

**IHF FOCUS: elections; freedom of expression and media; judicial system and independence of the judiciary; torture, ill-treatment, police misconduct and detainees' rights; religious intolerance; national minorities; asylum seekers and immigrants; women's rights; rights of the mentally ill and disabled.**

Membership in the EU and NATO remained the top foreign policy priorities, although the election of the former high-ranking communist Arnold Ruutel as President raised expectations for improved relations with Russia.

At the beginning of the year the European Court of Human Rights confirmed the line taken by the Supreme Court in a high-profile case on libel, and in the summer the President vetoed a new Church and Congregations Law due to its controversial provisions on religious communities conducted from abroad.

Existing institutional and financial arrangements restricted the independence of the lower-level courts, and a remaining backlog of cases had an adverse effect on their operation. Conditions in prisons and detention facilities did not improve noticeably in comparison with the previous years and reports on police violence gave rise to serious concern.

The naturalisation rate continued to slow down even though about a fifth of the population still did not have citizenship. As a result of amendments to the Law on the Obligation to Leave the Country and Refusal of Entry, the situation of illegal residents became more vulnerable. In line with the precarious balance between the aim of protecting the state language and the commitment to respect international standards established by the amendments to the Language Law in 2000, the Government introduced legislation to implement the use of the Estonian language in the private sector.

The opening of a regional Ombudsman's (Legal Chancellor's) office in the northeast city of Narva raised expectations that more attention would be paid to the particular problems faced by the Russian-speaking minority, including discrimination.

The immigration quota remained in place, although cases of family reunification were excluded from its scope, while few asylum applications were filed.

Traditional attitudes regarding the role of women were strengthened, and even though statistics showed that women were better educated than men, their position in the labour market and politics was inferior to that of men.

### **Freedom of Expression and Media'**

The media sector remained vibrant, with a high number of print and broadcast outlets in relation to a population of less than 1,4 million people. There was one state-owned and three private TV channels, and four state-owned and more than 30 private radio channels. In the print sector, seven daily newspapers were distributed on the national level and dozens of local and regional publications as well as weekly papers and magazines were published. Both state-owned and private channels broadcasted programmes in Russian and two national dailies were printed in Russian. In general freedom of the media was respected. However, libel remained punishable under criminal law.

◆ In February the European Court of Human Rights issued a decision in the case of *Estonia v. Tammer*, which was admitted in 1998. In 1997 the Estonian Supreme Court upheld a ruling according to which the journalist, Enno Tammer, had insulted Vilja Laanaru, wife of the prominent politician Edgar Savisaar, in an article published in *Postimees* on 3 April 1996. Like the two lower instance courts, the Supreme Court found that Mr Tammer's choice of words in calling Ms Laanaru an "abelulohkuja" (a specific Estonian term for describing a per-

son who has broken up another person's marriage) and a "rongaema" (a term for describing an irresponsible mother who has deserted her child), degraded the honour and dignity of Ms Laanaru, and ordered him to pay a fine of 220 *Kroons* (approximately 14 Euro) and court costs. Alleging that the ruling violated Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Mr Tammer filed a complaint with the European Court of Human Rights. However, in its February decision the Court stated that Mr Tammer could have expressed a negative opinion without resorting to the offensive language used in the 1996 article and that the moderate fine he was sentenced to was not an illegitimate or disproportionate restriction of the freedom to hold opinions and to receive and impart information and ideas without interference provided for in the Convention article at issue.<sup>2</sup>

Many private media outlets continued to face financial difficulties. This was partly due to the tough competition for the limited advertising and subscription revenues, but also due to the fact that no state subsidies were granted.

### **Judicial System and Independence of the Judiciary<sup>3</sup>**

Independence of the judiciary was firmly established by law. In general, state officials, political parties, the media as well as the public also acknowledged the independence of the judiciary. However, some matters remained of concern.

Firstly, the executive branch continued to closely administer district and regional courts, which enabled the Ministry of Justice to exercise indirect influence over decisions taken by the courts. This problem has already been discussed for several years in the country, and in late 2000 the Ministry of Justice sought to address it by proposing a new Courts Act. However, the draft law contained a number of trouble-

some provisions and most judges did not believe that it guaranteed sufficient institutional independence to the courts. In 2001 the examination of the draft law did not advance noticeably.

Secondly, the district and regional courts exercised no separate control over and were only to a minimal extent involved in the planning of their finances. At the same time the budgetary process was not regulated in detail, which left considerable discretion to the executive and legislative branches when allocating funds to the lower-level courts. There was also concern that improvements in the judges' salaries foreseen by the new Courts Act had only been included to encourage judges to refrain from criticising other aspects of the draft law.

Thirdly, remaining shortcomings in the functioning of the courts coincided with a trend of declining public confidence in the judiciary. Close to six percent of all administrative cases were still pending more than two years after their start and 20 percent of all criminal cases were pending for more than one year in the lower level courts.<sup>4</sup> Although the quality of court decisions in the lower instances improved, as evidenced by a growing number of decisions upheld upon appeal, some judges also continued to display uncertainty in their application of the law. It was therefore a positive step that a new strategy for training judges was adopted in February.<sup>5</sup> Further measures to reduce the backlog of cases and to improve the quality of the work of judges were particularly motivated in light of studies indicating that a clear majority of the public perceived courts as slow and inefficient.

### **Torture, Ill-treatment, Police Misconduct and Detainees' Rights**

Reportedly ill-treatment of prisoners took place in both prison and pre-trial detention facilities. A considerable number of the complaints filed with the Ombudsman dealt with the rights of detainees.<sup>6</sup>

Despite an attempt in 2000 to reform the police corps by significantly reducing the number of officers and increasing the salary of those who remained, some officers reportedly continued to resort to verbal abuse and excessive physical force against suspects.<sup>7</sup>

◆ In April, five officers from the Pärnu branch of the Criminal Police were charged with excessive use of force, abuse of powers for the purpose of criminal activities and neglect of official duties. During the investigations it was established that the officers had been involved in the systematic abuse of persons held in pre-trial detention since 1997. In particular, the so-called “cell number 16” method had become notorious in the detention facilities of the Criminal Police branch. Detainees were taken to cell number 16, where they were abused until they agreed to confess to the crimes they were charged with. Most remarkably, the police officers themselves never carried out the abuses but always ordered an inmate from a local prison to do so with the help of handcuffs, a truncheon and a gun. Typically, the detainees’ hands were cuffed behind their back and they were beaten around the face and threatened with a gun pressed into their mouth. The inmate selected for the task was also ordered to rob the detainees of their belongings. Claims by some detainees that they had been subjected to electric shocks remained unsubstantiated. Allegedly, at least 30 detainees were abused in cell number 16. As of the end of 2001, charges of ill-treatment against the five police officers were still pending and no date had been set for the trial.<sup>8</sup>

◆ On 21 August, police were called to a private party in Tallinn because the neighbours were disturbed by the noise. When two police officers attempted to arrest Sven Tarto and his friend Allan (family name not known), who were drunk at the time, they resisted. This reportedly prompted the two police officers to resort to use excessive

force to make the men comply. During the trip to the police station the abuses continued in the police car. As a result of the abuses Mr Tarto’s liver burst causing him to die, while his friend’s cheekbone was fractured. According to a doctor, who was interviewed in a local newspaper, only the use of exceptionally brutal force can result in a burst liver. Following the tragic incident, charges were brought against the two police officers, and in December both of them were sentenced to three years suspended imprisonment with one year probation, and ordered to pay 1,600 *Kroons* (approximately 102 Euro) in compensation and 8,000 *Kroons* (approximately 512 Euro) for court costs. Once the sentences were announced the two policemen were discharged.<sup>9</sup>

### Religious Intolerance

In June the Parliament passed a new Church and Congregations Law that barred registration of religious communities conducted from abroad. However, following criticism from several religious communities, particularly from the Estonian Orthodox Church, which is subordinated to the Moscow Patriarchate, Lennart Meri, the then President, refused to sign the law. He described the ban imposed by the law as a disproportionate restriction on the exercise of freedom of religion and as an intrusion into the sphere of autonomy of religious communities laid down in the Constitution.<sup>10</sup>

### National Minorities<sup>11</sup>

In response to constructive pressure from the EU and other international bodies, Estonia has made much progress in the field of minority policies in recent years. However, the efforts on the part of the international community have not been sufficient to secure full rights to the large Russian-speaking minority. In particular, the legacy of restricted access to citizenship

continued to limit the rights and opportunities of this group.

### *Citizenship, Residency*

Since the Citizenship Act (which in general meets international standards) came into force in 1992, about 115,000 non-Estonians have been granted citizenship. In line with a trend, which has been persistent already for several years, the naturalisation rate slowed down in 2001: between January and July 2001, 2,034 persons were granted citizenship, as compared to 3,637 persons between August and October 2000. Half of those naturalised were minors.<sup>12</sup> Numerous rights and protective mechanisms continued to be limited to citizens, including the provisions of the Framework Convention for the Protection of National Minorities (FCNM).

Between the date of independence and the end of 2001, about 230,000 persons had been granted permanent residence permits, about 47,000 temporary resident permits and about 165,000 aliens' passports. Between 30,000 and 80,000 persons, mostly Russian-speakers, were estimated to be residing illegally in the country.<sup>13</sup> These so-called illegal aliens were in a vulnerable position, and the June amendments to the Law on the Obligation to Leave the Country and Refusal of Entry further increased pressure on them. As the amendments were aimed at doing away with the problem of illegal residents by exhorting them to either register themselves with Estonian authorities to have their status regularized or leave the country, the amendments proved problematic in several respects.<sup>14</sup>

Firstly, in order to qualify for regularisation illegal residents had to meet at least one of three criteria: they had to be ethnic Estonians; enjoy a family life in Estonia protected by law; or have settled in the country before 1 July 1990 and not have resided in any other country since then. A considerable number of the illegal residents

did not meet any of the criteria. However, many of these persons undoubtedly have close ties to Estonia and perceive it as their true home country.

Secondly, a fine of up to 10,000 *Kroons* (640 Euro, equivalent of two average monthly salaries) was foreseen for illegal residents who were granted the right to regularise their status but whose regularisation process had not been completed within 90 days after they had been requested to initiate it. In light of the fact that a regularisation process normally lasts at least one year, and that the same body that issues residence permits was to impose the fine (the Citizenship and Migration Board), these provisions could not be considered anything but unreasonable.

Thirdly, state officials were also empowered to order the expulsion of illegal residents, including in cases where their regularisation was pending or on appeal. Previously it had only been possible to expel illegal residents on the basis of a decision of an administrative judge. An issue of great concern was the fact that the new provisions left broad scope for the abuse of power, while depriving the persons affected of the right to effective access to court.

Fourthly, the fate of stateless persons who were not eligible for regularisation and in whose cases an expulsion order could not be implemented was left unsettled. By law, these persons should, on the basis of an administrative court decision, be placed in an expulsion centre and wait there to be expelled. The maximum duration of the detention was two months but it could be extended unlimited times by another period of two months.

Following the entry into force of the amendments, the authorities reportedly carried out raids *inter alia* at market places to track down illegal residents.

### *Integration Programme*

Integration was the official aim of the Government's minority policies and was

promoted in line with the integration programme that was adopted in March 2000. This programme covers the period 2000-2007, and for the first three years the budget amounts to 14,5 Million Euro, about half of which originates from foreign sources, including the EU. During the first year the emphasis of the programme lay on the teaching of Estonian in Russian-speaking schools and to Russian-speaking adults.

### Language

New government regulations that were adopted in May set out the level of proficiency in Estonian required of different professional groups of private sector employees. While *inter alia* public transport drivers and social workers were expected to have a basic proficiency, employees involved in the sale of goods and services "dangerous to life, health, social safety or the environment" were expected to demonstrate a middle level proficiency and plane and ship captains, a high level proficiency. Although the new regulations were formally in line with international standards, it was considered problematic that they were guided by the legally ambiguous principle of justified public interest laid down by the 2000 amendments to the Language Law.<sup>15</sup>

On 21 November the Parliament voted to abolish language requirements for candidates in parliamentary and local council elections.<sup>16</sup> This change of law was positive since the requirements previously in place had severely restricted the right of non-Estonian-speakers to run for and choose their candidates in elections, in particular at the local level.

In a number of places, where Russian-speakers comprised a majority of the population, the local authorities continued to use Russian both for communication with residents and in internal dealings. By law these authorities also had the right to request to use Russian, along with Estonian, as their internal working language. However, when four deputies of the Narva city council sub-

mitted such a request to the central authorities in August, it was rejected. The minister in charge of the matter stated that the request could not be approved until it had been ensured that all local officials in the city were proficient in Estonian to the extent required by the Language Law.<sup>17</sup> In previous years several requests of a similar kind had also been rejected.

### Public Signs

The legislation regulating public signs continued to violate the FCNM. Even in areas where Russian-speakers comprised an overwhelming majority, all signs, signposts, announcements, notices and advertisements addressed to the public had to be in Estonian. This practice was, in particular, disadvantageous for elderly Russian-speaking residents who were not fluent in Estonian.

### Ethnic and Racial Discrimination

There was still no comprehensive legal framework for protection against racial and ethnic discrimination and the existing provisions were not monitored or enforced effectively. The general consensus on the part of the authorities seemed to be that discrimination was not a problem in the country and that no particular measures to address the matter were therefore necessary. However, although there were no official statistics, reports by NGOs indicated that many members of minorities faced discrimination. For example, in 2000 the Legal Information Centre for Human Rights received complaints and requests for assistance from more than 470 ethnic Russians, whose concerns to a considerable extent dealt with alleged discrimination.<sup>18</sup>

Positive developments included the opening of a branch office of the Ombudsman in the predominantly Russian-speaking city of Narva in June, while another office was planned for the equally Russian-speaking city of Sillamäe. It was expected

that these offices would assist in the concerns of Russian-speakers being dealt with better.<sup>19</sup>

### **Asylum Seekers and Immigrants**

As amended in January, the Refugees Act largely corresponded to EU standards. However, the concepts of “safe third countries” and “manifestly unfounded claims” remained restrictive. In its November progress report, the European Commission also called for improvements in the administration of asylum matters, the border asylum process and the integration of refugees. As in previous years, the asylum application rate was low, and as of late 2001, no more than 51 asylum applications had been filed since independence. While four persons had been granted asylum, five persons had received temporary residence permits on humanitarian grounds.<sup>20</sup>

The 1993 Aliens Act continued to limit immigration to an annual quota of 0.05% of the population. For 2001 the number was set at 684, and by May, 466 residence permits had already been granted.<sup>21</sup> Following a Supreme Court ruling in 2000, which declared it unconstitutional to invoke the immigration quota in cases of family reunification, the Law on the Obligation to Leave the Country and Refusal of Entry was amended in June so as to make persons with close family ties to citizens and legal residents eligible for legal status outside the quota.<sup>22</sup> However, although the application of the immigration quota has been repeatedly criticised by international bodies, including the UN Committee on the Elimination of Racial Discrimination, no plans to abolish it were announced.<sup>23</sup>

### **Women’s Rights<sup>24</sup>**

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) as well as other international treaties related to women’s rights had primacy over domestic legislation. While the

Constitution ensured equality before the law for all and prohibited discrimination on the basis of sex, the concept of “discrimination against women” was not defined in the effective legislation. However, a new Gender Equality Act proposed by the Government clarified the terminology and definitions with regard to gender equality. The draft law also explicitly prohibited direct discrimination, established measures against indirect discrimination and provided for gender equality in education, training and employment. As of the end of the year the proposed law was awaiting a first reading in the Parliament. For the third year, promotion of gender equality was included in the annual government plan.

In the beginning of 2002 the Committee on Elimination of Discrimination Against Women examined the report submitted by the Estonian Government, which was ten years overdue.

One area of concern was the resurgence of traditional gender attitudes that the country has experienced in the last decade, as a backlash against the obligatory equality between the sexes that was enforced during the Soviet era. For example, according to a survey cited in the Estonian report, more than 80% of the inhabitants were of the opinion that it was a man’s task to earn money and a woman’s duty to take care of home and children. In line with this, men’s participation in housework has recently decreased. Traditional gender stereotypes also prevailed within the educational system and at work places. Meanwhile the country’s courts were under-used as far as cases of gender discrimination were concerned, even though a majority of the judges were women, which should in theory encourage women to file cases. A Committee member noted that possible reasons for the low number of court cases could be a lack of information or the costs of a legal procedure.

Another area of concern was the fact that the high level of education among the

country's women did not correspond with equal chances in terms of employment and political office. The labour participation rate among women was still significantly lower than that of men (53% versus 63% in 2000), and traditional labour market patterns prevailed, with about 70% of the women employed in the service sector. The average salary of women was approximately one quarter less than that of men. In the field of politics, women constituted 18% of the members of the Parliament and 26% of the members of local councils. The new Government formed at the beginning of 2002<sup>25</sup> had a record number of five women within its ranks. The under-representation of women in politics was clearly related to prevailing attitudes. Surveys accounted for in the Estonian report indicated that, in particular, persons with higher education and well-paid jobs displayed a negative attitude towards the participation of women in politics, and that an overwhelming majority of both men and women remained unwilling to become involved in politics.

Some additional areas of concern were women's health care and abuse against women. The number of abortions was alarmingly high, with 98 abortions to 100 births registered for 2000, which suggested that abortion was often used by women as a means of contraception at the expense of endangered physical and mental health. Domestic violence was still a taboo and together with other factors, including a lack of financial resources, this often prevented women from leaving violent partnerships.

The new Penal Code that was adopted in June finally criminalized trafficking in women. However, the authorities still failed to deal with the problem in a focused manner.

A total of 160 NGOs worked on women's issues: some major ones included the Centre for Civil Society Training, the Women's Training Centre, the Estonian Women's Studies and Resource Centre and the Estonian Rural Women's Union.

### **The Mentally Ill and Disabled<sup>26</sup>**

Estonia was the only EU Accession country whose Government had not authorised the publication of any reports on its country by the European Committee for the Prevention of Torture (CPT).<sup>27</sup> The Mental Disability Advocacy Centre (MDAC) stated that it had heard informally that on a visit to the Valkla Social Welfare House in 1997 the CPT witnessed examples of ill-treatment against patients.

On a recent visit to Valkla, MDAC witnessed conditions, which amounted to degrading treatment, including patients being locked in a room all day, communal showering using shared brushes, and many instances of unjustified invasions of privacy. The Ministry of Social Affairs has a plan to reduce numbers in social care homes by discharging 10% of their population per year, but it is not clear what steps they are taking towards de-institutionalisation and the establishment of support services in the community.

There was no requirement for a hospital to inform a patient who had been detained involuntarily of the reasons of his detention, thereby in breach of Article 5(2) European Convention of Human Rights (ECHR).

According to MDAC, there were reports that a large number of psychiatric hospital patients were "persuaded" to become voluntary patients. Patients may sign a form saying that they consent to receive treatment voluntarily. Some patients told MDAC that they were not informed what they were signing.

There were also concerns about the use of police in conveying people to psychiatric hospitals. Contrary to the ECHR, there was no requirement under Estonian law for a prior psychiatric examination before conveyance during an "emergency". MDAC also had concerns about the adequacy of police training in mental health issues: the organisation suspected that untrained police officers could take someone

to a psychiatric hospital merely on the basis of permission from a relative.

Estonian legislation provided that once a person had been taken to involuntarily detention, they could “meet briefly” with a relative, doctor or lawyer. The duration of the meeting could be decided by the attending doctor. This provision appeared to be excessively restrictive, as these procedures left patients with minimal access to support, medical expertise and legal representation.

Of major concern was the fact that the 1997 Estonian Mental Health Act (section 13.4) expressly stated that a person who had been involuntarily taken to detention because of his “mental disorder” may be detained on the decision of a judge “without a court hearing” for 30 days initially, and 90 days on subsequent occasions. The patient could not appeal this decision. This was in clear violation of Article 5(4) of the ECHR, which provides the right to take proceedings by which the lawfulness of a detention is decided speedily by a court.

Further, there was difficulty in obtaining a second psychiatric opinion. This was said

to be partly explained by the limited medical school facilities, which created a collegiate atmosphere.

Under Estonian law, none of those living in any of Estonia’s 22 “social care homes” was legally detained. In spite of this, many “social care home” residents were held in locked rooms or could not leave the grounds of the institution without prior authorisation. Also, most of the residents of these long-stay institutions were under the guardianship of family members or “professional” guardians – who could even be members of staff of the institutions, raising concerns about conflicts of interest. Guardians had the legal power to place a person in a “social care home” and prevent them from being discharged. MDAC reported that it had met residents who seemed to have the mental capacity to decide where to live, and who expressed a desire to live in the community but could not do so because their guardian would not agree to their being discharged, nor were there the support structures in the community to allow them to do so.

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## Endnotes

<sup>1</sup> Unless otherwise noted, based on Freedom House (FH): *Nations in Transit 2001*, at [www.freedomhouse.org](http://www.freedomhouse.org).

<sup>2</sup> ECHR, Judgment in the case of Tammer v. Estonia (Application 41205/98), 6 February 2001.

<sup>3</sup> Unless otherwise noted, based on Open Society Institute (OSI), *Monitoring the EU Accession Process: Judicial Independence*, September 2001, at [www.eumap.org](http://www.eumap.org).

<sup>4</sup> Figures for the situation as of the beginning of 2001, European Commission (EC), *Regular Report on Estonia’s Progress Toward Accession*, November 2001, at [www.europa.eu.int/comm/enlargement/estonia](http://www.europa.eu.int/comm/enlargement/estonia).

<sup>5</sup> EC, *op.cit.*

<sup>6</sup> *Ibid.*

<sup>7</sup> FH, *Nations in Transit 2001*.

<sup>8</sup> Estonian press articles, February 2002.

<sup>9</sup> *Ibid.*



- <sup>10</sup> Keston News Service, 29 June and 4 September 2001.
- <sup>11</sup> Unless otherwise noted, based on the chapter on Estonia in OSI, *Monitoring the EU Accession Process: Minority Protection*, September 2001, at [www.eumap.org](http://www.eumap.org).
- <sup>12</sup> EC, *Regular Report on Estonia's Progress Toward Accession*, November 2001.
- <sup>13</sup> Ibid.
- <sup>14</sup> Legal Information Centre for Human Rights (LICHHR), Vadim Poleshchuk, "Illegals' in Estonia; Final Solution?", 16 July 2001, at [www.lichr.ee](http://www.lichr.ee), and additional information in February 2002.
- <sup>15</sup> LICHHR, Vadim Poleshchuk: "Estonia, Latvia and the European Commission: Changes in Language Regulation in 1999-2001", 17 January 2001, at [www.lichr.ee/eng/](http://www.lichr.ee/eng/)
- <sup>16</sup> RFE/RL *Newsline*, 28 November 2001.
- <sup>17</sup> RFE/RL *Newsline*, 10 August 2001.
- <sup>18</sup> LICHHR, 2001.
- <sup>19</sup> EC, *Regular Report on Estonia's Progress Toward Accession*, November 2001.
- <sup>20</sup> Ibid.
- <sup>21</sup> Ibid.
- <sup>22</sup> LICHHR, Vadim Poleshchuk, "Illegals' in Estonia; Final Solution?" See also Citizenship and Residency under National Minorities.
- <sup>23</sup> OSI, *Monitoring the EU Accession Process: Minority Protection*, September 2001.
- <sup>24</sup> Based on information included in a press release published by the UN Committee on the Elimination of Discrimination Against Women, 23 January 2002.
- <sup>25</sup> The former three-party coalition, headed by Mart Laar, resigned, and was replaced by a new Reform Party-Centre Party coalition, headed by Siim Kallas, in January 2002. The resignation followed internal discrepancies, mainly caused by the fact that the Reform Party formed a coalition with the Centre Party in the Tallinn City Council in early December 2001.
- <sup>26</sup> Based on information from the Mental Disability Advocacy Centre (MDAC) to the IHF, March 2002.
- <sup>27</sup> The CPT visited Estonia twice, in 1997 and 1999.