State of the Rule of Law in Europe in 2022

Reports from National Human Rights Institutions

Estonia

ENNHRI European Network of National Human Rights Institutions

Õiguskantsler
Chancellor of Justice

Estonia

Chancellor of Justice

Impact of 2021 rule of law reporting

Impact on the Institution's work

Rule of law is and always has been an integral part of the Chancellor's work when supervising the activities of state agencies. More specifically, this involves monitoring whether laws and other legislation organising the lives of people, institutions and companies are compatible with the Constitution and other laws and whether applicable rules are also lawfully implemented. The core of the state based on the rule of law is the principle that everyone is equal before the law. The principle of separation of powers and independent institutions must guarantee a situation where the lawfulness of norms can be checked and, if necessary, contested.

References

- https://www.oiguskantsler.ee/annual-report-2021/

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Chancellor of Justice was accredited with A-status in December 2020 (1). The Sub-Committee on Accreditation welcomed the establishment of the Chancellor of Justice as an NHRI and commended its efforts to promote and protect human rights in Estonia since then.

Regarding the selection and appointment of the Chancellor of Justice, the Estonian NHRI clarified that, in practice, the Estonian President consults all political parties represented in the Parliament as well as the legal community before submitting a proposal to the Parliament. However, the SCA took the view that the process enshrined in the NHRI's enabling legislation was not sufficiently broad and transparent. The SCA encouraged the Chancellor of Justice to advocate for the formalization and application of a process that includes all requirements under the UN Paris Principles and SCA General Observations.

Further, the SCA noted that the legislation is silent on the number of times the Chancellor can be re-appointed, which leaves open the possibility of unlimited tenure. The Chancellor

of Justice reports that, in the past, re-appointment has not occurred. Nevertheless, the SCA encouraged the NHRI to advocate for amendments to ensure that the term of office be limited to one re-appointment.

Finally, the SCA encouraged the Estonian NHRI to advocate for an appropriate legislative amendment to make explicit its mandate to encourage ratification of and accession to regional and international human rights instruments. However, the SCA acknowledged that the Estonian NHRI interprets its mandate broadly and carries out activities in this regard in practice.

References

(1) https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/SCA Report December 2020-24012021-En.pdf

Regulatory framework

The NHRI has a constitutional basis and has the mandate to contribute to access to justice for individuals, including through complaints handling, strategic litigation before courts, providing legal assistance to individuals and carrying out awareness-raising.

The national regulatory framework applicable to the institution has not changed since the 2021 report.

Enabling and safe space

The relevant state authorities have good awareness of the NHRIs' mandate, independence and role.

The Chancellor of Justice has unrestricted access to documents, other materials and areas, which are in the possession of the agencies under supervision (para. 27 of the Chancellor of Justice Act). Agencies and persons shall enable the Chancellor of Justice unconditional and immediate opportunity to receive all documents and other materials in the possession of the agencies and persons and access to relevant places. Additionally, para. 28 provides that the Chancellor of Justice has the right to **request information** necessary for the performance of their duties and agencies under supervision, parties to conciliation proceedings, other persons and agencies shall communicate such **information within the term set by the Chancellor of Justice**. Para. 35, subsection 2 provides that the Chancellor of Justice has the right to apply for commencement of disciplinary proceedings against officials who obstruct the activities of the Chancellor of Justice or his or her advisers.

The addressees of the NHRI's recommendations are legally obliged to provide a timely and reasoned reply and overall the recommendations are usually taken into account. Threats and harassment and any other forms of intimidation against the NHRI, heads of institution

and staff are dealt with in accordance with applicable criminal law provisions. The Chancellor of Justice may be removed from office by a court judgment only (paragraph 140 of the Constitution) and criminal charges may be brought against the Chancellor only on the proposal of the President and with the consent of the majority of the Parliament (paragraph 145 of the Constitution and paragraph 11 of the Chancellor of Justice Act).

References

- https://www.riigiteataja.ee/en/eli/528052020006/consolide

Human rights defenders and civil society space

Laws and practices negatively impacting on civil society space and/or on human rights defenders' activities

Although COVID-19 related regulations have set certain limitations to the exercise of the right to freedom of assembly, such as distancing rules or limitations to the number of participants in some spaces, and created tensions in people's everyday lives, general observations demonstrate that protests (assemblies) have been taking place safely and without violence, including protests questioning the Government and the restrictions.

NHRI's role in promoting and protecting civil society space and human rights defenders

We have direct relationships with human rights NGOs and human rights defenders through our three advisory bodies (Advisory Committee on Human Rights, Advisory Council for Persons with Disabilities, Advisory Committee for Children's Rights). When preparing for the last Universal Periodic Review and review on the implementation of the Convention of the Rights of Persons with Disabilities (CRPD), the Chancellor was in contact with relevant NGOs to coordinate some of the recommendations and focus points (while remaining independent).

The Chancellor monitors civil society space through responding to and investigating individual complaints and through monitoring developments more broadly (including those reported in the media).

Checks and balances

The principle of good administration means, inter alia, that state and local government officials communicate with people politely and to the point. State agencies must also organise their work so that no one is left uninformed or in an uncertain or simply confusing situation as a result of action or inaction by the agencies.

People contacting the Chancellor are often dissatisfied with how state agencies deal with their requests and applications. (1) The problem starts right from an agency's failure to register a person's application. Applications and other documents must be registered in the document register no later than on the working day following their receipt. This requirement is laid down by the Public Information Act (§ 12(1) clause 1). The requirement of registering documents is not an end in itself but helps to ensure that each application leaves a trace and is also dealt with. It is unlawful to keep an application simply on an official's desk or in the e-mail inbox. Due to failure to register applications and requests, the Chancellor had to admonish the Agricultural Board (2), Kohtla-Järve City Government (3) as well as Kose Rural Municipal Government.

Põlva and Rakvere town and Tallinn city and Valga rural municipality failed to reply by deadline to people's memorandums and requests for explanation. Problems with the respect for deadlines also occurred in the Ministry of Justice, the Ministry of the Interior, the Ministry of Social Affairs, and the Health Board. The law stipulates that memorandums and requests for explanation must be replied to promptly but no later than 30 calendar days as of registration. In complicated cases, the deadline for reply may be extended to two months. In line with the principle of good administration, an individual must be informed at the first opportunity about a delay in replying or extension of the deadline for reply and the reasons for it.

Problems over compliance with the principle of good administration also occurred in organising social services. This was particularly evident in a case in Toila rural municipality where a petitioner complained about being taken to a care home. According to the Chancellor's assessment (4), in terms of applicable law Toila rural municipality clearly violated the petitioner's rights while the municipality's activities in organising the general care service were not lawful. The rural municipal government failed to draw up a record of the petitioner's alleged oral request to obtain the general care service, failed to present data on involving the petitioner in the proceedings for provision of the social service, ensuring their right to be heard and taking account of their will, nor did it prepare an all-round assessment of the petitioner's need for assistance. It also remained unclear in this case in what condition the petitioner was at the time of signing the contract with the care home and whether and what kind of will they expressed at all.

Kohtla-Järve city also failed to resolve an application for housing in line with applicable law. The petitioner requested housing from the city because they lived in an unheated garage and had been identified as lacking capacity for work. The Chancellor found that Kohtla-Järve city had failed to lawfully resolve the petitioner's application for housing (5). The city government failed to assess the petitioner's need for assistance, failed to draw up

a proper decision concerning the petitioner's application, nor did it duly notify the petitioner of the decision.

References

(1) https://www.oiguskantsler.ee/annual-report-2021/rule-of-law#p2

(2) https://www.oiguskantsler.ee/sites/default/files/field_document2/M%C3%A4rgukirjale%20vastamine.pdf

(3) https://www.oiguskantsler.ee/sites/default/files/field_document2/Eluruumi%20taotluse%20lahendamine.pdf

(4) https://www.oiguskantsler.ee/sites/default/files/field_document2/%C3%9Cldhooldusteenuse%20korraldamine.pdf

(5) https://www.oiguskantsler.ee/sites/default/files/field_document2/Eluruumi%20taotluse%20lahendamine.pdf

Trust amongst citizens and between citizens and the public administration

The level of public trust towards public institutions is something that can always be improved. There has been some fluctuation during the pandemic times, but overall people trust different state authorities. For example, 71% of the respondents to a survey carried out in November 2021 stated that they trust the Estonian courts.

References

(1) https://www.riigikohus.ee/et/uudiste-arhiiv/uuring-kohtuid-usaldab-71-protsenti-eestimaalastest

NHRIs as part of the system of checks and balances

As illustrated above, the Chancellor's task is to monitor whether the authorities comply in their work with legislation, including the principle of good administration, and handle complaints concerning the respect of the principle of good administration.

The Chancellor can also make observations when a draft legislation has serious constitutionality issues.

Functioning of the justice system

The Chancellor comes into contact with the work of the courts in three ways. The Chancellor of Justice is a member of the Council for Administration of Courts; the Chancellor may initiate disciplinary proceedings in respect of all judges, and the Chancellor prepares an opinion for the Supreme Court in constitutional review court proceedings.

By virtue of office, the Chancellor serves on the Council for Administration of Courts, which convened for a session twice in the second half of 2020 and four times in the first half of this year (all four sessions were held online).

The complaints received by the Chancellor concerning the functioning of the justice system raised the following issues, as illustrated in the Chancellor's 2021 annual report:

- Isolated cases of alleged misconduct of judges in proceedings: during the reporting period, there were 15 such cases. With regard to some cases, the Chancellor also asked for an explanation from a judge and/or chair of the court. These included a case concerning a judge's conduct during a court hearing, a case concerning the refusal by a judge to allow into a public hearing people wishing to listen to the hearing, a complaint on the failure to ensure proper interpretation at an administrative court hearing and one on the excessive length of judicial proceedings in a civil case. During the reporting year, in none of the cases did the Chancellor find a reason to initiate disciplinary proceedings in respect of a judge.
- Lack of publicity of judicial decisions in administrative court proceedings concerning the social sphere and privacy concerns due to the public disclosure of court decisions concerning criminal offences or misdemeanours.
- Different treatment of witnesses in court.
- Subsequent imposition of aggregate sentences on a person for committing several criminal offences.
- Alleged breaches of the principle of presumption of innocence.

The Chancellor also made a proposal (2) for the Code of Misdemeanour Procedure to be amended so that a person suffering damage as a result of a misdemeanour may access the misdemeanour file after the court decision in the case. The suggested amendments to the Code of Misdemeanour Procedure entered into force on 30 April 2021. Regrettably, petitions received by the Chancellor revealed that even after the amendment to the Code of Misdemeanour Procedure, when issuing a copy of the file, officials of the Police and Border Guard Board still also cover other information in the file, such as the contact data of the person causing the damage or witnesses. Since this is contrary to the aim of amending

the Code of Misdemeanour Procedure, the Chancellor recommended that the Police and Border Guard Board should ensure that a person who has directly suffered damage as a result of a misdemeanour is entitled to examine the entire file, while protecting special categories of personal data of other persons contained in the file according to the law (3).

References

(1) https://www.oiguskantsler.ee/annual-report-2021/rule-of-law#p3

(2) https://www.oiguskantsler.ee/sites/default/files/field_document2/Ettepanek%20viia%20v%C3%A4%C3%A4rteomenetluse%20seadustik%20p%C3%B5hiseadusega%20koosk%C3%B5lla.pdf

(3) https://www.oiguskantsler.ee/sites/default/files/field_document2/V%C3%A4%C3%A4rteomenetluses%20v%C3%A4%C3%A4rteotoimikuga%20tutvumine%20ja%20koopiate%20v%C3%A4ljastamine.pdf

Media freedom, pluralism and safety of journalists

According to the latest World Press Freedom Index, drawn up by Reporters Without Borders, Estonia was highly ranked as 4th out of 180 countries as regards the level of press freedom enjoyed by journalists and media in the country. (1)

The Chancellor of Justice notes that its institution has not found evidences of any pressure to media freedom, pluralism or threats to safety of journalists in Estonia in the reporting year.

The Chancellor also observes that complaints concerning media freedom issues and the respect of ethical standards by media are mostly addressed within the self-governed Media Council, whose decisions are then made public. Moreover, there is a special Media Ethics Commissioner appointed within the Estonian National Broadcasting Company (a public, but independent, entity).

Nonetheless, the Chancellor acknowledges that overall global processes such as digitalization strongly influence the financial future of media. In a small media-market such as Estonia (1.3 million inhabitants), the resulting economic and market pressures may in the long-term harm media pluralism.

References

https://rsf.org/en/index?year=2022

Corruption

Under the Political Parties Act, the Chancellor of Justice appoints one member to the Political Parties Financing Surveillance Committee. The Chancellor has appointed the editor-in-chief of the cultural paper *Sirp*, Kaarel Tarand, as a member of the Committee. The Committee and its members are independent, they have no obligation to report their activities to the persons or institutions appointing them, and they also do not accept or receive instructions from the persons appointing them.

In spring 2021, ten years had passed from setting up the Political Parties Financing Surveillance Committee in its present form. This has been a sufficiently long time to reveal whether and how well the established procedure leads to the desired objective, and whether supervision is effective and economical and supports law-abiding behaviour by political parties and election coalitions equated with them. And not only this. Supervision is also a sort of a mirror: it shows that statutory financing rules – not only control – contribute to fair competition and the development of representative democracy exercised through political parties.

When an attempt was made a year ago in the Riigikogu to change the current procedure for supervision, unfortunately the approach initially pursued was not of the kind that would have led to a solution. Instead, as of this spring, work has been ongoing on remedying shortcomings in the Political Parties Act based on the so-called traditional approach, beginning from collecting and analysing data and preparing a draft by experts in the Ministry of Justice. However, regardless of who does the preparatory work, final political decisions are for the parliament to make. Both sides must be weighed in combination, i.e. both financing of political parties and supervision thereof. The choice of tools provided for supervision depends on what is allowed and what is prohibited in financing political parties.

The period of the global corona pandemic has very well revealed why every detail in the structure of state power is important. The idea and purpose of supervision over financing of political parties is not to undermine the authority of political parties. Likewise, it cannot be the aim of political parties to discredit supervision. Cooperation carried out in line with clear and precise rules should ensure that public power in its entirety, including political parties as its building blocks, enjoys sufficient trust in the eyes of citizens. There could be more trust in political parties, and shortcomings in this respect also cast a shadow on state institutions. If citizens do not trust political parties, they do not trust the state, which in turn affects the state's ability to succeed: this time in dealing with the health crisis, next time with some other crisis originating independently of Estonia which, nevertheless, the

Estonian state must deal with. Thus, in establishing rules for financing and supervising political parties, human lives and openness of society are indirectly at stake.

Possible changes in the set-up and financing of institutions must be weighed carefully, yet quickly, because the entry into force of the changes should not hamper election of the next composition of the Riigikogu. Everyone concerned – recipients, donors and guardians of money – must be given time and opportunity to prepare and get adjusted. After all, it is in the interests of everyone involved that competition is fair and a corrupt act by a single individual involved in the system should not cause unfair reputational damage to their colleagues who abide by the rules.

As is usual in years when elections of municipal councils take place, the focus of supervision also falls on local authorities. Compared to the time four years ago, some improvement in the conduct of candidates running for municipal councils may be perceived, including in the use of communication channels of local authorities, or to be precise, in non-use of those channels for political advertising.

Based on complaints received by the surveillance committee, room for improving the situation still exists, but undoubtedly the persistent work of the Political Parties Financing Surveillance Committee, precepts issued by it and court rulings have had an effect at least on the conduct of political parties in power in larger local authorities. At the same time, we should not forget the question whether resources spent in the course of supervision to investigate misuse of an insignificant monetary amount have indeed been used for a good purpose and whether an indirect consequence of burdening the committee with these acts might not be that a larger – in monetary terms more significant – violation, creating an unfair advantage for the perpetrator, might evade proper scrutiny.

In this case, an example of citizens seeing most directly how extensive the effect of changing just one detail in the law can be is the abolition of the restriction on outdoor political advertising during the active campaign period. This should inspire the Riigikogu to deal swiftly and properly with other details of political competition as well.

References

(1) https://www.oiguskantsler.ee/annual-report-2021/rule-of-law#p8

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

Rule of law needs care and attention at all times, also in crisis situation. Our last Annual Report has a long section on Rule of Law and COVID-19 (1). In the following paragraphs we give an overview of some of the main issues observed.

The Chancellor had to draw attention to the fact that a local authority cannot impose restrictions on fundamental rights **without a legal basis** by merely referring to the corona situation (2). The Chancellor also noted that the law does not allow a police prefect to enact a restriction overnight on sale of alcoholic drinks **by simply notifying the public about the order** (3).

During the reporting year, the Chancellor explained repeatedly the general points of departure for imposing restrictions with a view to combating the spread of COVID-19 (4). In the case of combating an infectious disease, it should be kept in mind that the principle of proportionality enshrined in § 11 of the Estonian Constitution allows imposition only of those restrictions which are unavoidably necessary to prevent the spread of the infection. Each restriction has to be assessed individually as well as the aggregate of all the restrictions simultaneously imposed.

The Chancellor also had to explain repeatedly the legal nature of the corona restrictions imposed by order of the Government of the Republic (5). Certainly, the fact that resolving an epidemic situation has been left for the Government has some advantages. In particular, this enables a quick response in a changing situation. However, on the other hand, it has brought about decisions passed at very short notice (sometimes essentially overnight). This does not leave any possibility for public debate. It is not normal if undertakings are given only 24 hours to express an opinion concerning an important change that affects them significantly (6). It would be understandable if such overnight changes were due to an unexpected change in the epidemic situation requiring extremely rapid intervention. However, such rapid changes cannot be acceptable when the emergence of a situation was known long in advance (in which case planning the changes should have started earlier) or if the situation allows giving those concerned a reasonable time for expressing an opinion.

References

(1) https://www.oiguskantsler.ee/annual-report-2021/rule-of-law#p1

(2) https://www.oiguskantsler.ee/sites/default/files/field_document2/M%C3%A4rgukiri%20Peipsi%C3%A4%C3%A4re%20vallas%20SARS-CoV-2%20viiruse%20leviku%20t%C3%B5kestamiseks%20v%C3%B5etud%20meetmete%20suhtes.pdf

(3) https://www.oiguskantsler.ee/sites/default/files/field_document2/Alkohoolsete%20jookide%20jaem%C3%BC%C3%BCgi%20piiramine.pdf

(4) https://www.oiguskantsler.ee/sites/default/files/field_document2/Covid-19 levikuga seotud piirangutest.pdf

(5) https://www.oiguskantsler.ee/sites/default/files/field_document2/Vastus%20%C3%B5igusaktide%20eristamise%20ning%20COVID-19%20haiguse%20levikuga%20seotud%20piirangute%20%C3%B5igusliku%20iseloomu%20ja%20vaidlustamise%20kohta.pdf

(6) https://leht.postimees.ee/7314392/vaikeettevotjad-kardavad-et-valitsus-paneb-nad-vaktsineerimisrindel-tanki

Most important challenges due to COVID-19 for the NHRI's functioning

Despite the challenging situation, the institution continued to carry out inspection visits as National Preventive Mechanism throughout the pandemic.

References

(1) https://www.oiguskantsler.ee/annual-report-2021/inspection-visits