaluation of the implementation of the Guidelines does not allow to assess whether they have met their objectives. Also, the Guidelines lack an enforcement mechanism. The draft legislation on ‘revolving doors’ is currently under consideration by the Government. The draft foresees a cooling off period after the term of office of the Government members has expired⁵⁸.

The first feedback on the implementation of the Anti-Corruption Act is positive. Last year, the obligation to declare interests was extended to ministers’ political advisers and the deputy secretaries-general of ministries⁵⁹. According to GRECO, the amendments as presented to the Parliament were a positive development⁶⁰. Overall, the initial feedback on the implementation of the amendments to the Anti-Corruption Act that entered into force in April 2021 indicates their usefulness in terms of drawing attention to registering the declarations of interest and ensuring clarity of the role of political advisors⁶¹.

The Minister of Justice will soon submit the draft law aimed at strengthening the powers of the Political Parties’ Financing Surveillance Committee. In October 2021, the Ministry of Justice published a ‘legislative intent’⁶² to amend the Political Parties Act with a view to increase the powers of the Political Parties’ Financing Surveillance Committee. The draft law would extend the investigating powers of the Committee through a legal basis for requesting documents, information and explanations from third parties. Currently, the Committee can make such requests but the third parties are under no obligation to respond. Furthermore, the draft law would introduce a deadline for returning prohibited donations and would introduce compulsory enforcement of Committee’s request to transfer the value of these donations into state budget. Finally, political parties and members of political parties would be prohibited from using public funds for political activities of the party. Currently,

⁵⁴ Estonian Government (2021), Guidelines for Ministers and their advisers to avoid conflicts of interest, paras. 12-13.

⁵⁵ Information received from the Ministry of Justice in the context of the country visit to Estonia.

⁵⁶ The turnout for the completion of the online course has not been promising: As of 23 February 2022, 1737 public officials have passed the e-test for the Moodle online course. In addition, there are between 4700-7800 views for each training video in YouTube, depending on the topic, however, there is no disaggregated data on how many of them are actually from public officials concerned by the Guidelines for conflict of interest.

⁵⁷ GRECO Fifth Evaluation Round – Compliance Report, p. 6 and 7.

⁵⁸ Written contribution from the Ministry of Justice in the context of the country visit.

⁵⁹ Act amending the Anti-Corruption Act 323 SE of 6.04.2021. The Ministry of Justice has identified that even before those rules were introduced several ministries had a practice of encouraging their deputy ministers to declare their assets, Information received from the Ministry of Justice in the context of the country visit to Estonia.

⁶⁰ GRECO Fifth Evaluation Round – Compliance Report, p. 8-9. The new amendment entered into force on the 23 April 2021.

⁶¹ Written contribution received from the Anti-Corruption Select Committee in the context of the country visit to Estonia.

⁶² 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.

this only applies during periods of election campaigns. Following the public consultation, the Ministry of Justice is preparing the draft law and envisages to send it to the Government by August 2022, before tabling it at Parliament⁶³.

On whistleblower protection, the legislative procedure for a new comprehensive regulation is ongoing. On 17 January 2022, the Legal Affairs Committee adopted the draft Act on the Protection of Whistleblowers⁶⁴ which was a positive step according to both the Government and the stakeholders⁶⁵. 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. It contains provisions on safeguarding the confidentiality of whistleblowers also in corruption cases⁶⁶.

III. MEDIA PLURALISM AND MEDIA FREEDOM

In Estonia, the freedom of expression finds legal and formal protection in the Constitution⁶⁷. Secondary legislation expressly ensures the right of journalists to protect their sources, fosters media freedom in the radio and television sector⁶⁸ and provides safeguards for the independence of the public service broadcaster⁶⁹. The right to information is explicitly recognised in the Constitution, in the Public Information Act⁷⁰ and in the Personal Data Protection Act⁷¹. Legislation has been adopted to transpose the revised Audio-Visual Media Services Directive (AVMSD)⁷².

Estonia has adopted legislation to strengthen the independence of the media regulator – the Consumer Protection and Technical Regulatory Authority. Amendments to the Media Services Act and amendments to other associated acts⁷³, transposing the revised AVMSD⁷⁴, which were under preparation during the previous two Rule of Law Reports⁷⁵, were formally adopted on 16 February 2022 and are being implemented. The amended Media Services Act entails changes in functions and competences of the national media regulator, which has been operating as an administrative body of the Ministry of Economic Affairs and Communications. A specific provision validates the independent and impartial status of the media regulator in carrying out its tasks, aiming to fulfil the requirements on independence

⁶³ Information received from the Ministry of Justice in the context of the country visit to Estonia.

⁶⁴ Draft Whistleblower Protection Act 504 SE.

⁶⁵ Information received from the Ministry of Justice during the country visit to Estonia.

⁶⁶ This initiative has been proposed in view of aligning the national legislation with the Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law; Information received from the Ministry of Justice in the context of the country visit to Estonia.

⁶⁷ Constitution of the Republic of Estonia, § 44-46.

⁶⁸ Media Services Act, §15 and 13.

⁶⁹ Estonian Public Broadcasting Act.

⁷⁰ Public Information Act.

⁷¹ Personal Data Protection Act.

⁷² Complete transposition of the AVMSD was notified to the Commission on 14 March 2022. Estonia ranks 4th in the 2022 Reporters without Borders World Press Freedom Index compared to 15th in the previous year.

⁷³ Act on Amendments to the Media Services Act and Amendments to Other Associated Acts 327 SE.

⁷⁴ Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU.

⁷⁵ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Estonia, p. 8; 2021 Rule of Law Report, Country Chapter on the rules of law situation in Estonia, p. 9.

enshrined in the revised AVMSD⁷⁶. The media regulator reports that it is able to carry out its tasks efficiently and that it has undergone a structural change at the end of 2021 and now benefits from the support of a new information society division⁷⁷.

Amendments to media law enhance transparency of media ownership. The transposition of the relevant provisions of the revised AVMSD⁷⁸ introduce for the first time a specific obligation for media companies to disclose their ownership structure, including beneficial ownership⁷⁹. General information related to entrepreneurship, including information on beneficial ownership of general and limited partnerships, private and public limited companies and commercial associations⁸⁰, is electronically made available to the public for free in the Business Register⁸¹.

Restrictions to media ownership and concentration are limited in practice. TV and radio companies must obtain a licence from the media regulator to operate. The detailed procedures for operating licenses, including the grounds for their termination, are provided for in the Media Services Act. That act does not lay down any quantitative rules for market entry or operation, but does not allow for a license to be granted in connection with a dominant influence over the management or if this substantially harms competition in the media services market⁸². The media regulator, which grants such activity licences, reports that controlling concentration of media companies is primarily a task for the competition authorities. The abovementioned provision has not been used to deny a licence for any TV or radio company so far, and terminations of licences are very rare⁸³.

The independence of public service media is foreseen by law. Rules for the independence and general conditions of employment of members of the Management Board of the public service media are laid down in the Public Broadcasting Act. Members of the Management Board are appointed by the Public Broadcasting Council composed of members of the Parliament and four external experts. Political influence is minimised by the fact that a two-thirds majority practically requiring acceptance across different political parties is needed for the Public Broadcasting Council to appoint or dismiss members of the Management Board. Furthermore, according to stakeholders, the dismissal rules are robust and difficult to abuse⁸⁴. However, the MPM 2022 points out that apart from the general diversity requirement for the Council, the Public Broadcasting Act does not provide any specific safeguards for the appointment procedure for the Director General of the public service media⁸⁵. There is no regulatory body to monitor the fulfilment of the public service remit but the Supervisory Board reports annually to the Parliament's cultural committee on the activities of the public service media. The public service media's provision of online news, which is not clearly prescribed in law, has generated complaints concerning unfair competition among certain

⁷⁶ Art. 30 of the revised AVMSD.

⁷⁷ Information received from the Consumer Protection and Technical Regulatory Authority in the context of the country visit to Estonia.

⁷⁸ Art. 5 of the revised AVMSD.

⁷⁹ 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).

⁸⁰ Pursuant to Subsections 77(1), (2) and (3) of the Money Laundering and Terrorist Financing Prevention Act.

⁸¹ Business Register is available here: <https://rik.ee/en/e-business-register>.

⁸² § 32 of the Media Services Act.

⁸³ Information received from the Consumer Protection and Technical Regulatory Authority in the context of the country visit to Estonia.

⁸⁴ Information received from the public service media in the context of the country visit to Estonia.

⁸⁵ 2022 Media Pluralism Monitor, country report for Estonia, p. 16.

stakeholders in the private media sector⁸⁶. The ability of the public service media to produce public service content is threatened by staff reductions caused by insufficient funding and current staff working beyond their capacity⁸⁷.

The right of access to information is protected by the Constitution, yet its practical implementation continues to be subject to divergences amongst authorities. As mentioned in the 2020⁸⁸ and 2021⁸⁹ Rule of Law Reports, stakeholders indicated that the public administration tends to deny and/or delay access to public information in certain cases⁹⁰. The reasons often relate to strict interpretation of data protection rules and delays caused by a requirement for centralised responses to journalist enquiries which was further aggravated by the COVID-19 pandemic⁹¹. The MPM 2022 maintains a medium risk with regard to the protection of right to information⁹².

The comprehensive framework for the protection of journalists has remained stable. Since the 2021 Rule of Law Report, the situation regarding the protection of journalists has remained stable. The MPM 2022 notes that there have been no attacks nor public smear campaigns against journalists⁹³ but certain instances of defamation continue to be criminalised⁹⁴. The Estonian procedural law⁹⁵ provides for comprehensive measures to deal with malicious actions and parties to proceedings, which can help to safeguard journalists against abusive lawsuits⁹⁶. The Association of Journalists has launched an information campaign to encourage journalists to report any threats to freedom of the press they may experience⁹⁷. Challenges for journalists are particularly linked to fewer jobs in local papers, although paid digital subscriptions have increased substantially⁹⁸. One alert has been

⁸⁶ ERR news, Private media enterprises file ERR complaint with European Commission (8 September 2020); 2022 Media Pluralism Monitor, country report for Estonia, p. 22.

⁸⁷ Information received from the public service media in the context of the country visit to Estonia.

⁸⁸ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Estonia, p.8.

⁸⁹ 2021 Rule of Law Report, Country Chapter on the rule of law situation in Estonia, p.10.

⁹⁰ According to Article 3 of the 2009 Council of Europe Convention on Access to Official Documents, any limitation to the right of access to official documents, such as a limitation aiming to protect privacy and other legitimate private interests, should be set down precisely in law, be necessary in a democratic society and be proportionate to the stated objective; access to information contained in an official document should not be refused if there is an overriding public interest in disclosure; parties to the Convention are encouraged to consider setting time limits beyond which the limitations to the right of access to official documents would no longer apply.

⁹¹ Information received from the Estonian Press Council and the Estonian Association of Journalists in the context of the country visit to Estonia and 2022 Media Pluralism Monitor, country report for Estonia, pp. 9-10. See also the 2020 Rule of Law Report, Country Chapter on the rule of law situation in Estonia, pp. 8-9 and the 2021 Rule of Law Report, Country Chapter on the rule of law situation in Estonia, p. 10.

⁹² 2022 Media Pluralism Monitor, country report for Estonia, p. 9.

⁹³ 2022 Media Pluralism Monitor, country report for Estonia, p. 10.

⁹⁴ Penal Code § 247, 275 and 305.

⁹⁵ Code of Civil Procedure, § 45, 162, 168, 169, 200, 371(2), 383, 391, 423(2); Input from Estonia for the 2022 Rule of Law Report, p. 6.

⁹⁶ For example, the court may reject or dismiss a statement of claim, if, based on the factual circumstances presented as the cause of the court claim, a 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.

⁹⁷ Information received from the Estonian Association of Journalists in the context of the country visit to Estonia.

⁹⁸ Information received from the Estonian Association of Journalists and written contribution received by the Ministry of Culture in the context of the country visit to Estonia; Estonian Media Companies Association (2021), Statistics 2021.

published on the Council of Europe’s Platform to promote the protection of journalism and safety of journalists⁹⁹. This concerned one case where fines were imposed by a court of first instance on two journalists and a news outlet after they published information about pre-trial criminal proceedings without seeking permission or informing the prosecutor’s office, which is required under the law¹⁰⁰. The implications of the ruling¹⁰¹ were considered by journalists to constitute an undue interference with the right to free speech and allegedly undermine press freedom¹⁰². The decision has since then been overturned by the appeal court¹⁰³.

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 complaint¹⁰⁴. In addition to the justice system, the Office of the Chancellor for Justice (ombudsperson), which has an A-status accreditation from GANHRI¹⁰⁵, plays a role¹⁰⁶ in the system of checks and balances. Involvement of the public and stakeholders in public affairs is supported by advanced Information and Communication Technology tools.

The project creating a new digital platform to further improve the process of enactment of laws entered its first implementation phases. The Ministry of Justice continued the work on the ‘Co-creation workspace project’, which aims to create a new digital platform to improve the law-making process and improve stakeholders’ involvement in it. Even though the current public consultation process in Estonia already takes place via an online platform, the new project, which would replace the current online platform for public consultation, is meant to improve the visibility of the ongoing procedures and encourage wider public participation. Stakeholders have expressed optimism in the new platform as it would allow them to have better overview of the ongoing open procedures for public consultations¹⁰⁷. Phase I of the project offers drafters of legislation a workspace, which allows multiple

⁹⁹ Council of Europe, Platform to promote the protection of journalism and safety of journalists, Estonia

¹⁰⁰ § 214 of the Criminal Procedure Code stipulates that information concerning pre-trial proceedings can be disclosed only with the permission of and to the extent specified by a Prosecutor’s Office and further subject to a number of conditions. With the exception of accused or suspected parties to those pre-trial criminal proceedings, failure to comply with said procedure may be subject to a fine.

¹⁰¹ Harju County Court, order of 14 April 2022, 1-22-1949.

¹⁰² European Federation of Journalists Estonia (2022), Criminal fines for journalists over public interest reporting send dangerous signal; ERR and Estonian Association of Media Enterprises (2022), Private media firms join ERR in public address on press freedoms.

¹⁰³ The court of appeal ruled that the imposition of fines is discretionary and the court of first instance had failed to demonstrate that they were justified in this specific case. Tallinn Circuit Court, order of 14 June 2022, 11-22-1949. On 28 June 2022, the order of the Tallinn Circuit Court was appealed and is currently pending before the Supreme Court.

¹⁰⁴ § 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 Parliament.

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

¹⁰⁵ Global Alliance of National Human Rights Institutions.

¹⁰⁶ The Chancellor of Justice has a broad and strong mandate, including acting as the National Preventive Mechanism under the UN Convention Against Torture and the National Monitoring Mechanism under the UN Convention on the Rights of Persons with Disabilities. It also performs the functions as the Ombudsperson for Children.

¹⁰⁷ Information received from the Open Estonia Foundation, Human Rights Center Estonia and Estonian Institute of Human Rights in the context of the country visit to Estonia.

editors/creators to work on the same document on the platform. From January 2022, Phase II and III have been launched in parallel. They focus on internal cooperation between public authorities, launching the new platform for public consultation, and on procedures regarding EU law initiatives¹⁰⁸.

New legislative amendments have provided a broader basis for measures to address health emergencies and exercise supervision. In the course of 2021, the Parliament passed additional amendments to the Communicable Diseases Prevention and Control Act. Previous amendments gave the Health Board and the Government powers to adopt measures for the prevention and control of the COVID-19 pandemic¹⁰⁹. The 2021 amendments foresee that in the event of a particularly dangerous infectious disease and an unavoidable necessity, the Health Board and the Government may also close public institutions and private establishments 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 new amendments also allow for involving 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 these amendments were enacted, there had been no regulation of the involvement of law enforcement authorities and the Health Board¹¹⁰. Furthermore, according to the amendments, people could also be held criminally liable for breaching other requirements established by the Government or the Health Board¹¹¹. As mentioned in the 2021 Rule of Law Report, all COVID-19 pandemic-related Orders of the Government contain information on how they can be legally challenged¹¹². During 2021, there were 68 complaints, one of which was closed with a final decision, five others were closed for other reasons, in two cases there has been a judgment but it has not become final yet and in three cases the judgments of the first instance courts have been appealed. In 45 cases, a decision on interim relief has been made. All requests by applicants for interim relief have been denied or decisions for interim relief have been appealed by the Government and have been overturned by the Circuit Court¹¹³.

On 1 January 2022, Estonia had one leading judgment of the European Court of Human Rights pending implementation¹¹⁴. At that time, Estonia's rate of leading judgments from the past 10 years that remained pending was only at 5% and the average time

¹⁰⁸ Written contribution from the Ministry of Justice in the context of the country visit.

¹⁰⁹ § 28 of the Communicable Diseases Prevention and Control Act. Amendments adopted on 12 May 2021.

¹¹⁰ The Health Board has been able to cooperate with them only through applications for professional assistance or exchange of officials. The new amendments will simplify and speed up the involvement by allowing the Government to decide on the involvement of a law enforcement agencies at the proposal of the Health Board.

¹¹¹ § 27 and § 28 of the Communicable Diseases Prevention and Control Act.

¹¹² "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".

¹¹³ Written contribution from the Ministry of Justice in the context of the country visit.

¹¹⁴ The adoption of necessary execution measures for a judgment by the European Court of Human Rights is supervised by the Committee of Ministers of the Council of Europe. It is the Committee's practice to group cases against a State requiring similar execution measures, particularly general measures, and examine them jointly. The first case in the group is designated as the leading case as regards the supervision of the general measures and repetitive cases within the group can be closed when it is assessed that all possible individual measures needed to provide redress to the applicant have been taken.

that the judgment had been pending implementation was only 3 months¹¹⁵. The case, pending since September¹¹⁶, concerns a failure to conduct an effective criminal investigation into allegations of abuse¹¹⁷. On 1 July 2022, the number of leading judgments pending implementation has increased to three¹¹⁸.

The civic space in Estonia remains open¹¹⁹ and the Cohesive Estonia Development Plan 2021-2030 replaces or integrates all previous strategies and plans. On 18 November 2021, the Cohesive Estonia Plan 2021-2030 was adopted. The plan integrates or substitutes all previous plans that were adopted on the same topic. The Cohesive Estonian Development Plan¹²⁰ aims, among others, at supporting the activities of Civil Society Organisations (CSOs). The new plan, developed with the engagement of Civil Society Organisations does not substantially differ from the previous programme¹²¹, but its duration is extended from five to ten years. Furthermore, the work of CSOs is supported through the National Foundation of Civil Society, which is a state-financed civil society fund, development and support centre that focuses on helping CSOs build their capacity to function purposefully and effectively¹²². However, the budget of the fund has not increased for years¹²³.

¹¹⁵ All figures are calculated by the European Implementation Network and are based on the number of cases that are considered pending at the annual cut-off date of 1 January 2022. See the Contribution from the European Implementation Network for the 2022 Rule of Law Report, p. 3.

¹¹⁶ The applicant's representatives have requested the reopening of the proceedings, which is pending.

¹¹⁷ Judgment of the European Court of Human Rights of 22 June 2021, *R.B. v. Estonia*, 22597/16, pending implementation since 2021.

¹¹⁸ Data according to the online database of the Council of Europe (HUDOC)

¹¹⁹ See rating given by Civicus, Estonia. Ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

¹²⁰ While the 2020 Rule of Law Report noted the development of the Civil Society Development Plan 2021-2030, and the 2021 Report mentioned the launch of the Civil Society Programme 2021-2024 to replace it, in 2021, Estonia adopted the Cohesive Estonian Development Plan, which integrates a number of development plans and strategies.

¹²¹ The plan contains actions such as promoting the ability of NGOs to collect donations, including providing support and counselling to NGOs; making the funding for NGOs more transparent; supporting capacity building of NGOs through offering a diversity of funding opportunities and reducing the dependency on project grants; Estonian Government (2021), *Cohesive Estonia Development Plan 2021-2030*, pp. 29-31.

¹²² Input from Estonia for the 2022 Rule of Law Report, p. 13.

¹²³ Information received from the Open Estonia Foundation, Human Rights Center Estonia and Estonian Institute of Human Rights 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 2022 Rule of Law Report can be found at https://ec.europa.eu/info/publications/2022-rule-law-report-targeted-stakeholder-consultation_en.*

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Annex II: Country visit to Estonia

The Commission services held virtual meetings in February 2022 with:

- Anti-corruption Select Committee
- Consumer protection and Technical Regulatory Authority
- Estonian Association of Journalists
- Estonian Association of Judges
- Estonian Bar Association
- Estonian Institute of Human Rights
- Estonian Internal Security Service
- Estonian Public Broadcasting
- Estonian Press Council
- Human Rights Center Estonia
- Ministry of Culture
- Ministry of Finance
- Ministry of Foreign Affairs
- Ministry of Interior
- Ministry of Justice
- Office of the Chancellor of Justice
- Open Estonia Foundation
- Political Party Financing Surveillance Committee
- National 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
- Article 19
- Civil Liberties Union for Europe
- Civil Society Europe
- European Centre for Press and Media Freedom
- European Civic Forum
- European Federation of Journalists
- European Partnership for Democracy
- European Youth Forum
- Free Press Unlimited
- Human Rights Watch
- ILGA Europe
- International Federation for Human Rights (FIDH)
- International Press Institute
- Open Society European Policy Institute (OSEPI)
- Osservatorio Balcani e Caucaso Transeuropa
- Philea
- Reporters Without Borders
- Transparency International Europe