



FUNDAMENTAL RIGHTS
AND THE RULE OF LAW

Report on the visit to Estonia Authorities' observations on the report

12-13 October 2023



European Economic
and Social Committee

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Six members took part in the country visit to Estonia. The delegation met with several representatives of civil society, specifically civil society organisations (CSOs) and social partners, on the one hand, and the Estonian authorities on the other. The aim of this report is to faithfully reflect and reproduce the views of civil society.

1. Fundamental rights related to the social partners

Participants in this session mentioned their appreciation for the regular **tripartite meetings** (employers-trade unions-government) to discuss the labour laws. They regretted the fact that the last meeting had been over a year ago (as of October 2023), although they understood that this was linked to the turbulent political situation in Estonia.

According to the participants, a good legal framework and good practices for the inclusion of the social partners in government policy-making processes existed; however, the implementation was problematic. For example, the **consultation period** was often deemed too short and the social partners claimed that it did not allow them enough time to consult internally. Participants felt that there had been a recent rise in this phenomenon of consultation periods that were too short, particularly since the start of the COVID-19 pandemic.

Participants considered that the **social partners' capacity was limited** for various reasons. They explained that their organisations depended on membership fees and that Estonia had amongst the lowest density of union coverage in the EU. Participants believed that this low union density could be linked to the demographic situation in Estonia, a lack of education about trade unions, the large number of small companies, and a lack of capacity in the trade unions to promote their work and therefore recruit more members. It was also believed that some employers might threaten their employees against joining unions, and reference was made to the situation of Russian-speaking dockworkers.

Participants agreed that the Estonian workforce was not **sufficiently aware of their right to freedom of association** as part of social partner organisations. Participants also considered that the lack of funding and staff in the **labour inspectorate** was problematic.

2. Freedom of association and assembly

Participants considered that there were **no unjust restrictions** that would limit the freedom of assembly or activity of CSOs in Estonia.

Participants explained that the Estonian CSO community was diverse and that **functioning strategic partnerships** were in place between the ministries and umbrella CSOs. These partnerships allowed for selected CSOs to receive funding and to work together with ministries on policy development and implementation. However, a downside of the overall good availability of public funding was that some CSOs were too dependent on government funds. In these cases, the freedom of the CSO to publicly criticise could depend on the minister and their team. Participants also noticed that 2022 had seen a big increase in private donations to CSOs due to the war in Ukraine.

As far as **participation of CSOs in public affairs** was concerned, participants said that bills being discussed in parliament had to indicate the way in which CSOs had been involved in the process of drafting of the bill. Participants appreciated this cooperation between CSOs and public authorities, which they believed was not questioned in Estonia.

Participants, however, explained that there was a conflict of approach and organisational structures concerning the **consultations**: While CSOs would like to be consulted in a flexible manner, the ministries preferred structured consultations, which was criticised for sometimes overly limiting the ability to express ideas fully. Generally speaking, participants considered that the time given by the ministries for consultation on draft policies needed to be extended.

Participants explained that the fabric of CSOs was less dense in the **Russian-speaking groups** than in the rest of the population.

3. Freedom of expression and freedom of the media

Participants agreed that freedom of expression and media freedom were **good overall** in Estonia. They explained that it was safe for journalists to express themselves, but they also considered that self-censorship might also exist in relation to a journalist's loyalty to their employer. Participants believed that freelance journalists' socio-economic situations were at a disadvantage in the Estonian media business model. A participant called for a fund to be set up to support freelance journalism.

Participants believed that journalists stood up efficiently for the protection of **press freedom**. Participants noted that the Estonian authorities had not expressed much interest in changes to media freedom although it was believed that access to documentation had been considered.

Despite an overall good picture, participants agreed that pressure on media freedom had been growing in the last decade through the use of legislation. Some participants believed that some cases of **strategic lawsuits against public participation (SLAPP)** existed, which the authorities denied based on the criteria used in Courts in 2022-2023. Participants also shared their concerns that some provisions of the European Media Freedom Act, which introduce additional controls by the authorities on journalistic content, could potentially impact press freedom. Precedents involving misuse of the General Data Protection Regulation (GDPR) and copyright legislation were mentioned as examples illustrating such

concerns. Participants also regretted that, in their view, judges in the first-instance courts lacked sufficient training in media law.

Participants noted a **lack of funding** for the public broadcaster and independent regional media outlets.

Participants mentioned that a **hate speech law** was being discussed in Estonia. They generally expressed concern over the use of social media to propagate hate speech. A participant believed that Russian propaganda was the biggest issue for Estonian media's trustworthiness and that this propaganda encouraged discrimination against minority groups such as LGBTQI+.

Participants considered that the **protection of whistle-blowers** was very important in a small society where loyalty came before values, and where one could potentially lose one's job and jeopardise relations for reporting abuses in a public way.

4. The right to non-discrimination

Participants noted that there were generally not many issues regarding how CSOs working against discrimination could operate in Estonia. Participants in this session also welcomed the strategic partnerships that existed between ministries and CSOs, as participants had done in other sessions. Participants referred to research showing that the legislative procedure had been positively impacted by these partnerships. Nevertheless, according to participants, the **consultation** of anti-discrimination CSOs by the authorities during the policy-drafting process remained inconsistent. It was considered problematic that the processes seemed to vary depending on the minister and their cabinet. Participants explained that some politicians in power chose not to consult CSOs in drafting laws, despite the existence of best practice documents that indicated the need for consultation. Participants asked for more meaningful and longer consultation periods.

Participants believed that there was a **lack of funding** available for CSOs working against discrimination in Estonia. They also considered problematic that access to social services was inconsistent, both regionally and within target groups. It was explained that social entrepreneurship was growing in Estonia, but a participant lamented that CSOs were not eligible for the funding available for that sector due to their non-profit status.

Participants complained that the **equal treatment act** did not adequately consider the rights of people with disabilities. They asserted that the relevant CSOs had not been consulted when the act was drafted.

According to a participant, the **rural population** faced indirect discrimination by being ignored in policy-making. It was added that the regional pay gap was increasing and that the elderly were disproportionately impacted by this.

Participants believed that there had been a decrease in general support for **Ukrainian refugees** amongst the Estonian population. It was explained that some Estonians did not want to see refugees moving into their neighbourhood and therefore discriminated against them when renting out housing. Participants believed that the exact number of Ukrainian refugees was not known, which complicated the provision of adequate services. A lack of understanding of their rights amongst asylum-seekers was an issue, as was a long waiting time for the issuing of passports. Access to healthcare was also considered to be complicated for asylum-seekers in Estonia.

Participants expressed concern over the amendments to the **State Borders Act**, and the impact on migrants seeking temporary protection.

Participants explained that **same-sex marriage** and adoption by same-sex couples would be legal as of 2024 in Estonia. A participant however called for further efforts by the authorities to tackle the prejudice against same-sex couples and their children that continued to exist in society.

The lack of a national action plan on **gender inequality** was considered problematic by participants. They called a plan to be developed through consultations with CSOs and with due consideration of the regional differences as well as the prevailing gender segregation in certain professions in Estonia.

5. The rule of law

Participants believed that the **highly digitalised Estonian judicial system** was working well and that the length of proceedings and pending cases was amongst the shortest in the EU. This had proven useful during the COVID-19 pandemic, as the courts had continued their work without interruption thanks to such a high level of digitalisation.

Participants considered that there was **equal access** to the courts for all, although the sole litigation language was Estonian, which might deter members of minorities such as the Russian-speaking minority. People living in Estonia that did not speak the language could however request an interpreter from the court.

An issue noted by the participants was the **low fees available under state legal aid**. They explained that court-appointed attorneys under the state aid legal system could not financially sustain their work and were therefore leaving the system.

A participant noted that there was a **shortage of judges**, which was likely to be a long-term issue given the lack of vocations and reduced enrolment in training to become a judge. As a result, judges were faced with an increasingly high workload. They also did not benefit from the same social guarantees as other categories of professions, as their salaries did not include a pension provision. This in turn impacted the attractiveness of the profession.

There was concern among the participants that the new directive to make national competition authorities more effective enforcers (the ECN+ Directive) would endanger **client confidentiality**. They believed that the lack of rules clarifying when a law firm could be searched also threatened client confidentiality.

Participants agreed that Estonia did **not have a general issue with police violence**.

Participants felt that in recent years Estonia had witnessed an increase in **corruption cases**, particularly in the private sector, as a result of better detection of these cases.

**Authorities' observations on the report
on the visit to Estonia
12-13 October 2023**

Observations from the Estonian authorities on the report of the Fundamental Rights and Rule of Law Group on its visit to the Republic of Estonia on 12-13 October 2023

The Estonian Government consider the rule of law and fundamental rights to be the cornerstone principles in a democratic society. Their preservation and protection are of great importance. The Government therefore welcomes the work of the Fundamental Rights and Rule of Law Group (FRRRL) and its efforts to emphasise and promote respect for these values in Member States of the European Union.

We understand that due to the methodology of the EESC FRRRL's work the report reflects mainly the views and perceptions of civil society. Bearing that in mind, we would still like to provide a brief context or perspective for some of the comments made by civil society.

Fundamental rights related to the social partners

Short consultation period on the policy-making process – the number of draft acts prepared in an expedited manner has been higher in recent years due to a number of factors. As mentioned in the report, the COVID-19 pandemic was one of them, but also the war in Ukraine and increased national security concerns have prompted a number of drafts to be prepared urgently. However, what most recently has impacted the perception of tight consultation periods, is the government's priority to decrease the state budget deficit, which has led to legislative amendments aimed at reducing the state's costs and increasing revenues. In autumn 2023, several draft acts related to the state budget, some of which had a significant impact on the business sector, were prepared urgently and without sufficient time for public consultation.

According to Estonian legislation the minimum consultation period for draft acts is fifteen working days, during which other ministries, stakeholders and the public can express their opinion on the draft. The Code of Good Public Engagement, however, foresees a standard period of four weeks as good practice. The Ministry of Justice recently analysed the consultation periods of draft acts. The data confirmed that for amendments directly linked to the adoption of the 2024 state budget the formal consultation period was significantly shorter than for drafts that were not directly linked to the budget (5 working days and fourteen working days, respectively). Therefore, concerns expressed by CSOs are justified. There are, however, specific reasons behind this phenomenon, and it cannot be considered a general shift in practice.

Reasons for social partners' limited capacity – the overall culture of trade unions is not very widespread in Estonia. Various reasons for that are already covered in the report as well. Concerning the reference made to the employers threatening employees against joining unions it should be noted that such threats are illegal under the Trade Unions Act. Violation of freedom of membership in a trade union is also punishable under the Penal Code.

Insufficient awareness of the right to freedom of association – we would like to inform FRRRL that the Ministry of Economic Affairs and Communications is preparing an action plan for promoting social dialogue and collective bargaining. This action plan will include different activities that should, inter alia, help with promoting trade unions and collective agreements. The ministry will also continue to hold tripartite meetings with the participation of social partners and the minister in charge of the policy sector. The last tripartite meeting was held in December 2023.

Freedom of expression and freedom of the media

Self-censorship in relation to a journalist's loyalty to their employer – it should be noted that loyalty to an employer cannot be considered as self-censorship in its true sense. Being loyal to an employer is rather inherent to all democratic countries. When working for a publication that supports certain worldviews, it is rather normal for a journalist to follow some basic principles of the publication without it being self-censorship.

Alleged SLAPP cases – regarding this statement, it should be noted that no strategic lawsuits against public participation (SLAPP) have been identified in Estonia. According to the respective SLAPP proposal and recommendations of the European Commission (initiated in April 2022), there are criteria that should be met to qualify the case as a SLAPP. No such cases were identified in courts during 2022-2023. There might be claims outside the court that from some aspect can be perceived as SLAPP-related by the civil society representatives. Due to the very general information in the report, we cannot comment specifically on the referred cases.

The right to non-discrimination

Funding for CSOs – the state provides multi-annual financial support through the strategic partnership system to the CSOs working in the field of equal opportunities and gender equality. In 2022-2024 strategic partnership projects in this field are carried out with a total funding of 1.5 MEUR.

Complaints about the Equal Treatment Act – as there are no further explanations about the referred shortages, it is difficult to provide specific comments on these statements. Nevertheless, it should be noted that the current Equal Treatment Act (ETA) was adopted in 2008, i.e., the practice criticised in the second sentence – that the relevant CSOs had not been consulted when the act was drafted – is from approximately 15 years ago. Present practice is that relevant CSOs are always provided an opportunity to comment and make proposals to the draft law during the public consultation.

Lack of action plan in gender equality – we would like to inform FRRL that gender equality strategy is part of the national Welfare Development Plan. In 2023, the government adopted the [Welfare Development Plan for 2023-2030](#), which outlines the main challenges and opportunities as well as courses of action for advancing gender equality and equal opportunities. The strategic goals for gender equality set out in the strategy include increasing economic equality between men and women, increasing gender balance in decision-making processes, changing societal attitudes to value and support gender equality, strengthening institutional capacities to promote gender equality, enhancing sectoral law enforcement, and increasing cooperation with stakeholders and CSO-s and ensuring well-functioning advocacy. The development plan is implemented through four-year rolling programmes. The Welfare Development Plan 2023-2030 was developed through public consultations with women's rights organisations, relevant stakeholders and other civic society organisations.

The rule of law

Equal access to the courts – the official working language of courts in the Republic of Estonia is Estonian. At the same time, the opportunity is guaranteed to protect the rights and go to court for those people who do not speak Estonian. It is possible to use interpreters in all courts in Estonia (in civil, criminal and administrative cases).

Shortage of judges – the Ministry of Justice shares concerns about the attractiveness of the judiciary profession and has taken legislative steps to address this issue. A process of amending the law has been

initiated with the aim of making the role of a judge more flexible and appealing to younger generations of legal professionals. The intention is to amend the Courts Act to allow judges to work part-time (currently a very limited option) and engage in entrepreneurial activities, provided these activities align with judicial ethics and do not impede the administration of justice. Additionally, to mitigate the impact of judges retiring due to generational shifts, the Ministry of Justice has amended regulations allowing for the simultaneous presence of an outgoing judge and a new judge in smaller courts.

The ECN+ Directive and client confidentiality – in the latest version of the ECN+ Directive transposition draft, the confidentiality of the communication between the lawyer and the client is guaranteed without any exceptions. This means that any communication is protected, both in connection with the ongoing competition supervision procedure and outside of it, including information exchanged before the procedure in any form (including documents, correspondence, etc.). The bill contains a direct reference to the lawyer's professional secrecy stipulated in the Bar Association Act. The regulation of law office searches has also been specified – namely, such searches can only take place in accordance with the provisions of the Code of Criminal Procedure, which means the highest possible standard of fundamental rights protection in Estonian law.



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