

HUMAN RIGHTS LITERATURE REVIEWS

Estonia

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1. Introduction

For the purpose of this review, and for the comprehension of the situation in the country in general, it is necessary to highlight that the human rights climate in Estonia is subject to a threefold effect: consequences stemming from the inheritance of its past as a part of the Soviet Union, the impact of its accession to the European Union, as well as its own national peculiarities. The following selection has been made after taking into account the most prevalent human rights issues in light of the aforementioned influences, through the prism of sociopolitical and legal developments in Estonia. Attention will be given to the significant human rights publications in, or with regard to, Estonia during the reporting period, reflecting not only general approaches to human rights but further touching on specific themes such as migration, statelessness, equality and the media, with a time frame focusing mainly on 2015-2019.

2. Relevant Journals

When looking at official legal journals in Estonia, the offer seems to be limited at face value, especially in regard to human rights law. Until very recently, the School of Law of the University of Tartu published the only Estonian law journal *Juridica*,¹ and its English edition *Juridica International*,² covering legal issues of Estonian and international importance. *Juridica* was established as a result of international scientific cooperation with the Faculty of Law and Financial Studies of Glasgow University in 1993 and has featured over 900 contributing authors since its creation.³ The topics addressed in *Juridica*, frequently involving human rights law, are determined by the editorial board, which includes representatives of the University of Tartu, the Supreme Court and the Ministry of Justice, while

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1 *Juridica*, available at: www.juridica.ee/issue.php?id= (last accessed 29 March 2019).

2 *Juridica International*, available at: www.juridicainternational.eu/ (last accessed 29 March 2019).

3 One of the frequent contributors is Julia Laffranque, Judge at the European Court of Human Rights, her most recent articles being 'A Look at the European Court of Human Rights Case Law on Moral Issues and Academic Freedom', and '(Just) Give Me a Reason ...', the latter being motivated by the ECtHR judgment *Baydar v. the Netherlands*, no. 55385/14, 28 April 2018.

those for *Juridica International*, published since 1996, are planned by an international board of law scholars.

In 2018, the *East European Yearbook on Human Rights*⁴ emerged. This new regional peer-reviewed legal journal brings added value by the two journal sections that offer overviews and analysis of regional human rights practice and literature, which aim to become an important resource for both the human rights academic research community, human rights activists and civil society in general. The journal is published in cooperation with Tallinn University, the Danish Institute for Human Rights and Walther Schücking Institute of International Law, and its concept was developed in the context of the 'HURMUR: Human Rights – Mutually Raising Excellence' project.⁵ The publication focuses on human rights discourse in the Eastern European area, placing these matters in the context of worldwide problems and developments.

Moreover, several interdisciplinary journals are published in Estonia, addressing human rights from a combination of focal points.

The *Studies of Transition States and Societies* (STSS)⁶ is a fast-growing open-access interdisciplinary journal for the study of transition societies. Published since 2009, STSS aims to promote interdisciplinary exchange between scholars in all major fields of the social sciences with emphasis on sociology and political science. The substantive focus of the journal is on the transitional societies, particularly on the societal and political changes in the post-socialist region. The journal is published biannually, and whereas the spring issue combines articles of political science, papers in sociology are published in the fall, most recently covering human rights-related topics such as social exclusion of youth, equality and activism.⁷

*Acta Politica Estica*⁸ is an open-access peer-reviewed journal aiming to offer a platform for a wide-ranging scope of analysis in the field of politics and governance in Estonia. *Acta Politica Estica* was established in 2004, and has been published regularly in fall. In addition to the traditional sub-disciplines of politics and governance, works linked to other fields of social sciences and humanities, including law and human rights, are often featured. Alongside the more traditional areas of politics and governance such as party politics, and government policy-making, the publication also highlights research in public opinion, electoral behaviour, political culture, communication and identity, as well as social movements. In the latest issue, one of the pieces published addressed the application

4 The *East European Yearbook on Human Rights*, official website available at: <https://eeyhr.eu/> (last accessed 29 March 2019).

5 A European Commission Project funded under the first TWINNING call of Horizon 2020 (Project No. 692143); more information available at: <http://hur-mur.eu/> (last accessed 29 March 2019).

6 *Studies of Transition States and Societies*, available at: <http://publications.tlu.ee/index.php/stss/> (last accessed 29 March 2019).

7 For example, see H. Sikk, 'Activist Localities in the Queer South', *Studies of Transition States and Societies*, Vol. 10, No. 2, 2018, pp. 55-65; Y. Kosyakova, E. Saar, & J. Dämmrich, 'Institutional Change and Gender Inequalities at Labour Market Entry: A Comparison of Estonia, Russia, and East and West Germany', *Studies of Transition States and Societies*, Vol. 9, No. 2, 2017, pp. 17-40.

8 *Acta Politica Estica*, available at: <http://publications.tlu.ee/index.php/actapoliticaestica/index> (last accessed 29 March 2019).

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of child-friendly justice and its principles in the Estonian legal system in the case of juvenile offenders.⁹

The *East-West Studies* journal,¹⁰ originally established in 2007, has been published since 2015 by the Tallinn University School of Governance, Law and Society as a double peer-reviewed academic journal. The aim of the journal is to bring together specialists in various social studies such as philosophy, law, psychology, economy, international relations and other social sciences whose interests transcend a geographic region. The *East-West Studies* journal is published annually, or once in two years. The latest issue, published in 2017,¹¹ addressed human rights issues such as the right to be forgotten,¹² and the rights of vulnerable groups.¹³

The *Journal of the Estonian Parliament*¹⁴ – *Riigikogu Toimetised* – is a socio-political journal created for discussing the constitutional tasks of the Parliament, publishing peer-reviewed research papers that deal with issues of interest in modern society, governance and politics. Even though this journal does not present a strong legal focus, many of the topics addressed in its previous issues relate to human rights in Estonia, thus offering an important contribution to the overall discussion.

In addition, perhaps in a somewhat less academic form yet proving to be an important publication in the human rights field in Estonia is *Feministeerium*¹⁵ – an independent feminist media outlet. Among other activities, it publishes weekly online articles on its blog, offering a platform for feminist writers in Estonia and abroad, representing a variety of perspectives. It welcomes both visual and written works in Estonian, Russian or English, and its pieces highlight the human rights issues concerning women, minorities and the LGBTQ+ community and contribute to the social and legal discussion in a more accessible format.

On an international level, Estonian academics are not only featured on the editorial boards of various foreign law journals, such as the *Review of Central and East European Law*, and *International Comparative Jurisprudence*, but are also frequent contributors in the field of human rights law. From the reporting period, articles with both an international and a national perspective, such as 'New Challenges to the Old Idea of Universality of (All) Human Rights', by Rein

9 Gornischeff *et al.*, 'Lapsesõbraliku õigusemõistmise kontseptsiooni ja selle põhimõtete rakendamine Eesti õigussüsteemis alaealiste õigusrikkujate juhtumite kohtulahendite näitel', *Acta Politica Estica*, No. 9, 2018, pp. 24-62.

10 *East-West Studies*, available at: <http://eastwest.tlu.ee/> (last accessed 29 March 2019).

11 *East-West Studies*, No. 8 (47), 2017.

12 C. Wulff, 'From Norm Emergence to Active Promotion through the Courts: A Case Study of the Right to be Forgotten', *East-West Studies*, No. 8 (47), 2017, pp. 63-75.

13 Bugarszki *et al.*, 'Comparative Analysis of the Implementation of Article 19 of the United Nation Convention on the Rights of People with Disabilities in Eight European Countries', *East-West Studies*, No. 8 (47), 2017, pp. 106-118.

14 *Riigikogu Toimetised*, available at: <https://rito.riigikogu.ee/> (last accessed 29 March 2019).

15 *Feministeerium*, official webpage, available at: <https://feministeerium.ee/> (last accessed 29 March 2019).

Müllerson,¹⁶ and ‘Why is a “Good Abortion Law” Not Enough? The Case of Estonia’, by Liiri Oja,¹⁷ can be highlighted.

3. Noteworthy Human Rights Publications and Reports

Even though there is a general tendency to produce shorter individual pieces of writing in the form of journal articles and targeted opinions, noteworthy human rights publications of the covered period also include books, collective works and large-scale research projects.

Many of the broader projects devoted to in-depth analysis focusing on particular issues have been initiated by the Estonian Institute of Human Rights (EIHR): the first and oldest independent organization in Estonia systematically dealing with the protection of human rights. The Institute was established on Human Rights Day, 10 December 1992. The goal of the Institute is to collect, systematize, analyse and promote information about human rights, to increase public awareness about the field and to make proposals about how to better protect human rights in Estonia and elsewhere in the world. To this end, the Institute conducts frequent research projects.

Most recently, three research companies – Turu-uuringute AS in Estonia, Latvian Facts and Rait in Lithuania – conducted a public opinion research project on behalf of the Estonian Institute of Human Rights, in the course of which 1,013 Estonian residents, 1,010 Latvian residents and 1,000 Lithuanian residents were surveyed.¹⁸ The main goal of the research was to determine how human rights are being protected in the Baltic countries, how problems related to human rights were perceived, whether residents feel that the state would defend them if their human rights were violated and whom they would turn to in the case of such a violation. A strong difference of opinion emerges in the survey, demonstrating that in Estonia 73% of the respondents feel that human rights are respected in their country, whereas only 47% of the respondents in Latvia and 33% in Lithuania agree with that statement.¹⁹

In 2016, in light of the European migrant crisis, the Institute conducted a ‘Survey of New Immigrants to Estonia’ among the Estonian population and immigrants.²⁰ The study provides an overview of the degree of familiarity of organizations that deal with immigration issues among the population, as well as people’s level of interest in learning about the language and culture of Estonian inhabitants who speak other languages. The study also analyses the trustworthiness of the media space, provides an assessment of the support system for new immi-

16 R. Müllerson, ‘New Challenges to the Old Idea of Universality of (All) Human Rights’, *Israel Yearbook on Human Rights*, Vol. 47, 2017, pp. 161-174.

17 L. Oja, ‘Why Is a “Good Abortion Law” Not Enough? The Case of Estonia’, *Health and Human Rights Journal*, Vol. 19, No. 1, Special Sections: Abortion and Human Rights Drug Control and Human Rights, 2017, pp. 161-172.

18 Institute of Human Rights, ‘Human Rights in the Baltic States. 2018 Comparative Study: Estonia, Latvia and Lithuania’, 2019.

19 *Ibid.*, p. 11.

20 Institute of Human Rights, ‘Survey of New Immigrants to Estonia’, 2016.

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grants and, for the first time, inquires about their opinion regarding the human rights situation in Estonia.²¹

The Estonian Institute for Open Society, another independent research institution, published a report on 'Age Discrimination in Labour Market' in 2016.²² This study, based on the results of a nationwide survey, was motivated by the ageing population and conducted in order to find out whether and to what extent age discrimination exists in the Estonian labour market. The survey shows that while Estonia has overcome the active exclusion of the elderly, and such exclusion has been replaced by tolerance, the latter seems somewhat superficial, neutral and indifferent, rather than empathic and understanding. This ageism is further confirmed by the existence of restrictions and obstacles, which are considered by many as an inevitable social norm. As the survey shows, negative stereotypes create a strong basis for indirect discrimination against the elderly, having a negative effect on their competitiveness in the job market.²³

However, reports concerning human rights issues in Estonia are not published by human rights organizations and NGOs alone. Once a year, the Chancellor of Justice presents an annual report of his or her activities to the Parliament. The Chancellor is a one-person, independent constitutional institution, whose task is to make sure that legislation valid in Estonia is in conformity with the Constitution and that the fundamental rights and liberties of people in Estonia are protected. Besides constitutional review and ombudsman functions, the Chancellor also fulfils the role of a national preventive mechanism for ill-treatment, ombudsman for children and National Human Rights Institution and monitoring authority for the Convention on the Rights of Persons with Disabilities. Most recently, the Annual Report 2017-2018 has been published, including information on children's rights, inspection visits, local authorities, equal treatment, courts and many other topics.²⁴

On an international level, recent important publications about the human rights situation in Estonia include the Concluding Observations on the Third Periodic Report of Estonia by the UN Committee on Economic, Social and Cultural Rights.²⁵ While the Committee welcomed the legislative, institutional and policy measures taken by the State to enhance the level of protection of economic, social and cultural rights, particularly the significant increase in the minimum wage during the reporting period and the adoption of the Welfare Development Plan for 2016-2023, concern was expressed over available resources, treatment of refugees, discrimination, undetermined citizenship, equality and domestic violence, among many other issues. Similarly, the Amnesty International

21 *Ibid.*, p. 2.

22 Estonian Institute for Open Society, 'Age Discrimination in Labour Market', 2016.

23 Estonian Institute for Open Society, 2016, pp. 12-13.

24 English summary of 2017-2018 overview of the Chancellor of Justice activities available at: www.oiguskantsler.ee/annual-report-2018/ (last accessed 29 March 2019).

25 UN Committee on Economic, Social and Cultural Rights, concluding observations on the third periodic report of Estonia (2019) E/C.12/EST/CO/3.

Report 2017-2018²⁶ echoed unease about the position of refugees and asylum seekers and the level of discrimination with regard to ethnic minorities.

Apart from reports, recent important publications also include several books, two of which will be highlighted for the purposes of this review. Both of them are devoted to relevant human rights concerns in the country: the first is directed at a more novel issue of new media, while the second addresses the issue of minority policies and statelessness, which has been at the forefront of discussions since the re-independence of Estonia.

In the 2018 Routledge Research series in Human Rights Law publication *Human Rights Law and Regulating Freedom of Expression in New Media*,²⁷ the authors focus on Nordic countries, globally well known for their elevated human rights standards and high degree of Internet freedom. This collection of works reviews the subject of freedom of expression within Nordic and Baltic countries, incorporating both general themes and relevant country-specific motifs. Chapter 4²⁸ maps the Estonian human rights landscape in the context of freedom of expression and new media. While international observers praise Estonia as a country where “the roof beams of freedom of expression protection are raised high” and the written press relies mostly on self-regulation, the chapter concludes with some degree of polarization in Estonia’s position in the European human rights landscape regarding this right.

*Strategic Frames: Europe, Russia, and Minority Inclusion in Estonia and Latvia*²⁹ explores minority policies in Estonia and Latvia following their re-independence. Schulze, assessing the influence of European institutions as well as Russia itself, analyses matters of citizenship and statelessness following the collapse of the Soviet Union. Pinpointing both the strategic framing and the counter-framing of external actors, the author explains the controversies, delays and suboptimal outcomes surrounding the passage of ‘conditional’ amendments in both Estonia and Latvia as well as the local political climate post accession.

4. Relevant Doctoral Theses

In the following overview of PhD theses on human rights issues, four dissertations, each with a different perspective, contributing notably to the general discussion will be highlighted. It becomes evident that emerging scholars on Estonian human rights are writing about issues from both a domestic and an international perspective, from universities at home and abroad.

26 Amnesty International, Amnesty International Report 2017/18 – Estonia, 2018.

27 Susi et al. (Ed.), *Human Rights Law and Regulating Freedom of Expression in New Media*, Routledge, 2018.

28 R. Veetõusme, T. Pajuste, & M. Susi, ‘Estonia – Raising High the Roof Beams of Freedom of Expression’, in Susi et al. (Eds.), *Human Rights Law and Regulating Freedom of Expression in New Media*, New York, Routledge, 2018, pp. 41-58.

29 J.L. Schulze, *Strategic Frames: Europe, Russia, and Minority Inclusion in Estonia and Latvia*, University of Pittsburgh Press, 2018.

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4.1. *L. Oja, Who Is the “Woman” in Human Rights Law: Narratives of Women’s Bodies and Sexuality in Reproduction Jurisprudence*³⁰

This thesis, by Liiri Oja, looks at women in human rights law and explores the effects of the reinforcement of harmful stereotypes. Through the analytical frame of a reproductive rights-based approach, the author points to the emerging narratives about women, their bodies and sexuality when jurisprudence regarding abortion, birth, reproductive violence and assisted reproduction is connected and read together.

The thesis delves into a total of 35 cases from a transnational space, more specifically the European Court of Human Rights, the United Nations Human Rights Committee, the United Nations CEDAW Committee and the Inter-American Court of Human Rights, covering the period 2003-2017. By analysing this bulk of case law via a feminist perspective, the work argues that despite some progress, women are still assigned roles linked to the idea of women as mothers and women’s bodies as reproductive bodies. However, the thesis does not focus only on the jurisprudence but, in fact, explores how the silencing of women’s voices is happening in three interconnected spaces: in the legal discipline in general, in human rights law and, finally, in the analysed transnational human rights case law.

Thus, Oja concludes, the human rights law forums are still not putting women’s lived experiences at the centre of their analysis and are not doing effective listening work, choosing to disregard the realities faced by women instead. In this respect, the author is particularly critical of the European Court of Human Rights and its case law. Oja emphasizes that in order to better the situation the criticism needs to travel further than simply unpacking the jurisprudence, writing that “it is crucial to ask what is being researched: whose experiences are being traced, recorded, theorized, translated into policies?”³¹ She links this to academia, indicating gaps in research and the predominance of human rights scholars ignoring feminist works in their engagement and teachings in the field. Further, and as one of her concluding remarks, the author emphasizes that the understanding of human rights-based approaches to health, including reproductive and sexual health, cannot remain within the legal discipline alone. In order to advance the conversation and bring about change, the conversations about rights need to transcend the legal community.

4.2. *K. Mäger, The Taming of the Shrew: Understanding the Impact of the Council of Europe’s Human Rights Standards on the State Practice of Russia*³²

In her dissertation, Mäger looks beyond Estonia, analysing the major obstacles in Russia’s complex relationship with the Council of Europe and its standards, as well as hindering compliance with the European Convention for the Protection of

30 L. Oja, *Who Is the “Woman” in Human Rights Law: Narratives of Women’s Bodies and Sexuality in Reproduction Jurisprudence*, PhD thesis, European University Institute, Florence, 2018.

31 L. Oja, 2018, p. 236.

32 K. Mäger, *The Taming of the Shrew: Understanding the Impact of the Council of Europe’s Human Rights Standards on the State Practice of Russia*, PhD thesis, School of Law, University of Tartu, 2018.

Human Rights and Fundamental Freedoms. The author cleverly uses the metaphor of the taming of the shrew when characterizing Russia's interaction with the normative system of the Council of Europe (COE) and the European Court of Human Rights (ECtHR). Mäger concludes 'that the taming of the shrew' has not proved overly successful after twenty years of membership in the CoE because of various legal, political and social factors that hamper compliance with the European Convention on Human Rights (ECHR).

The first central obstacle hindering effective compliance with the ECHR identified by the thesis is the lack of support from Russian domestic institutions for conformity with international human rights law. While the Russian Constitution establishes a formal framework for a liberal rule-of-law state, Russian executive power lacks limits in reality, and other institutions, such as the courts, lack the power, ability and will to implement human rights predictably and impartially. The second key obstacle identified by the author is the low status of the ECHR in the Russian domestic legal hierarchy. Indeed, according to the thesis, the Constitutional Court does not tend to interpret central civil rights and freedoms in the light of the case law of the ECtHR, particularly in politically sensitive court cases. The third major obstacle identified by the dissertation is the value system cultivated by the Russian government and approved by the practice of the Constitutional Court, as well as the Russian Orthodox Church. Mäger finds that these attitudes are more supportive of traditional values and interests such as Russian sovereignty, state security and patriotism. The thesis further argues that rigid legislative amendments have restricted the exercise of the right to freedom of expression, the right to freedom of assembly and the right to freedom of association, being the last important obstacle preventing effective compliance with the ECHR. These amendments have deterred Russians from speaking up, posing questions and demanding changes in their country, thus further weakening the means and motives of civil society to demand compliance with international human rights treaties.

As a result, Mäger argues, the effectiveness of the CoE is hindered, and without change effective compliance with the normative system of the Council is unrealistic in Russia. The author concludes that "compliance cannot be enforced from the outside when the idea of human rights is not entrenched in a country, particularly in its legal and political institutions."³³

4.3. K. Luhamaa, *Universal Human Rights in National Contexts: Application of International Rights of the Child in Estonia, Finland and Russia*³⁴

Luhamaa approaches her thesis from the perspective of international law in a national context, and the principle of universality, the aim of the dissertation being an analysis of the interpretation and implementation of selected children's rights in three states: Estonia, Finland and Russia. In particular, the thesis delves into whether significant differences occur in the national implementation of the

33 K. Mäger, 2018, p. 255.

34 K. Luhamaa, *Universal Human Rights in National Contexts: Application of International Rights of the Child in Estonia, Finland and Russia*, PhD thesis, Faculty of Law, University of Tartu, 2015.

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minimum core of these 'universal' rights and what factors might cause any such differences.

The author finds that even in the case of the Convention on the Rights of the Child, the universality claim does not necessarily always hold true and, furthermore, that the interpretation and practical application of the minimum core of rights in these states differ considerably. In its analysis, the work approaches the conditions of national implementation of international human rights, as well as the implementation of two primary principles of the Convention: the definition of a child and the best interests of a child. The research undertaken shows that there are considerable differences in the national implementation of the rights of the child, a number of these discrepancies being substantiated through different values or traditions. Further, the thesis argues that the practice of the Convention Committee is not consistent. One of the examples presented in this regard is child marriage, where the Convention Committee did not recommend the implementation of the ban on child marriages to the analysed states. The dissertation concludes that more vigorous work on behalf of the Convention Committee in the interpretation of norms and follow-up on developments in the relevant states would have a positive effect on national legal systems, guaranteeing better implementation of the Convention.

4.4. K. Joamets, *Gender as an Element of Marriage Capacity in the Context of National and Supranational Law in the European Union*³⁵

While submitted slightly outside of the reporting period, this thesis is nonetheless relevant in the context of equality in Estonia, especially in light of recent developments in legislation and jurisprudence. The dissertation explores the legal relation of marriage capacity and its legal function in a changing society, concentrating on the validity of the relevant regulation in Estonia and its conformity with supranational laws.

The first section of the work is dedicated to the concept of marriage capacity in its legal-historical development in a changing society, especially in Estonia and its relation to culture. The second section covers the legal regulation of marriage capacity and the question of free movement in the supranational level, exploring the latter as a fundamental right belonging to the primary law of the EU. Further, the secondary law of the EU is analysed, specifically the developments of EU law on family relations. The third section explores compliance of Estonian law with supranational law. The work claims that 'regressive states' in the EU should make a critical appraisal of their culture to evaluate their position on the protection of culture and its legitimacy. The author concludes that changing societies allow no single paradigm, but would foster evolution in all spheres of life.

Following the submission of this thesis, and subject to the recent jurisprudence of the Supreme Court, the Estonian Police and Border Guard Board now recognizes same-sex marriages in case both of the partners held residence in the

35 K. Joamets, *Gender as an Element of Marriage Capacity in the Context of National and Supranational Law in the European Union*, PhD thesis, Faculty of Social Sciences, Tallinn University of Technology, 2014.

country they married in at the time of registering the marriage. What is more, the Registered Partnership Act (RPA) was passed in Parliament on 9 October 2014, and it entered into force on 1 January 2016. To date, however, the Parliament has not passed any implementing legislation, i.e. provisions that specify the implementation of the RPA in everyday practical situations. The passage of the draft as an act requires the majority of the votes of the members of the Parliament, since the draft amends acts governing court procedure and the Citizenship Act. It would therefore be of interest to see a new analysis on the topic, taking into account the emerging changes in relation to same-sex marriage and registered partnership.

5. Summary

In the light of the aforementioned literature, it is evident that human rights issues are frequently featured in reports, opinions, articles and general legal research. The content of such literature effectively reflects the true pressure points in society: the rights of (new and old) migrants, women's rights, equality and the role of the media in human rights. Reading these works in conjunction with the threefold historical heritage permits us to better understand the foregoing concerns and think along with the authors about how the problems in Estonia can and should be remedied.